

PROCEEDINGS RESUME ON 6 MAY 2002:

CHAIRPERSON: The Standard Bank is giving evidence today. Is Mr Smith the first witness?

MR NAIDU: Yes, Mr Chair.

5 PAUL JOHN SMITH d.s.s.

MR NAIDU: Chairman and Commissioners, the Standard Bank bundle constitutes pages 1 to 157. The witnesses will be in the order of Mr Smith, Mr Willie Potgieter thereafter and Mr Simon Ridley.

10 CHAIRPERSON: I just wish to put on record that Mr Bamish is representing Standard Bank today. Right, Mr Naidu, let us proceed.

EXAMINATION BY MR NAIDU: Mr Smith, did you prepare a statement which constitutes pages 1 to 14 of the Standard Bank bundle? --- Yes, I did.

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

15 You appreciate that this statement will constitute together with the evidence that you are going to give, evidence before this Commission? --- Yes.

Are you the Director Group Risk Management of SBIC, a position to which you were appointed in November 1999? --- That is correct.

20 And is your primary role to co-ordinate the risk management activities of all business units across the Group and to report the activities to the chief executive as well as the Board Risk Management Committee and the Board Audit Committee? --- That is correct, yes.

You set out the structure of the Standard Bank Group fairly comprehensively in paragraph 3 of your statement? --- That is correct.

And you also identify in the course of this paragraph the various persons that have responsibility in relation to the different areas? --- That is correct, yes.

25 Is there anything that you would like to add to the contents relating to the group structure or are you content with what is recorded? --- I am content with what is recorded.

Do you deal with the risk management within the Group in paragraph 4 and you identify in slide 6, at the bottom of page 10 the various committees and sub-committees that constitute this particular area? --- Correct, yes.

30 The three board sub-committees you identify in paragraph 4.2 and the important management committees are included in paragraph 4.3, am I correct? --- Correct.

35 In paragraph 4.6 you deal with the risk management of foreign exchange activities in SCMB. Is there anything that you would like to add to what is contained there? --- I think the final comment is really just to indicate that the limits set in fact have never been breached, our internal limits, throughout the year and in fact those limits internally are much more conservative than in fact regulatory limits imposed upon us.

Thank you, Mr Chairman, that is the end of the examination.

CHAIRPERSON: Any questions from the floor? Any questions from the Commission? No questions. Thank you, Mr Smith, you may be excused.

40 NO FURTHER QUESTIONS

WILLEM JOHANNES POTGIETER: d.s.s.

45 EXAMINATION BY MR NAIDU: Mr Potgieter, did you prepare a statement or was a statement prepared for you which constitutes pages 15 to 51 of the Standard Bank bundle? - -- I confirm.

And do you confirm and adhere to the contents of this statement and appreciate that the statement constitutes evidence together with your evidence before this Commission? --- Yes.

50 Are you the director and head of the International Banking Division of Standard Corporate and Merchant Bank ("SCMB") since 19 - sorry, were you employed since 1969? - -- That is correct.

And you are presently the director and head of the International Banking Division? -- - That is correct.

55 In 1995 were you appointed as a director of Foreign Exchange at SCMB in the then newly formed SCMB Treasury Division? --- That is correct.

And your responsibilities you identified in paragraphs 1.2.1 to 1.2.3? --- That is correct.

And your present position you were appointed to in the year 2000 and were those responsibilities identified in 1.3.1 and 1.3.2 added to your portfolio? --- That is correct.

60 You are also the past chairman and an honorary member of the ACI Financial

Markets Association? --- That is correct.

In paragraph 3 you deal with the foreign exchange dealing activities in SCMB with reference to the products, markets and your bank's role. Is there anything that you would like to add? Perhaps I should draw your attention to paragraph 3.4 and ask you if there is anything that you would like to add to that? --- In paragraph 3.3 we confirm that our role, we see our role in the market as SCMB as a very client priority role and as a result of that obviously we are involved in market making activities. Our turnovers are large, as I confirm in paragraph 3.3, approximately 5000 transactions per day, \$2 dollars and that is in 40 currencies. But that the rand or any transactions that would have an influence on the exchange rate of the rand was only to the extent of about 15% of this turn. I also confirm that paragraph 3.4, that as a result of our market making activities we are obviously involved in large trading positions too.

And in slide 7 on page 5 you set out a summary of the structure of your Department?

--- That is correct.

And on page 7, in slides 8 to 11, the enlargements of which are on pages 69 to 72 of the bundle, you identify some trends identified by SCMB during the year 2001 in respect of the daily turnover volumes in spot and forward rand activities by non-resident banks?

--- That is correct. The slides or the charts that appear on page 7 would represent the activities of both local importers and exporters and also those of non-resident banks.

In paragraph 4 you deal with risk management, internal control and compliance and perhaps I would ask you, Mr Potgieter, to apply your mind to the fact that there is presently no obligatory regulatory mechanism which compels traders across the boards. Can you perhaps deal with this questions and perhaps any other matter you would like to raise under this paragraph and if you feel inclined to make certain recommendations which may be helpful to this Commission? --- I will do that. I would say that the foreign exchange activities in South Africa are very much in line with the similar activities that we find in many many overseas banks and that is really where our activities started many many years ago, as far as I go back to the 70's but one should also say that the foreign exchange activities are certainly regulated in terms of the regulations and the rulings of the Exchange Control rulings as administered by the Reserve Bank. So that would be the background and those are also very clear as to what one can do with your resident and non-resident counter bodies. We in SCMB also subscribe to the ACI code of conduct and we have heard quite a bit of the ACI code of conduct in previous evidence. And whilst that, the ACI, are obviously an institution that members, particularly foreign exchange dealing members, belongs to in his private capacity, those are certainly not regulated by law but certainly the ACI, and particularly in the code, there are lots of recommendations being made as to how business should be conducted in the foreign exchange market. With the result that you find that many banks, both here and overseas, has actually adopted that in particularly dealing mandate that will be given to dealers in the various capacities. What we have done in SCMB, obviously we subscribe to those rules. Many of those obviously encounter .. (indistinct) regulations or actually recommendations as to how we should conduct particular transactions, so what you find is that where the ACI code deals with matters of fraud, confidentiality and so forth, we incorporated that in our employment documents or p.a. trading rules which they actually sign in the bank, any of those. And then you also find that some recommendations in the ACI codes, certainly we in the bank have certain procedures actually to follow that, i.e. after-hours trading, how you deal with tape recording and how do you deal with .. (drops voice, indistinct) and so forth. That is the principles in the bank that we actually .. (drops voice). So by and large I would say the ACI code is certainly a good guideline as how people should go about it but many many banks has actually adopted that as a dealing principle or a dealing mandate. I know that we have certainly done it in South Africa and many other banks have done it too. And if one can recommend something, you know, that will probably be a recommendation you know that the whole industry and the whole market should actually certainly apply those principles.

Is there any sanction available should any member of ACI or any trader who is a member of ACI violate the code of conduct? --- As far as ACI is concerned themselves, I do not believe that there has been any such matters, been brought to attention but certainly within the bank, because I have mentioned that all of these recommendations that is in the ACI code obviously dealt with different banks, and that will certainly be dealt in the particular banks in terms of their disciplinary codes.

Is there anything further that you would like to add to this paragraph? --- No,

nothing further.

In paragraph 4.2 you set out in detail your internal control and compliance with Exchange Control Rulings.

5 CHAIRPERSON: Mr Potgieter, can you estimate how many employees are dedicated to exchange control in Standard Bank even although the Exchange Control rules and regulations have been liberalised? --- We have got two specific departments which I refer to in paragraph 4.2.1.1 and 4.2.1.2, one being an exchange control department with 10 staff members that would advise internally and externally how to deal with it. And then also we have a department within our international business centres that actually deal with exchange controls, do monthly audits and regular checks and so forth and those are 13. But besides that, all our front end dealing staff, particularly in our international business sectors would be dealing with exchange control matters because these are staff members that have certain instructions for payments or instructions for hedging transactions and they need to vet the documentation that is required in terms of doing that. So at a guess, and I do not have the right numbers, but I would say that easily 200 of those staff members in the international business centres will be dealing directly with documentation in foreign exchange control and the others, we have got a staff compliment of about 500 in our international business centres and many of the others would during their duties, would also attend to those matters.

10 MR NAIDU: In 4.2.5 you talk about the inspection and any errors that might be discovered and the form 10951 application which is submitted to SARB and you say that in your bank during 2001, 12 such applications were submitted. Can you just give the Commission an idea about the matters in relation to these particular applications, the general nature of them? --- Many of these applications or errors are really in respect of excess for instance in give(?) allowances by the private individuals or where you have specific cases where the Exchange Control Department within the international business centres have picked up occasions where it would have been necessary for a particular transaction to get the authority of the Reserve Bank prior to making payments and that had not been done and we put that on record with the Reserve Bank and then try to recover the funds and then deal with the recommendation of the .. (drops voice, inaudible). We have had 12 such applications which have actually been recorded to the Reserve Bank with a combined total of R5 million.

15 And it did not have the potential to have any effect on the exchange rate? --- No, these are very small amounts.

20 In 4.3 you deal with the foreign exchange dealing with resident clients. Would you like to add anything to that, perhaps I can draw your attention to 4.3.3? --- In the normal course of the business the rules in dealing with the clients are very clear in that whenever payments are made that one need to sign the documentation and obviously endorse the documentation that the exchange has been provided. In respect of contracts, where clients do hedging contracts, we should also vet the documentation and annotate those documents that forward exchange cover has been provided. But we have felt in the bank for many years that in order to bring this further to potential clients, whenever we transact with clients, we in our confirmation to the client state, make a declaration for client to sign, paragraph 4.3.3., to confirm that the transaction which is entered into is in terms of a firm and ascertained commitment and particularly that this commitment has not been covered twice. So the client would sign such confirmation and return it to our bank.

25 In 4.3.6 you deal with the procedures to ensure that exporters comply with the 180 day rule?

30 CHAIRPERSON: Could we just go back to 4.3.5 at slide 12 which is on page 18, the slide dealing with payments for imports. What is the measurement of the left-hand column? I can understand the periods, how much money in other words? --- For the sake of confidentiality in this forum we obviously left the left-hand bar open.

35 Oh I see. --- But what we would like to indicate to you, Mr Commissioner, the trend actually in the payments for imports that with SCMB, particularly through the last four months of the year, that we have not had an escalation in payments for imports when the rand was under severe pressure and that if you look at December 2001 and compare that with the payments done in January 2001, there was not much of a difference.

40 What is the significance of the June amount which appears to be high? --- That is sort of half year payments that normally you will find that even on the export side that half year people tend to make payments for imports and also we see for exports. But to the best of my knowledge that was also the period where in fact we handled the last transactions of De Beers.

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That might be an explanation. --- Yes.

Thank you.

MR NAIDU: Mr Potgieter, would you like to add anything, make any comment in relation to 4.3.6? --- No.

5 And in slide 14 you record the illustration of the trend of export proceeds received during the course of 2001 for all your bank's exporting clients? --- That is correct, yes.

CHAIRPERSON: Can we just go back to the previous slide which was dealing with the F178's. My understanding of page 34 of your statement in which you deal with the substance on this is that your bank's experience was that your clients were not reaching the 10 180 day limit, is that correct, really their maximum was about 120 days in certain months? --- Yes, what we do deal with here is that this is the average of the number of days in any particular month that exporters would have used to remit the export proceeds back. What I try to indicate here is that if one look at the average basis, then certainly no client or the trend is that clients, our exporting clients, would normally give credit to the extent of about 120 days 15 to the importing clients and during the latter part of the year, whilst it increased in November, December, it has come back to the sort of average which was during the course of the year, 120 days.

Thank you, you may continue.

MR NAIDU: To what extent have you noticed there to be compliance when funds are 20 transferred from one authorised dealer to your bank in the completion of the MT100 form, Mr Potgieter? --- That is a difficulty which the other authorised dealers dealt with too. I can just add that within SCMB we have the same difficulties and the main difficulty being really that if you have a client that are fairly active in terms of the CFC account and have a number of credits to the CFC account, it is difficult when you do make a payment to a CFC account and 25 other authorised dealers, to determine exactly what date you should be using on that. In most cases we really try to accommodate this but you cannot always be accurate with this particular - we have got an agreement between the authorised dealers, particularly this year, seeing that there has been a lot of focus on the CFC accounts, particularly from a very senior level at the Reserve Bank where the Reserve Bank actually addressed a letter from Ms Jill 30 Marcus to the banks and we try to co-ordinate this and make sure that when we do receive messages from another bank and the MT100 is not annotated, that we actually refer it back to the other bank and make sure that we get it back accordingly.

In 4.3.7.5 and slide 15, you deal with the trend of credit balances in the CFC accounts. Is there anything that you would like to add or comment upon? --- No, I think it is 35 very clear what I have said there, just to say that within SCMB we have not found that our CFC credit balances has increased during the latter part of the year. It is very much a sideways trend actually as you can see in slide 15. We also do, in addition to the normal checks, we scrutinise all our big CFC account holders' accounts on a regular basis to make sure that there is no upward trend in those balances and if there are then we will query that.

40 In 4.4 you deal with the foreign bank vostro accounts. Would you like to add anything or make any comment in relation to the extent of it being overdrawn? --- I have no more comment to make, no.

In 4.5 you deal with your bank's dealings with non-resident banks and in 4.5.2 you deal with the response pursuant to or consequent upon the 16 October circular. Is there 45 anything that you would like to add to that? --- This has been dealt with at quite some length too, just to say that as far as we are concerned that the only impact this really had on foreign bank dealings were that, I refer to that as that foreign bank dealings almost came to a halt during that period, and I am talking about the period after the circular was issued. The only reason for that was that foreign banks that were active participants in our market were 50 uncertain about policy going forward in terms of exchange control at that point in time but certainly we have experiences here that as that rule has become very clear, you know that foreign bank activities actually started picking up again.

CHAIRPERSON: Can I just debate with you 4.5.3, that date 19 October. If you look at page 147, the date of your circular to corresponding banks on 25 October. --- Yes.

55 And it seems to me that that must be the correct date because the evidence so far does not indicate that the ACI Reserve Bank settlement of the circulars had been done within a few days? --- Yes.

60 What is the correct date there, Mr Potgieter? --- We have communicated with our offshore correspondent parties on 25 October but to the best of my knowledge on 19 October there was various communications out to the foreign banks and particularly a communication

on their web site, and it is my understanding it is on 19 October, that was the first clarity of some of the rules.

But what I am trying to establish is you will recall that the ACI and the Reserve Bank settled a communique which included the certification by the compliance officer of the non-resident bank. I am trying to establish when that was made public? Mr Bruce-Brand estimated that it took about two weeks after 14 or 15 October, namely near the end of October. Have you got any greater clarity on the date that that was circulated? --- We will probably have it in our records but I have a bit of doubt in my mind as to whether it was the 19th or 25th October. We can check up on that and get back to you but we will certainly be able to give you the exact date when that communique was clear.

His difficulty in evidence was that the Reserve Bank had not made the communication, the authorised dealers have? --- Yes.

And I wonder if you can come back to that, some written document just simply say that according to our records the circular .. (intervenes) --- We will simply do that but as far as own correspondent banks are concerned obviously on 25 October, we actually, if you go through our bundle on page 149 we told them what that compliance should be. My understanding that at that point I am sure there would have been clearance on the compliance certificate on the bank immediately already.

You see, I am interested to know when the foreign banks would have become aware of the fact that their compliance officers now had to sign the certificate and on your documents which I have read it seems to me the first time was 25 October but if it is any other date if you could let the Commission know. --- Thank you, Mr Chairman.

MR NAIDU: Mr Potgieter, in 4.5.6 you deal with your bank's endeavours to secure compliance with the circular. Is there anything that you would like to add to that? --- Not more than what I have added there, Mr Naidu.

So far as the exchange control contraventions are concerned, you say that there were contraventions by clients during the period in question but in your view do you believe that the contraventions had any impact on the rapid depreciation of the rand? --- In my view it did not have an impact on the rapid depreciation of the rand.

In 4.7 you talk about the problem you have experienced in achieving and demonstration effective compliance with the exchange control within your bank and the excon department itself. Is there anything you would like to add to that? --- No, I think it is three areas that we refer to and I think it is very clear and we certainly are in communication with the Reserve Bank as to how those issues can be resolved.

Your bank's perspectives are set out in paragraph 5 and you identify in 5.4 specific perspectives on factors influencing the rapid depreciation of the rand. Is there anything you would like to add to that? --- No.

And you conclude in the exchange control perspective with certain remarks in 5.5.1 where you say that your bank is unaware of any illegal or unethical transactions or whether any person may have made an proper gain or improperly avoided loss? --- That is correct.

I have no further questions.

CHAIRPERSON: Any questions from the floor? Any questions from the Commission? Nothing. Thank you, Mr Potgieter, you are excused.

NO FURTHER QUESTIONS

SIMON PETER RIDLEY d.s.s.

EXAMINATION BY MR NAIDU: Mr Ridley, did you join SCMB as Director Finance and Operations in June 1999 and is your current responsibility in SCMB for finance Information Technology, Operations functions and the Custody division? --- That is correct.

You set out your bank's markets, products and client base in paragraph 3? --- That is correct.

And more specifically your client mix in 3.2.4? --- That is right.

Do you wish to make an amendment at the top of page 3 on the third line by including the words "both residents" between the word for and the word our in the third line? --- That is correct.

So that it now reads "these products may give rise to foreign transactions for both resident and our non-resident clients"? --- That is correct.

You deal specifically with your scrip lending activities in 3.14 and in 3.14.4 you say that the document bundles detailing specific scrip/stock borrowing transactions, involving non-resident entities, local subsidiaries and offshore controlled organisations during September to December have been supplied to the forensic auditors appointed by the

Commission? --- Yes, that is more .. (inaudible)

The impact on your bank as a result of the depreciation of the rand is set out in paragraph 4 dealing with capital adequacy in 4.3 and your capital raising and shareholder value in 4.4. Would you like to add to anything you say in your final paragraph 4.5 regarding the sentiment? --- Yes, I think at the time of writing this, this was in March, things were rather more gloomy than they are at the moment. So our share price has improved. If we look at 4.4.1 we talk of a dollar share price dropping to 263 US cents in dollar terms while it is now about 350. So it still reflects a decrease from the 421 at the beginning of 2001. Since this has been written, in the last few weeks shares have been slightly more attractive to the local and international investors and it is probably not a total coincidence that that has been at the same time that the rand has improved, given that an improving rand is a prospect of lower interest rates and lower interest rates would indicate better times for banks with regard to bad debts etcetera. So since this was written there has been a slight improvement in sentiment and it is not quite as gloomy as it actually was at the time.

Mr Ridley, do you confirm and adhere to this statement that has been prepared and constitutes part of the bundle? --- Yes, I do.

You do appreciate that the contents of the statement constitutes evidence before this Commission? --- Yes.

That is all for this witness.

CHAIRPERSON: Questions from the floor? Questions from the Commission?

MS QUNTA: You mentioned the negative impact of the depreciation of the rand, were there any positive impact of the depreciation of the rand on Standard Bank for example? --- At a group level, at the Stanbic level our offshore subsidiary operation generated a positive translation of gain for us, so in rand terms those operations became more valuable. We did not show that as part of our profits but took it straight to a non-distributable reserve. But that would be the one benefit that we did notice.

CHAIRPERSON: And your currency trading desk, your forex operations viewed in isolation, would they not have been more profitable, particularly near the end of the year? --- Yes, as indicated in the statement, I think the months of November and December we had a good foreign exchange revenue, much in line with the total bank figures that were mentioned in the report by Deloitte. In some areas, such as now bond trading areas, we made losses which probably more or less compensated for the additional forex profits that we made.

Thank you, Mr Ridley, you may be excused.

NO FURTHER QUESTIONS

MR NAIDU: That concludes the evidence of Standard Bank.

CHAIRPERSON: And does that conclude the evidence for today?

MR NAIDU: Yes, Mr Chairman.

CHAIRPERSON: The Commission will adjourn until 10:00 tomorrow to hear the Reserve Bank's evidence.

PROCEEDINGS ADJOURN: