

PROCEEDINGS RESUME ON 11 APRIL 2002:

CHAIRPERSON: Today we have FirstRand Bank Limited. Mr Bester is the first witness.

JURIE JOHANNES HUMAN BESTER d.s.s.

MR NAIDU: Mr Chairman, on behalf of FirstRand there will be three witnesses, the first Mr  
5 Bester, the second Mr Ribbens and the third Mr Gregory Katz. Their statements are  
contained in a bundle which will be handed in, for the record, as the FirstRand bundle.

CHAIRPERSON: Thank you, sir.

EXAMINATION BY MR NAIDU: Mr Bester, are you the head of Risk and Audit Services for  
FirstRand Bank Ltd? --- That is correct.

10 Is your qualifications, your work experience and your position indicating its area of  
responsibility set out in paragraph 1 of your statement? --- Correct.

And do you confirm and adhere to the contents of the statement which you signed?

--- Yes.

Do you accept that the statement constitutes evidence before the Commission? ---

15 Yes, I do.

You confirm also, Mr Bester, that FirstRand had been informed that the information  
supplied to the forensic auditors is in the process of analyses and interrogation and the  
results thereof will be submitted to the bank and, if necessary, the bank may be requested  
to respond to any information that is raised in those reports which call for a response? ---

20 Yes, I do.

Your statement and the evidence you are about to give, the way I understand it,  
and please correct me if I am wrong, constitutes your personal knowledge and information  
that you obtained from other individuals within the Group? --- That is correct.

You set out the group structure of FirstRand which is the authorised dealer in  
25 Bester 1 which constitutes page 23 of the bundle? --- That is correct.

In paragraph 2.2 you describe the interaction with Foreign Exchange trading banks,  
is there anything that you would like to add to what is contained in paragraph 2.2? ---

Maybe just to stress that the majority of the foreign currency trading activities will take place  
in the treasury division of RMB or Rand Merchant Bank as it is known and that the foreign  
30 subsidiaries had very small activities in foreign currency trading.

You set out the key personnel responsible for treasury, foreign exchange, risk  
management, structured finance, corporate finance and the compliance functions in  
paragraph 2.3 of your statement? --- That is correct.

You deal in paragraph 3 with risk management, internal control and compliance.  
35 Do you want to make any comment in relation to the risk management framework in  
addition to that contained in your statements? --- I would just like to highlight the structure  
that we have within the banking group to ensure that we enforce our risk management  
policies as well as our compliance policies. In terms of our structure we deploy the risk  
management functions and compliance functions as far as possible into the divisions and  
40 certainly into all the divisions and as far as possible into individual business units and that is  
specially true of the trading area of RMB, the treasury division of RMB. This structure  
enables us to ensure that we have experts in risk management and compliance  
management close to the coal face and we believe it enables us to maintain strong control  
over the activities.

45 You set out in Bester 2 the detailed limit framework. Is there anything that you  
would like to add to what is contained in 3.2? --- No, thank you.

The intraday limits you discuss in paragraph 3.3, is there anything that you would  
like to add? --- No, thank you.

Regarding the utilisation of limits, you identify days in the year under review on  
50 which the foreign exchange trading desk's individual stress loss limit was exceeded. Would  
you like to make any comment in that regard? --- Just to stress that all these excesses  
were approved in terms of our formal compliance and risk management procedures and  
that the excesses specifically in most instances relate to foreign currency, affects foreign  
currency and very small excess in US dollar against the rand.

55 You identify the net open position limit per supervision and that those set internally  
respectively in Bester 2 and 3? --- That is correct.

Regarding ethical standards, would you like to make a comment in that regard? ---

Yes, please. We have within RMB a code of conduct which all employees are required to  
accept as part of their employment contract and in the code of conduct and in the  
60 employment contracts we also request of employees to acknowledge that they will comply

with the official policies and controls of the bank. This enables us to enforce the ethical standards that we require from our dealers, both in treasury and on the foreign exchange desk and also enables us to enforce all our board risk management policies under labour law. The contain the principles of the ACI Code of Conduct within the RMB Code of Conduct but we reinforce that through formal policies and the formal code of conduct to enable us to enforce that on employees in the event of transgression.

And to what extent does your code compare with the principles and guidelines in the ACI South Africa code? --- We believe that it essentially reflects those guidelines and principles.

10 I understand, and correct me if I am wrong, but not all dealers employed by the authorised dealers are members of ACI? --- That is correct.

And to the extent that those who are not members are not bound by the ACI Code, they are certainly bound by your code of conduct? --- Yes, definitely so.

15 You make the point in 3.12 that save for the instance referred to in paragraph 4.9.7 of the statement of Mr Ribbens, there were no other breaches of the ethical standards that you are aware of? --- That is correct.

In paragraph 4 you deal with the impact on the bank results and activities. Would you like to add anything in relation to those particular sub-issues in this paragraph? --- Maybe I could just quickly given an overview of our experience and our views on this point.

20 In 4.1.2.1 we comment that higher customer volumes and larger spreads in the foreign currency market in the period under review would certainly have, and especially in the latter part of that period, would certainly have enabled us to make larger profits. We also point out that as those transactions for our customers would all be within exchange control requirements, that the volumes, that we expect lower volumes in the future because there is

25 only a limited amount that can be dealt by our customers in terms of exchange control. In (ii), under that paragraph, we simply say that we do not expect that market making activities will necessarily lead to higher profits because there is a constant reversal of market trends which would trap the market maker with positions in the opposite direction. In 4.1.2.2 we comment that because of the translation of our foreign currency liabilities into rand at higher

30 rand prices for dollars, that we would increase the liability of our balance sheet and as a result of that would be required to hold larger cash reserves and liquid assets, both of which would incur higher costs for us. Overall, there is certainly not a panacea for the bank in terms of a weaker rand as I will show, as I go through. If we look at translation gains it is certainly through the foreign capital that we have offshore as well as any other foreign

35 assets as a net position would have been translated into rand at a higher rand value price per dollar and to that extent it would strengthen the banking groups' international and local balance sheets on the capital side and on the asset side. But if you then look at credit limits instance, that we establish on our local customers in respect of foreign currency facilities that we make available, those facilities will be translated at the weaker rate and as a result

40 of that it will blow up our balance and it will also cause us to look at the balance sheet of our customers in relation to rand terms, in rand terms, and as a consequence might force us to reduce limits set for our customers in foreign currency terms and that could certainly hamper our business with our customers in the future. Systems expenditure are mostly priced as far as hard and software is concerned, often priced in foreign currency lower rand

45 value. A higher price for dollars will increase those costs for us in the future and that will impact on the cost of the services that banks render to the market at large and that market cannot easily afford those higher costs. I referred to capital adequacy earlier where we translate our assets or foreign currency investments, foreign currency loans into rand, it will entail a higher balance sheet and a higher capital requirement in terms of the Banks Act.

50 So certainly that again is penal to us. If you look at the international market, the international market would translate our balance sheet and our capital structure into foreign currency and again because of the weaker rand we will be seen in the eyes of the international market as being smaller in currency terms and that is true of the banking sector as a whole and it is also true of I believe the country's capital position. On liquidity

55 we are certainly impacted by a lower rand where we are called to maintain margins in respect of foreign currency exposures by our counterparts and where these are funded in rand, obviously there is a higher rand requirement and where these are funded in foreign currency it would entail and cause us to borrow additional foreign currency. Look at the credit limits (in 4.1.5.2) at the credit limits of our foreign counterparts on us. I have made

60 the point earlier that they would translate our balance sheet into foreign currency terms and

they would certainly see us as smaller in their terminology, in their denomination and mark lower limits of us. Overall (in 4.1.6) sentiment towards the banking sector and towards the country will be affected by a lower value for the rand because foreign investors and foreign counterparts will perceive the country and the banking sector to be poorer in foreign  
5 currency terms.

In paragraph 5 you deal with bank perspectives and you make the point in 5.1 that you do not regard profits made from proprietary trading, market making or any other trading in the rand as improper or unethical in any way, mainly because you do not regard it as any different from trading in any other financial instrument or physical asset? --- That is correct.

10 In 5.2 you deal with the different types of transacting behaviour. In 5.3 you deal with speculation. Is there anything that you would like to add in this regard further to what you have said in your statement? --- Nothing in addition, just to stress that we do not see speculation in a negative context at all. We believe that any business activity where you buy any goods or instrument or sell it for re-sale or re-purchase, implies that you are taking  
15 a view to profit from that action and could be termed speculation. In paragraph 5.4 you identify your views in relation to market making. Is there anything that you would like to add to it? --- We look at market making as an absolute essential aspect of any market and there is often, in my view, the connotation that a market maker acts against the interests of the market by for instance if the rand is weakening, buy in dollars, in order to hold those  
20 dollars to supply its customers. I see that as absolutely no different from buying tomatoes if you expected that there would be a substantial increase in the demand for tomatoes. The last thing you would want to do is first sell the tomatoes and then buy them at a higher price.

And similarly, in the case of the rand, if you perceive that the rand is weak because of the demand for dollars, you would go and as a normal business process buy the dollars in order  
25 to have it available to sell to customers and also to protect your own financial position.

In 5.5 you deal with speculative activities. There is a fairly comprehensive that you made under this, is there anything that you would like to add? --- No, thank you.

In 5.6 you identify in seven sub-sections specific transactions, events, factors or omissions. Would you like to add anything to that contention? --- Yes, I do, just to stress  
30 that the rand market in foreign currency, especially in dollars, is subject to severe imbalances from time to time because of the natural cash flows into that market. These imbalances between the demand and supply of dollars create fluctuations and at times severe fluctuations in the price, the rand price for foreign currency and we believe that these imbalances are at times aggravated by the other points that we mentioned.

35 Having received the questionnaire submitted to your bank regarding whether or not you were aware of any illegal or unethical transactions or actions during the period under question, did you perform an exercise in terms of e-mailing the relevant senior management of the various divisions, receiving their responses which you evaluated and is the response set out in 5.7.3 and would you like to indicate what the bank's response is in that regard? --  
40- That is correct, we circulated the e-mail to the various senior officers of the bank and the collective answer was that no one knew of any unethical or illegal transactions with the exception of the one transaction which Mr Ribbens will refer to later.

Was it the same in regard to your enquiry as to whether any person made any improper gain or improperly avoided loss? --- Yes, we followed the same procedure and  
45 got the same collective reply.

Does the same apply to non-residents? --- It applies to non-residents to the extent that we have knowledge of those transactions, yes.

What is your bank's view in regard to the entry, activity and exit by non-residents in the market? --- We hold the view that type of transaction that is done by a non-resident will  
50 either positively or negatively impact or potentially impact the price of the rand in terms of foreign currency at that point. If a foreign investor is bringing funds into the country for investment that will positively impact the reserves and potentially the price, in other words firm the price in rand terms for dollars and at the same time if a non-resident then withdraws those funds at some stage in the future, that will mean that there is additional demand for  
55 dollars at that point and could negatively affect the price of the rand.

In 5.11 you make certain recommendations regarding exchange control and in 5.11.2 you specifically highlight the absence of sufficient consultation by SARB's Exchange Control Division and the authorised dealers before rulings are made? --- Yes.

Is there anything that you would like to add or state in that regard? --- We always  
60 find that the Reserve Bank is extremely helpful, most professional when we approach them

with a request for a ruling in terms of exchange control. Our only recommendation is we believe it would improve the process and remove some of the uncertainty in advance if the Reserve Bank consult more broadly by circulating drafts to the authorised dealers before they publish them and then pick up the questions as to practicality and practical  
5 implementation that authorised dealers would have at that point.

Something like the way that SARB contacts people in the market, amongst auditors etcetera, to get their views before any practice .. (drops voice, inaudible) --- Yes, along those lines.

In 5.12 you make certain recommendations concerning exchange control. Is there  
10 anything that you would like to add? --- No.

In 5.13 you identify certain problems. Is there anything in that regard that you would like to add? --- Just to stress that it is a statement of fact that the manual processes to ensure compliance with exchange control are cumbersome and do create practical problems for us.

15 In 5.14 you speak about the circular that was issued on 15 October (D342 and D345). Would you like to make any comment in addition to that contained here? --- Just to point out that the circular required change in the processes that non-resident banks would have had to follow to comply with this circular and that that change in process certainly at that point reduced liquidity in the market because it would have been necessary for the  
20 foreign banks compliance' officers in this instance to go and look at the requirements of exchange control and formulate new procedures and policies before they could freely deal in the market again.

MS QUNTA: Were there change or were there a re-statement of existing consensus because we have heard evidence that it was not a change for non-resident banks, it was  
25 just a re-statement of what the banks has to do anyway and if you say it was a change, what was the change? --- The circular changed from the requirement where an authorised dealer would ask of the non-resident bank to confirm an ascertainable commitment in executing transactions to one where the compliance officers of the foreign banks were now required to sign a compliance certificate that the transactions complied with South African  
30 Exchange Control regulations and rulings and as far as I am aware those rulings were only at that stage made available to those compliance officers and certainly I would imagine that they would have needed time to study those rulings and time to decide on what type of processes they would have wanted to introduce within their banks in order to comply with it directly.

35 So it was not a ruling as such, it was a change in enforcing the ruling? --- Certainly and it was a change, I would imagine, in the processes on the other side to give effect to them.

CHAIRPERSON: On the other side being a foreign bank? --- Being a foreign bank and their compliance functions.

40 MR NAIDU: Thank you, Mr Chairman.

CROSS-EXAMINATION BY MR GINSBERG: May I just ask my attorney to hand for convenience to Mr Bester a copy of the circular of which he speaks and also to give yourselves a copy so that it is easy at hand and direct just a few questions to Mr Bester about the circular in the light of one of the things that you said in your statement. This is the  
45 circular, you will remember, that was issued subsequent to the October statement. And Commissioners it is numbered 344 and 345. That was the pagination given to it as an annexure to the Governor of the Reserve Bank's evidence.

CHAIRPERSON: Just remind me what that file number was?]

MR GINSBERG: That was Volume 7. Mr Bester, if you would turn to page 344 and you will  
50 see that that is the first page of a two page document headed "Important Notice for the attention of Relationship Managers, Compliance Officers and Dealers". Just so that we can set the correct context of this document, is it correct that this is a document that was prepared as a collaborative effort between the Reserve Bank and the authorised dealers, that is my information? --- Yes, I would have to, I was not present at that meeting but I  
55 believe that there was such a meeting and that if that is so that is correct.

So as far as you are aware this was not a unilateral document by the Reserve Bank itself? --- Correct. May I ask a question on that?

Yes? --- I was not present at the meeting and I just have one question, to what extent was this stated as a requirement handed to the meeting or was the statement  
60 changed in any way after the discussion with the authorised dealers present at the

meeting?

I will attempt to get an answer for you on that. My information is that it originated from the authorised dealer community, and was presented to the Reserve Bank for its final approval and thereafter saw the light of day. But perhaps you could, from within your own  
5 organisation, get a firm answer to what I am putting to you. That is as we understand the position. --- Yes.

Now could I then take you to the first opening few lines of this document, it says at  
344:

"The South African Reserve Bank has decided to ensure that existing exchange control  
10 rules and regulations should be applied. After consultation with the Reserve Bank the South African authorised dealers decided to inform their correspondents abroad of the requirements to deal in the South African Foreign Exchange markets. We are of the opinion that the measures being applied are not retrogressive in nature and represent an application of existing rules and regulations. The authorities have no intention of generally denying non-  
15 residents access to the foreign exchange market but believe that in the interests of fairness existing rules should not only be applied to resident and non-resident investors in South Africa as is currently the case but also to non-residents who have only a trading interest in the South African Foreign Exchange market. It should also be clear that the rules and regulations apply very specifically to the financing of short rand positions in the foreign  
20 exchange and domestic financial markets."

Now do you have any difficulty in understanding what that means? --- No.

Do you think that any reasonable authorised dealer in this country cannot understand what that means? --- No.

Do you think the same of your foreign correspondents? --- Yes, I would expect  
25 that they will clearly understand what is meant.

So on a first reading of the document it should be clear? --- I would think so, yes.

Now this document, I understand, was sent to your correspondent relationship managers overseas in late October, early November of last year? --- Yes.

So that was very shortly after the Governor's statement of 14 October. --- Yes.

30 Furthermore, the document you will see contains seven paragraphs and I am certainly not going to read that but just as a summary for the sake of the Commission, paragraph 1 deals with spot transactions in respect of which there is no restriction whatsoever, is that correct? --- Yes.

So that was not a change in regard either to policy or the implementation of policy?  
35 --- Yes.

The second paragraph deals with swap transactions. Now there the rules were always, were they not, that one needed a firm and ascertainable underlying transaction before doing the deal? --- That is correct and as I understand it confirmed by the bank as you have transacted with the bank.

40 Yes, correct. So no change in policy there, however you have said a change in implementation procedure? --- Absolutely.

To which we will come in a moment. So thirdly, we then have the so-called outright purchase. Now here, as I understand it, also no change in policy but compliance issues arise? --- Correct.

45 Fourthly, swap transactions and there one also needs a compliance letter but again no change in policy and, finally, the wording of the compliance letter. Now do you know who ACI is because they are referred to in paragraph 5 of that document? --- Yes.

Who are they? --- The Association of Commercial Authorised Dealers who elect to belong to them and it is an international one.

50 So am I correct in saying that it is the authorised dealers community? --- Yes, certainly.

And therefore it is clear from 5 that the wording of the compliance letter was a collaborative effort? --- Absolutely.

Now in the light of what you have told the Commission now, would you like to  
55 perhaps review what you said in 5.14.2 on page 21 of your statement because there one reads that the market incorrectly interpreted the circular. Now is that really a fair conclusion to draw in the light of what you have just answered me. --- Just to reply to that, my comment is the market, the general market, the market is not in this instance confined to authorised dealers or non-resident banks. If you look at the general market and leading up  
60 to that point, I think it has certainly been my view that official policy is tending or is to relax

exchange control gradually over time.

Let me just pause without wishing to interrupt you and try and make this clear. So 5.14.2 does not relate to authorised dealers, either here or overseas or the Reserve Bank?

--- I did not say that, I said .. (intervenes)

5 Well to whom does it relate? --- I said 5.14.2 said the whole market, in my view, and in our view, incorrectly interpreted this as a strengthening and re-introduction probably of exchange control because of the changes in procedures *inter alia* but also just looking at the sentiment. If I were a local resident that wanted to invest funds offshore, I might have reacted, this is my view, by saying does this look like a re-enforcement or a potential  
10 precursor to a strengthening or re-introduction .. (intervenes)

Mr Bester, you would not know this, would you, what a potential foreign investor might or might not .. (intervenes) --- I am talking about me as a South African resident and I am saying I might at that point have decided to sell some rands and buy dollars in terms of my dispensation.

15 It seems to me then that that is a highly speculative statement, would you agree? --  
- If you say it is speculative, it is also in my view the way I think that investors might react.

Yes. Now if I can take you back just a moment then to 5.11.1. There you say, and you seem to me to be speaking of today, that "there is sufficient certainty with regard to the interpretation of Exchange Control with specific emphasis about what non-resident banks  
20 and non-residents are allowed to transact."

Now that is a very broad statement. Do you want to try and give, if you can, an example of where you say the insufficiency and uncertainty really lies? What aspect of exchange control? --- In my experience in the markets over the years I have certainly on numerous and really more than numerous occasions heard the comments and experienced the  
25 questions as to exactly what is allowed, especially in so far as non-residents are concerned.

In my view, the issue of this statement by the Reserve Bank enforces exactly that view.

The uncertainty? --- The uncertainty.

But it is a document that you clearly understand and that authorised dealers clearly understand? --- Yes certainly but what I am saying remember this refers to the period 1  
30 January to end December and it talks about the weakening in the rand and it is our opinion that there was insufficient certainty and I think this document is the result of that collective opinion in the market and that is the reason why the market approached the Reserve Bank picking up on what you have said to clarify the position.

Now when you say the market approached the Reserve Bank, who exactly are you  
35 talking of? --- I believe we authorised, as you have said earlier.

**CHAIRPERSON:** You mean approached after 14 October? --- You said that this circular was issued in consultation with the authorised dealers, is that correct?

**MR GINSBERG:** This was an implementation of the Governor's statement of 14 October. -  
-- Yes, and in consultation with the authorised dealers.

40 Well the authorised dealers suggested the wording and the Reserve Bank approved it? --- Approved it.

Those are the facts? --- Yes, and I believe that this was done to eliminate that uncertainty or any uncertainty that there might have been.

So it seems then that the uncertainty you talk about is between 14 October and  
45 early November? --- No, I did not say that.

Well then what uncertainty are .. (intervenes) --- The uncertainty of this statement by the Governor as well as this letter, in my view, was needed to eliminate uncertainty that existed in the market throughout the period under review and even before that otherwise it would have been unnecessary in my view.

50 And did it achieve its object, do you believe? --- I think that it certainly re-enforced a problem - or let me rephrase that, the market, in my experienced, believed that there was uncertainty with non-resident banks as to what they may or may not do. This certainly served the purpose of telling those banks exactly what should be done to the extent that everything is properly defined in the ruling and only to that extent.

55 Well no doubt if there are residuary problems you will tell me about them in a moment because in 5.11.2 you say that there is insufficient consultation by the exchange control division of the bank with authorised dealers before rulings are made. Now in that regard you are not referring to 14 October statement and the subsequent circular that we have now spoken of? --- That is absolutely correct.

60 There you are satisfied there has been full consultation? --- To the extent that I

heard about the process. I was not personally involved in the process.

CHAIRPERSON: I think, Mr Bester, the question is this comment of yours is a more general comment, you are talking about in general, not limited to 14 October? --- Yes, and may I just go back to the testimony that I gave, we always find the Reserve Bank extremely  
5 helpful when it comes to approaching them with rulings and interpretations. Our recommendation is simply that it would facilitate the process, as it did in this instance, to consult before the time and it is a recommendation that we make as a bank.

MR GINSBERG: Now I am not crossing swords with you yet on that issue, I just want to ask you, am I correct that your bank attended the Sunday meeting of which the Governor  
10 spoke on 13 October last year, before the 14th's statement? --- I cannot answer you.

I believe your bank did? --- Yes.

And I also believe that your bank did not raise concerns .. (intervenes)

MR ?: Mr Chairman, clearly the witness has said that he was not present .. (inaudible)

CHAIRPERSON: I think what Mr Ginsberg can do is to put the Reserve Bank's position on  
15 record and if First National wants to deal with it, it can call the appropriate witness. I think that is an easier way of dealing with it.

MR GINSBERG: Thank you, Mr Chairman, yes. Our position is, as the Governor correctly we say testified, is that only two banks raised questions on the 13th, one was Citi Bank and if I remember the evidence correctly they said to the Governor that this would mean the  
20 forex would move offshore or some of it and Deutsche Bank who said to the Governor that they thought that he was focusing on the wrong issue or party. Save for that, the evidence of the Governor has been that none of the other banks raised any criticisms or concerns about the 14 October statement. Perhaps you can take an instruction on that. --- Yes.

May I just point out that, I mean our comments here is in response to the questionnaire and  
25 the questionnaire asked what impact did this have and our reply is that it reduced the liquidity in the market as a result and it could only be temporarily and we explained that a change in procedures and processes would have necessitated that change. We did in this case make absolutely no comment as to insufficiency of consultation in that specific instance.

30 May I then on to 5.12.1 where you say that your bank is a proponent of the abolishment of Exchange Controls. Now may I just ask you this, does your bank propose the big bang approach or are they proposing the measured and slow approach that has been followed by the Minister of Finance at the moment? --- This is a collective consensus view, it is not to say that everyone in the bank would necessarily hold the same view and I  
35 find it very difficult to speak for everyone except to say that in discussions we certainly hold the view that it is a question of process, procedure and timing. So in order to try and answer that question, I think one would tend towards an orderly abolishment of exchange control.

Yes. Fine, thank you. Then in 5.12.2 you suggest there that there is an unequal  
40 treatment by the Exchange Control authorities between players in the market. Am I putting it too strongly or is that your intention? --- Yes, I think you are putting it too strongly, we just say we recommend that the Reserve Bank ensures that it applies equally.

So there is no suggestion, is there, and if there is you must please tell me so, that we the Exchange Control is not being applied equally to all players in the market because  
45 that is a serious allegation? --- There is no allegation to that extent, I think the statement of the Governor on October 13/14 and the subsequent directive goes back to the point that I made about eliminating uncertainties that might have existed in the market.

Then finally, 5.13.5. Now you raise a problem here of the difficulty of policing exchange controls in so far as non-residents are concerned. First of all, may I just get your  
50 agreement on one thing and that is exchange controls do not apply to non-residents? --- If you .. (intervenes)

They have been abolished. --- If you are saying they do not now apply to non-residents?

Well exchange control has been abolished for non-residents. If I am wrong you  
55 must tell me which exchange controls apply to non-residents? --- I thought that this circular made it clear that if you hedge transactions for instance that those transactions still need to comply with exchange controls.

Well only in that sense, that there has to be a firm and ascertainable underlying transaction. --- But that is exchange control.

60 Is that the sense in which you are suggesting it? --- That is one aspect of

exchange control.

That applies to non-residents? --- Yes.

Well if that is what you are talking about, let me ask you this, if the foreign bank is honest in its dealings with yourselves and the other banks in this country, then there is no problem? --- If they are .. (intervenes)

Is that right? --- If they are honest then there is no problem but if you say honest in what context?

Let us just take it one step at a time. If they have a firm and ascertainable transaction and they tell you about it, then they are complying with the rules and regulations and things work, do they not? --- Correct.

If they are dishonest and they do not tell the truth about a firm and ascertainable transaction, then the system does not work? --- Yes, I will concede that that is so.

Now what is your experience with foreign banks, are they honest or dishonest in this regard? --- I really cannot answer that.

Well what is your feeling, you have been in the game a long long time? --- But bear in mind, Mr Commissioner, I do not trade on the foreign currency desk from day to day, all I can say is this, that as in the example we explained that, and we believe that that action would be totally honestly done but with the result then that a foreign party, either a foreign bank or one of its customers, could end up with a position holding dollars against the rand. We give an example as a potential way in which this could happen.

But this letter that has to be filled in which the banks have given, the wording of which has been given by the banks, has to be given by a foreign compliance officer, is that correct? --- Absolutely right.

Now that, as I understand it, is one of the most responsible positions in any banking institution? --- It certainly is after this introduction and I did refer to that, I did say in my evidence that it necessitated at that point that the compliance officers would have reviewed their processes and procedures to ensure that there is no uncertainty and to the extent that the information that they have and the rulings allow them to do that and certainly to the extent that they then sign that letter, I would imagine that they would totally comply.

And they would do so honestly? --- And they would do so honestly.

So on the probabilities as far as you are concerned there is no suggestion of wholesale dishonest conduct? --- Not wholesale.

And therefore the system post 14 October works? --- To the extent that it is quite clear what can be done and quite clear as to what cannot be done after a transaction is entered into.

Thank you, Mr Bester.

CHAIRPERSON: Mr Ginsberg, while you are still at the table, is it common cause that the compliance letter was a new formality that the foreign compliance officer had to complete?

MR GINSBERG: Yes.

CHAIRPERSON: So Mr Bester's evidence in that regard is common cause?

MR GINSBERG: Yes.

CHAIRPERSON: Thank you for clarifying that.

MS QUNTA: Now prior to the compliance letter, is it your evidence, Mr Bester, that the South African, the resident or the authorised dealer simply asked the non-resident whether there is, orally whether there is a firm and underlying commitment and accepted the response to that by the non-resident? --- I believe, I think that was changed to in writing at some point.

I am talking about prior to .. (intervenes) --- Prior to and I am referring to that and that is my understanding that it was a dealer to dealer communication.

So the authorised dealer would accept that or did you take any procedures to establish whether in fact there is an underlying, a firm and underlying commitment? --- As I understand it we accepted the word of the dealer, on the other side may I suggest that one of my colleagues who deals in that market every day could answer that question specifically.

Okay, can I perhaps also just take you back to 5.11.2. You indicate there, I think under recommendations that there is consultation, debate and amendments after the rulings have been issued and you are suggesting that there should be consultations before the rulings are made. But even before I come to that, it says here "invariably there is consultation, debate and amendments after rulings have been issued which result in uncertainty and ultimately in negative sentiment towards the country, putting selling

pressure on the ZAR". Now is it the debate and the consultation that result in uncertainty or is it - can you just clarify that sentence for me, it is not clear the way it is reading, what you are trying to convey there? --- Maybe it is my second language, so my expression is not that clear.

5 No, that is fine. --- What I am saying is both really, to the extent that a directive is issued and immediately after issue there are questions in the minds of the authorised dealers or non-residents, the market participants as to the practical implementation for instance and to the extent that that then necessitates going backwards and going back to Reserve Bank asking questions, waiting for a response. As I said earlier which they are  
10 always very co-operative in doing, I am just expressing a view that that in itself could create uncertainty and possible negative sentiments.

And what would that negative sentiments then say, would it say that you have exchange control or you are not implementing exchange control in a clear and certain manner. What would the negative sentiments be? --- I think it emanates simply from the  
15 uncertainty at that point.

Perhaps I can address this to Mr Ginsberg because yesterday during Nedcor's evidence there was an allegation by Nedcor that the Reserve Bank turned a blind eye to the implementation of or the enforcement of exchange control. In effect they mentioned the question of establishing whether or not there is a firm and underlying commitment and in  
20 response to a question I asked they said well verbally the Reserve Bank knew that certain regulations are not being complied with and they turned a blind eye. I wonder if the Reserve Bank has a response to that?

MR GINSBERG: Yes.

MS QUNTA: Because that is a fairly serious allegation.

25 MR GINSBERG: No, we have been discussing that and other issues that have arisen since last giving testimony and what we are going to request the Commission in due course is that we be given an opportunity for wrapping up some loose ends that have now arisen and which one expected from our side. It will not be a lengthy wrap up but I think it needs to be done with your permission and it will address that issue. It will also address some of the  
30 issues raised today and others that are going to arise in the next few days and if we may then take our time to organise ourselves and with your permission do it at a more convenient time. I cannot answer that question today. But we are not going to duck it, we will face up to it.

CHAIRPERSON: Mr Ginsberg, just as far as the programme is concerned, the programme  
35 is available at the moment and we have been negotiating to have Standard Bank who stood down because of your Reserve Bank on Monday, for 6 May. So that should be the last day that a major bank testifies and perhaps you should then, if it is convenient, do that on the Tuesday, 7th May, and then you have heard all the banks and you can wrap up with whatever are your concerns.

40 MR GINSBERG: And answer any questions of this nature?

CHAIRPERSON: Of this nature that arises.

MR GINSBERG: That arise.

CHAIRPERSON: Yes, we will then accept that invitation and be here on the 7th.

MR GINSBERG: Yes.

45 CHAIRPERSON: Subject to that date being confirmed with the Standard Bank. But you can liaise with me about that date.

MR GINSBERG: Thank you very much.

MR NAIDU: Mr Chairman, I can record that yesterday afternoon there was a request by the attorneys for the Reserve Bank for the statements of the bank that testify today and this had  
50 not been requested earlier, so that process henceforth is going to be .. (intervenes)

CHAIRPERSON: As soon as the statements are available the Reserve Bank .. (intervenes)

MR NAIDU: We are going to make them available.

MR GANTSHO: Mr Bester, in terms of our scope of work we are required to advise the President on any relevant recommendations including the effectiveness of the current  
55 administrative system after affording adherence to exchange controls and in your statement somewhere you have highlighted or raised a problem that arises from the ability of non-residents to open more than one bank account with the authorised dealers. Are you suggesting there that or are you making a recommendation that this needs to be addressed, perhaps by limiting non-residents to one bank account with a local authorised  
60 dealer? --- Mr Commissioner, we specifically raised that point under the problems that we

see in the market as a statement of fact. We are certainly not making a recommendation that we should force non-resident banks only to have one bank account. I understand, as I see it, that it might be a solution but it would certainly be a retroactive step I would think.

But you have highlighted a problem? --- It is a problem.

5 You have no solution to that problem. Okay. And in your example, I think it is on paragraph 5.13.5. You are also raising or highlighting the problem there that might be regarded or characterised as unethical or illegal for that matter, where one leg of a transaction is cancelled and thereby shorting the rand. Is this example based on an actual observation that you have made or a similar incident that .. (coughing, inaudible) --- As I  
10 said earlier I do not deal personally in the market and have not done so for many years but it is an example to show how it might happen.

So it is a mere probability or possibility, you have not made any observations of an incident of that nature? --- It is just an example as to how it might happen.

We are trying to get recommendations from you. 4.1.2.1. You are saying there that  
15 the number of transactions, that your customers increased during the period under review and that these are expected to reduce in the future because of certain limits and so on and so forth. Are you referring to corporate customers of yours here or is this relating to individual allowances? --- I am specifically referring to all of our customers, specifically corporate customers to the extent that there is for instance a certain volume of imports into  
20 the country in a year or over a period. If those importers decided to accelerate the foreign currency cover for those transactions which we are allowed to do in terms of exchange control, I would see as a matter of course that they would not again be able to hedge those same imports and it would reduce volumes in the future.

That is all, Mr Chairman.

25 CHAIRPERSON: Thank you, Mr Bester, you may stand down.

#### NO FURTHER QUESTIONS

ANDREAS STEPHANUS RIBBENS d.s.s.

EXAMINATION BY MR NAIDU: Mr Ribbens, are you the head of the FNB Foreign Exchange House, a division of FirstRand Bank Limited and where you are also responsible  
30 for Treasury Operations at Rand Merchant Bank, a division of FirstRand Bank? --- That is correct.

You completed a statement which you signed, the contents of which you confirm and adhere to? --- That is correct.

And you appreciate and understand that this statement constitutes evidence before  
35 the Commission? --- That is correct.

Did you set out your qualifications and work experience in paragraph 1.1 to 1.5 of your statement? --- I did.

And does your statement constitute a knowledge and so does your evidence of matters which are peculiar to your knowledge and about which you obtained knowledge  
40 from other sources in the bank? --- That is correct.

In paragraph 2 you deal with products, markets and role which you set out indicating the relationship between the activities, its reasons and whether or not it is OTC or exchange traded? --- That is correct.

And that these set out on pages 29, 30 and at the top of 31 of your statement? ---  
45 Again that is correct.

And do you detail in paragraph 2.2.1 the specific products in which you transact which goes through pages 31, 32, 33 and the top of 34? --- That is correct, yes.

Do you have any comment having regard to what you say in 2.2.3 about whether or not these instruments given rise to a foreign exchange transaction? --- Just to the extent  
50 that we were asked to explain when it would give rise to foreign exchange transactions. Any of these transactions or any of these instruments when sold to a non-resident counter party that does not have rand to pay for it will lead to a currency transaction and by their very nature any currency against currency or commodity against currency transaction will also lead to a foreign exchange transaction.

55 In paragraph (F) and (G) you deal with corporate, your corporate finance division and your RMB special projects? --- Correct.

Is there anything you would like to add? --- I would just like to highlight that our corporate finance business is a division within Rand Merchant Bank and it is specialising and focusing on advising mostly listed companies who is not taking proprietary positions  
60 other than in preference shares. It runs a Pref Share book and for the period January 1st to

31 December last year it did not do any cross border transactions in that book.

In paragraph 2.4 you deal with equity markets and 2.5 with interest rate markets and in 2.6 you make certain comments in relation to foreign exchange. Would you like to make any additional comment to what is contained in your statement? --- Nothing in  
5 addition, I would just like to point out that you will find in 2.4 that we stated that the majority of our profits in the equity markets arise from proprietary trading, somewhat less so in our interest rate markets and in our foreign exchange activities the bulk of our profits are made from customer transactions and we made a very small percentage of our profits in the foreign exchange area from proprietary trading.

10 Would you like to make any comment further than that stated in 2.9 of your securities lending transactions? --- Just again I do not wish to make any additional comment. I would just like to draw the attention of the Commission to this sentence where we said that we were not aware of any significant or unusual short position in the market for the period where we were required to report on and, more specifically, we have very few  
15 clients, very few non-resident clients and the bulk of their activity were related to corporate arbitrage type transactions such as the De Beers/Anglo deal.

Have you provided to the forensic auditors appointed by the Commission the specific details of your scrip and stock borrowing transactions. Or you have afforded them access to that information? --- In certain instances we have provided the information  
20 required, in all other instances we have provided them access to that information.

In 2.12 you identify a few of the structures which could affect the rand. You want to highlight anything that you mentioned in this paragraph? --- I would like to start off and just mention that we were asked for deals that could affect the rand. Number one, it is not an exhaustive or exclusive list, it is a list of transactions that we felt could affect the rand and,  
25 secondly, they are examples and not specific transactions. In the first instance we said whenever a non-resident purchase or sell rand denominated assets such as bonds, equities, etcetera, it will lead to a demand for rand and thus probably strengthen the currency. Any time that a foreigner hedges a previously uncovered rand position such as bond holdings, it will affect the currency. Any cross currency swaps will result in resultant  
30 spot positions that would need to be hedged. Any profits or losses made by local banks or authorised dealers in its hedging activities in the offshore interest rate or commodities market, any profits would ultimately be repatriated back to South Africa. Any losses would need to be funded from South Africa. Any hedging activities specifically around the large mines etcetera would lead to a demand or a supply of dollars in the market and all of those  
35 type of transactions will affect the supply and demand of currency in the market and ultimately affect the price of the currency in the market.

In 2.13 you deal with rand and denominated loans to non-resident institutions. Is there anything that you would like to highlight there? --- I perhaps just need to explain that we, although we did get permission to do a loan during the period under review, we made  
40 no such loans to non-residents during the period under review.

And is it correct that all the asset based finance transactions mentioned in your statement are duly authorised, have been duly authorised by the Exchange Control division as such? --- Yes, we have in-house exchange control experts to the extent that transactions can be accommodated within the existing rulings. We would do so in the  
45 extent where we require prior authorisation, we would require that from the Exchange Control Department itself.

In paragraph 2.15.1 you describe a market making or your role in the foreign exchange market, did that role change after 13 October 2001? --- I believe my colleague will testify it became more difficult but it certainly has not changed.

50 The composition of your client base, have you made all this information available to the forensic auditors appointed by the Commission? --- We have made it available, we have detailed both by, market shares by deals and by volumes and it has been made available to the forensic auditors.

Can you describe briefly your procedure to monitor exchange control compliance?  
55 --- Yes, first we have a distinction between standard products and non-standard products. Any standard products such as spot forwards etc. through to our, dealt with our customers, I will get to that in a minute, the procedures there. Any non-standard transaction which is typically a structured type of transaction, is subject to a deal conclusion forum. The deal conclusion forum consist of experts in the field of accounting, tax, excon, etcetera where we  
60 try and make sure that before we implement a deal we have complied with all necessary

regulatory requirements and a deal will not be implemented until a deal conclusion sign off. The exchange control department is represented on the deal conclusion forum and we require specific exchange control sign off where it is deemed necessary. Then as far as standard products are concerned, that is a process function. We have essentially three  
5 different delivery channels through which we deal with exchange control to our customers. We have an electronic dealing system, we allow certain customers direct access into our dealing room through the telephone and we have a branch dealing system available in most of our branches. All of those, the adherence to exchange control is centred in 17 operation centres throughout the country where we believe we have adequately skilled staff to handle  
10 the day to day compliance with exchange control and if in need they will contact our central exchange control department to ensure that they correctly interpret exchange controls and for the rest I think I have spelt it out in detail in the statement.

And what procedures do you have in place to ensure compliance with the .. (drops voice, inaudible) --- We have a set of compliance requirements in terms of our CFC  
15 accounts. Number one, we monitor them to ensure that they are not overdrawn. That is not an exchange control requirement, it is a credit issue for us. We also match debits and credits on those accounts to ensure that we do not transgress the 180 rule. Then furthermore, whenever we receive funds from another local authorised dealer and those funds were previously in a CFC account belonging to a customer that require us to again  
20 settle that into a CFC account. The duty is on the other authorised dealer to instruct us of the original date on which the funds were received in the CFC and we duly note that when we settle the funds into the CFC account. And then lastly, funds in the CFC account may not be used for instance to subscribe to a magazine overseas, so we also have compliance procedures in place to ensure that only admissible transactions are settled over those CFC  
25 accounts.

In 4.5 you describe procedures in place to deal with monitoring of your CFC and overdrawn Vostro accounts. Is there anything that you would like to add to that? --- Just we have mentioned that, or further on in the statement, that we often have overdrawn Vostro accounts and one needs to place that into context, the majority of those overdrawn  
30 accounts would be because of settlement delays, errors where we do not receive funds from another bank that was expected on a due date and we have procedures in place to ensure that we receive funding on those accounts from the customer or that it adequately explains as a result of non-receipt of funds from another authorised dealer etcetera. And we escalate that up to the Reserve Bank.

35 Have these procedures in any way changed after 13 October? --- Are you referring to the Backing of Firm and Ascertainable Commitments?

Yes. --- Yes, after 13 October the circular that was dealt with before. Initially the circular came out. We were not quite sure of how exactly to implement the circular. There was then the consultative process of the ACI and all authorised dealers through the  
40 Reserve Bank and then the wording of a compliance letter that was agreed with the Reserved Bank and the authorised dealers and after 13 October we started requesting compliance letters from foreign banks every 14 days on a specific, every fortnight essentially, not a rolling 14 days.

And the response received is set out in paragraph 4.8.2 of your statement? ---  
45 That is correct. We have substantial difficulties getting our corresponding banks, compliance officers, to sign the compliance letters.

Regarding contraventions, did you conduct investigation that you set out in 4.9.1 and did you receive a response in 4.9.3? --- Yes, and just to elaborate on that somewhat. We had one incident where there was actual fraud committed that involved foreign  
50 currency. The funds were eventually returned and thus did not affect, ultimately did not affect the reserves of the country. Secondly, we have our own internal audit teams that inspect branches as well as the SARB's, the Exchange Control inspection department and from time to time in those reports there will be reports of some administrative controls that failed, such as the example that we have mentioned where foreign exchange have been  
55 given to a traveller more than 60 days prior to the date. So we regard those as serious and we would follow up on that but I think it is inevitable in a bank as large as ours.

In paragraph 5.1 you make the point that the specific information relating to your Vostro and CFC accounts have all been made available to the forensic auditors? --- That is correct.

60 In 5.2 you deal with the overdrawn accounts and in 5.4 your daily spread. Is there

anything you would like to add to that? --- No, it is perhaps just interesting to note in 5.2.2 that foreign Vostro account holders on average hold a positive balance and thus contribute to the reserves of the country.

Thank you, Mr Chairman, I have no further questions.

<sup>5</sup> CHAIRPERSON: We will adjourn then for 15 minutes.

PROCEEDINGS ADJOURN:

PROCEEDINGS RESUME

ANDREAS STEPHANUS RIBBENS: s.u.o.

CHAIRPERSON: Any questions, Mr Ginsburg?

MR GINSBURG: If I may just ask one question of Mr Ribbens, Mr Chairman. Mr Ribbens,  
5 on page 46 of your statement, paragraph 4.4, you referred to exporters and the  
administration of their accounts which are known as CFC Accounts. --- That is correct.

And you have explained to the Commission that you have specific procedures in  
place to administer those accounts. --- That is correct.

Does your bank have any difficulty in administering the CFC Account? --- We  
10 certainly have, I think my colleague has testified earlier on that it requires a manual process.

So to the extent that it is a manual process, we would prefer not to have to do it. But it is  
not, it is as simple as when we settled out of a CFC Account. We will, the system will  
generate the MT100 if it goes to another authorised dealer. We would need to manually  
capture the date on which the funds originally entered the CFC Account. There are some  
15 difficulties with it. If we for instance transfer \$10 million and the \$10 millions consists of  
funds that came in at different times, we need to specify each one of those. So it is much  
like any of the other exchange control requirements. It is a manual process. It is not rocket  
signs but it costs us money to do it.

And apart from some administrative wrangles here and there, the process as a  
20 whole is, you are able to administer effectively and efficiently? --- It is easy. Let me just  
deal with both sides. (indistinct) that funds. It is relative simple to do that, we need to  
advise the authorised dealer that the funds, as I have explained before. There are more  
difficulties when we receive the funds from another authorised dealer because we need to  
scan every incoming transaction to ensure that the other authorised dealer did not provide  
25 us with details and if so we capture it manually. So it is a manual process.

Just one moment. Yes, thank you Mr Chairman. That is all we want to ask.

CHAIRPERSON: Any questions by the commissioners?

NO FURTHER QUESTIONS ASK BY ANY OF THE PARTIES

CHAIRPERSON: No questions asked, Mr Ribbens. Thank you. You may stand down.

30 NO FURTHER QUESTIONS

MR NAIDU: Mr Chairman, before the next witness commences with his evidence, if I can  
just put something on the record.

CHAIRPERSON: Yes.

MR NAIDU: You will have noticed that there are no submissions in these statements in  
35 regard to an economist on behalf of FirstRand Bank. The reason for that is quite simple  
and that is that the Commission themselves called merchant banks upon Mr Gouws.

CHAIRPERSON: Yes.

MR NAIDU: And I would just like to place on the record that FirstRand Bank associate itself  
largely with the duty expressed.

40 CHAIRPERSON: As Mr Gouws expressed earlier on. Thank you.

GREGORY LANCE KATZ: d.s.s.

CHAIRPERSON: You may be seated, Mr Katz. --- Thank you.

EXAMINATION BY MR NAIDU: Mr Katz, are you the Head of interbank trading and  
customer dealing for FirstRand Bank? --- I am.

45 And do you set out your qualifications, experience and your responsibilities in  
paragraph 1 of your statement? --- I do.

And do you confirm and adhere to the contents of the statement? --- Yes.

And do you appreciate that this is evidence now before the Commission? --- Yes.

You have in your statement dealt with the bank perspective regarding the so-called  
50 "hot trading days" which you identified in 2.1.1 to 2.1.3. Do you want to say anything with  
regard to the records kept by the bank or otherwise in relation to these days? --- Just to  
say that the records are always available. The dealer will not remember exactly what price  
the rand might have traded or any currency for that matter. Going back in history, if one  
wants to check those reports, one would be able to recollect what transpired.

55 And you wanted to highlight in paragraph 2.2.2 some general trading principles  
regarding the details on these "hot trading days". Would you like to add anything to what is  
contained here? --- Just to say that the trading hours, the official trading hours of the rand  
will be quote to market maker are from 08:30 to 16:00 South African time. Mention has  
been made of the spreads and how those have widened which we have a summary at the  
60 back in terms of how wide those spreads moved during the course of those "hot trading

days" and to say that the spreads in the market place are really reflective of the volume of the transactions, the time of the transaction and the liquidity of the market at the time that the price is asked for and obviously the credit worthiness of the counter party.

And then you are referring to the information contained, which was spreads quoted  
5 by Reuters in pages 57 to 71 which is the annexure attached. --- That is correct.

In 2.2.7 you identified the reasons for the spreads during this period. --- That is correct.

Would you like to add to what you have stated there? --- I think it is covered.

In 2.3 you deal with economists' and desk head's market views and strategies. Is  
10 there anything that you would like to add to what is contained in your statement? --- It is covered in the statement just to say that obviously when people look at the markets, different factors contribute to the decisions taken in taking a decision and these factors include flows that take place and that the flows take place in the market place obviously will give a view of what other people are perceiving that will take place within the currency.

15 Thank you, Mr Chairman. I have no further questions.

CHAIRPERSON: Just in regard to the last two pages of your statement. The one is that you say the sentiment over the period, I think that is the period of volatility that you are talking about, was negative. Is that correct? --- That is correct.

And then when you say that the general market view of the rand towards the end of  
20 the year was bearish. Does that mean negative? --- Yes, bearish we are talking in terms of rands abolish for the dollar.

Abolish for the dollar? --- That is correct.

Any questions?

MS QUNTA: Paragraph 2.3, Mr Katz, on page 55. You say there:

25 "2.3.1 In determining trading strategies, the Foreign Exchange Trading Desk traders will take into account market information from a broad spectrum of sources."

And then you mentioned them there. How do those, can you give me an example of how such information will impact on the trading strategy, a practical example? --- Assuming it is a fresh day where there is nothing in the market place, when one comes in the morning,  
30 one will read the various commentaries on the news wires to see what people see happening during the course of the day. Is there economic news taking place? Are there any political factors that can contribute to the movement of the currency? One must bear in mind that the rand is one of many currencies that are traded. So the same movements can take place in any of the major currencies or some of the emerging market currencies as  
35 well. One reads these commentaries. Some of the commentaries are based on economic news. Some of the commentaries are based on merge and acquisition flows that might take place. Some of the commentaries pages that are read, are done on people that follow charts which see the rand breaking or the currency breaking various levels and all these are put into your mind to see what might drive the market. One must remember that nobody is  
40 bigger than the market. So there are, our view is that we might take as a bank, should fit in or be used where we speak to other counter parties. If for example some of the companies in South Africa decide to take their cover, be it importer/export cover, the decision that they are basing it on, is either to do with the need for them to have the funds available and the timing is based upon what economic factors and the views that they have read within the  
45 market place.

And would that then affect the decision that the trader take? --- That would definitely have an impact in affecting his decision or hers.

We have also heard evidence that often what comes through and you have mentioned the wire news, it is just a headline and we have heard evidence from various  
50 witnesses that often because of the pressure, it is just a headline that that make people .. they do not have time to read the whole story. --- That is correct, yes.

I have no further questions.

NO FURTHER QUESTIONS BY ANY OF THE PARTIES

CHAIRPERSON: Thank you very much. --- Thank you.

55 NO FURTHER QUESTIONS

MR NAIDU: Thank you, Mr Chairman. That concludes the evidence on behalf of FirstRand.

CHAIRPERSON: Yes.

MR NAIDU: With your leave, Mr Chairman, we have an opportunity and then we make use  
60 of the opportunity to present the evidence of Mr Rudolf Gibbs who is the president of ACI

South Africa.

CHAIRPERSON: Yes.

RUDOLF GIBBS: d.s.s.

EXAMINATION BY MR NAIDU: Mr Gibbs, are you the president of ACI South Africa? --- I  
5 am.

And is your *curriculum vitae* attached to your statement marked A on page 8 of the bundle? --- It is.

You have made a statement which constitute pages 1 to 7 and you confirm the contents of this statement? --- Correct.

10 And you accept that this is going to be evidence before the Commission? --- Correct.

ACI is a chapter, if you can describe it of ACI International. --- Correct.

ACI International was founded in Paris in 1955 and its foundation, and correct me if I am wrong, was justified by the fact that foreign exchange markets had been largely  
15 unregulated. --- Exactly. That was a move towards self-regulation by market participants.

And there was then a need for a uniform and internationally recognised code of conduct for the purpose of regulation. --- Correct.

ACI South Africa which had originally been The Forex Club of South Africa was founded in 1978. Am I correct? --- Correct.

20 And can you describe its membership? --- I think it is defined in point 7, the membership that is really individuals that are employed by authorised dealers and license broking firms. These 30 organisations employed roughly 450 dealers in the foreign exchange discipline, 300 of which are ACI members and membership is voluntary.

And does it mean then that any codes which had been established by ACI, are not  
25 applicable to the non-members? --- Yes, that is correct.

Is ACI South Africa governed by an executive committee consisting of 10 persons who are employees of these authorised dealers and license broking houses? --- Correct.

The main business of ACI South Africa is set out in paragraph 14 of your statement? --- That is correct.

30 And you describe in paragraph 15 onwards the code which is referred to in paragraph 4 of your statement, the ACI Model Code. --- That is correct.

Is there anything you would like to add regarding this code further to what is contained in your statement? --- I certainly would. Just with reference to paragraph 16. It is a fact that emerging markets in general have no formal code or adopted a formal code as  
35 opposed to major financial centres.

CHAIRPERSON: In paragraph 19 you talk about an examination programme. Does ACI South Africa put traders through an exam? --- We do indeed. It is a global standard which is delivered electronically.

40 And does the trader have to pass before the trader can trade or not? --- It has not been formalised in South Africa, Mr Chairman. We are in the process of negotiation with our members as well as organisations and the authorities to formalise the process whereby very similar to your exchange traded products, SAFEX dealers for argument sake will have to sit the exam before he could trade. Incidentally in the Middle East that is a formal requirement that you passed the examinations before you trade.

45 And you refer to the Middle East, but other countries? --- It has been adopted in Australia only recently. They have accredited some 3 500 people and should we pull it off in South Africa, we can expect a similar response.

Right. Thank you.

MR NAIDU: In paragraph 23 you deal with the procedures for breaches of the code. Can  
50 you just briefly identify what happen if any dealer is suspected of or accused of having breached the code? --- In international practice and obviously locally here as well, is a consultation with the so-called transgressors. Should the dispute not be resolved at this level, consultations would take place with both the employer and the central bank.

55 --- What action, if any, apart from the consultation, is taken against the transgressor? Certainly disqualification from membership and as parts, or if not all, of the code is adopted in employers' employment contracts, there is some form of recourse and there are isolated incidents which has resulted in dismissal of transgressors.

Are you able to give us an idea of how many since you became president? ---

60 They are few and far between. We generally find that members are outstanding citizens. I think we must assume that.

Alternatively you might not have had sufficient evidence against them. ---  
Alternatively. That is correct.

You deal also on page 4 with the Committee for Professionalism. Is that a committee in ACI South Africa? --- The executive committee, there are members that are  
5 charged specifically with this portfolio.

CHAIRPERSON: And the committee you are talking about here, is that an international committee? --- That is a global committee.

I see from the membership, it must be a global committee. --- That is a global committee and it refers to paragraph 27 the actual constitution of that committee.

10 MR NAIDU: And the chairman, an ABSA official. --- That is correct, yes.

On page 5 you deal with the education initiatives. Can you just briefly describe this? Is there anything that you would like to add there? What do you mean by an examination programme? --- Well, education from an ACI perspective, is really a cornerstone of ACI where given the fact that foreign exchange markets have been and still  
15 are largely unregulated whereby market participants impose a form of self-regulation upon themselves being this Model Code and education around that so that our members become theoretically as well as technically skilled within their profession. The examination programme is very unique in that all exams are individualised. So no one person writes the same exam.

20 And is it contemplated in negotiations under way to establish or to create a degree course at a local university? --- It is a global drive to take the theoretical skills to the highest level.

You identify the way forward. Is there anything that you would like to highlight? --- Just perhaps reiterating an earlier statement that should the process or our process be  
25 formalised, we could expect a similar response to that in Australia whereby a large number of market participants, not necessarily members of the association will become accredited.

You respond to the evidence given in this Commission by Mr Langley. Do you want to deal with that? --- I think it is pretty clear that we totally disagree with his statements.

30 Has Mr Langley been a member of ACI South Africa? --- He certainly was, yes.

And what do you know about his involvement with the banks and his work history, if anything at all? --- Little. I know the organisations he used to work with, yes, before.

Who were they? --- They were ABSA or the Allied Bank initially and then ABSA. He spent some time with Gencor and I think he finished at Credit Agricor.

35 Thank you, Mr Chairman. I have no further questions for this witness.

CHAIRPERSON: Any questions?

MS QUNTA: Mr Gibbs, I saw your statement a few minutes ago for the first time and so I have just gone through it quickly. I wanted to ask you first of all you say in paragraph 22 that many banks and other entities have incorporated a code into their internal codes. ---  
40 That is correct.

Now are you aware of how many banks there are? You say many banks. What does that mean now? All the institutions in the country or half of them or 50%? --- Madam Commissioner, without having studied the various employment contractors, it is just purely a word of mouth bearing in mind that this code of conduct has been globally accepted as the  
45 standard for best market practices although not formulated formally in South Africa. It is for employers to incorporate such behaviour into their contracts.

But are you able to say that all banks, it is many banks, it is not all the banks, that are incorporated .. (intervenes) --- I am unable to say if it is all banks. I would certainly say that where our members are employed that code has been taken into consideration.

50 And you talk about the procedure for breaches in paragraph 23. How do these breaches come to your attention? First of all I assume this is a voluntary code. --- It is a voluntary code.

There is no obligation. How do the breaches of the code come to your attention?

--- Given the position of ACI, we have been recognised as the individual members' mouthpiece and it is the individual members who bring disputes to our attention and we  
55 would deal with it ... (intervenes)

Being the authorised dealers? --- Being the authorised dealers, yes.

And are you able to give the Commission statistics in relation to breaches that have been reported to you? --- As I say there had been few and far between internationally  
60 perhaps. Locally there are really very little to speak of only in light of the Commission and

allegations that have arisen from them had they come to our attention.

No, I mean generally. Not necessarily ones that falls within our terms of reference.

--- In fact one over the years.

Over how many years? --- Over my involvement since as an officer-bearer over  
5 the last eight years.

So over the last eight years, only one breach of your code has been brought to your  
attention? --- Correct and incidentally it resulted in the dismissal of the individual. I do not  
think I am at liberty to state that. It involves one of the organisations and they may testify to  
that fact.

10 And are you able to say whether that is the only breach that has occurred? --- I  
can safely say that, yes.

On what basis would you say that? Do you do inspections of your members? ---  
We have not yet, we do not have such a process involved bearing in mind that our  
membership is made up of individuals and it is not organisations.

15 So you in effect for what you state now, you depend on the members bringing  
breach to your attention? --- 100% integrity and the honesty of members, yes.

So you do not actually know what happens whether those are the only breaches  
that occurred because you have no .. (intervenes) --- I would not know.

And let me take you to your comment on Mr Langley's statement then, the fourth  
20 paragraph at 41. You say there that Mr Langley made allegations of misinformation, false  
transactions in the industry and you say that you disagree with that statement. --- Correct.

Now Mr Langley's statement was, his evidence was given in the first week of the  
Commission and as I recall, and we can check the record, he mentioned certain examples  
of practices that traded in the industry, getting involved in and I do not believe or I do not  
25 recall him saying that all traders do that. --- I think it was an interpretation by the press that  
led to this response which was made public as well.

But I think it would be better for you to look at his statement to see what he does.

The press is not always reliable in terms of conveying because they do not have the space  
besides anything else to convey every detail of the evidence. But I want to say then that in  
30 view of what you have just said to me that you do not actually do inspections and you do not  
have first-hand information of what occurs on the trading floor. Are you then able to actually  
disagree with Mr Langley who was a trader and explain to the Commission what happens  
on the trading floor? --- Absolutely bearing in mind that our membership, they are traders  
and this is where we get our first-hand news from. We are certainly not a regulator where  
35 we conduct inspections as such. We only create a forum and a platform whereby issues  
relevant to our market place, are discussed and that is critical to our formation and updating  
the exact foundation of our industry. With regards to Mr Langley, I had view of his testimony  
and he said what he said. It certainly could be interpreted that he slanted the industry as a  
whole and therefore it not only had local repercussions but certainly international  
40 repercussions where the association globally felt that we should respond to the testimony to  
fend the integrity of our industry.

No, I understand that. What I am saying is Mr Langley was in fact not the only one  
who mentioned examples. Let us take one example of traders conduct. We asked several  
witnesses and the first witness who actually testified to some of the practices, and we  
45 certainly, I am not suggesting that that takes place here. I am referring to the evidence that  
was led before this Commission. The witness from the BIS who talked about the Code,  
mentioned that some of the practices that occurred and he mentioned that some of the  
same practices that Mr Langley, for example two people deciding to do a trade when in fact  
there is no intention that that trade should take place and then in the afternoon calling off  
50 that trade but by the time they called the trade off, the currency had moved. Now the BIS  
witness said that that takes place internationally. Is it your evidence that no incident like that  
takes place in this country at all? --- I cannot state that categorically.

So therefore Mr Langley's evidence of ... some of his experience needs  
interpretation of what happened, you cannot really dispute that in total. I do not believe, and  
55 we can check the record, that he said everyone in this country does that because you would  
not be in a position to say that. --- Exactly.

I have no further questions.

CHAIRPERSON: Any further questions?

MR NAIDU: Mr Chairman, just one question in clarification.

60 CHAIRPERSON: Yes.

MR NAIDU: Mr Gibbs, you said in your evidence that this is a voluntary code. I would like to understand what you mean when members apply to join ACI South Africa, do they commit themselves to subscribing to the code or is it left to each member as to whether he or she intends to subscribe to the code? --- By implication joining the association you  
5 automatically submit yourself to the model code.

I have no further questions.

CHAIRPERSON: Thank you. Thank you, Mr Gibbs. --- Thank you.

NO FURTHER QUESTIONS

CHAIRPERSON: The Commission adjourns until tomorrow morning at 10:00.

10 PROCEEDINGS ADJOURN