PROCEEDINGS RESUME ON 4 APRIL 2002:
NIAL McDONALD ANTHONY SMITH d.s.s.
EXAMINATION BY MR BROOKS: Mr Smith, will you please just tell the Commission what position do you hold at Deutsche Bank or at Deutsche Security? --- I am a director of Deutsche Security, a wholly owned subsidiary of Deutsche Bank and I work in the structured equity transactions room .. (drops voice, inaudible)

You are not a director of Deutsche Bank AG? --- No.

Now Mr Smith, you have prepared a witness statement which is in the bundle before you. Would you please confirm the content of that witness statement? --- I confirm the content of it.

And then if I could please ask you to deal with your witness statement. I understand that you will be dealing with your statement with reference to some graphs or whatever, slides that you will be shown, is that correct? --- That is correct.

Just to make it very clear that when you refer to slides or graphs please note that you cannot use a torch to highlight anything. Please remember that when you refer to the slides to indicate very clearly what you are referring to so that a reader of the record will understand that part of the evidence. If it is on a particular page number such as A, B, C please also refer to that page number very clearly. --- Right.

Can I just suggest the following, when Mr Smith gets to the evidence relating to the implementation of these transactions which is very complex evidence and are complex transactions, we will use the benefit of the slides. Should, however, at any stage anything not be clear, could I please ask that you interrupt at that stage already because if you lose him once you have lost him for always on these transactions. They are extremely complex, I repeat that. To get a clear understanding we must then interrupt and question him then to understand that transaction. So if we could please have that arrangement.

Mr Smith, it is up to you. --- Thank you. I hope to show that these complex are actually quite simple but they might appear complex at first and certainly there is a lot of detail in the transactions and that is why the statements appear, are so long and appear so complicated. On page 1, to read the witness statement, this is before the Commission of Enquiry into the rapid depreciation of the exchange rate of the Rand regarding certain asset swaps.

1. The Purpose: The purpose of the statement is to explain the following asset swaps arranged by Deutsche Securities Ltd. The asset swap arranged for Sasol Ltd during February 2001, the asset swap arranged for Nampak Ltd during July and August 2001 and the swap arranged for M-Cell Ltd during January 2002. It will be shown that none of the asset swaps gave rise to or contributed in any way whatsoever to the rapid depreciation of the Rand in the last quarter of 2001. It will also be shown that the asset swaps were entered into for sound commercial purposes and that the transactions entered into by the Deutsche Bank Group in connection with the asset swaps and in consequence of the resultant exposures and funding positions are legal and ethical. We will also show that none of these transactions were for speculative purposes.

2.Arrangement of statement:

CHAIRPERSON: I think, Mr Smith, where it is obvious to us, like in paragraph in paragraph 2, you need not read to us. --- Thank you.

The statement consists of the following parts. First of all an overview, part 1; the Sasol asset swap, part 2; the Nampak asset swap, part 3 and the M-Cell asset swap, part 4.

Deutsche Securities: I am a director of Deutsche Securities, a wholly owned South African subsidiary of Deutsche Bank AG. Deutsche Securities is a member of the JSE Securities Exchange, South Africa and carries on the business of dealing in equities. By equities I mean shares, options on shares and other securities and financial instruments, the value is based on or derived from shares. In the course of its business Deutsche Securities trades in JSE listed securities for its clients and for its own account. It advises on, arranges, executes and settles transactions in equities for its clients prior to entering into the transactions for various purposes such as the making of new instruments, the restructuring of investments or business interests and in financing of new ventures or acquisitions.

Background of Deutsche Bank: In considering the asset swap transactions it is pertinent to understand the context within Deutsche Bank within which Deutsche Bank operates in the South African market. Deutsche Bank established a representative office of two people in South Africa on 8 April 1980. Following the first democratic elections in South Africa in April 1994 Deutsche Bank resolved to establish a significant presence in this country. According

Deutsche Bank buys a 50% shareholding in Ivor Jones, Raw & Co, a firm of stockbrokers on 1 January 1996 and purchased the remaining 50% of the company on 1 January 1997. The company is now named Deutsche Securities (Pty) Ltd. Deutsche Bank AG established and capitalised a branch, Deutsche Bank, Johannesburg branch in South Africa in March 1998. Deutsche Bank, Johannesburg became government bond primary dealer on 1 April 1998. The second part of that sentence should be erased, and the banking licence was issued, that should be raised from the end of the sentence please. Deutsche Bank Johannesburg became authorised dealer in foreign exchange on 25 March 1999. Deutsche Bank Johannesburg is now the leading market maker in corporate and government bonds, foreign exchange and .. (indistinct) bills. Deutsche Bank Johannesburg indeed managed R9 billion worth of domestic corporate bonds in 2001 including the first Rand denominated bond for foreign multi national corporations. Deutsche Bank grants Euro denominated credit facilities to large South African corporates, public enterprise and the South African Reserve Bank amounting in aggregate to hundreds of millions of Euro's. Deutsche Bank also extends credit lines for a large number of counterparts for Rand denominated financial transactions. Today Deutsche Bank employs over 200 people in South Africa and offers its clients a wide range of world class products and skills. Through its Lingune programme Deutsche Bank seeks in partnership with African Harvest to transfer such skills to formerly disadvantaged South Africans. The Board of Managing Directors of Deutsche Bank AG approved in February 2001 the establishment of the Deutsche Bank Africa Foundation during 2002. That will substantially increase Deutsche Bank's existing social investment programme in South Africa and Africa. The asset swap transactions were implemented by a structured equity transactions group in Deutsche Bank to which I belong. SETG provides solutions to different financial problems presented by clients, particularly in raising capital. The SETG team has, for example, provided R722 million in financing for black economic empowerment transactions in South Africa in the past three years. This has enabled black empowerment groups to gain exposures to M-Cell, PQ Africa and People's Bank. Deutsche Bank paid R290 million directly to black empowerment groups for investment in a variety of projects. This represents one of the largest amounts placed in the hands of black economic empowerment groups in South Africa. The beneficiaries have included 15 empowerment consortiums including trade unions, black business groups and charitable organisations. Deutsche Bank South African equities, economics and company research and its international sales capability are also integral to the three corporate asset swap that it has concluded. Credibility with international fund management in South Africa, equity research and sales is vital in motivating them to buy equities that are subject to the asset swaps. Deutsche Bank has over the past six years aggressively and successfully sought to produce and sell South African equities research to international investors in Europe, the United Kingdom and the United States. Dedicated South African sales teams in London and New York have regular contact with most international portfolio investors with interests in South Africa. The international success of the Deutsche Bank South African team in the research and sales is illustrated in several independent surveys that have rated the team in first place. These include the institutional investor survey 1998-2001; the Reuter survey in 1997-2000; the Greenwich survey in 1999-2001 and, just to point out, these are all international surveys, those three. And then the Financial Mail survey, local survey, in 1997-2001. The foreign investor survey by Deutsche Bank have been a consistent source of nett inflows of portfolio capital into the country since 1996. Equity portfolio inflows have been an important positive contributor to the financial accounts of the balance of payments. The corporate asset swaps I will explain were undertaken in the context of Deutsche Bank's commitment to South Africa and its credibility and strength in motivating its national investor to buy South African securities.

Could you just stop there for a moment please. --- Yes.

If we look at the Deutsche Bank Group, we have got Deutsche Bank AG which is the German registered entity, is that correct? --- Correct.

And then we have a branch which is Deutsche Bank, Johannesburg? --- Correct.

Is that correct? --- That is correct.

So that is a branch of Germany? --- Correct.

We also have, and this is a name we see a lot of and hear a lot of, is Deutsche Bank London? --- Correct.

Is that the same as Deutsche Bank, Johannesburg, also just a branch of let us call it the holding company? --- That is correct. From a legal point of view Deutsche Bank London is a branch of Deutsche Bank AG, that is correct.

And then just to complete the picture, just tell us where does Deutsche Securities (Pty) Ltd fit into that picture? --- Deutsche Securities (Pty) Ltd is a member of the JC Securities Exchange and is a subsidiary, a wholly owned subsidiary, of Deutsche Bank.

AG? --- AG.

At the end of the day when Deutsche Bank AG brings out its annual financial statements you will find London, Johannesburg and Securities consolidated into that statement? --- In terms of the AG's statement?

Yes. --- Correct. Perhaps I should explain an additional point, that for exchange control purposes Deutsche Bank London and Deutsche Bank Johannesburg are separate entities and that is because for exchange control Deutsche Bank Johannesburg is a resident and Deutsche Bank London is not.

Thank you, please continue. --- General overview of assets .. (intervenes)

MS QUNTA: Before you continue, Mr Smith, this statement is on behalf of Deutsche Securities, is that correct? Are you here to speak on behalf of Deutsche Securities and will you be able to speak for and on behalf Deutsche Bank Johannesburg? --- I am here on behalf of the Deutsche Bank Group. What Deutsche Bank has tried to do is collect all the information from all these different entities and I would try and answer all the questions you have for Deutsche Bank London, Deutsche Bank Johannesburg and Deutsche Securities. It is possible, because I do not work for either London or Johannesburg, on occasion I might have to refer the question but the intention is to answer all your questions completely.

Thank you. --- General overview of asset swaps. The exchange control regulations 1961 prohibit South African residents, including South African corporations from transferring money or securities to non-residents except with the approval of the Reserve Bank. This effectively means that South African corporates may not make foreign investments without the prior approval of the Reserve Bank. The Reserve Bank has indicated that if a South African corporate wished to make a foreign investment, the corporate may request an authorised dealer to make application to the Reserve Bank on behalf of the corporate for the approval. The Reserve Bank has indicated that it will consider any such application on the basis *inter alia* of national interest and that it may permit the investment to be funded in whole or in part by way of an asset swap. The term asset swap is used by the Reserve Bank to refer to an arrangement whereby a South African resident makes or pays for a foreign investment using South African assets in circumstances where a non-resident invests an equivalent amount in South African assets. The Reserve Bank typically reserved the right to call on South African residents to repatriate foreign investments if and to the extent that the non-resident sells its South African investment and the sale results in a flow back. The Reserve Bank has not published any guideline as to the manner in which asset swaps should be structured and they can and are structured in many different ways.

MR BROOKS: Mr Smith, will you just stop there please. --- Yes.

You have referred there to asset swaps and your understanding of asset swaps. While we are dealing with that could you just tell us what your understanding is of a share placement as opposed to an asset swap? --- Yes, a share placement, we have some definition on page 6(m) and that refers to placement of shares. If I may just read that if I may: "The term placement is a term an art and particularly refers to an issue or sale of shares by an issuer or seller of shares or by an agent of any one of the aforementioned to counter parties on a solicited basis. This term, placement of shares, is used interchangeably with the term sale of shares." So that handles the question on placement of shares. I am being advised to read the purchase and sale of shares as well.

Please do so. --- "A purchase of shares would typically involve the payment by the buyer of shares to the seller of such shares of a purchase price in exchange for delivery of the shares with the intention that the ownership in the shares would be transferred from the seller to the buyer. The sale of shares would have a corresponding but opposite meaning."

But in so far as your definition in regard to placement of shares does not contain a reference to delivery of shares, the passing of ownership as we have in the purchase of shares, can we take it that that is also to be read into that definition? --- Yes, I think it is market speech if you like, the terms are used exchangeably in my experience.

But you also mean there that there is delivery and an intention to pass ownership? --- Correct.

In your placement of shares definition? --- Yes.

Thank you. --- 5.4, I believe. Foreign investments that are funded by way of asset swaps often have an impact on the Rand. If I may digress here for just a second. First of all I am talking here about an impact on the Rand, I am not talking reserves, neutrality or that concept, those are different concepts. In terms, and we will get to that later. And what we mean by an impact on the Rand here, let us take the example, let us say a foreign investor sells government bonds, R150 bonds, to fund purchase of shares. That may very well have an impact on the Rand in terms of if those bonds were sold to fund the purchase of shares. So this is a concept that we will come back to but I just highlight it here. I will also show that the asset swap that we conducted did not impact the Rand and did not give rise to the rapid depreciation in 2001.

I think we are going to get there a little bit later, the sale of bonds etcetera, let us leave that and we will continue and get there in the right order. --- Right. One reason is that the foreign investor may sell a pre-existing South African investment to acquire a South African investment, to acquire a South African investment under an asset swap. Another reason is that a foreign investor may seek to hedge certain risks relating to a South African investment and by hedge we mean reducing the risk of buying an asset. It appears from evidence given to this Commission by representatives of the Reserve Bank, that the Reserve Bank is of the view that possible short term advantages of asset swap mentioned in 5.5 above are outweighed by the long term advantages of permitting South African corporates to expand into offshore markets. I would just like to point to a statement made by the Governor of the Reserve Bank, Mr Tito Mboweni, who said "unless such profitable investments are matched by an equally profitable offshore investment by South African company, the negative dividend gap will widen". Asset swaps facilitate this process by allowing corporates to reduce their cost of funding offshore expansion.

General: Although the Johannesburg branch of Deutsche Bank Johannesburg and the London branch of Deutsche Bank London form part of the same legal entity, DBJ is regarded as a South African resident and as a separate entity for exchange control purposes. See Regulation 17 of the Exchange Control Regulations. For purposes of this statement I accordingly assume that DBL and DBJ are separate legal entities. References in this statement to Deutsche Bank include both such branches. Annexure A which is on page 6L and 6M of part 1 of the statement contains definitions and explanations of certain market terms which I intend using in this statement.

Mr Smith, I think it may be a good idea just to run through that glossary now. Would you turn to page 6L and give us a brief overview of the definitions as contained there? You do not have to read it word for word, you can just in your own words explain to us what the flow back is etcetera?

MS QUNTA: Mr Brooks, I think unless it is very long, when we are going to go through the record in a month's time or so, I think it is important that we get as much as possible on the record because sometimes it is difficult to cross-reference between the statement and the record because the record is always more useful. So unless something is extremely long I would prefer that as much as possible is read into the record.

MR BROOKS: Mr Commissioner, are we going to have this witness brought?

MS QUNTA: Yes, I know but I think it is not convenient for me, Mr Chair, if we have to jump from the witness' statement to the record.

MR BROOKS: Well Mr Smith, why do you not spend a lot of time and read the glossary terms which we can read ourselves, read it onto the record. --- Yes, I think it is a good idea to read it. Flow back. I must just say here when we are talking about flow back, we are talking in connection with asset swaps because I think that is the intention of the definition.

That is what we are dealing with. --- Yes. Flow back involves sale of shares purchased by a non-resident in terms of an asset swap to a resident. So the term is clearly understood what flow back means. What is not clear is whether flow back includes a sale by a specific non-resident of shares not purchased in terms of the asset swap but being shares of the same issuer as the shares purchased in terms of the asset swap. In other words, to say that in English, if a person has purchased some shares, let us say 1 million shares and then in terms of the asset swap purchases 100 000 shares. If they now well 200 000 shares, you know, first of all we can say well which shares did they sell, did they sell the part of the million shares or did they sell 100 000 of the 100 000 shares that they first purchased. So there is a question there but we do understand what the term flow back means, that it is the sale by a non-resident to a resident.

Thank you, continue.

CHAIRPERSON: Just in regard to flow back because it is so important. It may be difficult causally to connect the one to the other but conceptually it is the flow back of the very shares that form part of the assets. There is no question around that. --- We are very clear, we are very clear on what flow back means, it is the sale by a non-resident in terms of the purchase by the asset swap to a resident. So there is absolute clarity on what that means, there is no confusion. What I refer to simply a practicality as we heard yesterdays, shares themselves have no identity specifically so when someone sells shares we know it is a sale but we are not sure it is a flow back.

And does that mean that you would have difficulty if you were monitoring flow back as you may be obliged to do by the Reserve Bank? --- Deutsche Bank takes this concept very seriously and we have great efforts involved in monitoring all of the sales which may be flow backs and what we have done to date is we reported on the sales and we say to the Reserve Bank you know these are the sales and again we assume that they could be flow backs but we are not sure.

So you simply record the sale? --- Exactly, we incorporate all the sales and say these are all the sales and they could be flow back. But the term is very clear.

MS QUNTA: Perhaps Mr Smith, you can come back to this because I find it an interesting question, the question of saying that you are not able to identify the shares that flow back. How are you able to monitor then. I do not know if you want to talk about that now? --- Yes.

If you sell 100 shares to someone and you have a transfer in the ordinary course of the sale of shares, ownership passes, in terms of the Companies Act once it is put in the register but in the normal course of commercial transactions once the party receives the delivery of the share transfer form. That transfer form would contain the number of the shares, say 100 shares, 100 Sasol, M-Cell, Nampak shares. Now those shares are sold to a non-resident and then say for example 50 of those shares come by way of flow back into the country. Are you saying it is difficult to establish the identity of those shares? I do not understand why you are saying it may be more difficult to identify the shares and therefore, and we heard yesterday too Sasol said that they may have a problem identifying the shares but I do not understand the difficulty because you have a share certificate? Or unless I am not understanding what the problem is.

--- What you have said is correct in terms of previously there was a share certificate, on strait(?) there is no longer a share certificate. Let me talk pre-strait. A share certificate had a number per certificate. So if you bought a million shares you had certificate number 1. Your million shares. If Mr Brooks bought 100 000 shares he had certificate number 2. Now if you decided to sell 300 000 of your million shares, you would return your certificate of a million shares back to the Registrar. The Registrar would split that certificate in two, give you back another certificate of 700 000 shares which might be certificate number 1 but it might be certificate number 64 and the other 300 000 shares would now get a new number. So in other words, your certificate number 1 has now been broken into two certificates and this may happen as often as there is a trade. That is pre-strait. Post-strait, the records are as I, and I do not understand strait fully, but the records are electronically held, there are no certificates at all, there are simply a balance in your account of how many certificates you own. So it will simply reflect that you own a million Sasol shares or some other number and there will not be a certificate number attached. And if you sell 100 000 shares your balance will be updated to 900 000 but it will not be clear, you know, which shares are which. So from that point of view, in my understanding, shares have no identity. That is one of the practical problems that we look at when we look at flow back. But I must say again we are not confused by the term flow back, we know what flow back means. It is clear that it is a sale by a non-resident to a resident. However, it is just a case of practicality of working out I sold Mr Brooks a certain number of shares, some of which he sold back but he owned the shares. Did he sell the shares that I sold him in terms of the asset swap or did he sell some of his other shares. So in accounting terms we would look at something called was it last in, first out? The shares that he purchased last, did he sell those first or was it first in, first out accounting. First in, first out accounting is the shares that he purchased first he sold first and the two different accounting methods, last in, last out or first in, first out give a different result. That if he purchased the shares under the asset swap last, the last in, first out would be a flow back and the first in, first out would not be a flow back. But they both were sales.

I think my question is even with strait, and I believe that strait was meant to simplify proceedings of movement of shares, but I would be very surprised if strait was meant to obfuscate the ownership of shares and the movement of shares. Surely that could not have been the intention of strait. But are you saying that you are not able to identify shares that come back in the flow back because there is no share certificate or are you saying that it is difficult, it is more difficult than pre-strait --- I am saying both pre and pro strait, the pre-straight where there was a certificate number, you can go and change your certificate number by handing it in to the Registrar, splitting your certificate, your one certificate into two and getting new certificate numbers.

