

PROCEEDINGS RESUME ON 2 MAY 2002:

CHAIRPERSON: We start with Mr Papadakis's evidence.

GEORGE PAPADAKIS d.s.s.

5 MR MUKWEVHO: Before we can proceed I just want to place on record that apart from the statement that is before you, there are also slides. So at some point we will have to rely on those slides presentation.

CHAIRPERSON: No, that is fine.

10 EXAMINATION BY MR MUKWEVHO: Mr Papadakis, you have prepared a statement as part of the investigating team that has been appointed by the Commission to look into the allegation in this matter. For record, can you please summarise your curriculum vitae? --- I qualified as a chartered accountant with one of the big five auditing firms in 1992. During that period I was involved in the audits of several listed companies and multi-national corporations including companies in various industry sectors doing banking, manufacturing, constructing and engineering. From 1993 onwards I have specialised in the field of forensic accounting and have conducted various investigations on behalf of various regulatory and prosecutorial authorities and government departments. I am currently the accounting expert responsible for quality control in several of these matters. I have testified in court previously in matters relating to exchange control and have done investigations pertaining to exchange control. Our firm was also appointed by then Judge William Heath to conduct the forensic investigation into the ABSA lifeboat and I have also testified in several civil matters in the High Courts.

The statement has been prepared on behalf of the investigation team. Do you confirm the contents thereof? --- I confirm the contents thereof as prepared by the investigation team.

25 If you look at page 1, paragraph 1.3, you actually make mention of the team. Can you please elaborate briefly on the composition of the team? --- The investigating team appointed by the Commission comprised various expertise, myself as a forensic accountant. There were structured finance specialists. There was legal resources as well in the team.

30 And you act as the leader of that team? --- Correct, I acted as the leader of the team.

Still on page 1, paragraph 2, you deal with the objectives of the team. Do you confirm that? --- I confirm paragraph 2.1.

35 On page 2 you deal with the approach that you took when conducting investigations. Can you briefly explain how you went about it? --- In brief, after the team had been appointed to conduct the investigation we reviewed the contents of the Wakeford letter. We then proceeded to interact with the various parties mentioned in the letter, held discussions with those parties and collated documentation. Pursuant thereto we heard the evidence tendered to the Commission and we listed paragraph 3.3, the parties who we initially had consultations with. The four named corporates in Wakeford's letter but at an early stage we determined Biliton did not conclude an asset swap transaction and therefore did not concentrate our investigation on a transaction but limited the investigation to Sasol, Nampak and M-Cell. We also consulted with Deutsche Bank, Johannesburg and Deutsche Securities, being representatives of the Deutsche Bank Group, and the Department of Finance and National Treasury as well as the South African Reserve Bank.

45 But at all times your investigation was transparent in the sense that you always put issues to the parties concerned, is that correct? --- That is correct.

50 On page 2, paragraph 3.4, you deal with the validity on page 60 of the document, can you please tell the Commission about that? --- Well I will read 3.4 into the record, is that "we as a team did not verify the validity or authenticity of the relevant records and documentation subjected to an analysis by ourselves. We accepted such documentation at face value unless stated to the contrary in the report. At 3.5 we record that "should new documentation and/or information be provided to us for whatever reason, our opinions and interpretations may change and an amended report issued if considered necessary".

55 Thank you. On page 3, item 5, you actually deal with the various parts that compose this report. In each part what is it that you set out, is it the findings? --- In each part we set out the factual findings of the investigation as conducted by the team.

60 Mr Chairman, we can go through the first transaction which is on page 4 and that is Part 2 and that is the Sasol transaction. Mr Papadakis, on page 4, paragraph 2, you set out the purpose for the report. Would you please read that into the record? --- For the purposes

of this report we deal with the application, approval, structure and our analysis of the implementation of the Sasol transaction. We deal with the Sasol transaction taking cognisance of all the legs as implemented by DB. We also deal with the sale of shares of DBL in the context of considering the extent to which DBL on-sold Sasol shares to investors and in order to try and determine any quantum of possible flow back. We have done so with reference to the definition of flow back as provided by DB.

On the next page, page 5, heading number 3, it deals with the application and approval of the Sasol asset swap and the word asset swap and in inverted commas. May you please explain why is it like that? --- We have throughout the report put the words "asset swap" in inverted commas based on the fact that there is a lot of debate whether this was an asset swap or a share placement and we do not wish to give an interpretation as to whether it was an asset swap or a share placement and as such will only refer to it as in inverted commas. We do understand that the Reserve Bank was approving a share placement.

INTERVENTION BUT TOTALLY INAUDIBLE

MR MAKWEVHO: Do you confirm the contents of paragraphs 3.1 and 3.2 basically dealing with the application and the approval by SARB? --- I confirm the contents of this paragraph.

Mr Chairman, for record purposes the application is set out on pages 21 to 23 of the bundle whilst the approval is on pages 24 and 25. Please deal with the structure of the Sasol transaction? --- The structure of the transaction as analysed by the structured finance experts in the team comprises the individual legs which are set out in the slides presented by DB to the Commission. Our analysis of the DB documents and evidence indicates that the scrip lending, hedging and funding transactions as implemented by DB and contained in the slides are related to the asset swap as approved by SARB and we deal below with the effect of the Sasol asset swap and related transactions as implemented by DB. Our analysis of the implementation of the Sasol transaction will be illustrated to the Commission by way of a slide and what we have done to be consistent, Mr Chair, we have kept the slides as presented by Deutsche Bank so as not to re-create slides but try and keep it as simple as possible.

Mr Chairman, this is the stage when we will actually put up the slides. The slides were actually made available, they are part of the bundle, they were made available this morning. If you look at the hard copies, this particular slide will be on page 71. In paragraph 5 you deal with the analysis, will you please take the Commission through that and where appropriate you are free to refer to the slide. --- Correct. As I say the analysis of the implementation was done by the structure financial specialists from the team and both members of the team are available to take technical questions on the implementation of the structure. We have tried to present the structure, the implementation of the structure in a chronological sequence and we will when necessary refer to the slide to indicate the chronological sequence. In paragraph 5.1 we record that there was an exchange of rands for foreign currency. An analysis of the implementation of the Sasol transaction indicates that rands were exchanged by Deutsche Bank London for foreign currency, predominantly in the South African Foreign Exchange market. rands were exchanged for foreign currency as follows: On 19 and 20 February 2001 Deutsche Bank London exchange R2,5 billion for 350 million euro. The settlement date for these foreign currency transactions was 26 February 2001. Approximately R1,8 billion was exchanged in the South African Foreign Exchange market for euro R250 million. According to our analysis then the foreign currency transaction is the first transaction that happened in the implementation of this structure. The currency conversion was effected on 19 and 20 February 2001. The rand depreciated in value on these days. On 26 February 2001 Sasol paid approximately R2,5 billion to Deutsche Securities. Deutsche Securities placed the approximately R2,5 billion on deposit with Deutsche Bank Johannesburg. The rights to this deposited were ceded as collateral to Sasol International Holdings (SIH) for the Sasol shares borrowed from SIH. On 26 February 2001 DBL paid euros the equivalent of R2,5 billion approximately less Deutsche Bank London's fee to Sasol Offshore and DBJ paid approximately R2,4 billion to DBL in terms of a South African Government bond repurchase agreement concluded with DBL. With reference to the slides, Mr Chair and other members of the Commission, our analysis of the implementation is highlighted by the red arrows which is the essence of the implementation of the transaction as analysed by ourselves.

For record purposes can you just summarise the movement of the rand as it appears on the slide? --- As it appears Sasol made a payment of rand to Deutsche Securities.

Deutsche Securities placed that on deposit with Deutsche Bank Johannesburg. Deutsche Bank Johannesburg then entered a repo transaction with Deutsche Bank London. In terms of that an amount similar, an amount was converted in the foreign exchange markets by Deutsche Bank London. Deutsche Bank London on the same day paid Sasol the euro equivalent of the rands transacted by, converted in the foreign exchange market.

5 Please deal with the effect of the conversion of rands for euros as set out in paragraph 5.1.3 on page 6? --- The effect of the conversion of rands to euro as referred to at 5.1.2.1 supra if considered in isolation would be that the total foreign currency reserves of the country were reduced by euro 250 million. There is a difference between the two 250  
10 and the 350. The extra 100 million euros would, on our understanding, ultimately also impact on the reserves of the country but those were not necessarily transacted in the South African Foreign Exchange market.

On 5.1.4 you deal with disclosure issues, may you please read that into the record? --- Deutsche Bank did not, prior to the implementation of the transaction, disclose to Reserve  
15 Bank and particularly Ex Con of Reserve Bank, the conversion of the rands for euros. Deutsche Bank only disclosed this fact to SARB after a review of the Sasol transaction was initiated.

Please deal with representations and disclosures which are set out in paragraph 5.2 on page 6? --- Representations and disclosures. In the context of the asset swap  
20 transaction as implemented by Deutsche Bank the following transactions were not disclosed to Reserve Bank. The scrip lending agreement concluded between SIH and DS and all these transactions are recorded on the slide; the conversion of approximately R2,5 billion for euro 350 million. The bond repurchase agreement concluded between Deutsche Bank London and Deutsche Bank Johannesburg. The transfer of S A Government bonds by  
25 Johannesburg to London as security for the scrip lending agreement referred to at 5.2.1.5 infra and the scrip lending agreement between Deutsche Bank London and Deutsche Bank Johannesburg where Deutsche Bank Johannesburg acted as agent for Deutsche Securities.

Please proceed. --- The forward sale of Sasol shares between Deutsche Bank London and Deutsche Securities was disclosed to SARB but such was not disclosed in the  
30 context of the asset swap. The application for the forward sale as made on 9 February 2001 in terms of which permission to trade 50 million Sasol shares was sought. The maturity date of the contract was 31 December 2001.

In paragraphs 5.2.1 and 5.2.2 do you at all deal with the question as to who had the duty to disclose? --- We do not seek to make any interpretations, Mr Chair, as to who had a  
35 duty or otherwise to disclose.

For the record, Mr Chairman, the application regarding forward sale approval as set out in paragraph 5.2.2 is contained on pages 26 and 27 of this bundle.

CHAIRPERSON: Thank you.

MR MUKWEVHO: Deal with the last paragraph, 5.2.3? --- It was represented to SARB that  
40 no currency conversion would take place. If I may now add, it is my understanding that the structured finance experts in the team looked at the implementation of this transaction in its entirety because it is only by looking at this transaction in its entirety that you can assess the effect of the implementation and similarly they looked at all - my understanding is they looked at all the parties that were involved in the implementation.

45 CHAIRPERSON: Yes. Please continue?

MR MUKWEVHO: Look at the next paragraph which is paragraph 6, you actually deal with the sale of Sasol shares by DBL. Is that investigation concluded at the moment? --- No, that is not concluded yet but we did do the investigation to test certain representations that were  
50 made.

But do you confirm the content of that paragraph? --- I do confirm the content.

Please deal with your conclusions which are set out on paragraph 7, page 8 of the statement? --- In terms of the Sasol asset swap and related transactions, as implemented by Deutsche Bank, rands were exchanged for foreign currency by Deutsche Bank London. The effect of this exchange was that the foreign currency reserves of the country were  
55 depleted to the extent of the conversion. The individual legs of the Sasol transaction as implemented by Deutsche Bank in the context of the asset swap are related. The documents and evidence indicates that Sasol was not aware of all the detail surrounding the basis upon which the transaction was to be implemented by Deutsche Bank. The Sasol asset swap was implemented during February 2001. The currency conversion was effected by Deutsche  
60 Bank London on 19 and 20 February 2001 on which days the rand depreciated in value. We

are not, Mr Chair and Commissioners, in a position to provide any definitive conclusion as to whether or not this transaction contributed or gave rise to the rapid depreciation of the rand.

Why are you not in a position to do that? --- The team has been consulting, the team itself did not have in its composition specific experts in foreign exchange dealing. The team did consult with experts outside of the team and we thought it appropriate based on those consultations for the Commission to consider whether those experts should be led independently of the team's evidence.

Please proceed? --- An analysis of the Sasol shares on-sold by Deutsche Bank London to other foreign investors indicate on a sample basis that shares were on-sold by London and the proceeds received by London in rands. The possibility of flow back, as reported by Deutsche Bank to SARB in an amount of approximately 6% does require further investigation in order to establish conclusively whether such represents flow back.

CHAIRPERSON: Was the evidence not that Deutsche Bank reported all the transactions and assumed flow back? --- They reported all their sales and assumed such to be flow back and that represents the 6%.

6%, that is correct.

MR MUKWEVHO: Mr Chairman, that is the end of this evidence in so far as the Sasol transaction is concerned. We can proceed to the next one.

CHAIRPERSON: Yes let us proceed through to the end and then we will have questions.

MR MUKWEVHO: We now go to page 9, part 3, and we deal with the Nampak transaction. Do you confirm paragraph 1? --- I confirm the contents of paragraph 1.

Do you also confirm paragraph 3 that deals with the application and approval of the Nampak asset swap as well as the paragraph containing the structure, that is paragraph 4? -- I confirm those paragraphs.

Please deal with the analysis of the implementation of the structure and also with the aid of the slide which will be on page 72. --- Again, Mr Chair and other Commissioners, we deal with the analysis of the implementation as analysed by the structured finance specialists and again refer you to the red lines. Our analysis of the implementation of the Nampak transaction indicates that rands again were exchanged by Deutsche Bank London for foreign currency in the South African Foreign Exchange market. rands were exchanged for foreign currency as follows: This is not necessarily in chronological sequence, we apologise, but we will see from the date it is evident what happened first. On 3 July 2001 Nampak paid DS an amount of approximately R170 million in respect of tranche 1 of the asset swap and on 7 August 2001 an amount of approximately R59 million in respect of tranche 2. DS placed the equivalent amount of rands with a South African bank, SBSA. This bank in turn re-deposited the same amount with Deutsche Bank Johannesburg. This deposit was used as collateral for Nampak shares borrowed from the South African Bank. Deutsche Bank Johannesburg paid approximately R170 million to Deutsche Bank London in terms of a SA Government bond repurchase agreement concluded with DBL and again the first transaction was the conversion of rands for foreign currency. On 26 and 27 June 2001 Deutsche Bank London exchanged approximately R170 million for 15 million British Pounds. The settlement date of this transaction was 3 July 2001 which is the same date that Nampak paid an amount to Deutsche Securities. This was in respect of tranche 1. On 2 August 2001 Deutsche Bank London exchanged approximately R59 million for British Pounds 5 million. Again the amounts referred to, Mr Chair, are the same amounts as was paid by Nampak in rands to Deutsche Securities. The settlement date of this transaction was 7 August 2001. This payment was in respect of tranche 2. These foreign currency transactions were concluded in the South African Foreign Exchange market. On 3 July 2001, being the same date, the settlement date of the foreign currency conversions and the same date that Nampak paid Deutsche Securities an equivalent amount of rands, Deutsche Bank London paid 15 million to Nampak offshore in respect of tranche 1. On 7 August 2001 Deutsche Bank London paid 5 million to Nampak offshore in respect of tranche 2. The currency conversions by Deutsche Bank London were effected on 26 and 27 June 2001 and 2 August 2001. With reference to the documents and evidence of Deutsche Bank we note that they stated that the currency conversions were done on 26 June and 24 July. This does not confirm the dates that we see from the documents. The rand appreciated in value on 26 June and 2 August 2001. The rand did depreciate in value on 27 June 2001.

