

PROCEEDINGS RESUME ON 8 APRIL 2002:

CHAIRPERSON: We continue today with the Commission today with the evidence of the Reserve Bank. My understanding is that the first witness for the Reserve Bank is Mr James Cross.

5 JAMES EDWILL CROSS d.s.s.

EXAMINATION BY MR BROOKS: Mr Cross, you were employed by the Reserve Bank, is that correct? --- That is correct.

In what capacity were you employed? --- As a deputy governor of the bank and with effect from August 1999 as senior deputy governor.

10 And when did you retire? --- 31 December 2001.

Mr Cross, you have prepared a statement for purposes of this Commission, could you please deal with that statement? --- Certainly, thank you. Towards the latter part of August 2001 the head of a local branch of a foreign bank requested an interview with my office together with a colleague. On enquiring as to the reason for the interview I was told
15 that the bank wished to test a financing mechanism for offshore acquisitions by South African companies. In view of the subject to be discussed, Mr L van Zyl, the then general manager of the international banking department and Mr Tom Coetzee, the assistant general manager of the Exchange Control Department, joined the meeting. At the meeting the structure was described relating to bridging finance provided by the offshore parent bank pending the issue
20 of shares offshore by a South African company in order to acquire the offshore investment. It was explained that placing the shares in a large parcel for a once off transaction for a sizable amount would in all likely damage the share price of the South African company in question. A method had been devised whereby the shares of the offshore company to be acquired would be purchased by means of an offshore loan. As and when the shares of the South
25 African company were placed piecemeal on the offshore markets, the loan would be gradually expunged until sufficient shares had been placed to make the acquisition in accordance with the exchange control regulations. In order to secure the offshore bridging finance the parent bank had to rely on security provided in South Africa by the corporate making the offshore acquisition. For credit purposes the offshore bank required to sell
30 forward rand for dollars to the equivalent of the security provided by the domestic corporation. We were asked whether or not the bank would object to such a structure being put in place. After discussing the matter for some time and asking further questions, the meeting concluded that we could *inter alia* not agree to the forward sale of rand as requested. We asked the party in question as to who would benefit from the profit or loss of
35 this transaction as, in our view, it seems superfluous to a proposed structure. We were not given a definite answer to this question and concluded that the amount of the domestic security would have to be increased or decreased as the exchange fluctuated in order to match the requirements of the proposed structure. We invited the party requesting the interview to submit details to the Exchange Control Department of the bank should a formal
40 reply be necessary. Some time later in September or early October I received a phone call from another person working for the same institution. This person stated that according to information received by their bank certain offshore acquisitions by South African companies had been financed by using the domestic balance sheets of the companies in question to fund their offshore acquisition which would normally have been in contravention of the
45 exchange control regulations. From what I can recall Sasol's name was mentioned. I said that I had no detailed knowledge of any specific approval given to this company and asked whether or not the methodology applied or alleged to have been applied was the same or similar to the example given by the colleague in the interview mentioned above. It was intimated that the method used seemed to have been similar or the same and that the result
50 would have been in their view negative for the domestic currency. I thanked the person in question for the information and contacted my colleagues in Exchange Control Department, suggesting to them that they review the execution of the transactions in question in order to ascertain the exact method of funding utilised therefor. I wish, chair, to, if I may, just explain the difference in the exchange control context between a review and an investigation which is
55 being widely used. An investigation is an extremely formal affair which often involves the police. It is usually an accusation of fraud and it normally ends up in the bank actually submitting the documents to the prosecuting authorities to take a decision whether or not to prosecute. A review is something totally different and was often conducted because in the development of the exchange control rulings it is often innovative. Banks, that actually
60 influence our rulings unfold over time, in other words the innovative ways to help South

African companies, make acquisitions under restrictive conditions. This request I put to Mr Grove at one of our daily market meetings and later passed the same information onto Mr Alec Bruce-Brand, head of the Exchange Control Department and Ms Jill Marcus, the deputy governor responsible for exchange control. During November and December the same party
 5 who gave this information called again on numerous occasions wanting to know if the bank had followed up the matter and needed to know what was the outcome. On each occasion I responded by saying that the matter was in the hands of the Exchange Control Department and to the best of my knowledge they were busy reviewing the transactions in questions. Secondly, I explained to the person concerned I would not be able to give any details of the
 10 bank's findings because it would be a contravention of the South African Reserve Bank Act. Furthermore, the institution the person represented was in fact competing with the institution having executed the deal, that is the Sasol deal, and it would thus be inappropriate aside of any restriction to pass on any details. Lastly, from time to time I asked my colleagues in exchange control if there had been any progress and they confirmed that they were
 15 reviewing the matter but due to delays in receiving information it would probably take some time to finalise. Mr Chairman, with your permission I would like to address an allegation regarding my personal involvement in the matter before the Commission. The allegation is that I was in fact Mr Wakeford's informant. I was appointed a deputy governor of the Bank with effect from 1 January 1997 by Mr N R Mandela. In August 1999 I was designated senior
 20 deputy governor during the time when President T M Mbeki was in office. If I were at all unhappy with the way in which my colleagues at the bank or the National Treasury were conducting themselves in certain issues I would have been entitled to approach President Mbeki to discuss the matter. President Mbeki, to my knowledge, conducted an open door policy with regard to senior officials appointed by the Government. I did not do so because I
 25 had no reason to do so. I wish to state that I have never communicated with Mr Wakeford on any issue verbally or in writing, either directly or via a third party. Furthermore, I hereby authorise the Commission and Mr Wakeford to make public any details of my alleged involvement with Mr Wakeford which I deny in this regard. I wish to thank you and the Commission for this opportunity.

30 Commissioners, may I then just add the following please, that last week articles appeared in the Mail and Guardian and in the Financial Mail alleging that Mr Cross is Mr Wakeford's source. Now arising from those articles we communicated with Mr Wakeford's attorney and arrangements were then made to communicate with Mr Wakeford yesterday
 35 afternoon by telephone. We phoned Mr Wakeford yesterday afternoon at about 16:00 on a conference call facility from the offices of Werksmans who represent the Reserve Bank. Present at or during that conversation were myself, Adv P Ginsberg who represents the Reserve Bank, Adv S K Hassan, Mr Chris Moriates of Werksmans, the attorney representing the Reserve Bank. If I could just read to you a brief note which we prepared arising from that
 discussion.

40 "1.Mr Brooks informs Mr Wakeford that the purpose of the call to him was to enquire of him whether the press reports in the Mail and Guardian and Financial Mail alleging that Mr James Cross was Mr Wakeford's source are correct.

2.Mr Wakeford confirmed that -

2.1Mr Cross was not his source;

45 2.2he has never ever discussed the matter with Mr Cross; and

2.3he has never met or spoken to Mr Cross.

3.Mr Wakeford was informed that if Mr Cross is his source Mr Cross authorises him to disclose him as the source.

4.Mr Wakeford responded to this by stating Mr Cross is not my source."

50 And these notes were taken by Mr Hassan during the conversation so they are contemporaneous notes. Thank you, Mr Commissioner.

CHAIRPERSON: And I will place on record that at the request of the Reserve Bank I telephoned Mr Wakeford this morning and confirmed that Mr Cross was not his informant.

MR BROOKS: I have no further questions for Mr Cross.

55 CHAIRPERSON: Yes, any questions? Mr Ginsberg?

CROSS-EXAMINATION BY MR GINSBERG: No questions

CHAIRPERSON: If there are no further questions then Mr Cross is excused. Thank you for attending again, Mr Cross. --- Thank you, Chair.

NO FURTHER QUESTIONS

60 MR BROOKS: Mr Chairman, we then call Mr Chris Grove of the Reserve Bank. Mr

Commissioner, while Mr Grove settles down, may I just record that you will see that Mr Grove's statement is a lengthy document. We have with the assistance of Mr Grove made attempts to shorten his statement, so we will whilst he is giving evidence attempt to shorten it otherwise we are going to be here for a very long time. Once again if there is anything that
5 you wish us to deal with which we skip simply to save time please mention that and we will deal with it.

CHAIRPERSON: Yes, certainly.

MR BROOKS: I then call Mr Grove.

CHRISTIAAN TIELMAN GROVE d.s.s.

10 EXAMINATION BY MR BROOKS: Mr Grove, you have before you your statement with the annexures thereto. I see that SARB has referred to this as volume 8. --- Yes.

Of the SARB bundle? --- Yes.

Mr Grove, would you please turn to page 65 of your statement where you will find your CV. If you could just read that into the record very briefly or just deal with it rather. --- I
15 am in the service of the South African Reserve Bank, Exchange Control Department situated at 38 Church Square, Pretoria. I joined the bank on 1 January 1976, commencing work in the Pretoria branch. On 1 July 1977 I was transferred to Excon where I have worked ever since. I obtained a B.Com degree from the University of South Africa majoring in Economics and Business Economics. I have also attended a senior executive programme for Southern
20 Africa at the Wits and Harvard Business Schools and I was appointed as an assistant general manager on 1 October 1997 as head of one of the operation divisions. I have worked in all the various technical areas in the Department.

Mr Grove, if I can then take you to page 4 of your statement and if you could start at the introduction paragraph. --- I, Christiaan Tielman Grove, in my capacity as assistant
25 general manager in the Exchange Control Department which I shall in this statement refer to as Exchange Control of the South African Reserve Bank, hereby make the following statement to the Commission in Part 1 hereof regarding the policies and norms applied by Exchange Control in regard to applications by South African corporates to make direct investments .. (intervenes)

30 To make foreign .. --- To make foreign direct investments. In Part 2 hereof in regard to the relevant Sasol transactions, in Part 3 hereof in regard to the relevant Nampak transactions and in Part 4 hereof in regard to the relevant M-Cell Ltd transaction. At the outset I wish to place my statement in context by pointing out that I have dealt with the Sasol transactions, the Nampak transactions and M-Cell transaction at the Commission's request
35 or specific request and for purposes of reviewing and providing a greater insight into the specific transactions which are, and have been, the subject matter of the Commission's investigations during this part of the hearings before the Commission.

You can skip paragraph 3. --- Part 1, the framework applicable to policies and norms. Before dealing in specific terms with the policies and norms applied by Exchange
40 Control in connection with direct foreign investments by South African corporates, it will be useful to briefly review the legal framework within which those policies and norms are applied. Full details of the legal framework of Exchange Control which have been provided to this Commission by Mr A M Bruce-Brand, the general manager of Exchange Control, are to be found at pages 5 to 8 of the Commission's document marked SARB Volume 6. In the
45 course of that section of his statement Mr Bruce-Brand defined, identified and dealt with the concepts of the Exchange Control Regulations, the orders and rules, authorised dealers, the rulings and circulars all being Exchange Control's legal concepts and arrangements to which I shall refer in this statement. The principles with which I have dealt in this statement and which constitutes those aspects of the Exchange Control legal framework which I regard as
50 essential for purposes of explaining the policies and norms applicable to the proposed direct foreign investments by South African corporates are to be found in and have been extracted from the rulings and the circulars. In terms of paragraph 3 of the orders and rules certain banks have been appointed as authorised dealers in foreign exchange. Their function is to assist Exchange Control in administering exchange control. Perhaps I can just add the
55 following. The authorised dealers are co-responsible for the effective administration of exchange control. Authorised dealers have wide powers since they have the authority to approve certain transactions on behalf of their clients. The exchange control rulings which I shall in this statement refer to as rulings, issued by Exchange Control, set out the authorities granted to authorised dealers and the rules and procedures to be followed by authorised
60 dealers in dealing with the day to day matters relating to exchange control. These are from

time to time amended as required and supplemented by circulars. The rulings are in fact a technical handbook for use by authorised dealers containing authorities, instructions and conditions applicable to a wide range of transactions that they may undertake on behalf of their clients. Where an authorised dealer is not empowered to approve a transaction in terms of authority set out in the rulings, an application must be submitted to Exchange Control. In the context of this statement it is important to note that authorised dealers are not empowered to grant any South African corporate the authority to make a foreign direct investment. In the event, therefore, of a South African corporate seeking to make a foreign direct investment, such corporate is obliged through an authorised dealer to submit a written application to Exchange Control for authority to do so. For purposes of supporting and motivating an application by a South African corporate to make a foreign direct investment, Exchange Control is required to be in possession of sufficient information regarding the transaction, its nature, purpose before consulting with the National Treasury or exercising the authority delegated to it by the Minister of Finance. The relevant authorised dealer must also state in such application whether or not it recommends the transaction and its reasons for giving or withholdings its recommendation. All transactions between a resident and a non-resident such as a potential foreign direct investment whereby capital or any right to capital is directly or indirectly exported from South Africa, must be carefully scrutinised by the authorised dealer to ensure that if such transaction is concluded at arm's length and at market related prices. In considering any such application submitted by an authorised dealer on behalf of a South African corporate, Exchange Control takes into account not only the merits of the particular case and the circumstances giving rise thereto but also equality of treatment of all similar requests. Any such application can only be considered properly if Exchange Control is in possession of sufficient information. It is therefore the duty of the authorised dealer on behalf of the South African corporate client to verify the content of each application and to ensure that all applications are fully detailed and presented in an acceptable form. An authorised dealer in making any such application must ensure that full and precise particulars of the underlying transaction or transactions are recorded in the application. Any application shall state clearly the corporate's reasons for wishing to undertake the transaction, what benefits will accrue to South Africa either in the short or the long term and whether there might be subsequent or other related transactions. Once an application of the foregoing nature has been authorised by Exchange Control, it is incumbent on the authorised dealer concerned to ensure that the transaction or transactions in respect of which authority has been given must be finalised on a particular basis on which it has formally been approved by Exchange Control. Any deviation from the arrangements originally approved by Exchange Control must be referred to Exchange Control for consideration and prior approval to the extent that Exchange Control deems such approval proper. Exchange Control require that the authorised dealer involved in any such application must verify as and when the underlying transactions are implemented that any conditions laid down by Exchange Control have been adhered to. Mr Chairman, I think at the same time I wish to highlight that it is a requirement that in the case of any doubt about the interpreting of a ruling or anything that is not clear in a decision, should be referred back to Exchange Control for an explanation and that is clearly stated in the Exchange Control rulings. When in doubt refer to Exchange Control. In the event of an applicant, in this instance the South African corporate, or its authorised dealer implementing a transaction or series of transactions, which form the subject matter of an application, to which I shall refer to as the main application to Exchange Control, and such implementation of a transaction or those transactions, deviates in any manner from the authority granted by Exchange Control, and I have given simple examples here, authority granted to transfer a million rand and an authorised dealers transfers R2 million; or takes place in a manner not disclosed to Exchange Control in the main application, for example if authority granted for an increased travel allowance and the proceeds is utilised for investment rather than travel; or involves further or ancillary transactions not disclosed in the main application, for example if a hedging transaction is entered into as a consequence of the main application and such hedging transaction is not disclosed in the main application, then and in that event such implement would constitute a contravention of the Exchange Control Regulations. Policies and norms relating to direct foreign investments. I now deal with the more specific policies and norms which are applied by Exchange Control in connection with foreign direct investments by South African corporates. Applications by South African corporates to invest overseas are considered by Exchange Control in the light of national interest, that is benefit to South Africa.

In terms of the clear policy approach by Exchange Control, the purpose of exchange control over direct investments abroad is to prevent the loss of foreign currency reserves through the transfer abroad of capital held in South Africa and to help to avoid undue on South Africa's foreign exchange reserves. Such investment, in terms of Exchange Control policy, result in a longer term benefit to the country such as the promotion and/or enhancement of exports of goods and services, including technology through the protection of existing markets and the development of new ones and the protection of essential imports of goods and technology. I am not going to read paragraph 7, that just confirms the limits applicable to corporates for investment purposes and I think all the corporates have dealt with this in detail. South African corporates are on application to Exchange Control also allowed to utilise their local cash holdings in South Africa to partly finance new investments where the cost thereof exceeds the respective amounts of R750 million, that is in the case of investments into Africa, including . (indistinct) and R500 000 investments outside of Africa. That is elsewhere in the world. Such additional foreign currency transfers are restricted to 10% of the cost in excess of the foregoing amounts irrespective of the size of the transaction. The balance of the finance, that is the remaining 90% that is in excess of the R500 000 or R70 000 plus the 10% of the cost in excess of the foregoing amounts required must still be raised abroad by the South African corporate or at such corporate's election all the finance may be so raised and may be so raised on application to Exchange Control by means of one or more of the following methods or transactions which are described in more detail hereunder, namely the raising of a foreign loan or foreign finance facilities on the strength of the corporate's offshore assets. The raising of a foreign loan or foreign finance facilities on the strength of the South African corporate's balance sheet, that is the domestic balance sheet. Or the employment of profits earned abroad by corporates which have existing approved investments abroad. Perhaps I must just for the benefit of the Commission, this excludes the retention of export proceeds and service payments. this is your profit margin that may be employed overseas to finance expansion. A corporate asset swab or in our definition a share placement. Foreign finance facilities.

CHAIRPERSON: Sorry, Mr Grove, 8.4 and 8.5, are they different concepts or are they just different terminology for same concept? --- Well it is different terminologies and in our view it is different concepts. It is a different financing mechanism.

And you will come to that? --- I will deal with that. South African corporates may, on application to Exchange Control, raise foreign finance facilities by way of a loan or otherwise on the basis that such foreign finance facility or loan shall be for a minimum period of two years if raised on the strength of the South African corporate's balance sheet. If it is done on the strength of the corporate's offshore assets there is no requirement for such facility to be for a minimum period of two years. The South African corporate shall be permitted to guarantee such finance facility on the strength of its balance sheet.

Corporate asset swaps: Corporate asset swaps entail one or other of the following types of transactions. The South African corporate as purchaser makes a foreign acquisition and in payment therefore delivers to the foreign vendor or foreign vendors shares in the purchaser, that is the South African corporate or the South African corporate as purchaser makes a foreign acquisition and at the same time disposes of an asset in South Africa to a non-resident or pays for that local asset in foreign currency, which currency is then retained abroad by the South African corporate to fund the foreign acquisition, it being necessary to understand that the local asset involved will not constitute shares in the South African corporate but will rather consist of a local asset or assets owned by the South African corporate itself or the South African corporate as purchaser makes a foreign acquisition and in payment therefore delivers a South African asset to the foreign vendor or vendors.

Share placements: Share placements entail the placement of a listed South African corporate's own shares with long term foreign investors on the basis that the listed shares to be so placed may consist of a new share issue by the South African corporate or existing shares bought back by the South African corporate and the long term foreign investors shall in consideration of the placement with them of these shares pay to the South African corporate the foreign currency abroad to finance the approved foreign acquisition.

MR BROOKS: It is to re-finance, Mr Grove? --- The first one is to finance the approved foreign acquisition or to re-finance an existing approved foreign investment or to finance an expansion of an existing proved foreign investment.

Mr Grove, will you just stop there. You have heard the evidence of Deutsche Bank in regard to what they have called the corporate asset swaps. Would I be correct in saying

that strictly speaking they were not corporate assets swaps but share placements? --- You are correct, they were share placements and in our responses and communication, subsequent communication, we tried to distinguish between a corporate asset swap and a share placement. But we have constantly referred to it as share placements.

- 5 Application for foreign direct investments: In the course of a South African corporate making application to Exchange Control through an authorised dealer for the approval to make a direct foreign investment, such South African corporate and such authorised dealer are obliged not only to adhere to the general application requirements which I had previously mentioned (paragraph 4 of my statement) but will be required to adhere to the following more
- 10 specific requirements which are as a matter of course imposed as pre-conditions to any authority or provision granted by Exchange Control to enter into and implement any such transaction, namely Exchange Control as a matter of policy will require that any of these transactions when implemented must be reserved .. (indistinct), that is when a transaction is implemented, I think that is what everybody was waiting for, there must be no negative
- 15 impact on the country's total foreign exchange reserves. Cognisance is therefore given that by Exchange Control of the fact that corporate asset swaps and share placements could have a direct impact on reserves since non-residents may freely disinvest from South Africa after they had taken up the shares and thereby repatriate the so proceeds of such investment. Perhaps I must just add here that when we allow a share placement we are
- 20 aware of the fact that we have abolished controls over non-residents and that we would not like to impose any restrictions on the freedom of a non-resident to disinvest from South Africa. So any condition would therefore be imposed on the South African corporate that wishes to make lawful investments or that wishes to avail of a share placement as a mechanism to finance the acquisition of an offshore asset. In the case of assets swaps and
- 25 share placements, Exchange Control will in granting permission therefor reserve to itself the right to request the South African corporate to which such approval was granted to re-finance in an approved manner such subsequent disinvestments by the non-residents so as to restore reserves neutrality. As indicated previously (see paragraph 4.7 of my statement) Exchange Control shall require that all share placements and asset swaps take place at
- 30 arm's length and at market related prices or values not at a discount. In order to discourage the premature disposal of such assets or shares which disposal would have the effect of prejudicing the reserves neutrality of any such transaction. Arising out of the foregoing considerations, more specifically paragraph 12.1 and 12.2, Exchange Control would therefore in granting permission for an asset swap or share placement transaction, impose
- 35 an obligation on the South African corporate to advise Exchange Control via its authorised dealer on a periodic basis as determined by Exchange Control of the success or otherwise of the share placements and of the flow back to South Africa of share swaps or placements. In this context a flow back means and refers to those of the listed shares of the applicant, that is the South African corporate or the other assets which have been placed with the foreign
- 40 investors or which have been so swapped to the foreign vendors and which shall have found their way back to South Africa and have been purchased by and registered in the names of South African residents. In the event of any such flow back of shares or assets taking place, Exchange Control, as previously indicated, will in the course of granting the necessary approval have reserved to itself the right to oblige the South African corporate involved in
- 45 such transaction to re-finance in a manner approved by Exchange Control any amount transferred from South Africa as the result of such flow back. For purposes of the application by South African corporates to Exchange Control for approvals in connection with assets swaps and/or share placements, Exchange Control will attribute the following meanings to the following terms:
- 50 "Foreign investor" is a person or legal entity whose normal place of residence, domicile or registration is outside the common monetary area. And then the common monetary area consists of South Africa, Lesotho, Namibia and Swaziland.
- "Long term foreign investor" in the context of the share placement means a foreign investor whose intention it is to hold the relevant shares as part of its long term portfolio.
- 55 And I think one can add that accepts price risk as well.
- A "resident" is a natural person or legal entity whose normal place of residence, domicile or registration is in the common monetary area."
- At the request of the Commission I have attached to my statement at pages 66 to 81 of SARB Volume 8, extracts from the rulings, we send out parameters to which all authorised
- 60 must adhere when dealing with securities lending, re-purchase agreements and hedging

transactions. I now deal with Part 2 of my statement which relates to the specific transactions entered into by Gensec Bank Ltd and Deutsche Bank with Sasol. This is just to confirm that Exchange Control has *inter alia* received various applications from Gensec Bank as well as Deutsche Bank Johannesburg branch in respect of Sasol's investment in the
 5 foreign based chemical business known as Condea.

Commissioners, may I just stop the witness there. From paragraphs 16 up to and including 28 it is repetitious of what we have already heard from Deutsche Bank and Sasol. I am going to ask the witness just to confirm the content of these paragraphs and if I could ask that we could skip those paragraphs and go on to paragraph 29 which is really the nub of the
 10 Deutsche application.

CHAIRPERSON: Yes.

MR BROOKS: Could you just confirm those paragraphs that you are not going to read? --- I confirm that is included in the statement, all those paragraphs and I am not going to read it.

Please continue then with the application numbered 8 which we find at page 18,
 15 paragraph 29. --- Application No. 8 dated 25 January 2001 and this is the important application. Reference is made by DBJ in all their applications, dealt with hereafter to the term assets swaps and I advise this Commission that the application submitted by DBJ on behalf of Sasol in truth and in fact referred to share placements of the nature referred to in paragraph 11 of my statement and not asset swaps as referred to in paragraph 10 of my
 20 statement. As will appear later from my statement, this application number 8 is the only application by DBJ which was implemented on behalf of Sasol pursuant to an authority granted by Exchange Control. Further applications number 69 and 84 dealt with hereafter in paragraphs 40, 41, 42, 43 and 44, were authorised by Exchange Control but were not implemented by Sasol.

25 Sorry, if I could also stop there. When we get to paragraphs 40, 41, 42, 43 and 44 I will ask that the witness skip those paragraphs.

CHAIRPERSON: Yes.

MR BROOKS: Thank you. --- As this application number 8 has turned out to be the only application which was implemented on behalf of Sasol, I shall throughout my statement
 30 hereafter refer to this application as Sasol application number 8. In terms of the above application a request was received for Sasol to raise up to Euro 350 million - that is approximately R2,6 billion - by means of an offshore share placement and to utilise the proceeds to re-finance a portion of a foreign loan raised to finance the acquisition of Condea.

The terms of the share placement were to be as follows: Existing Sasol shares held by
 35 wholly owned Sasol subsidiaries of Sasol would be placed with long term foreign investors. The transaction was to take place at market related prices. It was proposed that the placement would be transacted with long term non-resident institutional clients of Deutsche Securities of whom seven specified clients were named. It was clearly stated that no South African party would participate in the proposed share placement and DBJ, in terms of our
 40 requirements, strongly recommended that approval be granted. Commissioners, the response, I am not sure whether I should repeat everything, this has been read into the records by both Sasol and Deutsche Securities.

Would you, Mr Grove, paragraphs 1, 2 and 3 was referred to before but I think the important one is paragraphs 4 and 5, the quote, could you just deal with those two
 45 paragraphs. ---

"4. Kindly keep us posted on a six monthly basis as to the success or otherwise of the placement which should include full details of any flow backs that might occur or have occurred. In this regard it should be pointed out to your customer [in this case Sasol] that in the event of any flow backs occurring, we reserve ourselves the right to call upon them to re-finance the amount transferred from South Africa abroad in order to recoup the loss in foreign currency".

And basically what we meant by that is that you re-state the reserves the bank .. (fiddling with documents, inaudible)

"5. Finally, any liability that the applicants must settle with their local subsidiary or subsidiaries in respect of the shares to be placed must be done so locally in Rand. It follows that foreign subsidiaries may not take up the applicant's shares as part of the share buy back arrangement and shares obtained by them in this manner may not be included in this authority and must be reported to ourselves."

Mr Grove, sorry, could I just stop you there. In paragraphs 36 and 37 there is reference made to a letter at pages 153 and 154 and the response thereto. Those letters
 60 have already been dealt with in the evidence by Deutsche Bank. So I am going to ask Mr

Grove just to deal with briefly with these two letters. We are not quite sure that they in fact deal with the Sasol transaction but if you look at the date they appear to deal with the Sasol transaction. Please continue. --- Yes, the letter dated 16 February 2001 from Deutsche Securities referred to a general enquiry and we responded to that in general as well but I think it is also important to note in paragraph 36 that we refer to the term share placement.

Thank you, Mr Grove, continue then on paragraph 38 please? --- 38, application number 68 of 25 June 2001. That, I think, both Sasol and Deutsche Securities have dealt with that one, so I do not know whether it is necessary to read everything into the record.

I think, well it is a report back on the application, so I think that is important. ---
10 Okay.

Please deal with that. --- In terms of the aforementioned application the following report back was received by Exchange Control, a total of 39 735 600 shares, Sasol shares, have been placed and therefore with institutions or an institution whose intention it was to hold such shares as part of its long term portfolio, that is our interpretation. Proceeds of Euro 15 350 million before expenses were raised through the placement. These were used in part settlement of the purchase price of Condea. Euro proceeds were settled directly for the account of Sasol Investments Holdings (Pty) Ltd. Shares were placed with Deutsche Bank AG in London which I shall refer to as "DBL" who have undertaken to Sasol that they will not sell the shares for a period of 12 months other than to other suitable long term foreign 20 investors and any such sales will be transacted through Deutsche Securities. Deutsche Bank London ("DBL") have subsequently sold, and that was at 25 June 2001, a total of 9,6 million Sasol shares to foreign investors of whom four specified clients were named. Deutsche Securities was not aware of any subsequent sales of the Sasol shares acquired by the parties referred to in the paragraph above. No South African party has participated in the 25 placement exercise and Exchange Control responded on 5 July 2001, "thank you for the information furnished".

Then we get to paragraphs 40 up to paragraph 44 which are not relevant and I would ask that you would skip those paragraphs. If you would then go to paragraph 45, Mr Grove? --- Follow up procedures regarding Sasol application number 8 dated 25 August 30 2001.

MS QUNTA: Mr Grove, before you continue, paragraph 41, you indicated earlier on, Mr Brooks, that the transactions in 40 were not proceeded with. Does that include 41?

MR BROOKS: Yes, up to 43. 40 up to paragraph 43.

Please continue with 45, Mr Grove. --- During late September or early October 35 2001 the then senior deputy governor of the South African Reserve Bank, Mr James Cross, requested that Exchange Control review the transactions implemented in terms of Sasol application number 8. On 9 October 2001 Exchange Control held discussions with Messrs Winkler and .. (indistinct) of Deutsche Securities to discuss the structure used in order to facilitate the placement of the Sasol shares. The Deutsche Securities delegates were 40 requested to provide a full written report to Exchange Control in this regard which was received on 18 October 2001. Deutsche Securities' letter dated 18 October 2001 (Annexure ..). Deutsche Securities advised that following the meeting on 9 October 2001 they set out further information which Exchange Control requested regarding the implementation of the corporate asset swap [in our terminology the share placement] transactions by Deutsche 45 Bank with specific reference to the Sasol transaction. They *inter alia* provided details of the following: what a corporate asset swap or share placement entails, possible currency leakage through corporate asset swaps or placement; Deutsche Bank asset swap/share placement structure; Deutsche Securities believed that any form of asset swap or share placement structure is in most instance currency neutral but may result in some currency 50 leakage because foreign investors can sell other denominated investments to finance the purchase or they may hedge a portion of their end exposure. The currency hedging risk is reduced where the stock that is subject to the swap is neutral, is a neutral rand hedge such as Sasol. Exchange Control responded on 30 October 2001 in the following manner:

"Thank you for the general overview of your corporate asset swap or share placement 55 structure. However, to enable us to fully understand the Sasol transaction we require a systematic step by step overview of the Sasol share placement exercise as requested in a recent meeting with specific reference to possible currency leakage, currency hedging and full details of pricing and possible flow back."

Deutsche Securities' follow up letter dated 7 December 2001. Further to Exchange Control 60 letter dated 24 October 2001, Deutsche Securities set out the information requested on the

steps involved in the Sasol share placement exercise and possible currency leakage on the following basis.

"A total of 39,7 million Sasol shares were placed with Deutsche Bank London as part of a share placement exercise. The shares were sourced in the market on behalf of Sasol to equate an amount of R2,5 billion to Deutsche Securities in South Africa to settle the purchase price. The price was transacted at the price of R3,00 per share. To ensure that script was available for delivery to the buyer to settle the sale of such large transaction, Deutsche Securities entered into a script borrowing arrangement with Sasol International Holdings, a wholly owned subsidiary of Sasol. Script borrowed from SIH were subsequently returned within a month. The shares were placed with Deutsche Bank London. Proceeds of Euro R350 million pre expenses were paid by Deutsche Bank London directly into Sasol's nominated off shore bank account. The sale was transacted at the price of Euro 8,81 per share. The share placement resulted in an effective exchange rate of R7,15 to the Euro for Sasol. Deutsche Bank London on-sold a large portion of the Sasol shares to long term foreign investors. All such sales were transacted through the Deutsche Securities."

A list of the buyers was set out in this letter. Such sales may have resulted in currency leakage in the following situation: If a foreign buyer sold other South African assets to purchase the shares, new money was not used for the purchase. The foreign buyer hedges all of half of the Rand exposure of his portfolio. Deutsche Securities was not aware of any subsequent selling of the shares purchased by the buyers. The shares that DBL was not able to on-sell are held by DBL and managed as part of its global equities book. DBL sold the shares to long term foreign investors when the demand for the shares arises. The global equities book was managed on an .. (indistinct) basis with the risk and managed on the total portfolio rather than each individual stock. Currency leakage may have resulted in the following situations. The global book sold down other Rand denominated assets to fund the acquisition. The global book hedged a portion of the total Rand exposure.

You can skip 51 and 52. --- During a telephone conversation I had with Mr Winkler of Deutsche Security on 8 January 2002, he confirmed that the share placing exercise was concluded on 23 February 2001 and that to his knowledge approximately 10% of the shares had to date, and that was on 8 January, been sold by non-resident holders which resulted in a flow back. He was, however, requested to submit more detailed information to Exchange Control on the transaction. Deutsche Securities' letter 15 January 2001 - that should read 15 January 2002 - Annexure A2, pages 175 to 176.

"Following the aforementioned telephone conversation on 8 January 2002 with Mr Winkler of Deutsche Securities he elaborated on the Sasol share placement that took place in February 2001 by providing Exchange Control with the following information."

Sasol International Holdings, a South African company that is 100% owned by Sasol. The subsidiary holds Sasol treasury stock as a result of Sasol undertaking a share buy back in 2000. Deutsche borrowed Sasol shares from a company, that is now SIH and returned them within a month. Flow back from the Sasol shares placement transaction has been low. Deutsche Securities estimated a figure of 6%. 2,3 Million shares of the 39,6 million shares placed. a major reason for the limited flow back was that Sasol was a gear currency play. For every 10% depreciation to the Rand, Sasol's earnings rose by 20% resulting in a natural currency hedge to foreign investors. The weak Rand has been a major drive of Sasol's strong price appreciation of 68% in Rand and 18% in Euro since March 2001. Also included in this letter was an estimate of flow back by offshore institutions in excess of 100 000 shares over the previous ten months. Exchange Control responded on 22 January 2002, Annexure A15, to DBJ:

"With reference to correspondence received from Deutsche Securities dated 7 December 2001 and 15 January 2002 relating to the share placement exercise as follows:-"

Skip paragraph 1, the next paragraph:

"In regard to point 2 of the January letter relating to flow backs from a transaction, I point out that Sasol must be requested to re-finance from abroad the amounts transferred from South Africa in respect of the flow back sales in order to recoup the loss in foreign currency.

We would require suitable confirmation to this effect once the amounts have been re-financed from abroad. Furthermore, it is noted that Deutsche Securities entered into a script borrowing arrangement with Sasol International Holdings which was not disclosed in the original application dated 25 January 2001. In this regard we require your clarifying comments in the matter. We also require to know the exact manner in which the proceeds of Euro 350 million were funded by DBL (Deutsche Bank London) directly into Sasol's nominated offshore

bank account with specific reference to direct and/or indirect financing arrangements with Deutsche Securities or Deutsche Bank in South Africa which could include currency swaps or the like.

