

PROCEEDINGS RESUME ON 7 MAY 2002:

CHAIRPERSON: Good morning, ladies and gentlemen. Let us commence the proceedings of the Commission. Today the Reserve Bank is giving evidence again. My understanding is that Mr Bruce-Brand is the first witness for the Reserve Bank. Is that right?

5 MR NAIDU: Yes, Mr Chair. And the statements of the two witnesses are enclosed in SARB, Volume 9, the bundle of SARB, Volume 9.

CHAIRPERSON: Thank you.

ALEXANDER MacGREGOR BRUCE-BRAND d.s.s.

10 EXAMINATION BY MR NAIDU: Mr Brand, for the purposes of your evidence today has a statement been prepared for you which constitutes pages 1 to 7 of the bundle? --- That is correct.

And do you appreciate that this statement together with the evidence you may add today constitutes evidence before the Commission? --- Correct.

And do you confirm and adhere to the contents thereof? --- Yes, I do.

15 Mr Brand, I am going to invite you to exercise the option you prefer to read the statement into the record and supplement it with any explanation that you may choose. --- Thank you.

CHAIRPERSON: Yes, let us proceed, Mr Bruce-Brand. ---

20 "There are several outstanding issues that you have asked the South African Reserve Bank to address. The purpose of this statement is therefore to address these outstanding issues. At the conclusion of my statement, Mr Lambertus van Zyl, Advisor to the Governor, will deal with the South African Reserve Bank's perspective on the consequence of the decision to apply existing exchange controls on South African Authorised Dealers in respect of transactions with non-residents. I now turn to deal with the issues raised at the Commission since the South African Reserve Bank last gave evidence.

Share Placements:

During calendar year 2001 the Exchange Control Department to which I shall refer as 'Exchange Control' approved 12 share placements/corporate swaps to the value of approximately R22,9 billion. Of this seven approvals were, for a variety of reasons, not 30 proceeded with. Transactions totalling approximately R4 billion were implemented. A detailed breakdown of these transactions have been made available to the Commission.

Compliance Letters:

Authorised Dealers have testified that they have not always received the so-called letters of compliance to satisfy the requirements of Exchange Control Circular D.342 of 16 35 October 2001. The non-receipt has been reported to Exchange Control.

As part of its monitoring process the Bank is reviewing the current position with regard to such non-compliance, but is in the interim allowing transactions to proceed. The reason for this is not to unduly interfere with the smooth operation of the foreign exchange market in South Africa. Compliance letters continue to be called for and 40 non-receipt thereof must still be reported to Exchange Control.

Reserves Neutrality:

What is essentially a very simple concept has been somewhat confused by aspects of evidence presented to this Commission over the last few weeks.

45 Firstly, for exchange control purposes the reserves refer to the total gold and foreign exchange reserves of South Africa as a country. This would be the reserves of the Central Bank, the authorised dealers and Government. I submit that in an exchange control environment reserves neutrality cannot reasonably refer to any other reserves, for example only the reserves of the Central Bank. These reserves are negatively affected if a foreign currency outflow takes place and positively affected if 50 a foreign currency inflow takes place."

Mr Bruce-Brand, is it correct that the next witness, Mr van Zyl, will deal, if required, with the details of these reserves under the various categories? --- That is correct.

55 "Should Exchange Control authorise a foreign outward investment and approve the transfer abroad of the R500 million (or R750 million in the case of investments in Africa) in foreign currency, that outflow negatively impacts on the reserves of the country.

60 Exchange control policy, as laid down by the Minister of Finance, permits the transfer abroad of the R500 million (or R750 million in the case of investments in Africa) in foreign currency, and a further amount of 10% of the balance between R500 million, or R750 million, as the case may be, and the total cost of the foreign investment. This, Mr Chairman is therefore the loss or decrease in the foreign reserves which South

Africa is prepared to accept. In other words, South Africa is prepared to forego R500 million (or R750 million in the case of investments in Africa) of its reserves to allow a corporate to make a foreign acquisition. (For record purposes this amount was progressively increased from R20 million in 1996 to R500 million in 2000)."

5 Likewise, there was a similar progressive increase from R20 million to R750 million in respect of SADEC and in Africa.

Also from 1996? --- Correct.

10 "In those cases where the cost of the foreign investment exceeds R500 million and a corporate chooses to raise the excess funding required by means of, inter alia, a share placement, this exercise cannot be allowed to take place in any manner which may further negatively impact on the reserves of the country.

15 As a consequence of what is stated above, when agreeing to a share placement Exchange Control requires that, save for the R500 million (or R750 million investment in the case of Africa), reserves neutrality is, at all times, maintained. Furthermore, any approval will be granted subject to such flowback as may occur (flowback has a negative impact on the reserves) being rectified. Flowback is rectified by instructing the relevant corporate to refinance abroad the negative outflow with a positive inflow. (The corporate and the Authorised Dealer are well aware of this condition since it is so stipulated at the time the approval is granted).

20 What is set out above concerning flowback being rectified, serves to ensure that the loss of foreign exchange from the reserves of the country is limited to the R500 million (or R750 million in the case of investments in Africa) plus the 10% referred to in 4.4 above and, therefore, restores reserves neutrality as far as any excess is concerned.

25 It is, therefore, self evidence that no other transaction should be engineered, under any guise, to exceed the permissible outflows prescribed by the Minister of Finance.

30 In contemplating the transactions in issue, the question arises of whether bonds were purchased by Deutsche Bank London and whether they paid for them or not. The fact remains that Exchange Control would not take into account the foreign exchange which may or may not have come into South Africa's reserves for the purposes of adjudicating upon the relevant Share Placement transactions. Acquisitions of South African assets by non-residents built up in this manner prior to an application to Exchange Control for a Share Placement would definitely not be considered by Exchange Control as a motivating factor. If this alleged addition to the reserves is a factor, why was it not disclosed in the original application to Exchange Control?"

35 Mr Chairman, if I may then turn to the Costs and Applicability of Exchange Control:

40 "Comment has been passed on the cost of administering exchange controls. Mr Chairman, yes, this is a fact and in a post exchange control environment there are still likely to be costs in order to ensure compliance with prudential requirements, money laundering and the collection of balance of payments data.

45 There has been testimony to the effect that an estimated 70% of exchange controls that existed at one stage have been abolished and that the balance 'are not very effective and not very important any more' and may as well be removed. The removal of exchange control is a policy issue which falls within the domain of the Minister of Finance. Insofar as the implementation of existing exchange controls is concerned, I wish to highlight the following.

50 Whilst I agree that a large portion of the administrative burden (such as making an application to Exchange Control for any current payment in excess of a given Rand amount limited) has been done away with, capital controls on South African residents still remain - it is only the quantitative limits that have been generously increased over the last few years. It is evident that each time limits are increased, further outflows of capital from South Africa takes place which indicates the effectiveness of the current controls.

55 Having regard to all the evidence which has been led before this Commission on the enforceability or otherwise of exchange controls, I believe that I owe the Commission, on behalf of Authorised Dealers (who co-administer exchange controls) and Exchange Control some sense of perspective.

60 As you will recall at page 21 of my previous testimony, which is contained in SARB Volume 6, approximately 5.6 million foreign exchange transactions were reported during 2001 to Exchange Control. This Commission has heard evidence of difficulties which

have occurred in a very small number of these transactions. The difficulties that have been brought to the attention of this commission are, in the main, limited to one form of transaction, namely share placements. I submit that it is unfair to judge the effectiveness of the entire exchange control system on these few transactions, when it is clear that the vast majority of foreign exchange transactions are implemented without difficulty. The number of transactions successfully implemented in 2001 bears testimony to the fact that exchange controls operate efficiently and effectively within the policy parameters set by the Minister of Finance.

I do not wish to harp on the apparent inconsistencies in exchange controls, which may have been conveyed by some of the Authorised Dealers. At the end of the day these are minor if regard it had to the reasons for continuing with exchange controls. To suggest that a minor inconsistency or unclear point, renders the administration of exchange controls (in their totality) ineffective is akin to suggesting that one person's tax evasion renders the entire tax system ineffective.

I am the chairperson of what is referred to as the Liaison Committee, where Authorised Dealers have the opportunity to air their views on any issue relating to exchange controls. The Liaison Committee meets on a quarterly basis and has recently held its 51st meeting. The meetings are of a formal nature and each Authorised Dealer is represented the meetings. Minutes of the meetings are kept and recommendations are acted on either in the form of new Exchange Control Circulars or by means of clarification in the minutes themselves. Unfortunately, the Authorised Dealers have, of late, not always availed themselves of this opportunity in that more junior delegates attend these meetings. The Authorised Dealers are therefore afforded an opportunity to deal with perceived inequities of inconsistencies not only during the course of these liaison meetings but also by means of direct communication with Exchange Control.

It is inevitable that exchange controls restrict Authorised Dealers from implementing transactions which they believe to be to their client's advantage. Although Exchange Control is sensitive to the legitimate needs of corporate South Africa, those needs cannot be implemented in a manner that exceeds the prescribed limits laid down by the Minister of Finance, and which is not in the interest of South Africa as a whole.

Every effort is made by the South African Reserve Bank in its implementation of exchange controls to facilitate the commercial transactions of the South African economy. Thus a degree of flexibility is applied in the implementation of the Exchange Control Regulations, and if, in some instances, such flexibility leads to uncertainty, it is, I believe, a price worth paying.