Please go to pages 38, 39 and 40, those are the three annexures that set out the dates on which you are saying the conversions occurred and just indicate to the Commissioners where those dates are actually on those documents? --- With reference to

page 38, the deal date is the date of the transaction and that is 26 June. On page 39 the deal date is 27 June and on page 40 the deal date is 2 August 2001.

Please deal with the movement of the rands in this transaction? --- The movement of the rands was Nampak paid a rand amount to Deutsche Securities. Deutsche Securities then placed an amount on deposit with a South African Bank in respect of the scrip lending agreement. The same amount of money was then placed back on deposit with Deutsche Bank Johannesburg by the South African Bank. Deutsche Bank London converted a same amount of rands for foreign currency and Deutsche Bank London paid Nampak offshore an equivalent amount of foreign currency that equates to the amount transacted in the foreign exchange market, the rand amount transacted.

What is the effect of the conversion of rand into pounds? --- The effect of the conversion of rands for British pounds in respect of both tranches was that the total foreign currency reserves of the country were reduced by 20 million.

Please deal with paragraph 5.1.4 on page 12 which relates to disclosures? --- Deutsche Bank did not prior to the implementation of the transaction disclose to the Reserve Bank the conversion of rands for British pounds. DB only disclosed this fact to SARB after review of the Nampak transaction was initiated.

Do you confirm the contents of paragraph 5.2 which deals with representations and disclosures? --- I confirm the contents.

On page 13, paragraph 6, you deal with the use to which the foreign currency was put. Please address the Commission on that?

--- Paragraph 6 is application of foreign currency raised from the assets swap. According to a document prepared by JSA dated 11 May vire NPB page 32, Sayers motivated the reasons for the Deutsche Bank asset swap proposal to be proceeded with. From the document it is apparent that there was a concern relating to the impact on Nampak of a loan originally raised to settle the purchase price of Plysu which was the Nampak subsidiary acquired in the United Kingdom. This concern was based *inter alia* on the level of debt resulting from the purchase of the subsidiary and consequent implications of interest payments that the loan could have on the Nampak Group.

Please turn to pages 36 to 37 of the bundle. There you will find an approval by SARB which is dated 14 December 2000. On page 36, on the last paragraph, you actually see the approval and the use to which the funds should be put. Can you just quickly summarise that? --- Essentially the approval was granted for the full proceeds of the share placement to be received offshore and those were to be capitalised in the books of Nampak Holdings UK plc which capital injection will be utilised to fund the capital expenditure programme of Plysu plc. Any expansion plans were of course to be placed on record with Excon and should the expansion be in a different line of business, Excon prior approval was required.

Mr John Sayers, on behalf of Nampak, actually testified and said that the application of those proceeds were in accordance with the approval. Do you confirm that? --- No, we do not confirm that, we would say it was not strictly in accordance with the approval granted.

In your findings what was the proceeds initially used for? --- The proceeds were initially used for to settle part of the loan that had been raised by Nampak to acquire the British subsidiary.

**CHAIRPERSON:** And does Nampak agree with you? --- Nampak does not agree with us.

**MR MUKWEVHO:** Please turn to pages 46 to 48 of the bundle and more particularly on page 47, there is a heading there which is whether the use of 15 million - can you please just read that? --- age 47, use of 15 million, it says NIL/NRL settles 15 million of NH UK loan on 16 July 2001. When the 20 million matures and can then draw down on the NH UK loan when funds are required for N plc .. (indistinct) dependent on timing. This would again increase loan due by NH UK to NIL/NRL by 15 million.

**CHAIRPERSON:** This is a document you rely on? --- We rely on this document *inter alia*, yes.

**MR MUKWEVHO:** Please turn to page 52 which actually states that the 15 million was used to discharge the syndicated loan, page 52 and please read into the record the first sentence under the heading "current status"? --- "Current status: You are probably aware that 15 million of the NH UK syndicated loan was paid off on 16 July 2001".

Do you confirm the contents of paragraphs 6.2 and 6.3 of your statement? --- I confirm the paragraphs.

Please read for the record paragraph 6.4 of your statement? --- "According to

Excon any deviation in respect of an approval granted needs to be submitted to Excon for approval. The application of the foreign currency by Nampak appears to be a deviation from the original approval granted which deviation should have been reported to Excon. It is our understanding from Excon that such a deviation would have been favourably considered had it been placed on record with Excon."

5 On page 14, paragraph 7, please summarise your evidence with regard to the sale of Nampak shares by DBL? --- We did investigate based on a sample whether Deutsche Bank London on-sold Nampak shares to other foreign investors. The schedule containing our analysis is available for Commissioners. The reason it is not included in the bundle is that it contains names of Deutsche Bank clients and an amounts etcetera and it was decided, based on confidentiality, not to include it. But it is available to the Commissioners. We found that initially 18 356 185 Nampak shares were placed. In respect thereof approximately 4,7 million Nampak shares have been on-sold by Deutsche Bank London. We analysed sales in an amount of approximately 4,1 million of such shares and our analysis confirms that the shares as represented by Deutsche Bank as on-sold to foreign investors were in fact sold and the proceeds thereof received in rands. In order to look at possible flow back, we analysed, based on the sample, the information appearing in the Nampak share register and we could not find the specific names of the shareholders which are represented on the Deutsche Bank documentation in the share register as being registered as the shareholder and in fact nor do we find Deutsche Bank London registered as a shareholder.

20 What are your conclusions with regard to these transactions? --- That the sale of Nampak shares are you referring to?

Your conclusion yes?

25 CHAIRPERSON: Paragraph 8. --- 8.1: "In terms of the Nampak asset swap and the related transactions as implemented by Deutsche Bank rands were exchanged for foreign currency by Deutsche Bank London. The effect of this exchange was that the foreign currency reserves of the country were depleted to the extent of the conversion. The individual legs of the Nampak transaction, as implemented by Deutsche Bank in the context of the asset swap are related. The documents and evidence indicate that Nampak was not aware of the detail surrounding the basis upon which the transaction was to be implemented by Deutsche Bank. The Nampak asset swap was implemented during June and August 2001. The currency conversions were effected on 26 and 27 June 2001 and 2 August 2001. The rand did appreciate in value on 26 June and 2 August but it depreciated on 27 June."

30 And that is in 2001? --- 2001. We are not in a position to provide any conclusion as to whether this transaction contributed or gave rise to the rapid depreciation of the rand. The application of the foreign currency proceeds received by Nampak was not applied strictly in accordance with the approval granted by Excon. Any deviation from the basis upon which an application is approved needs to be submitted to Excon. An analysis of the Nampak shares on-sold by DBL to other foreign investors indicate on a sample basis that these shares were in fact on-sold by DBL and all the proceeds in respect thereof were received in rands and the possibility of flow back would require further investigation.

35 That concludes his version in so far as the Nampak transaction is concerned. Will you now proceed to part 4 and that deals with the M-Cell transaction. Do you confirm the contents of the statement as set out in paragraphs 1, 2, paragraph 3 which deals with the application and the approval thereof as well as the structure set out on paragraph 4 on page 17. --- I confirm that.

45 With the aid of a slide which will be slide number 73 please deal with your analysis of these transactions. --- Our analysis of the M-Cell transaction confirms that Deutsche Bank utilised in this instance their own funds to underwrite this transaction and DBL did exchange R231 million for \$20 million on 8 January 2002 on the basis that this was a hedge of its currency risk. Again if we can refer the Commissioners to the red arrows, that shows the flow of funds.

50 Please deal with the representations? --- The following transactions were not disclosed to SARB, the scrip lending agreement between SBSA and DS. In terms of the M-Cell transaction Deutsche Securities purchased approximately 5,8 million M-Cell shares in the South African market and borrowed from SBSA the balance of the shares, i.e. approximately 10 million M-Cell shares. The foreign currency conversion was also not disclosed.

60 On paragraph 6 may you please read 6.1? --- Again DS provided us with a schedule reflecting M-Cell shares on-sold by DBL as at 15 February 2002. The schedule is

available to Commissioners, again we have not included it on the basis that it contains confidential information. We compared the information contained in the M-Cell share register as at 18 December. As the M-Cell shares were only sold by DBL subsequent to this date there is no possibility of flow back as at the date we inspected the register.

5 And do you confirm the contents of paragraph 6.2? --- I confirm that.

Please deal with your conclusion as set out in paragraph 7? --- In terms of the M-Cell asset swap and the related transactions, as implemented by Deutsche Bank, rands were exchanged for foreign currency by Deutsche Bank London on the basis that this was a hedge of its currency risk. The documents and evidence indicate that M-Cell was not aware of the details surrounding the basis upon which the transaction was to be implemented. In respect of the M-Cell shares on-sold by DBL, these were sold subsequent to 31 December 2001 and we make no conclusion in respect thereof as pertains to flow back. The M-Cell asset swap was implemented during January 2002, this falls outside the period of our investigation as contained in the terms of reference and as such we do not express any conclusion whether or not the rand depreciated in value on the date the currency conversion was effected. We are furthermore not in a position to conclude based on the available documentation and evidence whether this transaction contributed or gave rise to the rapid depreciation of the rand in any period prior to the date on which the currency conversion was effected.

Mr Chairman, that concludes the evidence of Mr Papadakis.

20 CHAIRPERSON: What about part 5 dealing with the .. (indistinct) transaction?

MR MUKWEVHO: Do you confirm the content of part 5 which is set out on page 20 of the report? --- I confirm the contents thereof.

That is all, thank you, Mr Chairman.

25 CHAIRPERSON: Mr Papadakis, perhaps just for record purposes we should place on record that there were these two tip off lines and that they were processed through your team? --- Correct.

And that is what you are reporting on here? --- That is what we are reporting on, Mr Chair, yes, there were two tip off lines that were operating during the course of the investigation and those reports were made available to us and were then analysed, considered and disseminated either to the teams or the appropriate authorities.

Thank you very much. No further questions, Mr Mukwevho?

30 MR MUKWEVHO: No further questions.

CROSS-EXAMINATION BY MR WASSERMAN: Mr Papadakis, I understand that you have testified in some matters on exchange control issues, correct? --- Correct.

35 Do you regard yourself as an exchange control expert? --- No, I do not.

You earlier and in your report came to the conclusion and I would like to test whether you express a view as an economist or not, you came to the conclusion that there was a depletion of the country's foreign currency reserves in consequence of each of these transactions? --- That is a conclusion we make in the report, correct.

40 But is it seen in isolation or is it a view expressed from an economist point of view? -- I do not think we ever expressed views or sought to interpret economic policy or express views as economists. We recorded the facts and I think if I can just say, answer the second part of your question, whether this was in fact considered in isolation, I think our report does say that we considered this transaction in isolation.

45 In isolation. --- Correct.

So just to make it quite clear, the only effect of that statement is that in consequence of the transaction 250 billion euros were exchanged or the country's reserves were depleted to the extent of 250 billion euros? That is the only effect of your statement? --- The effect of the statement is that.

50 Because you have not considered the other legs of the transaction which could have influenced the country's foreign reserves and had influenced the reserves. You have not considered that? --- We have considered all the related transactions, all the related transactions to the Sasol asset swap. So I would say we have considered them.

55 You have not expressed any views on the bonds purchased by Deutsche Bank London of which you are well aware? --- That is a bond repurchase agreement concluded with London.

60 You have not referred in your statement to the R1,2 billion worth of bonds purchased by Deutsche Bank London in order to fund this transaction to do the exchange? --- As we have said, that transaction is a repurchase transaction and our understanding of the repurchase transaction is as contained in the evidence of the Reserve Bank which is

effectively in legal terms a purchase and repurchase but in economic terms a loan.

No, no, I am talking about the bonds acquired by Deutsche Bank London in order to do the exchange, to acquire the shares? --- We have considered that and we say in terms of this transaction that was a repurchase agreement, which is in effect a loan to London.

5 Mr Papadakis, what about the fact that Deutsche Bank London had to pay money in order to acquire the bonds? In other words, there was an inflow of foreign currency into the country? --- Sorry, can you repeat, Deutsche Bank London had to buy?

Had to buy bonds from South African residents in order to do the transaction? --- When was that?

10 But you know about it, the R1,2 billion that you have seen about, you have been told about it? --- Can you refer me, I do not recall a figure of R1,2 billion in Deutsche's evidence?

No, no, you have seen in the submission of Deutsche Bank and you have seen the documentation? --- I do not recall a figure of R1,2 billion.

15 The total was R2,5 but one particular leg in order, because there was a shortfall, was R1,2 billion worth of bonds in February?

--- London bought?

Yes. --- London entered various transactions during February I would understand during February and prior to February.

20 I just want to know, did you, do you know about the R1,2 billion, yes or no? --- If you can refer me to it I can look and I will tell you if I know it. I do not recall a figure of R1,2.

What do you recall? --- I recall the evidence being that there was a bond repurchase transaction of R2,4 billion.

25 Mr Papadakis, that is true but in order to do the transaction Deutsche Bank London required approximately R2,5 billion worth of bonds, is that correct? --- Deutsche Bank London required bonds?

Yes. --- They required, Deutsche Bank London required to pay R2,5 billion to buy the shares.

Yes, and as far as the scrip lending transaction is concerned, was there not an exchange, bonds for scrip? --- Was there an exchange bonds for scrip?

30 Yes. --- On the evidence that I have seen there is a repurchase transaction concluded between Deutsche Bank London and Deutsche Bank Johannesburg, a repurchase transaction.

Correct, and Deutsche Bank London had to have bonds in order to conclude that transaction, is that correct? --- They had to have bonds?

35 Yes. --- They may have had bonds that they purchased prior, but it was a repurchase transaction.

They had to have bonds, is that correct? --- I would accept they had to have bonds in their account.

40 You have seen they had bonds and you have also seen they acquired bonds in February of the particular year, 2001, you have seen that? --- I have not seen that they have acquired bonds per se, they did various transactions pertaining to in bond market.

And if they had acquired bonds, is it correct to assume that they would have purchased bonds from residents and hence an inflow of foreign currency into the country? --- They may have purchased bonds from non-residents as well.

