involved; and b) the *Bank Act* provisions which require that three quarters of a Schedule I bank's board of directors must be Canadian citizens, ordinarily resident in Canada. Thus, what guarantees Canadian control is that Schedule I banks are management- and director-controlled.

Two further points are relevant here. The first is that the 10/25 rule still applies to residents of countries other than the U.S. The second is that Chapter 17 does not apply to provincially chartered financial institutions. Thus, Americans could not buy the Quebec-chartered arm of Royal Trustco because Quebec legislation still incorporates the 10/25 rule. This leads in a rather anomalous direction: if Canadians want to allow trusts to be narrowly held and also want to ensure that they remain in Canadian hands, the "solution" would be to have them charter provincially!

- *The Schedule II Bank Provision and the AMEX Charter*

A second significant provision is that which exempts U.S. Schedule II banks from the asset ceiling on the size of the foreign bank sector and improves the ease with which they can establish branches. This, combined with the adoption of the BIS (Bank for International Settlements) capital-adequacy standards for both Schedule I and II banks, effectively means that there are no differences in terms of powers between Schedule I banks and U.S. Schedule II banks. However, there are differences in terms of ownership structure.

U.S. Schedule II banks, like all other foreign banks, are subsidiaries of their parent banks. As stated in the foreign bank guidelines (Appendix D), foreign bank applicants are generally expected to be widely held and involved primarily in financial services, although this has not always been the case. Use of guidelines rather than legislative requirements recognizes that the situation of foreign banks is not uniform around the world. The Committee understands that roughly ten per cent of the foreign banks with subsidiaries in Canada are either commercially linked and/or narrowly held outside Canada (such as state-owned banks). Most of these are non-U.S. foreign banks. However, with the decision to allow American Express to charter a Schedule II bank, some witnesses expressed concern that Canada had fundamentally altered its policy toward foreign bank entry. Specifically, if AMEX serves as a guide, the playing field would be altered since U.S. Schedule II banks could be commercially linked whereas Canadian Schedule I banks could not. What is true is that, over the years, the application of the policy toward foreign entry has resulted in several cases where the ownership structures for the parents of Schedule II banks are less restrictive than the ten per cent rule applicable to Canadian banks. Since most of these pre-date the FTA (and most are non-U.S. foreign banks), it is inappropriate to link this to the Free Trade Agreement.

The trust companies also feel aggrieved by the AMEX decision. They argue that if a U.S. resident (American Express) can now own a bank in Canada, then similar Canadian providers of financial services should also be permitted to own a bank in Canada. The comparison that comes easily to mind is between BCE Inc. and American Express (U.S.). Both are widely held and both are commercially linked (although, to be fair, BCE Inc. is essentially involved in commerce whereas American Express is basically engaged in financial-related activities). Yet AMEX has a Schedule II bank charter which it can wholly own in perpetuity whereas BCE Inc. can only obtain a domestic Schedule II bank charter, which requires BCE Inc. to sell down to ten per cent within ten years.

There are no obvious solutions to these issues. To allow Royal Trustco, for example, to charter a bank would compound the playing field problems for the banks: both U.S. Schedule II banks and wholly owned domestic banks (if such a category were to exist) would have an ownership freedom not allowed to Schedule I banks. The obvious solution might appear to be to have only one class of Canadian bank where the only provision would be to have at least 35 per cent of voting shares publicly traded. The problem then would be that the existing Schedule I banks would be vulnerable to American takeover because of the access provided to U.S. residents under the FTA.