With reference to my evidence at pages 18 to 20 of SARB Volume 6, I wish to point out that the 180 day/CFC administration and compliance procedures were changed by Exchange Control at the request of the Authorised Dealer community to assist them in their task. Exchange control policy is, as previously recorded, the domain of the Minister of Finance. Authorised Dealers have always been invited to suggest further exchange control liberalisations.

In concluding, may I state that any application to Exchange Control has a certain motive and intent and if that intent is not disclosed or exposed willingly, then the applicant is not being transparent in its ultimate or objective. An approval from Exchange Control, which has been achieved under these circumstances can therefore eventually result in consequences not acceptable to Exchange Control. Finally, I fail to see how any regulatory authority can be expected to anticipate undisclosed transactions having a bearing on the application on which it must make a decision."

Thank you.

MR NAIDU: Thank you, Mr Chairman, that is the evidence of Mr Bruce-Brand.

CHAIRPERSON: Any questions from the floor?

MR GINSBERG: Mr Chairman, could we ask for the witness to be available to discuss .. (inaudible, not using microphone)

CHAIRPERSON: So would it be convenient if Mr Bruce-Brand stands down until after Mr van Zyl's evidence?

MR GINSBERG ADDRESSES BUT TOTALLY INAUDIBLE

CHAIRPERSON: It sounds like too long to stand down. But you can reserve your right to question until after Mr van Zyl. Any questions by the Commission?

MS QUNTA: Mr Bruce-Brand, the issue of flow back, there was some confusion in the

course of the earlier evidence by the corporates and Deutsche Bank about what constitutes flow backs and I notice in 4.6 that you talk about flow backs. Do you feel that there is a need for you just to indicate what your understanding of flow back is, what the Reserve Bank's understanding of flow back is? --- Very briefly, yes. Of the shares that are placed abroad
 5 which generate foreign currency to finance the acquisition of a foreign investment, if of those shares flows back to South Africa, in other words non-residents buy them and they sell them back to South African residents, that would mean an outflow of foreign currency, therefore we term that flow back.

And does it matter who sells the shares as far as you are concerned? --- No, from a
 10 country's point of view the flow back is a negative impact on the foreign exchange reserves.

Then you say in 4.6, the last sentence in brackets is that "the corporate and the Authorised Dealer are well aware of this condition since it is so stipulated at the time the approval is granted". Is it always stipulated or is it understood by the corporates and the Authorised Dealers? --- No, we would stipulate it.

15 In writing? --- In every reply we give where we approve a share process, in writing.

And I have asked this question before, if the corporate says I did not know about the flow back or I did not know about those transactions which were not disclosed, would the corporate still be, as far as the Reserve Bank is concerned, would the corporate still be held responsible for that if there is any flow back? --- At the end of the day yes because it is the
 20 corporate that has made a foreign acquisition.

I have no further questions.

MR GANTSHU: No questions

CHAIRPERSON: Now Mr Bruce-Brand, you may stand down and then you may be recalled for Deutsche Bank to put questions to you. Thank you very much.

25 WITNESS STANDS DOWN

MR NAIDU: The next witness is Mr van Zyl.

LAMBERTUS VAN ZYL d.s.s.

EXAMINATION BY MR NAIDU: Mr van Zyl, is it correct for your evidence today a statement has been prepared which constitutes pages 8 to 12 of the bundle? --- Yes.

30 And is your curriculum vitae attached as page 13? --- Yes.

Do you confirm and adhere to the contents of this statement? --- Yes.

And you appreciate that the statement, supplemented by any evidence you may add, constitutes evidence before this Commission? --- Yes.

Again Mr van Zyl, I would invite you to exercise the option of reading the statement
 35 into the record, if you so choose? ---

"The statements by the Governor of the South African Reserve Bank, Mr T T Mboweni and the General Manager of the Exchange Control Department of the Bank, Mr A M Bruce-Brand have dealt extensively with the decision by the Reserve Bank to enforce existing exchange controls on South African Authorised Dealers in respect
 40 of transactions with non-residents. The reasons for and objectives of the 14 October 2001 statement by the Reserve Bank were explained by Mr Mboweni, while Mr Bruce-Brand explained the Exchange Control implications.

A number of other witnesses to the Commission have mentioned the 14 October 2001 statement as a factor contributing to lower turnover the domestic Rand exchange control market as well as the sharp decline in the Rand's exchange rate in the closing stages of 2001. While Mr Mboweni in his statement before the Commission,
 45 acknowledged that the 14 October 2001 statement could have contributed to a decline in liquidity or turnover in the domestic Rand exchange control market, the purported causality between turnover and the value of the Rand is not clear to the Reserve Bank at all. We would strongly suggest to the Commission that any suggested causality is an oversimplification and that it should not be accepted by this
 50 Commission.

It is instructive to look at different periods of Rand weakness in an effort to determine what causality, if any, may exist between either an increase or decrease in turnover in the domestic Rand exchange control market and the exchange rate of the Rand. For
 55 purposes of the following examples, I have used the total turnover in the domestic Rand exchange control market.