45 I put it to you, you have seen the information and we will pull it out if it needs to be done, in the submission and you have seen the information? --- I have seen the information and the information refers to a repurchase transaction concluded between Deutsche Bank London and Deutsche Bank Johannesburg and we have considered that information and considered it is not relevant to our conclusion on the basis that it is a repurchase transaction.

50 Do you exclude, Mr Papadakis, or do you ignore the fact that there was an inflow of foreign currency into the country in consequence of an acquisition of bonds by Deutsche Bank London? --- At which date?

55 In February? --- There were several repurchase transactions and as I say those are reflected in a schedule I have seen but they are repurchases and reverse repo transactions as well.

Mr Papadakis, I put it to you that not only did Deutsche Bank London have bonds but they also acquired bonds for purposes of this transaction, in particular R1,2 million was topped up in order to do this deal? --- That is not apparent from records.

60 Just assume for the purpose of the argument that that is fact, did that have a positive impact on the rand? --- On the basis that there was an assumption that there was bond

purchases, not repurchases, bond purchases, then I will accept if there was bond purchases there was an inflow.

And that would be a factor to take into account before one makes a bald statement that the country's foreign currency reserves had been depleted? --- Only on the assumption  
5 that there was a purchase and not a repurchase transaction, then yes, but it was not a purchase, it was a repurchase transaction.

I just want to know, Mr Papadakis, do you admit or deny that you have been told about the purchase transactions? --- I have been told about a purchase but it is in fact a repurchase transaction.

10 So you have been told by you concluded that as opposed to the fact that it has been represented to you as a purchase, you regarded that as a repurchase? --- That is actually what it is, it is a repurchase and it is recorded as such, as a repurchase.

CHAIRPERSON: Where is it recorded as a repurchase? --- It is recorded in the document that I was given.

15 Yes, but is that in the agreement itself or in the records of Deutsche Bank? --- In the records of Deutsche Bank.

MR WASSERMAN: So you read it as a repurchase, not a purchase? --- That is what it is recorded, as a repurchase.

20 I put it to you that it was in fact a purchase, the R1,2 billion? --- The document does not reflect that.

If I put it to you in fact it was a purchase, would you change your stance? --- If in fact it was a purchase and those bonds were acquired to fund the acquisition and it was not a repurchase agreement, then I would consider that.

25 And you would have referred to that? --- But it is not a purchase, it is a repurchase.

But if it was a purchase you would have referred to that? --- But with reference to the facts, those are not the facts. Now you are asking me to start assuming things that are not facts.

I am putting it to you that if it was a purchase you would have been duty bound if you intended to give an objective picture to refer to the purchase? --- If it was factually a  
30 purchase I would have considered it in the context of the facts.

Why did you not refer, Mr Papadakis, to the narrowing of the dividend gap, the positive impacts of these transactions and the impact that would have had on the foreign currency reserves of the country? --- Mr Chair, as I said as a team we investigated the transaction and our report is to present the factual findings surrounding the implementation of  
35 this transaction. The narrowing of the gap was information we did not consider, if there was in fact a narrowing of the gap.

Because of the on placement of shares, you do not think that would have triggered the inflow of currency into the country? --- We considered that and we deal with it in the report and we say in the report that we did consider the on-sale of shares by London to other  
40 foreign investors. The sample we analysed reflects that all those shares, share sales, were in fact settled in rand. If you now want to assume that those rands are generated by those foreign investors exchanging foreign currency for rands, that would be the correct interpretation. But there is no evidence that those foreign investors who then bought shares from Deutsche Bank London converted foreign currency to acquire rands. Those might have  
45 been rand balances that they held.

Might have been. Just to conclude that issue about the bonds, Mr Papadakis, as a fact Deutsche Bank London was in possession of bonds to the value of about R2,4 billion, is that correct? --- They could have been in possession of more than R2,4 billion.

50 Yes, but for purposes of the deal they had R2,4 billion? --- For the purposes of the deal they had R2,4 billion.

How would they have acquired that R2,4 billion worth of bonds? --- They could have acquired it by various means, I mean I understand .. (intervenes)

From whom do you buy these bonds? --- Residents or non-residents. Lots of people own South African bonds.

55 But it had to come from residents originally, correct? --- I do not see why it had to come from residents originally.

60 As a fact it was put to you and it was demonstrated that these were acquired from residents? --- That was not a fact that was put to me, a schedule was put to me which reflects purchases, or bond transactions concluded by Deutsche during a period which is not restricted only to February.

With whom? --- The counter party is reflected as on shore but that to me is the schedule reflecting the on shore purchase between Deutsche Bank London and Deutsche Bank Johannesburg.

It was demonstrated to you, Mr Papadakis, and let me put to you now that these  
5 bonds were acquired from residents. Can you dispute that? --- That was put to me, as I said the facts reflected on the schedule, it is a repurchase transaction .. (intervenes)

It does not matter whether it is a repurchase or a purchase, in fact they were acquired from residents? --- I think it does make a difference whether it was a purchase or a repurchase because DBL said that they did a repurchase transaction. They did not say we  
10 did a purchase and then a repurchase.

COURT: I think, Mr Papadakis, the point here is not whether it is purchase or repurchase but that the source is local and not foreign. That is what is being put to you. Did you confirm in your investigation that they were locally owned bonds? --- No, the only evidence reflected on the schedule I looked at is that the counter parties are recorded as on shore.

15 And what does it mean? --- It could be Deutsche Bank being onshore.

Does that mean that it was acquired from a resident? --- It was a repurchase transaction concluded with a resident.

And what is the effect of that? --- The effect of a repurchase transaction?

Yes? --- According to my understanding, as I said and I think I can refer the  
20 Commission if they wish, to the evidence of the Reserve Bank that in legal form it is a purchase and repurchase, in substance, in economics it is a loan by the seller of the proceeds of the sale.

MS QUNTA: So perhaps I am getting lost in this. Why Mr Papadakis, do you, if Deutsche Bank comes and is saying that it does not matter whether it is a purchase or a repurchase,  
25 what is important in terms of the question whether it depletes the reserves of the country, is whether it involves residents or non-residents, onshore or offshore, why do you believe whether it is a repurchase or a purchase is essential? --- Well because it is not possible just from the basis of determining what happened in the bond market to conclusively establish that the proceeds that London paid originated from a sale of bonds. Deutsche Bank is  
30 involved in other activities. They are involved in warrants, tea bonds, transactions in the currency market and that is why it is relevant. Because in substance according to my understanding a repurchase agreement is in essence a loan by the seller of the proceeds of the sale.

CHAIRPERSON: Does that not mean that there is an introduction of foreign currency into  
35 the country? --- No, it means the opposite.

If the bonds for the value of R2,5 billion is exchanged, you say that does not mean that because the bonds have been acquired by the use and by payment of those bonds in foreign currency, that does not mean an introduction of foreign currency into the country? ---

That introduction, first of all the evidence I have given, I do not see the date of the  
40 introduction and, secondly, the repurchase transaction is not an inflow according to my understanding.

MR GANTSHO: Can I just get clarity here, Mr Papadakis, if a borrowing by DBL of scrip, the introduction of foreign currency into the country would be limited to the fee that DBL pays to DBJ? --- That would be my understanding.

45 That is the actual proceeds or the amount that is paid for those .. (drops voice, inaudible) --- That is my understanding.

MS QUNTA: Do you have a copy of this schedule, is that the schedule that is available to the Commissioners? --- No, the schedule that has been given to me by Deutsche Bank, that is a different schedule but I do have a copy.

50 Do you have a copy of that? --- Yes, I have.

Perhaps you should make it available to the Commission and we shall then be able to establish what it says, whether it is a repurchase or a purchase.

MR WASSERMAN: Mr Papadakis, the bonds had been acquired by the payment of foreign currency, any bond purchased from a resident involves the payment of foreign currency? ---

55 You assume the purchase from a resident?

From a resident, I put it to you that the purchases were from a resident, that would have the impact of the inflow of foreign currency? --- I have seen no evidence that the purchase was from a resident.

60 That is not what I am asking you, I am asking you theoretically that would have the impact of an inflow of foreign currency? --- The purchase by a foreign investor of a bond

from the resident being a purchase would have .. (intervenes)

Obviously, it is the only way it can happen. Now Deutsche Bank London is now vested with bonds to the value of R2,5 billion or R2,4 billion as a minimum and they, in order to do this transaction, sell these bonds or loan these bonds to a resident. Would that not  
5 have a positive impact on the reserves of the country? --- No, it is not necessarily so because you first of all ask me to assume .. (intervenes)

They bought them. --- Could I finish, Mr Wasserman.

Yes.

CHAIRPERSON: Let us just have the answer. --- You assume for starters that the bonds  
10 were initially purchased from a resident. I have not seen any evidence of that fact. The initial purchase, I have not seen evidence that it was bought from a non-resident or a resident. If it was bought from a resident initially at some time it may have had, it would have had an impact on the reserves positive. But we said you cannot look at it in isolation for two reasons.

First of all there is no evidence that that happened and, secondly, it is a re-purchase  
15 transaction by London. And a repurchase transaction is not going to have a positive impact on the reserves of the country.

I see, there you express as a chartered accountant? --- As I said that is the view we express as a team comprising not only me as a chartered accountant but structure finance specialists as well that were involved in the analysis of the implementation of this transaction.

I see, the fact that the foreign currency that was generated was used to discharge a  
20 liability of a resident which the resident had to settle in foreign currency, would that have a negative or a positive impact on the currency reserves of the country? --- Not in this instance.

Generally, if a debt is settled would it have a positive impact or a negative impact? --  
25 - On the foreign currency reserves of the country?

Yes? --- Based on these facts, no.

Why not? --- Because in terms of the application, Mr Chair, the loans raised by the corporates offshore needed to be settled out of the proceeds generated by the operations of those entities offshore. So that is how they were to be settling the debt.

Once again a view expressed as a chartered accountant? --- As a chartered  
30 accountant and as part of the team.

Will it amaze you if I convey to you that I have had discussions with more than one economist about it and that would be regarded as a positive impact on the foreign reserves of the country? --- If you can put that evidence to me and the expert that said it I can consider it  
35 but as I say now I have considered it on the basis of the implementation, or we have considered it on the basis of how this transaction was implemented and the effect of the implementation. To put other propositions to me now that you know that are not substantiated by any facts that we have seen, I do not think I can or we as a team can tender an answer.

Mr Papadakis, I was interrupted when you were asked by my colleague about the non-disclosures, did you intimate something about a duty? --- Sorry, when were you interrupted?

I was interrupted earlier when you were giving your evidence in chief, did you, were you asked whether there was a duty on the part of Deutsche Bank to disclose these  
45 unrestricted transactions which you call related transactions. Did you say something like that? --- I was not asked whether there was a duty, I think the question asked of me was do we make any findings or interpretations on whether there was a duty and my evidence was we do not seek to make any interpretations on what duty resided with anybody to disclose or not to disclose.

Fine, then I do not have to deal with that. But let me then deal with your positive statement that an opposite, you cannot say whether there was a duty or not? --- I said we know that the evidence on whether there was a duty to disclose or not is on record with the Commission both by Deutsche, that is the corporate, and the Reserve Bank and we seek to make no interpretation on that evidence other to say factually what was disclosed and what  
55 was not disclosed.

Yes, your positive statement, especially in 5.2.3, it was represented to SARB that no currency conversion would take place. Now on which facts did you base that positive statement. --- Sorry, can you just refer me to .. (intervenes)

Paragraph 5.2.3. --- Of which part?

60 Of the Sasol one. --- Yes?

On what was that statement based? --- That statement is based upon the application to SARB.

What part of it? --- Can I refer you to the application?

Yes. ---

5 MR MUKWEVHO: If I can just assist you, look at page 22 of the bundle. --- At page 22, Mr Chair, it is paragraph 3, terms of the proposed asset swap.

MR WASSERMAN: Could I ask you which bundle are you looking at? --- At my bundle.

Well I do not have such a bundle, could I have a copy of that, just direct me to the document you are referring to. --- It is the application dated 25 January 2001 by Deutsche  
10 Bank. It is page 33 initially of I think the Deutsche Bank bundle.

Yes, carry on. --- At paragraph 3 it says "terms of the proposed asset swap. Settlement of the asset swap." That is one of the subparagraphs.

"Proceeds from the asset swap will be paid to SIH for onward investment into the offshore asset in foreign currency, i.e. foreign investors will pay in foreign currency and there will be no  
15 conversion into or out of Rand."

Yes, what does that mean? --- That is where we get the statement from. To us that means the transaction as a whole would not result in a conversion into or out of rands.

Where do you get that from? --- From a reading of this document.

Do you read as a chartered accountant or as a lawyer or what do you reading as? --  
20 - We read it as a team comprising forensic accountants and structure finance specialists and the legal team as well, the legal resources.

What has been discussed there, what is the issue at stake there? --- The issue there is how this transaction is going to be settled.

No, they are talking about the proceeds, Mr Papadakis. --- No, it says settlement of  
25 the asset swap, Mr Wasserman.

Well read it, "proceeds from the assets swap"? --- That is how the proceeds are going to be set off.

What amount was exchanged in this transaction, which part was converted rands into foreign currency or foreign currency into rands? --- Approximately R2,5 billion was  
30 converted in 350 million euro.

By whom? --- By Deutsche Bank London.

Now Mr Papadakis, you want to say that it was positively represented by Deutsche Bank to the Reserve Bank that Deutsche Bank London which is a foreign entity will not hedge? --- If I may, as I said, when we looked at this transaction we looked at it in its  
35 entirety. I order to appreciate the implementation of this transaction and the effect of this transaction, we are saying to the Commissioners in terms of our findings you have to consider this in terms of all the transactions and all the parties involved in the transactions including Deutsche Bank London, Deutsche Bank Johannesburg and Deutsche Securities.

Now Deutsche Bank London now all of a sudden is also bound by the foreign  
40 exchange controls and regulations? --- We have never made a comment whether Deutsche Bank London is bound or is not bound by exchange control. We have said we seek to make no interpretation, all we are saying is in order to assist the Commissioners to understand the effect of the implementation this is how we see the implementation.

Mr Papadakis, were the proceeds of the transaction ever exchanged? --- Which  
45 proceeds?

The proceeds of the asset swap which is being discussed in this particular paragraph on which you place reliance.

CHAIRPERSON: Mr Papadakis, remember that this is dealing with a London leg, the European leg of the asset swap, it is when those shares are on-sold? --- No, I do not think,  
50 when those shares are sold to whoever or on-sold, in our understanding and the way we read this transaction as a whole, the foreign investor was to pay foreign currency directly to the corporate offshore account. There was to be no conversion into or out of rands on the transaction as a whole.

MR WASSERMAN: Now where do you say, where do you get it from? --- From the reading  
55 of this document.

Mr Papadakis, this is a discussion about the proceeds of the asset swap, this is what this deal says. Mr Papadakis --- What it says.

Let us focus on what proceeds mean, what is being discussed here? --- The proceeds being the 350 million euro.

60 Which 350 million euro? --- The proceeds from the asset swap.

From the swap, in other words the placement, that is what is being discussed in this particular paragraph. --- It is the proceeds from the asset swap, the proceeds being the proceeds that the corporate was to get from the asset swap.

5 And did the corporate get foreign currency from the asset swap? --- It definitely did.  
And were those, was that foreign currency exchanged or converted? --- Yes.  
When was it converted? --- On 19 and 20 February 2001.

We are talking about the funding of the transaction, it is a totally different aspect. The proceeds are the proceeds that are generated by way of the placement, the on placement of the shares, that is what this is about? --- No, I would disagree. To me the  
10 proceeds are the proceeds from the asset swap that will be paid to SIH.

It is unbelievable. So you are saying that money that was paid by SIH itself are now turned into proceeds, the R2,5 million that was paid by Sasol itself you regard as the proceeds of the asset swap? --- No, the proceeds of the asset swap is the foreign currency.

15 --- And the foreign currency was never converted, Mr Papadakis?  
--- No, the rands were converted.

No, the foreign currency that was generated by the on placement of shares were never converted into rands or vice versa, it was never done, it was paid directly into the offshore of SIH? --- Yes and we are saying in our analysis of the implementation that foreign currency being the proceeds that the corporate got offshore was generated by the  
20 conversion of rands into foreign currency.

I see. There is no discussion in this document about the fact that Deutsche Bank London will hedge or will pay the whole amount directly into the offshore account of SIH? --- It says, that is how we read the document, foreign investors will pay in foreign currency and there will be no conversion into or out of rand.

25 By whom? --- By to us the foreign investors.

No, that was never, if you read any of the further applications you will see it is conversion by the company. --- If I may, can I refer the Commissioners to a letter that was addressed by Deutsche Securities to the Reserve Bank in October 2001?

CHAIRPERSON: Yes.

30 MS QUNTA: Have you got the reference, have we got it already in the documents? --- The Reserve Bank page 169.

MR WASSERMAN: What is that letter, Mr Papadakis? --- It is a letter addressed by Deutsche to the Reserve Bank explaining the implementation of corporate asset swaps.

35 Just give us the reference first of all to the bundle? --- It is SARB bundle, page 169.  
Which volume of the SARB bundles?

MR MUKWEVHO: It is Volume 8, Mr Chairman. --- Volume 8.

CHAIRPERSON: Page? --- It is page 169 and 170.

Read onto the record the relevant page so that we can follow the evidence with you? --- The relevant pages are page 169 and page 170 and this corroborates our understanding  
40 that there was to be no conversion by the foreign investor into or out of rand. And it sets out the basis upon which, and I think this is a response to the Reserve Bank from Deutsche of how they implemented the asset swap and it says:

"Following your meeting with [a person from Deutsche] we have set out further information which you requested regarding the implementation of corporate asset swap transactions by  
45 Deutsche Bank with specific reference to the Sasol transaction."

It goes on to say that:

"The swap should be currency neutral as there is no conversion of rands into foreign currency by the corporate. If the foreign investor hedges his rand exposure or if he realises other rand investments to finance the purchase, currency leakage will occur".

50 And it sets out to explain how possible currency leakage may occur. It then goes on to say in respect of the Sasol transaction specifically:

"It is important to note that in the case of Sasol foreign investors are less likely to hedge their rand exposure because Sasol carries inherent rand hedge characteristics. For example, in February 2001 when the swap was effected the Sasol share price of R63,00 translated into a  
55 price of 8,81 euro. Deutsche Bank research had a target Sasol price of R100,00 and was forecasting a stable rand/euro exchange rate. Notwithstanding the recent depreciation of the rand the Sasol share price now translates to R10,23 euro, an increase of 16 since implementation."

And then it says:

60 "Deutsche Bank's asset swap structure.

Deutsche Bank has designed an asset structure that we believe reduces the risk of currency leakage."

Now to us that is conversion out of rands. "This is achieved as follows" and they say how it is achieved and then in conclusion they actually say:

5 "We believe that any form of corporate asset swap or share placement is in the most instances currency neutral but may result in some currency leakage because foreign investors can sell rand denominated investments to finance the purchase or they may hedge a portion of their rand exposure. The currency hedging risk is reduced where the stock that is subject to the swap is a natural rand hedge such as Sasol."

10 So if you are saying it was never the investor that was going to hedge, it was never said that the investor will not hedge their risk, their currency risk and convert rands into euro, that seems to me to be at variance to what is reflected in this letter dated October.

MR WASSERMAN: That is how many months later? --- That is eight months after implementation.

15 We are talking about the time when the application was made, you made a positive statement in your report to the Commission that there was a positive representation. Now where is that? --- It is in the letter of the application.

Mr Papadakis, we have already seen that that is a discussion about the proceeds of the on placement and if you read further, if you go to page 39, the letter of 16 February 2001

20 .. (intervenes)

CHAIRPERSON: Can you tell me what reference is that?

MR WASSERMAN: It is a letter dated 16 February, that is the Sasol file, just look at that file.

--- I do not have a numbered bundle for Sasol but if you can refer me to the document.

It is file number 1, it is parts 1 and 2. --- I think I was not given a copy of the Sasol.

25 Well I will read to you page 39, a letter of 16 February 2001 and the top bullet point reads as follows:

"No conversion from rand to foreign currency would take place on behalf of the company".

--- That is the letter between who and who?

30 That is from Deutsche Securities to the Reserve Bank. It was always whether the company which is not permitted to convert will convert in any way in order to generate foreign currency into its offshore account. It was never a discussion about the foreign investor or Deutsche Bank London hedging its transactions, there was no representation made concerning that fact. --- We read page 22, we read the document to mean that in respect of the transaction as a whole the foreign investor will pay the corporate foreign currency

35 offshore and there will be no conversion into or out of rands.

Mr Papadakis, the statement, you read it that way or we read it that way, you would obviously not ignore or rule out the fact that Deutsche Bank or Deutsche Securities did not, when it wrote that letter or made the application, intend to convey what you believe they intended to convey? --- I do not have any personal knowledge of what was written, as I say

40 we have analysed the implementation of this transaction in order to determine the effect thereof and I believe the letter of 31 October, which is now eight months after the implementation, corroborates the finding of the team.

That is your perception but your perception that a positive representation was made could be wrong? --- I think the Commission will decide obviously if our finding of the positive presentation is right or wrong.

CHAIRPERSON: Mr Wasserman, would it be convenient to take the adjournment?

MR WASSERMAN: Thank you, Mr Chairman.

CHAIRPERSON: Adjourned for 15 minutes.

PROCEEDINGS ADJOURN:

50 PROCEEDINGS RESUME:

CHAIRPERSON: Mr Wasserman, do you still have questions?

EXAMINATION BY MR WASSERMAN (continued): Mr Papadakis, just to conclude a few issues and I would like you to just reconsider your position concerning that third paragraph in our bundle, file 1, page 33, and I think you derived your statement in 5.23 from this particular

55 reference to the proceeds from the asset swap. Now what did you understand the proceeds to mean? --- The proceeds we understand to mean the foreign currency.

And why do you say there was a conversion of in and out of rands in order to facilitate the injection of that foreign currency to be of your account? --- Because there is a basis of our analysis of the implementation of this transaction that there was a conversion of

60 rands into foreign currency and that foreign currency would be paid to Sasol offshore. It is

not necessarily the same foreign currency but that is the conversion out of rands into foreign currency and that is how we read paragraph 3 of the application and approval, Mr Chair. The application says:

"In terms of the proposed asset swap, the settlement of the asset swap, proceeds from the asset swap will be paid to SIH. The only person or entity that could pay SIH any proceeds was the foreign investor."

Which happened? --- If I could continue, Mr Wasserman?

"And the foreign investor had to pay SIH and they had to pay him in foreign currency i.e. the foreign investor will pay in foreign currency and there will be no conversion into or out of rand."

We are saying based on our analysis of this implementation of this structure, there was a conversion out of rand into foreign currency.

By whom? --- By Deutsche Bank London.

And that is the sole basis for your allegation in 5.23 because there was no reference to Deutsche Bank London in this particular document. There is simply a reference to the company. It is quite clear from all the correspondence that that particular reference about moving in and out of rands into foreign currency in the opposite way, was limited to the company but the company was the only entity not permitted to do that. --- No, that is not how we analysed that statement.

But you have already conceded that you may be wrong. --- I may be wrong and that is for the Commission to decide if the team is right or wrong.

Before I conclude, I just want to deal with one further issue. It is quite startling that in your final report, you had come to the conclusion that you do not have the in-house expertise to come to a positive conclusion as to the impact these transactions had on the depreciation of the rand. That is basically what you are saying. Correct? --- We are saying we are not in a position to conclude whether these transactions caused, contributed or gave rise to the depreciation of the rand.

But is it not likely that because of the timing of these transactions that they could not have had an impact? --- Mr Chair, as we said we have been consulting outside of the team with experts and it is a very complex issue where the timing of transactions may impact in future or past and that is the basis why we do not come to a conclusion and suggest that if the Commission wishes they either consider the evidence that is before them or lead those experts.

Just to conclude your draft the day before this part based on the fact the rand appreciated in value in these days, we conclude that the Sasol transaction could not have given rise to the rapid depreciation of the rand. That was your report the day before the final report saw light. --- Mr Chair, that was our draft report which we invited comments on. At that stage we were still consulting with experts and the legal resource within the team had a consultation subsequent to us issuing that report and it is on the advice of the legal resource within the team that that was changed.

So you merely elected to err on the side of caution basically? --- I do not know. You will have to ask, as I said it was the legal resource that made that decision.

Thank you. Now to conclude Mr Papadakis, I put it to you that just to summarise the issue about the reserves, I put it to you that you had been shown that DBL had acquired bonds to the value of R2,3 billion and the only way they could have acquired that or the only effect of that acquisition could have been the inflow of foreign currency into the country. --- Mr Chair, if I may can I ask one of the experts that dealt with the implementation to answer that question?

CHAIRPERSON: I just want to go back to the question. We are talking about the acquisition of bonds?

MR WASSERMAN: Yes.

CHAIRPERSON: You did not put that in your question but you are talking about the acquisition of bonds?

MR WASSERMAN: The acquisition of bonds. I mean you do not dispute that?

MS QUNTA: Mr Wasserman, are you now leading new evidence?

MR WASSERMAN: No.

MS QUNTA: What do you base your ... you are putting it to him the statement of fact and what is the basis of that statement of fact?

MR WASSERMAN: The fact that Deutsche Bank has demonstrated to the team .. (intervenes)

MS QUNTA: Outside the Commission?

MR WASSERMAN: No, no, in the submission.

MS QUNTA: In the Deutsche Bank submission?

MR WASSERMAN: Yes.

MS QUNTA: Do you have a reference number?

5 MR WASSERMAN: There is a schedule that was already referred to. --- It is not in the Deutsche Bank bundle.

CHAIRPERSON: Mr Papadakis, just to go back. That is the proposition that has been put to you and it was the evidence that there was an acquisition, not a reacquisition, not a loan in effect. --- Well, we say it is in effect a loan. The original purchase, if there was an original  
10 purchase, can I through you chair ask one of the structured finance specialists to answer the question or should I answer?

Who would you like to answer the question? --- Ms Kruse?

Ms Kruse, you are a member of that team. What do you want to testify to in that regard?

15 MS KRUSE: I just want to clarify that I (indistinct) the structure only. I do not have any exchange control equity. So I would like to stay away from those questions. But when we looked at the structure, we just took that Deutsche Bank London owned the bond in order to allow them to do the repurchase agreement. So we have not looked at any transactions dealing with the original purchase of the bonds by Deutsche Bank London and as our  
20 diagrams reflect, and I think as Deutsche's reflected, that an original bond purchase was there. So it was not a leg that we linked to this transaction.

MR BEZUIDENHOUT: If I may just ask a question, Mr Chairman?

CHAIRPERSON: Yes certainly.

MR BEZUIDENHOUT: As I understand in your investigations in the last couple of weeks,  
25 Deutsche Bank gave a schedule of bonds that it purchased from residents indicating bond purchases and an increase in currency reserves in February at the time of the transaction. Is that right? --- That is the schedule that I have .... it does not reflect purchasers. It reflects repurchases, various transactions that we had done. Not only in February prior to February as well and the point that has been made, if we are to consider factually whether there was  
30 an original purchase of bonds that Deutsche then made and resulted in an inflow of currency, those facts must be put to us, Mr Chair, because then we would also need to investigate how those acquisitions were funded in the first place. So that is why we restricted ourselves to the implementation of this transaction and the repurchase transaction in respect of the bonds. We cannot make any comment as to whether there was an original purchase of bonds or not  
35 and how it was funded.

I think in Niall Smith's evidence given to the Commission, he testified that over a period of three or four months that in fact Deutsche Bank purchases, and I think it was eight or nine billion of South African bonds from South African residents and the information I posted it to, was just more specified than that. In other words as I understand what had  
40 happened was that you were given a schedule saying these 2,3 billion bonds were bought for this transaction. Is that what happened? --- That is not correct. The schedule I was given, as I have said, Mr Chairman, .. (intervenes)

MR WASSERMAN: Mr Chairman, who is answering the questions now? I am busy with Mr Papadakis and I would like to finish with him. My learned colleague .... (laughter)

45 CHAIRPERSON: Well, Mr Papadakis saw the schedules.

MR WASSERMAN: Well, he did not know and he called upon his colleague to assist him.

CHAIRPERSON: Yes.

MR WASSERMAN: So I would like him to leave his colleague and let my attorney deal with his colleague, we do not mind that, but I would like to finish this line of examination.

50 CHAIRPERSON: Let us just first get an answer to your attorney's question. The question relates to that schedule. It has been more specific rather than just the R8 billion worth of purchases of bonds and you say, as I understand it, the schedule reflects repurchases and not purchases and that is the essence of your evidence. --- Yes, it reflects various types of transactions. We (indistinct) bond borrowings, bond lendings. It is not specific to reflecting  
55 the purchase of bonds.

MR BEZUIDENHOUT: would it matter whether it is a repurchase or not? --- To me .. (intervenes)

MR WASSERMAN: No, no, Mr Chairman please. Let him keep quiet. This is an examination solely .. (intervenes) --- Can I answer that question?

60 CHAIRPERSON: Mr Papadakis, you answer the question. --- Yes, it is very relevant

because in subsequent a repurchase transaction is a loan by London of the proceeds of the sale. That is why it is so very relevant that it is a repurchase transaction and not a purchase transaction.

I think Mr Bezuidenhout and Mr Wasserman, that is the difference between  
5 Deutsche Bank and the team and that needs to be resolved by way of evidence, it seems to me. The one view that has been put to you and you must put your view in due course by way of evidence, I think.

MR WASSERMAN: I take your point, Mr Chairman.

CHAIRPERSON: Yes.

10 MR WASSERMAN: It is a debate between us. It is really we were surprised that the investigating team were called to deal with these issues. I do not think Mr Papadakis really is an expert to deal with the issue. But .. (intervenes)

MS QUNTA: But Mr Wasserman were you not given Mr Papadakis's report?

MR WASSERMAN: Yes.

15 MS QUNTA: So you were aware of what he was going to deal with?

MR WASSERMAN: Ja, I missed the relevance of that question.

MS QUNTA: No, you are saying you are surprised that you ave come and they are dealing with it. Surely you saw that before today. So your client would have been in a position to respond to this either in your dealings with him or to come prepared today to deal with that  
20 issue?

MR WASSERMAN: No, I think you misunderstood what I said.

MS QUNTA: Okay.

MR WASSERMAN: What I have said is we were surprised that he was called being a chartered accountant to come and to give recommendations to the Commission in view of  
25 the fact that these are issues upon which only the Commission can make the call. --- Can I answer that?

Yes. --- We do not seek to make recommendations and I think our report makes any recommendations to the Commissions. Our objective is to place facts before the Commission as we see them, as we investigate them and to allow the commissioners to  
30 make a decision. That is what we understand our role to be. Not to make recommendations.  
CHAIRPERSON: Right let us proceed please.

MR WASSERMAN: Mr Papadakis, then assuming that DBL acquired R2,3 billion worth of bonds and that was used for this particular transaction, it would have had positive impact on the reserves. Is that correct? --- Again Mr Chair I am asked to answer questions based on  
35 assumptions. If the assumption is that I will say yes but that is not represented by the fact.

CHAIRPERSON: No, you are not being asked to debate the facts. You are being asked to debate the assumption. That is the assumption and we know where we are in the Commission. --- I will accept that proposition put to me.

MR WASSERMAN: And the acquisition of Condea would have a positive effect and would  
40 contribute to the narrowing of the dividend gap. You would agree with that? --- In the long term I presume that is why the Reserve Bank approved the Condea.

The placement of shares would have a positive impact in the sense that there would be generated inflow of foreign currency into the country. You would agree with that? --- No, I do not agree with that necessarily. If you want to again put it to me on the basis of an  
45 assumption, yes I will accept the proposition but not on the basis of the facts before it.

And if you take all these facts into account, it is quite conceivable that the whole transaction would have had a positive impact on the reserve rather than a negative impact? --- If the transaction had been implemented on the basis represented to the Reserve Bank,  
50 yes.

Thank you, Mr Chairman.

CHAIRPERSON: Any questions? Mr Serrurier?

MR SERRURIER: Mr Chairman in paragraph 8.5 of Part 3 of the witness's statement, it is stated that the application of the foreign currency proceeds by Nampak was not applied strictly in accordance with the approval granted by Excon. Any deviation from the basis upon  
55 which an application was approved, needs to be submitted.

CHAIRPERSON: Yes.

MR SERRURIER: Mr Chairman, I have reason to believe that any such application if submitted will be granted and accepted by the Reserve Bank.

CHAIRPERSON: Yes.

60 MR SERRURIER: And there are reasons why that is so and I have had a brief discussion

with my colleague, Mr Ginsberg about that. So Mr Chairman I do not think with respect, unless you want an explanation for all of that whether we need trouble the Commission because it seems to us it is a matter between my client and Exxon and it is largely of a formal nature. The complaint was that instead of immediately spending the British pounds raised, which were raised for constructing additional plants, my client put the money as it were into his bank account in the meanwhile and to pay it out as and when the construction is completed of the additions.

CHAIRPERSON: But the allegation here goes further than that. It was used to reduce the loan.

10 MR SERRURIER: Well, yes I mean if one has an overdraft with your bank and you pay a cheque into your account, it reduces the loan.

CHAIRPERSON: It was only in that sense that your client says there was a misuse. It simply went into its overdraft.

15 MR SERRURIER: Well, it is more complicated than that but it had loans which are like an overdraft and he used it in the meanwhile to reduce those loans and as and when the construction contracts had to be paid for, that money will be used for that eventual purpose.

CHAIRPERSON: I see. And you are saying that the Reserve Bank have no objection to that if you now place those facts before them?

MR SERRURIER: Yes.

20 CHAIRPERSON: That is the essence of what you are saying?

MR SERRURIER: Yes.

MS QUNTA: But can I understand then your response to 5.3 or 8.5 or whatever, is that your client agreed then that there was a deviation? This is a factual statement. It is not ... I understand that the investigators here are not postulating what the Reserve Bank would have done. They mentioned what the Reserve Bank said. But in relation to the factual statement there, do you disagree with that?

25 MR SERRURIER: Yes, it depends on the meaning of the word strictly in this report. We do not believe that the approval granted by Exxon properly interpreted in fact prevented us as it were depositing the money into our bank account in the meanwhile but to the extent that it is necessary to explain that to the Reserve Bank, we are prepared to do so to avoid any further problems.

MS QUNTA: My problem is that the Commission and the Reserve Bank are two separate entities. We have been asked to make certain conclusions and the investigation that had been conducted, we still have to make a finding in relation to what facts are placed before us.

35 So whether or not your client made an arrangement with the Reserve Bank, does not prevent us, it does not stop the Commission, in fact we are obliged to make a finding either way. So my question really to you is: are you disputing the finding of fact by the investigating team and if you do, did you make a submission to the Commission or are you asking the Commission now to come and make another input in relation to that and you know you obviously had the opportunity, I presume, to respond to the findings because they had been in contact with your client all the time.

40 MR SERRURIER: Well, yes there are two points that arise. The first is that not even Mr Papadakis seems to suggest that this might effect the central question which is before you commissioners. In other words the depreciation in the rand and it has never been suggested and nor could it be suggested that it had any effect on that. This is simply a complaint about some sort of formal issue, as we understand it and we are saying with great respect that whilst we do not agree that the funds were not placed in accordance with the Reserve Bank, approval to the extent that a formal application is necessary which as I say we have reason to believe, will be approved, we are prepared to make that application and perhaps then to the extent that the Commission might or might not be worried about whether the Reserve Bank approves of this, perhaps one should wait and see if the Reserve Bank does in fact approve after such application has been made because if they do approve, then there can be no question that the funds were not applied in accordance with the approval.

50 MS QUNTA: I am not sure I understand you because if someone ... let us take a hypothetical example. If someone has done something which is not in line with a specific piece of legislation, for whatever reason, it may be a lack of understanding of that piece of legislation or it may be for whatever other reason, a year down the line the person now understands that he should have done it a different way, but the fact remains that at the time that this occurred, something was not done in line with the piece of legislation, if there is sufficient evidence to that effect. Now the fact that you are going to make another application

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to the Reserve Bank, does not stop this Commission or the investigating team to make a finding. It is up to the Commission then to decide the importance of the evidential weight of that finding. I am not even coming to that. I am just wanting your response to 8.5. It is a very simple question. If you say you dispute that, then I think what you need to do is to indicate to the Commission what the basis for your dispute is and I think it is quite easy for you to give them a document to say this is not in fact what happened. But you know we cannot also continue the Commission *ad infinitum*. So I think my question is not what you are going to do with the Reserve Bank because in a sense I am not sure whether that is relevant to what we are looking at now.

10 MR SERRURIER: Well, they say that if you had ... the complaint is you should have made an application to the Reserve Bank but you did not. They say any deviation from the basis upon which an application is approved, needs to be submitted to Excon. So all they are telling me here, madam, is that if there was a deviation, I must submit an application to Excon. I am saying to you my client is prepared to do that and we have every reason to believe that that would be granted and there would not therefore be a deviation from the basis upon which the application was granted. But my other point, commissioners, is that because this is simply a gratuitous complaint, this has nothing to do with the depreciation of the rand which is what, with great respect, your job is to determine. But I can lead Sayers if necessary, to explain this more fully to you if that is what you require. I am seeking to save your time by doing that because I see it in my respectful submission, this is a side issue completely. But I am in your hands.

MS QUNTA: No, I will leave it.

CHAIRPERSON: Let us just establish whether the facts are common cause that it was that the money went into the overdraft call it of Nampak in London and that is what you found, Mr Papadakis. --- Yes, Mr Chair. Those are the facts?

Those are the facts. --- We used to settle the loan and as we say it is a side issue.

Yes. --- The only point that we raised in the report is from the perspective that it comes to the ability of Excon to administer exchange control.

Yes. --- They require the information to be put on record. Otherwise they cannot ..  
30 (intervenes)

So the facts are common cause. It is what one makes of it. --- That is correct.

And which we know what to do about that, I hope. --- Ja.

Thank you, Mr Serrurier.

MR SERRURIER: Thank you, Mr Commissioner.

35 CHAIRPERSON: Mr Ginsberg anything from the Reserve Bank?

MR GINSBERG: Thank you, Mr Chair. What I have been told by my client is that they consider this to be a minor deviation in the overall scheme of the transaction as a whole and with the benefit of hindsight the exchange control department says they would have agreed to the request.

40 CHAIRPERSON: Yes.

MR GINSBERG: So as far as we are concerned, it has been built up into an issue which it does not deserve.

CHAIRPERSON: Alright.

MR GINSBERG: The promise is of little consequence.

45 CHAIRPERSON: Thank you, Mr Ginsberg. Mr Gauntlet, National Treasury, do you want to add anything?

MR GAUNTLET: No questions.

CHAIRPERSON: From the Commission's point of view? Questions?

MS QUNTA: I do not have questions.

50 MR GANTSHO: No questions.

CHAIRPERSON: Mr Mukwevhore, do you have any questions?

MR MUKWEVHORE: Just two questions.

CHAIRPERSON: Yes.

MR MUKWEVHORE: Mr Papadakis, in your evidence you stated that in terms of the Repo, Deutsche Bank Johannesburg, paid approximately R2,5 billion. It is actually a change there. It went to Deutsche Bank London. Is that true? --- That is correct.

An assumption was made by Mr Wasserman to you that Deutsche Bank London initially purchased South African Government bonds and that led to an inflow. The exchange of R2,5 billion from Deutsche Bank Johannesburg to London will have the effect of cancelling that inflow if ever there was one. Would you agree with me in that? --- If there  
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ever was one it does cancel it but as I say if we had to investigate whether there was ever an initial purchase, we would now have to go and investigate how that was funded.

So based on that assumption, one cannot say really that there was a positive impact as a result of such purchase? --- You cannot make that finding, no.

5 Furthermore Mr Wasserman indicated to you that in the letter that is set out in volume 8, that is on page 169, is irrelevant because it was actually returned eight months later. Would you agree with me that that letter is relevant in the sense that it deals with the Sasol transaction? --- Yes, I would say, Mr Chair, it is relevant.

No further questions, Mr Chairman.

10 CHAIRPERSON: That then concludes your evidence. Thank you, Mr Papadakis. --- Thank you, Mr Chairman.

Mr Wasserman, does Deutsche Bank want a further opportunity in due course to re-canvass this issue by way of evidence?

15 MR SERRURIER: What we would like to do is to make the document that was under discussion which reflects the accurate facts concerning the bond acquisition, to give an explanation.

CHAIRPERSON: Because it seems to me that is no doubt an issue whether it is purchased or repurchased under that schedule and it is the R8 billion worth of bond purchases.

MR WASSERMAN: What we will do is we will furnish an explanation concerning that.

20 CHAIRPERSON: Okay, so you do not want to come by way of evidence again to clarify this?

MR WASSERMAN: No.

CHAIRPERSON: You may stand down. --- Sorry, can we just make a comment there, Mr Chair?

25 Yes. --- If they are going to provide that schedule, can they show how those bonds were originally funded as well?

Well, I think the way we should do it, is the way it has been done up till now is that the two of you must get together and if necessary in some way evidence must be placed before the Commission. --- Thanks, Mr Chairman.

30 If possible by agreement and by disagreement, that that is reflected in the documentation placed before the Commission.

MR WASSERMAN: thank you, Mr Chairman.

CHAIRPERSON: You may stand down and then we will deal with Mr Immelman's evidence.

#### NO FURTHER QUESTIONS

35 CHAIRPERSON: We will adjourn for five minutes to rearrange.

#### PROCEEDINGS ADJOURN

#### PROCEEDINGS RESUME

CHAIRPERSON: The next witness is Mr Immelman to be led by Mr Naidu.

ALLAN JOHN IMMELMAN: d.s.s.

CHAIRPERSON: Proceed Mr Naidu.

40 MR NAIDU: Thank you, Mr Chairman.

EXAMINATION BY MR NAIDU: Mr Immelman, for the purposes of your evidence today, you present a report compiled by Deloitte & Touche and a set of slides which you bring to take the Commission through. --- That is correct.

Is your *curriculum vitae* attached as page 138 of the bundle of documents? --- It is.

45 Can you just give the Commission an idea about your experience in the field of foreign currency trading? --- I have been involved in the financial markets for the past 15 years. The financial markets go not just to the foreign currency market, but to interest rates and commodity and equity markets as well as derivative markets. Integral to this foundation of my experience has been exposure to foreign exchange markets. I have worked in a number of capacities in the foreign exchange markets and financial markets both as a professional advisor, as a consultant, in the capacity in treasury management capacity for a large, certainly one of the largest multi-national corporates that we have in this country as well as in an audit advisory capacity. I am currently responsible for the financial services practice, the national financial services practice of Deloitte & Touche.

50 I see. And you set out your experience in your *curriculum vitae*. --- The relevant experience, I did.

55 And the other members of your team, do they have any specific experience in the financial market that you would like to comment upon? --- My colleague on my right, Ingrid Goodspeed has significant experience in the financial markets and she has spent her entire career specialising in this particularly in banking. She has worked in risk management and in

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treasury management capacities and has an intimate knowledge of the workings of the financial markets and the foreign exchange markets.

I know you are going to deal with it more fully as you go through your report. Can you just give the commissioners an idea about the way your team interacted during the investigation and the compilation of the report? --- Yes. The team started with a large number of potential participants than it ended up with. This was because the terms of reference initially were being discussed and analysed and an approach to the project was being formulated. Once the approach was concreted and discussed and approved by a management body which was formulated by the commission, and this was done in late January this year, the final composition of the team was set. That team comprised of senior members of the firm such as myself and Ingrid, a tax partner who was experience in structured finance to look at certain responses to questionnaires on structured finance particularly as well as professional staff from our financial services team who are a group of professionals who specialise in the financial market. That was the team. The core team interacted on a daily basis as well as with other members of the other investigative teams of which there were two appointed by the commission as well as with the commissions particularly frequently prior to the commencement of the hearings.

And you are going to deal with the confidentiality of the information and the manner in which this was treated during your investigation as you go on? --- I will deal with that in detail during the course of the representation.

Mr Immelman, if you would like to start just briefly by way of introduction, how your report is structured? --- The report is structured to reflect the process that we followed in conducting the investigation. So it starts with an explanation of the scope and the limitations which we identified as having an impact on the ability to conduct an exhaustive investigation given the size of the market. Those limitations are clearly explained. As a result of that we decided on an approach. So the report defines the approach which approach is decided to best address the terms of reference giving consideration to the limitations. It then explains in detail how the data was gathered; which market participants were included in the investigation and why; certain materiality considerations which were addressed to limit practically the extent of the investigation so as to not just spend time unnecessarily on market participants who were considered to be unlikely to have a material impact on the depreciation of the rand; on specific periods. We limited the focus further on specific periods, some of which we call 'hot days' others being the last four months of the year where the major depreciation occurred. That is clearly defined and explained in the report. We then present our detailed findings and we conclude with the conclusion.

Thank you. Would you like to start with your first slide relating to the scope? --- What we are going to start with, is an expansion of really the summary that I have just given which is to define the scope in detail with reference to the terms of reference, go to the limitations, the approach. We will then cover the results by category of financial market participant which is material authorised dealers. The result we presented in line with the categorisation of the market participants which is material authorised dealers - South African Reserve Bank, international banking departments, representatives of offices, the exchanges, and then we provide the results only of the analysis of the hot days and our conclusion.

I would like to state from the outset that this was not an economic analysis. It was an analysis of the information provided to us in response to the call for information from the financial market participants. I will address that in more detail a little further.

Moving to the scope, the scope was very specific from the terms of reference which go to the effect that the investigation needs to cover any foreign exchange transaction during 2001 that contributed or gave rise to the rapid depreciation of the rand during that year which meant any institution involved in transacting in foreign currency, is included in the scope of this investigation and obviously that includes the market makers. The sheer size of that scope obviously is quite daunting and it was subject to these call limitations. One is that of the market say \$8 billion a day turnover market. The offshore transactions are excluded from the scope of this investigation because the jurisdiction did not go that far. Robert McCalley represented to this commission on 4 March that possibly the local market (mechanical interruption) 71% total (mechanical interruption) being what we call offshore. Local economists have reported that this could be as much as 60%. The implication is, just to clarify there the 71% or the 60% of the offshore transactions which means transactions in which a resident counterparty was involved. That is initially a significant limitation. There are also enormous daily transaction volumes running to millions a day and the terms of reference

specifically state transactions, identified transactions which may have contributed to the depreciation of the rand. Now each transaction, each one of those millions has the potential of impacting the value of the rand and a single transaction is often only part of a complex range of economic and financial structures and commitments and I would like to read from the report here, paragraph 11:

"Foreign exchange transactions arrives from, inter alia, investment, hedging, trade, financing or capital transactions including dividend payments. The foreign exchange transaction therefore commonly represents only a part of the related series of financial commitments and structures all of which require identification, analysis and understanding in order to assess the likely impact of an individual foreign exchange transaction on the rapid depreciation of the rand."

Furthermore given these limitations it introduced a further limitation which is time and cost required to conduct a thorough investigation at the transaction level and this was considered impractical given the reporting deadlines imposed on the investigative team.

What we had to do was to develop and approach to not compromise the terms of reference which required the identification of transactions and the way we did that was as follows: we split our approach into two phases and the first phase was to define criteria for investigation - that is from our understanding of the financial market, what should we be looking at to understand what might have given rise to the rapid depreciation of the rand? Those criteria will be listed later in this representation.

We need to design and develop data collected and analysis tools, how we are going to do it?

What type of statistical analysis and techniques are we going to use? How much is quantitative? How much is qualitative? How are we going to get the information from the financial market participants? I have already mentioned we used the questionnaire. That was the approach. We need to limit focus to keep periods because we have to cover 365 days. Do we apply the same amount of attention to every day? We decided not to. And we were doing that to lay the basis to form an opinion on activities as opposed to individual transactions.

Although some of the data that we asked for, or a lot of the data that we asked for, went to individual transactions.

We were looking to establish a trend and an understanding of activities on which to form an opinion to then ascertain whether those activities themselves require further investigation because if we go back to one of the limitations which is a foreign exchange transaction, is a part and is a reflection of a series of other financial commitments and transactions and we need to understand those and then decide do these require further investigation so we can then identify these specific underlying transactions. That was the approach.

Once that was understood and once those activities were identified, we would then conduct detailed investigations quite simply to identify and report on those specific transactions and their effect on the rand in accordance with the terms of reference.

By implication therefore this approach has a key decision point in it and that falls between phase 1 and phase 2. If activities require further investigation, which is the left block which says yes, then we go to phase 2. If we do not identify any, we conclude as such and report which is what we are doing today. We are concluding and reporting. We followed the right leg of that decision.

The institutions we identified in the scope, I mentioned that every institution involved in the transaction of the rand, needed to be included in the scope. We also understand that every transaction has to go through the book through an authorised dealer. So what we started with were the authorised dealers representative officers, SARB international banking department, and we wanted information from the exchanges to identify volumes specific and trading specific information across the financial markets outside of the foreign exchange market and their potential impact on the financial exchange market. So we covered the bond exchange, the JSE and (indistinct).

Now why not anyone else? Because that is the phase 2 scope - insurance companies, asset managers, corporates, are counterparty to transactions. The other side of that transaction is an authorised dealer or anyone of those other institutions we have listed. So we start on the one side. We do not look at both if we do not need to. That is why we would only look at them if it was necessary.

Confidentiality issues: There were many. Much of the information provided us or requested by us of the authorised dealers, is of a highly confidential nature. It is confidential for a

number of reasons. One is business specific confidentiality which goes to competitive position. The second is client confidential information which goes to the rights of the individual client and there are regulatory conditions which we had to comply with with regard to the Companies Act and the Johannesburg Stock Exchange and the Reserve Bank.

5 The way we addressed these, is to limit the size of the investigative team, to put a procedure in place which control the receipt of the information and the analysis of the information in a securely controlled environment with physical access controls. The data was analysed on a local area network which was secured. We had experts in control from an independent service line in Deloitte & Touche exercising independent control over this data, over the  
10 room, over the access and providing and doing daily backups of all the data and the analysis and these backups were stalled in an off-site location.

Other confidentiality issues which I will cover later related to profit information. Profit information is confidential for obvious reasons for the banks and we agreed to use profits and analyse profits on an index basis. This basis was agreed with the authorised dealers and the  
15 profit information which I represent later, is weighted, obviously against an index and not against absolute figures.

It was also an understanding that the powers of the Commission were clearly understood by the institutions being investigated as well as the powers of the investigative team but at any stage we could call for the detailed information and undertakings were provided by the  
20 authorised dealers that should this happen, the confidentiality would still be protected and if necessary proceedings would then continue here.

MR NAIDU: That was set out on pages 90 and 95 of your report? --- Yes, that is correct. And those are letters of undertakings provided byu the Commission.

CHAIRPERSON: Carry on, please. --- Furthermore there were data analysis issues which  
25 we have to attend to resulting from time pressure. It was a very comprehensive questionnaire and at the complex area the result is that not all of the responses were in the same provided to us in exactly the same format. We considered this and in our opinion this is not detracted from the integrity of the information or the data that we received.

The focus: The period concentrated on September through to December simply because  
30 there was a 42% depreciation of the rand over that period. Depreciation for the preceding nine months or eight months was 10,7%. That is shown very clearly on this graph which I am sure everyone on this room is by now very familiar. So from September to October was focused. It does not mean that we excluded or ignored the previous months. We certainly investigated those but the focus, I stress, was on September to December.

Unrecollected data: I have mentioned that we designed questionnaires eliciting both  
35 quantitative and qualitative responses from the participants. Detailed quantitative responses were provided in spreadsheet format in line with by completing a spreadsheet template that we developed and sent to the participants.

The range of questions is very comprehensive. That is provided as appendix, Annexure 72.

MR NAIDU: It commences at 72 until 88. --- And a different cessionaire was compiled for  
40 the authorised dealers from the South African Reserve Bank. The representative offices, the bond exchange, the JSE exchange and the Safex division of the JSE. Certain questionnaires were compiled for each one of those groups .. of the financial market groups.

We covered limits, trading ethics, the extent and composition of transactions, pricing and the  
45 size of the bid office spread, the foreign exchange rate profit; we looked at foreign exchange taxation across client categorisation; we looked at securities lending to establish the extent of short selling; the degree of corporate structure finance activities which impacted on foreign exchange and unusual activity on hot days.

Then applied the materiality test. This is a standard type of approach to this type of  
50 investigation and this was found necessary given the limitations which I have discussed and the materiality test did, it resulted in the exclusion of the participants regarded as having insignificant involvement.

What is that insignificant involvement mean?

Well, one wanted to ensure that at least 95% of the transactions or the value of the  
55 transactions in the foreign exchange market in the year under investigation were covered. And so to do that, we looked at the turnover of all of the participants.

Is this the information you got from the participants? --- This is information that we  
got from the participants. Initially we looked at the turnover on hot days and the list of the hot days is provided also as an annexure to the report. In fact it is .. (intervenes)

60 Page 15. --- On page 15?

CHAIRPERSON: Yes. --- If I can define on a hot day as to why we did this. Paragraph 32 on page 14:

There are those days during the year with significant points move in the value of the rand as well as certain notable days identified by economists and financial market participants such as the attack on the World Trade Center. In fact that should be 11 September and not the 12th, or the day after. It is the day after. Not the day of the attack. It is quite correct, 12 September, and 15 and 16 October being days after the announcement of the strict enforcement of exchange controls as an example and the hot days are shown in table 2 on page 15.

10 So by looking at these turnover figures, we wanted to cover at least 95% of the market which equated to a daily turnover of \$350 million. That is a dollar equivalent of trading foreign currency against the rand. That resulted in the inclusion of 10 material authorised dealers and those are presented on the next slide. They were ABSA, BoE, Citibank, Deutsche, FirstRand, Investec, JP Morgan, Nedcor Bank, Nedcor Investment Bank and Standard Bank.

15 The non-material bank submissions were scrutinized. We identified nothing in those submissions from the non-material banks which warranted further investigations and none of the material banks submitted that they had identified or they provided no admissions which directed us towards any irregularities on ethical behaviour which they might have identified.

MR NAIDU: Do you mean non-material? --- The non-material banks.

20 Yes. --- Sorry did I say material?

Yes. --- The non-material banks.

Before you go on, Mr Immelman, how did you verify the turnovers to determine your materiality? --- Those turnover figures, a second materiality test was then performed which was verifying the turnover figures to data received from the South African Reserve Bank for the periods 1 September to 31 December by applying the same materiality tests, the same list of banks was corroborated.

25 CHAIRPERSON: Let us move on. --- We moved now to the results and the results are provided against these categories. Trading and foreign exchange markets, profits, client transactions, securities lending, (indistinct). We move on to those directly. Trading and foreign exchange markets are further sub-categories.

We looked at market-making and proprietary trading, we looked ethical standards and these are all issues which have been raised by our submissions to the Commission. We looked at market-making prior to and post 14 October 2001 for the reason given that this has been raised on a number of occasions as a significant influencing date. We looked at foreign exchange limits and the financial instruments traded being spots, outright boards and swaps. Spots outright and swaps required a little bit explanation as to why because the accepted definition of turnover in foreign exchange includes turnover in the spot market, the outright forward market and the forward leg of swap transactions, you gross that up and that makes the turnover number in foreign exchange. You translate that prevailing exchange rates from 35 currency 1 to the rand; to the US dollar equivalent and we get one figure being the US dollar figure.

40 Market-making proprietary trading: All of the authorised dealers are market-makers and they stand by and they stand ready to buy and sell at the rates that they quote - the bid and the offer rate. Profit is generated from that spread, the difference between the bid and the offer rates and obviously from changing market prices. I intend to go through this quite rapidly because I understand that a lot of evidence has been led in this hearing before.

They provide liquidity to the market. They have a specific responsibility in line with their appointment as market-makers and proprietary positions may be held to make competitive prices. Strictly this proprietary trading is conducted for profit and by its nature it is speculative. It is trading on its own account, the banks trade on their own accounts and at their own risk and prop trading distinguishes itself from other types of trading such as trading for customs or for market-making or hedging. The consensus view though are proprietary trading by implication speculation is that its directional or meaning anticipatory based on a view, the view of the direction of the market is going to make - to make profit or to prevent a loss. It also includes arbitrage which is identifying opportunity from mispricing in the market. It certainly adds liquidity in the market. It is not necessarily unethical, improper or illegal and you see in the global financial markets and not just in the foreign exchange market, you see it in the other markets as well, it is a necessary economic activity conducted to a dynamic liquid and efficient market.

60 MR NAIDU: This is the consensus view ... (intervenes) --- This is the consensus view.

Of the responses from authorised dealers? --- The authorised dealers. It is not an attempt at all this presentation to infer in any way that things happened in the market which might not need authorised (mechanical interruption).

5 Ethical standards: Every respondent stated that they subscribed to the ACI Code which was being presented in detail to the Commission or they have internal codes of conducts or have an internal code of conduct which is consistent with the ACI model. They all have robusting internal control frameworks and that is important because the control framework needs to be robust to identify breaches. Breaches are identified within frequency which goes to the statement I made just before I started the slide to say it does not imply that all of those standards are adhered to explicitly. The breaches are found. This is a market which is managed and staffed by people. We all make mistakes and we all do things sometimes from perspectives that might not comply with policy and standards of an organisation which is why you need an ineffective control framework. Breaches are identified but they are in frequency. No breaches were identified as considered material to the terms of reference. This is a representation from the authorised dealers.

10 Now before I proceed with this, the question can obviously be asked the extent to which reliance can be placed on these submissions and we considered this very seriously and the issues around this go to the time and cost required to perform a detailed audit to verify these submissions. These submissions are provided by authorised dealers, are appointed as authorised dealers by the South African Reserve Bank who had to comply with stringent compliance. They are regulated entities. They are regulated in terms primarily from this perspective of the bank sales. They are subject to regular inspections. They had to provide returns on data, statutory returns. The inspections are conducted by both on site and off site. They had extensive internal audits investigations and they have .. there is an external audit function here which is significance when it comes to the controls and the integrity of information provided by the clients.

15 CHAIRPERSON: When you refer to the external audit, are you talking about the Reserve Bank external audit or also .. --- External audits are performed on all the participants being the authorised dealers and the Reserve Bank.

20 Fine. --- They were very well aware of the powers of the Commission. They were aware that phase 2 of this investigation was a very real possibility and that a team of investigators could be coming on to perform detailed investigations into detailed transactions and as I have stated before, the turnover figure provided was corroborated with independently to data provided us by the South African Reserve Bank.

25 For those reasons we have relied on the information provided us in response to the questionnaires.

30 Market-making prior to and post 14 October: I have mentioned why it is an important day. It was the announcement of the intention by the Reserve Bank to enforce existing exchange control rules. There have been numerous submissions of the effect of this. Non-resident banks ceased. Market-making activities, the impact of it on the liquidity market.

40 Authorised dealers, however, increased their role as market-makers because they needed to take on additional responsibility.

45 Foreign exchange limits: Limit structures and monitoring are an integral part of the risk management framework which I have already referred to. There are a number of limits which are applied by financial institutions, all of which are designed to control and manage the amount of risk that they are prepared to take on in the conduct or their participation in those financial markets.

50 There are also statutory limits imposed on them by the South African Reserve Bank. What we did is we looked at a weighted average, utilisation of overnight net open position limits which is the limits which the desks must not exceed at the close of trading on any one day. The utilisation of that limit over the period investigated, did not exceed 52%.

55 MR NAIDU: Is that illustrated in figure 2 on page 25 of your report? --- Which is this graph figure 2.

60 What we see is during the last quarter of last year, risk was not increased shown by the limits relative to prior period and we actually see that the average overnight net open position limit, the absolute limit, decreased in the period September to December which meant that the banks considered it prudent to cut their limits and therefore exposure foreign currency. That is shown in this graph, figure 3 in the report. You can quite clearly see the limits coming down in the last period.

Now that is just the overnight limits.

There are interday limits as well. Now interday limits, if set, can exceed overnight limits and can come sometimes quite significantly. This is important that banks are trading in active markets and they have a market-making responsibility. Interday limits are monitored continuously by trading hedge and that monitoring activity and reporting activity is part of an

5 integrated risk management framework in a financial institution and it was designed to detect excesses such as using rand and spot checks and a disciplinary process as an additional control is in place which we put into action if dealers do exceed limits imposed on them.  
Financial instrument traders, the spot outright forwards and swaps: There is debate around this but the pure theory goes that only spot transactions can impact the exchange rates of a

10 currency. Swap transactions cannot because it contains both a spot leg and a forward leg both of which are offsetting. Forward transactions are priced against the spot and when a forward is priced, it is forward points which are added to the prevailing spot rate and those forward points represent interest or inflation rate differential between this country and the country in which the forward current transaction has been transacted.

15 What we see then by looking at all of these, is we see a consistent trend being the net purchase of foreign currency over the last quarter. We can see the top line, the red line being the forward leg of the swaps and the bottom one being the spot leg of the swaps being exact mirror images of each other. Therefore offsetting each other. We see the outright forward across the year dipping only in December reflecting forward purchases being a net

20 sale and spot consistently being a net sale.  
MR NAIDU: You are referring to figure 4? --- I am referring to figure 4.

If you might just mention it because the record does not indicate what you refer to. --- I beg your pardon. I will do that.

Looking at this in a different way, we looked at now just the spot of transactions concluded by

25 the authorised dealers, the non-residents and residents of the country.  
This graphs is not reflected in your bundle but it is contained in your list of or your documented slides? --- It is in the documented slide on page 10, it is slide 28 but it is not included in the report. It simply illustrates the different in activity between different categories of participants or counterparty being the authorised dealer, the non-residents and the

30 residents.  
CHAIRPERSON: Just explain to us what it does mean? What is your conclusion from .. (intervenes) --- It goes to who was responsible for the sale of currency and what we are seeing here quite clearly is that residents of .. that is resident institutions of South Africa who were significant sellers over this period which obviously .. well, what we will be concluding

35 later, is reflective of sentiment rather than of in a specific transaction.  
We looked further to split that out and we looked at portfolio related transactions because we see that portfolio flows as opposed to flows coming out of corporations dominate the volumes and the portfolio flows are bond transactions dominated. Fairly foreign investors were significant net sellers of bond during the period and in late December they were net sellers of

40 (indistinct) which is shown by this graph here which is figure 5 in the report.  
CHAIRPERSON: If I can just understand the figure 5 I have got in front of me here, a portfolio is ... transactions are the blue line. Is that correct? --- The light blue line.

And is that demonstrating that in December particularly there was an outflow of currency in relation to portfolio transactions? --- That is correct.

45 That is what that spike means in December? --- That is correct.

To make it a little simpler, this graph more clearly shows the difference between portfolio and non-portfolio flows and the domination of portfolio flows and the impact on currency and looking within the portfolio flows, we see how the bond dominates in the portfolio. So this is just a graphical presentation to support what I presented in previous slides.

50 MR NAIDU: That is figure 7? --- Figure 7 of the report.

CHAIRPERSON: Just pause there for a moment. I just want to have a look at it. Yes, I understand that. Yes, let us move on.

MR NAIDU: Yes go on. --- Could I please have one moment to confer with my colleague?

55 CHAIRPERSON: Yes certainly. --- Moving on to profits which became a topical issue with regard to the submission of absolute data for confidentiality reasons. The purpose that we wanted the data from an investigative reason in the first place, was to identify trends and correlations. So the absolute amount was less important to us and we could therefore agree on the provisions of the data on an indexed basis using January as the base month, January 2001 as a base month, and we followed a very simple, very standardised indexing approach.

60 This was analysed as I said to establish trends and correlations, if any, and these are trends

between profits and limits and profits and spreads and the profits and limits and spread and it is just a range of combinations.

We found nothing. We found no issues. Spreads were fairly consistent for September this year. That is the bid office spread I was referring to and profits peaked after that in line with the spreads. We all understand how market-makers make profit and in line with the volatility and this is what we see. The red line is profit within interesting spikes but there is this huge cline in November and December in line with the spread and we must make note here that this is a weighted average and weighting will eliminate some of the volatility that you would see if we presented this on a daily basis. However the weighting does provide a more representative understanding of the direction of profits and spreads which is why we used that technique.

What we see is that no material authorised dealer, and this is on the basis of analysing each submission within that individual entity and each entity relative to the total of population and we see that no material authorised dealer makes profits that were out of line with the average of all the other material authorised dealers or their own prior performance. There was obviously significant volatility in the exchange rate and so we saw profit volatility arising from market-making activity. That correlation was clearly evident.

Points to understand here is profits are both realised and unrealised. Realised profit means money in the bank. Unrealised profit means that I have an asset or liability which ever it might be which has a value and that value changes in line with the changing exchange rate. So what we see here being reported by the banks is a combination of cash in the bank i.e. profits realised and profits unrealised meaning it is just a translation of the value of an asset which changes and the only way that that would come into effect is that if they realise those positions as foreign exchange positions at a later point in time at exactly the same exchange rate. Then the profit figures that we see reflected on that graph would be realistic today and all become realised.

CHAIRPERSON: I think we should pause here before we are going to do a new subject matter. Mr Naidu, can you ensure that we get from Mr Immelman this hardcover version of the slide presentation?

30 MR NAIDU: Yes.

CHAIRPERSON: Including that one slide that was new to us?

MR NAIDU: Yes.

CHAIRPERSON: And if we can have that by tomorrow morning if possible and not before. --- The hard, a printout .. (intervenes)

35 A printout yes. --- Just of the slide?

Yes, everything that you have been taking to the slide presentation. We just want a copy .. (intervenes) --- You should have it. I provided that copies this morning.

Oh now then we will get that during lunch. Thank you. We will adjourn until 14:00.

PROCEEDINGS ADJOURN

40

COMMISSION RESUMESALLAN IMMELMAN: s.u.o.CHAIRPERSON: Good afternoon, let us carry on with the afternoon session. Mr Immelman is still busy with his prior presentation.

- 5 MR NAIDU: (BREAK IN RECORDING) ... your report is exactly that and save for certain comments you have to make in relation to your conclusion, you do not propose to go through this report? --- I do not propose to go through the report. --- I do not propose to go through the report.

10 Thank you. Would you like to proceed? You were on page 33 in relation to your report and slide 36. --- We had just concluded the section on profits made by material authorised dealers. The next section is client transactions and the only real notable points that were coming out of this analysis was the analysis of the Bostro account balances and the CFC balances. The Bostro account balances, that is an account held by a foreign bank with a local authorised dealer and the CFC account is a customer foreign currency account  
15 which for example say is a foreign currency account held by a corporate, to which the proceeds of exports would be deposited and held within the regulatory (indistinct). What we saw was Bostro account balances increased, which means that the foreign banks withdrew, or in foreign exchange parley they sold Rands and we looked at a number of CFCs but looking at the ten largest you see that these balances increased over the period October  
20 through December, which reflected that the amount of foreign currency, which really means that the account holders decided to keep the balances in those CFC accounts for longer than they had previously. It is shown on these two accounts which is Bostro account, we can see a decrease in trend and an increase in trend on the CFC account. Sorry, I beg your pardon, that is figure 9 in the report, it is slide 37 and figure 10 in the report, slide 38. Moving on to securities lending. Now if we look at securities lending to establish the degree of short selling, which could have put additional pressure on the Rand, only equity transactions obviously that were conducted with a foreign entity, because it could be viewed as a forerunner of the Rand speculation, this is what we find. It is figure 11 in the report and I think we have come to the part in the report where ... I must apologise for this, for the numbering ...  
30 no not yet, we are going to come to the section in the report where the numbering goes a bit awry. This is figure 11 in the report. What we saw over this period, there was an upward trend in volumes of shares trading in the JSC and there are peaks on 20 December but there was a decrease in trend in securities lending.

35 Sorry Mr Immelman, sorry to interrupt you. Page 40, figure 11 is represented as some other diagram. --- Page 40, sorry?

Page 40 of the report. --- Page 40 of the report, this is the right place, page 40 of the report should be figure 12. So we are back to figure 11, the right figure 11 on page 37 of the report. Just to recap, over this period we saw an upward trend in the volume of shares traded on the JSC, peaking on 20 December at 152,3 million, quite a volume. The decrease  
40 in trend in securities lending the second half of the year, you recall that we were looking at this to establish the degree of short selling which could be viewed as a forerunner to the Rand and this is really just a summary of the analysis which we did but then it is insufficient evidence of short-selling to warrant any further investigation and estoppel at this point for those reasons. Moving to corporate finance, corporate finance transactions offered by Vanity  
45 Corporate Finance is included in the report so I am not going to redefine that, but what we found is there were no specific products reported to us involving foreign exchange transactions for the period. So there was nothing in corporate finance pointing to any further need for investigation. The structured finance, the submissions reflect predominantly Rand based transactions, not foreign currency transactions or transactions involving foreign  
50 currency. Those cross border transactions which there were are mainly trade finance related transactions which is a different financing arrangement and in any event transactions involving foreign currency require exchange control approval and those approvals are covered by another investigative team appointed by the commission. So on structured  
55 finance there are no significant findings. We then moved on to the more quantitative aspects of the questionnaire which really have been summarised in this diagram which is main perspectives of the reason for the depreciation of the Rand. So other than the quantitative and qualitative analysis which we performed, we asked banks to provide their own reasons and to rank them in order of importance. Now we must recall that there were ten material banks to whom questionnaires were sent, however seven of the non-material banks also  
60 supplied us with this information. Of those 17, ten ranked the information and seven did not.

Unfortunately I am not in a position to tell you because I do not have the information, of the ten who ranked it, whether they were material banks or whether they were not regarded as material. Of those banks who did not rank the information but provided it, we assigned that information, or that category, in equal weighting rather than excluding it and this is the result,

5 with the majority of the banks citing South African Reserve Bank or regulatory policy or action, being in their opinion the major contributor to the rapid depreciation of the Rand followed by the events in Zimbabwe, contagion from emerging markets, we have heard that the Rand is used as a proxy for emerging markets but certainly contagion significantly impacting. Other issues, September 11 disaster, privatisation from policies in South Africa,

10 general market sentiment, political factors having about the same type of importance. The impact of single large flows such as dividend repatriations and then obviously leads and lags and potential investor panic towards the end of the year compounded by the withdrawal of market makers and the reduction in market liquidity. Interestingly banks which decided not to weight their responses did so with the reason that these were all factors which contributed in

15 a relatively short space of time, so they felt it was inappropriate to weight because of the combined impact and effect of the weight of the impact of all of these factors.

The banks also commented on the impact of the rapid depreciation of the Rand on their businesses, and there were many. There were long term impacts and short term impacts and it is important obviously to note that this is looking and reporting in a position where the

20 Rand had displayed significant depreciation, not today when we are sitting at R10,60. Nevertheless the impacts remain because these are a response to the rapid depreciation of the currency. So the local banks, their concerns were focused around the impact in the domestic economy and interest rates, the economic impact, the ability for the country to achieve its economic targets such as inflation and obviously concern about the fact that, or

25 the impact on their reported earnings when translated into foreign currency. Branches of foreign banks, similar the negative impact on profitability and reporting currency up to their parents and also reporting of funds. So quite simply a consensus that depreciation has an overall negative impact, there is nothing new there but there were some short term benefits obviously, the short term benefits being the foreign exchange profits which we have seen and

30 the foreign currency translation gains. I refer back to my explanation of realised and unrealised profits, so on translation of certain assets there will be a gain, in translation. There are short term negative effects as well and most notably the losses experienced by these banks on their bond debt. This graph which is not in the main body of the report, or in the main report, but it is very similar except for the Allsi(?) line, to figure, it shows figure 12 on

35 page 43 of the report, it should be figure 13 on page 43 of the report. This just shows how the R150 yield attract the exchange rates and we all know that there is an inverse relation between yield and price with that big pick up there where there are significant losses because the prices went down and those losses were certainly experienced. Interesting to note here the tracking of the Allsi which really reflects the share prices over the same time

40 period, which does not historically show such a close correlation, which is why we put that up. It was really just an interesting correlation. Another impact is the restatement of foreign currency, denominated liability, which results in higher cash and liquid asset reserve requirements. I do not know how much explanation it requires but this has a significant impact on a financial institution because it means that these liquid assets and reserves are

45 not available with which to conduct business. Reduction in statutory net open foreign currency position limits in foreign currency terms, not just in Rand terms, the reason being it is calculated as a percentage of total capital, of a bank's total capital and reserves and it is calculated in Rands but when you translate that limit to a currency equivalent it is lower, which impairs a bank's ability to conduct the same level of business. Increase in cost of

50 imported infrastructure and of foreign services, significant. Reduced capital and balance sheet structures when viewed by foreign institutions or (indistinct) agencies, it is an impairment on the value of the balance sheet. Further negative sentiment towards the country and stability of the currency, speak for themselves. Offshore interests in investment opportunity, it becomes more discouraged. And this is an important one, the expectation of

55 interest rate increases resulting in customers holding their funds in the short term. Interesting point this because it puts a lot of pressure on the bank's asset liability management and interest rate risk management functions with a complement in cost. Increasing interest rates affect the share price, adversely affect the share price, that is what we are talking about here, of companies in the banking sector, of the banks, because it impacts on property. Increasing

60 margin collateral required to support, is the credit support (indistinct) this is the International

Swaps and Derivative Association, effectively netting agreements against which collateral has to be held and this increases the need for collateral, which takes more liquidity out of the bank. Additional risk management administration costs, negative effect on morale and their concern is further pressure on the brain drain. So really a preponderance of negative impacts reported by the banks. Moving on to the South African Reserve Bank's international banking departments, their results are not reported separately for confidentiality reasons, so their response is included under material authorised dealers which we have already reported on. They went further to say that they were unaware of any illegal or unethical transactions which contributed to the depreciation and of any collusion, improper gain or improper loss avoidance further contributing to the depreciation. Rep offices. We issued 52 questionnaires and got 49 responses. Still to date we have not had the other outstanding three. Some interesting statistics from these responses. The average country limit of the rep offices is just under US \$300 million, the highest being 1.5 billion and that is not a limit in the amount of foreign exchange, it is not the foreign exchange limit that we have discussed, it is the exposure that that rep office can have and, you know, US dollar equivalent amount to South Africa. The lowest was only \$800 000,00. None of those limits were exceeded. All their transactions were booked offshore to a parent company. Most reported minimal or no impact therefor, of the depreciation, other than the evaluation of country risk and they had similar views on the influencing factors to those of the authorised dealers which we have already presented, so I am not going to repeat those. The exchanges, and that was the bond exchange, South African futures exchange and then the JSE. The specific data that we got we have included in the hot day analysis, so I am not going to repeat it again here either, we are going to be moving on to the hot days, and the same as the South African Reserve Bank they made statements that they were unaware of any activity illegal or unethical or transactions or collusion which could have contributed to the rapid depreciation of the Rand. Moving on to hot days, we did extensive analysis of the hot days. It is contained, every single day's analysis is provided in the body of the report as annexure J on page 98 and the significant analysis led to one conclusion and it was very interesting and I will show you a graph now to support this. There was no clear or consistent correlation between movement in the exchange rate, and that movement is in both the direction of the exchange rate or the magnitude, the size of the move in the exchange rate. So between the movement in the exchange rate and the foreign currency flows in the markets, the foreign currency flows we have looked at, that is for example here the net spot trade for the day which is the correlation between the movement in the exchange rates and the flows in the spot market for the day. And the analysis goes to a myriad of factors. Some are economic, some are political, some are purely sentimental but they all influence the behaviour of the market participants because you must remember the market participant is an authorised dealer who has responsibility for quoting a spread in the market. That makes a price. 60% maybe, 71% of the market, the rest of it being offshore but all of these factors influence the behaviour of the market participants which can collectively impact the value of the Rand. I mentioned that offshore trade is excluded. This graph shows the lack of correlation. If something is well correlated you will find the big red block and the blue block on the same side of the dividing line and we see significant and frequent anomalies pointing to the fact that it is impossible for us here to quantifiably prove or arithmetically prove a relationship between the movement in an exchange rate and the movement in a currency, the amount of currency traded in a day and that represents millions of transactions. So the result of all of this, we needed to come up with a conclusion. We were asked to conclude as an investigative team and we conclude as a result of this that there were no activities which required further investigation in terms of the approach that we adopted and in terms of the limitations to the scope which we explained. We further concluded that it was the combined impact of the millions of transactions that make up the market and those millions of transactions which blatantly reflected an aversion to holding Rands which contributed to the rapid depreciation of the Rand and finally that these transactions were concluded in response to factors influencing the market, the response in a manner which is consistent with standard practice in international financial currency markets. That concludes the presentation.

**MR NAIDU:** Mr Immelman do you confirm the contents of your report and do you adhere to that? --- I do.

No further questions.

**CHAIRPERSON:** Any questions from the floor?

**CROSS-EXAMINATION BY MR GINSBURG:** Yes, thank you Mr Chairman. If I may take Mr

Immelman back to page 40 and 41 of his written statement where he has in figure 12 drawn a representation of a pie chart and just ask a few questions about how he arrives at the 26% figure which is attributed to the South African Reserve Bank policies and which is then extrapolated to be a cause for the rapid decline in the currency. On page 41 Mr Immelman  
5 you say under your causes, SARB policy, and the first cause which you list is circular D342. Now that of course dates itself but what about the next one "comments by the Reserve Bank staff including the Governor"? Two questions. One is on what date and secondly what was the nature of that comment that went into your pie chart? --- I will have to confer with my  
10 colleague and I do not know if we have those details available now but we can certainly get them to you.

Yes well that would then go for all the components of the SARB policy because what I am getting at is whether you can date them and whether you can rate them as objectively speaking being relevant or whether you have just simply taken a conglomeration of factors and thrown them into the mix as it were. --- We took this conglomeration and categorised  
15 them under staff policies.

Without knowing what the comment was by the Governor or what the statement was regarding ...(intervenes) --- No the responses were specific with regard to specific comments or statements being made.

And with dates? --- I cannot recall as I sit here.

20 Well let us leave it at that Mr Chairman because it is unresponsive really from our point of view. --- I can give you one example, that is just one example for now. We are looking at page 104, 16 October, it is a day between the 16th and 5 November but unfortunately that date fell off. We can see it is in our report. What we are saying here, the SARB says that inflation risk has increased due to the weaker Rand, foreigners uneasy since  
25 the release of the SARB circular D342. It is those specific dates that we refer to and those statements that we are referring to on a specific date. That date, we will get it you now, it is a date between 5 November and 16 October.

I do not have that page number. --- 22 October, page 104, annexure J to the report, page 104.

30 Well I see no particular dates there. --- It is 22 October. The one after that is the 5th, the one before it is the 16th and this is the 22nd. It fell off the top of the report.

Can I have those dates again? --- The one date that we are looking at is 22 October, and the statement here, it is page 104 in the report and the statement is: "The Reserve Bank says the inflation risk has increased due to the weaker Rand." Another  
35 example is 29 November on page 107 where the Governor indicates that interest rates may rise if inflation targets come under threat and so we would go through every hot day.

Yes well really without that detailed information it is a little meaningless because one needs to date each and every category under SARB policies. Would you agree with me on that? --- It is quite possible for us to do that. What we have here is presented a summary of  
40 the analysis which is all but if you want the detail we can certainly provide that because it is just going down to our base data.

CHAIRPERSON: Mr Ginsburg when we adjourn work out a practical way that we can place that on record. If you can discuss it with Mr Immelman we will put it on record.

MR GINSBURG: Yes. Then what I would like to direct your attention to is a further question  
45 which you ask and if you turn to your list of questions which is at the back of your report after the bibliography, it would be annexure B. --- This is to the authorised dealers is it?

Yes. It is annexure B. I do not have the page number but it is headed 7 and it is bank perspectives. 7.4 is the question you are now dealing with but 7.12 is a further question specifically regarding the South African Reserve Bank circular, which I take it is circular  
50 D342. --- Yes.

Now to what extent has there been an overlap between ...(intervenes) --- That question ... sorry I am interrupting.

No you can answer. --- That question was included at the request of another investigative team, the team that was involved working at the Reserve Bank. It had two  
55 components to it. One was looking at exchange controls and the effectiveness thereof, or the impact thereof and that is why that question was asked and that will be dealt with in a subsequent submission to this commission.

So there has been no contamination then between 7.12 and 7.4? --- No not at all.

They are totally independent of one another? --- Totally independent.

60 Good. Well then if I may move on. You said that you weighted the answers where

the banks themselves had not given a weight to the answer. --- Yes.

And you weighted them equally with the other answers? --- If they did not provide a weighting themselves or a ranking they were equally weighted.

5 Now did you tell them that you had done that? --- I do not believe we did. No we did not.

So you are not sure whether they would agree that you should weight the one factor equally with the other unweighted factor? --- You are quite correct.

10 So to that extent some doubt is cast upon the veracity of these results. --- You could say that that would create some doubts. The approach we followed is that on the balance of probability. We did go back to them. The majority of those who did not rank them, or did not provide a weighting, would have weighted it in a similar way to those who did.

But we do not know. --- No we do not know. I am purely saying on the balance of probability that would be our expectation.

15 Perhaps we should not speculate here because it is important for my client to get on record exactly what this pie chart means, not what it might mean had different considerations applied. Now in regard to the banks themselves, we know that ten what you have called material banks responded and seven less material or immaterial banks. --- They are not considered ... not material to the investigation.

20 For your purposes. --- Yes.

Now did you weight the banks? In other words did you give the answers of the material banks greater weight than the non-material banks? --- No we did not.

Now should you not have if you were consistent in applying your own rules of the game? --- It is one way of putting it but what we are not saying is that ...(intervenes)

25 Just hold on one moment. If I am correct in putting it that way, am I also correct in saying that had you done that the results would also be different? --- You are quite right in saying the results would have been different.

And they might have been more favourable to my client. --- They might have been more favourable to your client.

30 Yes. You were going to say something? --- Yes. This would be weighting professional opinion. What we did not want to really do is weight professional opinion.

35 But you did in applying your materiality test in previous parts of your report, you weighted professional opinion. --- We were not weighting professional opinion on the materiality, we were weighting the level of financial involvement and therefore potential impact. It was a financial weighting, a financial materiality test. What we are talking here is weighting personal opinion.

40 But would there not be merit in doing that if you had a large bank more involved in the Forex market than a very Johnny come lately, if I may use that phrase, bank that dabbles in the Forex market? Would there not be a justification for giving the heavy weight greater weight than the light weight? --- I believe that there would for one reason and that is that the reasons that they provide are used in setting policy within that institution. In other words that the bank would formulate trading policies and risk management policies on the basis of those views. That was not the intention that we had here. The intention that we had here in our representation is to present very simply what the opinions and views were of professionals involved in the financial markets in those banks on what contributed to the rapid depreciation of the Rand.

45 So we are not intending are we then to present the commission with a scientific analysis of what the true causes of the depreciation of the currency were? --- On this graph, this analysis would fail tests of significant scientific analysis.

50 Hopelessly fail I would suggest. --- Your suggestion might be correct. That was never the intention.

And nor was it the intention to attempt to prove the truth of the contents of the replies, they were taken at face value as if they were true. --- That is correct for the reasons I have already given the commission.

55 And nor did you show the banks the pie chart after you had completed it and asked them whether that pie chart accorded now with their impression of the reasons for the rapid depreciation of the Rand. --- Yes we did. Every bank was issued with a copy of this report.

And how have they responded? --- We got not one response from the banks.

60 --- I did not assume, I merely said that they were given the opportunity to respond.

Were they specifically asked about the pye chart? --- They were asked to respond on the report, not specifically the pye chart.

Now these questionnaires were not given under oath were they? --- No.

Do you know whether they accorded with the testimony given in the public hearings  
5 which was given under oath and which was on some occasions subject to cross-examination? --- We have not conducted a comparative test.

So there might well be differences between what they said under oath and what they said in the environment of their office when they were not subject to public scrutiny. --- They might. I would have no reason to expect that there would be but there certainly might.

10 And if they were cross-examined they might well have seen the error of their ways and they might have conceded. --- They might.

Were you here when Investec was cross-examined on behalf of the Reserve Bank? --- I was not.

Well let me tell you what happened. They rated the circular D343 as first on their list  
15 and one question to them elicited the following response, that it was not of first importance, it was simply among equals. So that is conceivable if the evidence you have relied on was given in open commission, that it would have looked very different to the pye chart. --- I can see that. This is merely a reflection of the submissions we received.

Now one further thing you talk of in your pye chart is the leads and lags and investor  
20 panic. You talk in particular of the use or abuse of the 180 day rule. That is the CFC accounts, as I understand it. May I just ask you whether in reaching that conclusion you took into account a letter written by Deputy Governor Marcus to all the authorised dealers on 4 January of this year in which Governor Marcus says to the banks, and I am reading the concluding paragraph:

25 "In this regard your confirmation that your CFC accounts with specific emphasis on the 180 day rule have been and are being administered within the ambit of exchange control rulings as required by 18 January 2002."

Did you take that into account and the responses that she received from all the  
30 banks which I looked at and which by and large say that the CFC accounts are being properly conducted within the ambit of the exchange control regulations? Did you take that into account? --- I certainly do not recall. My colleague might ...(intervenes)

Well if you did not then that would render your leads and lags part of the pye chart entirely discredited, would it not?

CHAIRPERSON: I do not follow that. Why should that be?

35 MR GINSBURG: Well Mr Chairman because the banks, and I have the letters and if necessary we will deal with them, but the banks have said in response to a request that they are carrying out their functions on the CFC accounts in accordance with exchange control regulations.

CHAIRPERSON: An element of the leads and lags was simply that you may not have  
40 exceeded the 180 days but you may have waited the 180 days, that that might have an impact.

MR GINSBURG: Yes of course but I am talking about the word "abuse" which appears in Mr Immelman's statement and that is all I am limiting myself to.

CHAIRPERSON: Yes that is what I want you to clarify.

45 MR GINSBURG: Yes I beg your pardon. It is limited to the word "abuse" and not to the word "use" where you can play around with the period. Would you then agree that the word "abuse" is entirely out of place? --- It is a reflection of the submissions that we received. It would then be implying that the submission was out of place.

I think then you need to clarify that. Did you get replies from the banks that  
50 according to their records there had been an abuse of the 180 day rule, that there had been clients who had exceeded the period? --- My colleague informs me that the word "abuse" might be too strong. We would prefer to check our detailed responses from the authorised dealers before we respond to that question.

Yes. Can we assume then that you are putting abuse on hold unless you inform the  
55 commission to the contrary? Otherwise one may get the wrong impression about this. --- You may.

Yes thank you. Thank you Mr Chairman.

CHAIRPERSON: Are there any other questions from the floor? I am looking around at the lawyers sitting here. No further questions by the commission?

60 MR GANTSHO: Did you try to verify these assertions that have been made by these banks

with respect to that last question as well, did you try to determine if these statements were accurate? -- No we took the submissions, we accepted the submissions on the basis that I explained in my presentation. There was no subsequent check of those submissions, no.

5 CHAIRPERSON: Any further questions? The commission then adjourns until tomorrow morning at 10:00.

COMMISSION ADJOURNS