

PROCEEDINGS RESUME ON 9 APRIL 2002:

CHAIRPERSON: We commence this morning's proceedings. Today we hear the evidence of Absa Bank Ltd. The first witness is Mr Balt and representing the Commission we have a new legal team. Mr Naidu, perhaps you should put your names on record.

5 MR NAIDU: Thank you, Mr Chairman. For the record the initials are H K, the surname Naidu SC. I am assisted by Hamilton Minatshu(?) of the Johannesburg Bar.

CHAIRPERSON: Thank you. And Mr Le Roux, you represent Absa today.

MR LE ROUX: That is correct, Mr Chairman.

CHAIRPERSON: Thank you. Mr Bolt, your full names please?

10 PETRUS JOHANNES BLIGNAUT BALT d.s.s.

EXAMINATION BY MR NAIDU: Mr Balt, are you employed as Group Treasurer of Absa Bank Ltd? --- Yes, that is correct.

And is your qualifications set out in paragraph 1 of your CV which is Balt 1 on page 16 of the bundle of documents? --- Yes.

15 And is your training and work experience set out respectively in paragraphs 2 and 3? --- Yes.

Can you describe briefly in your current position what are your areas of responsibility? --- In my current position it is to co-ordinate all the treasure activities of Absa Group locally plus abroad which *inter alia* would include the following. It is all the routine treasury management issues. It is also the daily funding and cash management. It is the hedging, liquidity and risk management plus it is also the banking relationship management. It is also expected for me to prepare routine and - it is basically reports on an *ad hoc* basis and I also look at the front, middle and back office functions plus the preparation of annual budgets plus strategic plans.

25 For your present for and on behalf of Absa have you prepared a statement which constitutes pages 1 to 15 of the bundle of documents? --- Yes, that is correct.

And do you confirm the contents of this statement? --- Yes.

Do you adhere to the statement? --- Yes.

30 And you appreciate that this statement will constitute evidence before this Commission? --- Yes.

Just very briefly to give an outline of the process involved in preparation of the statement, do you confirm that Absa had received a questionnaire which identified in broad outline information that was required to be responded to? --- Yes.

35 And did the process involve receiving statements from you and other officials of Absa --- Yes.

And with interaction with the legal team representing the Commission were the statements concluded in the form presented to the Commission? --- Yes.

And you were also made to understand that there are forensic auditors which had been interrogating the information, detailed information supplied to them by Absa? --- Yes.

40 And when the report is obtained that subject to what is contained in that report you may be requested on behalf of Absa to respond to any information in that report which calls for a response? --- Yes, that is correct.

Now you prepared an outline generally of the presentation that Absa intends to make today? --- Yes.

45 Would you go through that quickly? --- Thanks very much. In the outline of the presentation, Mr Chairman, we are dealing with the activities very much in terms of what the questionnaire asked us. My responsibility will be to deal with Absa's foreign exchange activity and I will look at the structure plus the overview of the operations. Then I move on to the products, markets and role. Briefly I will discuss the impact on the bank's results and activities. Just for the record, that was a detail provided in terms of the questionnaire as well as after the statement of Mr Bob Tucker there was certain information requested on a Standard Bank format. That was also supplied to the Commission. Then I will look at the bank perspectives, that I will deal there with non-residents as well as the circular D which was issued in October, D342. The following from my presentation. Mr Rebuzzi who is
50 general manager on international banking operation side, he will deal with the exchange control compliance and procedures. Then following from him Mr Carel Grönum who is general manager of risk management, enterprise risk management, he will deal on the risk management framework and the compliance and the adherence to the ethical codes and standards will be dealt with by Ms Rianne Potgieter who is head of compliance in Absa
55 Corporate and Merchant Bank.
60

And in your bundle of annexures have you prepared in Balt 3 the corporate, the group executive structure of Absa? --- Yes.

And in paragraph 4.1 you deal with the structures and the responsibilities? --- Yes.

Would you like to go through that please? --- To start off with the group executive
5 structure, what you have there is the Absa Group which include Absa Bank Ltd, is the group,
and that starts with Mr Nollie Bosman who is the group executive. Then I have highlighted all
the group executive directors and I have just denoted those areas that they are involved,
where foreign exchange exposure or foreign exchange activities occur. Like for instance Dr
Booyesen on the Business Bank, Mr Charles Erasmus on the Private Bank. Just for the
10 record, in my slide 3 I have added Mr Skosana who is looking after the personal financial
services, just for the record, just to add that onto your slide because that was discussed in
my witness statement. And then Mr J P van der Merwe who is looking at the retail banking
services. Mr Louis van Zeene on the physical channels and just for the record, physical
channels refers to the branch network. It is the platform of delivery. And, finally, is the
15 Corporate and Merchant Bank side of which I am the group treasurer, that is under Mr
Rupert Bardeaux.

That structure is dealt with in Balt 4? --- That is correct. If I move on, I would just
like to highlight that on page 2 of my statement I deal with the foreign investments, that is the
limit to the R750 000 plus the travellers cheques and subscriptions but the bulk of the foreign
20 exchange activity occurs in the Corporate and Merchant Bank which is Balt 4. This is the
slide that I will follow on now from. Chairman, it is a very busy slide and I would like to refer
you to the note and where appropriate I will highlight. As I have mentioned Mr Rupert
Bardeaux is the group executive director and he is responsible for the Corporate and
Merchant Bank. Now I would like to highlight those areas where there are foreign exchange
25 activity or foreign exchange products. It is in international bank side in South Africa. On the
securities lending the treasury which is under my responsibility where there is a proprietary
trading unit, foreign exchange asset trading is mainly involved in non-foreign exchange
related deals. Money market, funding side and then there is a client transacting area. Then
Mr Rob Rebuzzi that I have highlighted who is also a written statement. Then Mr Tommy
30 Edwards looking after corporate and specialised finance and specifically on the specialised
finance side, I will deal with this. And then there is an international offshore arm which is
headed by Mr Peter Gordon and that deals with all the offshores which include Absa London,
Absa Singapore, Absa Asia (Hong Kong) and Bankhaus Wölburn which is a private bank in
Hamburg of Absa.

And is the local and offshore operations set out in paragraph 4.1.2 of your
statement? --- That is correct.

Now in Balt 5 and 6 on page 29 and 30 you deal with how these divisions interact
with each other? --- Yes.

Would you like to briefly discuss that? --- Yes. Just to start, very important, all the
40 offshores interact with one another on a matrix basis. What I have done is I have highlighted
the specific division. Then I look at the intent and the product involvement. Very important, if
I can start with Absa London which is a branch of Absa Bank Limited. The intent of Absa
London is to be a pricing hub for all non-rand treasury products. Very important, in our
offshores because of the liquidity of the rand, we do have from time to time client driven rand
45 transactions. And our intention in Absa is to reduce that involvement without adversely
impacting on profitability over the next few years. Then furthermore, in Absa London it
facilitates the client transactions. It is also responsible for the hedging of its risks which would
emanate from its client transactions as well as from the proprietary trading unit. And then
finally Absa London co-ordinates the raising of all non-rand funding.

On the product involvement, they are very much involved in the interest rate products which
50 range from the forward rate agreements, swaps, futures, bonds and options. They are also
looking at emerging market arbitrage. Also on foreign exchange side and on the money
market side. Very important, Absa London is not a market maker.

If I can move on to Absa Limited, Singapore. Absa Limited Singapore is also a branch of
55 Absa Bank Limited in South Africa. It focuses on Singapore Dollar denominated treasury
products. It also facilitates client trades, I have mentioned London and it uses the rand hub in
Johannesburg and the non-rand hub in London to do the execution. It is also responsible for
the hedging of its risks which emanates from its normal banking activities. It has very much
the same products as is the case with Absa London.

And is that set out at the top of page 4 of your statement? --- That is correct.