MR NAIDU: And in this regard are you referring to Graph 1? --- Yes.

Yes, continue? --- Just to show the different periods of Rand weakness, I will be
 60 referring, this is the monthly rand per dollar averages over time, the beginning of 1996, also

in 1998 and once again a little bit of rand weakness in 1999. Those are the periods that I will be referring to and coming back to some.

Mr Chairman and Commissioners, graph 1 is recorded on page 14 of the bundle.

Let me just repeat:

5 "For purposes of the following examples, I have used the total turnover in the domestic Rand foreign exchange market. Strictly speaking it would be more correct to focus on turnover in the spot plus outright forward market as foreign exchange swaps do not directly affect the spot exchange rate."

All I am doing is pointing out here that I have worked with the total turnover whilst strictly speaking one could argue that those two components being the outright forward transaction plus the spot transactions are far more important in determining the spot exchange rate of the rand but I think that very generally then move in tandem.

You are referring to Graph 5 which is page 18 of the bundle and which appears on the screen presently. ---

15 "This more correct methodology, however, would not, in my opinion, materially affect my conclusion, because the different components of turnover tend to move in the same direction and by roughly the same magnitude. In 1996 the rand depreciated from an average of USD1 = R3.64 in January to USD1 = R4.20 in April. This was a depreciation of 15.5%."

20 May I just stop you for a moment. Graph 3 that is on the screen presently understate, am I correct, the nett turnover by some 500 million. Is the correct graph attached to the bundle on page 60? --- Yes, that is correct. Unfortunately there was a technical error in electronically transmitting this graph and it understates by roughly 500 million dollars the turnover but in the graphs now with the commissioners it is correct.

25 Thank you. --- But that does not change very much.

"Over the same period the average daily turnover in the domestic Rand exchange control market increased by almost 42% from USD 3,019 billion to USD4,284 billion."

MR NAIDU: You are referring to graph 4? --- We are now going to graph 4.

30 "Total turnover by non-residents increased by some 79% from USD 0,683 billion to USD 1,223 billion. It would appear as if a sharp depreciation of the Rand at the time coincided with an increase in turnover and particularly, an increase in turnover by non-residents.

In 1998 the Rand again depreciated sharply."

MR NAIDU: As shown in Graph 1. --- Graph 1 and we are referring to that period there which you can see was just before the middle of 1998.

"Having traded at a monthly average of USD 1 = R4,93 in February, the rand fell by 26,4% to an average of USD 1 = R6,23 in July. Over the same period total average daily turnover increased by some 139% from USD 3,983 billion in February to USD 7,395 billion in July."

40 MR NAIDU: As illustrated in Graph 4. --- Those figures, sir, were illustrated in Graph 3, we are now going to Graph 4.

"Once again turnover with non-residents increased, this time by 213% from USD 1,323 billion in February to USD 4,138 billion in July. Over different periods the increase in turnover was even more pronounced as it peaked at a level in excess of USD 11 billion in June 1998.

45 While one could easily use different months and arrive at different average turnovers and exchange rates, one cannot deny that in these previous periods of Rand weakness sharp depreciations of the Rand coincided with considerable increases in turnover in the domestic Rand exchange control market, and in particular with non-residents.

50 I am certainly not arguing that increases in turnover inevitably lead to a much weaker Rand, as indeed one cannot argue that decreases in turnover would inevitably lead to a weaker Rand."

And we see Graph 3 again.

55 "Turnover in the domestic Rand foreign exchange market increased significantly early in 1999.."

and I am referring, Commissioners, to that period over there, from around January to almost the middle of the year.

In Graph 3? --- In Graph 3.

60 "Turnover in the domestic Rand foreign exchange market increased significantly early in 1999 without a sizable depreciation of the Rand. In January 1999 average daily

turnover was USD 6,855 billion. By June 1999 the average daily turnover had increased by almost 33 to USD 9,089 billion. (Back to graph 1). Over the same period the average daily exchange rate depreciated by a relatively small percentage of 1,7% from USD1 = R5,98 in January to USD 1 = R6,08 in June.

5 Over shorter periods the link between turnover and the exchange rate is also uncertain (Graph 2). For instance, the Rand averaged USD1 = R11,54 in December 2001, fluctuating significantly and briefly depreciating to USD1 = R13,84, on an average daily turnover of USD 6,051 billion. In February 2002 average daily turnover had declined by 194% to USD 4,876 billion, but the Rand was far more stable, trading at
10 an average exchange rate of USD1 = R11,48.

In summary, it would appear as if there is no consistent link between changes in turnover in the domestic Rand foreign exchange market and the level of the exchange rate of the Rand to the US Dollar.

Perhaps there is a different perspective which merits consideration. Had the Reserve Bank
15 not acted in October 2001 to limit dealing without a firm and ascertainable commitment or accrual, in the domestic Rand foreign exchange market, might the outcome in November and December 2001 not have been much worse? I do not think that non-residents would have bought the Rand when the currency fell on a surplus demand for foreign exchange. In 1996 and 1998 non-residents were
20 perceived to lead the charge when the Rand depreciated by selling the currency short to the detriment of the exchange rate. Why would non-residents have gone against the trend in 2001? It seems much more likely that, had their activities not been curtailed, they would also have sold the Rand, when they perceived the currency to be weak, leading to much more volatility, and possibly a greater
25 depreciation.

It should be borne in mind that by 14 October 2001 the Rand had already started depreciating rapidly."

As one can see from that slide i Graph 2. Let me just find the date, that is 15 October around there, we can see that the trend really started well before that, the end of July, the beginning
30 of August, the Rand briefly depreciated, I think almost in anticipation that something was going to be done to exchange controls and after that the trend continued, really only steepening very sharply towards the end of November.

"I am of the opinion that it is highly likely that had the authorities not decided to apply existing
35 exchange controls the Rand would in any case have succumbed to the surplus demand for foreign exchange. As indicated earlier, non-residents would quite possibly have felt free to join the trend by selling the Rand short for trading purposes. The outcome for the exchange rate may well have been far worse and the question then would have been why the Reserve Bank and National Treasury had done nothing.

40 As the decision of 14 October 2001 impacted on the activities of non-residents in particular, it is instructive to consider not only the activities of non-residents in the domestic Rand foreign exchange market but also their transactions in South African equities and bonds. The objective is to determine whether the decision of 14 October 2001 not only influenced the turnover in the domestic Rand foreign exchange market, but also
45 portfolio investments by non-residents."

And there we have table 1 showing those portfolio investments in equities, bonds and the total, the red figures indicate negatives, outflows.

MR NAIDU: On page 19 of the bundle.

"In calendar year 2001, non-residents purchased South African bonds and equities to the
50 amount of R4,203 billion."

Commissioners, that figure there, as indicated there for us, the total R4.201.

"These flows, however, and in particular purchases and sales of bonds, were quite volatile throughout the year. Notwithstanding this volatility, from the beginning of January 2001 to the end of August 2001 .."

55 It is that period over there, from January to the end of August, to that figure -

".. net purchases of equities and bonds by non-residents amounted to R11,914 billion. In the remaining four months of the year (and that is obvious from that figure, those four figures) this came to net sales of R7,710 billion."

And as we can see quite clearly from this table, the big change occurred in September, that
60 figure over there.

"The big change occurred in September 2001 with net sales of South African equities and bonds by non-residents of R5,510 billion."

And if we look at that we can see that it was in particular the huge sale of bonds, R7,716 billion worth of bonds that turned that figure into such a sizable negative.

5 "Thus non-resident portfolio investments in South Africa turned noticeably negative a month before the statement of 14 October 2001 and could hardly have been caused by it. These net sales [I do not show those figures, I have them with me but I do not show them on the slide] occurred from the very first business day of September 2001 and could also not necessarily be linked to the tragic events of 11 September 2001 or the
10 decision by the Reserve Bank to decrease the repo rate by 50 basis points in September 2001.

It is interesting to note that since the beginning of 2002 non-resident portfolio investments into South African equities and bonds have again turned positive after the sell-off experienced in the last four months of 2001."

15 And I turn to this table again.

"From the beginning of January 2002 to the end of April 2002 non-residents have purchased South African equities and bonds to the amount of R8,712 billion."

That is the figure over there, we can see sizable positives of buying for bonds and equities from the beginning of this year.

20 "This inflow has no doubt contributed to the Rand's recent stronger performance, notwithstanding the fact that turnover in the domestic Rand foreign exchange market in March 2002 was still lower than in the months prior to October 2001.

In concluding, I believe it is appropriate to refer back to the statement made by the Governor of the South African Reserve Bank to this Commission, which statement is contained
25 in SARB Volume 7. In particular I wish to refer to that portion of the statement concerning the events surrounding and leading up to the statement of 14 October 2001, in which the Governor explained that the contents of that statement had been extensively discussed prior to its issue. That statement was carefully conceived and I do not believe that it contributed to the rapid depreciation of the exchange rate of
30 the Rand."

Thank you very much.

Mr van Zyl, are you able whilst you are on paragraph 14 regarding the statement, are you able to comment on whether there were any other positive aspects arising out of that statement? --- I think the one point that I would like to point out about the 14 October
35 statement is that non-residents were not barred from trading spot at all, just from financing short rand positions in the forward market and I do believe, if my memory serves me right, that already by 19 October it was clear to the banks that non-residents were free to trade spot.

Whilst you are on that, Mr van Zyl, can you give the Commission or take them to a
40 sequence of events which followed the statement of 14 October with particular reference, if you may, concerning the steps taken with regard to bringing it to the notice of the authorised dealer community? --- In the week immediately after Sunday, 14 October, a delegation of the banks, of the authorised dealers rather under the auspices of ACI came to see the bank and we had discussions with them. They had quite a number of questions and those
45 questions were answered and were already available on the ACI website on 19 October. As I referred to earlier I think that already on 19 October it was clear that foreigners could continue trading in the spot market as they were not debarred from doing that. We then negotiated with the banks, with the Authorised Dealers acting under ACI, a letter that they would send to their correspondent banks and I believe that by 25 October that letter was on
50 the ACI website and some of the banks told me that by 25 October they were already sending it out to correspondent banks.

And finally, may I refer your attention to paragraph 4.2 of the statement of Mr Alex Bruce-Brand on page 3 of the bundle. --- Yes.

Mr Alex Bruce-Brand referred to the foreign exchange reserves in the first sentence
55 of that paragraph as being the reserves under the control of SARB, the authorised dealers and the government. Can you perhaps just take the Commission through the various categories indicating in more detail the state of the reserves? --- Yes. those are the three components of what we would call the country's reserves and as a matter of interest, Commissioners, that is typically reported on page S102 of the Reserve Bank's quarterly
60 bulletin. We may or may not have handed the quarterly bulletin in the first documentation

but, in any case, it is reported there. It is also reported on the so-called SDDS data .. (indistinct) of the Reserve Bank on the website of the bank one month in arrears. So there is not much doubt what the reserves of the country are and as a matter of interest, each and every authorised dealer receives a letter from the bank which is typically, not in all cases, but typically signed jointly by the International Banking Department and the Exchange Control Department setting out to them what they are allowed to invest the reserves in and I do not want to bore you too much with that. The reserves owned by the Reserve Bank, typically at the moment a level of \$7,6 billion of which something like I think 1,6 billion is gold and the rest is foreign exchange reserves, placed on deposit with non-resident banks with our correspondent banks or placed under management with a number of managers that we have appointed, that the bank has appointed and also in assets such as the United States Treasury Bills. That is very briefly what the Reserve Bank has. And there is also a fairly sizeable amount, smaller than the amount under control of the Reserve Bank, I think typically in the vicinity of \$4 billion under control of the banks, of the authorised dealers and as I have indicated earlier, they know full well what they are allowed to invest that in, for instance placed with non-resident banks, tradeable non-resident assets such as bonds and bills, money market instruments, commercial paper, margin accounts and then certain categories of investment are very clearly excluded to them. And then the third category, broad category under the control of Government from time to time, it suits National Treasury, when they borrow abroad to keep those funds for a short period abroad on their own, on deposit of their own account and not to pass those reserves onto the Reserve Bank. In the instances where that is done that is also clear in the quarterly bulletin of the Reserve Bank. I hope that suffices.

Thank you, Mr Van Zyl. Mr Chairman and Commissioners, that concludes the evidence led on behalf of the Reserve bank.

CHAIRPERSON: Yes, thank you. Any questions from the floor? From the Commission?

MR GANTSHO: Are you able to shed more light on the impact of the decrease in the reserves of the country on the currency, the exchange rate of the rand? --- That linkage is not in all instances exactly the same. If for instance a South African corporate for whatever reason say for imports, would buy \$100 or \$200 million and make a payment, that would typically come from the reserves from that component held by the authorised dealer and yes certainly that would be a transaction where the reserves will go down, will decrease and certainly put downward pressure on the rand, all other things being equal. But if the Reserve Bank for instance would decide for whatever reason to repay a loan of \$100 or 200 million, the total reserves will decrease but it will not impact on the exchange rate. Unfortunately I cannot give you a clear guideline that in all instances a change in the reserves should impact on the exchange rate, it is not that simple. Once again, if a big South African corporate would, for whatever reason, enter into let us say a syndicated loan offshore and they would turn that into rand on a covered basis, you know, by selling and buying the dollars through one of the authorised dealers, once again there will be a simultaneous sale and purchase of foreign exchange. The foreign exchange will be on the accounts of a South African authorised dealer, perhaps for the full period of the loan. The reserves will increase but the rand will not be affected. So unfortunately I cannot give you a very simple correlation. From time to time there will be depending on the transaction and from time to time there may not be.

CHAIRPERSON: Any further questions? Mr van Zyl, you may stand down.

NO FURTHER QUESTIONS

MR NAIDU: Mr Chairman, can we just have a short stand down to discuss with the representatives of Deutsche Bank?

CHAIRPERSON: Yes, just before we do that, let me just clarify with Mr Ginsberg. On a prior occasion we discussed trying to bring to a head the parallel process that the Reserve Bank and Deutsche Bank are following and the Commission. We hoped of course that that would be concluded by today. You have informed me that that process is not yet concluded?

MR GINSBERG: No.

CHAIRPERSON: Can you just perhaps place on record your anticipated time for concluding the parallel process?

MR GINSBERG: We will be in a much better position to judge that by the end of today for reasons which I do not have to go into at this stage, Mr Chairman, but discussions will be taking place which will give us more clarity at the end of today. We may therefore be able to resolve the issue when a final wrap up session of this Commission is to take place when I

understand the Ministry of Finance will be giving evidence and we would hope at that stage to be able to wrap up the discussions which we are having with Deutsche Bank as well. We anticipate that that wrap up session will take place later this month, I am not entirely sure when it would suit the Department of Finance to make their closing statement. They have

5 informed me they will be in communication with yourself and ourselves. We will then dovetail our date to try and suit the Commission's purposes and hopefully wrap up our discussions with Deutsche Bank at that stage as well.

CHAIRPERSON: Now I assume that this question of reserves neutrality is part of the very discussions you are having with Deutsche Bank in the parallel process?

10 MR GINSBERG: That is correct. It is amongst other things part of the discussions we are having, yes.

MS QUNTA: Can I just find out, Mr Ginsberg, because I am not aware of everything that you have just said to the Commissioner.

MR GINSBERG: Yes.

15 MS QUNTA: And what would be the purpose of having these discussions with Deutsche Bank, how does it impact on the work of the Commission and our ability to complete our work?

MR GINSBERG: What has happened was, and you would have seen from evidence given previously, that the Reserve Bank has written formal letters to Deutsche Bank and the three

20 corporates involved in the share placement transactions in order to request them to inform the bank what steps might the bank take in regard to those transactions if the bank ultimately came to the conclusion that those transactions were less than perfectly implemented. Now it is that process to which I am referring when I talk of the discussions that we are having with Deutsche Bank. You will recall that Deutsche Bank was the lead banker in all those

25 transactions and it may ultimately turn out that if the Reserve Bank and Deutsche Bank can resolve the differences which presently exist between them in regard to reserves neutrality as one of the items, then we will be able to come to the Commission and jointly inform the Commission that at least from that point of view the issue has or has not been resolved, I do not know how it will work, and then the Commission may or may not decide to deal with that

30 specific exchange control issue as part of its report. It is not something I can express an opinion on but the way we see it from the Reserve Bank's point of view is that it is an exchange control issue and our evidence has been, and I think it has been uncontradicted evidence, that those transactions did not give rise to or contribute to the rapid decline in the exchange rate of the rand. So obviously it will be up to yourselves to decide how to deal with

35 it.

MS QUNTA: You see, Mr Ginsberg, my problem is as I am sitting here and I do not know what the contents of your discussions are but I understand the terms of reference of the Commission and I said this I think last week, that the Reserve Bank is an independent institution.

40 MR GINSBERG: Yes.

MS QUNTA: Where contraventions of exchange control have occurred the Reserve Bank should feel free to act in a manner that it is obliged to act in terms of the rules and regulations.

MR GINSBERG: And that we are doing, madam.

45 MS QUNTA: And what we are doing, the Commission should not impact on that and I would be concerned if there is a merging of this thing of the Commission, so it is important for me to understand what you have suggested to the Commission.

MR GINSBERG: No, let me give you own assurance that first of all the investigation by the South African Reserve Bank into these transactions commenced before the Commission

50 was called out. That evidence is on record and that evidence is uncontradicted. That investigation would have taken place whether the Commission sat or did not sit and whether the Commission heard or did not hear evidence about those transactions. That is the first thing. So we are on an independent process to that of the Commission and it is that independent process that we are hoping to resolve on an exchange control basis with

55 Deutsche Bank. However, to the extent that that issue has been publicly aired and raised, we and I believe our colleagues from Deutsche Bank feel that we owe to the Commission some form of resolution if we can to the exchange control issue. What you make of it thereafter is fortunately not our concern and therefore we will simply convey to you what we have done and no more than that. We consider it to be somewhat of a loose end at the

60 moment which we want to resolve on an exchange control basis as soon as possible.

MS QUNTA: Well would you want a hearing for that because surely if there is problems all you need to do is to inform the Commission in writing. It may or may not have an impact on the decision that the Commission makes ultimately but you know I just do not want the Reserve Bank to feel that they have to explain something to the Commission for the
5 Commission to do its work because we will come to our own conclusions separately from whatever the Reserve Bank does. That is how it should be.

MR GINSBERG: Yes. I think and I have Deputy Governor Marcus here with me but I think that our position is that because it has been so publicly aired, we believe from the bank's side that we owe the Commission and the public some form of resolution to that dispute if and
10 when it can be achieved without necessarily detailing the full content of how that issue has been resolved. You will appreciate it is to some extent a private issue involving proprietary information but we still believe that some form of public statement would be necessary.

MS QUNTA: Thank you.

CHAIRPERSON: Mr Bezuidenhout, can you come forward so that I can find out what your
15 position is?

MR BEZUIDENHOUT: We would ask for a tea break and then I would inform you after that.

CHAIRPERSON: Yes, let us take a 20 minute break now.

PROCEEDINGS ADJOURN:PROCEEDINGS RESUMES:

CHAIRPERSON: Now Mr Bezuidenhout, you wanted to ask some questions?

20 MR BEZUIDENHOUT: Yes. Deutsche Bank in its evidence before this Commission has given a full explanation of the asset swaps and the related transactions and has fully explored the issues regarding those matters during the course of which it is clear that there are differences of opinion between Deutsche Bank and the Reserve Bank regarding exchange control and the interpretation and application of these exchange control
25 regulations. It is felt that Deutsche Bank has dealt with the issues that have been raised today sufficiently in its evidence, that Deutsche Bank has made it clear that it in no way acted illegally or improperly and that it will attempt therefore on that basis to resolve its differences with the Reserve Bank in further discussions and we will not therefore ask any further questions at this stage.

30 CHAIRPERSON: Thank you, Mr Bezuidenhout.

MR GINSBERG: Mr Chairman, on our side from the Reserve Bank we do not want to be seen to be pre-empting any decision that we may ultimately have to take on the exchange control issue because of the administrative law and due process procedures which the Reserve Bank has put in place. So we therefore at this stage have nothing further to add.

35 MR NAIDU: Mr Chairman, I have nothing to add to this debate but formally to hand in the bundle which is before you and the Commissioners of the non-material authorised dealers. You will notice that the documents is preceded by a memorandum signed by myself and the attorney Mr Potgieter. This bundle is being handed in subject to two qualifications. One is an affidavit by one of the banks which is not yet to hand but will be handed in shortly and
40 possibly an affidavit clarifying one aspect relating to one of the banks which is contained in the bundle and once that is available will be made available to you and your learned commissioners.

CHAIRPERSON: So in essence this bundle for the purposes of the media contains the affidavits of all the non-material banks subject to the two qualifications you have placed on
45 record.

MR NAIDU: Yes.

CHAIRPERSON: Thank you, Mr Naidu. Does that then conclude today's proceedings?

MR NAIDU: That concludes today's proceedings.

MR GANTSHO: I have got one question for clarification. Deutsche Bank testified that asset
50 swap transactions and also the related transactions did not lead to the depreciation of the rand. That was its testimony. Mr Ginsberg made a statement today that in at least one of those transactions you agree with that statement. I just want to confirm if that is your evidence or that of your client?

MR GINSBERG: Yes, Mr Commissioner, the evidence, as I recall it, on behalf of the South
55 African Reserve Bank in regard to all three transactions, that is Sasol, M-Cell and Nampak, is that none of the three have contributed to or directly led to the rapid depreciation in the exchange rate of the rand. That is as I recall the evidence on behalf of the Reserve Bank and we of course remain with that testimony.

MR GANTSHO: Would that mean also that if there is a view that it prevented or one of those
60 transactions or all of them prevented the appreciation of the rand, that you also say that that

did not prevent the appreciation, is that what you are conveying?

MR GINSBERG: No, we did not deal, if my memory serves me correctly, with what effect it might have had on the appreciation of the currency but we did specifically deal with the effect on the depreciation of the currency. I do remember you asking at a certain stage the
5 question you are now putting to me and the answers which I think you got from others, not from ourselves, was that it could well have had an effect on the appreciation. But I think an undefined effect, if my memory serves me correctly.

MR NAIDU: Mr Chairman, before you adjourn I have just been handed affidavits, copies of affidavits by Mr Miles Smith purportedly, and a quick reading of its indicates purportedly a
10 response to certain statements made by Mr Papadakis before this Commission. It is my respectful view, sir, that these statements ought to be ventilated before this Commission officially and not to hand - I believe, it is my brief from being handed these documents to hand it to the Commission, but it seems to me, sir, that this affidavit ought not to be handed to the Commission in private but ought to be ventilated publicly. If we could just have an
15 opportunity to discuss it with the attorney acting for Deutsche Bank.

CHAIRPERSON: So what you are saying is you are happy to accept the affidavit but you want it done in public ..

MR NAIDU: Yes.

CHAIRPERSON: We will stand down but we will not adjourn.

20 PROCEEDINGS STAND DOWN; PROCEEDINGS RESUMES:

MR NAIDU: I am informed by Mr Bezuidenhout that they would rather prefer an opportunity to consider this issue and if advised to present it later or not at all.

CHAIRPERSON: The Commission stands adjourned to a date to be arranged. We will let the interested parties and the media know once we have arranged the date. It will not be
25 earlier than in two weeks time. The Commission then is adjourned.

PROCEEDINGS ADJOURN: