

**COMMISSION OF INQUIRY INTO THE RAPID DEPRECIATION OF THE
EXCHANGE RATE OF THE RAND (“COMMISSION”)**

STATEMENT BY CHRISTIAAN TIELMAN GROVÉ

**SPECIFIC TRANSACTIONS ENTERED INTO BY GENSEC BANK LIMITED AND
DEUTSCHE BANK WITH SASOL LIMITED, AND BY DEUTSCHE BANK WITH
NAMPAK LIMITED, AND M-CELL LIMITED**

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STATEMENT BY CHRISTIAAN TIELMAN GROVÉ IN HIS CAPACITY AS ASSISTANT GENERAL MANAGER IN THE EXCHANGE CONTROL DEPARTMENT (“EXCHANGE CONTROL”) OF THE SOUTH AFRICAN RESERVE BANK.

INTRODUCTION

- 1 I, Christiaan Tielman Grové, in my capacity as Assistant 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 foreign investment, in part 2 hereof, in regard to the relevant Sasol Limited Transactions, in part 3 hereof, in regard to the relevant Nampak Limited Transactions and in part 4 hereof in regard to a relevant M-Cell Limited Transaction.

- 2 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 specific request and for purposes of reviewing and providing a greater insight into these specific transactions which are and have been the subject matter of the Commission's investigations during this part of the hearings before the Commission.

- 3 At the request of the Commission I have also included my personal Curriculum Vitae, at page 65 of this bundle of documents which has been marked for the Commission's purposes as, and shall be referred to by me as SARB Volume 8.

PART 1 : FRAMEWORK APPLICABLE TO POLICIES AND NORMS

- 4 Before dealing in specific terms with the policies and norms applied by Exchange Control in connection with direct foreign investments by South African corporates it will be useful briefly to review the legal framework within which those policies and norms are applied -
- 4.1 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 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.
- 4.2 The principles with which I have dealt in this statement and, which constitute those aspects of the exchange control legal framework which I regard as essential for purposes of explaining the policies and norms applicable to proposed direct foreign investments by South African corporates, are to be found in and have been extracted from the Rulings and the Circulars.
- 4.3 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 controls.

- 4.4 The Exchange Control Rulings (which I shall, in this statement refer to as "the Rulings") issued by Exchange Control, set out the authorities granted to Authorised Dealers and the rules and procedures to be followed by the Authorised Dealers in dealing with day-to-day matters relating to exchange control. These are from time to time amended as required and supplemented by Circulars.
- 4.5 The Rulings are, in fact, a technical handbook for use by the Authorised Dealers, containing authorities, instructions and conditions applicable to a wide range of transactions that they may undertake on behalf of their clients.
- 4.6 Where an Authorised Dealer is not empowered to approve a transaction in terms of the authorities 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.
- 4.7 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 and 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 withholding 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 each such transaction is concluded at arms length and at market related prices.

- 4.8 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 its 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.
- 4.9 An Authorised Dealer in making any such application must ensure that -
- 4.9.1 full and precise particulars of the underlying transaction or transactions are recorded in the application;
- 4.9.2 any application shall state clearly -
- 4.9.2.1 the corporate's reasons for wishing to undertake the transaction;
- 4.9.2.2 what benefits, will accrue to South Africa either in the short or the long term;
and
- 4.9.2.3 whether there might be subsequent or other related transactions.
- 4.10 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 the 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).

- 4.11 Exchange Control requires 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.
- 4.12 In the event of an applicant (in this instance a South African corporate) or its Authorised Dealer implementing a transaction or series of transactions which formed the subject matter of an application (to which I shall refer as "the Main Application") to Exchange Control and such implementation of the transaction or those transactions -
- 4.12.1 deviates in any manner from the authority granted by Exchange Control, eg. authority granted to transfer R1 000 000 and the Authorised Dealer transfers R2 000 0000; or
- 4.12.2 takes place in any manner not disclosed to Exchange Control in the Main Application, eg. if authority granted for an increased travel allowance and proceeds utilised for investment rather than travel ; or
- 4.12.3 involves further or ancillary transactions not disclosed in the Main Application, eg. if a hedging transaction is entered into as a consequence of the Main Application, and such hedging transactions is not disclosed in the Main Application;

then, and in that event, such implementation would constitute a contravention of the Exchange Control Regulations.

POLICIES AND NORMS RE: DIRECT FOREIGN INVESTMENTS

- 5 I now deal with the more specific policies and norms which are applied by Exchange Control in connection with direct foreign investments by South African corporates.
- 6 Applications by South African corporates to invest overseas, are considered by Exchange Control in the light of the national interest (ie benefit to South Africa). In terms of the declared policy approach by Exchange Control, the purpose of exchange control over direct investment 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 pressures on South Africa's foreign exchange reserves. Such investment must, 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 both 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.
- 7 In cases where a longer term benefit to South Africa can be demonstrated, South African corporates are allowed, on application to Exchange Control, to transfer up to R750 million from South Africa per new approved investment in Africa including SADC. In respect of investments elsewhere in the world, South African corporates are limited to the transfer of up to R500 million from South Africa per new approved investment.
- 8 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 and R500 million. Such additional foreign currency transfers are restricted to 10% of the cost in excess of the foregoing amounts irrespective of the size of the transactions. The balance of the finance (that

is the remaining 90% 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 abroad) 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 hereafter, namely -

- 8.1 the raising of a foreign loan or foreign finance facilities on the strength of the corporate's offshore assets; or
- 8.2 the raising of a foreign loan or foreign finance facilities on the strength of the South African corporate's balance sheet; or
- 8.3 the employment of profits earned abroad by corporates which have existing approved investments abroad; or
- 8.4 a corporate asset swap; or
- 8.5 a share placement.

FOREIGN FINANCE FACILITIES

- 9 South African corporates may, on application to Exchange Control, raise foreign finance facilities, by way of a loan or otherwise on the basis that -
 - 9.1 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; and
 - 9.2 the South African corporate shall be permitted to guarantee such finance facility on the strength of its balance sheet.

CORPORATE ASSET SWAPS

- 10 Corporate asset swaps entail one or other of the following types of transactions -
- 10.1 the South African corporate as purchaser makes a foreign acquisition and in payment therefor delivers to the foreign vendor/s shares in the purchaser i.e. the South African corporate; or
- 10.2 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 who pays for that local asset in foreign currency which is 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
- 10.3 the South African corporate, as purchaser, makes a foreign acquisition and in payment thereof delivers a South African asset to the foreign vendor or vendors.

SHARE PLACEMENTS

- 11 Share placements entail the placement of a listed South African corporate's own shares with long term foreign investors, on the basis that -
- 11.1 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
- 11.2 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, to refinance an existing approved foreign investment, or to finance an expansion of an existing approved foreign investment.

APPLICATIONS FOR FOREIGN DIRECT INVESTMENT

12 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 by means of any of the transactions involving the raising of foreign finance facilities or the employment of profits earned abroad (see paragraphs 8.1 to 8.3 and 9 of my statement), a corporate asset swap (see paragraphs 8.4 and 10 of my statement) or a share placement (see paragraphs 8.5 and 11 of my statement), such South African corporate and such Authorised Dealer are obliged, not only to adhere to the general application requirements which I have previously mentioned (see paragraph 4 of my statement) but will be required to adhere to the following more specific requirements which are, as a matter of course, imposed as preconditions to any authority or provision granted by Exchange Control to enter into and implement any such transaction, namely -

12.1 Exchange Control, as a matter of policy, will require that any of these transactions when implemented, must be reserves neutral, ie. when the transaction is implemented, there must be no negative impact on the country's total foreign exchange reserves. Cognisance is therefore taken 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 and thereby repatriate the sale proceeds of such investments. In the case of asset swaps and 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 refinance, in an approved manner, such subsequent disinvestment by the non-resident(s) so as to restore reserves neutrality.

- 12.2 As indicated previously (see paragraph 4.7 of my statement) Exchange Control shall require, that all share placements and asset swaps take place at arms 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.
- 12.3 Arising out of the foregoing considerations (see paragraph 12.1 and 12.2 of my statement) Exchange Control would therefore, in granting permission for an asset swap or share placement transaction impose 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 placement and of the flowback to South Africa of shares swapped or placed. In this context a flowback 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 investors or which have been so swapped to the foreign vendor/s 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 flowback 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 such transaction to refinance, in a manner approved by Exchange Control, any amount transferred from South Africa as a result of such flowback.
- 13 For purposes of the application by South African corporates to Exchange Control for approvals in connection with asset swaps and/or share placements, Exchange Control will attribute the following meanings to the following terms -

- 13.1 “Foreign Investor” is a person or legal entity whose normal place of residence, domicile or registration is outside the Common Monetary Area.
- 13.2 “Common Monetary Area” consists of South Africa, Lesotho, Namibia and Swaziland.
- 13.3 “Long term foreign investor” in the context of a share placement, means a foreign investor whose intention it is to hold the relevant shares as part of its long term portfolio.
- 13.4 “Resident” is a natural person or legal entity whose normal place of residence, domicile or registration is in the Common Monetary Area.
- 14 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 which set out the parameters to which all Authorised Dealers must adhere when dealing with -
- 14.1 securities lending;
- 14.2 repurchase agreements;
- 14.3 hedging transactions.

PART 2 : SPECIFIC TRANSACTIONS ENTERED INTO BY GENSEC BANK LIMITED AND DEUTSCHE BANK WITH SASOL LIMITED

SASOL LIMITED (SASOL)

- 15 Exchange Control has, inter alia, received various applications from Gensec Bank Limited (to which I shall refer as "Gensec") and Deutsche Bank AG, Johannesburg branch (to which I shall refer as “DBJ”) in respect of Sasol’s investment in the foreign based chemicals business known as Condea.

GENSEC APPLICATIONS SUBMITTED

16 Since the first number of applications received by Exchange Control dealing with Sasol's investment in Condea were submitted through Gensec, brief references are made to the approvals granted to such applications.

**GENSEC APPLICATION NUMBER 14 OF 2001-01-16
SEE ANNEXURE "A1" (PAGES 82 TO 93 OF SARB VOLUME 8)**

17 On 2001-01-19 Exchange Control authorised Sasol to acquire a 100% interest in a German chemicals business known as Condea. The purchase consideration for the acquisition was for a base amount of Euro 1 295 million (approximately Rand 8 372 million using an exchange rate of 6,8516) plus any other adjustments.

18 Approval was granted for the transaction to be financed as follows -

18.1 Direct transfer from South Africa of Rand 935 707 000 (i.e. Rand 50 million plus 10% of the excess cost).

18.2 The balance of the required funding by way of offshore borrowings of which an amount of USD 400 million would be guaranteed from South Africa.

**FOLLOW UP APPLICATION NUMBER 41 OF 2001-02-27
SEE ANNEXURE "A2" (PAGES 94 TO 97 OF SARB VOLUME 8)**

19 On 2001-03-05, Exchange Control authorised Sasol to increase the amount to be transferred from South Africa to R 1 337 million. This was as a result of the increase from Rand 50 million to Rand 500 million, in respect of the foreign investment limit by corporates, announced by the Minister of Finance in his Budget Speech of 2001-02-21 (R 500 million plus 10% i.e. R837 million of the excess cost of the investment).

**GENSEC APPLICATION NUMBER 13 OF 2001-01-16
SEE ANNEXURE "A3" (PAGES 98 TO 140 OF SARB VOLUME 8)**

- 20 Exchange Control received an application for Sasol to raise up to Euro 150 million (approximately Rand 1 107 million) by means of an offshore share placement and to utilise the proceeds to re-finance a portion of the foreign loans outlined above, raised to finance the acquisition of Condea.
- 21 The terms of the share placement were as follows -
- 21.1 Gensec Ireland would acquire, on behalf of Sasol, shares in the South African market.
- 21.2 Gensec Ireland would place the shares with long term international investors.
- 21.3 The shares would not be sold at a discount.
- 21.4 The proceeds would be utilised towards the repayment of loans raised for the Condea acquisition.
- 21.5 An amount of Euro 150 million was to be raised.
- 22 Exchange Control responded on 2001-01-19 as follows:

"I thank you for the information furnished and advise that we are agreeable to the arrangements outlined in the application. Kindly keep us posted on the success of the share placement and advise us once the facility has been repaid. This authority is granted, subject to the condition that if any flowbacks occur, we reserve ourselves the right to call upon the applicants to refinance abroad any amounts transferred from South Africa in order to ensure reserves neutrality."

**FOLLOW UP APPLICATION NUMBER 111 OF 2001-07-10
SEE ANNEXURE "A4" (PAGES 141 TO 143 OF SARB VOLUME 8)**

23 Exchange Control received a request to extend the authority granted in application number 13 (annexure A3) for a further period of six months. The reason for the extension was the time aspect involved in placing the relevant shares with suitable long term non-resident investors whereby no shares are sold at a discount but are sold to satisfy offshore demand for Sasol's shares on an ongoing basis.

24 Exchange Control responded on 2001-07-17 as follows:

"I thank you for the information furnished and advise that, in the circumstances, we are agreeable to the proposed arrangements for the specific purpose stated. We note the comments contained in the final paragraph of your application."

**GENSEC LETTER DATED 2002-03-12
SEE ANNEXURE "A4(a)" (PAGE 144 OF SARb VOLUME 8)**

25 With reference to application number 13 of 2001-01-16 (annexure A3), Gensec advised Exchange Control that they through their offshore subsidiary Gensec Ireland have placed 1 883 408 shares with foreign investors which realised an amount of United States Dollars 13 267 601.85.

26 The above-mentioned amount was paid to Sasol Financing offshore. Gensec furthermore advised that as far as they were aware no flowback to South Africa had occurred.

**APPLICATION NUMBER 46 OF 2002-03-15
SEE ANNEXURE "A4(b)" (PAGES 145 TO 146 OF SARb VOLUME 8)**

27 Gensec confirmed that they sourced the offshore investors prior to them purchasing the Sasol shares in the local market. No hedging transactions were entered into by them during the placement of the Sasol shares with foreign investors and that the purchase of the Sasol shares and the

subsequent sale thereof to the offshore investors were made on the same day.

- 28 Gensec enclosed a schematic representation of how they would place a South African corporate's shares with foreign investors.

DEUTSCHE BANK AG, JOHANNESBURG BRANCH/DEUTSCHE SECURITIES (PTY) LIMITED APPLICATIONS SUBMITTED

**APPLICATION NUMBER 8 DATED 2001-01-25
SEE ANNEXURE "A5" (PAGES 147 TO 152 OF SARB VOLUME 8) : SHARE PLACEMENT NO. 1**

- 29 Reference is made by DBJ, in all their applications, dealt with hereafter, to the term "asset swaps". I advise this Commission that the applications submitted by DBJ, on behalf of Sasol, in truth and in fact refer to share placements of the nature referred to in paragraph 11 of my statement, and not asset swaps of the nature referred to in paragraph 10 of my statement.

- 30 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. The 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. 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 hereafter refer to this application as Sasol application number 8.

- 31 In terms of the above application, a request was received for Sasol to raise up to Euro 350 million (approximately Rand 2 600 million) by means of an offshore share placement and to utilise the proceeds to re-finance a portion of the foreign loans raised to finance the acquisition of Condea.

- 32 The terms of the share placement were to be as follows -

- 32.1 Existing Sasol shares (held by wholly owned subsidiaries of Sasol) would be placed with long term foreign investors.
- 32.2 The transaction was to take place at market related prices.
- 32.3 It was proposed that the placements would be transacted with long term non-resident institutional clients of Deutsche Securities, of whom seven specified clients were named.
- 33 It was clearly stated that no South African party would participate in the proposed share placement.
- 34 DBJ strongly recommended that approval be granted.
- 35 Exchange Control responded on 2001-01-30 as follows -

“(1) I refer to the telephone conversation with your Mr Lansdown when he confirmed that the share placement will substitute part of the initial revolving credit facility of USD 400 million for which a guarantee was authorised by ourselves under application number 14 dated 2001-01-16.

(2) We are, therefore, agreeable to the placement of Sasol shares to the Rand value of Euro 350 million on the JSE for the specific purpose stated. This authority is subject to the conditions outlined under point three on page two on your application.

(3) We note that long term foreign investors will subscribe for the relative shares and that no South African party will participate in the share placement exercise. We also note that the relative shares will be placed at market value.

- (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 flowbacks that might occur/have occurred. In this regard, it should be pointed out to your customers that, in the event of any flowbacks occurring, we reserve ourselves the right to call upon them to refinance the amounts transferred from South Africa abroad in order to recoup the loss in foreign currency.*
- (5) *Finally, any liability that the applicants must settle with their local subsidiary(ies) 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 applicants' shares as part of a share buy back arrangement and shares obtained by them in this matter may not be included in this authority and must be reported to ourselves."*

**DEUTSCHE SECURITIES LETTER DATED 2001-02-16
SEE ANNEXURE "A6" (PAGES 153 TO 154 OF SARB VOLUME 8)**

- 36 In their letter of 2001-02-16, Deutsche Securities, referred to a telephone conversation with Exchange Control regarding corporate asset swaps when they requested confirmation on their understanding of the settlement thereof ie -
- 36.1 Deutsche Securities would purchase shares in the company and on-sell/place these with long term foreign investors.
- 36.2 The company would pay Deutsche Securities the Rand value of the shares placed in South Africa.

- 36.3 The company would receive the foreign currency (proceeds from the sale of the shares) directly into their offshore account, for the account of an entity approved by the South African Reserve Bank.
- 36.4 No conversion from Rand to foreign currency would take place on behalf of the company.
- 37 Exchange Control responded on 2001-02-21 on the following basis -

"I acknowledge receipt of your facsimile of 2001-02-16 in the above connection and confirm that, in respect of share placement exercises sanctioned by ourselves, we are agreeable to Deutsche Securities (Pty) Limited acquiring the company specific shares in the secondary market and onselling these to long term foreign investors for payment offshore. All costs towards the purchasing of the shares by your institution must be settled locally in Rand by the company involved to ensure a reserves neutral position at all times."

**APPLICATION NUMBER 68 OF 2001-06-25
SEE ANNEXURE "A7" (PAGES 155 TO 157 OF SARB VOLUME 8) : BEING A
REPORT BACK ON SASOL APPLICATION NUMBER 8**

- 38 In terms of the aforementioned application the following report back was received by Exchange Control -
- 38.1 A total of 39 735 600 Sasol shares have been placed.
- 38.2 Proceeds of Euro 340,55 million (net of expenses) were raised through the placements. These were used in part settlement of the purchase price of Condea.

- 38.3 Euro proceeds were settled directly for the account of Sasol Investment Holdings (Pty) Limited (“SIH”).
- 38.4 Shares were placed with Deutsche Bank AG (London) (to which I shall refer 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 investors. Any such sales will be transacted through Deutsche Securities.
- 38.5 DBL has subsequently sold a total of 9 606 814 Sasol shares to foreign investors of whom four specified clients were named.
- 38.6 Deutsche Securities was not aware of any subsequent sales of the Sasol shares acquired by the parties referred in the paragraph above.
- 38.7 No South African party has participated in the placement exercises.
- 39 Exchange Control responded on 2001-07-05 as follows:

“I thank you for the information furnished.”

APPLICATION NUMBER 69 DATED 2001-06-26

SEE ANNEXURE “A8” (PAGES 158 TO 163 OF SARV VOLUME 8) : SHARE PLACEMENT NO. 2

- 40 In terms of this application -
- 40.1 DBJ advised that Sasol is a South African domiciled, public company listed on the JSE Securities Exchange SA (“JSE”), further background information concerning the Sasol Group structure, and its operations was provided;
- 40.2 Sasol International Holdings (Pty) Limited (“SIH”), a wholly owned subsidiary of Sasol, serves as the holding company of the Sasol group’s international investments.

- 40.3 Application was made for Sasol, to raise up to USD 250 million (approximately R2 008 million) by means of a share placement.
- 40.4 The proceeds would be utilised to further reduce part of Sasol's debt incurred in funding the acquisition of Condea.
- 40.5 The Sasol shares would be placed with long term foreign investors. The Sasol shares are listed on the JSE. The Sasol shares to be placed would be purchased by Deutsche Securities, with the purchase price being settled in Rands by Sasol.
- 40.6 All purchases of Sasol shares by non-resident investors in terms of the asset swap would be at market related prices.
- 40.7 The foreign currency proceeds "from the asset swap" (share placement) would be paid directly to SIH (for onward investment into the offshore asset) i.e. SIH will not receive Rands for conversion into foreign currency.
- 40.8 Share placements would be transacted with long term non-resident institutional clients of Deutsche Securities of whom eleven specified clients were named.
- 40.9 It was stated that no South African party would participate in the placement exercises.
- 40.10 The proceeds from the share placement were to be used to refinance a portion of the USD 400 million revolving credit facility utilised to finance the acquisition of Condea.
- 41 Exchange Control responded on 2001-07-06 as follows:

“To enable us to consider the application, we require to be furnished with the following information -

- (1) Confirmation that Sasol will purchase its shares in the secondary market with their own Rand funds.*
- (2) Full details of the transaction i.e., the number of Sasol shares and the price at which it would be sold to Deutsche Securities.*
- (3) Written confirmation from Deutsche Securities that, if we agree to the transaction, they will onsell such shares in a responsible manner to long term non-resident investors and that, if the non-residents disinvest, they will advise Sasol and ourselves of such disinvestments.*
- (4) Full details of the amount outstanding on the USD 400 million facility, i.e. amount outstanding, name of lender, interest rate payable, period of facility as well as details of collateral given for such facility.”*

**APPLICATION NUMBER 84 DATED 2001-07-19
SEE ANNEXURE “A9” (PAGES 164 TO 168 OF SARB VOLUME 8)**

- 42 In terms of the aforementioned application the following additional information was provided in respect of application number 69 -
- 42.1 Existing Sasol shares would be purchased on behalf of Sasol. Sasol would utilise their own Rand funds for such purchases.
- 42.2 The number of shares, subject to the transaction would depend on the market price ruling at the time of implementation and the size of the transaction to

be undertaken. The maximum size of any transaction(s) would be as set out in the original application (i.e. USD 250 million).

- 42.3 DBJ attached written confirmation from Deutsche Securities regarding the responsible placing of shares to long term non-resident investors.
- 42.4 DBJ attached a letter from Sasol, setting out the details requested on the USD 400 million revolving credit facility.
- 43 Exchange Control responded on 2001-08-01 as follows -

"I thank you for the information furnished and advise that we should have no objection to the proposed arrangements".

This authority may be regarded as valid for a period of three months.

Kindly keep us posted on a three monthly basis as to the success of the placement (including the name(s) of the long term investors or otherwise which should include full details of any flowbacks that occurred/might occur.

This authority is granted, subject to the condition that if any flowback occurs, we reserve ourselves the right to call upon the applicant company to refinance from abroad any amounts transferred from South Africa in order to ensure reserves neutrality."

- 44 It is Exchange Control's understanding that the share placement authorised in applications numbers 69 and 84 never materialised. This has been confirmed verbally to Exchange Control by Deutsche Securities and Sasol.

**FOLLOW UP PROCEDURES REGARDING SASOL APPLICATION NUMBER 8
DATED 2001-01-25**

45 During late September or early October 2001 the then Senior Deputy Governor of the South African Reserve Bank, Mr James Cross, requested that Exchange Control investigate the transaction implemented in terms of Sasol application number 8. On 2001-10-09 Exchange Control held discussions with Messrs Winckler and Von Seidel of Deutsche Securities to discuss the structure used in order to facilitate the placement of the Sasol shares. The Deutsche Securities delegates were requested to provide a full written report to Exchange Control in this regard, which was received on 2001-10-18.

**DEUTSCHE SECURITIES LETTER DATED 2001-10-18
SEE ANNEXURE "A10" (PAGES 169 TO 172 OF SARB VOLUME 8)**

46 Deutsche Securities advised that, following the meeting with them on 2001-10-09, they set out further information which Exchange Control requested regarding the implementation of the "corporate asset swap" (share placement) transactions by Deutsche Bank, with specific reference to the Sasol transaction.

47 They, inter alia, provided details of the following -

47.1 What a corporate "asset swap" (share placement) entails.

47.2 Possible currency leakage through corporate asset swaps or share placements.

47.3 Deutsche Bank's "asset swap" (share placement) structure.

48 Deutsche Securities believed that any form of corporate "asset swap" or share placement structure is, in most instances currency neutral, but may result in some currency leakage because foreign investors can sell other Rand-denominated investments to finance the purchase, or they may hedge a portion of their Rand exposure. The currency-hedging risk is reduced

where the stock that is subject to the swap is a neutral Rand hedge, such as Sasol.

49 Exchange Control responded on 2001-10-24 in the following manner -

"I thank you for the general overview of your corporate asset swap/share placement structures. 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 the recent meeting, with specific reference to possible currency leakage/currency hedging and full details of pricing and possible flowbacks."

**DEUTSCHE SECURITIES LETTER DATED 2001-12-07
SEE ANNEXURE "A11" (PAGES 173 TO 174 OF SARB VOLUME 8)**

50 Further to Exchange Control's letter dated 2001-10-24, Deutsche Securities set out the information requested on the steps involved in the Sasol share placement exercise and possible currency leakage therefrom on the following basis -

"A total of 39 735 600 Sasol shares were placed with DBL as part of the share placement exercise.

The shares were sourced in the market on behalf of Sasol, who paid an amount of R2 503 340 000 to Deutsche Securities in South Africa to settle the purchase price. The purchase was transacted at a price of R63.00 per share.

To ensure that scrip was available for delivery to the foreign buyer to settle the sale leg of such a large transaction, Deutsche Securities entered into a scrip borrowing arrangement with Sasol International Holdings ("SIH), a wholly owned subsidiary of Sasol.

Scrip borrowed from SIH was subsequently returned within a month.

The shares were placed with DBL. Proceeds of Euro 350 million (pre-expenses) were paid by DBL directly into Sasol's nominated offshore bank account. The sale was transacted at a price of Euro 8,81 per share. The share placement resulted in an effective exchange rate of Rand 7.1524 to the Euro for Sasol.

DBL onsold a large portion of the Sasol shares to long term foreign investors. All such sales were transacted through Deutsche Securities. (A list of the buyers was set out in this letter.)

Such sales may have resulted in currency leakage in the following situations -

- The foreign buyer sold other South African assets to purchase the shares, i.e. "new money" was not used for the purchase.*
- The foreign buyer hedges all or half of the Rand exposure on its portfolio.*

Deutsche Securities was not aware of any subsequent selling of the shares purchased by the buyers listed above.

The shares that DBL was not able to onsell are held by DBL and managed as part of the global equities book. DBL sold the shares to long term foreign investors when demand for the shares arises. The global equities book was managed on an integrated basis, where the risks are managed on the total portfolio rather than for

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 its total Rand exposure."*

51 A response to the aforementioned letter of Deutsche Securities dated 2001-12-07 was not immediately forthcoming from Exchange Control, in view of the intervening festive season and the attendant reduced staff compliment. However, as will appear from what is set out below, Exchange Control responded in January 2002.

52 During a telephone conversation I had with Mr Winckler of Deutsche Securities on 2002-01-08 he confirmed that the share placement exercise was concluded on 2001-02-23 and that, to his knowledge, approximately 10% of the shares had, to date (2002-01-08), been sold by non-resident holders which resulted in a flowback. He was, however, requested to submit more detailed information to Exchange Control on the transaction.

**DEUTSCHE SECURITIES LETTER DATED 2001-01-15 (SHOULD READ 2002-01-15)
SEE ANNEXURE "A12" (PAGES 175 TO 176 OF SARB VOLUME 8)**

53 Following the aforementioned telephone conversation on 2002-01-08 with Mr Winckler of Deutsche Securities he elaborated on the Sasol share placement that took place in February 2001 by providing Exchange Control with the following information -

53.1 Sasol International Holdings (Proprietary) Limited ("SIH") is 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 the company (SIH) and returned them within a month.

53.2 Flowback from the Sasol share placement transaction has been low. Deutsche Securities estimated a figure of 6% (2,3 million shares of the original 39,6 million shares placed). A major reason for the limited flowback was that Sasol was a geared currency play. For every 10% depreciation to the Rand, Sasol's Rand earnings rose by 20% resulting in a natural currency hedge to foreign investors. The weak Rand has been a major driver of Sasol's strong price appreciation of 68% in Rand and 18% in Euros since March 2001.

54 Also included in this letter was an estimate of flowback by offshore institutions in excess of 100 000 shares over the previous 10 months.

55 Exchange Control responded on 2002-01-22 (Annexure "A15") (see pages 188 to 189 of SARB Volume 8) to DBJ with reference to correspondence received from Deutsche Securities dated 2001-12-07 and 2002-01-15 relating to the share placement exercise as follows -

"(1) I refer to correspondence received directly from Deutsche Securities dated 2001-12-07 and 2002-01-15 relating to the above share placement exercise.

(2) With regard to point 2 of the January letter relating to flowbacks from the transaction we wish to point out that Sasol must be requested to refinance from abroad the amounts transferred from South Africa in respect of the flowback sales in order to recoup the loss in foreign currency. We would require suitable confirmation to this effect once the amounts have been refinanced from abroad.

- (3) *Furthermore, it is noted that Deutsche Securities entered into a scrip borrowing arrangement with Sasol International Holdings which was not disclosed in the original application No. 8 dated 2001-01-25. In this regard we require your clarifying comments in the matter.*
- (4) *We also require to know the exact manner in which the proceeds of Euro 350 million were funded by Deutsche Bank London directly into Sasol's nominated offshore bank account with specific reference to direct/indirect financing arrangements with Deutsche Securities/Bank in South Africa which could include currency swaps or the like.*
- (5) *Finally, we require to be furnished on a three monthly basis of full details of any flowbacks that might still occur. "*

56 Pursuant to Exchange Control's letter of 2002-01-22, 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) with representatives of DBJ, Deutsche Securities and DBL on 2002-02-12, it became apparent to me that DBJ had 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 full report on the Sasol share placement.

**DEUTSCHE BANK LETTERS DATED 2002-02-18 AND 2002-02-26
SEE ANNEXURE "A13" (PAGES 177 TO 184 OF SARB VOLUME 8)**

57 On 2002-02-18 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 number 8, dated 2001-01-25 (Annexure A5 hereto). In doing so it provided Exchange Control with a written explanation

from Deutsche Securities also dated 2002-02-18. Also refer to DBJ's letter dated 2002-02-26 in this regard. Copies of both letters are attached as Annexure "A13" at pages 177 to 182 of SARB Volume 8).

58

The following constitutes an extract of the essential elements of the letter referred to in 57 above -

"(1) Background

- (1.1) During February 2001, Deutsche Securities, a subsidiary of Deutsche Bank, agreed to arrange an asset swap for Sasol to enable Sasol to repay part of the Euro 1,3 billion offshore financing facilities raised by Sasol to pay for its acquisition of Condea, an offshore company. The asset swap was to involve the acquisition of Sasol shares in the South African market, the placement (i.e. sale) of up to Euro 350 million worth of the shares with non-residents and the payment of the proceeds of the placement into Sasol's offshore account.*
- (1.2) Market conditions dictated that the Sasol shares be acquired and placed over a period. In February 2001, when the asset swap was first implemented, Deutsche Bank expected to place all the Sasol shares within a period of six to twelve 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 the arrangements in a way that Sasol would receive the funding in one tranche.*
- (1.3) The asset swap was executed in February 2001 and involved the acquisition of Sasol shares by 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 then endeavoured to place the shares with long term foreign investors.

- (1.4) DBL hedged its market exposure in respect of the unplaced shares by entering into a forward sale agreement with Deutsche Securities. DBL hedged its currency exposure in respect of the unplaced shares by exchanging Rand for Euro. DBL also funded its holdings in the shares by concluding a bond repurchase transaction with DBJ. For risk management purposes, DBL later lent the unplaced Sasol shares 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.*

(2) Transactions

- (2.1) The following transactions were entered into for purposes of implementing the asset swap -*

(2.1.1) On 2001-02-22, Deutsche Securities sold 39 735 600 Sasol shares to DBL for R2 503 340 000. In settlement of the purchase price, DBL paid Euro 341 million into Sasol's offshore account. This amount was the Euro equivalent of the purchase price less DBL's costs and fees. The sale was settled on 2001-02-26.

(2.1.2) Deutsche Securities acquired 1 303 200 of the Sasol shares referred in 2.1.1 above in the South African market and borrowed the balance of the shares (i.e. 38 432 400 shares) from SIH, a South African subsidiary of Sasol, under a securities lending transaction concluded on 2001-02-23. As

security for Deutsche Securities, obligation to return an equivalent number of Sasol shares to SIH, Deutsche Securities agreed to cede to SIH all rights which Deutsche Securities had to a cash deposit of R2 503 340 000 with DBJ.

- (2.1.3) On 2001-02-26, Sasol paid Deutsche Securities R2 503 340 000 being the Rand equivalent of Euro 350 million. Deutsche Securities placed the amount on deposit with DBJ. The deposit was ceded to SIH as envisaged under the securities lending transaction referred to in paragraph 2.1.2 above.*
- (2.2) In order to hedge the market risk in respect of the unplaced Sasol shares, DBL and Deutsche Securities entered into a forward sale agreement on 2001-02-22, in terms of which DBL agreed to sell and Deutsche Securities undertook to purchase 38 432 400 Sasol shares at a price equal to their market value in South African Rand on the date of implementation of the asset swap plus interest.*
- (2.3) In order to hedge DBL's currency risk in respect of the unplaced Sasol shares, DBL exchanged R2 503 340 000 for Euro 350 million on 2001-02-19 and 2001-02-20. The exchange was for settlement on 2001-02-26.*
- (2.4) In order to fund DBL's holdings of unplaced Sasol shares, DBL and DBJ entered into a repurchase transaction on 2001-02-26, in terms of which DBL sold South African government bonds to DBJ and DBJ paid DBL R2 400 000 000. This amount was equal to the value of the bonds. The repurchase agreement provided that DBL*

would repurchase the bonds at the original selling price plus an amount in respect of finance costs.

(2.5) *In order to manage the risk relating to the holdings of bonds purchased under the repurchase transaction and the Sasol shares purchased by DBL, DBL loaned 38 432 600 Sasol shares to DBJ on 2001-03-23. 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 SIH 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 failed to return the Sasol shares. The bonds had a market value similar to the Sasol shares.*

(2.6) *The effect of the aforementioned transactions on DBJ and DBL was as follows -*

(2.6.1) *DBL purchased Sasol shares.*

(2.6.2) *DBL hedged its market risk relating to the shares.*

(2.6.3) *DBL hedged its currency risk.*

(2.6.4) *DBL and DBJ balanced their currency positions.*

(2.7) *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 2001-06-25, DBL had placed 9 606 814 of the 39 735 600 shares originally acquired by it from Deutsche Securities.*

However, during the second half of 2001 foreign interest in the South African equity markets was limited and the pace at which the shares could be placed slowed considerably. As of 2002-02-08, DBL had placed 14 206 933 of the original number of shares acquired in 76 separate placement transactions. DBL is continuing with its efforts to place the shares.

(2.8) Whenever any Sasol shares were placed by DBL, the following would occur -

(2.8.1) DBL would obtain the shares to be delivered by it to the foreign investor from DBJ and DBJ would in turn obtain them from Deutsche Securities. The shares would be purchased by Deutsche Securities in the South African market. The shares delivered to DBL would be in partial settlement of the securities loan referred to in 2.5 above.

(2.8.2) Depending on the value of the shares at the time of their 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 repurchase of bonds under the repurchase agreement referred to in 2.4 above and on account of any amount due to Deutsche Securities as referred to in 2.8.4(a) below.

(2.8.3) Deutsche Securities would fund the purchase of the shares by a partial withdrawal of the deposit as referred to in 2.1.3 above and, to the extent that the market value of the shares had increased since implementation of the asset swap, by

recovering the increase from DBL under the forward sale as described in 2.8.4 below.

(2.8.4) DBL and Deutsche Securities would close-out in cash part of the forward sale referred to in 2.2 above to the extent of the placed shares, with the following result -

(a.) To the extent that the market value of the shares on the date of close-out exceeded the price of the shares as set out in the forward sale agreement, DBL would pay Deutsche Securities the excess. The excess, together with that part of the deposit repaid by DBJ, would be sufficient to cover the purchase of the shares to be returned to DBL 2.8.1 above.

(b) To the extent that the market value of the shares was lower than the price of the shares as set out in the forward sale, Deutsche Securities would be required to pay DBL the shortfall. The shortfall would be equal to Deutsche Securities' profit and to DBL's loss.

(3) Exchange Control Approvals

(3.1) Approval for the asset swap

- Letter dated 2001-01-25 from DBJ to the Reserve Bank. (Annexure "A5").*
- Letter dated 2001-02-16 from Deutsche Securities to the Reserve Bank. (Annexure "A6").*

- *Letter dated 2001-02-21 from the Reserve Bank to Deutsche Securities. (Annexure "A6").*

(3.2) Forward sale transaction

- *Letter dated 2001-02-09 from DBJ to the Reserve Bank. (Annexure "A14").*
- *Letter dated 2001-02-12 from the Reserve Bank to DBJ.*

(3.3) Securities loan

- *Section E.5(ii) of the Rulings.*

(3.4) Repurchase transaction

- *Section E.5(i) of the Rulings."*

59 Having finally and as recently as 2002-02-26 ascertained from DBJ and Deutsche Securities an explanation in terms of the foregoing letter of all the transactions which were utilised to implement Sasol application number 8 (annexure A5), 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 2002-02-18 and 2002-02-26, in terms of those letters.

60 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 Dealer submitting an application on behalf of its client to ensure that full 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.

- 61 It would appear from the information submitted to Exchange Control in terms of Deutsche Securities' letter of 2002-02-18, Annexure A13 hereto that there was less than sufficient disclosure by DBJ in the Sasol application number 8 dated 2001-01-25, Annexure A5 hereto, of all related or subsequent transactions which were implemented or were to be implemented pursuant to Sasol application number 8. Exchange Control was not approached 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 this 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 all the related transactions were only provided as per DBJ letters of 2002-02-18 and 2002 02-26.
- 62 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 2002-02-18 and 2002-02-26, on the one hand, and Exchange Control approval (which is to be found in paragraph 35 of my statement) of that application on the other hand -
- 62.1 The original Sasol application number 8 (annexure A5), 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 the transactions enumerated in the letter from DBJ dated 2002-02-18 (annexure A13) see paragraph 57 above, appear not to have been disclosed to Exchange Control on the Sasol Application number 8.

62.2 As will appear from paragraphs 45 to 56 of this statement, notwithstanding steps taken by Exchange Control to obtain all the details of all related and subsequent transactions in connection with the Sasol Application number 8, such details were apparently not immediately disclosed.

62.3 Although it was a specific requirement of Exchange Control that the transaction or transactions in respect of which the Exchange Control's approval to the Sasol Application number 8 was granted, should be implemented in a manner which would maintain and/or ensure reserves neutrality, it now appears that some or all of the transactions entered into prejudiced that obligation placed on DBJ to ensure reserves neutrality. 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 2002-02-18 (annexure A13) in 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 503 340 000 for Euro 350 million on 2001-02-19 and 2001-02-20. The exchange was settled on 2001-02-26."

63 In accordance with established Exchange Control review proceedings Exchange Control, assisted by its legal advisors, held discussions with representatives of DBJ and Deutsche Securities on 2002-03-26 during which meeting the parties involved were advised of Exchange Control's concerns about the apparent discrepancies as referred to above. In order to enable 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 2002-03-26 was given to DBJ in terms of which Exchange Control's concerns were highlighted. In the letter Exchange Control also called upon DBJ and Sasol to explain and make representations within 14 days in writing addressed to Exchange Control. Exchange Control has

requested that the following issues must be addressed in such representations –

- 63.1 The facts relevant to each transaction which was entered into in connection with the Sasol Application number 8 (annexure A5) and the approval granted by Exchange Control pursuant thereto (to which I shall refer as "Sasol Authority"), together with the cash flow (including cross-border flows) implications resulting from the implementation of all those transactions;
- 63.2 Whether or not 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, the extent to which DBJ and/or Sasol submits those perceived discrepancies to be inaccurate;
- 63.3 As to why, if the transactions implemented in connection with the Sasol Authority were so implemented in a manner which is inconsistent with the Sasol Authority or which results in any condition attaching to such Sasol Authority becoming operative, Exchange Control should not impose remedial measures in terms of the Exchange Control Regulations.
- 64 The foregoing procedures instituted by Exchange Control are of an ongoing nature, to the extent that after Exchange Control has received and considered full representation from DBJ and Sasol, Exchange Control shall make a decision as to what further action (if any), is required in connection with the proceedings.

PART 3

**NAMPAK LIMITED (NAMPAK)
APPLICATIONS SUBMITTED BY DEUTSCHE BANK
APPLICATION NUMBER 95 OF 2000-11-28
SEE ANNEXURE "B1" (PAGES 190 TO 194 OF SARB VOLUME 8)**

- 65 In terms of the aforementioned application, submitted in the name of Nampak, DBJ, inter alia, advised that Nampak is a South African domiciled

public company listed on the JSE Securities Exchange. Nampak International Limited (“Nampak International”), a company domiciled in the Isle of Man, is a wholly owned subsidiary of Nampak and serves as the Nampak Group’s offshore financing arm, managing cash resources and investments. Nampak International has a wholly owned United Kingdom subsidiary namely Nampak Holdings (United Kingdom) PLC (“Nampak UK”) which, in turn, owns Plysu PLC (“Plysu”).

- 66 Permission was requested for Nampak, through Nampak International, to raise up to GBP 25 million (approximately Rand 277 million) by means of a corporate asset swap (“share placement”) in order to finance Nampak’s global expansion by way of an equity injection into Nampak UK. This injection of capital was to be utilised to partly fund Plysu’s capital expenditure programme over a twelve month period. Nampak proposed to fund the capital expenditure by way of a GBP 25 million new equity injection with the balance of GBP 25 million being funded from Plysu’s internally generated funds as well as from external borrowings.
- 67 The terms of the share placement were as follows -
- 67.1 The sale of Nampak shares (ordinary shares of 5 cents each) by Nampak International to long term foreign investors.
- 67.2 The transaction was to take place at market related prices as and when market conditions permit.
- 67.3 Deutsche Securities was to arrange the share placements.
- 67.4 It was proposed that the placements would be transacted with long term non-resident institutional clients of Deutsche Securities who were named in the application.

67.5 It was clearly stated that no South African party would participate in the proposed share placement.

68 DBJ strongly recommended that approval be granted.

69 Exchange Control responded on 2000-12-13 as follows -

"I thank you for the information furnished. Kindly see our reply to your application number 100 of 2000-12-11".

**FOLLOW UP APPLICATION NUMBER 100 OF 2000-12-11
SEE ANNEXURE "B2" (PAGES 195 TO 197 OF SARB VOLUME 8)**

70 In terms of the aforementioned application the following additional information was provided in respect of application number 95.

71 It was proposed that the share placement would be completed by placing existing Nampak shares, held by a South African wholly owned subsidiary of Nampak, with the institutional investors as referred to.

72 The Rands received would then be converted into British Pound on the day that the equity leg was transacted. The British Pound proceeds would then be injected into Nampak's United Kingdom operations.

73 Exchange Control responded on 2000-12-14 as follows -

"I thank you for the information furnished and confirm the telephone conversation of 2000-12-12 with your Mr Mike Landsdowne when he was informed that since the proposed double conversion that will take place when funds are introduced by foreign parties to purchase the shares and the subsequent conversion back to foreign currency falls outside the ambit of current Exchange Control policy. Accordingly, we are unable to accede to the request

on the basis outlined and now await your further advices in the matter”.

**APPLICATION NUMBER 103 OF 2000-12-12
SEE ANNEXURE “B3” (PAGES 198 TO 201 OF SARB VOLUME 8)**

- 74 In terms of the aforementioned application the envisaged share placement, under Application number 100 (see annexure B2 hereto), was amended to the effect that the sale proceeds from the sale of any Nampak shares held by a subsidiary of Nampak to a foreign buyer would be settled directly in foreign currency (i.e. there would be no currency conversion).
- 75 The foreign currency proceeds were to be paid for the account of Nampak and not for the account of the Nampak subsidiary.
- 76 Exchange Control responded on 2000-12-14 to the revised application as follows –
- “(1) I thank you for the additional information furnished and advise that we are agreeable to the placement of Nampak shares to the Rand value of GBP 25 million on the JSE for the specific purpose stated. This authority is subject to the conditions outlined on page two of your application.”*
- (2) We note that the relative shares will be taken up by long term foreign investors and that no South African party will participate in the share placement exercise. We also note that the relative shares will be placed at market value.*
- (3) 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 flowbacks that might occur/have occurred. In this regard, it should*

be pointed out to your customers that, in the event of substantial flowbacks occurring, we reserve ourselves the right to call upon them to refinance the amounts transferred from South Africa abroad in order to recoup the loss in foreign currency.

- (4) *It is noted that the full proceeds to be received offshore will be capitalised in the books of Nampak Holdings (United Kingdom) PLC which capital injection will be utilised to fund the capital expenditure programme of Plysu PLC. Any expansion plans must, of course, be placed on record with ourselves. Should the expansion be in a different line of business, our prior approval is required.*
- (5) *Finally, any liability that the applicants must settle with their local subsidiary(ies) 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 applicants' shares as part of a share buy back arrangement and shares obtained by them in this matter may not be included in this authority and must be reported to ourselves”.*

77 During the meeting held at the office of Deputy Governor Marcus with representatives of DBJ, Deutsche Securities and DBL on 2002-02-12, as referred to in paragraph 56 above, I requested DBJ to provide Exchange Control with a full report on the Nampak share placement.

**LETTERS DATED 2002-02-21 AND 2002-02-26
SEE ANNEXURE “B4” (PAGES 202 TO 210 OF SARB VOLUME 8)**

78 On 2002-02-21 DBJ, responded in this regard by providing Exchange Control with a written explanation from Deutsche Securities also dated 2002-02-21. Also refer to DBJ's letter dated 2002-02-26 in this regard. Copies of both letters are attached as Annexure “B4”. It should, however, be noted that one of their letters is incorrectly dated 2001-02-21.

The following constitutes essential excerpts from the aforementioned letters -

"(1) Background

(1.1) In June 2001 Deutsche Securities, a subsidiary of Deutsche Bank, agreed to arrange an asset swap for Nampak to enable Nampak to provide additional capital to its United Kingdom subsidiary, Nampak (UK). As stated in the letter dated 2000-11-28 by DBJ to the Reserve Bank, the capital was to be used by Nampak UK for the expansion of the business of its subsidiary, Plysu. The asset swap was to involve the placement (i.e. sale) of up to GBP 25 million worth of Nampak shares with non-residents and the payment of the proceeds of the placement into an offshore account for use by Plysu.

(1.2) Deutsche Securities implemented the asset swap in two tranches. The first tranche ("Tranche 1") was for GBP 15 million and was executed in July 2001. The second tranche ("Tranche 2") was for GBP 5 million and was executed in August 2001. Both tranches involved the acquisition by Deutsche Securities of Nampak shares, the sale of the shares by Deutsche Securities to Nampak Products Limited ("Nampak Products"), a South African subsidiary of Nampak and the on-sale of the shares by Nampak Products to DBL. In each case, the sale by Deutsche Securities to Nampak Products was settled in Rand and the sale by Nampak Products to DBL was settled in pound sterling ("GBP"). The amount paid by DBL was equal to the market value of the shares and was paid by DBL into an offshore account to Nampak International, a foreign subsidiary of Nampak. DBL then endeavoured to place the shares with long term foreign investors.

(1.3) *DBL hedged its market exposure in respect of the unplaced shares by entering into a forward sale agreement with Deutsche Securities and by purchasing contracts on the South African Futures Exchange ("SAFEX"). DBL hedged its currency exposure in respect of the unplaced shares by exchanging Rand for GBP. DBL also funded its holdings in the shares by concluding a bond repurchase transaction with DBJ. For cost management purposes, DBL later lent the unplaced Nampak shares 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.*

(2) *Transactions*

(2.1) *The following transactions were entered into for purposes of implementing the asset swap:*

(2.1.1) *As part of Tranche 1 of the asset swap, Nampak Products, a South African subsidiary of Nampak, sold 13 815 416 Nampak shares to DBL and DBL paid the purchase price of GBP 15 million into an offshore bank account of Nampak International. As part of Tranche 2, Nampak products sold 4 540 769 Nampak shares to DBL and DBL paid the purchase price of GBP 5 million into an offshore bank account of Nampak International. The sale transactions were settled on 2001-07-03 and 2001-08-07 respectively.*

(2.1.2) *The Nampak shares relating to Tranche 1 and Tranche 2 were acquired by Nampak Products from Deutsche Securities and Nampak Products settled the purchase*

prices in Rand on 2001-07-03 and 2001-08-07 respectively. Deutsche Securities in turn acquired the Nampak shares from The Standard Bank of South Africa Limited (“SBSA”) under two securities lending transactions. As security for Deutsche Securities’ obligation to return an equivalent number of Nampak shares to SBSA, Deutsche Securities deposited cash collateral with SBSA, SBSA in turn re-deposited the cash collateral with DBJ.

- (2.2) In order to hedge its currency risk in respect of Tranche 1, DBL exchanged R170 325 000 for GBP 15 million. In order to hedge its currency risk in respect of Tranche 2, DBL exchanged R59 025 000 for GBP 5 million. The exchanges were settled on 2001-07-03 and 2001-08-07 respectively.*
- (2.3) In order to hedge their market risk in respect of Tranche 1, DBL and Deutsche Securities entered into a forward sale agreement on 2001-06-27 in terms of which DBL agreed to sell and Deutsche Securities undertook to purchase 13 815 416 Nampak shares at a price equal to their market value in South African Rand on the date of implementation of Tranche 1 of the asset swap plus interest.*
- (2.4) DBL hedged its market risk in respect of Tranche 2 by entering into put and call contracts on SAFEX. The expiry dates of the contracts are 2002-09-19 and the strike prices are R13.96. In terms of the contracts, Deutsche Securities is entitled to receive an amount based on the excess of the market value of the unplaced Tranche 2 Nampak shares over their value based on the strike prices and DBL is required to pay an amount if there is an excess. DBL paid initial margin to SAFEX in respect of the contracts.*

- (2.5) *Deutsche Securities hedged its market risk in respect of Tranche 2 by entering into put and call contracts on SAFEX. The expiry dates of the contracts are 2002-09-19 and the strike prices are R13.96. In terms of the contracts, Deutsche Securities is entitled to receive an amount based on the excess of the market value of the unplaced Tranche 2 Nampak shares over their value based on the strike prices and is required to pay an amount if there is a shortfall. Deutsche Securities paid initial margin to SAFEX in respect of the contracts.*
- (2.6) *DBL obtained funding of approximately R170 325 000 and R54 090 000 from DBJ. This was done by the conclusion of repurchase transactions between DBL and DBJ. In terms of the repurchase transactions, DBL sold South African government bonds with a 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 repurchase transactions provided that DBL would 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 bonds purchased under the repurchase transactions and the Nampak shares purchased by DBL, DBL loaned the unplaced Nampak shares to DBJ on 2001-10-09. The securities loan was entered into by DBJ as agent for Deutsche Securities. The Nampak shares received by Deutsche Securities under the loan were delivered by Deutsche Securities to SBSA 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 on deposit with DBJ.*

As security for the obligations under the securities loan, DBJ transferred the same type of bonds referred to in 2.6 above to DBL on the understanding that DBL would have no obligation to return equivalent bonds if DBJ failed to return the Nampak shares. The bonds had a market value similar to the Nampak shares.

(2.8) The effect of the aforementioned transactions on DBJ and DBL was as follows -

(2.8.1) DBL purchased Nampak shares.

(2.8.2) DBL hedged its market risk relating to the shares.

(2.8.3) DBL hedged its currency risk.

(2.8.4) DBL and DBJ balanced their currency positions.

(2.9) As from the date upon which the Nampak shares were sold to DBL, DBL endeavoured to place the shares with long term foreign investors. By 2002-02-15, DBL had placed 4 737 689 out of a total of 18 356 185 Nampak shares in 16 separate transactions. DBL is continuing with its efforts to place the shares.

(2.10) Whenever any Nampak shares were placed by DBL, the following would occur -

(2.10.1) DBL would obtain the shares to be delivered by it to the foreign investor from DBJ and DBJ would in turn obtain them from Deutsche Securities. The shares would be purchased by Deutsche Securities in the South African market. The shares delivered to DBL would be in partial settlement of the securities loan referred to in 2.7 above.

- (2.10.2) *Depending on the value of the shares at the time of their 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 this amount, together with any amount received by DBL on closing 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 Tranche 1 shares, on account of any amount due to Deutsche Securities as referred to in 2.10.4(i) below.*
- (2.10.3) *Deutsche Securities would fund the purchase of the shares by withdrawing part of its deposit with DBJ and, to the extent that the market value of the shares had increased since implementation of the asset swap, by any amount recovered under its hedge.*
- (2.10.4) *If the shares related to Tranche 1, DBL and Deutsche Securities would close-out in cash part of the forward sale referred to in 2.3 above to the extent of the placed shares, with the following result -*
- (i) *To the extent that the market value of the shares on the date of close-out exceeded the price of the shares as set out in the forward sale agreement, DBL would pay Deutsche Securities the excess. The excess, together with that part of the deposit repaid by DBJ, would be sufficient to cover the purchase of the shares to be returned to DBL.*
- (ii) *To the extent that the market value of the shares was lower than the price of the shares as set out in the forward sale,*

Deutsche Securities would be required to pay DBL the shortfall. The shortfall would be equal to Deutsche Securities' profit and to DBL's loss.

(2.11) If the shares related to Tranche 2, DBL and Deutsche Securities would each close-out its SAFEX hedge to the extent of the placed shares.

(3) Exchange Control Approvals

(3.1) Approval for the Asset Swap

- *Letter dated 2000-11-28 from DBJ to the Reserve Bank. (Annexure "B1").*
- *Letter dated 2000-12-12 (should be 2000-12-14) from the Reserve Bank to Deutsche Securities (should be DBJ).*

(3.2) Forward sale transaction

- *Letter dated 2000-10-18 from DBJ to the Reserve Bank. (Annexure "B5").*
- *Letter dated 2000-10-18 (should be 2000-10-23) from the Reserve Bank to DBJ.*

(3.3) SAFEX transactions

- *Permitted under the Rulings.*

(3.4) Securities loan

- *Section E.5(ii) of the Rulings.*

(3.5) *Repurchase transaction*

- *Section E.5(i) of the Rulings."*

80 Having finally and as recently as 2202-02-26 ascertained from DBJ and Deutsche Securities an explanation in terms of the foregoing letter of all the transactions which were utilised to implement application numbers 95 and 103 (see annexures B1 and B3), I will now, on the basis of such information, deal with my perception of the discrepancies which appear, when regard is had to application numbers 95 and 103, the Exchange Control approval granted in respect thereof and the disclosures made on 2002-02-21 and 2002-02-26 in terms of the foregoing letters.

81 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 Dealer submitting an application on behalf of its client to ensure that full 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.

82 It would appear from the information submitted to Exchange Control by DBJ in terms of the Deutsche Securities letter of 2002-02-21 (Annexure B4) that there was less than sufficient disclosure by DBJ in the Nampak application of all related or subsequent transactions which were implemented or were to be implemented. Exchange Control was not approached for approval of any deviation from the original Authority which Exchange Control granted pursuant to the Nampak Application and the facts of any other subsequent or related transactions were not made available to Exchange Control

timeously. Full details of all the related transactions were only provided as per DBJ's letters of 2002-02-21 and 2002-02-26.

83 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 (see annexure B3) (to which I refer as the "Nampak Application") and the approval granted by Exchange Control in regard thereto (to which I refer as the "Nampak Approval") (see paragraph 76 of this statement) -

83.1 The Nampak 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 referred to in DBJ's letters dated 2002-02-21 and 2002-02-26 (see annexure B4) appear not to have been disclosed.

83.2 Notwithstanding that it was a specific requirement of 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 2002-02-21 (see annexure B4 hereto) breached that obligation on DBJ and Nampak to ensure reserves neutrality.

84 In accordance with established Exchange Control procedures, Exchange Control assisted by its legal advisors, held discussions with representatives of DBJ, Deutsche Securities and Nampak on 2002-03-26 during which meeting the parties involved were advised of Exchange Control's concerns about the apparent discrepancies as referred to above. In order to enable Exchange Control to give further consideration to the matter and arrive at an informed decision in terms of Exchange Control Regulations, a letter dated 2002-03-26 was given to DBJ and Nampak in terms of which Exchange

Control's concerns were highlighted. In the letter Exchange Control also called upon DBJ and Nampak to explain and make representations within 14 days in writing addressed to Exchange Control. Exchange Control required that the following issues are to be addressed in such representations -

- 84.1 The facts relevant to each transaction which was entered into in connection with the Nampak Application and the Nampak Approval together with the cash flow (including cross-border flows) implications resulting from the implementation of all those transactions;
- 84.2 Whether or not Exchange Control's perception of the discrepancies referred to in paragraph 82 of my statement are accurate and if not the extent to which DBJ and/or Nampak submits those perceived discrepancies referred to in paragraph 83 of my statement to be inaccurate;
- 84.3 As to why, if the transactions implemented in connection with the Nampak Approval were so implemented in a manner which is inconsistent with or which results in any condition attaching to such Nampak Approval becoming operative, Exchange Control should not impose remedial measures in terms of the Exchange Control Regulations.
- 85 The foregoing procedures instituted by Exchange Control are of an ongoing nature, to the extent that after Exchange Control has received and considered full representations from DBJ and Nampak, Exchange Control shall make a decision as to what further action (if any), is required in connection with the proceedings.

PART 4

**M-CELL LIMITED (M-CELL)
APPLICATIONS SUBMITTED BY DEUTSCHE BANK
APPLICATION NUMBER 101 OF 2001-10-25
SEE ANNEXURE "C1" (PAGES 215 TO 218 OF SARB VOLUME 8)**

- 86 In terms of the application submitted, DBJ advised that M-Cell is a South African domiciled, public company listed on the JSE Securities Exchange SA ("JSE"). M-Cell's interests comprise wholly owned subsidiaries Mobile Telephone Networks Holdings (Pty) Limited ("MTN") and Orbicom (Pty) Limited.
- 87 MTN is a provider of telecommunications services in South Africa and a number of African countries.
- 88 Mobile Telephone Networks International Limited (Mauritius) ("MTN International"), a wholly owned subsidiary of MTN via Mobile Telephone Networks Africa (Pty) Limited ("MTN Africa"), serves as the holding company of the M-Cell group's international investments. At 2001-03-31, these comprised of investments in Mobile Telephone Networks Uganda Limited (MTN Uganda) (50%), Rwandacell S.A.R.L. (31%), MTN Cameroon Limited ("MTN Cameroon") (100%) and MTN Nigeria Communications Limited ("MTN Nigeria") (94%).
- 89 Application was made for M-Cell, to raise up to USD 75 million (approximately R695 million) by means of a share placement.
- 90 The proceeds would be utilised to pay down part of the M-Cell group's debt incurred through MTN International to fund its offshore investments.
- 91 M-Cell shares, which are listed on the JSE would be used for the placement. Existing M-Cell shares would be purchased by Deutsche Securities, with the purchase price being settled in Rands by M-Cell or one of its wholly owned South African subsidiaries.
- 92 The M-Cell shares so purchased would then be placed with long term non-resident investors.

93 The share placement would be implemented in a number of tranches over the next 6 months, as and when market conditions are suitable.

94 All purchases of M-Cell shares by non-resident investors in terms of the share placements would be at market related prices.

95 The foreign currency proceeds from the share placements would be paid directly to MTN International i.e. MTN International will not receive Rands for conversion into foreign currency.

96 The share placements would be transacted with long term non-resident institutional clients of Deutsche Securities, which included twelve such institutions identified by name in the application.

97 It was stated that no South African party would participate in the placement exercises.

98 The proceeds from the share placement would be used to re-finance a portion of the current USD 450 million offshore facility raised by MTN for MTN International.

99 These borrowings have been approved previously by Exchange Control.

100 Exchange Control responded on 2001-11-19 as follows -

“(1) I thank you for the information furnished and advise that the matter was discussed during the course of an interview held at our offices on 2001-11-13 when we requested additional information.

(2) Accordingly, to enable us to suitably consider the application, we require to be furnished with same.”

- 101 During the aforementioned meeting on 13 November 2001 the transaction was discussed and Exchange Control called for the following additional information/documentation to suitably consider the request -
- 101.1 A letter from the Board of Directors of M-Cell whereby consent is given for the placement of M-Cell shares to settle MTN debt.
- 101.2 Full details of the book entries reflecting the placement position.
- 101.3 Full details of the mechanism to be utilised by Deutsche Securities to facilitate the share placement exercise.

FOLLOW UP APPLICATION NUMBER 107 DATED 2001-11-15

SEE ANNEXURE "C2" (PAGES 219 TO 222 OF SARB VOLUME 8)

- 102 In terms of this follow up application, DBJ furnished Exchange Control with the following information: -

103 **Confirmation by M-Cell board to Placement of M-Cell Shares**

A letter from the financial director of M-Cell, stating M-Cell's approval of the asset swap mechanism to repay debt of MTN International, was attached to the application.

104 **Cash flows of the asset swap**

The cash flows from the asset swap transaction would flow as follows -

- 104.1 The Rand value in respect of the M-Cell shares purchased in the open market would be paid to Deutsche Securities by Mobile Telephone Networks (Pty) Limited ("MTN"), which is a wholly owned subsidiary of M-Cell via MTN.

- 104.2 The foreign currency proceeds from the sale of the M-Cell shares to foreign investors would be paid directly to MTN International.
- 104.3 In effect, the funds were to be raised by MTN to restructure the debt of its offshore subsidiaries.
- 105 **Share placements**
- 105.1 The share placement exercises would -
- 105.1.1 Be done over a period of 6 months as and when there is foreign investor demand for M-Cell shares.
- 105.1.2 The share price and effective exchange rates for such share placements will not be set at the outset, but as and when transactions are implemented.
- 106 Exchange Control responded on 2001-11-23 as follows -
- "(1) We should have no objection to the proposed share placement provided the price of shares are not fixed prior to the actual purchase thereof, but that sufficient shares will be placed with Deutsche Securities to realise the required USD 75 million.*
- (2) It must be pointed out that suitable steps must be implemented in order to minimise any flowback to South Africa.*
- (3) The Control reserves itself the right to call on the applicants to refinance any flowbacks to the Republic to ensure reserves neutrality.*
- (4) Kindly record to advise us of the success or otherwise of the share placement exercise and report any flowbacks to the Republic."*

107 During the meeting held at the office of Deputy Governor Marcus with representatives of DBJ, Deutsche Securities and DBL on 2002-02-12, as referred to in paragraph 56 of my statement I requested DBJ to provide Exchange Control with a full report on the M-Cell share placements.

**LETTER DATED 2002-02-21
SEE ANNEXURE "C3" (PAGES 223 TO 228 OF SARB VOLUME 8)**

108 On 2002-02-21 DBJ responded in this regard by providing Exchange Control with a written explanation from Deutsche Securities also dated 2002-02-21. (Annexure "C3"). It should, however, be noted that their letter is incorrectly dated 2001-02-21.

109 The following constitutes essential excerpts from the above letter from DBJ dated 2002-02-21 -

"(1) Background

(1.1) During October 2001 Deutsche Securities, a subsidiary of Deutsche Bank, agreed to arrange an asset swap for M-Cell to enable M-Cell to repay part of the USD 450 million offshore financing facility raised by MTN, a wholly owned subsidiary of M-Cell. The facility was used to finance the license fee and infrastructure rollout costs of the Nigerian mobile telephone business of MTN Nigeria.

(1.2) The asset swap was to involve the acquisition of M-Cell shares in the South African market, the placement (i.e. sale) of up to USD 75 million worth of the shares with non-residents and the payment of the proceeds of the placement into an offshore account of MTN International.

(1.3) *Deutsche Securities implemented the asset swap in four tranches for a total of 15 707 485 M-Cell shares worth USD 20 million. In each case, Deutsche Securities acquired M-Cell shares and sold the shares to DBL. DBL paid the purchase price into an offshore account of MTN International. DBL then endeavoured to place the shares with long term foreign investors.*

(1.4) *DBL hedged its market exposure in respect of the unplaced shares by entering into put and call contracts on the South African Futures Exchange ("SAFEX"). DBL hedged its currency exposure in respect of the unplaced shares by exchanging Rand for USD. As DBL placed the shares, the hedges and funding arrangements were unwound, thereby resulting, inter alia, in the exchange of foreign currency for Rand.*

(2) *Transactions*

(2.1) *The following transactions were entered into for purposes of implementing the asset swap:*

(2.1.1) *Deutsche Securities sold a total of 15 707 485 M-Cell shares to DBL for a total of USD 20 million. The shares were sold in four tranches, as follows -*

- *5 797 500 shares sold for R86 321 775 for settlement on 2002-01-22;*
- *2 750 000 shares sold for R41 575 050 for settlement on 2002-01-23;*
- *3 000 000 shares sold for R43 950 000 for settlement on 2002-02-24; and*
- *4 157 955 shares sold for R60 000 139 for settlement on 2002-02-25.*

- (2.1.2) *Deutsche Securities acquired 5 797 500 of the M-Cell shares referred in 2.1.1 above in the South African market and borrowed the balance of the shares (i.e. 9 907 985 shares) from The Standard Bank of South Africa Limited (“SBSA”) under a securities loan transaction entered in between Deutsche Securities and SBSA. As security for the securities loans, Deutsche Securities deposited an amount of approximately R160 000 000 with SBSA. The amount of the deposit was varied according to the value of the loaned securities.*
- (2.1.3) *On 2002-01-25, MTN paid Deutsche Securities R231 850 000 being the Rand equivalent of USD 20 million.*
- (2.1.4) *In settlement of the purchase prices referred to in 2.1.1 above, DBL paid USD 20 million into an offshore account of MTN International. This amount was the USD equivalent of the purchase prices.*
- (2.2) *In order to hedge its currency risk in respect of the M-Cell shares, DBL exchanged R231 850 000 for USD 20 million on 2002-01-08.*
- (2.3) *DBL hedged its market risk in respect of the M-Cell shares by entering into put and call contracts on SAFEX. The expiry dates of the contracts are 2002-06-21 and the strike prices are R15.05, R15.28 and R15.78. In terms of the contracts, DBL is entitled to receive an amount based on any shortfall in the market value of the unplaced M-Cell shares below their value based on the strike prices and DBL is required to pay an amount if there is an excess. DBL paid initial margin to SAFEX in respect of the contracts.*
- (2.4) *Deutsche Securities hedged its market risk in respect of the M-Cell shares by entering into put and call contracts on SAFEX. The*

expiry dates of the contracts are 2002-06-21 and the strike prices are R15.05, R15.28 and R15.78. In terms of the contracts, Deutsche Securities is entitled to receive an amount based on the excess of the market value of the M-Cell shares over their value based on the strike prices and is required to pay an amount if there is a shortfall. Deutsche Securities paid initial margin to SAFEX in respect of the contracts.

(2.5) As from the date upon which the M-Cell shares were sold to DBL, DBL endeavoured to place the shares with long term foreign investors. As of 2002-02-18, DBL had placed 6 099 500 of the 15 707 485 M-Cell shares.

(2.6) Whenever any M-Cell shares were placed by DBL, the following would occur -

(2.6.1) DBL would recover any loss on the placement by closing out its SAFEX hedge. This loss would be equal to any shortfall in the market value of the placed M-Cell shares below their value based on the strike prices. DBL would be required to pay an amount equal to any profit it would otherwise have made.

(2.6.2) Deutsche Securities would purchase the same number of M-Cell shares in the South African market and deliver them to SBSA in partial settlement of the securities loan. Deutsche Securities would then withdraw part of its cash collateral deposited by it with SBSA. Deutsche Securities would recover any loss on the purchase of the shares by closing out its SAFEX hedge. This loss would be equal to any excess in purchase price of the shares over their value

based on the strike prices of the applicable SAFEX contracts. Deutsche Securities would be required to pay an amount equal to any profit it would otherwise have made.

(3) Exchange Control Approvals

(3.1) Approval for the asset swap:

- *Letter dated 2001-10-25 from DBJ to Exchange Control. (Annexure "C1").*
Letter dated 2001-11-15 from Exchange Control to Deutsche Securities. (According to our records the letter was dated 2001-11-23 and addressed to DBJ). (Annexure "C2").

(3.2) Safex Transactions

Permitted under Rulings."

110 Having finally and as recently as 2002-02-21 ascertained from DBJ and Deutsche Securities an explanation in terms of the foregoing Deutsche Securities letter of all the transactions which were utilised to implement applications number 101 and 107 (annexure C1 and C2) to which I refer as the M-Cell Application, I will now on the basis of such information, deal with my perception of the discrepancies which appear, when regard is had to applications number 101 and 107, ie the M-Cell Application, the Exchange Control approvals granted in respect thereof, and the disclosures made on 2002-02-21 in terms of the foregoing letter.

111 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 Dealer submitting an application on behalf of its client to ensure that full 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.

112 It would appear from the information submitted to Exchange Control in terms of the Deutsche Securities letter of 2002-02-21 (Annexure C3 hereto) that there was less than sufficient disclosure by DBJ in the M-Cell application of all related or subsequent transactions which were implemented or were to be implemented. Exchange Control was not approached for approval of any deviation from the original approval which Exchange Control granted pursuant to the M-Cell Application and the facts of any other subsequent or related transactions were not made available to Exchange Control timeously.

During the meeting held on 2001-11-13 and referred to more fully in paragraph 101 of my statement Exchange Control, inter alia, requested the Deutsche Securities delegates to provide full details of the mechanism to be utilised by Deutsche Securities to facilitate the share placement exercise. However, in their response (Annexure "C2" hereto see page 221) the other related transactions which were eventually disclosed in the letter of 2002-02-21 (annexure C3, page 223 hereof) were not disclosed by DBJ.

113 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 of 2001-10-25 (annexure C1) and number 107, dated 2001-11-15 (annexure C2) ("M-Cell Application") and the M-Cell approval to those applications dated 2001-11-23 (annexure C2) (to which I shall refer to as the "M-Cell Approval") -

113.1 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 2002-02-21 (annexure C3) appear not to have been so disclosed in the original M-Cell Application.

- 113.2 Notwithstanding that it was a specific requirement of Exchange Control that the transaction or transactions in respect of which the M-Cell 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 dated 2002-02-21 (annexure C3 hereto) breached the obligation placed on DBJ and M-Cell to ensure reserves neutrality.
- 113.3 In accordance with established Exchange Control procedures, Exchange Control assisted by its legal advisors, held discussions with representatives of DBJ and Deutsche Securities on 2002-03-26 during which meeting the parties involved were advised of Exchange Control's concerns about the apparent discrepancies as referred to above. M-Cell was not represented at the meeting. It is my understanding that notwithstanding my insistence that M-Cell should attend the meeting, M-Cell was, approximately one hour prior to the commencement of the meeting advised by DBJ/Deutsche Securities not to attend the meeting. In order to enable Exchange Control to give further consideration to this matter and arrive at an informed decision in terms of Exchange Control Regulations, a letter dated 2002-03-26 was given to DBJ in terms of which Exchange Control's concerns were highlighted. In the letter Exchange Control also called upon DBJ and M-Cell to explain or make representations within 14 days in writing addressed to Exchange Control. Exchange Control required that the following issues are to be addressed in such representations –
- 113.4 The precise nature of and facts relevant to each transaction which was entered into in connection with the M-Cell Application and the M-Cell Approval together with the cash flow (including cross-border flows) implications resulting from the implementation of all those transactions;
- 113.5 Whether or not Exchange Control's perception of the discrepancies referred to in paragraph 112 of my statement are accurate and if not the extent to

which DBJ and/or M-Cell submits those perceived discrepancies and/or deviations and/or non-disclosures to be inaccurate;

113.6 As to why, if the transactions implemented in connection with the M-Cell Approval were so implemented in a manner which is inconsistent with the M-Cell Approval or which results in any condition attaching to such M-Cell Approval becoming operative, Exchange Control should not impose remedial measures in terms of the Exchange Control Regulations.

114 The foregoing proceedings instituted by Exchange Control are of an ongoing nature, to the extent that after Exchange Control has received and considered full representation from DBJ and M-Cell, Exchange Control shall make a decision as to what further action (if any), is required in connection with the proceedings.

Mr Chairman and other members of the Commission, I thank you.

***Pretoria
2002-04-05***