value must be made up by a transfer from earned surplus to capital surplus. The language I think is simply inappropriate, although perhaps it is true that not many people misunderstand it.

Finally, I think there could be a good deal more improvement in a section that has certainly been improved. This appears on pages 8 and 9, clause 19, section 12, subsections 14 and 15. I think the meaning of subsections 14 and 15 has never been entirely clear. These are the subsections that prevent the issue of non-voting shares. They were put in in the 1930's. I think it was pretty clear that the original subsection 14 was aimed directly at the device of management shares where a company issued a few shares carrying voting rights to an inside group and then issued a lot of shares with no voting right to an outside group, giving the inside group a monopoly of voting power with perhaps a very small investment.

Unfortunately, the original subsection 14 was worked a little too explicitly in terms of blocking this device. It said you might not give to one class of shares exclusive voting power. I think it did leave open the possibility of giving voting power to two classes of shares and then having a third class with no voting power. I do not think the companies branch has ever been willing to permit a class of shares with no voting power; I do not think it was entirely clear from the old subsection 14 that this was forbidden. The new subsection 14 seems to take care of the point; it says that no class of shares may be issued with voting rights limited in such a way as to attach to any other class or classes of shares the exclusive right to control the management of the company, so this would preclude an issue of non-voting shares, I suppose.

I think subsection 15, however, still needs some improvement. Subsection 15 provided an exception to subsection 14. As I would paraphrase the two sections as they now stand in the act, subsection 14 says you may not create a class of shares that has exclusive power, and subsection 15 says there is one exception to this, you may give exclusive voting power to a class of preferred shares on the happening of a stated event. I think one of the defects in the subsection is that it does not expand on what a stated event is. Pretty clearly the intention was that when dividends had been passed for a certain number of periods it would be appropriate for the preferred shares to take over the company. I think subsection 15 was intended to permit exclusive control of the company to the preferred shares in this sort of situation. I do not suppose that exclusion is really very important. Very few companies give exclusive control to an issue of preferred shares under any circumstances. Many companies do give voting rights to their preferred shares, not exclusive control but at least voting rights when the dividends have been passed. I think subsection 15 has been interpreted to mean that this is all right; that is, that you do not have to give full voting rights to preferred shares, and it is sufficient to give them the right to vote when certain things have happened. I am not sure that the passing of dividends carries this inevitable interpretation, but I think it is the interpretation given by the companies branch. I believe it would be appropriate to redraft subsection 15 to make it clear—if this is the meaning—that the voting rights of preferred shares may be limited to the extent that they may be able to be voted only when certain things happen. I would hope the term "stated event" might be spelled out in a little detail. I believe the intention was that the stated intent would be the passing of some dividends. I do not think it is at all clear from the wording of subsection 15 alone that that is what is meant by stated event.

I think that is all I have to say, Mr. Chairman.

Mr. GELBER: I was interested in the discussion about shares in mutual funds. I wonder whether some of these problems would dissolve when you view mutual fund as a partnership. Do you not think that a mutual fund really is a form of partnership?