I understand the process. You see, I think what I am trying to establish from you, may be simple things, even with strait the movement of shares and who those shares belong to and what type of shares they are, is it your submission that you are not able to identify shares, you are not able to track the movement of shares because of the strait? --- No, our submission, what we do is we assume when a buyer who has purchased shares, our submission will say if that buyer sells any shares, even though we do not know which shares he is selling or she is selling, any shares that that persons sells we track as possible flow back. That number we then, the whole number even though it could be an over-estimation of the flow back, we report that whole number to the Reserve Bank. We then say this is probably too conservative, we are being too conservative by over-reporting because in some cases the sales may not actually be flow back but not knowing we report, in other words, we over report and we give a full position of all the sales, only a part of which may be flow back. So from the flow back point of view we take a conservative stance in that we report too much, if you like.

MR BROOKS: Sorry, could I just ask you, from a legal point of view, you know all lawyers learn that when there is a sale there must be delivery. There was then delivery of a share certificate. How is delivery now made in terms of this strait when there is a sale of shares? --- Sorry, I must repeat, I am not an expert on straits.

Your understanding, I am not asking you for a legal opinion or an expert opinion. --- Right.

How in practice does this work? --- My understanding is there is a register held by a CSDP which stands for .. (intervenes)

It does not matter what it stands for? --- Anyway, I think it is a custodian, that custodian records the ownership of shares. Now my understanding is there are a number of large institutions, I believe namely banks in South Africa which are CSDP's and when a resident or non-resident buys shares, that transaction is recorded in their books to say you own shares or the commissioner owns shares.

MR ? OBJECTSI think Mr Chairman, as Mr Smith has correctly pointed out, he is not an expert in this field and I do not think it is fair, he tries to help .. (inaudible)

MR BROOKS: Just lastly on flow backs, if a non-resident sells to another non-resident, is it possible to monitor any flow back on that transaction? --- A non-resident selling to another non-resident, there is not flow back.

There is not flow back. If a next non-resident now sells, sells it back, can you trace that flow back? --- No, we cannot.

In fact is it impossible? --- It is impossible to trace.

MR GANTSHO: Just a short question, Mr Smith, on the flow back. You have mentioned LIFO and FIFO as methods that you could use to track the movement of these shares and you have also mentioned that you report everything to the Reserve Bank. Has there been any guidance from the Reserve Bank as to which method you should use or is there an internal preference with Deutsche as to which method to use? --- We have had some discussions with the Reserve Bank. I must say the issue is not simple for the Reserve Bank as it is not simple for us either, the question is a difficult question. In terms of which method to be used, FIFO or LIFO, that really depends on the books of the buying entity, so it is not for Deutsche Bank to make the decision on FIFO should be used or LIFO, it is simply a case of an institution would typically have its own accounting method and they may record shares in one way or the other. Of course it is completely up to the Reserve Bank, they may decide one method or another could be used and that we leave to the Reserve Bank.

But there has been no guidance from them as to which method to use because you have the responsibility to monitor the movement? --- Yes, we record, if there has been a sale we record a sale has occurred and this may be flow back but we need to be told whether it is a flow back.

Thank you.

MS QUNTA: I have had different evidence from the Reserve Bank and from the last two days of reporting, you are fairly accurate saying there is probably a 10% flow back. So I am not sure how you are able to establish that if you now say you do not know how to track a flow back but maybe we can come back later. --- I am explaining that the sales that we reported to the Reserve Bank in terms of our conservative method, we assume all those sales were flow back and that is the 10% number. So what we are saying is there are no additional sales that we are aware of that could be flow back. So what we are saying to the Reserve Bank is, we are saying we have noticed this number of sales, a portion of which is flow back but we are not going to say which is and which is not flow back. It is just the total sales of around 10%. A portion or all of that could be flow back and if the Reserve Bank tells us that all those sales are flow back, that is fine, we accept that. That is a conservative way to calculate the position. So it would lead, if anything, to an over reporting of flow back.

MR BROOKS: Mr Smith, please move on. --- Would you like me to .. (intervenes)

LDR. --- LDR is an abbreviation of the term last date to register. This refers to the last date on which a person who is entitled to be registered in the share register of a particular issuer is permitted to be entered into the register for the purposes of being entitled to certain rights conferred by an issuer on the shareholders, including the right to a dividend and is usually used in reference to a dividend.

Thank you. --- The loan of shares: The loan of shares typically involves a transaction in terms of which the lender of the shares lend the shares to a borrower for reward. The borrower would typically place collateral with the lender as security for its obligations to return equivalent securities upon maturity or termination of the securities lending agreement. If the value of the loan securities increases, the borrower must post additional collateral. Collateral typically comprises cash or government bonds. Upon termination or maturity of the loan, the borrower would return to the lender securities equivalent to the loan securities and a lender would be obliged to return to the borrower the collateral provided under the securities loan.

Mr Smith, can I just stop you there, emphasis on equivalent securities, the obligation to return securities is not the same securities but equivalent securities? --- Again because there is no track as to which certificate is which, correct.

That word must be emphasised? --- Correct.

Thank you. --- Long term foreign investor: Again it may be obvious but if I could please point out that we are talking again long term investor in connection with an asset swap transaction. A long term foreign investor could be described as a non-resident purchaser of shares that by reason of such purchase intends to benefit from its rights to such shares. The use of the words "long term" refers to an absence of intention on the part of the investor to buy the shares with a sole intention of immediately selling the shares back into South Africa, thereby resulting in a flow back. The term long term foreign investment does not imply the specific period for which the shares must be held but it may be taken to mean a period of 12 months or more. Long term foreign investors in shares often hedge the exposures in respect of shares and lend the shares to third parties to generate income. So just to summarise that, the use of the expression long term foreign investor in connection with an asset swab could be taken to mean the purchase by a non-resident who does not intend to sell those shares back into South Africa thereby resulting in a flow back within a year. OSLA: An abbreviated reference to an overseas lenders agreement, an OSLA is typically concluded by two counter parties to a securities lending agreement including residents and non-residents counter parties to regulate their relationship in regard to the borrowing and lending of securities. Placement of shares: (intervenes)

You have dealt with that, please skip that and go on to Re-purchase. --- Re-purchase transactions: A re-purchase transaction is an agreement whereby one party sells a security to another party with a simultaneous agreement to re-purchase the security at a future date at a stipulated price. The difference between the sale and the re-purchase price of the security is essentially an interest cost to the seller.

Give us an example of a security or securities? --- For instance R150, a government bond, may be such a security. Reserves, the golden foreign exchange reserves of the Central Bank.

Back to page 5 of your statement? --- 6.2 Sasol asset swap: A detailed description of the Sasol asset swop, its effects or lack of effects on the Rand and its legality is set out in part 2 of the statement.

Mr Commissioner, that is at page 7. I think we can short circuit, Nampak is page 143, M-Cell 360. And Mr Smith, what you have said in regard to Sasol I take it goes for Nampak and M-Cell as well. What you said in 6.2, we do not have to repeat for 6.3 and 6.4? --- Sorry?

Have we lost each other? --- We do not need to repeat 6.3 and 6.4.

Thank you. Please carry on. --- Page 7, background of Reserve Bank approval: During 2000 Sasol entered into agreements to acquire Condea, a German company .. (intervenes)

Sorry, where are you? Mr Smith we have lost you. --- Page 7, sorry.

Are you skipping the rest of this and going straight to Sasol? --- Yes.

I see. Very well.

MS QUNTA: On which, where are we now? --- Sorry part 2 on page 7.

MR ? : Mr Chairperson, maybe for purposes of convenience clarify the issue, the idea is to chronologically deal with the different transactions now.

MR BROOKS: Mr Smith, may I suggest the following. In this 6 series that we going to still get to there are expressions used there such as market risk, currency risk etcetera which you are going to refer to in the Sasol transaction. --- Right.

I did not realise that you were going to jump straight into Sasol as it were. --- Sorry.

It may be a good idea if you first deal with those concepts as you have explained it in paragraph 6 otherwise we will get to Sasol and we will not know what a market risk and a currency risk etcetera is.

MR ? : Mr Commissioner, may we ask Mr Brooks to accommodate us and to let him start with Sasol and when we get to the term to deal with the term.

MR BROOKS: We can do it that way.

CHAIRPERSON: Is it convenient?

MR BROOKS: Yes, we can do it that way. We are on page 7 of the statement. --- Background and Reserve Bank approval: During 2000 Sasol entered into an agreement to acquire Condea, a German company engaged in the chemicals business for approximately 1,3 billion Euro. Sasol funded the acquisition mainly by way of offshore financing facilities. During ... (indistinct) Sasol asked Deutsche Securities to arrange an asset swap to enable Sasol to use its South African resources to pay part of the offshore financing facilities.

Mr Commissioner, I have cross-references for you, I do not know how you would like us to deal with this or would you do those annotations yourselves.

CHAIRPERSON: I think it will take a lot of time to do the annotations, we can do it after the event, at the end of the day's session.

MR BROOKS: What I could also do with our important documents, I would take you to those documents and just for that purpose annotate.

CHAIRPERSON: Yes.

MR BROOKS: Carry on? --- The Reserve Bank approved the application on the basis that the asset swap would involve the acquisition of Sasol shares in the South African market, the placement, i.e. sale, of up to Euro 350 million worth of the shares with non-residents and the payment of the proceeds of the placement into Sasol's offshore account. Deutsche Bank Johannesburg applied for and received Reserve Bank approval to undertake a second asset swap for Sasol in an amount of 250 million Euro. However, the second asset swop was not implemented by any of the Deutsche Bank dealers. If I may just digress, Deutsche Securities and Sasol as well took a decision not to implement the swap. Deutsche Securities from its part was uncomfortable with the rate at which it was placing Sasol shares. At the time I believe Sasol was not comfortable with the rate, the exchange rate, just to point that out. Implementation of the asset swop: Mr Brooks, I would like to now, if I may, just give a diagrammatic representation of the statement. As you pointed out the transaction does appear complex and I am hoping to show that it is relatively simple but may appear complex and certainly the slides look complex initially. What I would like to do is to do a slide presentation, go through it, explain some of the concepts and then come back to part 2, if I may.

Please do that. --- Description of the Sasol transaction. As I explained these slides do appear complex and I apologise for that but what I will do is show you that in fact it is a combination of a series of fairly simple transactions and we will see, I hope I can explain that the basic idea is not actually complicated. This is an example of an asset swap. Again I must stress this is an example, there is no one way in which an asset swap occurs but this is an example.

Mr Smith, slide A. --- Right, slide A, at the bottom of the slide we have the JC, the market and just above that a broker where shares are purchased for payment from the JC. A local corporate pays Rand to that broker for settlement of those shares. Those shares are on-sold through the JC typically but not necessarily to a non-resident bank who may act or assist with the on placing of the shares to other non-residents and that bank may assist in terms of the asset swop by paying Euros to the offshore account of the corporate. The non-resident bank will then on place or sell those shares for payment to other non-resident investors. So really to try and simplify that we have the purchase of shares by a non-resident. The non-resident pays for those shares in Euros and the non-resident must ensure that flow back does not occur otherwise that is re-financing. The source of those shares is the South African market, the JC or there may be other sources but that is an example and the local corporate pays for that in Rand in South Africa.

Mr Smith, can I just stop you there. On that picture which entity is your long term foreign investor as defined earlier in your evidence? --- The long term non-resident investor may be the non-resident bank or may be the non-resident long term investor, the light blue in the top left of the slide or the non-resident which is the long bar slightly higher in the upper portion of the slide.

As we deal with each transaction you will explain to the commissioners which entity is the long term foreign investor? --- Yes.

MR GANTSHO: Sorry, Mr Smith, before you move on, you say the non-resident ensures that there is no flow back, that is a condition that is imposed by the Reserve Bank in approving the asset swop. But who makes that commitment to the Reserve Bank, is it the broker or is it the non-resident bank? --- I need to correct myself if I said that, the intention is that the broker at the bottom portion of the slide who arranges the asset swop needs to make sure that those shares are placed with a non-resident and in terms of, and the broker's knowledge that that will not lead to direct flow back.

So it is the broker? --- Of course the broker will not necessarily know directly if that flow back occurs and we mention some of the practicalities, for instance if the non-resident sells through another broker or another party, practically it is difficult to determine what flow back but that broker, to the extent that it sees flow back, will .. (drops voice, inaudible). So just to try and give an overview of this transaction, I just repeat some of the entities here. First of all, Deutsche Securities is a stockbroker. Deutsche Bank Johannesburg is a branch of Deutsche Bank AG but for change control reasons is a separate entity and Deutsche Bank London is also a branch of Deutsche Bank AG.

You are looking at slide B. --- Sorry, slide B. In the transaction which I will explain in terms of the statements, Deutsche Securities bought shares in the South African market from the JC, it is annotated 5.3.1. Deutsche Securities bought some shares in the market. I will not give numbers, it is a small number of shares in the JC market. Deutsche Securities borrowed a reasonably large number of shares from Sasol International, a South African company and Deutsche Securities posted collateral in terms of the borrow with Deutsche Bank Johannesburg. That collateral in terms of the securities lending agreement was then ceded to Sasol International at the bottom left of the screen.

Sorry, we have heard the evidence of Sasol, I just want to give the numbers. The buy from the JC was roughly 1,3 million shares? --- Correct.

The borrow from SIH, that is now Sasol International, was 38,4 million shares? --- Correct.

Approximately? --- Correct.

And then the collateral which, as you say, is posted with Johannesburg, Deutsche Bank Johannesburg, that is R2,5 billion? --- That is correct, yes.

Are those Securities' own funds, the R2,5 billion? --- Yes they are Securities' own funds, there was an origin of funds - sorry, if I can show you in the next step that Deutsche Securities received funds from Sasol as well. So Deutsche Securities at this point has shares, the majority 38 million approximately shares it had borrowed and approximately 1 million it has bought in the South African market. Those shares are then sold through the JC as normal trade in two - I am on arrow 2.1.2 - those shares are sold through the JC to the Deutsche Bank London. Deutsche Bank London pays for those shares in Euros to Sasol offshore account.

And for that purpose Deutsche Bank London is the long term foreign investor? --- Correct. You ask Mr Brooks where Deutsche Securities receives its moneys, there was money paid by Sasol in arrow 2.1.3. These numbers by the way refer to the statement which we will see later. Then 2.1.3 Sasol paid Deutsche Securities an amount of approximately R2,5 billion.

This may be difficult but it is the chicken and egg situation. --- Yes.

What happened first, was the payment of R2,5 billion first made or did Deutsche Securities first go into the market? --- I think it is, if I can maybe allude to an example that we talked about before. I suppose it is a bit like building a house. What you do is, if the windows to the house takes three months to order and the cement takes a week, you order the windows first although any practical person would say but you do the foundations first. So in terms of these transactions there are different settlement dates, for instance JC settlement date is, I think, seven days or five days and some of the other settlement dates are different days. So the transaction is organised so that settlement occurs simultaneously. So I would say in terms where I have black arrows in this diagram we are really referring to fairly simultaneous events.

MS QUNTA: Presumably the different settlement dates and the different component of that transaction would be decided up front in terms of an agreement or perhaps I should ask you, there is a written agreement between Deutsche Bank and Sasol or whatever other corporate, is there? --- Correct.

And the whole structure is contained within that agreement? --- No, the connection, the issues which affect Sasol are in the Sasol agreement and obviously the receipt of Rand, the borrowing of shares and the payment of Euros can be found in the documentation with Sasol.

MR BROOKS: So could you identify on slide B what is part of the agreement with Sasol? --- The agreement with Sasol is on the lower left of the screen, the borrow of shares where it says "borrow shares, see collateral", the arrow between Sasol International and Deutsche Securities. The payment of Rand, 2.1.3, and the payment of Euro, the upper left of the screen, Deutsche Bank London pay in Euro to Sasol. Those would be, in terms of the diagram thus far those would be the areas which would be contained in the agreement. There is also some other information which Sasol would know but that is not on the screen as yet.

As we go .. (intervenes) --- I will point them out.

We will deal with that. Please continue? --- So we now are at the situation where Deutsche Bank London had purchased approximately 39,5 million shares and it has paid Euros for those shares. It now sells, and I think the immediate sale and we are dealing with the black arrows at the moment, so we are talking about almost simultaneously it sold about 1,3 million shares to other non-resident investors and it received payment for those shares. Simultaneously Deutsche Bank London - arrow 3.1 - did a forward sale of shares from Deutsche Bank London to Deutsche Securities in terms of a hedging transaction that is implemented.

MR GANTSHO: Can you just repeat that? --- Yes, the forward sale is what is referred to as an over the counter transaction where Deutsche Bank London will sell for future delivery, in other words it is like a promise to sell in the future and it is a hedging transaction, so really what it achieves for Deutsche Bank London, it achieves the fact that Deutsche Bank London, we just consider Deutsche Bank London, has bought 39,5 million shares, has sold approximately 1,3 million, so it holds 38.2 million. Those shares are subject to market risk and a .. (indistinct) transaction is the hedging for Deutsche Bank London of that market risk.

MS QUNTA: What do you mean market risk, the shares are subject to market risk? --- That is the price of the shares could go up or down with the market.

With the exchange rate? --- No, it is really, the exchange rate is certainly a factor but it is really the price of the shares itself and remember when we talk about Deutsche Bank London, Deutsche Bank London is not interested or I should not say not interested but in terms of this specific purchase of Sasol Deutsche Bank London is not interested in the Rand/Dollar exchange rate because it buys an asset and it is paid Euros, so from Deutsche Bank's point of view at that point it is the Dollar price or Euro price of the movement of Sasol shares that is of interest.

So the risk is contained in the movement in the price of shares? --- The forward sale and I will show you, there are some other hedging transactions as well but the forward sale is specifically to handle the price risk of the shares.

CHAIRPERSON: Now that forward sale is back into South Africa, is it not? --- The forward sale is a promise in future to sell shares, so there is no sale of shares at that point.

MR QUNTA: I wanted to ask him to answer your question.

CHAIRPERSON: Mr Smith, can I just ask you a few questions please. This is a forward sale, that is a binding agreement as I understand it from what you have said, that in the future at some determinable point Deutsche Securities will buy back from Deutsche London the shares, the 38 million shares? --- Correct.

Is that not regarded by you or by the Reserve Bank as a flow back? --- It is not a flow back because in terms of the sale has not occurred at that point. It is a, for instance a forward sale is something which is transacted for instance on the South African Futures Exchange where the sale or purchase of the future is not the ownership at that point but the ownership will happen. There is no payment as well so that the shares have not been bought. The shares, in terms of the forward sale you are not entitled to rights in terms of dividends, share splits etcetera in terms of the forward sale. You are not entitled to vote the shares etcetera. So it is a promise in the future that the shares would be sold.

And it is an undertaking by Deutsche Securities to pay in the future at some agreed amount? --- To the extent that that forward sale is completed, and I will show later on, in fact the forward sale was never completed and thus far has never been completed because in terms of being a hedge it is unwound as shares are placed with non-resident investors and we will show how that proceeds and in fact the shares are never delivered in terms of that forward sale.

But it is a hedge because in the event of things not going well, Deutsche London will recoup its loan from Deutsche Securities? --- That is correct.

That is precisely what it is, it is a form of insurance? --- It is an insurance, it is simply an insurance, yes.

And is that forward transaction, 3.1, disclosed to the Reserve Bank? --- Yes.

At which stage in the relationship with the Reserve Bank? --- I think this was about two weeks, I am not sure of the exact date, approximately two weeks, it was 9 February.

9 February? --- 9 February.

Alright. --- And that was in terms of a specific application for the four transactions.

You can come to the details later, that is fine, I am just clarifying a few things in my mind as we go along.

MS QUNTA: I just have a follow up question, that forward sale, and leave aside the fact that it is an agreement to enter into an agreement at a future date, at the time of making that agreement for the forward sale of shares, what is the intention in terms of where are those, where would the sale be taking place, assuming that it takes place and where would it be sold to? --- As you will see, in fact the intention of entering into that forward is that it is never consummated and that the forward will slowly be unwound as shares are delivered to other non-resident investors.

No, I understand it is a hedge but I think what I am asking you is if it should be necessary to use that, say in the event that it is necessary to call on that, where would the shares be sold to? --- Deutsche London would sell shares to Deutsche Securities.

In South Africa? --- In South Africa.

So there would be .. (intervenes) --- So there would be a flow back.

A flow back. --- Yes.

MR BROOKS: Mr Smith, if I could ask a few further questions. Is it the same shares that has just been sold to London and which are now the subject matter of the forward sale agreement? --- The number of shares is approximately 38 million. That is the same amount as the number of shares which are borrowed.

May I suggest, exactly the same amount? --- Yes, it is the same amount. It is the same amount. Again we need to look at identity of shares in terms of the forward sale which says we promise to sell 38 432 400 shares, is the number, to Deutsche Securities. So that is the number of shares that Deutsche Bank London in the future promises that will be sold. They have not at this point been sold and that is a hedge on price risk. In terms of the identity of shares to be delivered, that is unknown, firstly because it is the intention of the forward sale that was not intended to be consummated into delivery and second of all, in terms of the identity of shares I think we have discussed.

May I ask you, if London is the long term foreign investor, why would it hedge its risk internally, in other words within the Deutsche Group? --- Because first of all Deutsche London has acquired an asset which it has paid for and it will, its intention as we will show in terms of this transaction is not to speculate on the Rand or on the price of the share. It is not a speculator and its intention is to use that aspect for the raising of finance and it is to use that aspect in terms of the transaction for raising fees, for generation of fees by Deutsche .. (intervenes)

So the bottom line really is the only reward which the Deutsche Group gets is the fee? --- Correct.

That is whatever percentage was agreed with Sasol? --- Correct.

For the transaction. --- That is correct.

And was that the intention of Deutsche when entering into the transaction? --- That is correct, there was no intention to speculate on the Rand or on the share price.

So was it then its intention to be a long term foreign investor or was it its intention to get a fee? --- As we have explained the term long term foreign investor in reference, and we refer back to our definitions, the long term investor - first of all if we look at the whole sentence, non-resident, Deutsche Bank clearly is a non-resident. Long term means about 12 months or more and in terms, with reference to an asset swap it means specifically that those shares will not flow back into South Africa and to the extent that they do for a period of 12 months and to the extent that they do, those need to be reported.

MS QUNTA: Did you, you say you disclosed, in response to the Chairman's question you said you disclosed the hedging transaction to the Reserve Bank on 9 February 2001, is that correct. --- That there was a specific application in terms of the forward sale agreement, yes.

But that is 2001? --- I think it is two weeks or three weeks before.

But I am trying to establish the year? --- 2001 yes, that is correct.

And did you disclose to the Reserve Bank that Deutsche Bank London may be the long term investor? --- Yes.

There is a copy, can you just refer to that application, there is an application or that particular for the hedging transaction, you do not have to refer to it, just give me a reference please to the application? Mr Ginsberg has come to your assistance, Annexure J. In which bundle?

MR BROOKS: Mr Commissioner, I see it is close to teatime. Just get the references for Madam Commissioner and resume after tea.

CHAIRPERSON: You are going to give this evidence, are you not, are we not going to get there in your statement? --- It is J94 and 95. page 94 and 95.

You can carry on for a few more minutes. --- So we have just dealt with 3.1 on the slide. In terms of the hedge that Deutsche Bank conducted after buying a Rand asset, it exchanged Rand for Euros in 3.2 on the slide and in terms of a cash flow management which I will explain again in the statement, and that is 4.1 on the slide, Deutsche Bank London sold to South Africa in terms of a re-purchase transaction, it sold South African or government bonds for Rands to Deutsche Bank Johannesburg. In other words, Deutsche Bank Johannesburg bought bonds and they paid for those bonds in Rand and that was a transaction of approximately R2,4 billion. I will show, that really concludes the first transactions. As I explained these arrows are all black. This really concludes all transactions which happened in February and it is probably a good place to pause there. This takes us up to section 4.1 of the statement. All transactions after 4.1 happened in March or at a later date. So it is probably a good point to pause in terms of the transactions that happened in February.

Mr Smith before we adjourn, we know what Sasol said in its evidence the day before yesterday. Looking at it from Sasol's point of view, it is a contractual relationship with Deutsche Bank, do you agree with that, there is no dispute of fact between you? --- There is no dispute.

There is no dispute of fact? --- No.

Good, we will adjourn for 15 minutes then.

PROCEEDINGS ADJOURN:

PROCEEDINGS RESUMES

NIALL SMITH: s.u.o.

CHAIRPERSON: Mr Smith, would you like to continue, please.

EXAMINATION BY MR BROOKS (continued): Mr Smith, could I .. I am still worried about the term long term foreign investor. Could you just go back to page 6L. Are you with us? --- Yes.

And we now accept that Deutsche Bank London on that picture is the long term foreign investor and if you read the definition, you say:

"A long term foreign investor could be described as a non-resident purchaser of shares that by reason of such purchase intends to benefit from its rights to such shares."

--- Yes.

Could I just make it clear that I understand what you are saying. That the benefit as per your definition is nothing more than the (indistinct). --- Correct.

Is that correct? --- Mr Brooks, that is correct. I think the shares, the ownership of shares confer certain rights and one of the rights is that Deutsche Bank London was to purchase shares for instances it owns Deutsche Bank AG owns a large part of corporate Germany. Those are assets, those shares are assets in Deutsche Bank AG's books. Deutsche Bank AG Germany uses these assets to raise finance, to do a number of different things with these shares which it owns and it is not necessarily own those shares for price performance or any other reasons. It owns those shares for a variety of reasons. In terms of this transaction we talk about, you are correct if you look at the transaction as a whole the Deutsche Bank Group did this transaction in order to earn fees. I would just like to say something else that Deutsche Bank falls within Deutsche Bank London here falls within the description of a long term investor for exchange control purposes. But it does not really matter because the point is that Deutsche Bank had undertaken to place these shares back with ... sorry not back, place these shares with other non-resident investors. The point being that there will not be a flow back, a sale of those shares by Deutsche Bank London back into South Africa.

And then just back to slide B, the transactions illustrated on slide B, can the commissioners accept that all those transactions as illustrated on that slide, are interrelated? --- No, what we need to do and what I tried to illustrate and that is done both in the witness statement and on the presentation, we have drawn a line, a vertical line down through the slide. The white section on the left hand of slide B is headed Sasol asset swap and that describes the asset swap ... (intervenes)

MR _____: Mr Commissioner, may I interrupt. I think Mr (indistinct) is focusing on Mr Niall's little laptop, he is trying to make notes. We do not appreciate that. Would you ask him to move it please.

MR BROOKS: It is the gentleman over there.

CHAIRPERSON: You were saying? --- On the left is the transaction which is headed Asset swap. On the right are transactions which occur as normal banking practice such as a repurchase transaction etcetera. So the asset swap I could take you back to the first slide you will see that the asset swap as we described it in slide A, looks similar to the transactions on the white or left portion of the screen.

MS QUANTA: If this transaction in B and on the left-hand side in the white section did not take place, in other words the borrowing of the shares, the actual asset swap, would the transaction in the grey part have taken place? --- Well, let us look commissioner the repurchase transaction. That is a daily transaction which occurs between Deutsche Bank Johannesburg and Deutsche Bank London. Let me digress to answer your question completely. Deutsche Bank Johannesburg being legally part of Deutsche Bank AG is a double A rated bank. It takes deposits from South African corporates because South African corporates like to lend money to a double A rated bank. In terms of the deposits Deutsche Bank Johannesburg takes, the bank then has cash which it needs to do something with to make a return. Deutsche Bank Johannesburg itself does not lend any money to South African Corporates. There is no lending facility from Deutsche Bank Johannesburg to South African corporates. So as you can see there is a net inflow of money from corporates from all over the place into Deutsche Bank Johannesburg but because we pay interest on the money, we have to make a return on that. In terms of that, Deutsche Bank Johannesburg established a repo desk in London and in South Africa in terms of which South African assets may be purchased and sold and by South African assets I mean mainly government bonds between Deutsche Bank London and Deutsche Bank Johannesburg to manage cash flow.

Now in terms of that Deutsche Bank may receive money from the corporate in terms of the deposit from the South African corporate purchased bonds that Deutsche Bank London owns South African bonds and pay for those bonds in full. So by buying the bonds in Deutsche Bank Securities now holds the bonds and has paid for those bonds and in that way Deutsche Bank again now not looking at it from a .. just looking at Deutsche Bank London treasury operations manages its cash flow on a daily basis to make sure that cash flows are correct. Now your question, to come back to your question, would these transactions in the great part of the screen have happened if the asset swap has not occurred? Well, clearly in terms of the cash management, there is an impact on Deutsche Bank Johannesburg cash position because of this transaction because Deutsche Securities placed collateral with Deutsche Bank Johannesburg. So certainly there is an impact on Deutsche Bank Johannesburg balance sheet for cash flow at that time and the repurchase transaction certainly is there to handle the efficient utilisation of cash which Deutsche Bank then do.

You said earlier on when I asked that the hedging in 3.1 on B. --- Yes.

In fact in a statement you say as a result of the asset swap, certain transactions were entered into -

1. Hedging
2. The sale of bonds and
3. the exchange for Euros.

So from your statement it appears that there is a link between the Sasol asset swap and the South African on the grey thing. --- Yes.

Are you saying now to me that that is not the case because you started explaining that these are the daily things. Can I accept that? --- Yes.

Is that what banks do? --- Yes.

But what I am trying to establish from you in a fairly clear way: is there a link between what is on the left-hand side on the white section of B and what is on the right-hand side? --- Commissioner, I think we can look at that in terms of the separation between church and state - what you have is you have certain transactions occurring in Deutsche Bank London in which Deutsche Bank London makes a decision on in terms of (indistinct) its treasury operations. If we look at would these transactions necessarily have happened as a result of the asset swap, the answer is no. Let us for instance look at the forward sale. The forward sale, Deutsche Bank London itself does not need to do a forward sale with Deutsche Securities. It could have for argument sake decided to take a portion of the risk itself. It could have decided to do another hedging transaction with an offshore counter party etcetera. So I think we need to or I want to be careful in saying is there a direct link between the asset swap on the left of the screen and the transactions on the right and the answer is no, we do not believe there is a direct link. Is there a link between the transactions? Yes, there is a link because as a result of the asset swap, the money that Deutsche Bank Securities had in its account was more than it otherwise would have and therefore it took certain actions to rectify the cash flow situation and certainly as a result of Deutsche Bank London's position who had purchased shares, it had risks positions etcetera which it would not have had if it was not for the asset swap. So .. (intervenes)

And to protect them from those risks on the right-hand side, the transactions entered into would minimise? --- Correct.

Can I just ask a follow-up question about that. When did you make the asset swap application to the Reserve Bank? What date? You do not have to give me the day, just what month? --- I think February.

MR BROOKS: If I may assist. It was approved on 25 January.

MS QUANTA: So the application would have been made before 25 January? --- Yes.

For the asset swap? --- Yes.

Maybe you can later on give me the exact date or I can find it in the documents. Now when did you make ... you say you disclosed to the Reserve Bank the transactions on the right-hand side. Did you report to the Reserve Bank the script borrowing? --- No.

You did not? --- No.

Why not? --- The borrowing was reported to the Reserve Bank but not at the time you referred to. The borrowing, the transactions on the right of the screen those are unrestricted except for the forward which I will explain. The transactions on the right of the screen are unrestricted transactions. There is general approval from the Reserve Bank in terms of the repo transaction where it is a normal part of the Deutsche Bank Johannesburg business that these transactions occur. This is something well accepted in the market. In terms of the forward sale, there was a specific approval in February, sorry I do not have the date, and in terms of the loan of the shares, that is on the bottom left-hand of the screen. That was between first of all between two local parties that was not referred to in terms of the application.

And when you made application for the forward sale, did you explain in your application the link between that forward sale transaction and the asset swap? --- No.

To the Reserve Bank? --- No.

MR GANTSHO: I want to submit that those two transactions are linked and I am basing this on what you have said on page 9, 3.2, where you said:

"In order to be a currency risk in respect of De Beers Holdings of (indistinct) Sasol shares."

And those Sasol shares are the Sasol shares that are covered by the left-hand side of your slide. --- Yes.

So there is a direct relationship because you were hedging the risks that arise from the left-hand side. --- Yes.

And whether you agree with me or not on this, let us just assume that I am correct. If I am correct then I would conclude that, and I want to find out from you if you agree with me, that that whole transaction is not (indistinct) because the rands would have flowed out of South Africa to your left-hand side of that slide .. on the right-hand side. Would I be correct in that conclusion assuming that my first assumption is right? --- Assuming your first assumption is correct, the transaction as we, and we have looked at the definition and we will come to it later in the statement and I hope to give a more complete explanation, but in terms of the transaction in terms of currency neutrality, we believe the transaction is currency neutral in terms of .. we have looked at three definition of what currency neutrality mean.

I have read that. I understand what you said in your statement. But if I am correct in my first assumption, that transaction would not be currency neutral? --- No, Commissioner, the forward sale of shares does not, sorry again I probably need to know at best. The forward sale is a promise that a sale will happen in the future. At the time of the transaction there is no currency movement whatsoever.

I am referring to 3.2. --- Yes.

That directly results in an outflow of rands. --- That is correct.

If my assumption is correct, therefore that would cause this whole transaction not to be currency neutral. I am not saying this is what happened. I am making an assumption and it is based on what you have said in your statement. --- Again in terms of 3.2 to the extent and I think this is an important part, to the extent that the rands are exchanged for Euros or foreign exchange in South Africa that results in a outflow. If Deutsche Bank London chooses to hedge with an offshore bank who has its own foreign exchange and own rand, there is no effect on reserves. So to the extent just looking at 3.2 only by itself, to the extent that Deutsche Bank London changes rand for Euros with a South African party, then you are correct. That is not reserves neutral. That portion is not ... to the extent that happens. In the event 3.2 as I will refer to, was a transaction and I am using approximate figures here, two sevenths of which occurred with London directly transacting with other London or international banks and five .. sorry, two sevenths with other London international banks and five sevenths with local South African or in the local foreign exchange market. I have simply represented an arrow, 3.2 going through Deutsche Bank Johannesburg to the local, that is at the bottom of slide B, that is supposed to represent the local foreign exchange market. Just for brevity there was another transaction with an international foreign exchange market which does not appear on the slide.

And you will explain that later? --- I will refer to that. Importantly 3.2 on its own, the transaction on its own, it is not currency neutral to the extent that that transaction is done with local operation.

And in this case it is done with Deutsche Bank Johannesburg? --- No, Deutsche Bank Johannesburg was the agent to execute Deutsche Bank London's order in the local market and when we transacted with the local market we can assume that it is a local participant although that is not necessarily the case either.

MS QUANTA: But it took place in South African foreign exchange market? --- Five sevenths, approximately five sevenths of the transaction in 3.2.

MR BROOKS: Mr Smith, just to complete that picture. I am at arrow 3.1 the forward sale of shares. Now just to give you the picture the Reserve Bank approval was 25 January. The transaction was fully implemented late February - 26, 27, 28 February. Are you with me? --- Yes.

Now if you go to J, page 94 and 95. Just go to page 94. Could you with reference to the slide B, explain to the commissioners what is 94 and what is 95? --- 94 is the coversheet of an application to apply for a forward on page 95 where the share name of the forward is Sasol. The seller of the forward (indistinct) seller is Deutsche Bank London. The buyer is Deutsche Securities. The number of shares is 50 million. The trade date is there.

Does that represent 3.1 as per our slide? --- That is correct.

Now how does the Reserve Bank know that this authority requested here. --- Yes.

Must relate back to the Sasol transaction. --- In terms of a .. well, maybe I can answer that by saying that we are not sure that that happened. Deutsche Bank applied for, I do not have the numbers, I think it was about 120 applications in 2001 in terms of equity derivatives. This was a transaction for approximately 2,5 billion. The next biggest one was about R358 million. So significantly smaller. It was does around the same time and the application was in the same department but we understand that that does not necessarily mean that the Reserve Bank met the two. As we have explained that these transactions on the left are transactions which occurred in terms of hedging positions on the books of Deutsche Bank London. Maybe I could .. (intervenes)

If you can just turn to page 95 because that page refers to 50 million shares and not 38 or 39 million shares. --- Correct.

If you look at page 94, there is no reference whatsoever to the Sasol transaction. --- Correct.

And it would have been a matter of ease to refer in that to the Sasol asset transaction. --- Mr Brooks .. (intervenes)

Sorry, do you agree with that? --- Well, as a matter of ease ... It would have certainly been a matter of ease. If I may explain in terms of an asset swap. The clear understanding as I will come to in my statement, concerns reserves neutrality and in terms of 3.1 a forward transaction is a promise to sell in the future a number of shares, in this case 50 million or whatever it is from one party to another. Now when that transaction is implemented, there is no payment. There is no delivery of shares. Shares do not flow. Payment does not flow. So 3.1 by itself has no impact on the reserves.

Now I am talking about your communication with the Reserve Bank. That is all I am dealing with. Can I ask you who is applying to the Reserve Bank for authority? --- Deutsche Bank London applies to the Reserve Bank on behalf of Deutsche Securities to implement these transactions.

Deutsche Bank London? --- Sorry, Deutsche Bank Johannesburg ... sorry, is applying to the Reserve Bank for Deutsche Securities to implement the transaction.

To purchase? --- To purchase and Deutsche Bank London to sell. So in the transactions it is shown who the seller is, Deutsche Bank London and who the buyer is, is Deutsche Bank Securities on page 95.

So you say there was disclosure to the Reserve Bank. It is only this disclosure. --- That was the disclosure. Well, it is also important to state that there is a register kept in Deutsche Securities of all transactions which are executed on this basis and we refer to them as over the counter transactions. This register is inspected by the Reserve Bank in our offices and they look at specifically and they were inspected in 2001 in February. I think late February there was an inspection by the Reserve Bank who looked specifically at the register which included this transaction but these inspections happen from time to time.

Thank you.

<u>CHAIRPERSON</u>: Shall we move on? --- Mr Brooks, I have now finished the transactions that occurred in February. I think it is probably useful to read the statement so we could see the actual facts and ... Could I read from page 8.

"2.1The following transactions were entered into for purposes of implementing Sasol assets swap. Deutsche Securities purchased 1,3 million Sasol shares in South African market and borrowed 38,4 million Sasol shares from Sasol International Holdings, a South African subsidiary of Sasol under security lending transaction concluded on 23 February 2001.

<u>MR BROOKS</u>: Sorry, Mr Smith if you could just stop there. The correct date is in fact 19 February. Just amend that in your statement.

<u>MS QUANTA</u>: And not 23, Mr Brooks?

<u>MR BROOKS</u>: 19. Mr Commissioner, you will find that on page 59 to 72. ---

"As security for Deutsche Securities' obligation to return an equivalent number of Sasol shares to SIH, Deutsche Securities agreed to cede to SIH all rights which Deutsche Securities had to a cash deposit of 2,5 billion with DBJ. On 22 February 2001 Deutsche Securities sold 39,7 million Sasol shares to Deutsche Bank London for R2,5 billion. In settlement of the purchase price, DBL paid 350 million Euro less DBL's fees and costs in Sasol's forward account. The sale was settled on 26 February 2001.

On 26 February 2001, Sasol paid Deutsche Securities 2,5 billion being the rand equivalent of 350 million Euro. Deutsche Securities placed the amount on deposit with DBJ. Deposit was ceded to SIH as envisaged under the securities loaning transaction referred to in paragraph 2.1.1 above.

In February 2001 when the asset swap was first implemented, Deutsche Securities expected that DBL will place all the Sasol shares within a period of six to 12 months."

I would just like to add there because it is missing that Deutsche Bank London then sold 1,3 million Sasol shares to other non-resident investors.

"The hedging transactions

In order to hedge the market risk in respect of DBL's holdings of the Sasol shares, DBL and Deutsche Securities entered into a forward sale transaction on 22 February 2001 in terms of which DBL had agreed to sell and Deutsche Securities undertook to purchase 38 million Sasol shares at a price equal to the market value in rand on the date of the implementation of the asset swap plus interest. DBJ applied to the Reserve bank by late February 2001 for approval of the forward sale transaction. The Reserve Bank approved the transaction by a letter dated 12 February 2001 addressed to DBJ."

MR BROOKS: And that is the document you have just referred to? --- Yes.

At 94 and 95. ---

"In order to hedge DBL's currency risk in respect of DBL's holdings or DBL's Sasol shares, DBL as a non-resident exchanged 2,5 billion for Euro 350 million on 19 and 20 February."

If I could just stop there for a minute, Mr Brooks. The only transaction which could have in any way affected the rand is 3.2. So that is the only leg which could have impacted on the price of the rand and that happened on 19 and 20 February 2001.

"Currency hedging transactions are concluded in 3.3 and on an ongoing basis by banks and other financial institutions and are generally regarded as prudent and necessary practice in the banking and finance industries.

As indicated in 6 below, the exchange of rand pursuant to currency hedge, did not give rise to or contribute to the rapid depreciation of the rand in the latter part of 2001."

If I could now move on to the funding and related transactions.

"In order to fund DBL's holdings of unplaced Sasol shares, DBL and DBJ entered into a repurchasing transaction on 26 February 2001 in terms of which Deutsche Bank London sold South African bonds to DBJ and DBJ paid DBL R2,4 billion."

Again if I could just make a point here. The sale of bonds, what is a South African bond? A bond is a form of cash. A bond is a long term form of cash. It is a promise. It is a notice issued by the government for them to buy just like a cash note. So this would be referred to in the market as a duration switch if you like. It is an exchange of one form of cash for another. A bond form of cash for cash. This amount was equal to the value of the bonds and again I just want to point out it was equal to the value of the bonds because Deutsche Bank Securities was buying bonds. There was a purchase agreement provided that DBL would repurchase the bonds at the original selling price plus an amount in respect of finance costs.

"Repurchase transactions are commonly entered into between South African authorised dealers and foreign exchange and non-residents and fall within the general Reserve Bank approval set out in section 251 of the Exchange Control Rulings."

At this point we have now covered all the arrows which I have previously drew on the slide and if I may, Mr Brooks, I would like to continue with the slide presentation and show you what happens and then come back to 4.2 to see how the story progresses. Just a point that I probably did not stress is in terms of 3.1 on diagram B, the forward sale of shares, if that was consummated, if the forward sale had occurred, in other words delivery of shares had happened for payment, that would have been a flow back and if that happened, that would have been reported in the normal course to the Reserve Bank. We are now going on to the light blue arrows and this is intended to convey the fact that these transaction then happened at a subsequent time. Deutsche Bank London through its international sales force then attempted to on place shares with long term investors as illustrated by the blue arrow. If we now go to slide C, as that happened, and again these are now simultaneous transactions. As that happened, Deutsche Securities purchased shares from the JSE for payment on the market. So that happened. Now those two transactions will affect the hedging arrangements that Deutsche Bank implemented and I will show the effect of those hedges. As we heard yesterday from Sasol, something else happened there and that is a Deutsche Bank London returned shares in March and April to ... sorry, let me start again. Deutsche Bank Johannesburg borrowed on behalf of Deutsche Securities borrowed shares from Deutsche Bank London to return to Sasol International. As we heard yesterday there was a borrow. In fact what happened is there was a borrow of about 38 million shares. Those 38 million shares were returned at Sasol's request for dividends. Shares were then re-borrowed. In fact 20 million shares were re-borrowed and then returned. Now I will simplify that in this diagram by simply saying Deutsche Securities borrowed shares from Deutsche Bank London with Deutsche Bank Johannesburg as the agent and it borrowed those shares in exchange collateral with place ... I am now with 4.1 on slide C. Bonds were placed as collateral for those borrow. So here we have Deutsche Bank London owns Sasol shares. It lends those shares 38 million of those shares to Deutsche Securities and when it lends those shares to Deutsche Securities, it said I need, I Deutsche Bank London need collateral for those shares and so it received South African bonds for collateral in terms of those shares. Those values are similar. In other words there is an exchange of value for value here. There is shares lent and bonds placed as collateral. Those shares were then returned and I will not go through the return and backwards and forwards, which actually happened, but to simplify those shares are then returned to Sasol in April. I think the end of April.

MR BROOKS: March and June. --- Sorry, March and June. So those shares are then returned to Sasol International. So what I have done there is I have just taken .. there are borrowed shares and return of shares. So as of June 2001 38 odd million shares borrowed and 38 million shares are returned. So we can say that that is net off and we could take that transaction out of the loop. As all this happens and consistently throughout time, Deutsche Bank London continued to sell shares, I have now used the red arrow to talk about another time period, sell shares to non-resident investor. As that happens and to the extent that that happens, Deutsche Bank London unwinds the forward sale 3.1 on diagram D with Deutsche Securities because it no longer to the extent that it paid shares, no longer needs that hedge and it purchases simultaneously shares in the South African market.

Mr Smith, can I just understand at this point does London still have shares that it can sell? --- London has those shares which it has loaned to Deutsche Securities and in terms of that loan it has a right to recall those shares. It will have to exchange bonds for those shares and it has an obligation in terms of those to place those shares with other non-resident investors.

So the shares that were bought, not those shares. --- Yes.

An equivalent amount of shares has been lent back to Securities. --- Correct.

And be replaced back with Sasol. --- That is correct. In terms of the ... that is correct. Those shares were lent by London to Deutsche Securities. Deutsche Securities then returned those to Sasol International.

But we cannot say it is the same shares which was originally sold to London? --- Well, I think we had this discussion before, Mr Brooks .. (intervenes)

No, I want to get this clear. --- Yes.

Because we are going to the next step now. --- Right. Well, we cannot say that. But I do not understand that that is relevant because .. maybe what I understand your question is, is that loan of shares is that a flow back and the answer is clearly not. The loan of shares is not a flow back because the flow back is a sale of shares back to a resident investor. Now in terms of this transaction Deutsche Bank London and as we see, I think 87, I may be wrong in the figure, but it is about 87 transactions continued to place as those three arrows at 5.3 illustrate, continues to sell its shares to other non-resident investors. So in terms of 3.1 to the extent if I can come back and just repeat the red arrows. Deutsche Bank London is placing shares in terms of 5.3 on diagram D to long term non-resident investors. As that happens it sources shares in the South African market in 5.3.1 at the bottom of the screen and to the extent that that is done, the forward transaction is unwound. At the same time Deutsche Securities has now received shares. It bought them in the South African market. It in terms of the loan agreement returned shares using Deutsche Bank Johannesburg as the agent. It returns shares to Deutsche Bank London. So it buys shares. The shares that it borrowed from Deutsche Bank London are returned to the securities loan and in terms of the sale of shares that are made to non-resident investors, Deutsche Bank receives payment for those and in terms of that the hedge is unwound. So we have in slide H the diagram of what has happened here where Deutsche Bank has in summary purchased shares from Deutsche Securities. Deutsche in its own right purchased those shares from

JSE. Deutsche Bank London did certain hedging activities which we see occurred and Deutsche Bank London placed those shares to non-resident investors. If I could just say here, this is not the same slide, but this is a similar slide as to slide A which I started with which really described what an asset swap is and if I could make a point with belabouring it, the remaining transactions which still appear on slide H, are the asset swap. The transactions on the right of the screen had disappeared. They are not a necessary condition for the asset swap. They could have been transacted in different ways and in terms of the ultimate slide, slide H, they all disappeared. This takes us to the end of the slide presentation for Sasol. If I may .. (intervenes)

Just before you .. the red arrows that is now where Securities sources further shares in the market to sell upstairs to the non-resident long term investors through London. Correct? --- It sources those shares through the JSE, yes.

Would Securities had a record of those shares which it sourced in the market? --- Absolutely.

So that is available. --- Yes.

To the commissioners if called for. --- It is approximately 87 or more transactions. It is a large number of transactions but they are all available. If I could just explain again without trying to go into deeply. When Deutsche Securities purchases shares for its own account, it does not treat itself as its own client and therefore does not issue a brokers' note to itself. So what happened is of course these transactions are recorded in our books but we do not send brokers' notes to ourselves. So in terms of are there brokers' notes to evidence, no there are not. But is there a record of these transactions occurring, yes there are.

And that is available to us? --- Yes.

Please continue.

MS ______: Mr Chairman, may I just at this stage .. sorry to interrupt ask you to go back to slide B so that I (inaudible) and just ask something for clarification. In regard to 4.1 on slide B which is the repo sale of the bonds. --- Yes, 4.1 on B.

As I understood your evidence you said that that transaction falls within the general permission and the Exchange Control Ruling E5/E1. --- That is my understanding.

That is your understanding. And therefore am I correct in saying that that part of the transaction did not form part of your application for the Sasol asset swap? --- No.

Thank you.

MR BROOKS: Mr Smith, do I understand that you are now going to leave the Sasol slides? --- If I may.

Yes, can I just ask, before we do that, the commissioners are there any questions you would like to ask before we move off those slides?

CHAIRPERSON: You conceded earlier that 3.2 there is a flow of rands out of South Africa. Just in isolation 3.2 would not be currency neutral. Is that correct? --- That is my understanding.

Now explain to us why looking at the transaction as a whole for example on slide B, the transaction as a whole (inaudible) is currency neutral according to Deutsche Bank. --- Okay, if I may just make a point and that is to talk about the use of the words currency neutral and reserve neutral. My understanding is that in terms of the Exchange Control we are concerned with reserves neutrality. My understanding is also that in terms of the statements made by the Reserve Bank, it is not, they are not there to make currency. So I will focus on the issue of reserve neutrality and not currency neutrality. In terms of reserve neutrality my understanding is that the transaction is reserve neutral as a whole and if I could just point out a couple of points without necessarily going into the whole transaction. First of all the purchase of South African bonds by the non-resident or by Deutsche Bank London that means that at some point there is a flow of .. Deutsche Bank London requiring bonds and there is purchase of rand. Also in terms of the payment of Euro by Deutsche Bank London to Sasol on slide B it is the top left where Deutsche Bank London pays Euro, there is a payment of Euro into a wholly owned subsidiary Sasol offshore account. Now we need to look at this a little bit more carefully. In terms of that we have the Sasol .. the International operation of Sasol have a loan which is being paid off. That is a 100% owned subsidiary. So to the extent that that loan is paid off, there is a reduction in foreign liabilities and that means that there is an inflow or balance if you like in terms of reserves.

Can you manage to persuade the Reserve Bank? This transaction as a whole .. (intervenes) --- Yes, we are very happy to continue discussions with the Reserve Bank and in terms of questions that they ask, we are very happy to talk to them and in terms of the spirit of what we are doing, we certainly as we are trying to make a point in the statement, we are really trying to comply with all the regulations in terms of the Reserve Bank .. (intervenes)

No, I am not asking your relationship with the Reserve Bank. My question was, because your answer is very difficult for me draft so quickly, is when the Reserve Bank said initially this Sasol transaction must be currency neutral, they meant as a whole including your hedging transaction. Is that your understanding or not?

MR ____: Mr Commissioner, if I am not mistaken, but is the expression currency neutral and the Reserve Bank has never insisted on currency neutrality. Their concept is they are focusing on reserve neutrality. You have asked earlier the question about why if one looks at the transaction globally, why Deutsche Bank is maintaining that it was in any event currency neutral. We have explained that in demonstrating that there was in implementing the swap. There was no impact on the value of the rand. In fact it increased the value. So as far as the currency situation is concerned, it did not, it was either positive or it was neutral but it did not negatively impact on the value of the rand. That is the stance. But could I ask you my instructing attorney, Mr Bezuidenhout, is a specialist in this field and I would ask you that you would allow him a few questions to clarify certain issues.

CHAIRPERSON: Of the witness?

MR ____: Of the witness.

CHAIRPERSON: Shouldn't we make it re-examination? Mr Bezuidenhout can obviously re-examine.

MR BEZUIDENHOUT: We may just confirm that some of the issues might get lost in the later detail.

CHAIRPERSON: Would it be more convenient if we do it now?

MR BEZUIDENHOUT: If you would allow us.

MS QUANTA: I just have one question which may assist Mr Bezuidenhout in his re-examination and I know you have given us figures. The cost of the Sasol your hedging transaction in Sasol, it is 2,4 billion, but are you able to give me a sort of total figure of what the cost of those hedging transactions were? If you are not able to do that right now, perhaps if you could do it after the break. --- I cannot give you a figure of the cost of the hedging transactions now. It involves the calculation of interest costs. I do not think I can even give it to you after the break. I can give it to you but it will take a little time.

Yes, perhaps you could hand it to the team and specifically I would like to look at your heading of the market risk and the currency risk and then I just have one more question relating to the Sasol transaction. Is the forward sale at the time that you conceived the transaction, if the Reserve Bank Regulations say that the conditions for the asset swap, it must be reserve neutral and it must have an underlying and firm commitment, if you were aware of those conditions and I accept that the forward sale was a future sale rather than a ... but you entered into that transaction knowing that it may result in a flow back and you entered into that more or less at the same time, in your view is that in accordance with the spirit of the Exchange Control Regulations and the rationale behind the Reserve Bank. We have heard evidence here that the aim is to assist the South African corporates but it is also to protect the reserves of the country. So in entering that forward sale which may have or could have resulted in a flow back, did you not contemplate the spirit of the Exchange Control Regulations? --- It is clearly within the spirit and I will explain why. It is clearly within the spirit because the intention and the subsequent actions by Deutsche Bank London show very clearly what was going to happen and again I am quoting a figure of 87 separate transactions and I may be proved to be wrong but it is a number like that where Deutsche Bank London used international road shows. It used its international presence in the world to go out and sell Sasol shares to on place those shares to non-resident investors. It excluded placements to hedge funds and other corporates or companies where it thought there may be flow back or immanent flow back. So even though it sold Sasol shares to hedge funds, it did not include those placements. It ignored those completely and to the extent that there were flow backs, it was diligent in terms of the monitoring of flow backs and those were reported to the Reserve Bank.

No, I am talking about 3.1 the transaction in 3.1. --- Yes, but 3.1 is the hedge of the share risk. Now that needs to be considered with the ownership of the share. The ownership of the share is being hedged. So I think one of the other commissioners said earlier today that there is insurance on that physical share and to the extent that those shares were on place before it is unwound. Now that means that the intention was that before it was never going to be consummated and in terms of if we look at in terms of the intention and what actually happened, the forward was never consummated in either of those events.

CHAIRPERSON: Mr Bezuidenhout, would you like to re-examine on this issue?

MR BEZUIDENHOUT: Thank you. I just have a few questions to clarify some issues.

CHAIRPERSON: Yes.

EXAMINATION BY MR BEZUIDENHOUT: Mr Smith, you have described three categories of transactions. Those that were concluded specifically to implement the asset swap and secondly the hedging transactions and currency risk and then thirdly the funding and related transactions. Could you just explain what would have happened if all the shares had been placed immediately and what the intention was in that regard?

CHAIRPERSON: Do you mean if the shares were sold immediately in London?

MR BEZUIDENHOUT: Yes, if they had been sold immediately by Deutsche Bank London to the international market. --- If those shares had been sold immediately and Deutsche always hopes that it can move a large number of shares very quickly, but even for us 38 million shares is a very large number. But if we had managed to place all those shares immediately, non of the other related transactions would have been required. If I could just add one proviso to that and that is the other side of the transaction. You of course need to source the shares from somewhere. Again I do not believe the South African market is capable of handling transactions this size. In fact this transaction represents probably more than a total value of trade on any day on the JSE. So there is no realistic way we could have even if we had placed those shares, that we could have sourced the shares. Now there was some discussion today and yesterday about the Securities borrowing. Why was that necessary? Well, let us assume as Mr Bezuidenhout has asked, we had placed all those shares on day 1. There is no way that Deutsche Securities would have been able to source those shares. So the Securities borrowing transaction would still have had to occur to settle and that is the only reason why it did occur was to settle Deutsche Bank for its shares. Deutsche Bank said we bought shares, we want them. Give them to us. So we had to go and borrow them from the market for delivery. So that is the answer.

Are you then saying that those were (inaudible) facilitated the payment of money to Sasol offshore and by entering into these transactions? --- That is correct.

On the forward sale transaction you have pointed out that that is a hedging transaction and that if it had been used to transfer shares from London to Deutsche Securities that that would have been an inflow. --- That would have been a flow back, yes.

Now that transaction in fact was never settled. --- That is correct.

What happened if the shares had been sold? --- As the shares ares sold, the transaction is unwound and there is a settlement and this occurs from the very first time shares are sold and as I have explained in terms of the diagram that the forward is unwound. So the very first time that shares are sold, and I am presuming you are talking now late February 2001 or early March 2001, the very first transaction that occurred, when that happened there was a settlement in terms of the forward to pay the difference between the price in the market and the price at the time of the purchase and that difference was the settlement on the forward. It was a cash difference. In fact it was an inflow and in fact just a point which I probably should have made clear, as a result of the hedging transactions on the right of the screen if you remember, there have been, you can look at all of those transactions, there have been an inflow into South Africa of approximately 900 to R1,1 billion as a result of those hedges. In other words if those hedges had not been there, they simply did the transaction and we only talk about the transaction on the left of the screen, the asset swap, if the hedging had not been there, the hedging itself, I am talking about the forward hedging etcetera, those hedging transactions resulted in an inflow into South Africa of between 900 million to 1,1 billion which would not have occurred if those hedging had not happened. In other words .. (intervenes)

MR _____: Is that a net inflow? --- I am talking net inflow.

Yes. --- So I am saying if, and I think it is an important point, if the transactions had happened on the left of the screen only, there would have been R900 million to R1,1 billion less coming into South Africa as a result. So the hedging, if you look at the hedging you could say, and this really illustrates why Deutsche Bank was not to speculate. Deutsche Bank London lost approximately a billion rand as a result of those hedges and it was happy .. well, maybe not happy, but it was prepared to lose that money because this was a hedge and this was not a speculation.

MR BEZUIDENHOUT: If one looks at the concept of reserves in more simple terms perhaps as an accounting item reflecting inflows and outflows from South Africa and one looks at the aggregate of the (inaudible) transactions, the hedging transactions and the funding and related transactions, if one puts all of those together and looks at the picture one day after they were all implemented, was there an aggregate outflow of asset from South Africa or an aggregate inflow or was there a balancing? --- In terms of the transactions there, if you look at them as a whole immediately after the transaction, there was a positive effect of approximately 100 million Euro on the reserves of South Africa in terms of my understanding. Now we are talking about reserves and again there seemed to be at least three different working definitions of reserves but in terms of my understanding of reserves, after implementation of the transaction, there was an estimate of 100 million Euro positive impact to the reserves of the country as a result of this transaction in my understanding and that picks up the question that the hedging of the currency by Deutsche Bank London occurred in two parts. There was five sevenths of the transaction. The Euro were purchased from South Africa entities or it was transacted in the South African foreign exchange markets. So we presumed they were transacted with South African entities and two sevenths with non-residents. So looking at a whole, and again this has to be, we need to be clear that this is an estimate because we do not know definitively who is on the other side of each transaction but if I look at the transaction as a whole at a guess I would say there was about 100 million Euros, approximately 100 million Euros positive impact coming into the country.

That would have flown out immediately. I understand that if one looks at it in terms of what the non-residents or London input is in the South African or what goes out from South Africa, effectively what happened is that Deutsche Bank London bought bonds with its own money, those came in and something went out. What was that? --- In terms of the transaction where you referred to the purchase of bonds, Deutsche Securities purchased bonds and paid rand for those bonds. Is that what you are referring to?

Yes, but the counter balancing .. (intervenes) --- Yes, those amounts that were purchased, say in terms of the purchase they paid the correct purchase price for the bonds.

You have pointed out that there is no way in which this transaction could have been settled immediately because of magnitude of the shares. --- Correct.

You have also spoken in your evidence of the question of hedging. Could you tell us what generally happens with the international investors in South Africa? Do they hedge? What is the position? --- An international investor in South Africa would look, and again I am not an expert, but I will give you my understanding, an international investor buys South African assets such as equities for various reasons. For instance we can take an example an international investor likes oil stocks and is happy to make an investment in an oil stock. They may have decided Sasol qualified in terms of that investment and they may decide they are happy to take oil risk but they like the stock for the way in which it beneficiates their oil. So they might buy the stock and they might decide to buy Sasol and they might decide to hedge the oil price. hedge the oil price. They might decide to hedge the rand because it is a rand asset. They might decide to hedge other components for instance they might be unhappy with the market risk of that specific stock rather than the specific risk. So they would hedge the market risk by selling an index of world index, a South African index, various things. So there are many number of hedges that may occur by an international investor and there are indeed many markets in which these hedges may occur. So we have markets specifically set up for hedges. I believe that Safex is a market where there is a significant amount of hedging activity where South African and international investors use Safex to hedge positions.

What is the Reserve Bank (indistinct) of your concern, approval in regard to hedging? Does a foreign investor first require approval in order to hedge? --- My understanding is that there are two types of approval and I think they are covered later in the statement and that is there is general approvals and there is specific approvals. In terms of general approvals there is general authority for certain transactions to occur such as hedging transactions; such as repurchase transactions. If you are looking at the financial industry; if we are looking at import/export, I believe there is a general approval in terms of import/export. There may be specific conditions attached, but there is general approval. So in terms of the financial services industry, there are a number of transactions permitted under general approvals. I mentioned Safex. There is a regulation in ... there is permission that hedges which occur on instruments which are listed in the South African exchange, are approved in general. So I see that as a general approval.

Thank you. Thank you, Mr Chairman.

MR ________: You said that the forward sale of the Sasol shares, caused an inflow of approximate R1 billion. Was it? --- Sorry, could you repeat the question.

The forward sale of the Sasol shares which is 3.1 on slide B, you said caused an inflow into South Africa of approximately R1 billion which you said would otherwise not have taken place but for the hedge transaction. Did I understand you correctly? --- That is correct. In terms of the ... (intervenes)

Well, let me then just follow it up because if I do understand you correctly, the purchase of my question is I want to ask you this: that had the price gone the other way with the Sasol shares, then there could have been an outflow. --- Correct.

Of a billion or more. --- Correct.

So in a sense the inflow was fortuitous essentially. --- Yes, the inflow .. well, the point is we are talking first of all, I just want to correct something. I said it is not only the forward hedge. It is actually a combination of hedges that I was referring to. In terms of that it is significant to look at the rand price of the asset. So if you look at the rand price and let us take the example where the rand price falls, if we have an asset which maintains its value in dollars and the rand price falls, that means there is going to be an inflow of rands, an excess inflow. So it is not purely related to the price of the asset only but you need to look at the relative movements. In terms of that it is my understanding that the Reserve Bank clearly understand that this occurs because the Reserve Bank gives approval for forward transactions on the basis that initially there is no money that is exchanged and that the asset, the money flow will happen based on what happens to the asset.

Yes, there could just as well have been an outflow. --- There could have been an outflow if we would have to have a strong rand and we would have to have the share price weakened.

Thank you.

MR BROOKS: Are there any further questions?

NO FURTHER QUESTIONS

MR BROOKS: Mr Smith, please move on.

CHAIRPERSON: I think we were on paragraph 4.2, page 9. --- 4.2 on page 9:

"4.2In order to manage the cost relating to the holdings of bonds purchased under repurchase transactions and the Sasol shares purchased by DBL, DBL loaned 38 million Sasol shares to DBJ on 23 March 2001. The number of shares subject to the loan was varied as the shares were borrowed or returned to SIH. The Securities loan was entered into DBJ as hedging for Deutsche Securities. Deutsche Securities delivered the shares to SIH in settlement of the securities loan referred to in 2.1.1 above. As security for the obligations under the Securities loan, DBJ transferred the same type of bonds referred to in 4.1 above, to DBL. The bonds had a market value similar to the Sasol shares. Securities lending transactions are commonly entered into between non-residence and South African authorised dealers in foreign exchange acting either as principal or as agent for other South African residence and fall within the general Reserve Bank approval set out in section E5/E2 of the Rulings.

Effect of the asset swap and other transactions:

The asset swap allowed Sasol to repay part of its offshore financing facilities used to acquire Condea. The effect of the aforementioned transactions in DBJ and DBL was as follows:

DBL purchased Sasol shares; DBL hedges its market risk relating to the shares; DBL hedges currency risk by selling South African bonds and exchanging the rand proceeds for foreign currency and DBL and DBJ balanced their currency positions."

If I could just make a point here because you know there have been, just really for clarity. Deutsche Bank Johannesburg, Deutsche Bank London and Deutsche Bank Securities either considered separately or together made no money from the fall in the rand price. The Deutsche Securities only owned fees. So there was no speculation in terms of the Sasol price or the rand price at all.

"5.3Whenever any Sasol shares were sold by DBL to other non-residents, the following would occur: DBL would obtain the shares to be delivered by each of the foreign investor from DBJ and DBJ would in turn obtain them from Deutsche Securities. Deutsche Securities would purchase the shares in the South African market. The shares delivered to DBL would in partial settlement of the securities loan referred to in 4.2 above. The proceeds received by investors on the placement of Sasol shares would be paid to DBJ and/or Deutsche Securities in South Africa. The payment would be on account of a partial repurchase of bonds under the purchase agreement referred to in 4.1 above and on account of any amount due to Deutsche Securities as referred to in 5.3.4 (a) below. Deutsche Securities would fund the purchase of the shares by partial withdrawal of the deposit as referred to 3.1.3 above and to the extent that the market value of the shares had increased since implementation of the asset swap by recovering increase from DBL under the forward sale as described in 5.3.4 below. DBL and Deutsche Securities would close out in cash part of the forward sale referred to in 3.1 above and to the extent of the placed shares for the following result: .. "

If I could just stop here and make a comment. The question was asked about the forward whether the shares were delivered in terms of the forward. 5.3.4 talks about the cash settlement of the forward transaction and that the forward was settled in cash here.

"(a)To the extent that the market value of the shares on the date of close out exceeded the price of the shares, is set out in the forward sale transaction. DBL would pay Deutsche Securities the excess. The excess together with that part of the deposit repaid by DBJ would be sufficient to cover the purchase of the shares to be returned to DBL. Any increase in the Sasol share price resulted in an increase currency inflow into South Africa. To the extent that the market value of the shares was lower than the price of the shares as set out in the forward sale, Deutsche Securities would be required to pay DBL the shortfall. The shortfall would be equal to Deutsche Securities profit and to Deutsche Bank London's loss."

And just to be clear it is between the profit or loss on that specific leg only and as we discussed before as a net there was no profit or loss.

"As from the date upon which the Sasol shares were sold to DBL, DBL endeavoured to answer or place the shares with other non-residents. By 25 June 2001, DBL had placed 9,6 million of the 39,7 million shares originally acquired by Deutsche Securities.

However, during the second have of 2001, foreign interest in the South African equity markets was limited and the place which the shares could be placed, slowed considerable.

As of 28 March 2002, Deutsche Bank London had placed 16,8 million of the original number of shares acquired in 84 separate placement transactions. Deutsche Bank London is continuing with its efforts to place the shares each month the number of shares placed in (indistinct).

The impacts of the asset swap and related transactions on the rand exchange rate ... (intervenes)

MR BROOKS: Mr Smith, just before you continue there, there is something if you look at the annexure which it may not be clear when the commissioners read your evidence and the documents a bit later, if you go back to page 10 the top paragraph, if I could just get your line of thought, the fourth line, you say:

"Deutsche Securities delivered the shares to SIH in settlement of the Securities loan referred to in 2.1.1 above."

Are you with me? --- Yes.

And then as security for the obligations under the securities loan, DBJ transferred the same type of bonds referred to in 4.1 above to DBL and you referred to note 20. Now please you are referring to a transfer of the same type of bonds and you referred to note 20 and the reference there is to page 141 which is Q. Would you please just go to that document because it appears on the face of it to be the incorrect document but if it is the correct document, please explain it? --- Yes, Mr Brooks, the next page 141A .. (intervenes)

Would you just first tell the commissioners how 141 and 141A fits in with what you said at note 20? --- Okay, on page 141 the document says on the top left of the document says Deutsche Bank AG produced by what we are referring to here as Deutsche Bank London.

Yes. --- It is two Deutsche Securities (Pty) Ltd Deutsche Bank South Africa. So there is actually a confusion there. The address is really to Deutsche Bank Johannesburg. Deutsche Bank SA being Deutsche Bank Johannesburg. The address underneath this is correct global markets is a division of Deutsche Bank Johannesburg. It is not a division of Deutsche Bank Securities. So the correct address should be Deutsche Bank Johannesburg. In the table below it refers to an amount of 38,4 million shares and it refers to a value of R2,6 billion and if I may go over the page .. (intervenes)

Just tell us what the document at 141 says? --- Okay, so ... would you like me to read it?

Yes, no, what is the guts of the document? --- Okay.

What does it tell the reader? --- Okay, it tells the reader that there is a confirmation of a loan of shares.

A confirmation of a loan of shares? --- So Deutsche Bank London is confirming that it has loan shares to Deutsche Bank Johannesburg.

Yes, you see that is where my problem comes in because in the sentence it refers to a type of bonds referred to in 141. Are you with me? --- Oh I see, yes.

So there seems to be included an incorrect document or incorrect description. If you could just please try and rectify that. --- Yes.

But maybe 141A will that assist us? --- Yes, we can try and get annexure to show you the bond .. (intervenes)

I think it is just an incorrect document. --- Right.

If you could just try and clarify that during the lunch adjournment. --- Fine.

Thank you. Please continue.

CHAIRPERSON: I think perhaps we should adjourn now?

MR BROOKS: Yes.

CHAIRPERSON: We will adjourn until 14:00.

PROCEEDINGS ADJOURN

COMMISSION RESUMES

NIALL SMITH: s.u.o.

EXAMINATION BY MR BROOKS: Impact of the asset swap and related transactions on the Rand exchange rate. It is clear that none of the transactions referred to in this statement, gave rise to or contributed to the rapid depreciation of the Rand on the fourth quarter of 2001. The following graph illustrates the Rand (indistinct) exchange rate over the period 1 January 2001 to 21 December 2001 and the bid offer spread.

Mr Smith sorry, could I stop you there please. We are going to deal with this graph but only in regard to Sasol but it would be a good idea, we have got the Nampak dates, it is July and August, it is 3 July and 7 August. To shorten proceedings, possibly if you could just identify on that graph Nampak at the same time. Could you do that? --- Fine yes.

Then we don't have to, at the end of Nampak, do the same exercise. --- Fine.

All right. --- If I could just say first of all that this graph bears, the source of this graph is Bloomberg's and the line represents the price of the Rand Dollar exchange rate throughout 2001. The arrow on the left-hand side is an arrow representing 19 and 20 February when the hedge that we spoke about previously, occurred and on or as we will show later on, the Rand actually strengthened over that period but the point here is just to make the point that the hedge occurred a long time before the rapid depreciation of the Rand. Just to help Mr Brooks, in terms of the hedge on Nampak, that occurred on 26 June and 24 July which is approximately halfway along that graph, June and July and again as we will show at the time, the Rand was actually strong on those days and strengthened over the period of the execution of the hedge. The bid offer spread which are the bars, the blue bars mentioned, first of all these must be taken as illustrative because they represent the difference between the buy and the sell price on Bloomberg's, the source of this graph is Bloomberg's. Those can't be taken to be exact numbers, it must be really taken as indicative of the bid and offer price at the time. The trends, so what I am saying in terms of the blue bars is the trend is relevant and that is generally the bid offer spread widened during the year and was larger during the end of the year than the beginning of the year. Reading on, 6.3: During the first six months of 2001, the Rand depreciated by 8% against US Dollar. This was followed by a depreciation of 11.7% in the third quarter of 2001 and a depreciation of 33.2% in the fourth quarter of 2001.

Sorry Mr Smith just while you have it, could you just put the graph back on? --- Sorry.

And we know that the M-Cell deal only took place in 2002. --- Correct.

You may as well cover that at the same time. --- Yes, so the M-Cell, the hedge in terms of the M-Cell was after the period in question. 8 January 2002.

Thank you. --- The changes in the Rand US Dollar exchange rate referred to in 6.2 and 6.3 above, are representative of changes in the exchange rate of the Rand against the other major foreign currencies, including the Euro.

The exchange of Rand for foreign currency pursuant to the currency hedge entered into in connection with the asset swap was executed on 19 and 20 February 2001. This was at least seven months before the start of the rapid depreciation of the Rand in October 2001 and could not therefore have caused such depreciation.

The Rand that was offered for exchange pursuant to the currency hedge was readily absorbed in the market for foreign exchange. This is borne out by the fact that the Rand US Dollar exchange rate strengthened on 19 and 20 February 2001 and over the entire month of February 2001. The transaction was executed in tranches of Euro 50 million. The trader that executed the transaction (now I am talking about the trader in South Africa who executed that part of the South African transaction,) was not informed of the total amount of Rand to be exchanged or the reason.

The trader was given instructions to exchange each tranche of Euro 50 million only after he had executed the previous instruction. Care was taken that the market would not move by any exchange and this was achieved.

As a general rule, the price of a currency or other commodity will change as a result of buyers or sellers entering the market. If the buyers and sellers enter the market at different times, the price of the commodity may move. The move occurs at the time the order is placed in the market. The change is proportional to the size of the order relative to the liquidity of the market at the time.

A trade that has small size relative to the market, will not move the market out of proportion to its relative size. According to the Reserve Bank, the total amount of Rand offered for exchange in the foreign exchange market in February 2001, was 1.5 trillion. So that is 1 589 billion. On this basis, the amount of Rand offered for exchanged in connection with the hedging transactions, about 2.5 billion, was only about 1.58% of the total market in February 2001.

What I would like to do now in 6.8 is just refer to a formula that is used in the equity market to try and calculate prior to execution of a trade, the possible impact. So I must say first of all, this is a formula which is just an estimate. It doesn't mean that this will occur, it is an estimate of what would happen in an equity and we are using this formula to apply to foreign exchange.

The impact of a purchase or sale transaction in listed shares on the price of the shares may be quantified by the following formula. A equals B times the square root of C. Where A is a percentage market impact, B is the expected annual change in price which in the context of the Rand, would be comparable to the annual volatility of the Rand to the US Dollar which was 10.6% in February 2001.

And C is the percentage annual volume of shares traded which, in the context of the Rand, is equivalent to percentage annual volume of the Rand traded for currency which is .000147.

So what we are trying to do here is we are trying to measure the possible impact that there may be on a listed market such as shares or foreign exchange, by looking at the volatility of that particular market and looking at the size of the order.

In terms of the formula, the estimated impact of exchange of Rand in connection with the asset swap was .13% at the time of the exchange.

In fact on execution, there was no impact on the Rand as we have said, the Rand actually strengthened but if you look prior to the order and we say prior to the execution of the order, what can we expect to happen, we could have expected an impact of .13%.

Accordingly there is no basis to suggest the asset swap gave rise to or contributed to the rapid depreciation of the Rand in the latter part of 2001. After the Sasol asset swap was initially implemented Deutsche Bank London began placing Sasol shares with other foreign investors. In some instances the proceeds were paid to Deutsche London in foreign currency and Deutsche London would exchange the foreign currency for Rand.

In other instances the foreign investors exchanged foreign currency for Rand and paid Deutsche Bank London the Rand. In either case the Rand proceeds were transferred to South Africa. The total amount of Rands so transferred to South Africa as a result of the placements, amounts to R1.3 billion.

The following table sets out the amount of Rand exchanged in foreign currency in connected with the Sasol asset swap and the Rand US Dollar exchange rate on the last trading day of the month.

Would you like me to read the table or.. (intervenes)

No I think, Commissioners I don't know, it speaks for itself. If I can just record, it is on page 14 paragraph 6.11. --- If I maybe could just point out two particular rows. In November 2001 there were R127 million were purchased and in December there was R26 million worth that was purchased

The Sasol asset swap had a neutral deposit of influence on the Rand foreign currency exchange for March 2001 to the end of 2001. Clearly the sale by Deutsche Bank London of Sasol shares to other non-residents will continue to have a positive impact on the Rand foreign currency exchange rate.

It might be interesting just to look at flow-back that resulted or should we say sales which could be deemed as flow-back in November and December because I have those figures. In December of 2001 there were no sales which could have resulted in flow-back at all. In November there were sales of approximately R42 million and in October I think there were some very small sales, probably around, I don't have the exact figure but probably around R4 million.

Sorry, from which document are you now reading? --- Sorry, I am not reading from a document.

Oh. All right. --- 6.. (intervenes)

Well that information which you have just conveyed to the Commissioners now. --- Yes.

Where is that document? What is it? --- That is an estimate of the sales that we have seen and we can try and provide that. Well we can provide that, we just need to get the document.

Okay. --- In a submission made by Deutsche Bank Johannesburg to the Commission, Deutsche Bank Johannesburg has set out in detail the reasons for the rapid depreciation of the Rand exchange rate in the fourth quarter of 2001.

In summary the decline in the Rand in 2001 and in particular the rapid fall in the fourth quarter of 2001 was caused by a convergence of many negative events and perceptions that at that aligned the expectations of most market participants behind a view that the Rand would continue to decline. This led to a classic (indistinct) in the Rand.

COMMISSIONER: You say that submission that you (indistinct) that was in reply to that questionnaire that we sent out? That is what you are referring to? --- That is the document.

And in regard to which Deutsche will give evidence later. --- Yes.

Have we now dealt with Sasol?

MR BROOKS: That is Sasol Mr Commissioner.

COMMISSIONER: Yes.

MR BROOKS: Do you have anything further to add in regard to Sasol Mr Smith? --- I don't, no.

Commissioner I wonder, would it not be appropriate before we move on, because I think when we get to Nampak and M-Cell, there will be a lot of repetition and it may be a good idea to the extent that there are questions now, to deal with those questions now.

COMMISSIONER: In other words if there are Sasol questions, let's try and deal them now?

MR BROOKS: Yes because they may clear up a lot of problems for the future.

COMMISSIONER: Yes. Are there questions in relation to Sasol?

MS QUNTA: I have (indistinct) no questions but the one, I just want to confirm you have probably answered the question already, what in your view was the firm and underlying commitment in terms of (indistinct) regulations for the exchange of Euros (indistinct) million Euro? --- What was the?

(Indistinct) --- Yes.

What was the firm and underlying commitment there in South Africa for that transaction? No I just want confirmation of that.

MR UNKNOWN: Yes I think, perhaps if I can assist in answering that question, from the submission it appears that the purchase and holding of the shares by Deutsche Bank London, is the underlying exposure.

MS QUNTA: Thank you.

MR GANTSHO: The follow-up question to Madam Commissioner's question, how was that transaction funded? How was that payment of 340 million Euros funded by DBL. --- Deutsche Bank treasury or the Deutsche Bank London treasury funded that and just referring back to the diagram, there was a sale of bonds, government bonds that Deutsche Bank London owned. They sold those bonds to Deutsche Securities and was received payment of approximately 2.4 billion for that. So there was 2.4 billion. There was also about 1.3 million Sasol shares sold at that time to other non-resident investors which they received money and so in terms of Deutsche Bank London's operations, those would have formed part of Deutsche Bank London's treasury operations and Deutsche Bank London would pay the Euro 340 million our of its treasury.

Just to confirm what you have said, the 2.4 billion was a conversion of Rands into Euros? --- Correct.

That is was. --- Yes there are two steps.

Yes I understand but then that lag actually resulted in a conversion of Rands into Euros. --- Correct.

And paragraph 5.4 of part 1, you say there that when that happens, in relation to an asset swap transaction, that may have an impact on the Rand? --- It may have an impact on the Rand yes.

In this particular case, do you have any opinion, did that have any impact on the Rand? You have just said that that didn't have an impact, I just want to confirm. --- It didn't have an impact because on the days that those hedges were executed, the Rand strengthened and strengthened during February as well.

Okay. Thank you.

COMMISSIONER: Yes, well let's proceed with the next section.

MR BROOKS: It is Nampak page 143. --- Background and Reserve Bank (indistinct). During 2000 Nampak Limited requested Deutsche Securities to arrange an asset swap for Nampak to enable Nampak to provide additional capital to its United Kingdom subsidiary Nampak Holdings PLC.

The capital was to be used by Nampak Holdings for the expansion of the business of its subsidiary Plysu PLC. Nampak asked Deutsche Securities to obtain Reserve Bank approval for the asset swap.

On 28 November 2000 Deutsche Bank AG Johannesburg branch applied to the Reserve Bank for approval for the Nampak asset swap on the basis that Nampak International Limited a foreign subsidiary of Nampak, would sell up to .25 million worth of Nampak shares to a long term foreign investors and to use the proceeds for the purposes referred to in paragraph 1.1 above.

Following the exchange of further correspondence between DBJ and the Reserve Bank in the course of which DBJ on instructions of Deutsche Securities provides and clarified the application. The Reserve Bank approved the application on 12 December 2000.

Commissioners that is page 158 and 9. Sorry. --- Sorry.

Some months after having obtained the aforementioned Reserve Bank approvals and in June 2001, Nampak asked Deutsche Securities to implement the asset swap which Deutsche Securities agreed to do.

Mr Brooks I have a short presentation on this transaction, like, if I could go through that.

Is that a J of your slide presentation? --- Yes. This is the same sort of slide show that we have for Nampak as we had for Sasol, I will probably moved slightly faster. First of all I think we remember from this morning slide A, the basics of an asset swap. This diagram shows you the different entities they are similar. We have Nampak off-shore account, Nampak products are different and we have a South African bank which is now different to this morning's show. Deutsche Securities purchased a number of shares and we will go through the exact numbers in the statement but it purchased a number of shares for payment on the JSE. Deutsche Securities also borrowed a number of shares from a local South African bank in a normal securities borrowing transaction. I should just add there, collateral was placed by Deutsche Securities with that South African bank in terms of a normal securities lending transaction. It transpires and in fact what happened to that collateral, the South African bank placed that money with Deutsche Bank Johannesburg on deposit. So that arrow isn't in the diagram but I think it just would be conclusive. Deutsche Securities sold shares or Nampak products should I say, bought shares from Deutsche Securities and those shares were sold to Deutsche Bank London in terms of 2.2, sorry I am on slide J, the sale of the shares is 2.2 in terms of the diagram. Deutsche Bank London, the top left, sold, sorry, paid Euro to Nampak the off-shore account.. (intervenes)

It was in fact nor Euro, it was Pounds. --- Sorry, this is incorrect, it is actually Pounds. Sorry. And it paid Pounds to Nampak off-shore in settlement of those shares. Deutsche London then sold an amount of shares in 5.3 on the diagram, slide J, it sold shares to non-resident investors for payment. So essentially we have a similar transaction except now the shares are going from Deutsche Securities by Nampak Products to Deutsche London instead of direct. In terms of hedges transacted, Deutsche London sold forward and did a SAFEX hedge in terms of those trades. The question is why did we do some one way and some another way, there is really different ways to do things and this transaction illustrates that one could use SAFEX or a forward contract to do that hedge. Deutsche Bank London also exchanged in 3.1, the arrow 3.1, exchanges Rands for Euro and there was a repo transaction, in other words Deutsche Bank Johannesburg purchased bonds from Deutsche Bank London for payment.

Sorry just that arrow, it is change Rands for Pounds. --- Sorry, that is also incorrect, That's Rand for Pounds. And it is arrow 3.1.

Yes. --- Arrow 4.1 is, there was a repurchase transaction where Deutsche Johannesburg purchased bonds from Deutsche Bank London. What I would like to do is the same that I did for Sasol, those black arrows represent really the transactions that happened around the time of the asset swap and if I could now read the detail, to show you the exact number of shares and then we will come back to (indistinct) in the diagram.

Please continue. --- 2.1 Deutsche Securities implemented the asset swap in two tranches. The first tranche, tranche 1 was for .15 million and was executed in July 2001. The second tranche was for .5 million and was executed in August 2001. As part of tranche 1 of the asset swap Nampak Products Limited, a South African subsidiary of Nampak sold 13.8 million Nampak shares to Deutsche Bank AG London branch and Deutsche Bank London paid the purchase price of .15 million into an off-shore bank account of Nampak International, a foreign subsidiary of Nampak.

As part of tranche 2, Nampak Products sold 4.5 million Nampak shares to DBL and DBL paid the purchase price of .5 million into an off-shore bank account of Nampak International. The sale transactions were settled on 3 July 2001 and 7 August 2001 respectively.

The Nampak shares relating to tranche 1 and tranche 2 were acquired by Nampak Products from Deutsche Securities. Nampak Products settled the purchase price in Rand on 3 July 2001 and 7 August 2001 respectively.

Deutsche Securities in turn acquired the Nampak shares from a local bank outside the Deutsche Bank group, the lender under two securities lending transactions. As securities for Deutsche Securities obligation to return an equivalent number of Nampak shares to the lender, Deutsche Securities deposited cash collateral with the lender. The lender in turn redeposited the cash collateral with Deutsche Bank Johannesburg.

Hedging transactions. In order to hedge its currency risk in respect of tranche 1, DB London as a non-resident, exchanged R170 million for 15 million.

In order to hedge its currency risk in respect of tranche 2, DB London exchange R59 million for 5 million. Exchanges were executed on 26 June 2001 and 24 July 2001 respectively.

In order to hedge their market risk in respect of tranche 1, DBL and Deutsche Securities entered into a forward sale agreement on 27 June 2001 in terms of which Deutsche Bank London agreed to sell and Deutsche Securities undertook to purchase, 13.8 million Nampak shares at a price equal to their market value in South African Rand on the date of the implementation of tranche 1 of the asset swap plus interest.

DBJ applied to the Reserve Bank by letter dated 18 October 2001 for approval of a forward sale agreement. The Reserve Bank approved the agreement by letter dated 23 October.

That is a correction there, it should be 23 October 2000 to Deutsche Bank Johannesburg.

Could you just stop there please Mr Smith. --- Yes.

I have some difficulty in understanding what you have said there. The Nampak swap was only implemented June, July, August 2001. --- Correct.

Right. But in that paragraph you tell the Commissioners that Deutsche Bank Johannesburg applied to the Reserve Bank by letter dated 18 October 2000. --- Correct.

That is nine months in advance. --- Correct.

For approval for the, sorry, of the forward sale agreement. If you look at page 200 which is annexure Q, is that the approval you are referring to? --- Yes that is the approval.

Right. Now once again, as per the Sasol questions which I asked you, how would the Reserve Bank on 18 October 2000 know that the approval which you are seeking here, relates to something which is going to happen in June, July, August 2001? --- They wouldn't necessarily put that together.

So how did you being Deutsche Bank, put it together? --- Well Deutsche, the discussions with Nampak started in 2000 and in terms of the discussions that we had with Nampak, we made the approval at the time we started the discussions.

I see. So on your house building as you told us earlier, you were already buying the window frames in October 2000? --- We put the, we didn't actually buy the window frames. What we did is we put in place a position where we could, were we to build the house, buy the window frames. Because the house wasn't actually built until Nampak agreed to do the transaction later.

Because we heard from Nampak yesterday, there was some uncertainty as to whether they were going to do the transaction. I think that decision was only made if I am not mistaken, on 21 May 2001. --- Correct.

So you say.. (intervenes) --- So to repeat, because I probably wasn't clear, Deutsche Bank applied for approval in preparation that if it needed to do the hedge, that it was able to, with securities. Of course that did not imply that it would do the hedge. It didn't imply that it couldn't do the hedge with a third party, someone in the office in London etcetera, but it put in place the situation where if it needed to do the hedge, it could.

Right. Okay then turn to page 201 and if you could please explain that page as read with 201(a). --- The page 201 represents the approval sought from the Reserve Bank for specific transaction we are interested in the fourth one down, Nampak where Deutsche Securities is derivative seller, Deutsche Bank London is the derivative buyer. There is a number of shares mentioned, 13.9 million and the dates, maturity dates etcetera, with a strike price now. If we look at page 201(a).. (intervenes)

Because if we look at 201, it looks as if the seller and the buyer is the wrong way around. --- Ja, that is incorrect. That was a typing error made in Deutsche Securities where the application that applied for the Deutsche Bank Securities and Deutsche London the names were reversed. So that is explained in page 201(a).. (intervenes)

Could you just read that to the Commissioners please? --- Okay.

A typing error occurs in this application to the Reserve Bank. The intention of the application to the Reserve Bank was to obtain approval for Deutsche Bank London to sell and Deutsche Securities to buy the derivatives.

This typing error was only discovered on preparation of this witness statement. A similar application was lodged with the Reserve Bank in respect of the Sasol asset swap. In terms of this latter application, see 94 of this statement annexure J, the application was without typing error.

So technically there is no Reserve Bank approval. --- For that leg, the approval was the wrong way around.

Yes. Has this position been rectified with the Reserve Bank? --- This has just recently come to our attention. We will certainly, I am not sure if there is any communication at this stage but certainly there will be communication. This was only picked up, in fact I think it was you who picked it up, not us. So we will certainly rectify that.

Right, please continue on page 145. --- Deutsche Bank London, I am reading 3.3 I believe, Deutsche Bank London hedged its market risk in respect of tranche 2 by entering it, to put and call contracts on the South African Futures Exchange SAFEX. The expiry dates of the contracts of 19 September 2002 and the strike prices of 13.96.

In terms of the contract Deutsche Bank London is entitled to receive an amount based on any shortfall in the market value of the unplaced tranche 2 Nampak shares below their value based on the strike prices and Deutsche Bank London is required to pay an amount, if there is an excess, Deutsche Bank London paid initial margin to SAFEX in respect of these contracts.

Transactions on SAFEX are commonly entered into by non-residents to hedge their exposure in respect of South African investments and fall within the general Reserve Bank approval that permit non-residents to trade in securities and financial instruments listed on the South African Exchanges.

Just to explain 3.3 and 3.2, this transaction is different to the Sasol one in that the hedges were transacted in two different ways. There was a SAFEX hedge for part of the transaction and there was a forward contract for another part of the transaction.

But the bottom line is that as was put to you by one of the Commissioners, the insurance which you took out was, the bottom line was in-house. --- Yes. Mr Brooks also in terms of the transactions that are done, they are recorded in a register. So in terms of the register which is inspected by the Reserve Bank those transactions are reflected correctly, the forward transactions.

Deutsche Securities hedged its market risk in respect of tranche 2 by entering into put and call contracts on SAFEX. The expiry dates of the contracts are 19 September 2002 and the strike prices are 13.96.

In terms of the contracts Deutsche Securities is entitled to receive an amount based on the excess of the market value of the unplaced tranche 2 Nampak shares over their value based on the strike prices and is required to pay an amount if there is a shortfall. Deutsche Securities paid initial margin to SAFEX in respect of these transactions, in respect of these contracts.

Funding and related transactions. Deutsche Bank London obtained the funding of approximately 170 million and 54 million from DBJ. This was done by the conclusion of repurchased transactions between DBL and DBJ.

Just incidentally these repurchased transactions are reported to banking supervision of the SARB as a normal course of business.

In terms of the repurchase transactions, Deutsche Bank London sold South African Government Bonds with the value of approximately equal to its funding requirements to Deutsche Bank Johannesburg and Deutsche Bank Johannesburg paid Deutsche Bank London an amount in Rand equal to the value of the bonds.

The repurchase transactions provided that Deutsche Bank London would repurchase the bonds at the original selling prices plus an amount in respect of finance costs.

This then gives us the transaction that were executed in terms of the asset swap and what I would like to do is now continue with the slide presentation, just to show you what happened subsequently.

For the record we are still on slide J. --- Yes, going for slide J. Deutsche Securities, a blue arrow in 2.3 then continued to purchase shares from the JSE for payment. And those purchases were timed as the placement between Deutsche Bank London and other non-resident investors occurred. So that is blue arrow 5.3. So I am trying to convey that this was an ongoing process and there is a whole many number of transactions appearing.

Later on and we will come to the exact date, Deutsche Bank Johannesburg lent, sorry Deutsche Bank London lent shares to Deutsche Securities through Deutsche Bank Johannesburg acting as agent. So in other words, securities borrowed from shares in Deutsche Bank London, with Deutsche Bank Johannesburg acting as agent. In terms of collateral Deutsche Bank Johannesburg in arrow 4.2 deposited bonds with Deutsche Bank London. Deutsche Securities use those shares to return the shares that it had borrowed from the South African Bank and so I have just said these two nett off again and so those disappear. Slide L, the Deutsche London continued in its efforts to place shares as shown by the red arrow and as it placed shares, it unwound its forward or its SAFEX hedge. I believe it unwound the SAFEX hedge first, that is 3.2 to 3.4 and so, and at the same time, it purchased shares on the JSE. So essentially as it placed shares with non-resident investors, it unwound its SAFEX hedge and purchased shares for payment on the JSE. So we can take that out. In terms of the purchase now Deutsche Securities had shares, those shares were placed, sorry those shares were used to return the loan through Deutsche Bank Johannesburg to Deutsche Bank London. In other words, Deutsche Securities had borrowed shares from Deutsche Bank London, to the extent that it purchased shares, it returned those shares. And as the payment, this is all happening at the same time, as the payment occurred, Deutsche Bank London would also receive payment and the repo and the hedge were unwound. So again in slide P we have really a very similar diagram to the Sasol diagram where we have an asset swap and again, I probably didn't make it clear but the transaction that remain after all these hedges, are the asset swap transactions. Just to repeat, Deutsche Securities is buying shares, selling it to Nampak Products. Nampak is selling those shares to Deutsche Bank London and London is paying Euros for them.. (intervenes)

Pounds. --- Sorry Pounds and Deutsche Bank London is then on-placing those shares with non-resident investments.

I don't want to repeat all the questions we have put to you earlier. The principle is exactly the same. Deutsche Bank London.. (intervenes) --- Exactly the same.

Is the long term foreign investor. Its only benefit is its fee, do you agree with that? --- Correct.

So the questions I put to you in regard to Sasol in regard to the principle and implementation of the deal, would you confirm that your answers are the same? --- Yes I confirm that.

Thank you. Carry on. --- Okay, so I am now going to, if I may leave the diagrams and look at 4.2.

In order to manage the costs relating to the holding of bonds purchased under the repurchase transactions and the Nampak shares purchased by DBL, DBL loaned the unplaced Nampak to DBJ on 9 October 2001. The securities loan was entered into by DBJ as agent for Deutsche Securities. The Nampak shares received by Deutsche Securities under the loan were delivered by Deutsche Securities to Standard Bank South Africa in settlement of the securities loan referred to in 2.3 above. Standard Bank thereupon repaid the cash collateral to Deutsche Securities and Deutsche Securities placed the amount on deposit with DBJ.

As security for the obligations under the securities loan, DBJ transferred South African Government Bonds to DBL. The bonds had a market value similar to Nampak shares.

The effects of the Nampak asset swap and related transactions.

Sorry can I just ask you this, after not the shares, but after shares are returned to the South African bank. --- Yes.

What equity risk still remains in the structure? --- Deutsche Bank has no, has in fact if you look at it, Deutsche Bank has risk on the shares arising from the shares which is exactly offset, in fact if you look at the very detail of the SAFEX transactions, the cover ratio of a SAFEX transaction is 100 shares for one. So the statement is not exactly correct but within a 100 shares, the risk placed in terms of the forward or the SAFEX contracts, offsets the return that is made or lost in terms of the shares.

Thank you. Please continue. --- Effect of the Nampak asset swap and related transactions. The asset swap allowed Nampak to provide additional capital amounting to .20 million to its United Kingdom subsidiary.

Nampak Holdings PLC. The effect of the aforementioned transactions on DBJ and DBL was as follows. DBL purchased Nampak shares. DBL hedged its market risk relating to the shares. DBL hedged its currency risk and DBL and DBJ balanced their currency positions.

So again no (indistinct) profit was made by Deutsche Bank entities in terms of the fall in the Rand.

As from the date upon which Nampak shares were sold.. (intervenes)

MS QUNTA: Could you just stop there. I heard Mr Brooks asking you whether the only benefit you gained from this transaction is the fee and I was going to ask him what he means by only because if you say only, it means that there could be other benefits. And perhaps either he or you can assist me, what other benefits would you get from a transaction like you engaged in besides your fee or your commission which I believe its (indistinct) 7% or 2%, 2.7, sorry. --- No it is not, we don't actually, we didn't disclose the fee Commissioner.

Oh.. (intervenes) --- I am not sure, sorry, yes?

But perhaps I am reading something else but what I am saying is, perhaps you can answer me, would there be any other benefit that you would gain from the transaction? --- I would say that the reason the transaction was done was to assist the client and for the earning of fees. So I think the, you know the assistance of a client may be used as another, we regard that important.

MR BROOKS: Yes.

MS QUNTA: You can continue. --- 5.3. As from the date upon which the Nampak shares were sold to Deutsche Bank London, Deutsche Bank London endeavoured to place the shares with long term foreign investors. By 28 March 2002, Deutsche Bank London had place 9.9 million out of a total of 18.3 million Nampak shares in 27 separate transactions. DBL is continuing with its efforts to place the shares.

MR BROOKS: Mr Smith sorry, could you just stop there please? Commissioners 5.4 is very repetitious of the Sasol transaction. Would you confirm that Mr Smith? --- That is correct.

Would you like the witness to read that into record. It is all covered in the Sasol transaction already.

COMMISSIONER: It is similar to Sasol.

MR BROOKS: Oh yes. Would you confirm it? It is similar to the Sasol.. (intervenes) --- It is similar, it is not the same but it is very similar. The intention is there, the difference is that SAFEX transactions were used for a hedge as well as a forward whereas in the Sasol transaction only a forward was, but the intention is perfectly the same.

But other than that, it is identical? --- It is the same, apart from.. (intervenes)

MS QUNTA: Can you perhaps refer to the number 5.4, for the record purposes. --- Yes I acknowledge that 5.4 has been read into the record.

At page 147. --- At page 147.

MR BROOKS: Thank you. Then if you could get to paragraph 6 Mr Smith, I think we have already dealt with the Nampak effect on the depreciation but on 148 there is a graph which you attempted to illustrate earlier without the benefit of the graph and then if you continue from 6.4, I think you gave certain percentages in regard to Sasol and here you give further percentages and possibly if you could just deal with those percentages. --- Okay, would you like me to read from 6.4?

In other words just highlight the percentages as you gave them in Sasol. --- All right, 6.4, sorry Mr Brooks I am being advised to read the amounts as well. I think it is relevant because the amounts relative to the foreign exchange market, are very, very small and I think that needs to be read.

Yes. What I mean is to get to the percentage, you have got to read the amount. --- Yes of course.

No problem with that. --- The exchanges of Rand for foreign currency pursuant to the currency hedge entered into in connection with the asset swop, occurred on the following dates: 15 million on 26 June 2001 and 15 million on 24 July 2001.. (intervenes)

Five million.. (intervenes) --- Sorry.. (intervenes)

Correct that. --- 5 million on 24 July 2001. The Rand Pound exchange rate closed at 11 38 on 25 June and at 11 33 on 26 June 2001. Showing that the Rand strengthened on 26 June, the day the first Nampak hedge was implemented.

The Rand foreign exchange rate closed at 11 71 on 23 July 2001 and 11 61 on 24 July 2001, showing that the Rand strengthened on 24 July 2001, the day the second part of the Nampak hedge was implemented.

In other words on both the days that the hedge, the currency hedge and if we get back to an earlier statement, the only impact could have been the currency hedge on the rate of the Rand and we are not talking now reserves, we are talking about currency rate, both days the currency firmed, in fact strengthened in Rand terms.

In June 2001 the Rand depreciated by .5% and in July 2001 the Rand depreciated by 2.4% against the US Dollar. The significant fall in the Rand started in September, six weeks after the finalising of the final leg of the transaction.

The changes in the Rand US Dollar exchange rate referred to in 6.2 above, are representative of changes in the exchange rate of Rand against other major foreign currencies including the Pound.

In terms of the formula referred to in part 2 paragraph 6, the estimated impact of the exchange of Rand in connection with the hedging of Nampak are asset swap, was .04%.

I think it is not that clear here. Just to remind you Mr Brooks, that is the estimate prior to the implementation. When the implementation was actually done, we found the Rand strengthening. But if we had done this, if we had done the calculation, you know if we had estimated what the impact would be prior to the transaction, we would have estimated it at .04%. Would you like me to continue reading?

Please. --- The Rand that was offered for exchange pursuant to the currency hedges were relatively small and were readily absorbed in the market foreign exchange. Accordingly there is no basis to suggest that any of the transactions entered into in connection with the asset swap, gave rise to or contributed to the rapid depreciation of the Rand in the fourth quarter 2001.

After the asset swop was initially implemented, DBL began placing the Nampak shares of other foreign investors. The proceeds were paid to DBL and transferred to South Africa. The asset swap had a neutral to positive influence on the Rand foreign currency exchange rate from 21, from August 2001 to the end of 2001.

Clearly the sale by DBL of Nampak to other non-residents, continued to have a positive impact on the Rand foreign currency exchange rate.

(Indistinct)

COMMISSIONER: Could we deal with any Nampak questions. Are there Nampak questions? Mr Serruries?

MR SERRURIES: I can't see the difference between your paragraph 3.3 and 3.4. Is there a difference there that I have missed? --- The difference is that in 3.3 we are referring to the hedge executed by Deutsche Bank London and in 3.4 we are talking about the hedge implemented by Deutsche Securities. In fact what happened is, Deutsche Bank London to hedge its position, would need to, it would need to buy put contracts and sell call contracts to effect a hedge while Deutsche Securities would have to buy call contracts and sell put contracts. So if you look at the detail of the statements, the SAFEX statements you will see, would you like to go to the statement.. (intervenes)

No I just want to understand the principles. --- If you look at the statements, you will see there is a minus sign in front of the put which is not there in front of the call in terms of the actual transactions that occurred in SAFEX.

And the other thing that, Mr Commissioner this is a general question but I would like to achieve some clarity, particularly about the concept of borrowing or lending shares. Now I know you bankers use those terms as a matter of convenience but strictly speaking of course you cannot borrow or lend an incorporeal such as a share, can you? Do you agree? You nod your head.

MR UNKNOWN: (Indistinct) I am not sure it is fair to ask the witness that statement. It is a leading question. I am not sure he is (indistinct) to reply to that.

MR SERRURIES: Well Mr Commissioner no doubt he will say if he doesn't know what the true answer is but the fact is.. (intervenes)

COMMISSIONER: Let's hear Mr Smith's answer.

MR SERRURIES: Yes.

COMMISSIONER: Mr (Indistinct) may be quite right. Just tell us what your understanding is. --- Okay my understanding in terms of market practice, in terms of what happens is that if I have bought shares and I lend those shares out, I could do that because I own the shares and in terms of that loan, I would expect to get some collateral in return for that. And the reason I get that collateral is to ensure that I get those shares back and then on demand, in terms of the securities lending contract, I would typically be allowed to request those shares back if I want them back. So it is at my request. I request those shares back and those shares are returned to me in terms of which I would then give back the collateral. Is that your question?

MR SERRURIES: Well I ask you this because you spoke about scrip borrowing. --- Yes.

Now how does that apply to electronic recording where there is no scrip. --- It is a, I think it is a carry over from the term that was used when there was scrip and I suppose that it is the usage which is in market language which is used today to mean that people borrow and lend shares as if there was scrip, even though we know that it is an electronic record.

Yes. So how do you effect borrowing or lending of shares in the new electronic environment? You can't hand over the share certificates because there isn't one. --- No, correct. So what happens is that when you borrow shares from someone, you would I presume and against we are talking about Strait which I am not expert but I presume an electronic record would reflect the fact that this borrow has occurred.

And as you understand the position of the borrower. --- Yes.

What may he do with the shares? May he trade in them, provided he acquires other shares to give back when his loan is called in? --- Yes.

Is that the custom in the market place? --- My understanding is that this actually occurs very frequently when for instance the, if I could first talk about the old scrip settlement, that when shares were sold, clients often didn't deliver those shares in time and in terms of making delivery, as we saw in the Sasol transaction, 38 odd million, 39□ million shares needed to be delivered and Deutsche Securities didn't physically have those shares, so it borrowed those shares for delivery. So yes, I understand absolutely that once you have borrowed shares, you can use those shares to sell if you want to do that.

COMMISSIONER: But in the second part of Mr Serruries's question was, if your obligation arises to return the shares, you would have to buy in and return .. (intervenes) --- You would have to return.. (intervenes)

The equivalent amount that you borrowed? --- Yes. Correct.

MR SERRURIES: And the opposite is also true because you can sell a share which you haven't yet acquired. --- That is exactly what happened with Deutsche Securities in the Sasol and the Nampak transaction where Deutsche Securities sold shares which it hadn't yet acquired, that's correct.

Yes. And the point I am seeking to make is that the actual acquisition of the shares may not necessarily precede the dealing in the shares by a party who purports or who actually deals in them. --- That is correct. If one sells shares prior to purchasing those shares, the transaction is typically referred to as a short position where one sold something one doesn't yet own and that can occur as well, ja.

And one other thing I think perhaps one should clear up. You have spoken about shares being in a certain place. Do you mean the place is determined by the residence or domicile of the holder of the shares? --- No, no, not at all.

MR BROOKS: He used the word placing.

MR SERRURIES: No, no, I am talking about shares are offshore as opposed to here. --- Right. In terms of my understanding again, we are talking about Strait and again I say that I am not an expert but my understanding of how the procedure works is as follows. A non-resident would appoint a local bank CSDP to record in their register the ownership. So you could say in terms of any non-resident who buys a South African share, you could say the place of that share is in South Africa because that is where the record is kept. So a non-resident who buys a share may simply never see the share, never see the electronic record. If they appoint a local bank to act as their CSDP, the local bank would keep the record of that ownership in South Africa. So in that case it could be any foreign investor buys the share, the record or the place could never be anything but South Africa and that could be whether we are talking about an asset swap, normal purchase or anything else.

Yes. Yes, thank you.

COMMISSIONER: Thank you Mr Serruries.

MS QUNTA: I have a question which I also wrote with Sasol but it arises with Nampak and I am sure with M-Cell, so maybe you can answer it now. You have given a graph to show the date of the transaction and in other to underline your submissions that the transactions had no effect on the exchange rate, you have said it took place on this day and on this particular day there was actually an appreciation rather than a depreciation. --- Yes.

We have, in the first week that we were here, we hear evidence from currency traders and I think maybe one or two economists that in certain instances, transactions take place and the effect on the exchange rate occur either before or after the actual effecting of that transaction. I suppose in the sense when it happens before, it is when the market hears about it and then quite in a different context, the De Beers transaction was used as an example, as I say in a different context that the market knew that the De Beers deal was going to materialise. They anticipated the massive inflow of foreign exchange and on the basis of that knowledge, the Rand appreciated and when they discovered that in fact the money was going to the, it was utilised by the Reserve Bank to reduce the NOSP, the Rand depreciated. So my, you seem to suggest here that in fact if, on the day the transaction happened, there is no effect on the Rand, it means that it has not affected the exchange rate. So my question to you is, what do you say to that submission that was made to us by experts? Do you agree or disagree or what is your views? --- Okay, to answer the question Commissioner, first of all at the time of executing the Sasol transaction, to our knowledge, you know ourselves and Sasol knew about the transactions, of course the Reserve Bank as well but really it was the knowledge of that transaction was going to occur, was confined to a very limited number, institutions and people. So I would have said if it were not for this investigation, I would have said that no-one knew about those transactions except those parties. However I have been proved wrong by Mr Wakeford who apparently knew about an M-Cell transaction before it happened. So I don't know how that happened but obviously my assumption is incorrect, although going on that assumption, I don't believe the impact could have been before the transaction. In terms of the impact on the currency as my understanding of trade in the market, the impact occurs if there is no knowledge before the transaction, the impact will occur at the time the transaction occurs. Unless the market doesn't, in my opinion, the market doesn't understand what is happening and takes some time to analyze you know, the market trade but actually the real effect is this, that you mentioned an example where probably the market saw the trade and didn't understand what was happening in terms of the trade with the currency and the Reserve Bank in the transaction you mentioned. So in that case I would say that the impact is because the market didn't understand what was occurring. Now these transactions were confidential to ourselves and the clients and so as I say I have been proved wrong but we didn't at the time believe that there was going to be a lot of publicity about these transactions. So at the time we believe that the impact was immediately. In retrospect it is impossible for me to answer what effect has there been as a result of these transactions because of Mr Wakeford's statements or other press statements or, I can't answer that. But I would say that essentially the impact on the market in terms of my understanding would be when the foreign exchange trades on the market, that is when the impact is. And I would say in the majority of cases and there is no reason here to suspect that the foreign exchange market didn't understand the transactions at the time because at the time Deutsche Bank London was trading foreign exchange in the market and that occurred on a certain date and the market absorbed that flow in the normal course of events.

MR NEIL SMITH s.u.o.

CHAIRPERSON: Right, can we then just move on.

MR MASHEGO: Sorry, can I just get your understanding.

CHAIRPERSON: Can you just introduce yourself for the record?

MR MASHEGO: I am Atley Mashego from ... (indistinct)

CHAIRPERSON: And you are part of the investigating team?

MR MASHEGO: Part of the investigating team yes.

CHAIRPERSON: Yes.

MR MASHEGO: From the statement that you have just made that the markets saw major transactions, but they did not understand why. In your opinion or understanding when the market identifies such a pattern, would you agree that normally they would respond by liquidity, people would try and stab back by withholding their trade until they find out what actually is happening and then ... --- What - in terms of the transactions the whole hedging occurred in terms of an environment where the rand was strengthening and both the Nampak -sorry, both the Nampak and the Sasol transactions - the market was strengthening and after that there were no - there was a number of dates we mentioned in terms of - in reference to these transactions and after that there was no participation in the market by Deutsche Bank at all. So the orders were out the way, the impact, if there was an impact, would have happened at the time of the transactions.

CHAIRPERSON: Yes?

MR BROOKS: Fine, let us move on then please to ... (indistinct) which is page 360 which is the second volume. --- Right.

Yes Mr Smith. --- Background and Reserve Bank approval.

"During October 2001 Deutsche Securities, a subsidiary of Deutsche Bank AG agreed to arrange an asset swap with M-Cell to enable M-Cell to be paid part of the US dollar 250 million ... (indistinct) financing facility raised by Mobile Technology Network Holdings MTN a wholly owned subsidiary of M-Cell.

The facility was used to find the license fee, the infra-structure role ... (indistinct) of the Nigerian mobile telephone business of MTN Nigeria Communications Limited, the subsidiary of MTN.

The asset swap was to involve the acquisition of M-Cell's shares in the South African market, the placement, i.e. sale of up to $ U.S. 75 million worth of the shares with non-residents and the payment of the proceeds of the placement into an off shore account of MTN International."

That is Mobile Telephone Networks International Mauritius.

"Deutsche Bank Johannesburg Branch applied to the South African Reserve Bank for approval of the M-Cell asset swap on 25 October 2001. The Reserve Bank approved the application on 15 November 2001.

Implementation of the M-Cell asset swap.

Although M-Cell had obtained approval to undertake asset swap for $ U.S. 75 million, Deutsche Securities implemented the asset swap only to the extent of $ U.S. 20 million. This was done by Deutsche Securities implementing asset swap in four tranches for a total of 15,7 million M-Cell shares worth $ 20 million."

Just possibly to explain that. M-Cell wished to implement the asset swap to the extent that they were receiving cash flow and so Deutsche, this is why Deutsche implemented 20 million asset swap initially. Also Deutsche Securities wished to make sure that it could place those shares, Deutsche Securities, Deutsche London wished to make sure that they could place those shares within a rapid time as well.

"Deutsche Security sold a total of 15,7 million M-Cell shares to Deutsche Bank London Branch for a total of 20 million. The share were sold in four tranches as follows:

5,7 million shares sold for R86 million for settlement on 22 January 2002.

2,7 million shares sold for R41 million for settlement on 23 January 2002; and

3 million shares sold for R43 million for settlement on 24 January 2002; and

4,1 million shares sold for R60 million for settlement on 25 January 2002.

Deutsche Securities acquired 5,7 million of the M-Cell shares referred to in 2.2 above in the South African market and borrowed the balance of the shares i.e. 9,9 million from a local bank outside the Deutsche Bank group, the lender, under securities loan transaction entered into between Deutsche Securities and the ... (indistinct)

As security for the securities loans Deutsche Securities deposited an amount of approximately R160 million to the lender. The amount of the deposit was varied according to the value of the loan securities.

On 25 January 2002 MTN paid Deutsche Securities 231 million being the rand equivalent of %20 million. In settlement of the purchase prices referred to in 2.2 above Deutsche Bank London paid $20 million into an off-shore account of MTN international. This amount was the U.S. dollar equivalent of the purchase prices."

MR BROOKS: Sorry, wold you just stop there please. Would you go to page 365 which is the Deutsche Securities letter where the transaction is explained to M-Cell. Now it is very similar to the Sasol and Nampak letters, but if you look at the very last paragraph on that page:

"The key features and benefits of the Deutsche Securities asset swap are

.complete flexibility on implementation. M-Cell is able to time transactions to suit its cash flow position and take advantage of favourable exchange rates and is not limited by foreign demand for shares. Deutsche Bank London will effectively underwrite ...

and I want to emphasize that word -

"... the placement of shares off-shore."

Now this is the first time that we come across this principle of Deutsche Bank London underwriting the placement of the shares. We did not find it in Sasol, we did not find it in Nampak. I can take you to those documents if necessary, but it is not there. Could you explain to the commissioners what the difference is here? --- There are two differences really about this. The first is that the - in reference to the complete flexibility at the beginning of that paragraph, here we understand that we are transacting first of all in smaller tranches, in smaller number of shares and M-Cell is a reasonably liquid share unlike Sasol where we had to go and acquire 39 million shares and place 39 million shares which we knew was impossible. This size of shares is in fact more manageable. At the time of the - at the time of doing the transaction we had a strong belief that we had a significant buyer, in fact a buyer who could buy all of these shares on day one. That buyer since in the event did not follow through and buy those shares. We actually expected at the time that to happen, that buyer did not buy those shares and we here refer to the fact that we did not want to say to the client M-Cell, well we know there is a buyer, we have got a buyer and you can do the asset swap and don't worry and then the buyer disappeared which in fact occurred and then the corporate could not do that swap.

So what happened was that Deutsche Bank really said we will undertake to be the buyer if that buyer disappears and that is what happened in fact and we can again - I do not have the numbers at my fingertips, but a number of shares - I think it was about a third, were placed prior to this. Deutsche Securities took - Deutsche London took two thirds of those shares and then hedged those shares - I will explain this by a ... (indistinct)

MR BROOKS: I just want you to explain the difference why you were underwriting the ... (indistinct). Please proceed. Paragraph 3, page 362. ---

"Hedging transactions.

In order to hedge its currency risk in respect of the M-Cell shares Deutsche Bank London as non-resident exchanged R231 million, $20 million U.S. on 8 January 2002. Deutsche Bank loan and hedges market risk in respect of the M-Cell shares by entering into put and call contracts on SAFFEX. Expiry dates of the contracts of 21 June 2002 and the strike prices of R15, R15,28 and R15,78.

In terms of the contracts Deutsche Bank London is entitled to receive an amount based on any shortfall in the market value of unplaced M-Cell shares below their value based on the strike prices and Deutsche Bank London is required to pay an amount, if there is an excess. Deutsche Bank London paid initial ... (indistinct) to SAFFEX in respect of these contracts. Deutsche Securities hedged market risk in respect of the M-Cell shares by entering into put and call contracts on SAFFEX. The expiry dates of the contracts are 21 June 2002 and the strike prices are R15,05, R15,28 and R15,78.

In terms of the contract Deutsche Securities is entitled to receive an amount based on the excess of the market value of the M-Cell shares over their value based on strike prices and is required to pay an amount. There is a shortfall. Deutsche Securities paid initial margin to SAFFEX in respect of the contracts."

Mr Brooks, if I could now go to a short slide presentation to illustrate this transaction. I will try and be brief, because we have seen the slides, similar slides before. To describe the M-Cell transaction we have the same entities except here we have MTN International and M-Cell. We have a local bank, otherwise the slide - my slide R is similar to previous ... Deutsche Securities arrow 2,2 sold shares through the Johannesburg Stock Exchange to Deutsche Bank London.

MR BROOKS: Did you ... (indistinct) slide R? --- Sorry, it is now slide R correct.

Ja. --- Slide R, arrow 2,3 Deutsche Securities bought a portion of the shares, I think it was about a third, through the JSC for payment and Deutsche Bank borrowed shares from a local bank and placed collaterals with that local bank in terms of delivery in terms of 2.2 Deutsche Bank London requiring ... (indistinct) Shares were placed with non-resident investors arrow 4,2 slide R, for payment of other non-resident investors. M-Cell paid to Deutsche Securities a rand amount and Deutsche Bank London paid to MTN International U. S. dollars. So again you know those are the asset swap transactions. In terms of the hedging Deutsche Bank London in arrow 3.1 exchanged rand for U. S. dollars and bought put options sold call options in arrow 3.2 with SAFFEX. Deutsche Securities sold put and bought calls arrow 3.3. So effectively what we have got here is we have got the exchange rate for U.S. dollars, the hedging through the SAFFEX market. Just if I can point out a couple of differences. First of all there is no re-purchase transaction in this diagram, it did not occur. There is also, it did not occur specifically related to this transaction and there is also no securities lending transaction between Deutsche Bank London because Deutsche Bank London and Deutsche Securities.

7 We now move on to the blue arrows. So again the black arrows represent the transactions which happened more or less at the same time. And then as Deutsche Securities purchased shares in the market and placed shares with long-term investors, arrows 2.3 and 4.2 respectively, it unwound, the - basically - sorry we are now going to the red arrows ... (intervenes)

MR BROOKS: That is slide S. --- Sorry, slide S, we turn to the red arrows. As those shares are sold for payment the arrows 3.1 is unwound and the hedge - the transactions through SAFFIX are unwound. So we end up with slide U which is the asset swap. So really we have got the same situation occurring here. We are ending at the same position - oh sorry I forgot to say as the shares are purchased in the shares are returned to the local banks, the local bank falls out of the picture. So here we have essentially the similar transaction happening in both Sasol and Nampak. The hedges are different, but essentially where we end up is the transaction of this nature.

Will you just confirm that the question which I put to you relating to the other transactions your answers will be the same in regard to this transaction? --- Yes. Yes, the answers are the same.

The long-term investor questions.

MR BEZUIDENHOUT: May I ask a question before we go ... (intervenes) --- Yes.

There has been questions about the fact that Deutsche Bank London is a long-term investor. Could you please Mr Smith tell us whether it is in fact relevant in terms of the Exchange Control Regulations it is in fact necessary that Deutsche Bank London is a long-term investor and why not? --- In terms - yes, in terms of the - whether London - Deutsche Bank London itself is a long-term resident investor is not, in my understanding, really relevant to the asset swap transactions, because in our understanding the issue here, the important issue is the flow back. So to the - so what is rele... - it is relevant that flow back does not occur and as we have illustrated in all three transactions flow back did not occur. In terms of - so in terms - if a non-resident investor A purchased shares and we knew that - a week later that non-resident would on-sell those shares to non-resident B it would not necessarily be an issue at all, because in terms of the asset swop what is relevant is that those shares ... (indistinct) flow back. So the - it is not specifically relevant whether Deutsche Bank London is a non-resident investor itself. What is relevant is that flow back is monitored and we, as I have explained we take efforts, great efforts to monitor the flow-back.

In some respects one might say that one of the roles undertaken by Deutsche Bank London is that of the person that is buying the shares and intending to on-sell them to other long-term investors. Now, is there any basis on which one could say that there was any doubt that Deutsche Bank London would have assumed that role? --- No, there is no doubt, because both in terms of the application, Deutsche Bank London was mentioned as one of the non-resident investors and second of all in terms of the report-backs, it was mentioned clearly that Deutsche Bank London held shares for on placement. So there can be no doubt about that.

Thank you.

MR MASHEGO: Can I ask. Where you say that it is irrelevant whether Deutsche Bank London is in fact a long-term foreign investor, if we say for argument's sake it is actually not a long-term foreign investor and on day 1 the ... (indistinct) subsidiary of Sasol is actually sitting with 340 euros. Okay, so we have now money that is sitting in a foreign subsidiary, but there is not long-term investor. Now, in that event have we complied with the requirements of the foreign exchange division of the South African Reserve Bank? --- The conditions of the - that the Reserve Bank put on these asset swaps is that a non-resident purchases these shares and in terms of our understanding of long-term that means a period say 12 months or more, just in terms of our understanding. So in terms of the non-resident it is relevant for instance that Deutsche Bank is a non-resident. So when we are grouping the words together Deutsche Bank London is a non-resident, that is relevant in terms of this. In terms of the fact that the shares, the intention of Deutsche Bank London is to sell the shares quickly to other non-residents and to make sure that there is no flow-back you can say from a technical point of view, you know Deutsche Bank is not a long-term resident - a non-resident investor, but in terms of the transaction that we are talking about what is, and this is exactly the point that you highlight, it is relevant to know that non-residents hold those shares for a period of for instance 12 months. So in terms of the structure that is what we have achieved, that we place shares with non-residents, we have a commitment for Deutsche Bank London to continue to place those shares with non-residents and to monitor the extent that there is flow-back, because flow-back is the issue here that we need to - in terms of flow-back we need to make sure that non-residents do not sell shares to residents, because that would then need to be reported and would be reported to the Reserve Bank and the Reserve Bank then may require that that be re-financed.

Yes, so if a short-term investor or a number of short-term investors actually take these shares, but there is no flow-back, is it your opinion that the requirements of the Reserve Bank would have been satisfied? --- In terms of the way Deutsche Bank placed the shares we do place and have placed many shares with investors who we consider to be short-term and those shares we do not count in terms of working out the placement. So if we place shares with an investor who we know first of all intends to sell those shares rapidly or quickly then we do not count that as a placement, we do not count that in terms of the asset swap. Deutsche Bank London, we know that it will only place those shares while the intention is that it will sell the shares maybe as quickly as it can, it is also the intention that those shares will only be sold to non-resident investors and it also has taken care to make sure that on selling those shares that those new non-residents will not simply sell them back to South Africa. So I think there is a - not I think - there is a big difference between selling shares to a short-term investor who is a non-resident who may sell those shares tomorrow back into South Africa which would then be flow back and selling those shares to Deutsche Bank London which will only sell the shares to an investor if they are non-resident long-term investors.

MS QUNTA: How do you - how does Deutsche Bank London ensure that, because presumably once they have - once they have disposed of the shares to a long-term investor they surely would have no control over what that investor does. As I understand what you are saying is that you feel that you meet the conditions as long as you make sure that the shares are with non-resident investors and that there is no flow-back then you have discharged your duty in terms of Exchange Control? --- No ... (intervenes)

So there is two questions here. --- Okay, not completely, we do not believe in discharge our duty. In terms of selling shares to a non-resident investor we will in terms of our understanding and our sales force, understanding of the market and who the investors are, you know what they are doing, their typical turn-over through shares etcetera, we will count those placements with investors who we understand will hold for a long time, a long term. So we used our best efforts to understand that really by the type of institution etcetera who buys the shares, and what you are referring to is its practical problem of course. You know what can happen, someone can buy shares on 8 September and then on 11 September disaster may decide well yes, I know on 8 September I want you to buy these shares and hold them for three years now, but because of the 11th of September I am going to sell them straight away. And since that is a practical problem and that is a difficult problem to solve, but at the time of placement of those shares with those non-resident investors we understand, we believe we understand that these people will hold them for a long term.

MR BROOKS; Right, shall we move on please. Mr Smith, paragraph 4. ---

"Effect of the M-Cell asset swap and related transactions.

M-Cell asset swap enabled M-Cell to repay $20 million of the $450 million off-shore financing facility used to finance the licensing fee and infrastructure roll ... (indistinct) costs of MTN Nigeria Communications Limited and indirect subsidiary of M-Cell. As from the date upon which the M-Cells were sold to DBL, DBL endeavoured to place the shares with foreign investors. As of 28 March 2002 DBL had placed 7,2 million of the 15,7 million M-Cell shares. Whenever any M-Cell shares were placed by DBL the following would occur. DBL would recover any loss on the placement by closing out its SAFFIX hedge. This loss would be equal to any shortfall in the marked value of the placed M-Cell shares below their value based on the strike prices. DBL would be required to pay to SAFFIX an amount equal to any profit it would otherwise have made. Deutsche Securities would purchase the same numbers of M-Cell shares in the South African market and deliver them to Standard Bank South Africa in partial settlement of the securities loan.

Deutsche Securities would then withdraw part of its cash collateral deposited by it with Standard Bank South Africa. Deutsche Securities would recover any loss in the purchase of the shares by closing out it's SAFFIX hedge. This loss would be equal to any excess in purchase price of the shares over their value based on the strike prices of the applicable SAFFIX contracts. Deutsche Securities would be required to pay to SAFFIX an amount equal to any profit it would otherwise have made."

Just in English that really means we are doing the hedge again.

"The impact of the asset swap and related transactions on the rand's exchange rate. The only transaction involving exchange of rand for foreign currency was the currency hedge referred to in 3.1 above.

This transaction resulted in the exchange of R231 million or $20 million U.S. on 8 January 2002. This occurred after the period during which the rand depreciated and in terms of ... (indistinct)

From the above it is clear that none of the transactions entered into in connection with the asset swap, gave rise to or contributed in any way to the rapid depreciation of the rand in 2001."

MR BROOKS: No further questions.

MR MASHEGO: Can I just ask one more question. Mr Smith you had indicated that you had actually executed this transaction in order to earn a fee? --- Yes.

Without disclosing what that fee is, when you negotiate the amount do you at any point in time make reference to compensation for any financial risk you have assumed, be it credit risk, equity risk or counter-party risk? --- Yes, absolutely. In terms of the calculation of the fee we look at the cost of hedging, the exposures that we take, the possible tax consequences of the transaction and we try and understand all these different things. Now, the problem or the - in terms of doing this there are a lot effects that are not clear, for instance tax regimes change, cost of hedging changes, the cost of implementing transactions on certain exchanges, that cost change, etcetera.

One of the big factors in terms of trying to arrive at a fee is to the extent that borrowing needs to be done. There is a market and there is a market price for borrowing. Now where shares are in short-supply the borrowing costs can increase just like the share price of any shares. So you know while Sasol's share might be R100 today for argument's sake it might be R200 tomorrow. We have to try and build into our fee structure a large component which is uncertain.

So in terms of calculating the fee we try very hard to try and estimate what the possible costs are going to be, but often you do not actually know what those costs are till after the event, because an example is if the borrowing of shares, if the borrowing market in shares increases and there is a short supply of that shares, that price may double, triple or quadruple and that will mean we have to pay those costs and of course when we charge the client a fee that is an upfront fee, we do not ask them to ... (indistinct)

CHAIRPERSON: Any further questions?

MS QUNTA: Ja, just one question relating to the M-Cell ... (indistinct). You have indicated in paragraph 1.3 that you applied for approval in relation to the asset swap. The transactions that went with the supplementary transactions, did you apply for approval to the Reserve Bank for instance the hedging transactions that you referred to in 2.3 and 3? --- The transactions of - that are on a - of a financial instrument on a - or an instrument which is listed on the South African market or exchange should I say, on an exchange, all under the general approvals ambit so there is no - so from that point of view those transactions are unrestricted and the require - or there is general approval given to those transactions.

MR GINSBERG: Sorry, just one question on terminology. You have referred in all three instances to what you call a currency hedge and in the Sasol example it is 3,2 on graph B and that appears in all your other graphs. --- Right.

But in fact that was just to exchange in the Sasol case of rand for euro on the South African foreign exchange spot market. --- In terms of the Sasol transaction I believe there was an exchange of five seventh's of the transaction in the South African spot market. In terms of - unfortunately I am not a forex dealer so ... (intervenes)

Well, let us just confine ourselves to the five seventh's just for the moment. --- Yes.

That is not a currency hedge, that is a spot transaction, it is a conversion of five seventh's of the total amount from rand to euro in the South African foreign exchange market. --- I do not know how exactly that was implemented, I can come back to you.

Thank you.

MR GANTSHO: Mr Smith, your evidence is clear to me that these transactions ultimately are true asset swaps, but in the meantime between the start of this these transactions and the unwinding of the hedges. --- Yes?

The transactions are largely financed by the conversion - the very point that has just been made of rands into foreign currency. --- Right.

And that to me makes them non-currency neutral. Do you agree with that observation? --- In terms of the, Commissioner in terms of the effect on the currency the way we look at the effect on the currency is what did the currency do when those transactions were implemented. Now in terms of - sorry, are you referring to currency neutral or reserves neutral?

Currency neutral. --- Currency neutral.

I have chosen that term very carefully. I have shied away from saying reserves neutral, because you have made an argument in your submission against that. --- Yes.

But you cannot argue that on that particular day the currency could have appreciated if this transaction did not take place. It is possible? --- It is possible.

It is possible, so that is why I am saying even though the currency did not move this is not currency neutral, because it could have prevented an appreciation of the currency on that particular day? --- It could have yes.

MR BEZUIDENHOUT: Can I just ask a question ... (indistinct) --- Yes.

Mr Smith how does one ordinarily hedge for currency risks? --- The - again I am concerned to be getting into an area that I am not very familiar with, but ordinarily I understand one sells or exchanges one currency for another.

Hmm. --- So maybe to elaborate slightly the transactions that we are describing are hedges. That is the intention and that is - what we did was it was a hedge of the currency.

CHAIRPERSON: That you hedge by doing the swap. Rands for euros, that is the very point Mr Ginsberg made. You might call it ... (indistinct) --- Yes correct.

... (indistinct) that the hedge ... (indistinct) an actual currency transaction swap. --- I do not know a different way to do that, unless you talk about a forward exchange.

No, no ... (inaudible) --- Yes, sorry.

MR GANTSHO: But isn't it essential to hold the other currency for it to be a ... (indistinct), if I swap rand to euros will that actually be a hedge, I have got to hold onto my euros, I do not - if I pay them off that takes away from the hedging, the ... (indistinct) from the ... --- No, I do not believe so, because a hedge refers to an asset you hold that if you have a South African bond or if you have a South African share or if you have another South African asset you have a house in South Africa as a non-resident you might hedge the currency without having the actual rands.

If you are hedging the currency risk of the unpaid shares one understands that you mean is when the value - the rand value of those assets drops because you are holding an opposite asset on the ... (indistinct) that will appreciate against the rand and you would in actual fact stay currency ... (indistinct) --- Exactly.

If you are sitting with only one leg of that exposure you are in actual fact not hedging? --- That is correct. So in terms of the transaction that you described that link is important. In fact it is vital that this is not simply an exchange of currency for speculation, that is a vital point that in fact the reason Deutsche London did that was to do a hedge. So that it would not make money when the rand fell or would not make or lose money when the rand fell or make money when the shares etcetera fell and on the currency side it ensured, it was an insurance on its position.

CHAIRPERSON: Yes, if there are no further questions ... (intervenes)

MS QUNTA: I just have one more question which is a very general question. Is this the last of your evidence? Are you finished now? --- No there is a concluding statement unfortunately.

Okay, maybe I will ask at the end. --- Pardon?

I will ask it at the end because it is a very general question, it is not related to any of this.

CHAIRPERSON: Mr Brooks, are we going to finish the concluding statement in ten minutes or shall we adjourn until tomorrow morning to finish with Mr Smith? What will be convenient?

MR BROOKS: Well Mr Commissioner I would have thought that it will be easier to finish it this afternoon if possible.

CHAIRPERSON: Oh, well let us do that.

MR BEZUIDENHOUT: May I point out there are still a number of pages, it is just not the concluding statement. We still have to deal with exchange control regulations and the approvals.

CHAIRPERSON: Could you just identify for us ... (intervenes)

MR BROOKS: What we are saying Mr Commissioner is where do we go back to ... (intervenes)

CHAIRPERSON: Just remind me ... (intervenes)

MR BROOKS: To paragraph 7 on page 5. You have a new page now.

CHAIRPERSON: And then we go right through all those paragraphs.

MR BROOKS: We have to go right to the end. So it is going to take a bit of time, but I do not know if we are maybe willing to sit after 16:00.

CHAIRPERSON: I know that tomorrow is certainly a much shorter day than we anticipated because the Reserve Bank wants to stand down till Monday. We only have National Treasury in other words tomorrow. So there is no reason why we shouldn't not ... (intervenes)

MR BROOKS: We may explain to the Reserve Bank Mr Commissioner that we understood this week that the longer you stand down the more burning questions you have to deal with. (Laughter.)

MR ____: Yes well we are not persuaded, we can ... (indistinct)

MR ____: If we are still going to cover all these pages, maybe we can just tonight see what we have already have that is in this.

CHAIRPERSON: I think Mr Wasserman you and Mr Brooks must get together with Mr ... (indistinct) so that we can just see what is the substance of which we are ... (indistinct) today, I mean tomorrow may not be as long either. Fine we will then adjourn until 10:00 tomorrow.

PROCEEDINGS ADJOURN