Finally, we require to be furnished on a three monthly basis full details of any flow backs that might still occur."

Pursuant to Exchange Control's letter of 22 January 2002, DBJ requested a meeting with Deputy Governor Marcus of the South African Reserve Bank. During that meeting held at the office of Deputy Governor Marcus who excused herself from the meeting prior to the transactions being discussed, she was only there I think for a very short period. She had already left before we started to discuss the letter and the related transactions. With representatives of DBJ, Deutsche Securities and DBL on 12 February 2002, it became apparent to me that DBJ has still not disclosed all the transactions which were implemented in connection with Sasol application number 8. I therefore requested DBJ to provide Exchange Control with a report on the Sasol share placement.

That meeting was on 12 February, was it? --- Yes, 12 February.

Yes? --- Deutsche Bank's letters dated 18 February 2002 and 26 February 2002, Annexure A13. On 18 February 2002 DBJ responded in this regard by attempting to provide on an *ex post facto* basis all the facts and transactions applicable to Deutsche Bank. Sasol application No. 8 dated 25.1.2001 (Annexure A5). In doing so it provided Exchange Control with a written explanation from Deutsche Securities, also dated 18.2.2002. And then perhaps also just you have to refer to DBJ's letter dated 26 February 2002 in this regard. Copies of both letters are attached as Annexure A13, pages 177 to 182 of Volume 8. Perhaps just to explain the letter 26 February 2002, it just affected small amendments to the letter dated 18 February 2002. The following constitutes an extract of the essential elements of the letter referred to in 57 above.

Background: (intervenes)

Paragraph 1.1, the quote there is repetitious of the transactions, can I ask you to skip that and go to 1.2. --- 1.2. Market conditions dictated that the Sasol shares be acquired and placed over a period. In February 2001 the asset swap was first implemented. Deutsche Bank expected to place all the Sasol shares within a period of 6 to 12 months. However, it did not suit Sasol's requirements to receive the funding in tranches, as and when the Sasol shares were placed. Deutsche Bank accordingly implemented arrangements in a way that Sasol would receive the funding in one tranche. The asset swap was executed in February 2001 and involved the acquisition of Sasol shares for Deutsche Securities, the sale of the shares to DBL and the payment by DBL of Euro 350 million into Sasol's offshore bank account less costs and fees. DBL endeavoured to place the shares with long term foreign investors. DBL hedged its market exposure in respect of the on-placed shares by entering into a forward sale agreement with Deutsche Securities. DBL hedged its current exposure in respect of the on-placed shares by exchanging Rand for Euro. DBL also funded its holdings in the shares by concluding a bond re-purchase transaction with DBJ. For risk management purposes DBL later lent the on-placed to DBJ/Deutsche Securities. As DBL placed the shares the hedges and funding arrangements were unwound, thereby resulting *inter alia* in the exchange of foreign currency for Rand.

The transactions. The following transactions were entered into for purposes of implementing the asset swap. On 22 February 2001 Deutsche Securities sold 39,7 million Sasol shares to DBL for R2,5 billion. In settlement of the purchase price DBL paid Euro 341 million into Sasol's offshore account.

MR ?: May I ask that we do not read the rest.

CHAIRPERSON: Yes, you can skip the rest of the sentence, that is the confidential part in regard to the fees and so on. --- Yes. Perhaps just the last sentence, the sale was settled on 26 February 2001.

Yes. --- 2.1.2. Deutsche Securities acquired 1,3 million of the Sasol shares referred to in 2.1.1 above in the South African market and borrowed the balance of the shares, 33,84 million from SIH, a South African subsidiary of Sasol, on a securities lending transaction concluded on 2001-02-23. As security for Deutsche Securities' obligation to return an equivalent number of Sasol shares to FIH, Deutsche Securities agreed to cede to FIH all rights which Deutsche Securities had to a cash deposit of 2,5 - that is the money that was provided by Sasol to buy the shares, R2,5 billion, with DBJ. On 26 February 2001 Sasol paid Deutsche Securities R2,5 billion in the Rand equivalent of Euro 350 million. Deutsche Securities placed the amount on deposit with DBJ. The deposit was ceded to FIH as

envisaged on the securities then transaction referred to in paragraph 2.1.2 above. In order to hedge the market risk in respect of the on placed Sasol shares, DBL and Deutsche Securities entered into a forward sale agreement on 22 February 2001 in terms of which DBL agreed to sell and Deutsche Securities undertook to purchase 38,4 million Sasol shares at a price equal to their market value in South African Rands on the date of implementation of the asset swap plus interest. In order to hedge DBL's currency risk in respect of the unplaced Sasol shares, DBL exchanged R2,5 billion for Euro 350 million on 19 February 2001 and 22 February 2001. The exchange was for settlement on 26 February 2001.

Mr Grove, you will be commenting later on this statement, is that correct? --- I will.

In order to fund DBL's holdings of unplaced Sasol shares DBL and DBJ entered into a re-purchase transaction on 26 February 2001 in terms of which DBL would sell South African Government bonds to DBJ and DBJ paid DBL R2,4 billion. This amount was equal to the value of the bonds. The re-purchase agreement provided that DBL would re-purchase the bonds at the original selling price plus an amount in respect of finance costs. In order to manage the risk relating to the holding of bonds on this re-purchase transaction and the Sasol shares purchased by DBL, DBL loaned 38,4 million Sasol shares to DBJ on 23 February 2001. The number of shares subject to the loan were varied. The securities loan was entered into by DBJ as agent for Deutsche Securities. Deutsche Securities delivered the shares to FIH in settlement of the securities loan referred to in 2.1.2 above. As security for the obligations under the securities loan DBJ transferred the same type of bonds referred to in 2.4 above to DBL on the understanding that DBL would have no obligation to return equivalent bonds if DBJ fail to return the Sasol shares. The bonds had a market value similar to the Sasol shares. The effect of the aforementioned transaction on DBJ and DBL was as follows: DBL purchased Sasol shares. DBL hedged its market risk relating to the shares. DBL hedged its currency risk and DBL and DBJ balanced their currency positions. As from the date upon which the Sasol shares were sold to DBL, DBL endeavoured to place the shares with long term foreign investors. By 25 June 2001 DBL had placed 9,6 million of the 39,7 million shares originally acquired from Deutsche Securities. However, during the second half of 2001 foreign interest in the South African equity market was limited and the pace at which the shares could be placed slowed considerably. As of 8 February 2002 DBL had placed 14,2 million of the original number of shares acquired in 76 separate placement transactions. DBL is continuing with its efforts to place the shares.

Will you just stop there. Commissioners, from 2.8 we are dealing with the unwind of the Sasol transaction. The only paragraph which appears to be relevant is 2.8.2 on page 35.

If I could ask Mr Grove just to read that paragraph. --- Depending on the value of the shares at the time of the sale to the foreign investor, all or part of the cash received by DBL from the foreign investor for the shares would be converted into Rand and paid to DBJ. The payment would be on account of a partial re-purchase of bonds on the re-purchase agreement referred to in 2.4 above and on account of any amount due to Deutsche Securities as referred to in 2.8.4.. (indistinct).

Mr Grove, will you then please go to paragraph 59, at bottom of page 36. --- Having finally and as recently as 26 February 2002 ascertained from DBJ and Deutsche Securities an explanation in terms of the foregoing letter of all the transactions which were utilised to implement the Sasol application number 8, I will now on the basis of such information deal with my perception of the discrepancies which appear when regard is had to Sasol application number 8. The Exchange Control approval granted in respect thereof and the disclosures made on 18 February 2002 and 26.2.2002 in terms of those letters. As explained in Part 1 of my statement Exchange Control is required to be in possession of sufficient information regarding any transaction or a series of transactions, its nature and purpose in order to consider granting approval for the implementation of such transactions. It is therefore incumbent on the authorised submitting an application on behalf of its client to ensure that all and precise particulars of the underlying transaction or transactions are recorded in the application as well as to indicate whether there might be subsequent or other related transactions. It would appear from the information submitted to Exchange Control in terms of Deutsche Securities' letter, 18 February 2002, Annexure A13 hereto, that there was less than sufficient disclosure by DBJ in the Sasol application number 8 dated 25 February 2001, that is Annexure A5 hereto, of all related or subsequent transactions which were implemented or were to be implemented pursuant to the Sasol application number 8. Exchange Control was not approach for approval of any deviation from the original authority which Exchange Control granted in response to Sasol application number 8 and the facts of

any other subsequent or related transactions were not made available to Exchange Control timeously. As previously explained in a statement, Exchange Control made various attempts in an endeavour to receive full details of all possible transactions implemented in regard to the Sasol transaction. Full details of this related transactions were only provided as per
5 DBJ's letter of 18 February 2002 and 26 February 2002. I am of the opinion that *inter alia* on the face of it, the following discrepancies appear when regard is had to the Sasol application number 8, Annexure A5, and the DBJ letters dated 18 February 2002 and 26 February 2002 on the one hand and Exchange Control approval which is to be found in paragraph 35 of my
10 statement of that application on the other hand. The original Sasol application number 8 for a share placement transaction did not disclose all related or subsequent transactions which were implemented or were to be implemented. In this respect I point out that almost all the transactions enumerated in the letters from DBJ dated 18 February 2002, see paragraph 57 above, appear not to have been disclosed to Exchange Control on the Sasol application number 8. As will appear from paragraph 45 to 56 of the statement, notwithstanding steps
15 taken by Exchange Control to obtain all the details of related and subsequent transactions in connection with the Sasol application number 8, such details were apparently not immediately disclosed. Although it was a specific requirement of Exchange Control that the transaction or transactions in respect of which Exchange Control's approval to the Sasol application number 8 was granted, it should be implemented in a manner which would
20 maintain and/or ensure its authority(?), it now appears that some or all of the transactions entered into prejudiced that obligation placed on DBJ to ensure its authority. As an example, I point out that the reserve neutrality required at all times seems to me to have been breached by the transaction referred to in DBJ's letter dated 18 February 2002, Annexure A13, paragraph 2.3 thereof, from which it appears that in order to hedge DBL's currency risk in respect of the unplaced Sasol shares, DBL exchanged R2,5 billion for Euro 350 million on
25 19 February 2001 and 22 February 2001. The exchange was settled on 26 February 2001. And this, Mr Chairman, is tantamount to a flow back.

CHAIRPERSON: Just before we proceed with the meetings which were subsequently held, it is a good time to stop you before we adjourn. So are you saying then, if we just go back to
30 paragraph 62, 62.1, your complaint is a failure to disclose all the related or subsequent transactions and we looked at the Deutsche Bank slides which you can come back to yourself but remember on the left-hand side it was what they call the asset swap transaction and the right-hand side is what they call the hedging transactions. In essence are you saying it was the right-hand side that was not disclosed in full, what they call the hedging
35 transactions. Is that my understanding? --- Your understanding is correct.

And then your next complaint is the timing, that they did not respond quickly enough to you to explain the position and then your third complaint, as I understand it, is this question of the reserve neutrality in which you say there was not reserve neutrality preserved as you required. Is that right? --- That is correct.

40 Alright, then I think that it is an opportune time to adjourn.

PROCEEDINGS ADJOURN:

ON RESUMPTIONCT GROVÉ (s.u.o.)

EXAMINATION BY MR BROOKS CONTINUES: Mr Grové continue reading paragraph 63 of your statement. --- In accordance with established (inaudible) review proceedings the exchange control assisted by its legal advisers held discussions with representatives of DBJ and Deutsche Securities on 26 March 2002 during which meeting the parties involved to advise to the exchange control concerned about the apparent discrepancies as referred to above. In order to enable the exchange control to give further consideration to the matter and arrive at an informed decision in terms of the exchange control regulations a letter dated 26.3.2002 was given to DBJ in terms of which the exchange control's concerns were highlighted. In the letter the exchange control also called upon DBJ and Sasol to explain and make representations within 14 days in writing addressed to exchange control. The exchange control has requested that the following issues must be addressed in such representations. The facts relevant to each transaction which was entered into in connection with the Sasol application number H, and the approval granted by the exchange control pursuant thereto to which I shall refer to as the Sasol authority together with the cash flow including cross border flows, implications resulting from the implementation of all those transactions. Whether or not the exchange control's perception of the discrepancies referred to in paragraphs 62.1, 62.2, and 62.3 of my statement are accurate and if not to the extent to which DBJ and/or Sasol submits those perceived discrepancies to be inaccurate. As to why. If the transactions implemented in connection with Sasol authority was implemented in a manner which is inconsistent with the Sasol authority or which results in any condition attaching to Sasol authority becoming operative, the exchange control should not impose remedial measures in terms of the exchange control regulations. The foregoing procedures instituted the exchange control has received and considered four representations from DBJ and Sasol, the exchange control will make a decision as to what further action if any is required in connection with the proceedings.

Would you please tell the commissioner have you received a response to that letter?
--- Not to my knowledge.

Commissioners if I could just stop there for a moment. On part 3 we deal with the Nampak application. Commissioners paragraph 65 up to and including 77 are repetitious of what we have already heard repeatedly. If I could ask if we could skip that and then go to paragraph 78, which we get again to be letters relating to the possible discrepancies dealt with in regard to Sasol.

MS QUNTA: Nampak sorry?

MR BROOKS: Yes Nampak.

MS QUNTA: You made a mistake.

MS QUNTA: Mr Grové could you then proceed and deal with paragraph 78 and further. --- Thank you Mr Brooks. Perhaps just if I can take you back to paragraph 77. The meeting that we had in the deputy governor's boardroom with DBJ, Deutsche Securities and DBL on 12 February 2002, during that meeting I have also requested DBJ to provide a full report on both the Nampak and M-Cell share placements. The letters are dated 21.2.2002 and 26.2.2002. See annexure B4, pages 209 to 210 of SARB volume 8. On 21.2.2002 DBJ responded in this regard by providing exchange control with a written explanation from Deutsche Securities also dated 21.2.2002 and also refer to DBJ's letter dated 26.2.2002 in this regard. Copies of both letters attached as annexure B4. It should however be noted that one of the letters is incorrectly dated 2001-02-21. And again the letter dated 26.2.2002 there was a small amendment to the Nampak response. I think one or two small amendments. The following constitutes essential excerpts from the aforementioned letters.

Mr Grové I am sorry just stop there again. Commissioners paragraphs 1.1 and 1.2 are once again background in regard to the Nampak transactions and I ask that we skip those. Although 1.3 is also background I think it is important and I would ask the witness just to read that into the record. --- DBJ hedged its market exposure in respect of the unplaced Sasol shares - sorry unplaced shares by entering into a forward sale agreement with Deutsche Securities and by purchasing contracts in the South African Futures Exchange, (SAFEX). DBL hedged its currency exposure in respect of the unplaced shares by exchanging rand for pound, (GBP). DBL also funded its holdings in the shares by concluding a bond repurchase transactions with DBJ. For cost management purposes DBL later lent the unplaced Nampak shares to Deutsche Bank Johannesburg/Deutsche Securities. As DBL placed the shares, the hedges and funding arrangements were

unwound thereby resulting *inter alia* in the exchange of foreign currency for rand. Transactions.

Mr Grové once again paragraphs 2.1.1 and 2.1.2 we have dealt with that. If I could ask you to skip that and just go on to paragraph 2.2 and further. --- In order to hedge its currency risk in respect of trans 1, the DBL exchanged R170 million for GB50 million in order to hedge its currency risk in respect of trans 2. DBL exchanged R59 million for 5 million. The exchanges were settled on 3.7.2001 and 7.8.2001 respectively. In order to hedge the market risk in respect of trans 1, DBL and Deutsche Securities entered into forward sale agreements on 27.6.2001 in terms of which DBL agreed to sell and Deutsche Securities undertook to purchase 13.8 million Nampak shares at a price equal to the market value in South African rand on a date of implementation of trans 1 of the asset swap plus interest.

Mr Grové on paragraphs 2.4 and 2.5 will you please just read the first sentence of each paragraph into the record. --- 2.4. DBL hedged its market risk in respect of trans 2 by entering into put and call contracts and SAFEX. 2.5 Deutsche Securities hedged its markets risk in respect of trans 2 by entering into put and call contracts and SAFEX.

2.6? --- DBL obtained funding of approximately R170 million and R54 million from DBJ. This was done by conclusion of repurchased transactions between DBL and DBJ. In terms of the repurchased transactions DBL sold South African Government Bonds for the value approximately equal to its funding requirements to DBJ and DBJ paid DBL an amount in rand equal to the value of the bonds. The repurchased transactions provided that DBL repurchase the bonds at the original selling prices plus an amount in respect of finance costs.

2.7. In order to manage the cost relating to the holdings of the bonds purchased under the repurchase transaction and the Nampak shares purchased by DBL, DBL loaned the unplaced Nampak shares to DBJ on 9.10.2001. The securities loan was entered into by DBJ as agent for Deutsche Securities. The Nampak shares received by Deutsche Securities on the loan were delivered by Deutsche Securities to SBSA, that is Standard Bank South Africa, thereupon repaid the cash collateral Deutsche Securities - sorry in settlement of the securities loan referred to in 2.1.2 above. SBSA thereupon repaid the cash collateral to Deutsche Securities and Deutsche Securities placed the amount in the deposit of DBJ. As security for the obligations on the securities loan DBJ transferred the same type of bond referred to in 2.6 above to DBL on the understanding that DBL would have no obligations to return equivalent bonds if DBJ failed to return the Nampak shares. The bonds had a market value similar to the Nampak shares. 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 the currency positions. As from the date which the Nampak shares were sold to DBL, DBL endeavoured to place the shares with long term foreign investors. By 15.2.2002 DBL had placed 4.7 million out of a total of 18,3 million Nampak shares in 15 separate transactions. DBL is continuing with its efforts to place the shares.

Mr Grové just stop there please. Commissioners from 2.10 we again deal with the unwind process. If I could just highlight in one paragraph which is 2.10.2, if I could just ask Mr Grové to read that paragraph. --- Depending on the value of the shares at the time of their sale to the following investor all or part of the cash received by DBL from the foreign investor from the shares would be converted into rand and this amount together with any amount received by DBL on placing out its hedge would be paid to DBJ. The payment would be on account of a partial repurchase of bonds under the repurchase agreement referred to in 2.6 above and in the case of trans 1 shares on account of any amount due to Deutsche Securities as referred to in 2.10.4(i) below.

You can stop there Mr Grové. Would you turn to the bottom of page 50, paragraph 80 and would you start the last two lines "I will now on the basis of such information". --- I will now on the basis of such information deal with my perception of the discrepancies which appear when regard is had to the application numbers 95 and 103 and that is the Nampak related application, the exchange control approval granted in respect thereof and the disclosure made on 21.2.2002 and 26.2.2002 in terms of the foregoing letters. As explained in part 1 of my statement the exchange control is enquired to be in possession of sufficient information regarding any transaction or a series of transactions, its nature and purpose in order to consider granting approval for the implementation of such transactions.

Please stop there, the rest of that paragraph is repetitious of the Sasol paragraph. Paragraph 82 please. --- It would appear from the information submitted to the exchange control by DBJ in terms of Deutsche Securities letter of 21.2.2002 that there was less than

sufficient disclosure by DBJ in the Nampak application of all related or subsequent transactions which were implemented or would be implemented. The exchange control was not approached for approval of any deviation from the original authorities which the exchange control granted pursuant to the Nampak application and the facts of any subsequent or related transactions were not made available to the exchange control timeously. Full details of all related transactions were only provided as per DBJ's letter of 21.2.2002 and 26.2.2002.

I am of the opinion that on the face of it *inter alia* the following discrepancies appear when regard is had to the Nampak application number 103, to which I refer to as the Nampak application and the approval granted by the exchange control in regard thereto which I refer to as Nampak approval see paragraph 76 of my statement. The Nampak application for a share placement transaction did not disclose all the related subsequent transactions which were implemented or were to be implemented. In this respect I point out that almost all of the transactions referred to in DBJ's letters dated 21.2.2002 and 26.2.2002 appear not to have been disclosed. Notwithstanding that it was a specific requirement of the exchange control that the transaction or transactions in respect of which the Nampak approval was granted should be implemented in a manner which would maintain and/or ensure reserves neutrality, it now appears that the transaction referred to in paragraph 2.2 of DBJ's letter of 21.2.2002 annexure 4B breached that obligation on DBJ and Nampak to ensure reserves neutrality.

Mr Grové what you deal with in 84 is again the discussion held, this is identical to the Sasol issue, is that correct? --- That is correct.

And you have asked for further information and would you just please confirm that in regard to Nampak you have not received the response as yet? --- To the best of my knowledge we have not yet received response.

Thank you. Commissioners that then concludes the Nampak leg and then at page 53 part 4, paragraph 86 the witness will deal with the M-Cell application and commissioners on the same vein as the Nampak application paragraphs 86 up to and including 106 on page 57 are repetitious and I will ask that those paragraphs be skipped. Would you then Mr Grové please turn to page 107.

MR GINSBURG: Just before he does, Mr Chairman so that we do not leave the commission or any of the members present with an incorrect assessment of the responses by Sasol, Nampak and M-Cell, through their attorneys and the attorneys for the Reserve Bank arrangements have been made for a postponement of responses for various reasons, not the least of which is the work that has to be done by them and ourselves in this commission.

So we are not suggesting in any way that the absence of responses from any of the corporates or Deutsche Bank or Deutsche Securities at this stage reflects negatively or badly on any of the parties.

CHAIRPERSON: Thank you.

MR BROOKS: Then Mr Grové paragraph 107 is again the Marcus meeting that you already dealt with. --- That is correct.

So we will not repeat that. Then please go to page 108 which is now the response by Deutsche dated 21 February 2002.

CHAIRPERSON: Paragraph 108.

MR BROOKS: Sorry.

CHAIRPERSON: Fine. --- Paragraph 108 letter dated 21.2.2002. On 21.2.2002 DBJ responded in this regard by providing the exchange control with a written explanation from Deutsche Securities also dated 21.2.2002 annexure C3. It should however be noted that the letter is incorrectly dated 21.2.2001. I think Mr Smith already referred to that. The following constitutes essential extracts from the above letter from DBJ dated 21.2.2002.

Mr Grové once again please skip the quotes 1.1 and 1.2 and deal with 1.3 and further. --- On 25.1.2002 MTN paid Deutsche Securities R231 850 000,00 being the rand equivalent of US\$20 million.

Sorry where are you now? --- 2.1.3.

Yes, page 58. --- My apologies I skipped a page. Deutsche implemented the asset swap before transfers for a total of 15,7 million M-Cell shares worth US\$20 million. In each case Deutsche Securities acquired M-Cell shares and sold the shares to DBL. DBL paid the purchase price into an off-shore account of MTN International. DBJ then endeavoured to place the shares with long term foreign investors. DBL hedged its market exposure in respect of the unplaced shares by entering into put and call contracts on SAFEX. DBL hedged its currency exposure in respect of the unplaced shares by exchanging rand for US dollars. As DBL placed the shares and hedging and funding arrangements were unwound

thereby resulting *inter alia* in the exchange of foreign currency for rands.

MR BROOKS: Mr Grové in regard to 2.1.1, I think it is easier just to confirm that the 5,7 shares were sold for settlement and that the rest - they related to the purchase of the shares by Deutsche Bank and the balance was borrowed. --- Yes.

5 Is that correct? --- That is correct.

Then go on to 2.1.2 please. --- Deutsche Securities acquired 5.7 million of the M-Cell shares referred to in 2.1.1 above in the South African market and borrowed the balance of the shares that is 9,9 million from Standard Bank of South Africa Limited SBSA under a securities loan transaction entered into between Deutsche Securities and SBSA. As security
10 for the securities loan Deutsche Securities deposited an amount of approximately R160 million with SBSA, the amount of the deposit was varied according to the value of the loaned securities. On 25.1.2002 MTN paid Deutsche Securities R231 million being the rand equivalent of US\$20 million. In settlement of the purchase price referred to in 2.1.1 above DBL paid US\$20 million into an off-shore account of MTN International, this amount was the
15 US dollar equivalent of the purchase price. In order to hedge its currency risk in respect of the M-Cell shares DBL exchanged R231 million for US\$20 million on 8 January 2002.

Mr Grové sorry would you just stop there please. On that paragraph 2.2 and could I refer you commissioners to the Deutsche bundle at page 405 annexure K in the second volume of the Deutsche bundle page 405. Now Mr Grové that documents deals with what
20 you have just read into the record now. Could I just ask that you again read K, because this is important and then comment on what is set out in K, and this is the record, it is a letter from Deutsche Securities to Standard Bank. --- Commissioners I think it is important just to highlight the fact that the transaction, that is the hedging transaction, the currency - hedging of the currency risk in respect of the M-Cell shares which resulted in the exchange of R231,8
25 million for US dollars, that was done on 8 January 2002. And if my understanding is correct that was a forward transaction for settlement on 25 January 2002. And that is also the same date on which M-Cell paid the R231 million over to Deutsche Securities to settle the local purchase leg of the shares. Then on 24 January 2002 there was a letter to Joey Adriaansen from Standard Bank from Mr Lansdown and I am going to read it:

30 "Dear Joey. Payment into Deutsche Bank AG London rand account."
And this is commonly referred to a non-resident account.

"Per our discussions an amount of R231,8 million is to be transferred into Deutsche Bank London's rand account for value on Friday 25 January 2002. The above payment will be made by Deutsche Securities to the above account as a reimbursement of amounts paid by Deutsche Bank AG London to settle the trades excluding MST and other transactional costs set out in the four attached brokers notes. These transactions form part of a corporate asset swap transaction, the approval for which has been granted by the Reserve Bank a copy of this approval was forwarded to you on 31 January. Please do not hesitate to contact me should there be any problems in the above regard."

Would you please comment on the content of this letter. --- Yes Mr Brooks, in terms
40 of the approval granted for the share placement that was a clear instruction to Deutsche Bank that M-Cell would have to pay the rand equivalent, rand purchase the price of the shares. So by implication it means that Deutsche Securities had to use the rand proceeds to finance the purchase of the shares. What has happened here and I am just assuming that it relates to the same amount that was received from M-Cell and that amount has in fact been
45 credited to a non-resident account, which means it is a fully transferable account. We have no yet had sight of the bank statements to check whether it was the same amount that was used to finance the forward leg of the transaction for settlement 25 January 2002. So this is clearly not in line with the approval granted. If it was the same amount yes.

MR GANTSHO: Would you please comment on the use of the non-resident accounts, is that
50 prohibited or is that allowed? --- Mr Commissioner any non-resident is at liberty to open up a rand account with a local authorised dealer, however the controls, there would be certain restrictions as to the manner in which that fund, that account may be funded. If it is as a result of a conversion that means a foreign currency conversion to rand then no restriction, however if it is from a local source, a South African source, then that transaction or that
55 deposit must relate to an approved transactions in terms of the exchange control rulings or in respect of transactions for which specific exchange control approval has been obtained. In this particular case we allowed the share placement for settlement locally, payment overseas and no deposit into a non-resident account.

MR BROOKS: Thank you Mr Grové if you then please continue on page 60 and for
60 purposes of paragraph 2.3 and 2.4 just read the first sentence of each paragraph please.

2.3. DBL hedged its market risk in respect of the M-Cell shares by entering it into put and call contract on SAFEX. 2.4. Deutsche Securities hedged its market risk in respect of M-Cell shares by entering into put and call contracts on SAFEX. 2.6.

Sorry just read 2.5 firstly. --- Sorry, 2.5. As from the date upon which the M-Cell
5 shares were sold to DBL, DBL endeavoured to place the shares with long term foreign investors. As of 18.2.2002, DBL had placed 6 million of the 15.7 million M-Cell shares.

Then Commissioners from paragraph 2.6 we again deal with the unwinding of the transactions. Mr Grové there is one difference between this unwind and the Nampak and Sasol unwinds, could you just highlight that. --- Yes Mr Brooks. If you look at the Sasol and
10 Nampak the way Deutsche Bank financed this transaction was by repaying bonds that they owned in South Africa. In this particular case it was not done on that basis.

Thank you, then Mr Grové paragraph 110. Just to put you in the picture, you have now received this letter from Deutsche and if you can then on the third last line just start reading there "I will now on the basis". --- I will now on the basis of such information deal with
15 my perception of the discrepancies which appear when regard is had to the application number - I beg your pardon, had to the applications number 101 and 107, that is the M-Cell application, the exchange control approvals granted in respect thereof and the disclosures made on 21.2.2002 in terms of the foregoing letter. As explained in part 1 of my statement the exchange control is required to be in possession of sufficient information regarding any
20 transaction or a series of transactions, which nature and purpose in order to consider granting approval for the implementation of such transactions.

Please stop there, the rest is repetitious in that paragraph. To 1.1.2. --- It would appear from the information submitted to the exchange control in terms of the Deutsche Securities letter dated 21.2.2002 annexure C3 hereto that there was less than sufficient
25 disclosure by DBJ in the M-Cell application in forward related subsequent transactions which were implemented or were to be implemented. The exchange control was not approached for approval of any deviation from the original approval which the exchange control granted pursuant to the M-Cell application and the facts of any other subsequent or related transactions were not made available to the exchange control timeously.

You can stop there and go to paragraph 1.1.3. --- I am of the opinion that *inter alia* and on the face of it the following discrepancies appear when regard is had to the M-Cell applications number 101 and 107 and the M-Cell approval to those applications dated
30 23.11.2002 which I shall refer to as the M-Cell approval. The original M-Cell application for a share placement transaction did not disclose all the related or subsequent transactions which were implemented or were to be implemented. In this respect I point out that almost all of the transactions recorded in DBJ's letter dated 21.2.2002 appear not to have been so disclosed in the original M-Cell application. Notwithstanding that it was a specific requirement of the exchange control the transaction or transactions in respect of which M-Cell approval was granted should be implemented in a manner which would maintain and/or ensure reserves
35 neutrality, it now appears that the transaction referred to in paragraph 2.2 of DBJ's letter dated 21.2.2002 annexure C3 hereto breached the obligation placed on DBJ and M-Cell to ensure reserves neutrality.

Mr Grové please stop there again. You then once again deal with the discussions held, correct? And if we can just round it off, subject to what was placed on record just now
45 the Reserve Bank have not received a response is that correct? --- That is correct.

Mr Grové I think that then concludes your statement. Is there anything that you would like to add to your statement? --- Nothing at this stage.

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

Thank you, I have no further questions.

50 CHAIRPERSON: Any questions?

CROSS-EXAMINATION BY MR GINSBURG: If I may just ask a few questions just to round off the evidence. Mr Grové if you go to page 9 of your statement paragraph 8. There you refer to the approval which exists in respect of Africa the transfer of capital of 750 million and in respect of the rest of the word 500 million plus 10%, there is a difference of the purchase
55 price in excess of those two figures is that correct? --- That is correct.

Now that is in respect of each and every transaction for which approval is sought and granted, it is not a cap or a limit in respect of transactions as a whole? --- That applies to each and every approved foreign direct investment by South African corporates.

So that could mean then that very large amounts of money are legitimately
60 transferred off-shore by local companies with approval of the Reserve Bank. --- That is

correct.

And in fact that is happening to your knowledge? --- That is correct.

Then secondly in so far as the exchange control approval submitted, applications rather submitted by Deutsche Bank or Deutsche Securities are concerned, I just want to ask
5 you a few general questions in the light of something that Mr Wakeford said previously. The first are applications for exchange control approval submitted by Deutsche Bank or Deutsche Securities treated differently by exchange control from any other applications which are submitted by any other authorised dealers? --- No.

Are they given any preference or are they looked on unfavourably because they
10 emanate from Deutsche Bank or Deutsche Securities? --- No not at all.

So then when Mr Wakeford's source, his so-called revered source suggested that there was, what he called a privileged position on relationship between the Reserve Bank and Deutsche Bank, what is your comment? --- I think that is incorrect.

Thank you.

15 CHAIRPERSON: Any other questions?

MR COOPER: Mr Chairman from the Sasol point of view I doubt if we have anything that we need to elucidate at this stage. It may however alter in the event of any questions from other parties if there are any and answers that affect Sasol. May we simply reserve...

CHAIRPERSON: Yes.

20 MR WASSERMAN: Mr Chairman in relation to the questions we would ask you to grant the indulgence (inaudible) commence with our examination at 14:00 (inaudible) tend to very long and we would like (inaudible).

CHAIRPERSON: Yes, the record may not have picked up Mr Wasserman from the wings there. Mr Wasserman on behalf of Deutsche Bank asked that the matter stand down until
25 14:00. I think that we should stand down until 14:00 and then Mr Commissioners and Mr Cooper or anybody else can ask questions after Deutsche Bank. The Commission stands down until 14:00.

COMMISSION ADJOURNS

COMMISSION RESUMES

C.T.GROVE: s.u.o.

CHAIRPERSON: May we begin? Just before Mr Wasserman begins, Mr Brooks I see that you have now filed this statement of Mr Cross in SARB 8 bundle at the end, is that correct?

5 MR BROOKS: That is correct.

CHAIRPERSON: Just to get it on record, it is from page 229 onwards.

MR BROOKS: So that is 229 up to and including 234 but then my note relating to the conference, sorry B note relating to the telephonic conferences called Mr Wakeford will be 235.

10 CHAIRPERSON: Yes.

MR BROOKS: I don't know whether you have copies?

CHAIRPERSON: No, not at the moment. That can be added in.

MR BROOKS: Yes.

CHAIRPERSON: Thank you. All right, now Mr Wasserman?

15 EXAMINATION BY MR WASSERMAN: Thank you Mr Commissioner. Mr Grove there are a few matters that I would like to raise with you. You have referred to the loose usage of the terms asset swap and share placement. Now you know even the letters that were emanating from SARB used those terms interchangeably, do you agree with that? --- You will have to direct me to it.

20 Well there is one, the letter of 24 October 2001. --- Can you give me the page number?

It is your page 172. --- Do you want me to respond to it?

I just want to get the --- Commissioners all we have done, the heading of the letter, we have just referred to what was stated in the letter from Deutsche Securities. If you read the content of our response, you will see that we refer to, what they refer to the corporate asset swap but we then refer to the share placements.

25 Yes. --- And then further on, we refer to systematic step-by-step overview of the Sasol share placement register.

Yes. May I put it to you this way that you are not suggesting that the terminology used leads to any inclusion of impropriety in the sense that there was an execution of the transaction but formed different to the way it would have been executed had the correct term used? --- Not at all.

You simply want to be clear about precisely the nature of the structure? --- Not at all. I think it is expected of any authorised dealer to submit an application. You must know the difference between a share placement which has been in place for many years. I think the very first share placement exercise was agreed to after the abolition of the Financial Rand. Corporate asset swaps only agreed to by the Minister of Finance in his budget speech, I speak out of correction, I think it was February 2001.

40 Do I gather from that answer that you are making any suggesting or you are not making any suggestion? --- I am not.

(Indistinct) sure? --- What I am saying is, as far as I am concerned, it should be quite clear to the authorised dealer that there is a clear distinction between share placement and a corporate asset.

45 Could I then put this conclusion to you, between you SARB and Deutsche Bank there was no misunderstanding about the nature of the structure. You both knew it was a placement of shares? --- Mr Wasserman with respect, I have explained the difference to the two persons, gentlemen who came to see me on, I think it was 9 October 2001.

Yes. --- I have tried to explain the difference from the way we see it, between a corporate asset swap and a share placement.

50 Are you satisfied that between the two parties, there was a proper understanding in the end? There was no confusion? --- No, no, after the October discussion you know, that is my understanding that they knew exactly what we were referring to.

But even before Mr Grove, if you look at all the letters, the exchange of correspondence, there is no confusion between SARB and Deutsche Bank as to precisely the nature of the structure that was considered, correct? --- Ja, that is the nature of the structure.. (intervenes)

55 Yes. --- Refers to share placement and not a corporate asset swap.

60 Correct. So one shouldn't attach any significance to the fact that the word asset swap was also used simultaneously, correct? --- I would rather prefer to stick to the word share placement.

Yes. Now Mr Grove, you I think referred to in your evidence to a definition of the term, long term foreign investor or long term investor and am I correct that you attached a particular aspect to that investor namely that he is a person who takes a price list? --- Correct.

5 Now did you by referring to that definition, at all suggest that DBL cannot be referred to as a long term investor in the sense of the structure that was considered by SARB? --- Not at all. That name was disclosed us upfront. So we thought Deutsche Bank London was part, you know as one of the foreign institutions with whom the shares could have been placed.

10 And furthermore Mr Grove there is also no question that as far as SARB is concerned, SARB at all times knew precisely what role was to be performed by DBL and I am referring to Deutsche Bank London.. (intervenes) --- Not at.. (intervenes)

Role in the sense of warehousing and on-placing. --- It was never mentioned to us Commissioners that Deutsche Bank London will warehouse the share. Each and every application it was clearly stated that they will be one of the many long term foreign investors.

15 Well let's investigate that. You see Mr Grove you are not suggesting to the Commission that the Reserve Bank understood that all these 39 million shares would have been placed in one blow, are you? --- If you go back to the original approval, that was basically what your client has indicated to us, that they will place the shares with long term investors over a period of time. The question of one institution taking up the full placement, was never mentioned to us.

Well you know it is now highlighted in the sense that you are suggesting that it might have influenced you in your consideration of the matter, if that particular arrangement was explained to you fully. Is that what you are suggesting? --- It may have ja. I am not saying that that would have negatively influenced our perception in the sense that you know if there is a legitimate request and it is disclosed to us that for various reasons, that is the way they would like to execute a transaction, we may consider it.

I am sure, I am sure you wouldn't have a problem with that if a person would, an authorised dealer would suggest to you that I can't place 39 million shares, unless I give a discount on the shares and I can't buy 39 million shares, Sasol shares with R2.5 billion and I would like to do it in this fashion, that you would have considered it very seriously, wouldn't you have? --- Mr Wasserman I think I must also just highlight this particular point, that if you would allow a share placement of the nature described by Deutsche Bank, it is a requirement that the corporate who wishes to raise financing or wishes to raise foreign currency, to settle an offshore liability, that they pay for the shares locally, the purchase of the shares locally. And that they can't fix the exchange rate upfront and if the corporate wants to raise for argument's sake, 350 million Euro overseas, they keep on buying shares and they place shares until they realise 350 million overseas. That is the basis from which we would, on which we would consider share placements.

40 Yes. --- So nowhere have we allowed anybody to fix the price upfront.

Yes, no, that is a very valid point and I accept without hesitation that if there was any suggestion that there would be a different share price, you would definitely have not considered this very favourably. But what I am putting to you is somewhat different and that is, if it was explained to you that it was not feasible neither possible to undertake a transaction of this magnitude without warehousing and on-placing within a reasonable period of time, you would have considered that as a valid consideration, correct? --- Yes.

Yes, because it was explained to you not three months later, in June of the same, precisely the function that was performed by Deutsche Bank London and there was no concern expressed by the Reserve Bank about that. --- That is correct but they have not disclosed all the other transactions.

50 Well I am dealing with on point of criticism.. (intervenes) --- No I am just saying, the other transactions as well.. (intervenes)

May I accept that this criticism that you have levelled or suggested, that that is not really of crucial concern, correct? Do you accept that Mr Grove? --- No, I just said that yes you are right, they have told us that they placed the shares with Deutsche Bank London.

55 And there was no criticism levelled by SARB after that, not even a query. --- No, not at all.

Now I take it Mr Grove, if that was explained to you upfront and you would have considered that carefully, if it was indicated to you that instead of Deutsche Bank London, the warehousing would take place with JP Morgan, that would also not have posed a problem?

60

Do you accept? --- We would have considered any request.

Yes. And do you accept that it would have been normal and in the ordinary course of events, in the ordinary course of business for an entity such as JP Morgan, to hedge itself against its risks? --- Mr Wasserman if a corporate approaches us on this basis, whether you
5 argue that all the transactions are valid, we would not have allowed that corporate to raise financing on this basis.

And that is not what I asked you Mr Grove, please answer the question. What I am saying to you is this, it is a simple question, JP Morgan, you would have accept an entity such as JP Morgan in the face of a transaction of this magnitude would have hedged itself
10 against its risks. --- No necessarily. If the corporate or its appointed agent did its homework, you would convince the foreign counter-party to accept the shares and retain it as part of your long term folio. So not necessarily.

Mr Grove sorry for interrupting you, I am talking about the function and the role adopted by the underwriter in the position of JP Morgan, Deutsche Bank London, is it out of
15 the norm for such a non-resident to hedge? --- It is hypothetical Mr Wasserman.

I am putting it to you.. (intervenes) --- I am responding to you. What I am saying.. (intervenes)

I am putting it to you that you know hedging takes place. Correct? --- On normal other transactions, not necessarily for a share placement. What we said here that we are
20 aware of the fact that we have abolished exchange control of a non-resident. So exchange control does not want to impose restrictions on a foreigner and any share placement it is expected of the corporate or its agent to do its homework and make sure that you place it with long term institutions, that you don't just take all the buying orders for Sasol shares and regard it as part and parcel of a share placement. And even in the past, we have allowed
25 corporates to do share placements. Those corporates physically went on an overseas road show to convince foreigners to assist them in you know, arranging finance overseas, to assist the corporate to finance the cost of offshore investments.

Mr Grove, this is a transaction of R2.5 billion. We are not talking about \$20 million.

Are you suggesting when you got that letter of 25 June 2001, when it was explained to you
30 that Deutsche Bank London undertook not to sell these shares within a period of 12 months, that you did not consider the possibility that Deutsche Bank London might have hedged itself? --- I did not handle the application so I can't answer your question.

Well that is not the issue. The issue is.. (intervenes) --- No the issue.. (intervenes)

Had you looked at this and the official at the Reserve Bank who looked at this
35 document, are you suggesting that that official did not consider the possibility that this was hedged? --- Well if you talk about, you place it with long term investors and that the foreign institution gives an undertaking to the corporate that they will not dispose of the shares within a period of 12 months, one has to assume that therefore they would also not hedge the risk, well number 1, the currency risk or the investment risk.

Why do you say that Mr Grove? --- Because you know surely the offshore bank,
40 during the discussions or negotiations that the corporate or its agent had with the offshore institution, must have explained to the offshore institution the reasons why they wanted to raise foreign currency through this mechanism. If you look at what we have allowed for corporates over the years, currently you have a limit which say now is financed at the direct
45 cost of reserves, elsewhere 500 million, Africa 750 million, what we are saying is that only 500 million plus in respect of a more costly investment, 10% of the excess cost may be financed at the direct cost of the reserves. Therefore this is a mechanism to assist corporates to raise additional financing. Therefore it is expected that not only the corporate but also the agent must do its homework and you must work on the understanding that you
50 know the authorised dealer involved should have a clear understanding as to the rationale of these kind of transactions. It is a mechanism to assist corporates to raised foreign currency.

But then I must admit that since we have abolished controls on a non-resident, we will not restrict the offshore institutions from disinvesting. If they want to dispose of the shares, they may do so. But then therefore we have an ultimate corporate to monitor that situation and to
55 refinance in the case of (indistinct)

Yes and they are permitted to hedge. --- In terms of the rules which you refer to, if you have an underlying asset in South Africa you can hedge it, ja.

Non-residents are permitted to hedge? --- Non-residents are permitted to hedge. If you have an asset in South Africa, fully paid for, you may hedge it, yes.

60 And you knew or you should have known that an entity in the position of Deutsche

Bank London might well have hedged. --- Well it is strange when I asked the question, I didn't get a straight answer.

But you know whom you directed that question to. When you, the question was directed to the authorised dealer, you got a prompt and accurate response, you know that.

5 --- That is correct. When we made inquiries, you know we were put in contact with the persons that we dealt with.

Well.. (intervenes) --- The applications was also signed off by the authorised dealer.

All right. I am just putting it to you that, and I don't think you will quarrel with me, that it might have been justified and reasonable on the part of Deutsche Bank to have understood
10 that when they submitted this letter to the South African Reserve Bank, they might have assumed and they were justified in assuming that the Reserve Bank would have understood the true nature of the possibility on the part of a foreign, a non-resident, to hedge itself against its risks.

MR GINSBURG: Mr Chairman that is an entirely hypothetical proposition. First of all I don't
15 recall the evidence of Deutsche Bank being that. Secondly Mr Grove has said he didn't personally sign the for the transaction. So to that extent we are not dealing with two counter-parties, we are dealing with a possibly hypothetical situation and I think it is not useful for such a question to be posed but certainly I am in your hands.

CHAIRPERSON: I think as far as Mr Grove is concerned, he is speaking for the Reserve
20 Bank. So let's assume he speaks for it. But you have taken it as far as you can.

MR WASSERMAN: Yes, I am suggesting that the evidence of Mr Smith was quite emphatic that Deutsche Bank at all times acted in good faith.

CHAIRPERSON: Yes.

MR WASSERMAN: And I am just putting to Mr Grove and I don't think he can deny it that,
25 and I don't think he will quarrel with the proposition that as far as Deutsche Bank was concerned, there was no specific obligation on their part or they didn't understand it to be, that they should have explained to you the precautions an entity such as Deutsche Bank London would take in order to hedge itself against its risks. You may disagree with what they have done Mr Grove, but you are not suggesting that they were clearly mistaken as far
30 as their understanding of the foreign exchange rulings and regulations are concerned, they were clearly mistaken in their understanding. --- Mr Wasserman I have never said that Deutsche Bank did anything illegal.

Yes. --- What I said is had we have been told of the facts prior to the submission or
in the original submission to us, we would not have agreed to this transaction. We would not
35 have allowed the corporate to use the proceeds raised through such a placement to finance offshore investment or to liquidate offshore debt. It would have been a requirement that the full proceeds be repatriated to South Africa.

I am not going to take issue with you on your suggestion that you might not have
granted approval, because you might not have but the fact is you might have Mr Grove, if it
40 was properly explained to you and if you had seen no risk to the reserves of the country, you might have considered this transaction favourably. --- Well if it was properly explained, we would not have agreed to it. I certainly wouldn't have agreed to it because an amount of R2,5 billion were exited at the direct cost of reserves.

That is your understanding. --- That is my understanding.

45 But obviously that understanding.. (intervenes) --- In the Sasol case.

Yes, we will deal with that soon. And as because you say for that reason the transaction was not reserves neutral, correct? --- Yes.

I will deal with that soon but may I put it to you this way and I appreciate it, you have
not suggested that there was any wrongdoing on the part of Deutsche Bank but what you are
50 suggesting, you would have preferred them to have disclosed certain legs of the transactions upfront, is that correct? --- Deutsche Bank as an authorised dealer, should be aware of the rules relating to offshore investment and the financing of such investment. As I explained this morning, they are co-responsible for the effective administration of exchange control. So they had a duty and responsibility to explain the full transaction.

55 Yes, now we are dealing, and I take it, with the issue of disclosure and non-disclosure that you have raised, is that correct? --- Correct.

Now what is their obligation as far as that is concerned? Where in the rulings and to
what particular law or regulation are you referring as far as that is concerned. That there
was an obligation on the part of Deutsche Bank to refer, not in respect of the application, to
60 the essence of the application but to all consequential transactions also. --- Well the rulings

make it quite clear in the sense that full and precise details of the underlying transaction, the transaction must be recorded in the application. In fact since we had made it our duty to try and explain the exchange control policies to authorised dealers and to the ordinary man in the street, we went further and we tried to explain exactly what we are referring to in the exchange control manual, which is available to all authorised dealers and if any corporate that wants access to that, I mean that is also available to them. And the manual makes it quite clear that you have to disclose all other related transactions or subsequent transactions or prior transactions (indistinct)

5
10 CHAIRPERSON: Is that in a ruling? --- That is the manual, it is just a guideline to the authorised dealers and the ordinary man in the street. But exchange control rulings in A1 is specific. It says full, well I can read it to you:

The exchange control department of the South African Reserve Bank is required to be in possession of full information regarding the transaction, its nature and purpose before consulting with the treasury or exercising the authority conferred to (indistinct) by the Minister of Finance.

15 When submitting applications for consideration, authorised dealers should ensure at all times that

Okay that is now the names of the company or individuals that they must furnish that to us and they must use the same names in subsequent application and they must also state whether recommended or not. So that recommendation is very, very important. That is a confirmation to exchange control that the authorised dealer is in agreement with what has been submitted to us.

I think the issue is, they may be under a duty to disclose what they call the asset swap transactions. The question is are they under a duty to disclose what they call the hedging transactions. I am using their phraseology to make it clear and Mr Wasserman's question is, in relation to the hedging transactions, the very ones about which you have a concern, where does that manual or a ruling say that they must disclose those. That is the essence of the inquiry at the moment. --- I don't think Mr Commissioner you will find it that it says that you must disclose a hedging transaction. But in the manual it says..

20
25
30 (intervenes)
MR WASSERMAN: As you relying on the manual now? --- No, no, I am just talking about, we tried to make it easier for you Mr Wasserman. The exchange control ruling set full and precise details and in the manual, because you know one endeavours to assist the authorised dealers to fully understand it and the policy supplied by exchange control, we have issued, at the request of the authorised dealers and the clients, we have issued the manual which we update on a regular basis as well.

Is there a disclaimer in that manual? --- Ja there is a disclaimer in the manual.

Are you.. (intervenes) --- But what I am saying is.. (intervenes)

35
40 Could I just ask you, in order to get an answer to the chairman's question, are you for purposes of your answer, relying on the rulings and regulations or are you also now relying on the manual? --- No what I am saying is, obviously I rely on the regulations and the rulings .. (intervenes)

45 Could we limit it then to regulations and rulings? Where in the regulations and rulings is there any indication or directive that but for the underlying transaction, other disclosures must be made? --- The rulings we talk about full and precise information regarding the transaction.

And that is the best you can do. --- As I explained, in the manual we tried to explain that the authorised (indistinct)

50 CHAIRPERSON: We have the wording in regard to the ruling but what is the wording in the manual. Does it refer to related transactions or.. (intervenes) --- Ja it refers to related transactions.

Just give us the terminology in the manual so that we can clarify that. --- I don't have a copy here.

55 MR WASSERMAN: What does that disclaimer say Mr Grove? --- I can't remember, I must read the, read it up.

Does it now say that you shan't rely on the manual? Is that not the introductory part of that manual? --- No, what we say is, you can't implement an transaction based on what is said in the manual. It is not a general approval.

60 Could I.. (intervenes) --- Just a guideline to authorised dealers and to the corporates.

Mr Grove what I find surprising is that you and based on no particular directive in the rules or the regulations, expect of an authorised dealer to even disclose hedging transactions in respect whereof there is a general authorization, is that your evidence today? --- No what I am referring to is that when an authorised dealer submits an application on behalf of a corporate, to finance a transaction which basically falls outside the norms, that they have to fully explain the transaction to us.

The underlying.. (intervenes) --- The authorised dealer has a responsibility to ensure that the letter and spirit of the exchange control system is adhered to.

Yes, we will get to reserve neutrality and all those issues but what I am concerned about is, some suggestion on your part that even hedging transactions in respect whereof there was a general authorization, that you expected the authorised dealer to spoon-feed you, is that correct? --- Yes, absolutely.

Even though there is a proper recordal in the books of that entity and there was a proper application in respect of other hedging transactions and even though you, on a regular basis, performed inspections at the authorised dealer, is there still an obligation.. (intervenes) --- Yes.

To spoon-feed? --- Yes.

To spoon-feed the Reserve Bank. --- Yes.

And where does it say that in the manual or in the rules or in the regulations. --- Well that they have to spoon-feed us?

Yes. --- Well it says that you have to comply with the spirit, letter and spirit of exchange control. Do you want me to read that to you as well?

Now tell us about the.. (intervenes)

CHAIRPERSON: Mr Wasserman sorry, just in regard to your question, where you talk about there being a general approval for the hedging transactions, where does that general approval arise?

MR WASSERMAN: We have referred to in the statement, to E5 Roman something if I am correct and that is the one block. I think you have referred to it this morning.

CHAIRPERSON: Yes.

MR WASSERMAN: That is those general approvals.

CHAIRPERSON: It is those general approvals that you say your hedging transactions fell under.

MR WASSERMAN: The hedging transaction in particular that was discussed by Smith but also there is, and I think that is maybe not emphasised well enough, DBL is a non-resident and DBL is entitled to hedge.

CHAIRPERSON: Yes.

MR WASSERMAN: There is no specific requirement or obligation on the part of a foreign investor or an entity, a non-resident, there is no preclusion on the part of a non-resident to hedge.

CHAIRPERSON: Yes.

MR WASSERMAN: So what Mr Grove, it is clear and I have no quarrel with you about that, that as far as underlying transactions are concerned, you are entitled to all the information. But you know that an underlying transaction is something different to hedging and related transactions or consequential transactions. The underlying transaction is that transaction which is the *fons et origo* of the deal, is that not so? --- What I said is the underlying and or other related transactions which will have a direct impact on the underlying transactions.

That is not in the rules nor the regulations. You know that. It is not there. --- Well it says it is the responsibility of the authorised dealer to provide us with full details of the transaction.

The underlying transaction? That is all it can mean. --- And or related transactions, that is explained like that in the manual.

It doesn't say so in the rules or the regulations. Is it not a bit unfair of you in the face of this inquiry now all of a sudden to insist on such strict compliances in the circumstances where you know there is no real clarity about that issue? --- Mr Wasserman all authorised dealers have appointed exchange control experts to assist them in managing the exchange control function and any other authorised dealer that have appointed an exchange control expert who is fully conversant with the exchange control regulations, rules and requirements would have requested whoever has devised this transaction, to disclose all the details to us.

In fact I wonder whether, had that been disclosed to the exchange control experts, whether they would have submitted an application for it.

You have a particular interpretation that you attach to the rules and regulations.. (intervenes) --- And perhaps I should just ask, you know you interrupted me, whether that process has been followed within Deutsche Bank.

You may have a particular interpretation you attached to your own rules and regulations but you accept that another party reading the same set of rules and also acquainted with some measure of expertise, may have a different interpretation. Do you accept that? --- Mr Wasserman we have on a quarterly basis, we have liaison committee meetings with senior people from the authorised dealers. The smaller authorised dealers and I am not referring to Deutsche Bank in a negative sense, they also have representation at the liaison committee meetings, the rulings committee meetings. If anything is not clear to them, that is a forum for them to raise it with us.

Yes but if they have clarity in their own minds, their understanding, then I take it you wouldn't expect them to raise that issue with you. Correct? --- All the authorised dealers know exactly that there are certain ways and means in which you can finance an offshore investment on behalf of a corporate.

Yes. --- And clearly, outside the limits that I have referred to, the 500 7-50 plus the 10% of excess cost, under no circumstances can you finance any other transaction at the direct cost of the South African reserves or for that matter the exchange rate.

Well Mr Grove with respect, could I just raise that question again. You would accept that there may be and there is the possibility of a different interpretation. It is not as clear as you tried to make it. --- Well it's, it's human.

Yes. --- I mean you have a set of rules and not everybody will interpret each and every part of that, of the rulings in the same .. (intervenes)

That is all I am trying to.. (intervenes) --- But in a major transaction involving 2.5 billion, I think that if there is any uncertainty that the majority of other authorised dealers or the exchange control people would have referred the matter to us if it was.. (intervenes)

Yes. --- And then the rulings makes it quite clear, if you have any doubt whatsoever, consult with exchange control.

Yes. Well Mr Grove could I then deal with a matter that is really, I think, the nub of the debate that we are having today and that is, the issue of reserves neutrality. Now you did refer in relation to this particular requirement, to the hedging that took place, the currency exchange that took place and you referred I think to that, described it as it is tantamount to flow back, is that correct? --- Yes that is correct.

What is your understanding of flow back? --- Well what we said is and I will give you a simple example, let's assume that the total reserves was R10,00 before the transaction, after they have done this transaction, that was less, let's call it R2,00. So there was a reduction on the reserves of the country. Because of the fact that there was a spot or a forward transaction in our foreign exchange market, Rand was used to buy foreign currency.

So there definitely, as far as we are concerned, after this transaction, it was not reserves neutral. Or this transaction resulted in a situation where there was a reduction in total reserves of the country.

No I am not asking you that. I am asking you about flow back. What is your understanding of flow back? --- Flow back means that shares that has been placed with foreigners, have found their way back to South Africa. So they sold the shares on the Johannesburg stock exchange.

A concept entirely different to reserves neutrality or.. (intervenes) --- Oh no, it is the same concept. There will be, because if you sell, if a foreigner owns a share and he sells it to a South African resident, he will receive Rand which he can convert to foreign currency. So again once he has done that transaction, there will be a reduction in the reserves of the country.

I see. So the reserves of the country, the foreign reserves of the country, that is your definition for purposes of exchange control? --- Correct.

Now where in either the application or the approval that was granted or in the rules or in the regulations, can we find that definition. Could you help us with that? --- I will find it for you in the exchange control rulings.

In the rulings? --- Ja. I think I read it to you this morning. Ja, I must say I don't know whether it is in the rulings, we will have to check. We will have to come back.

You can't find it Mr Grove? --- No not right now.

MR GINSBURG: Mr Chairman we will try and trace it if we can and if it is not there, we will say so. We are just wanting an opportunity to.. (intervenes)

CHAIRPERSON: Yes.

MR WASSERMAN: I accept my learned friend's undertaking.

CHAIRPERSON: I think you should try and do so today so that can on record today place the Reserve Bank's version.

5 MR WASSERMAN: Well Mr Grove may not surprise you but from the point of Deutsche Bank the issue of reserves neutrality that was raised the first time in your letter of 26 March this year, came as somewhat of a surprise because it wasn't a specific condition of the approval. Do you agree? --- Yes we said throughout all the applications that it must be reserves neutral.

10 No, no, it was not a specific condition of your approval. --- It was a specific condition of our approval.

No I say it was not. --- We said that if there is flow back you have to recoup loss in foreign reserves, what does it mean? You restate the reserves. In other cases we said to ensure reserves and neutrality at all times.. (intervenes)

15 Yes, for what, how would, did you indicate to Deutsche Bank, would they be able to achieve reserves neutrality. --- If it was unclear to them.. (intervenes)

No, no, no, please.. (intervenes) --- If it was unclear to them Mr Wasserman they had the responsibility to refer back to us, a .. (intervenes)

Mr Grove really, really.. (intervenes) --- A clear description.

20 It doesn't really help to pass the buck and then to always say that if it is unclear, come back and I will help you. Really that is not the way to deal with matters of this nature. --- Authorised dealers co-responsible for the administration of exchange control, they have wide powers. They have the authority to grant approvals for certain transactions. Corporate or any individual can't just do a transaction, they need an approval of some sort.

25 First port of call would be the authorised dealer and then exchange control.

Do you remember in what context you have used the concept reserves neutrality in one of your letters, exchanged with Deutsche Bank? --- Well I can't remember everything.

Yes. May I just remind you, what you have said in your letter is that payment for the shares should be made by the corporate in Rands, in South Africa, so as to ensure that the reserves neutrality is maintained. Now what did you mean.. (intervenes) --- At all times, that means that all the legs of the transaction must be reserves neutral.. (intervenes)

Oh, that all times did that also refer to consequential transactions related or .. (intervenes) --- I think I have explained to you Mr Wasserman that we have abolished controls of a non-resident.

35 No. --- We will not impose a restriction on a non-resident.

Yes Mr Grove let's.. (intervenes) --- If a non-resident then.. (intervenes)

Well let's focus on the.. (intervenes) --- If a non-resident then decides to dispose of the shares, of course it will not be reserves neutral.

Yes. --- But we will then institute action to ensure that you restate that position.

40 But that is why you provided for a particular mechanism to manage the flow back and you reserve the right to.. (intervenes) --- Inter alia yes.

Yes but the issue of reserves neutrality was only referred to in regard to the manner of payment for the shares. That's is the only place and the only manner in which your letter refers to the concept of reserves neutrality. Now just explain to the Commission.. (intervenes) --- It is common knowledge in the market that it must be reserves neutral.

45 Yes. Just explain, that is your letter of 21 February 2001, if you would like to have a look at it. I don't want to be unfair to you. --- Do you have the page number?

Ja maybe my learned friend could help me, it is in the M-Cell file on page 41. --- M-Cell file.. (intervenes)

50 M-Cell transaction. That is one example. This is actually a copy of the letter that you have written responsive to the Sasol transaction. But what, I can read it to you. --- Please.

The last sentence reads as follows:

All costs towards the purchasing of the shares by your institution, must be settled locally in Rand by the company involved to ensure a reserve neutral position at all times.

55 Now.. (intervenes) --- Does it refer to the M-Cell application?

No, no, it is a copy simply of a letter that you have written in respect of the Sasol transaction. --- That relates to the general inquiry by Deutsche Securities, not so?

Yes. --- That is so.

60 In the Sasol application, the Sasol approval, in no other document but this response

to an inquiry did you refer to the concept of reserves neutrality. Now could I ask you this.. (intervenes) --- No Mr Wasserman I think you are incorrect by saying that. In the one instance we said flow back to recoup the loss in foreign reserves. In other applications, I wouldn't say all of them, we refer to the definition reserves neutrality.

5 No, look at the Sasol one and then you will see.. (intervenes) --- Ja, I have said you refer to the one. Sasol we said we recoup. Some of the others we also used the phrase reserves neutrality.

CHAIRPERSON: Could we have a look at the Sasol transaction as an example, the basis on which the approval was given. Is that in the letter of 30 January 2001 at page 19 of this
10 SARB 8 bundle?

MR WASSERMAN: Page? --- Mr Commissioner perhaps.. (intervenes)

CHAIRPERSON: 19, this bundle, SARB 8 bundle.

MR WASSERMAN: Page 90 of 19 Mr Chairman?

CHAIRPERSON: 19.

15 MR WASSERMAN: Is it 1-9 Mr Chairman?

CHAIRPERSON: Yes. --- I have got it.

MR WASSERMAN: I don't know whether I have a similar document in SARB 8 bundle.

CHAIRPERSON: Is that the approval of the Sasol transaction? --- That is correct.

So the question we are debating is, whether you drew a distinction between share
20 flow back and reserves neutrality in any other respect. That is what we are focusing on. So Mr Grove that is where you have got to say to us, where you drew that distinction and that Deutsche Bank understood that distinction. --- Mr Commissioner by implication we, we referred to reserves in a (indistinct) general sense, that the transaction must be structured in such a basis, so as to ensure a reserves neutral position. I mean if we play around with
25 words like abroad in order to recoup the loss in foreign currency, what does it say? It means to restate the reserves.

MR WASSERMAN: Is that, that is what you are saying and that is the best that you can do Mr Grove to suggest that on the part Deutsche Bank they should have had in the back of their minds always this very fundamental condition that this structure should not offend
30 SARB's understanding of .. (intervenes) --- Reserves neutrality, correct.

Is that what you are saying? --- Yes.

But, I accept that but could I also ask you to be fair to Deutsche Bank. Would you accept that the correspondence as far as they are concerned, was not that clear in that regard? Would you accept that? Is it not fair to say that on the part of Deutsche Bank the
35 first time this issue of reserves neutrality was highlighted and raised in the letter of 26 March 2002. --- I have no doubt in my mind that the person who at the Reserve Bank dealt with this application, must have assumed that they understood exactly what, you know what the consequences of such a transaction could have been.

CHAIRPERSON: Mr Wasserman, the letter of 26 March 2002.. (intervenes)

40 MR WASSERMAN: That is the Werksmans letter asking for further and better particularity.

CHAIRPERSON: But was that not the letter that was written after Deutsche Bank had revealed.. (intervenes)

MR WASSERMAN: Yes.

CHAIRPERSON: The hedging set of transactions which the Reserve Bank find offensive?

45 MR WASSERMAN: Yes. --- That is quite correct Mr Commissioner.

MS QUNTA: Can I just find out before you go on Mr Grove, there is a reference on page 19 and 35 sub-paragraph 2, and I presume this letter was written on 30 January 2001. --- Correct.

This authority subject to the conditions outlined in point 3 on page 2 of your
50 application. Which application is referred to? Is that Deutsche Bank's application? --- Application number 8 yes.

And do you have an extract of that application? --- Yes I do.

MR GINSBURG: Page 150, 1-5-0.

MS QUNTA: Of volume 8.

55 MR GINSBURG: Of this one.

MS QUNTA: I actually can't see the page number. It is page 82?

MR GINSBURG: No page 150.

MS QUNTA: Oh.

MR WASSERMAN: Is it 1-5-0 Mr Chairman?

60 CHAIRPERSON: Yes.

MS QUNTA: Ja, that might assist us.

MR WASSERMAN: Yes, those are the conditions Mr Grove. I think the Commissioner is quite correct. --- Madam Commissioner no, it does not refer to the term reserves neutrality in the application.

5 MR GINSBURG: Mr Chairman before Mr Wasserman proceeds, there are two letters that I want to show Mr Grove. They are at 153 and 154 (indistinct) in front of you and I am just going to ask that he be given a short opportunity to look at them and see whether they are of any assistance in regard to this particular issue.

10 CHAIRPERSON: Yes let him look at them and we will look at them ourselves in the meanwhile. --- Well Mr Chairman it refers to generalities in the sense that Deutsche Securities would purchase shares in the company, on sell it, placed with long terms investors, would pay, the company would pay Deutsche Securities the Rand value to acquire the shares. The company would receive foreign currency, the proceeds on the sale of the shares, directly in an offshore account. No conversion from Rand to foreign currency would
15 take place on behalf of the company.

CHAIRPERSON: Just, where were you reading from? I can see.. (intervenes) --- That is on annexure A6 page 1-5-3.

1-5-3, I have seen that yes. --- And there we say: no conversion from Rand to foreign currency.

20 MR WASSERMAN: No, no, read the.. (intervenes) --- On behalf of the company.. (intervenes)

Yes. No, no.. (intervenes) --- Well if we say.. (intervenes)

Use it in its proper context, don't abuse it Mr Grove. --- Mr Wasserman if we said it on behalf of the company, why would we have allowed a foreigner to do it on that basis?

25 Well it is not, this is a letter written by Deutsche Bank incidentally. --- By Deutsche Securities.

By Deutsche Securities, sorry, very well. --- It is just a confirmation, had a telephonic discussion .. (intervenes)

30 Yes and quite incidentally you would agree there was no need.. (intervenes) --- And in our response we refer to share placements and we just mentioned, ja, 154, they must please settle the local leg in Rand to ensure reserves neutral position at all times.

May I carry on Mr Chairman?

CHAIRPERSON: Yes, carry on.

35 MR WASSERMAN: Mr Grove, I think it is quite apparent now that the only place where this concept was used was in a follow up letter that was triggered by an inquiry made by Deutsche Bank. And that relates to your insistence upon the settlement of the purchase price in Rand locally. Now was that done? Are you happy that the purchase price was settled in Rand locally? --- Perhaps with the exception of M-Cell. There is would appear.. (intervenes)

40 We will deal with (indistinct), don't worry we will deal with (indistinct) but are you in general.. (intervenes) --- I am not specifically referring to that, I am just talking, you have asked me a question, I am responding to your question.

45 Yes. --- In the M-Cell case which we would have to further investigate, it appear that the Rand amount that was supposed to have been paid to settle the purchase of the shares locally, found its way into a non-resident account.

Yes, well we will deal with that Mr Grove. But as far, let's then deal with the first two, Sasol and Nampak, you are quite happy, there was compliance of that requirement of yours, correct? --- That they have settled it locally?

50 Yes. --- Well in terms of the report that they did indicate to us that they received what, R2.5 billion odd from Sasol, yes.

Now Mr Grove, just to conclude that issue and when I refer to your letter of 26 March 2001, I was trying to explain to you and I think there may not be dispute or a debate between us about that issue, that is that in the minds of Deutsche Bank or Deutsche Securities, this very issue of maybe there could be an impact on the requirement of reserves neutrality, was
55 not highlighted until your March letter because in accordance with their understanding of your requirement, the settlement for the shares were affected in Rand locally. --- That is correct. That it was settled locally.

And then you will accept that there was no intention on their part to breach any requirement that was stipulated by SARB as far as that particular requirement is concerned?

60 --- It is difficult for me to accept that. I can't say.. (intervenes)

But you are not suggesting that that was the case. --- I am not suggesting anything.

Thank you. Mr Grove, on the issue of M-Cell and I am referring to annexure K, page 155 and I really believe that there is a misunderstanding as far as that document is concerned. You refer to annexure K and annexure K on page 155, no it is 405, sorry, I beg
5 your pardon Mr Chairman, 405, it is in the Deutsche Bank M-Cell file.

CHAIRPERSON: Ja.

MR WASSERMAN: You have the letter Mr Grove? --- Are you talking about the letter.. (intervenes)

K, I think your apprehension was that this is a clear indication that as far as M-Cell is
10 concerned, there was an exchange, a payment of R231 million into a non-resident Rand account and that enabled DBJ to transfer that amount and to exchange Rand for foreign currency, is that correct? --- No all I can say is that value date for the forward transaction, that is the so-called currency hedge, was for Friday 25 January 2002. The same day M-Cell paid over an amount of 231 million to Deutsche Securities, the same day there was an
15 instruction from Deutsche Securities to Standard Bank that they must deposit the R231 million in the non-resident account of Deutsche Bank London. That is all I said.

Yes. No I accept that but I am trying to clear up some confusion, I think there is a bit of a confusion and that is, that originates from the introduction of STRATE. Could I ask you to turn to page, oh you don't have it, page 362 of the M-Cell file. --- No, I think we must not
20 confuse STRATE with this issue. Nowhere did we authorise, if a foreigner buys the share or sells the share, if they buy a share, whatever the case might be, then there would be a transaction of this nature. Let's assume that a foreigner sells an asset, they receive Rand, it will go into a non-resident account. The fact that this is as a result of STRATE, I think shouldn't have happened because in terms of what we have allowed, is for the purchase of
25 the shares to be effected locally. Nowhere did we say it can go into a non-resident account.

No, well let me.. (intervenes) --- And I am not saying it is the same proceeds but I mean that is the assumption that I have to make.

MR GINSBURG: Mr Chairman I am sorry to interrupt, perhaps the answer here is this letter was written by Mr Mike Lansdown. Now he hasn't testified before this Commission. The
30 easiest way of finding out what Mr Lansdown did was to simply let Deutsche Bank call him and not try and probe from Mr Grove something that he can't know. He has quite clearly saying to the Commission, he is drawing this inference and it is not direct evidence, Mr Lansdown has the direct evidence.

MR WASSERMAN: Mr Chairman if I may respond to that.

35 CHAIRPERSON: Yes.

MR WASSERMAN: If, I understand my learned friend trying to protect Mr Grove, there is no need to do it.. (intervenes)

MR GINSBURG: I am not Mr Chairman. I am not trying to protect him.

MR WASSERMAN: Well then I must.. (intervenes)

40 CHAIRPERSON: Mr Wasserman are you asking Mr Grove to assume the truth of what is set out in this letter and what his comment is and what his concerns are about this transaction, if it was given effect to like this?

MR WASSERMAN: What I am suggesting Mr Chairman is this with respect and that is, there was a clear explanation of the reason why this payment was made. It is in a footnote
45 on page 362, footnote 11 and I simply want, intended to put the following to Mr Grove.

CHAIRPERSON: Yes, you can continue.

MR WASSERMAN: Thank you. Mr Grove the only thing that happened here is and you will appreciate that there was an undertaking on the part of Deutsche Bank London to make the payment into the foreign account of M-Cell, correct? --- The foreign currency, yes.

50 Yes. Now.. (intervenes) --- The proceeds of the sale of the shares.

Now the only thing that happened is, because the transaction that you referred to on page 405 was effected through STRATE, there was a double payment effected. It happens automatically. In other words Deutsche Bank London not only paid the foreign currency, but also paid that sum of money in Rands into the account of Deutsche Securities and hence the
55 obligation on the part of Deutsche Securities to rectify that double payment by causing a credit to be effected to the non-resident Rand account. That is all that happened. There was no, nothing sinister about this document. Do you accept that? --- For the time being I have to accept Mr Wasserman's explanation although we will further investigate this matter.

You do that reluctantly Mr Grove? --- No we will do that.

60 CHAIRPERSON: Mr Grove, the explanation he has given to you, if you turn to page 362 of

the Deutsche Bank file in relation to the M-Cell transaction, in footnote 11.. (intervenes) ---
Ja I have seen that.

You see, that is the explanation that Mr Wasserman has in essence given. --- We
will test the explanation.

5 And you will test that as part of your ongoing discussions with Deutsche Bank? ---
Correct.

Yes.

MR WASSERMAN: In conclusion Mr Grove, it is I think not an issue between SARB and
Deutsche Bank that none of these transactions caused or contributed to the rapid
10 depreciation of the Rand in the last quarter. --- I have never expressed that opinion that it
had any impact.

I am indebted to you Mr Grove. --- And it was not reserve neutral, that is a fact.

Thank you.

CHAIRPERSON: Are there any other questions from the phalanx of lawyers here?

15 RE-EXAMINATION BY MR GINSBURG: Just one or two. The question of reserves
neutrality, it is just not going to go away right at the moment Mr Chairman. Now Mr Grove
you said in answer to one of the questions put to you by Mr Wasserman that you felt it was
generally known in the market that share placements must be reserve neutral at all times. Is
that what you did say? --- That is correct.

20 And did you mean by that, that authorised dealers in general in this country,
understand that as one of the requirements for the share placement transaction in (indistinct)
--- That is correct.

Would you have expected that an authorised dealer of the nature of Deutsche Bank
would have had that similar understanding, to the other authorised (indistinct) --- Correct.

25 Whether they did or didn't, isn't at issue at the moment, the question is whether you
think that they should have that (indistinct). Then in so far as share placements in general
are concerned, there is it seems to me, two approaches. The so-called incremental
approach and that is where payment is made as and when the shares are placed and then
there is the much more direct approach which we have seen in these three transactions. Is
30 that correct? --- Correct.

The general or the vanilla share placement is the one where there is a incremental
approach, which wasn't followed in this case. --- Correct.

And then in so far as looking at share placements are concerned, there are of
course various parts to a share placement transaction as we have seen. Is it correct to look
35 at one isolated part of such a transaction and then attempt to draw a conclusion from that, as
to the transaction as a whole or must one have general overview to appreciate the full nature
or extent of (indistinct) --- Mr Ginsburg you must look at it from the holistic viewpoint. You
must look at all the transactions and its consequences.

Yes, thank you.

40 CHAIRPERSON: Questions by the Commissioners?

MS QUNTA: Mr Grové, is it Grové? --- That is correct m'Lady.

Let me ask you a general question. When transactions, whether it is a share placement or an asset swap, when you talk to the authorised dealers do you - and we have heard evidence from previous Reserve Bank and the corporate that there are series of discussions, telephone calls, consultations between the Reserve Bank and the authorised dealer and the corporate - maybe my first question is, is that correct? Do you confirm that that takes place where there are big transactions? --- Well, to answer it, to put it in perspective, in the beginning yes, we used to have consultations with the corporate, but of late in some cases there were no discussions - where proposals were submitted to us and we have reacted on ... (indistinct) proposals.

So are you saying now that there would simply be a written application and the Reserve Bank would, on the basis of that approve or not approve? --- Yes.

In the case of these transactions, the three transactions, do you know which process was followed, the consultations, the telephone calls or just a straight written application? --- It is difficult to say in the M-Cell case there was definitely consultations, we discussed it and I will then ask them to come back to me because I was part of the discussions and based on the follow-up the transaction was then agreed to. So in our minds we were quite happy that it is going to be executed on the basis that we would have thought it would be executed. In the Sasol case, you know what I have noticed is that the person that authorised the transaction had a telephonic discussion with Mr Lansdown, but I get the impression that he only wanted to establish the use of the - you know for what purpose they would use the proceeds. In the Nampak transaction there was correspondence to and from, it was not agreed to around one, it was agreed to after - I do not know whether there has been telephonic communication in between the first and the last application.

Okay, if you go to 12.1 on page 12 of volume 8 you indicate there that when the transaction is implemented there must be no negative impact on the country's total foreign exchange, and then you say further down there that:

"The Reserve Bank reserves the right to require the corporate to re-finance if there should be a flow-back of disinvestment."

Then in 12.3 on the next page you say there that an asset swap or a share placement transaction impose an obligation on the South African corporate to advise exchange control via the authorised dealer on a periodic basis, the success or otherwise of the share placement. I have two questions, related questions in respect of those two paragraphs. Can I understand you seem to place responsibility on both the corporate and the authorised dealers, but who is the application, in your view, who is the application made by? --- The corporate.

Okay. So if the corporate, if the authorised dealer expected to advise the corporate of the - you have said that on several occasions, what if the authorised dealer does not advise the corporate, why do you still hold the - why do you still expect the corporate to make good on if there is a problem? --- Well, it is the corporate that applies for the ... (indistinct) investment, so the authority has granted to the corporate and if there is any financing proposal put to us then obviously that approval, or that application will also be submitted by the corporate by its authorised dealer and we will then respond back to the corporate via the authorised dealer. So at the end of the day the approval is granted to the corporate and any conductors attached to such an approval would then be applicable to the Corporation.

Do you place obligation therefore on the corporate for the - for ensuring that the conditions are met? --- The corporate - yes, and the corporate could enter into an arrangement with its agent to do it on their behalf, I mean that arrangement between the corporate and the authorised dealer, we would not be part to that.

But the corporate, we have also had evidence, could the corporate come directly to the Reserve Bank if it chose to do so? We heard that in exceptional circumstances if it falls outside the guidelines they can go to National Treasury. Can they directly approach the Reserve Bank? --- If the corporate feels that it is a confidential transaction they can approach us directly yes.

Okay. --- But the execution would have been done through the authorised dealer.

Through the authorised dealer. So the authorised dealer is always a third party. --- Yes.

That is the intervening party? --- Yes.

I just have one more question. I think you have already answered that, in relation to whether the conditions, in an application you would normally put the conditions in the

approval written, can it happen in certain instances where the conditions may not be contained in the rulings or the manual, but you could impose certain conditions in the approval of the thing - how would the authorised dealer or the corporate know about those conditions, would it always be in writing? --- Yes, it will always be in writing, just perhaps put it in perspective, in terms of the rulings an authorised dealer can execute certain - or authorise certain transactions to be executed, subject to certain conditions. In cases where it falls out of the ambit of the rulings, or the scope of the rulings then there is a responsibility on the corporate by its authorised dealers to submit the application to us. We will then, if everything is highlighted in the application and a number of these applications stated that it will be done at market value etcetera, then we are not going to repeat that as a condition, but it is a condition of exchange control. So in some cases everything we incorporate in the application, we are not going to highlight those conditions, but we approve the application, then subject to what is stated in the conditions mentioned in the body of the application, but if it is not mentioned he will then impose different conditions, which conditions has to be conveyed to the corporate by the authorised dealer, it is their responsibility.

The last question with relation to Deutsche Bank. Deutsche Bank indicated that one of the - one of the reasons why they did not disclose their hedging transactions it is because they - it fell under general authorization and they even mentioned the - they gave us the particular reference. I cannot recall your response to that. Do you dispute what Deutsche Bank is saying in that regard? --- Well the rulings do make provision for such hedging ... (intervenes)

For hedging transactions? --- But it also has a lot of conditions attached to it, but we have not checked whether those conditions have been complied with. We will do so.

But at the moment you cannot really dispute what they are saying? --- No, I cannot. CHAIRPERSON: Could you just repeat that. I am still left a bit unclear about where the Reserve Bank's case on this is. Are you saying that there was a duty on Deutsche Bank to disclose the full effect of the hedging transactions, even though there was a general authority? --- Yes, but it is related to the same transaction. Anything related to the ... (indistinct) transactions, so therefore ... (intervenes)

So you regard them as interlinked? --- Interlinked yes.

So the hedging transactions had an effect that you would not have approved had you know at the beginning. That is the essence of what you are saying. --- Because approval on the exceptional circumstances approval was granted for this transaction, so it was not the ordinary type of transaction.

MS QUNTA: The last question is just a clarification. You had - you had asserted that the coupled transaction was not - the 2,5 billion was no reserve neutral, Deutsche Bank then responded to say that we have complied with the conditions. All you asked us to do was to settle the amount in rand which we have done, and you agreed with Mr Wasserman and yet earlier you said that 2,5 billion exited the country and that does not bring - what is your position now, because you in fact agreed with Mr Wasserman that Deutsche Bank complied with the conditions? --- Well, when I said they complied with the conditions, you know on the face of it that they settle the purchase of the shares, locally ... (indistinct) but Deutsche Bank London exited the funds at ... (indistinct) there was either spot or forward transactions at the direct cost of the foreign exchange reserves of the country.

So it is not the - it is not - I am just trying to understand, it is not the settlement for the shares that you are concerned with, you are concerned with the underlying transactions which resulted in this 2,5 billion going out? --- Yes, they did, they did - in two cases they did a repo of the bonds to raise the money which they exited and in the last one there was no repo transaction so one must assume that they either sold other assets or alternatively used - well Mr Wasserman gave the explanation, so I have to assume that they used other rand assets to facilitate the forward transaction.

I have no further questions.

MR GANTSHO: I have one general question Mr Grové. When reading your evidence, paragraph 3.8.1 you said SARS's understanding, you do not have to refer to it, you can just listen to - so that is your understanding was that the 39,7 million shares of Sasol were placed with long-term investors and would your understanding have changed if the - if they had informed you that they were going to warehouse the shares initially and why would it be different warehousing and ... (indistinct) to the long-term investors? --- Mr Commissioner, in the beginning, if I can go back, when we allowed the share placements, the majority of places related to new issues, the corporate would issue new shares, they would go on a road

show and they would then market their shares to foreign institutions and to make sure that the foreigners will take up the full issue they would then arrange with the foreign institutions or a bank to underwrite them. That means if for argument's sake there is an issue of a million shares, and they only get demand for 500 000 then that institution will take up the rest, thereby ensuring that they will raise the full amount overseas. So from our perspective you know sometimes it is good, depending on the circumstances, to the benefit of the corporate if they can get somebody to underwrite them, because then they can raise the full amount in one day.

5
10 CHAIRPERSON: So the question really is had you known there might be a delay in the selling of the shares over a period of time Deutsche bank had said to you, look we are going to hold the Deutsche Bank London ... (indistinct) and that is the term warehousing, because we simply cannot put 38 million on the market at the same time, and it may well be that it will take time, would you have had an objection if they disclosed that upfront? --- Not necessarily no.

15 MR GANTSHO: Provided the hedging transactions were not ... (intervenes) --- They ... (intervenes)

... (indistinct) I get to understand. The second question is specific and it does not relate to the evidence that you have led today, it is not your evidence, it is in the M-Cell file, that footnote that was referred to by Mr Wasserman. You may choose not to answer this question, because this is not your evidence, as I have already said. Just help me understand this trade settlement system, if you can. Let us deal with the first ... (indistinct) and start with the straight settlement system automatically generated a credit entry in the non-resident rand account on DBL with the settlement agents. Just that ... (indistinct), what does that mean in your understanding? --- Mr Commissioner I would prefer not to respond to that, I think you know we would have to ask somebody from ... (indistinct) to give you full insight to exactly how they do that.

Mr Wasserman, do you want to answer that question perhaps?

MR WASSERMAN: Could I ask my attorney to answer that?

MR GANTSHO: Yes, certainly.

30 MR ATTORNEY: Commissioner, the straight settlement system does not allow for delivery without payment. Once a sale is reported as in this instance where a sale of shares was reported on the system by Deutsche Securities where the sale had been made to Deutsche Bank London, automatically a payment is - a payment requirement is also generated, that is from Deutsche Bank London to its settlement agents, which in this case was Standard Bank and through the day's trades, at the end of the day there would have been a settlement schedule presented to Deutsche Bank London and their account with the settlement agent would simply have been debited, which all happens automatically. So the payment then by Deutsche Securities to Deutsche Bank London's non-resident rand account is simply to rectify that automatic entry that had been made over which London has no control and it is an issue that arises with all transactions of this nature.

40 MR GANTSHO: Your explanation for ... (indistinct) then that this should have been a debit entry in that account of that non-resident rand account?

MR ATTORNEY: Yes.

45 MR GANTSHO: Because a credit entry would have, in layman's terms, added money into that account.

MR ATTORNEY: Correct yes.

MR GANTSHO: Because your ... (indistinct) further transfers money into the same account?

MR ATTORNEY: Yes.

50 MR GANTSHO: So this would be ... (indistinct)

MR ATTORNEY: Yes, it is to cover the shortfall in the account.

CHAIRPERSON: Sir, if you just look at the footnote just so that we can make sure I have got it correct, just look at footnote 11 at page 362 of the Deutsche Bank file 2 and that is that sentence that reads:

55 "The straight settlement system automatically generated a credit entry in the ... (intervenes)

MR ATTORNEY: Credit entry yes, correct.

CHAIRPERSON: And should that read a debit entry?

MR ATTORNEY: Yes, in other words there was a shortfall.

CHAIRPERSON: I am just asking you to tell us how that should read?

60 MR ATTORNEY: Debit entry.

CHAIRPERSON: It should read debit entry?

MR ATTORNEY: Yes.

CHAIRPERSON: Can we change that accordingly?

MR ATTORNEY: Yes. (Background discussion.)

5 CHAIRPERSON: Mr Bezuidenhout, do you want to chat to your client about this before we change it, just so that we have a clear understanding?

MR BEZUIDENHOUT: I think so Mr Chairman.

CHAIRPERSON: The way what you are saying it is a book entry that took place? --- Yes, correct.

10 We will just stand down for a few minutes, can you do that now?

MR BEZUIDENHOUT: Thank you. --- Thank you.

CHAIRPERSON: We will just sit where we are and you guys go and talk to your clients and sort this out. Mr Grové and Mr Cooper on behalf of Sasol would be ... (intervenes)

15 MR COOPER: If we may just turn back then to 12.3 of your statement please in which you were dealing with what you were saying were the responsibilities ... (indistinct) Deutsche Bank agents in the case and the corporate, and I am interested just in what you were saying to the lady Commissioner of the obligation to monitor the share placement in order to the ... (indistinct) that is the only thing that I am raising. Mr Grové, I take it that in regard to the corporate you would accept that the Reserve Bank has a very real responsibility to ensure
20 that its authorizations are clear and reasonable. --- Well if it is deemed not to be reasonable, you know then I am going to go back to the earlier comments that I made and these obligations of the parties to establish what is reasonable or not. If you are not happy with the response, then obviously it is ... (intervenes)

25 Please understand this, I am just dealing with the corporate's position, dealing with a very large and significant commercial transaction. The corporate wishes very anxiously to stay within the terms of an ... (indistinct) even the huge discretionary power of the Reserve Bank, I am simply enquiring from you whether you would agree with the Reserve Bank as a responsibility to be clear and reasonable in its authorities. --- Yes.

30 Thank you. Now, in respect of this particular transaction, as I have understood your evidence the Reserve Bank would have known that the execution of the share placement to the identified customers of Deutsche was a matter between Deutsche and its clients is that right? --- No, I think it is a matter between the corporate, Deutsche and its clients.

35 Well, in what way can the corporate intervene as between the placement between Deutsche and its clients? --- The corporate approached us via its authorised dealer to do a share placement. It is the corporate that wanted to raise, you know the 15 million euros overseas, so the conditions would, unless it is otherwise stated, would be imposed on the corporate. But obviously, you know, corporates would have an arrangement with their agent or the authorised dealer in terms of which they would manage that process.

40 This authorised team who was a part of the Deutsche structure, had indicated to you that the detail of the share placement was going to be achieved by placement of specific amounts with specific clients of Deutsche, is that not so? --- Correct.

Who did you think, speaking for the Reserve Bank, was going to implement those placements? --- I would assume that the corporate has asked the agent to manage that process.

45 Was it not clear it was a process which would be implemented by the agent? --- Well, it was an arrangement between, I would assume between the agent and the corporate.

50 No sir, no sir, the arrangement as disclosed to the Reserve Bank was it not clear that the authorised agent disclosed an arrangement which any reasonable reading of what was disclosed, meant that Deutsche was going to place these shares with the clients of Deutsche, the entities of which were disclosed to by Deutsche and the amounts which was disclosed to you by Deutsche Bank. Is that not clear? --- If I may respond to that, in the correspondence Deutsche Securities indicated that they will place the shares with its clients and that was disclosed to the corporate as well.

55 CHAIRPERSON: I think Mr Cooper's point is, whether you call it Deutsche or Deutsche Securities, Reserve Bank knew that the institution that would ensure the placement was not Sasol, but Deutsche in some form or another. --- Well I do not know what the arrangement between Sasol and Deutsche Securities was.

60 MR COOPER: Yes, but you knew what Deutsche had disclosed in their application to the Reserve Bank. --- No, but Deutsche acted on behalf of the corporate, submitted the application on behalf on the corporate.

Well if you read so much in ... (indistinct) applications, let us read something into the authority grants at page 148.

MS QUNTA: Of which volume, of the volume A?

MR COOPER: Yes, of volume 8 yes. Who is this written to? --- To the authorised dealers who submitted the application on behalf of corporate.

So is the answer Deutsche Bank? --- Yes.

So you see that you note in the third paragraph that long-term foreign investors will subscribe to the relative shares, but no South African party will participate in the share placements exercised and the relative shares will be placed at market value. --- Correct.

Now all that is a reference to what was said at page 150 and 151, is that right? --- In the application submitted by Deutsche Bank in terms of which the applicant is Sasol.

You are becoming very argumentative Mr Grové. We will get along much better and much faster if you just answer the questions. My question to you was you know perfectly well that is a reference to pages 151, is that right? --- That is right yes.

And the share placement exercise therefore and the long-term foreign investors therefore to which this is a reference are those named at 151? --- Correct yes.

Then the non-resident institutional clients of Deutsche Security? --- Correct yes.

Including, but not limited to the following, and names are given. --- Correct.

Kindly keep us posted on a six-monthly basis as to the success or otherwise of the placement which should include full details of any flow-backs which might occur."

Who was in a position to kindly keep you posted? --- The corporate or ... (intervenes)

How would the corporate? --- By its authorised dealer.

(Laughter.) Whoever was going to get the information was going to be given by the authorised dealer? --- Or the arrangement that the corporate has with the authorised dealer.

Whoever was giving this information could only have been the authorised dealer? --- It could only come via the authorised dealer yes.

And the Reserve Bank was asking the authorised dealer to give it this very information "kindly keep us posted". Is that right? --- On behalf of the corporate ja.

So what role could the corporate play if the person who had the knowledge was the authorised agent and you were asking the authorised agent to tell you? --- Ja, you know if you look at the other paragraphs as well, we say that we as the Reserve Bank, reserves ourselves the right to call upon the corporate.

To do what? --- To re-finance flow-back.

To re-finance or to report? --- Surely then - no, to re-finance.

I was not asking you about the obligation of re-finance. --- No, I am trying to put it in perspective, what I am saying is if that is the condition imposed on the corporate, surely the corporate will ensure, via whoever they have appointed, that they have a mechanism in place that would enable them, or enable their authorised dealer to report back to us.

Mr Grové for a last question, a last aspect that I want to clarify, I certainly do not want to enter into arguments with you or the Reserve Bank, but equally I do expect, if I may say so, a fairness and a reasonableness in your answers. In the circumstances of this case 12.3 goes too far and goes too far unfairly in suggesting that the obligation to monitor flow-back which implies and ability and access to knowledge, it goes too far when you say this was shared by the corporate and Deutsche on the facts of this case, which facts we have discussed together it was an obligation on Deutsche and could only have been.

CHAIRPERSON: What is your answer Mr Grové? --- Perhaps Mr Cooper must just repeat his question.

MR COOPER: On the facts of this transaction as we have been talking about, the only obligation, and I draw attention to the words used in the authority given by the Reserve Bank, the only obligation was the obligation in regard to monitoring, was on Deutsche Bank, was not on the corporate and you are unfair to suggest that there was an obligation on the corporate in that regard. --- Is that your suggestion Mr Cooper?

CHAIRPERSON: Yes.

MR COOPER: I am asking you ... (intervenes)

CHAIRPERSON: Yes, you are being asked to comment on what Mr Cooper has put to you. --- No, no, you know, as far as we are concerned, as far as I am concerned, the obligation is on the privilege granted to the corporate, so the obligation is on the corporate through its appointed agents.

Thank you.

CHAIRPERSON: Mr Wasserman, Mr Bezuidenhout are you in a position to just give us

some finality on that issue.

MR BEZUIDENHOUT: Yes.

CHAIRPERSON: In footnote 11 on page 362 of the Deutsche Bank bundle?

5 MR BEZUIDENHOUT: Yes Mr Commissioner I am told again and confirmed that that
payment instruction that is in annexure K is in fact to rectify double payments. Deutsche
Bank London had made one payment in M-Cell's off-shore bank account and because of the
way that ... (indistinct) operates, another payment to the account of Deutsche Securities in
South Africa. Whether one sees these as credits or debits depends on whose perspective
10 one is looking from Standard Bank, the settlement agent's perspective, it would be correct on
to refer to credit both in line three and line four, but from the Deutsche Bank's perspective
both those references should be to ... (indistinct)

MR QUNTA: You probably - you go ahead.

MR GANTSHO: I do not know if you are testifying on behalf of M-Cell who made its
testimony and (background discussion) Oh sorry Deutsche, but I would like to just confirm
15 what you are saying sir, that this - that there was a double payment and this was a correction
of the double payment. --- Correct yes.

That answers my question.

MR GINSBERG: This issue of the double payment is something that can be resolved with
the Reserve Bank and it is in fact intended to be resolved with the Reserve Bank, isn't it so?
20 --- That is correct.

That raises this question as Mr Grové, this parallel process that the Reserve Bank is
following with Deutsche Bank and corporate, when will that be concluded?

MR GINSBERG: Perhaps I can attempt an answer, because ... (intervenes)

CHAIRPERSON: Yes, please do.

25 MR GINSBERG: Because it really is a legal matter. Mr Chairman, what has happened is
you have seen letters of request of ... (indistinct) to Deutsche Bank and various corporates.
There have, for reasons which I explained earlier, not been formal responses. The
statements in these proceedings will no doubt be - have come to the knowledge of the
parties and will be used as a basis, I would imagine, for further exchanges between them. It
30 is therefore a little difficult for us to prognosticate at the moment as to precisely when the
procedure will be completed, but it is moving along, it has not stalled and will not stall,
because all the parties are keen to engage one another to try and resolve the issue one way
or another. But what we could perhaps attempt to do before the commission ultimately
adjourns is to give some sort of report back in regard to progress in a general way without
35 disclosing specific instances of the matter.

CHAIRPERSON: But there are certain issues that would be of great assistance to us,
particularly the simple issue of whether it was entirely innocuous double payment that was
being reflected here or whether if something sinister was suggested in the evidence-in-chief if
I call it that, of Mr Grové. Now at the moment, the last day of hearing that we might have and
40 there is no certainty about this, because it is all very provisional, might be in mid May, round
about Monday 13 May is the last date we are talking at the moment.

MR GINSBERG: Yes.

CHAIRPERSON: Do you not think it would be valuable for the parties to aim to place
something before the commission at that time?

45 MR GINSBERG: Yes, I am ... (intervenes)

CHAIRPERSON: Otherwise we are reporting on really what is an issue hanging in the air, so
to speak, that to me seems to be unhelpful to the present ...

MR GINSBERG: I am receiving an indication from my left here that that is so yes.
(Background discussion.) Yes, and of course it involves a great measure of cooperation
50 between all the parties, so we take the indication to heart and I am sure that our counter-
parties will do the same thing, but without them there cannot be any report back.

CHAIRPERSON: I mean the way that you could get progress there is to reach an agreement
on a date by which the parties will respond to the very letters you have testified to whereupon
you would in turn either have meetings or responses.

55 MR GINSBERG: Yes.

CHAIRPERSON: I think in principle we should try and reach an agreement that you will try
and respond by mid May.

MR GINSBERG: Yes.

CHAIRPERSON: Well if you cannot and you report back to us that you cannot for whatever
60 reasons are advanced.

MR GINSBERG: Yes, thank you Mr Chairman we will certainly attempt to do that, subject to any further questions, two small issues remain, well one small issue and one concluding statement. The issue in regard to whether we can find in the rulings a reference to reserve neutrality as Mr Grové thought there might be is that we cannot.

5 CHAIRPERSON: Yes.

MR GINSBERG: We cannot find a specific definition of reserve neutrality in the rulings and we wish to place that on record.

CHAIRPERSON: Thank you.

MR GINSBERG: It has, however, been dealt with in a different context in his evidence.

10 CHAIRPERSON: Yes.

MR GINSBERG: Then in so far as closing remarks are concerned we have a very brief statement by Mr Bruce Brand, head of the exchange control, in order to address paragraph 1.4 of the Commission's mandate.

CHAIRPERSON: Mr Ginsberg, just before you get there, the other Commissioner would just
15 like to clarify something.

MR GANTSHO: As for my information, Mr Grové, with the bird's eye view of the Reserve Bank are you in a position to tell us if there were any similar transactions that perhaps took place in addition to Nampak, Sasol and M-Cell that you approved what is transcribed as the assets of transactions or share placement transactions that we may be interested in during
20 this period of January 1st 2001 and and 31 December? --- Mr Commissioner, I think we would have to check on that, we handle a number of applications on a daily basis, so that we would have to check.

MR COOPER: But you could check and come back to us on that? --- We can come back to you, that is no problem.

25 CHAIRPERSON: Right Mr Ginsberg, you were about to ...

MR GINSBERG: Yes, I was about to say that we have about a page and a half of the written statement by Mr Bruce Brand which we ... (indistinct) which will address paragraph 1.4 of the terms of reference Mr Commissioner.

CHAIRPERSON: This is at my request.

30 MR GINSBERG: And we would beg an opportunity to simply present that as opposing evidence on this ... (indistinct)

CHAIRPERSON: Do we get copies of the statement as well?

MR GINSBERG: Yes certainly.

CHAIRPERSON: While this is going to be given by Mr Bruce Brand I think it is just
35 convenient to put it in this file seeing we are dealing with it, otherwise we will have to try and remember what the pages were. Mr Brooks can you in the meanwhile give us some pages while Mr Bruce Brand deals with this. Mr Bruce Brand, I know you have given evidence before, but I think you should place your full names on record again.

MR BRUCE-BRAND: In the heading of the statement unfortunately it seems there is a type
40 out, there has been no gender case in my case, it is Alexander, not Alexandra.

ALEXANDER BRUCE-BRAND d.u.o.

MR COOPER: You may be seated. Read your statement into the record for us please. ---
Commissioners, the pagination is 236, 237.

45 Thank you. --- Thank you. Mr Chairman, I would like at this stage to make some closing general remarks concerning exchange controls with particular reference to paragraph 1.4 the terms of reference of this commission.

"Broadly speaking the primary purpose of exchange control is to protect the foreign reserves of the country. The effectiveness of the current administrative system of enforcing exchange controls is inter-linked with, and dependent upon, the fullest cooperation from all the
50 authorised dealers and the clients for whom they act in matters of exchange control.

The relationships between the authorised dealers, their clients and the Exchange Control Department has as its underlying rationale a duty of utmost good faith, transparency and trust.

Without this the system cannot function effectively. Within the parameters of the policy considerations underlying exchange control every effort is made to facilitate commercial
55 transactions of the South African economy. To enable exchange control to respond constructively in the ever changing and increasingly complex commercial environment the

aforementioned trust transparency and good faith is all the more important to enable exchange control to achieve this objective. My statement would not be complete without reference to the issue of whistle blowers in the context of exchange control. Whistle blowers have a useful role
60 to play in monitoring the implementation of exchange control, particularly given the challenges

to corporate governance. As in the past any one with legitimate information should feel secure in approaching the appropriate authorities, and we from exchange control want to make it clear that we will as always treat such information in the utmost confidence, its sensitivity, and treat it with the seriousness it deserves.

5 In the light of everything that there has been said by the South African Reserve Bank to this Commission and given the foregoing I am of the opinion that exchange controls are effective, provided that all role players fulfil their obligations in both the spirit and the letter of the existing rules and regulations. By and large our experience is that this is the norm and that the effectiveness of our primary objective, that is the protection of the country's foreign reserves, is
10 borne out by the growth in the reserves from approximately two weeks of import cover when the democratic government was elected in 1994 to the prevailing level of approximately 24 weeks of import cover. This objective has been achieved against the background of extensive exchange control ... (indistinct) and a significant reduction in government's foreign exchange liabilities."

15 Thank you.

CHAIRPERSON: I assume there are no questions arising out of that?

NO QUESTIONS

CHAIRPERSON: The Commission shall adjourn.

MR BROOKS: Just before we adjourn, two homework issues. Mr Commissioner you will
20 recall that in regard to the Nampak statement there was some confusion in regard to the reference to Deutsche Securities and Deutsche Bank. We have now received information from ... (indistinct) Gilfillan and we will rectify your files in that regard. If they could just be made available to us. I do not know whether all the files are available.

CHAIRPERSON: I think we will leave it to Chris Van Niekerk to get our files ... (indistinct)

25 MR BROOKS: The secondly the last piece of homework for the day. Commissioners you will recall that I made a statement relating to the Finance Week article by Mr Sergeant and the meeting held with Mr Sergeant. Mr Sergeant has provided me with a response which he wishes me to read into the record and I am going to do that. He has a very fancy handwriting so I am going to do my best to analyze this handwriting. The statement is:

30 "On Friday 5 April Mr Brooks referred to an article I wrote for Finance Week. Mr Brooks said 'The structure as set out in the article does not by any stretch of the imagination agree with the evidence that has been given by the corporate and Deutsche Bank before this Commission.'

For the sake of clarity please allow me to make two points:

35 1.The structures represented to the Commission by corporates and Deutsche Bank referred to asset swaps.

2.My article did not refer to asset swaps, either directly or indirectly.

Accordingly the structure I discussed did indeed not resemble the so-called asset swap structure.

40 Second, Mr Brooks said the Commission's investigating team met with me and that I 'was unable to provide any further hard facts or documents to substantiate the article'. If it so pleases the Commissioners, please allow me to clarify my understanding of the purposes for which the said meeting was held. I understood that the meeting was to be off the record. However, it does not matter, because I have nothing to hide. My recollection was that I told
45 the investigating team that the article I wrote was prepared using well understood techniques of investigative journalism. Accordingly I had a good number of industry sources whom I would protect. I indicated that the Commission's investigating team would not have to go too far in order to establish its own sources. If Mr Brooks and his team had indeed challenged me to provide details of sources and documents I would have asked to have been subpoenaed
50 before the commission. Had that indeed have happened I would have continued to protect my sources.

Thank you."

CHAIRPERSON: The Commission will adjourn until 10:00 tomorrow morning.