Can you proceed to Absa Asia, Hong Kong. --- Absa Asia Limited, Hong Kong is a subsidiary of Absa Bank. It focuses on client transacting as well as the hedging of market risks which emanate from their normal banking activities. Very important, the business is also, like the case with the other two, limited to client driven rand involvement.

5 And the products involved? --- Very much the same as the previous.

If you proceed to Bankhaus Wölbern and Company? --- Bankhaus Wölbern is a private bank of Absa which is situated in Hamburg, Germany. It is an A rated bank in terms of German law. It focuses primarily on client transacting as well as the hedging of market risk. The difference between Bankhaus Wölbern and the other units is their involvement in
10 Euro products. The business is also limited to client driven rand involvement.

Mr Balt, on page 5 of your statement you set out the key staff responsibilities in paragraph 4.1.4? --- Yes.

Now on page 6 of your statement you set out the financial market products and the markets in paragraph 4.2 and you also deal with it in Balt 7 and 8? --- That is correct.

15 Can you take the Commission through that, Mr Balt?

MS QUNTA: Sorry, Mr Naidu, you are referring to page 6 in this witness' statement, we have got 38, 39, 44, which one are you using?

MR NAIDU: Page 6, paragraph 4.2

MS QUNTA: Is it the number stamped on top?

20 MR NAIDU: Yes. We are dealing with Balt 7 and 8. --- Yes, that is correct.

Is that identifying the financial market products and markets?

--- That is correct.

Is that all set out in paragraph 4.2.1 and 4.2.2? --- Yes.

In 4.2.2 you deal specifically with the OTC's and on page 7 you deal with hedging,
25 execution and funding and at page 8 you go through to Exchange traded markets? --- Yes, and just for the record, in 4.2.3 I highlight those products which mainly give rise to foreign exchange transactions. I highlight that together in Balt 7 and Balt 8.

Right. --- To deal with it, Chairman, I have divided the financial products in over the counter products on Balt 7 and on Balt 8 on exchange traded markets. And then for the
30 record, I have also included the structures and corporate finance products which might involve foreign exchange securities. In going back to over the counter, those categories and products highlighted in yellow are those products which may give rise to foreign exchange transactions in the Group and those are the products that I highlighted in my witness statement as 4.2.3. In terms of the categories I am going to take you through on those
35 products, it is on the credit derivative side. And then it is commodities, it is equity derivatives, it is the foreign exchange market and securities lending. Very important is we do pricing, hedging plus execution and funding on all of those products. Then specifically with regard to credit derivatives, it is credit default swaps. Then on the commodities side we deal in all the main commodities which range from gold. Then there is options as well. Then in the local
40 market we are also looking at forward and physical transactions. Then to move on in terms of equities, spots and forwards, basis and currency swaps and securities lending. That is the OTC market or over the counter market. Then the following category is the exchange traded market. There we deal on all the major exchanges and (indistinct) which range from the Johannesburg to the London Metal Exchange. Very important there it is mainly on the
45 commodity side and equity derivative side which has a foreign exchange impact. And that is very much the precious metals and the base metal side and options. And on the equity it is on physical equity as well as indices and equity futures.

If I can then move on to the structures and corporate finance side. Those are categories which may give rise to foreign exchange transactions or when there is an importation of
50 goods or there is a discounting and a supply agreement. Or there could be invoice purchasing or commodity finance and your term loans, especially your export and project finance type transactions.

Now in paragraph 4.2.5 you make the point that Absa as an authorised dealer is a major market maker in the Forex market? --- Yes, that is correct.

55 Now your securities lending, does Absa deal with it an agency or in a principal? --- It is very much important to note to the Commission that Absa solely deals in an agency capacity.

You deal with that in paragraph 4.2.6. --- Yes, that is correct.

60 MS QUNTA: Are you going to deal with some of the products in a little bit more detail or are you just taking the Commission through them enumerating them?

MR NAIDU: Yes. That is what we propose to do unless there are any specific questions that you require to raise in so far as the products are concerned.

MS QUNTA: And in relation to the foreign exchange transaction which is after all our focus, is that going to be the same thing? --- It is very important, I have attached on pages 18 to 26, is a general glossary, where I have actually described all the treasury products terminology, if there is a specific question on a specific product.

MR NAIDU: You are interested in the foreign exchange related deals which may affect the Rand here.

MS QUNTA: Yes, because that is after all our focus, it would be better, I thought, certainly I would have hoped that we would have been enlightened on some of the products that Absa is involved in.

MR NAIDU: Yes, it is on page 9, Mr Balt, you confirm that on page 9? --- Yes.

You identify, using six bullets, those related deals which may affect the Rand? --- Yes, and I can mention them to the Commission. It is spots which has been defined in the glossary. It is the forward exchange contracts, futures, basis and currency swaps. Then it is securities lending and rand loans to non-residents. Just for note of the Commission, we have supplied details as per the questionnaire to the auditors.

Mr Balt, can you just describe briefly your Absa securities lending as you set it out in 4.2.6 to 4.2.8? --- I would like to read to the Commission. Absa Securities Lending deals solely in an agency capacity. Absa does not trade as a principal borrower or lender in this market. It services both lenders and borrowers which include S A residents as well as non-residents. Then with regard to the monthly average volumes for the period January 2001 to December 2001 have been provided, as part of the answers to the Commission's questionnaire and are available for scrutiny by the Commission, if required. And then the next point, Absa Custodial Services Division (very important) refrains from any scrip lending activities. And then furthermore, Absa Securities Lending, as the agent sourcing the relevant shares and delivering them to the borrower, does not have access to information relating to the underlying trades and reasons why shares are on loan. For instance, there may well have been arbitrage opportunities but the borrowers or traders would have determined these themselves. And then finally, Absa is not aware of any significant positions subsequent to 1 September 2001.

Mr Bald, the Absa client base set out in paragraph 4.3 of your statement .. (intervenes)

MS QUNTA: Sorry, Mr Naidu, are we allowed to ask questions or shall we wait until the presentation is finished?

MR NAIDU: The choice is yours, madam Commissioner.

MS QUNTA: If you could just go back to 4.2.8. You say Absa trades only as an agent, not as a principal? --- That is correct.

And you say further there that as an agent sourcing, and we are talking about scrip borrowing, is that correct, in 4.2.8, you are really talking about securities lending transactions? --- Yes, it is securities lending.

And are you saying that you do not have access to information relating to the underlying trade? --- No.

In terms of the Reserve Bank Exchange Regulations, are you an authorised dealer? --- Correct.

Now are you not required to provide that to the Reserve Bank and to monitor trade? --- Just for the record, I am not a specialist in securities lending. The information that I have detailed here I have obtained from our head of securities lending. I was told that in terms of securities lending, because we act as an agent, we do go through the normal risk framework which would mean credit limits. Plus it must be a party of substance and it is normally done on a collateralised basis. We do deal with the major parties which is residents as well as non-residents on the scrip lending side.

So it could be from a non-resident to a resident or vice versa, from a resident to a non-resident? --- Yes.

Agreement could be .. (intervenes) --- Yes, to the best of my knowledge there has been a change in terms of the collateral on the non-resident side and I deal with it later where in the past it was possible to lodge non rand collateral and that has actually changed. But with regard to specific requirements in exchange control, I would have to get back to the Commission. I am not in a situation where I can answer this.

Because you know the evidence that we have had over the last few weeks in

relation, perhaps not directly the scrip lending because I presume that the securities lending could stand alone, could be a stand alone transaction or it could be linked to an asset swap or a share placement? --- Yes.

5 But the requirement that there must be an underlying transaction and you are saying the trade, the underlying trade, you are saying you do not have access to that information. So presumably you would not know whether those transactions, if they are linked to any other asset swap or share transaction and involve foreign exchange, whether they comply with exchange control regulations or not? --- No.

10 Mr Commissioner, I have been informed by Absa to inform you and the co-Commissioners that should any information that you require, any form of detail on any issue, if an indication is given that information can be presented.

MS QUNTA: Yes.

MR NAIDU: Mr Balt, your client basis set out in 4.3 and in Balt 9 and I do not believe it is necessary to go through to the various percentages reflected. Do you adhere to the information in paragraph 4.3? --- Yes, that is correct.

15 Now page 11, paragraph 4.5, you deal with the impact on the bank's results and activities of the depreciation of the rand. Can you deal with that please? --- Yes, I am of the opinion that the rapid depreciation in the rand mainly had a negative effect on Absa's Treasury Operations. The impact on profitability was mixed. Gains were made on the Foreign Exchange and Gold and Currency Options desks, in contract, the interest Rate Derivatives and Local and Offshore Funding desks were negatively affected by a sharp decline in liquidity. As a second point the Treasury as a whole was adversely affected by the risk to credit lines, as these limits are set within institutional and Country Risk parameters. Then in terms of the value at risk parameters, these are also exceeded and that is the Tier-II limits and the capital adequately ratios were decreased due to a negative impact on the Rand's balance sheet.

20 And the securities lending unit? --- On securities lending they experienced a stagnation in the business over the period and the reason for the stagnation was due to a change in collateral requirements that I have just mentioned which were from dollar to rands. This has negatively increased collateral risk for the participants, especially on international side. The damage to the business is ongoing and the full extent has yet to be fully determined. Very important, in contrast to competing financial markets, on-lending is usually avoided because of stamp duty.

30 Mr Balt, paragraph 4.6.1 you deal with market making and speculation so far as Absa is concerned. Can you just deal briefly with that please? --- Yes, and I would like to discuss this in terms of my slides.

Balt 10 and 11. --- Balt 10 and 11.

40 Go ahead. --- Chairman and Commissioners, very important, I am making a distinction between a market maker and a speculator. Absa is a market maker and any profits arising from proprietary trading are generated within specific risk parameters. Important to note is that the assumption of risk demands a certain level of profitability which is risk and reward and provides an essential service in the financial market by creating liquidity.

45 If I can take you through this, I am a speculator and I deal with this in 4.6.1.4. There are many definitions and I have taken the Oxford Dictionary, it is to form a theory especially without a firm basis; to invest in stock in the hope of gain but with the possibility of losses; to gamble recklessly. The source is the Oxford Dictionary and I agree with this definition. On the other hand, a bank is a market maker. A market maker is a price maker. He buys risks, he takes a market view and I would like to refer you to 4.6.1.7 where I note that Absa Treasury has a full time treasury unit which does research. A function of the unit is to research daily market movements. Details of the movements and activity are available for scrutiny if required. Once we take a market view, we trade that risk and this is where the liquidity comes into the market because in a perfect market you will have your arbitrage, yes, you will have your hedges and you will have your speculators. And all of these parties are there to provide liquidity and to generate revenue. That is our distinction between a market maker and a speculator. Any transactions not conducted within defined risk parameters may be considered imprudent.

55 And 4.6.1.3 you identify examples of transactions which may be considered unethical or improper? --- Yes.

60 And you confirm that Absa does not engage in speculative activity? --- No, to the best of my knowledge my opinion is that Absa does not engage in speculative activities.

Absa's trading activities are based on a balance of the risks and the positions assumed during the course of its market making obligations that I have just handled with in my slide, Balt 10.

5 Mr Balt, are you aware of any illegal or unethical transactions or actions by any person or entity during the period under investigations that may have caused or contributed to the rapid depreciation of the Rand? --- No, to the best of my knowledge I am not aware of any illegal or unethical actions by any person or entity during the period of investigation that may have caused or contributed to the rapid depreciation of the Rand.

And does that also apply to non-residents? --- Yes.

10 Now in paragraph 4.6.2.2 to 4.6.2.4 you deal with the entry activity and exit of non-residents and its implications. Can you just briefly deal with that in your evidence? --- Yes. It is very important that the non-residents play a very active role in the market because with their participation it facilitates foreign trade, it increases liquidity in the rand which raises confidence levels in holding rand and in this regard foreign investment in South Africa is
15 aided. The activity of non-residents in raising liquidity lowers the risk of holding rand as confidence in entering and exiting the market is enhanced. It also improves global access to the rand market which is essential for the growth of imports and exports. Higher liquidity levels help to improve the range of products available in the rand market. It also helps to improve the attractiveness of the market and sophistication as well as local skills are
20 developed and improved by the participation of foreign entities in the market. Then finally, competition and pricing are also improved in the market through foreign participation.

And finally, in 4.6.3 you deal with the implications surrounding Circular D342? --- Yes.

25 Would you like to speak of that? --- I am of the opinion that the stricter enforcement of Circular D342 in mid-October resulted in an immediate liquidity drain and as a result of the market participants, and I would like to include the word after ensuring stricter compliance, it is an error on my statement, therewith. This resulted in an expansion in the second-tier rand market outside South Africa, widening of bid offer spreads and a decrease in the pool of market participants.

30 Can you just briefly explain what do you mean by second-tier rand market? --- Yes, it is very important to note that the rand is a liquid currency and that that is traded on all the major financial markets across the world. There was an article in the Beeld on Friday which estimated that it is approximately \$3 billion per day on the foreign exchange market is trade offshore. In addition, since 13 October 2001, the number of participants dealing directly with
35 the SA Rand market-makers decreased. That resulted in a decrease in turnover and a widening of bid/offer spreads. The market became imbalanced due to the lower liquidity and as a consequence, the risk of holding rand became unacceptable and resulted in severe reduction in foreign exchange supply to the market. Market efficiency was also negatively affected by the additional administrative burden.

40 And in conclusion, Mr Balt, you talk of a review that was conducted by the Reserve Bank in November 2001 and the result thereof? --- Yes.

Would you like to just briefly talk of that? --- Yes. it is important to note that the Foreign Exchange Review was done on Absa by the SA Reserve Bank towards the end of November. We have subsequently received confirmation that the authorities were satisfied
45 that Absa had complied with all the prescribed regulations.

And you have the letter from the Reserve Bank to that effect? --- Yes, I have the letter and I would like to hand this in for record of the Commission.

Thank you.

MS QUNTA: If you to 4.6.1.3, the term "unethical". --- Yes.

50 I think you are familiar with the terms of reference of the Commission, are you? --- Yes.

So there are two terms used there, the Commission is mandated to look at transactions that may be illegal or unethical and there is a distinction drawn between what is illegal and what is unethical. In other words legal but unethical. So in your, I have the
55 impression in 4.6.1.3 you are dealing with insider trading, money laundering, I am not quite sure what front running means but you can explain that, over-invoicing, collusion and fraudulent activities. Now to me all those transactions are actually illegal because insider trading is illegal and you can be fined heavily and imprisoned and all sorts of things. --- Yes.

60 So you know, my impression of those things you have mentioned they are not actually unethical, they are illegal. Do you, if you agree with me, do you have another

definition of what would constitute unethical? It is a two part question, if you do not agree with me then that is fine but if you agree that these in fact are illegal activities, insider trading is not allowed in this country, it is not unethical, it is illegal.

5 MR NAIDU: If I could perhaps just help the witness, do you understand the question to require a response as to what does he consider to be legal but unethical.

MS QUNTA: Yes, legal without the il. --- Can I come back to the Commission because my list is not comprehensive, I agree with that and I would like if it has the permission of the Commission to take some time and to come back to the Commission to do a clear distinction.

10 MR NAIDU: Mr Balt what is not illegal but unethical. --- Yes.
Is that correct?

MS QUNTA: Yes, because what is mentioned here, I am saying is actually illegal and you know it may not be important in the long run but I just thought I would draw your attention to that. --- Maybe to answer the question and if that suffices, is that I would say it might be legal but harmful or unethical. If a transaction is designed to harm a client and counter parties, it might not be illegal but to give a specific example, I would need to get back to the Commission.

15 Okay, and also perhaps if you were here yesterday during the evidence of the Reserve Bank, when you look at the rationale of foreign exchange control underlining the reasons why we have foreign exchange control in this country, to protect the foreign reserves of the country and maybe if you keep that in mind in terms of your definition of unethical, so that it is not just the clients and the counter parties but also the reserves of the country because that is after all the framework within which we are asked to look at the transactions. And then the second question, the second and last question, is I presume you speak for the whole structure of Absa, the Absa Group, is that correct? --- Yes, I am a witness statement
25 for Absa Bank here.

For the whole group, including your London branch? --- Yes, that is correct.

And in 4.6.1.6 you say there that Absa does not engage in speculative activity and then you go further down to 4.6.2, you say, in 4.6.2.1 you say that "I am not aware of any transactions, acts or omissions by any non-resident which contributed or may have given rise
30 to the rapid depreciation of the rand". --- Yes, that is correct.

Okay. Now is it possible for you to be able to make a statement like that in relation to all the divisions of Absa, the corporate finance division, the bank in London and if there were transactions that fall within our terms of reference, would it come to your knowledge and I am asking this in terms of perhaps what steps Absa Bank takes to ensure that compliance
35 is ensured with foreign exchange control regulations. You did not get into that too much and perhaps you say that there is a response to the questionnaires. We have not had access to those responses and perhaps you give that. But I would really like you to just very briefly explain to me the context in which you make that statement. What measures have Absa put in place to ensure that there are various components that deal with foreign exchange and
40 you have given them, comply with exchange control regulations? --- To start with your first question, this is my witness statement and I say it in my capacity that I am not aware of transactions. With regard to foreign exchange, Mr Rob Rebuzzi will deal with that to the full extent but I can just take you back to my slide where I dealt with Absa Corporate and Merchant Bank. We have an exchange control area which is headed up by Mr Miller Brink.
45 Because of the offshore activities, and I am talking of Absa London and I am talking of Absa Singapore being a branch of Absa, they also have to comply fully with the exchange control regulations. Our exchange control department which falls under Mr Peter Gordon of International ensures that there are full compliance to exchange control. More detail in terms of that compliance, that will be dealt by Mr Rob Rebuzzi in his statement.

50 MR NAIDU: Mr Chairman, is it expected that the further information will be required in the form of *viva voce* evidence or would it suffice if it can be supplemented with an affidavit?

CHAIRPERSON: In regard to what?

MR NAIDU: The question that was asked of the witness in so far as what constitutes not illegal but unethical.

55 CHAIRPERSON: Oh I see, that previous question.

MR NAIDU: Yes.

CHAIRPERSON: It would be fine if it is in a statement.

MR NAIDU: Thank you.

NO FURTHER QUESTIONS BY OTHER PARTIES

60 CHAIRPERSON: No further questions, Mr Balt, you may stand down.

NO FURTHER QUESTIONS

MR NAIDU: Mr Chairman, the next witness is Roberto Lorenzo Rebuzzi.

ROBERTO LORENZO REBUZZI d.s.s.

EXAMINATION BY MR NAIDU: Mr Rebuzzi, are you presently employed as the General
5 Manager, Operations and Technology, International Banking SA for Absa Corporate and
Merchant Bank? --- Yes, I am.

And have you signed a statement which constitutes pages 36 to 43 of the Absa
bundle? --- Yes, I have.

And do you confirm the contents of this statement? --- Yes, I do.

10 Do you adhere to the contents? --- Yes, I do.

Do you accept that this statement constitutes evidence before the Commission? ---
Yes, I do.

Have you set out in Annexure Rebuzzi 1 on page 44 and 45 your qualifications,
training and experience? --- Yes, I have.

15 And in paragraph 4 can you just briefly identify your responsibility? --- In my current
position I have the following responsibilities. The operational and risk management of the
five International Banking Centres, as well as the three Operational Support Units. The
International Banking Centres are located at Johannesburg, Pretoria, Durban, Cape Town
and Port Elizabeth. The operational support units for which I am responsible are located at
20 Nelspruit, Pietersburg and Bloemfontein. I furthermore have the responsibility for the risk
management of International Banking Centres, the Flagship and International Banking
Branches. These responsibilities entail the establishment and management of policies and
procedures to ensure Regulatory and Statutory Compliance. The Procurement and
Development of Computerised software and systems to facilitate the processing of
25 transactions that will enable and ensure Regulatory and Statutory Compliance. Furthermore,
the information and technology in respect of International Banking-related systems and
Regulatory and statutory compliance.

Mr Rebuzzi, paragraph 4.1.1 you deal with two ways in which forex deals may be
concluded and the first way you talk about an instance where a client has approached a
30 branch or centre to book a deal on its behalf. --- That is correct.

Can you just describe that briefly please? --- Yes, foreign exchange deals can be
concluded in two ways, that is clients may either request an authorised branch or one of
Absa's five International Banking Centres to book foreign exchange deals on their behalf, or,
if they are appropriately mandated by Absa International Banking Department in this regard,
35 clients may elect to book deals directly with Absa's Treasury Dealing Room. Where a client
has approached a branch or centre to book a deal on its behalf, the branch or centre will,
without exception, ensure, before proceeding, that the underlying transaction is permissible in
terms of the prevailing Exchange Control Rules and Regulations as prescribed by the South
African Reserve Bank and if the transaction is permissible and all conditions imposed in this
40 respect of such transaction in terms of Exchange Control Regulations have been satisfied
(for example, any requisite supporting documentation provided by the client for endorsement
has been viewed and vetted for acceptability) the relevant branch or centre will proceed with
the booking of the relevant deal and the finalisation of the transaction. If a client has
concluded a foreign exchange deal directly with the Dealing Room, the details of the deal are
45 communicated to the relevant branch or centre and it is the branch or centre's responsibility
in all instances to once again ensure that the transaction is permissible in terms of, and to call
for any relevant documentation as prescribed in the Excon Regulations. Only once these
requirements have been fully satisfied, will the branch or centre proceed with the processing
and finalisation of the transaction.

50 In paragraph 4.1.2 you deal with the manner in which your internal audit department
monitors adherence to certain Exchange Control limits. --- That is quite correct.

And in 4.1.3 you say that since April 2001 all foreign exchange transactions,
irrespective of the amount, are reported. Can you briefly describe how it is done? --- Since
April 2001 all foreign exchange transactions, irrespective of the amount, are reported on-line
55 to the South African Reserve Bank by means of the new Balance of Payments Reporting
System known as "BOP". BOP was, however, developed for an environment where there
are no exchange controls with the result that no provision is made therein for the proper
monitoring of exchange control limits. The forerunner to the BOP system, the so-called Form
A and E system, did however make provision for the monitoring of limits. The result is that
60 the monitoring of limits is for all intents and purposes done manually. While an authorised

dealer can ensure that a specific foreign exchange transaction, a gift transfer for example, does not exceed the current prescribed limit of R25 000 per applicant per calendar year, there is no measure in place whereby we can determine whether the same applicant might also have made a similar transfer through another authorised dealer. The only place where
5 excesses of prescribed limits will be detected is therefore at the South African Reserve Bank itself.

What compliance means are there with Absa with regard to the repatriation of foreign exchange export proceeds, Mr Rebuzzi? --- whenever a Form F.178 is attested to by an Absa Branch or Centre, the details thereof are recorded and diarised for follow-up of
10 receipt of the relevant export proceeds. Should notification of receipt of the export proceeds not be received by the date of accrual indicated on the Form F.178, the client or the receiving Authorised Dealer stated on the form R.178 is followed up by means of a letter. If a satisfactory response remains outstanding after three requests, the matter is reported to the South African Reserve Bank as required by the Exchange Control Regulations. In terms of
15 the Exchange Control Regulations, extensions to the 180 days period may be granted by Authorised Dealers without reference to the South African Reserve Bank up to a maximum of 360 days. In all instances where an export has taken place and no export proceeds are forthcoming, the matter is placed on record with the South African Reserve Bank, as required by the Exchange Control Regulations.

20 In 4.3 you deal with the procedures that are employed within Absa to monitor foreign currency accounts (CFC Accounts). Can I draw your attention to paragraph 4.3.3, the last sentence in that paragraph. Can you just explain why you say that information is not available. My understanding is, and correct me if I am wrong, that there is a form MT100 which accompanies the transfer of funds from the one authorised dealer to the other. ---
25 That is quite correct.

Does Absa comply with this requirements when it transfers from its bank to another authorised dealer? --- Yes, Absa does comply to that prerequisite and I think for the benefit of the Commission the Reserve Bank rules and regulations stipulate quite clear when export proceeds are transferred from one authorised dealer to another authorised dealer, it is the
30 transferring dealer's responsibility to annotate the amount of days, if any, that those funds were lying on that CFC account. Once those funds are transferred to another authorised dealer, it is that authorised dealer's responsibility to annotate it by means of a MT100 swift message and to indicate the amount of days that the funds were lying on the account.

You say that on occasions this information is not available, either the form is not
35 included or the information is not included in the form? --- We have had incidences where we have received export proceeds where the date has not been annotated from an authorised dealer and we have taken the stance point that the original date of accrual is therefore inserted in the .. (indistinct) of the incoming payment.

Now in paragraph 4.4 you articulate an opinion regarding exchange control
40 compliance procedures, would you like to deal with that briefly? --- Yes. In all instances where a corporate client books a deal directly with the dealing room, the underlying transaction is not finalised until it has been vetted and found to be permissible in terms of prevailing Exchange Control Regulations or has been authorised in terms of a specific approval granted by the Exchange Control Department of the South African Reserve Bank.
45 Corporates availing themselves of the so-called Import and Export Letter of Undertaking dispensation, or some other form of general documentary waiver granted by the Exchange Control Department of the South African Reserve Bank, would obviously not be called upon to produce substantiating documentation. In those instances where Absa has applied to the South African Reserve Bank for the dispensation,, we would have a copy on file. Where
50 Absa did not apply for the dispensation, we would have requested a copy of the dispensation as well as having requested to be included as a user of that specific authority. In these instances the client would simply indicate the nature of the payment for balance of payments reporting purposes and confirm that the foreign currency payment or accrual was in terms of the specific authority granted to it by the South African Reserve Bank. In so far as the
55 import/export dispensation is concerned, the onus rests with the client's auditors to confirm the validity of the client's business transactions, in accordance with prescribed laws and norms (including Exchange Control Regulations). A large percentage of Absa's corporate clientele have entered into these undertakings.

CHAIRPERSON: The undertakings you are talking about here, are those what have been
60 referred to as the CFC accounts? --- No.

Is it different to that? --- These are import and export undertakings.

Please continue, thank you.

MR NAIDU: Is that all you want to say about that? --- That is all I am testifying.

And in 4.5 you make certain remarks regarding Exchange Control in general. In
5 4.5.2 you speak of subject matters that require prior SARB approval and you list them, at the
bottom of page 6 and the top of page 7. --- Yes, that is correct.

CHAIRPERSON: For record purposes you mean page 41.

MR NAIDU: Page 41 and 42. Now you make a comment in paragraph 4.5.3 regarding the
relaxation of exchange controls, Mr Rebutzi, would you like to expand on that? --- Yes.
10 Although there has been a notable relaxation of exchange controls since 1996, the
authorities remain under considerable pressure, particularly from the business sector as well
as the financial media and some economists, to abolish all remaining controls without delay.
Given the current weakness of the Rand against the major foreign currencies, it has been
suggested by some that now is an opportune time to completely abolish all remaining
15 exchange controls. The authorities must however in my opinion persist with their published
policy of a gradual relaxation of exchange controls over a period of time. Although this
process should not lose its momentum, prevailing market conditions should always be taken
into account in determining the rate at which these controls ought to be relaxed.

And do you want to speak briefly to the contents of 4.5.4? --- Exchange controls
20 have been relaxed by either the complete removal of the specified limit, which previously
applied to a specific transaction type, and/or the substantial increase of such limit. In
addition, new types of permissible categories have been gradually introduced by the South
African Reserve Bank. For instance, one such new category is the payment of "fees in
respect of services rendered". The Exchange Control Regulations are, however, open to
25 conflicting interpretations and therefore have at times resulted in an "uneven playing field"
and in the extreme, a marketing tool for some of the more aggressive authorised dealers. As
an example, an authorised dealer will often accused another authorised dealer of allowing a
particular transaction that should, in its opinion, have been refused. Issues relating to the
interpretation of "fees in respect of services rendered" often result in differences of opinion
30 between authorised dealers.

And Mr Rebutzi, then page 46, Annexure Rebutzi 2, do you identify a declaration
which staff are expected to sign regarding compliance with Excon regulations prescribed by
SARB? --- Yes, and I think it is important to point out to the Commission Absa takes and
views this as a very serious document and more specifically the full adherence to the
35 Exchange Control rules and regulations. We have received a licence from the South African
Reserve Bank as an authorised dealer and we have now taken this to every single staff
member within Absa Bank and we have made them sign this declaration that they will adhere
and I think for the benefit of the Commission I would actually like to read out the
acknowledgment.

40 Yes. --- The employees' name and employee number are detailed on this
acknowledgement and it says -

"I hereby acknowledge that I fully comprehend the contents of Circular 2000 and 2001 [which
was an internal circular] dated 17 August 2001 and confirm that I am aware of the implications
of non-compliance with the directives contained in. I furthermore acknowledge that should I
45 neglect to adhere strictly to the letter and spirit of the directives contained in Exchange Control
rulings and regulations as prescribed by the South African Reserve Bank or knowingly collude
or participate in any activity or practice with the intention of circumventing and thus
contravening same I will be subject not only to Absa's internal disciplinary process but may
also face criminal prosecution in my personal capacity by the relevant authorities."

50 Thank you.

CHAIRPERSON: Any questions by the Commissioners?

MS QUNTA: I just have one question. 4.1.2, perhaps I should just indicate that perhaps if I
should investigate this report I might have more questions for you if it is relevant. You
mention there that you have an internal department, audit department, and that excesses are
55 reflected on a report and are investigated and contraventions and corrective actions (if
applicable) are reported to the SARB. In the course of 2001 are there any excesses or
contraventions that you have come across in your internal department? --- Yes, there were
minor transgressions and contraventions and if I could give you an example, an instance
there where a gift allowance exceeded the limit. This was immediately reported through to
60 the Reserve Bank and the Exchange Control audit department and corrective measures

were taken.

Oh so these transgressions do not relate, what do they relate to, to foreign exchange control violations? --- That is correct.

And why would a gift fall within that? --- There would have been an administration error within a specific branch or centre. Another typical example would be an overpayment on invoice, not an overpayment, an incorrect document. One of the specific rulings of the Exchange Control is that you had to pay against certain specified documentation, original documentation. Now you could have had an incident where the payment was effected against a facsimile copy or photostat copy. That is why I construe these as minor contraventions and corrective measures would be taken, that they would automatically go and get the original document from the client concerned.

So the best of your knowledge your internal department has not picked up any major contraventions? --- I carry no knowledge of any major contraventions and in answer to Mr Petrus Balt's question which you have previously there, the internal audit department would have relayed that information through to the central audit department and the head office in Exchange Control Department should any major contraventions been picked up in the course of their audit.

CHAIRPERSON: Thank you, you may stand down.

NO FURTHER QUESTIONS

20

CAREL FREDERICK GRÖNUM d.s.s.

EXAMINATION BY MR NAIDU: Mr Grönum, you are employed as General Manager of Enterprise-Wide Risk Management, a division of Absa Bank? --- Yes.

Have you completed a statement which you signed dated 4 April 2002 which constitutes pages 47 to 54 of the Absa bundle? --- Yes.

Do you confirm the contents of this statement? --- I do.

Do you adhere to this statement? --- I do.

And do you appreciate that this statement constitutes evidence before the Commission? --- I do.

You identify in annexure Grönum 1 on page 55 and 56 of the bundle your qualifications, work experience and your responsibilities in paragraph 2? --- I do.

Now can you just explain briefly what is enterprise-wide risk management? --- Enterprise-wide risk management as a division within Absa Bank has the objective to ensure that all financial risks are identified, quantified and managed in order to achieve an optimal risk-reward profile. It is important to note that the bank takes on risk. The objective is therefore the quantify the risk and to optimise the reward for the taken risk.

And do you identify in Grönum 2 on page 57 your risk governance structure, the group? --- I do.

And in Grönum 3 on pages 58, 59 and 60 the main responsibilities of each entity reflected in this structure? --- I do.

CHAIRPERSON: Sorry, in regard to the enterprise-wide risk management division, that has an independent function in the Group and who does it report to within your group structure? --- Referring to Mr Balt's testimony, if I can refer you to the slide on page 27, Balt 3, the structure of Absa Bank as indicated in the slide reporting through to Mr Nollie Bosman, our Group Chief Executive is Mr Swanepoel, Group Executive responsible for enterprise-wide risk management. An independent function, my role within the enterprise-wide risk management division is general manager, risk management.

So you report to Mr Swanepoel and he reports to Mr Bosman? --- Together with the risk management position we also have compliance internal audit forensic services and then development, research and development.

Thank you.

MR NAIDU: Mr Grönum in Grönum 4 on page 61, is that an illustration of all the identified risk areas in the group matched with the specific group committees, specialist as well as business units? --- Indeed so. Important to note that part and parcel of identifying the risk we also have to assign responsibilities to those areas responsible for managing those risks and the table as depicted in Grönum 4 highlights those risk as well as responsible areas.

How do you define risk, Mr Grönum? --- Risk is defined as any variance or variation from the expected or anticipated potential outcome of any given situation. Important to note is that the negative deviation we define as the down side or the risk while the positive deviation or the up side as defined as reward. So in brief, that refers to the risk definition.

The risk in Absa bank pertaining to the financial side can be categorised in the following major categories being credit risk, market risk, business risk, underwriting risk and then operational risk.

And what is Absa's approach with regard to enterprise-wide risk measurements? ---

5 The enterprise-wide risk measurement is based on earnings at risk. Earnings at risk are said or earnings targets rather are set based on the expected operating environment, reflecting economic growth, expected economic growth, expected interest rates and client behaviour to name but few. The uncertain with regard to these earnings targets is simulated and the possible negative deviation as I have referred to as the risk from the target over a 12
10 month period with a 99% confidence or certainty is the quantity of risk associated with the earnings targets, hence the risk reward profile and the earnings at risk being the risk associated to the value drivers within the bank.

Mr Grönum, you deal in paragraph 4.2 with market risk management. Can you just, without having to read all that comes under that, just briefly describe it? --- Market risk, to
15 put it in context, market risk is one of the financial risk types as I have referred to earlier. Market risk is categorised or dissected in three main areas being interest rate risk, liquidity risk and trading and investment risk. For the purpose of this Commission the focus is on trading and investment risk. The definition of trading and investment risk is the risk that arises in the change of the value of financial instruments or portfolio of instrument as a result
20 of changes in interest rates, foreign exchange rates, equity and commodity prices. Now the management of the trading risk is based on three approaches, one, Value-at-Risk; the second one stress-VaR (Value at Risk being an abbreviation for VaR or Var an abbreviation for Value at Risk). The second one then Stress-Var and the third technique or approach, the monitoring of net open positions and Greeks. The VaR referred to the value of a position, the
25 possible change in the value of a position. The value of a position or a portfolio position is a function of the structure, the size, the term and the price or rate of those instruments. And the value of this portfolio can change dependant on the changes in the price or rate of these instruments constituting the portfolio. If all well stays the same. Now in simulating the price and rate changes. We derived, based on an historic simulation we derived at the possible
30 changes in the value of this portfolio depicting the VaR. Complementing the VaR we utilise a technique called stress testing. In the stress testing we do not base the simulation of the price, the possible price and rate changes on historic observations only but we stress those simulations to provide for extreme market events. Another factor, as depicted in paragraph 4.2.1.3 is backtesting. The models utilised within Absa in calculating the value of risk are
35 subject to continuous refinement based on backtesting and the backtesting are highlighted on page 64, paragraph 2. In conclusion to your answer, Absa's internal trading risk model meet regulatory requirements and were approved by the Registrar of Banks for the calculation of risk capital for trading portfolios.

And in 4.2.2 you deal with trading risk limits? --- It is indeed so. In the previous
40 answer I have referred to three techniques being Value-at-Risk, stress-VaR and being the monitoring of positions. Now these techniques are subject to limits. First of all, the VaR limit being a Tier-I limited and the Tier-I limit can only be approved on Board level as a representative figure for the total earnings at risk or risk capital applicable to trading activities.

Supplementary to the Tier-I limit is the Tier-II limit or the management limit being position
45 limits, Greeks and maturity time bucket limits. With time buckets referring to limiting the exposure to instruments maturing with specific time period, 1 year, 2 years, 3 years, etcetera.

And how are these trading risk limits monitored, Mr Grönum?

--- Before I answer your question, Mr Naidu, please allow me just to highlight one aspect that I did not mention in the previous answer. In calculating these limits as well as calculating the
50 daily VaR pertaining to your question, is a bottom up approach. In the bottom up approach we allow for diversification and cross instruments within sub portfolios. We then allow for diversification across sub portfolios within a main portfolio and then for diversification across all the main portfolios in obtaining the total VaR for South Africa. We adopted a conservative approach in not allowing for diversification between South Africa and the international
55 branches so that is only an additive exercise. Now getting to the answer of your question how does Absa monitor the trading limits, the trading limits are monitored on a daily basis by ERM risk management in calculating the value of risk in the VaR. The Value at Risk is calculated on a daily basis and also measured relative to the approved limit. The Tier II limits are also monitored by ERM on a daily basis. Excesses are considered important and
60 reported through the operating executive or managing executive, ACMB as well as the

executive director of ACMB. These excesses are handled on a monthly basis on the market risk committee.

And how is this trading risk limit used or utilised? --- The utilisation of the trading risk limits are the responsibility of the dealers. They are responsible for utilising the allocated risk capital in order to achieve the required targets assigned or used in the calculation of the VaR limits.

You are dealing with the period under investigation only? --- Well initially, yes, investigation and monitoring.

And you have certain remarks in conclusion, Mr Grönum, if you would like to deal with that? --- As part of the conclusion I would like to, for the purpose of this Commission, highlight paragraphs 4.2, 4.3 based on the fact that Absa utilised 20.18% during the course of the review period of the approved limits. Based on that Absa did not engage in any foreign exchange transaction that gave rise to undue foreign exchange risk. Getting to the conclusion the, in concluding, regarding Absa's participation in the foreign exchange market as an authorised dealer Absa did not, to the best of my knowledge, enter into or participate in any foreign exchange transactions which gave rise to unacceptable risk exposure in the bank. Furthermore, no statutory limit violations occurred during the review period. That is based on -

*Absa complied at all times with statutory capital adequacy requirements in terms of Regulations to the Banks' Act; and

*Absa's net effective open foreign currency position was on average 2,57% of net qualifying capital with 10% allowed as statutory limit.

Thank you, Mr Chairman.

CHAIRPERSON: We will adjourn for 15 minutes.

COURT ADJOURNS:

PROCEEDINGS RESUME:

MR LE ROUX: Mr Chairman, there is one aspect that we would like to deal with and that is paragraph 4.2.8 of Mr Balt's statement which was raised concerns security lending and Mr Grönum would like to deal with that question.

5 CHAIRPERSON: Yes.

MR LE ROUX: You will find the particular paragraph on page 9 of the record at the bottom.

CHAIRPERSON: Fine. Would you like to deal with that, Mr Grönum? --- As far as paragraph 4.2.8, page 9, which relates to ABSA's Securities Lending is concerned, I wish to state the following: the product manual of ABSA on Securities Lending require inter alia that
10 all legal, tax and exchange control regulations are complied with, both in South Africa and in countries where borrows are resident. Furthermore to monitor all corporate actions in respect of borrowed shares to ensure that borrowers and lenders are aware of their liabilities and entitlements respectively. ABSA does therefore ensure as agent that regulatory requirements are complied with in Securities Lending as well. If it forms part, an integral part
15 of the transaction in respect of which exchange control approval is required. Furthermore in paragraph 4.2.8 Mr Balt stated that ABSA Securities Lending as the agent sourcing the relevant shares and delivery them to the borrower, does not have access to information relating to the underlying trades and the reasons why the shares are on loan. In this regard
20 he was referring to the business rationale of the clients whether it is settlement driven or arbitrage driven. The paragraph does not deal with the matter referred to above being the relevant information that must be given if Securities Lending forms an integral part of the transaction in respect of which exchange control approval is required.

Thank you. Any questions arising from that?

NO FURTHER QUESTIONS BY ANY OF THE PARTIES

25 CHAIRPERSON: Thank you. You may stand down. --- Thank you.

NO FURTHER QUESTIONS

MR NAIDU: Mr Chairman, the next witness for ABSA will be Rianné Potgieter and the witness will make an affirmation.

RIANNÉ POTGIETER: (affirms to speak the truth)

30 CHAIRPERSON: You may be seated, Ms Potgieter. Yes, Mr Naidu.

MR NAIDU: Thank you, Mr Chairman.

EXAMINATION BY MR NAIDU: Ms Potgieter, do you set out your qualification, training, work experience and your current position in Potgieter I non pages 69 and 70. --- That is correct.

35 You are employed as Head: Compliance and Operational Risk of ABSA Corporate and Merchant Bank, a division of ABSA? --- That is right.

Can you just briefly identify what your responsibilities are? --- My responsibilities as Compliance Officers of ACMB include the following:

40 **To increase the compliance coverage and awareness throughout ACMB;
*Identification of all legislation and regulatory requirements applicable to ACMB;
*The prioritising of new and existing legislation in terms of high, medium and low risk;
*In conjunction with management, to improve the risk management process to properly manage the legislation/ regulatory requirements;
45 *To monitor compliance with the various legislation/ regulatory requirements;
*Training of ACMB employees in respect of compliance matters;
*Providing advice (in conjunction with Group Compliance);
*To ensure implementation of the Basle II Operational Risk Management requirements in ACMB."

You talk about regulatory requirements, do you mean the regulations and the
50 rulings? --- Correct.

You have signed a statement which constitutes pages 66 to 68 of the ABSA bundle?
--- Yes, sir.

And do you confirm and adhere to the content of the statement? --- I do.

55 And you appreciate that this constitutes evidence before this Commission? --- Yes, I do.

Now you are going to deal by reference to Potgieter II which constitutes page 71 of the bundle, the compliance or the structure of compliance in ABSA. Correct? --- Yes.

60 You may continue. --- It is important to note that I am the Compliance Officer for ACMB. There is in fact a compliance officer for the ABSA Group and to that end I would like to take you through the structure on page 71. If you start more or less in the middle of that

structure, you will see a block Group Compliance Officer. He reports directly to the Group General Manager Enterprise Risk Management and then you will also see that he has indirect reporting lines to both the ABSA Group Chief Executive and the Group Audit and Compliance Committee. That ensures his independence. Then going down under the Group Compliance Officer, you have the Group Decentralised Compliance Department. You can appreciate that in a group the size of ABSA, a central department cannot possibly get around to all the departments. Hence the need for a decentralised compliance officer in the business unit such as myself for ACMB and I in my capacity as compliance officer of ACMB then have a direct reporting line to the divisional head office, Management in ACMB, the deputy operating executive: Risk Management.

In paragraph 4.3 you deal with the ethical standards, policy and procedures in relation to personal account trading. --- That is right.

And the standards as required as regards personal account trading which is applied by ABSA, include those items you identified in the four bullets in the middle of page 67? --- Correct.

Do you want to proceed? ---

"Ethical standards as regards Personal Account Trading, which are applied by ABSA in the conduct of its foreign exchange activities include:

*Certain provisions of the ACI Model Code of Conduct;

*Certain provisions of the London Code of Conduct as published by FSA (London Branch);

*ABSA Group's Personal Account Trading policy;

*ACMB Personal Account Trading sub-policy.

4.3.1 The Enterprise Wide Risk Management, compliance division, drafted the Personal Account Trading policy for the ABSA Group. Business areas/ divisions use the Group policy to develop their own sub-policy. The ACMB Personal Account Trading sub-policy contains ABSA's policy and procedures as called for in the ACI Model Code of Conduct. The sub-policy does not differ from the Group policy in any material respect. ABSA's offshore subsidiaries and branches have developed their own sub-policies in this regard.

4.3.2 ABSA staff members are required to sign a declaration to the effect that they subscribe and adhere to the ACI Model Code of Conduct, together with ABSA's personal Account Trading policy (both the Group and ACMB versions) and that they have familiarised themselves with the contents thereof."

Shall I continue?

Yes. ---

4.2.3 The corporate finance department maintains a list of companies for whom deals are being executed which may have an influence on those companies' share price(s). During regular departmental meetings, these names are communicated to all staff members who are involved in or have knowledge of the relevant deal(s). Staff members are prohibited from trading in these companies' securities for their personal account.

4.3.3 ABSA employees are required to maintain a register of their personal account portfolios which include all purchases and sales, the date of the deal, the name of the security, the quantity traded, the price and the broker used. These registers are provided to the decentralised Compliance Officer on a monthly basis. The decentralised Compliance Officer provides the ABSA Group Compliance Officer with the information quarterly. Trends are reported to the ABSA Group Audit and Compliance Committee.

4.3.4 Breaches, being a deviation from ABSA policy, are regarded as misconduct. ABSA's disciplinary process will be instituted against any employee guilty of such misconduct.

4.3.5 To the best of my knowledge, based on the monthly returns received for the period under review, there were no breaches of these ethical standards."

Ms Potgieter, are you able to comment on the question that was put to Mr Balt regarding instances of transactions that might not be illegal but may be unethical? --- It is difficult to think of examples. I did think of one but then in consultation with the Reserve Bank, it turned out also to be an illegal activity. But probably collusion is a good one to look at. But it is really to try and get within the parameters of a law or an act within those parameters to try and get around.

I suppose given an opportunity you may be able to articulate some responsible document? --- Yes.

Thank you, Mr Chairman.

CHAIRPERSON: Questions?

MR GANTSHO: Are you able to detect any collusion between your dealers in ABSA and outside ABSA in concluding a transaction? --- Sorry, sir I can hardly hear you.

Are you able to detect collusion between the players within ABSA and players outside ABSA in the foreign exchange market? --- There are various ways that these type of transactions come to our ears probably not something that we can specifically say you know this is collusion. There is not a mechanism whereby we can or control mechanism. I am

5 talking about the international banking area but we do pick up on these from time to time.

MR LE ROUX: Mr Commissioner, I think Mr Balt may also be able to assist.

MR BALT ADDING TO ANSWER OF MS POTGIETER

PETRUS JOHANNES BALT: s.u.o.

CHAIRPERSON: Yes, fine. Mr Balt, would you like to add to that? --- Yes, Chairman. In the trading environment it is very difficult to detect if there is collusion or fraudulent activity. What we require all the dealers they do to qualify as a dealer, you have to pass the ACI Code exams. Then you have, it is basically undertake in terms of the signing of the ACI Code that you have to on a monthly basis submit returns of your personal account trading. Any fraud ... (intervenes)

15 MR_____: What does a personal account trading mean? Trading for their own account? --- Yes.

MR_____: So that is one aspect? --- That is one aspect. In terms of the ACI Model Code, I will give you another example. Dealing outside the dealing room, is not allowed. So no dealer can say for instance as an example occur their cellphone trading. It is very difficult to stop any fraudulent activity. What we have, however, and that is what was stated by Rianné, we have got measures to pick that up and if a person is found to be subject, there is a full disciplinary hearing and he will be dismissed.

CHAIRPERSON: Let us give you a concrete example that was given to us in the first week and that is where two dealers collude to create fictitious deals and wanted to push the price up and then at some stage in a day, they cancel the deal. So they will quote; the quote will be accepted. There is in fact no trade. There is an indication in the market that there is interest and then before there can be execution because it is fictitious, they cancel the deal. Now that is the sort of thing that we are enquiring about. Do you have a mechanism as ABSA to pick up that sort of clearly unethical dealing? --- Mr Chairman, the slide that I did not handle with, and I would ask permission that I put that up, is the framework for trading activities.

25 Yes, if you would like to add to this. --- We have heard from our compliance officer, from Carl Grönum from the Risk Management side, in terms of all the procedures and the frameworks but I would like to show the Commission the framework within which dealing is done and all the parties involved.

35 Yes, it will be helpful if you could do that for us, please.

MR NAIDU: Mr Chairman, I take it although Mr Balt has stood down, he is still being regarded under his former oath. --- Mr Chairman, if I can refer you to slide 11. It is quite a complex slide which is on page 35 of my testimony. That is the starting point. That is where a deal is effectively negotiated and closed.

CHAIRPERSON: We cannot see where you are indicating. --- Sorry. All the parties involved and I would like to take you to the framework. There is a limit and a regulation side. There is a counterparty confirmation. There is a market and customer and there is a trading and risk management. To take your example if a lot of transactions is done and they are cancelled, it will be picked up in the tier two limits which is the management limit. There is a way that it is detected. There is a block there called monitor positions.

45 Yes. --- That will immediately be highlighted which is verified by risk management ERM which we have notified the Commission that is an independent function. There is also a position management which is part of the middle office. They do not report to me. They report to the head of Operations which is Mr Hendrik Opperman. So that is your another control point. You have your currency position, your profits and losses. So you will immediately detect in terms of volume there has been a number of transactions. That then feeds through to a deal information section, a confirmation and settlement by the back office which also does not report to me as well as confirmation and settlement by the client. Now in terms of the traders sitting in the middle, there is a customer out there; there is a price and information feed on Reuters; there is position management, middle office; there is risk management, there is credit limit utilisation and there is confirmation from the client and settlement by the back office.

50 Are you really saying that with all these checks and balances in place the way you
60 have described them on slide 11, that it would be quite difficult for a trader to get away with

it? --- That is correct, Mr Chairman.

And in regard to the disciplinary procedures, have you in fact disciplined employees for traders for breach of your policy? --- Yes, Mr Chairman.

I can see it as a matter of intent but has it been carried out in practice? --- It has
5 been done especially where trades have not been booked.

Yes, thank you. Any further questions? Any questions arising from that?

MR NAIDU: Mr Chairman, may I just have one question arising .. Mr Balt, just arising out of
the question by the learned commissioner. Do you think that if there was some process in
terms of which the transactions can be recorded in the dealing room, that you would be able
10 to eliminate completely any possibility of collusion? --- Yes, Mr Naidu we have got .. every
transaction is recorded. It is recorded on the deal date by the counterparty. There are limits
allocated to that and then in terms of the position, that has to comply with your tier two limits
which feeds into your tier one limit which is the value at risk. So yes.

When I mean recorded, I mean specific taped recordings so that one could after the
15 event .. (intervenes) --- Yes, Mr Naidu all the trades in the dealing room are recorded and
there are proper procedures in place in terms of the storage off site of those recordings and
where appropriate we do go back to those tapes and listen to them.

So all the dealers are aware of the fact that there conversations and dealings have
been monitored and can be replayed to review any kind of collusion? --- Yes, dealing is only
20 allowed in the dealing room and all the telephones in the dealing room are subject to on-line
reporting.

Thank you, Mr Chairman.

MS QUNTA: I just have one question. Do your dealer, the corporate and merchant bank,
the transactions that you execute on behalf of the client, are the dealers in the normal course
25 of trading, are they aware of some of those transactions? I am talking about the major trans-
actions, the onshore/offshore transactions. --- To answer you, commissioner, it is very
difficult in terms of the type of the transaction. Where a specific transaction which require any
specific authorisation from regulatory body, you will ensure that it has complied with. You ...
(intervenes)

No, I think my question is in terms of your trading, your dealings room and your
structure finance deal, especially those dealing with foreign exchange in the foreign
exchange market in the normal course of your business in the ABSA Group, are the dealers
aware of certain transactions that are being executed by your said corporate and merchant
bank? --- In terms of our corporate finance activities no and that is why the corporate
30 finance and the specialised finance transactions are dealt with separately. It might mean that
a specific leg of such a transaction would require either borrowing or investment or a foreign
currency leg, if that is the case, we will get involved from the treasury environment and we
will ensure that the necessary regulations are being adhered to. But there is a clear
distinction between our corporate finance activities and our normal activities. I as group
40 treasurer are responsible for the trading activities. So .. (intervenes)

CHAIRPERSON: I think the underlying concern is this that in your trading room a trader
may be aware of business being done in ABSA which might affect the price of a currency
and then trades in the currency in anticipation of that deal, so it is that thing. To what extent
45 are the Chinese walls in other words where one trader, and it might be regarded as insider
trading, we do not worry about the label for the moment, but it is that situation that I think that
the commissioner is concerned about. --- Mr Chairman, with regard to corporate finance,
they are housed in a separate section of the bank. No trader has got access in the corporate
finance section and the trading room itself is also restricted to only traders and any access of
marketing people or persons from other sections, are being authorised by myself. There are
50 no interaction between corporate finance and treasury staff and there are no information
shared amongst themselves. It is strictly prohibited in terms of ABSA.

So the trader might become aware of say a big deal only when the trader is
requested to give effect to a particular leg of the deal? --- That is correct.

Yes. --- But the details of that specific transaction is also not discussed with the
55 trader.

Any further questions?

MS QUNTA: What would the trader be told if it is involved in a particular leg? You say the
details are not discussed but what would he be informed of for him to carry out his whatever
his function is in that regard? --- There are certain rules, commissioner, in terms of client
60 confidentiality which does not only apply between ABSA and clients but it is also adhered to

within ABSA. The trader will merely be told that we need to buy or sell, if I can use an example, Mr Chairman, X-amount of currency or there might be a borrowing requirement and there might be an issuing of a specific funding instrument. No specifics of the transaction will be discussed with the trader concerned.

5 CHAIRPERSON: Anything else?

NO FURTHER QUESTIONS

CHAIRPERSON: You can both stand down.

NO FURTHER QUESTIONS

MR NAIDU: Mr Chairman, that concludes the evidence on behalf of ABSA.

10 CHAIRPERSON: We will adjourn until 10:00 tomorrow. I have this page that Mr Balt was going to hand in. I have got the letter here. What page number do you think .. shall we put it right at the end just for the sake of ease, 72, and we just need copies made and we will see to that from our side.

PROCEEDINGS ADJOURN: