

COMMISSION OF INQUIRY OF THE PUBLIC INVESTMENT CORPORATION

HELD AT

TSHWANE, PRETORIA

10

18 MARCH 2019

DAY 16

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PROCEEDINGS HELD ON 18 MARCH 2019

CHAIRPERSON: Good morning, morning.

ADV JANNIE LUBBE SC: Good morning Mr Commissioner, members.

CHAIRPERSON: Yes?

ADV JANNIE LUBBE SC: Mr Commissioner we are ready to proceed. This morning we will start with evidence from the regulatory authority the FSCA and I plan to call two witnesses, the first is Ms Nomku Tshombe who's the head of the legal department.

CHAIRPERSON: What's the name?

ADV JANNIE LUBBE SC: Nomku N-O-M-K-U Tshombe T-S-H-O-M-B-E.

10 **CHAIRPERSON:** T-S-H-O?

ADV JANNIE LUBBE SC: M-B-E. There is also a written presentation submission before the Commissioner my next witness Ms Felicity Mabaso will deal with this. The purpose of the evidence of Ms Tshombe is just to give the Commission a proper historical background of what happened in the past couple of years with regard to the regulatory framework.

CHAIRPERSON: We don't have a statement from her do we?

ADV JANNIE LUBBE SC: It's not necessary it will be very brief, five to 10 minutes Mr Commissioner.

CHAIRPERSON: Okay.

20 **ADV JANNIE LUBBE SC:** And with your leave I will ask her to ...

CHAIRPERSON: Your full names?

MS NOMKUMBULO TSHOMBE: My full name is Nomkumbulo Tshombe.

CHAIRPERSON: (Inaudible).

MS NOMKUMBULO TSHOMBE: Sorry?

CHAIRPERSON: I didn't hear the second name, you said Nomku? Oh Nomkumbulo is

the whole name?

MS NOMKUMBULO TSHOMBE: Yes.

CHAIRPERSON: Okay, Tshombe. Do you have any objection to taking the oath Ms Tshombe?

MS NOMKUMBULO TSHOMBE: None whatsoever Commissioner.

CHAIRPERSON: Do you swear that the evidence you're about to give will be the truth, the whole truth and nothing but the truth ... (intervention)

MS NOMKUMBULO TSHOMBE: I do.

CHAIRPERSON: Raise your right hand and say so help me God.

10 **MS NOMKUMBULO TSHOMBE:** So help me God.

CHAIRPERSON: Thank you. You may be seated.

MS NOMKUMBULO TSHOMBE: Thank you Commissioner.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner. Mrs Tshombe you are the head of the legal department of the FSCA is that correct?

MS NOMKUMBULO TSHOMBE: Yes I am.

ADV JANNIE LUBBE SC: What is the FSCA?

MS NOMKUMBULO TSHOMBE: The full name is the Financial Sector Conduct Authority established in terms of the Financial Sector Regulation Act which came into effect on the 1st April 2018.

20 **ADV JANNIE LUBBE SC:** Now the purpose of your evidence is just to enlighten the Commission of the historical background of what happened before the FSCA came into being.

MS NOMKUMBULO TSHOMBE: Yes Sir, shall I start?

ADV JANNIE LUBBE SC: Yes please.

MS NOMKUMBULO TSHOMBE: Thank you. The FSCA is the successor of the FSB

the former FSB which was the Financial Services Board. Financial Services Board has been in existence as a regulator of the non-banking financial services since, it was established by an Act that came into effect in 1990. The Financial Services Board has regulated the non-banking financial services in terms of from a prudential and also a conduct perspective. With the 2008 financial crisis the Financial Services Board together with National Treasury *etcetera*, the whole country started a financial regulation journey that culminated in the twin peaks mode of regulation which was established via the statutes that I referred to earlier, the financial sector conduct, the Financial Sector Regulations Act which came into effect on the 1st April.

10 Now in terms ... (intervention)

ADV JANNIE LUBBE SC: I think you must just explain to the Commission what do you mean by the twin peaks approach?

MS NOMKUMBULO TSHOMBE: The twin peaks approach really encompasses in simplistic terms the separation of regulation of conduct from that of regulation of the prudential activities of the financial services industry. So currently the Financial Sector Conduct Authority now regulates all the financial services entities that are under its regulation from both a prudential and a market conduct perspective whereas – sorry it regulates them only from a market conduct perspective whereas the prudential authority which is an entity within the Reserve Bank of South Africa it regulates the

20 prudential activities of financial services industry. I hope that is clear.

CHAIRPERSON: I hope so too.

ADV JANNIE LUBBE SC: Please proceed.

MS GILL MARCUS: Perhaps I could just add a point just to be clear, previously there was a separation and I think this is where the twin peaks makes the difference that you had banking regulation which included conduct, market conduct within the entities that

the Reserve Bank and bank supervision dealt with and then your FSB also dealt with the prudential regulation of everything else, your stock exchange, your insurance companies and so on.

MS NOMKUMBULO TSHOMBE: Yes.

MS GILL MARCUS: Whereas your market conduct includes conduct of banks which is different so you have the market conduct looking at the conduct of banks as well as the conduct of all other entities and the prudential regulation looking at that side including non-banks.

MS NOMKUMBULO TSHOMBE: Yes.

10 **ADV JANNIE LUBBE SC:** Thank you Mr Commissioner.

MS NOMKUMBULO TSHOMBE: Thank you indeed. Having, by twin peaks we've now explained what the difference is. The Financial Sector Conduct Authority, can I please with your leave Commissioner can I call it the Authority so that I don't have to think, the Authority currently, currently regulates as we speak, regulates the conduct of all financial services including banks via the old sectoral pieces of legislation which were used by the FSB during its conduct, obviously inclusive now of the pieces of legislation that focus on prudential activities because the FSCA the Authority regulates the banks as well but only from a conduct perspective.

20 **CHAIRPERSON:** Are you able to give us an indication of these pieces of legislation, how many are there?

MS NOMKUMBULO TSHOMBE: Yes can I just name a few, well not a few I'll name almost all that I can remember now, we're talking here the Long Term Insurance Act, the Short Term Insurance Act in the insurance area, we're talking the Pension Funds Act in the retirement industry area, we're talking the FAIS which is the Financial Advisory and Intermediary Services Act in the financial service provision area, we're

talking the Financial Markets Act in the capital markets area, we're talking the Friendly Societies Act in friendly societies, we're talking the Financial Institutions Act once again in the financial services area, financial service provision area, we're talking the Inspection of Financial Services Act. Can't remember if there's anyone that I'm leaving out but anyone that I'm leaving out is probably quite marginal but those are the main statutes the FSCA and previously the FSB used to administer.

So having introduced peak by via the FSR Act, sorry?

MR EMMANUEL LEDIGA: Question, the banks which Act conduct, which Acts sort of regulates the banks conduct?

10 **MS NOMKUMBULO TSHOMBE:** That would be, I think if we look at it now we'll be looking at the Banks Act but the Banks Act to the extent that it talks into prudential conduct that will be the function of the prudential authority. But as we speak now there is an extensive piece of legislation which is called the Conduct of Financial Institutions which is under discussion which will now delve deep into proper regulation of all the various areas of regulation by the FSCA. That piece of legislation is not yet, is not yet, has not yet been accented to, it's not yet an Act but it's in the advance stages of discussion. This is why I had to explain that currently the regulation is taking place still via the various sectoral pieces of legislation that were used before twin peaks came into being.

20 Okay so once twin peaks came into being and the Authority became established it was necessary for the authority to have a leadership and at that stage being a new entity, basically the FSCA the leadership of the authority had to be sourced, advertisements had to be made and that process was provided for via regulations that were promulgated by the Minister, I think they came into being on the 29th March 2018. Now the process of getting that leadership into place is still on course

and at the time the regulations then set up a transitional leadership structure for the FSCA. That transitional leadership structure was made up, is made up of in terms of the regulations, is made up of the commissioner, a commissioner that has been appointed as commissioner transitionally and within that leadership structure which is called the Transitional Management Committee, within that transitional structure the Executive Committee of the FSB was appointed but appointed as at that stage, in other words the Executive Committee of the FSB as provided for in section of the FSB Act. And then there was an extra member which was appointed as an expert by the Minister of Finance. So that's now the transitional structure that is leading the Financial Sector

10 Conduct Authority until the Commissioner, the Statutory Commissioner and the Deputy Commissioners are appointed. That process is still on course.

MS GILL MARCUS: Just a question in relation to that thank you, is that the name of the Commissioner that is the interim person that is Mr Abel Sithole is that correct?

MS NOMKUMBULO TSHOMBE: Yes, can I say something about that?

MS GILL MARCUS: Please do.

MS NOMKUMBULO TSHOMBE: Just to put it into context, the FSB was governed by a Board and Mr Abel Sithole was Chairman of the FSB Board. Now the Transitional Regulatory – in terms of the regulations the transitional structure was required to disestablish the FSB and to establish the FSCA with the least disruption in terms of

20 operations and in terms of that, those requirements the leadership that was chosen was to have Mr Sithole as the Commissioner and the FSB Exco as well as a ministerial appointment, one person was a ministerial appointment as an expert in market conduct.

MS GILL MARCUS: Sorry can we just ask who that person was that was appointed by the Minister?

MS NOMKUMBULO TSHOMBE: That's Ms Katherine Gibson.

MS GILL MARCUS: Katherine Gibson.

MS NOMKUMBULO TSHOMBE: Yes.

MS GILL MARCUS: And I don't question the motivation behind the steps taken but from the point of view of this Commission the question becomes that Mr Sithole is the Commissioner for the transition but he also is the CEO of the Government Employee Pension Fund, the same Mr Sithole that we're talking about.

MS NOMKUMBULO TSHOMBE: Yes.

MS GILL MARCUS: And therefore from the Commission point of view we just need to bear that in mind that the GEPF in relation to the Commission fulfils a different role as
10 distinct from the FSB which is a regulatory role which should be looking at the GEPF as well. So there's just a little bit of a, what I would think is a conflict or grey area that needs to be taken account of, obviously it may be different in relation to the fact in when it was set up as distinct from what appears before this Commission that we have to look at in relation to that.

MS NOMKUMBULO TSHOMBE: Okay if I may make just a comment on that Lady
Commissioner, the GEPF is not regulated by the FSCA and the FSCA regulates the PIC
the GEPF not and the Board of the GEPF, the Board of Trustees of the GEPF is
actually the governing structure of the GEPF. The principal officer, if I may also just put
the right terminology, Mr Sithole is the Principal Officer of the GEPF which is different
20 from a CEO in the traditional sense. So being a principal officer and being a CEO
being two different things and also having the Board being the actual governing
structure of the GEPF and also the GEPF not being regulated by the FSCA at all, the
FSCA regulating the PIC, I don't know if that's of any assistance, I hope so.

MS GILL MARCUS: I think it does help but it doesn't necessarily resolve the conflict because in essence using the words of the principal officer, the GEPF, and I'm talking

about specifically in relation to this Commission's work, I'm not talking more broadly because obviously the financial sector conduct authority regulates the PIC, we're looking into the PIC and the GEPF is the major client of the PIC. So given the same personality all I'm doing is pointing out that there is a grey area in relation to Mr Sithole, I'm not questioning what was done in relation to creating the regulatory authority.

MS NOMKUMBULO TSHOMBE: I will not question that Lady Commissioner, I leave that to the Commissioners, I just needed to set out the legal requirements and the legal framework.

CHAIRPERSON: But for my interest and purposes what's the difference between a
10 principal officer and a CEO?

MS NOMKUMBULO TSHOMBE: A principal officer is actually defined in the Pension Funds Act. I don't know if any of my colleagues has the Pension Funds Act, I don't have one with me now so it's not quite the same as the work of a CEO. The principal officer is actually a kind of liaison officer between the board of a fund and the members let me say of the fund, of any fund as well as the employers that contribute to that fund, members that contribute and the employers that contribute to the fund.

CHAIRPERSON: Which would mean that person then sits on the board?

MS NOMKUMBULO TSHOMBE: A principal officer actually is a permanent invitee of the board, the principal officer as such is not a member of the board but is a permanent
20 invitee of the board.

Commissioners I don't know if at this stage there's anything further that you would like me to explain? I think in terms of setting out the framework, the legal framework and the relationship between the FSCA, the FSB, the GEPF and the PIC I would imagine that I've said my peace unless there are any other questions?

ADV JANNIE LUBBE SC: If I can perhaps just sum it up it was put to me I think in

quite practical terms that the role of Mr Sithole is that of the undertaker of the FSB and the midwife of the FSCA, I think that explains it beautifully.

MR EMMANUEL LEDIGA: Just to be clear is that the GEPF doesn't fall under the Pension Fund Act?

MS NOMKUMBULO TSHOMBE: No, the GEPF has its own establishing legislation pretty much like the PIC has its own establishing legislation so it's not under the Pension Funds Act yes.

ADV JANNIE LUBBE SC: Thank you Mrs Tshombe. Mr Commissioner can we just rearrange for Mrs Mabaso to take ...

10 **CHAIRPERSON:** Your full names please Ma'am?

MS FELICITY MABASO: Felicity Mpho Mabaso.

CHAIRPERSON: Second name Mpho?

MS FELICITY MABASO: Mpho yes.

CHAIRPERSON: Do you have any objection to taking the oath?

MS FELICITY MABASO: No objections Commissioner.

CHAIRPERSON: Do you swear that the evidence you're about to give will be the truth, the whole truth, nothing but the truth, raise your right hand and say so help me God.

MS FELICITY MABASO: So help me God.

CHAIRPERSON: Thank you. You may be seated.

20 **ADV JANNIE LUBBE SC:** Thank you. Mrs Mabaso is it correct that you are the Divisional Executive of the FSCA?

MS FELICITY MABASO: Yes that's correct, Divisional Executive for Licensing and Business Centre.

ADV JANNIE LUBBE SC: Thank you. There is a written submission prepared dated the 15th is that correct

MS FELICITY MABASO: Yes that's correct.

ADV JANNIE LUBBE SC: Can you please start with that paragraph 1, you will be asked questions by myself and by the Commissioners during your presentation, are you comfortable with that?

MS FELICITY MABASO: I'm very comfortable with that.

ADV JANNIE LUBBE SC: Thank you.

MS FELICITY MABASO: Thanks from paragraph 1 of the introduction, okay your request of 8 March 2019 for the Financial Sector Conduct Authority to provide specified information to the PIC Commission of Inquiry refers. The FSCA came into existence on
10 1 April 2018 with the advent of the Financial Sector Regulation Act 2017. The FSCA took over the functions of the Financial Services Board and the various registrars responsible for the administration of the sectoral legislation more specifically in the context of the PIC and the Financial Advisory Intermediary Services Act of 2002 the Registrar of Financial Services.

In this letter references will be made to the FSCA, the FSB or Registrar as may be applicable at the relevant time. In anticipation of the appearance by officials of the FSCA before the Commission on 18 March 2019 the Commission is provided with high-level background information regarding the following; the type of licence issued to the PIC, supervision of the PIC over the period January 2015 to December 2018,
20 complaints received against the PIC, and the level of compliance by the PIC with loss administered by the FSCA.

Authorisation of the PIC. The PIC is only owned by the South African Government with the Minister of Finance as shareholder representative. The PIC was established on the 1st April in accordance with the Public Investment Corporation Act 2004 and section 4 of the PIC Act requires the PIC to obtain a licence in terms of

section 7 of the FAIS Act. The PIC was approved by the Registrar on 6 December 2005 to conduct the business of a category 1 FSP and category 2 Financial Services Provider in respect of the following financial products ... (intervention)

ADV JANNIE LUBBE SC: You don't to read that out if it is alright with you Mr Commissioner that specified in the columns?

CHAIRPERSON: Well I thought this was my chance of knowing what these documents are.

ADV JANNIE LUBBE SC: You're going to have it Mr Commissioner, will you please read it into the record.

10 **CHAIRPERSON:** Yes and explain them please, I mean I know what shares are, I know what money market instruments are but the rest I don't.

ADV JANNIE LUBBE SC: Thank you.

MS FELICITY MABASO: If I may Chair?

ADV JANNIE LUBBE SC: Yes please.

MS FELICITY MABASO: We have shares, PIC's approved for securities and instruments in shares and it can be listed or unlisted shares. And then we have securities and instruments those will be money market instruments that clients ... (intervention)

20 **ADV JANNIE LUBBE SC:** I'm sorry to interrupt I think what the Commissioner is looking out for is for you to explain under securities and instruments for example what is warrant certificates and other instruments.

MS FELICITY MABASO: Okay, alright.

MR EMMANUEL LEDIGA: Can I, also can you please talk about what do you mean by CAD 1 and CAD 2 because it's quite ... (intervention)

MS FELICITY MABASO: No I'll definitely get to that point.

MR EMMANUEL LEDIGA: And then the advice part and the intermediary ... (intervention)

MS FELICITY MABASO: Intermediary services part yes I'll take you through that.

MR EMMANUEL LEDIGA: Yes.

MS FELICITY MABASO: The proper necessary information, okay if I may, I just want to check with my colleague here. Apologies we just want to ... (intervention)

ADV JANNIE LUBBE SC: I think while they're looking for that, okay they're ready.

MS FELICITY MABASO: Sorry Chair I see we don't have some of the definitions here so if I may I'm going to ask some, if it's okay with your permission some of my
10 colleagues to speak to some of the instruments and give an explanation of those instruments okay.

ADV JANNIE LUBBE SC: Perhaps you can assist by talking to the category 1 and category 2 products?

MS FELICITY MABASO: Alright I can do that. A category 1 FSP is an FSP who offers advice and render intermediary services without discretion. So advice means any recommendation, guidance or proposal of a financial nature furnished by means or median to any client or group of clients in respect of the purchase of financial products or in respect of the investment in any financial product.

CHAIRPERSON: Where do you get that from?

20 **MS FELICITY MABASO:** It's a definition from the legislation.

CHAIRPERSON: Which legislation?

MS FELICITY MABASO: The FAIS Act, Financial Advisory and Intermediary Services Act.

MR EMMANUEL LEDIGA: And maybe explain discretion also, discretionary?

MS FELICITY MABASO: So discretionary FSP's means an FSP who renders

intermediary services of a discretionary nature regarding the trials of a particular financial product. So in the context of PIC it simply means that you know PIC have a full discretion or having entered into full discretionary mandate with all of its clients has the freedom to decide or make recommendations and decisions about how or where the client's funds or assets will be invested or must be invested and that is of course within the parameters of the client's objectives that are prescribed in the different mandates. And having said that we should always keep in mind that the code of conduct requires of every provider, financial services provider to at all times render financial services honestly, fairly with due skilled care and diligence and in the best
10 interest of clients and the integrity of the financial services industry. Though they have the discretion, that discretion must be within the limits of their client's objectives taking into account the code of conduct.

CHAIRPERSON: But who then ensures? Is it the FS? What is it, the FSCA ensures that you know that the honesty is there and everything else is there in the application of a client's funds?

MS FELICITY MABASO: Yes it is the FSCA who is supposed to make sure that there is honesty and integrity when it comes to client's assets. I mean as supervision of the Conduct of Financial Institutions means that you know it focusses on the fair treatment of customers, by financial institutions, including the protection of you know customer's
20 assets and funds against any theft or any fraudulent activities or irregular activities.

CHAIRPERSON: And how often does you organisation or institution do that? How often to you do oversight to find out whether there is no fraud and so forth?

MS FELICITY MABASO: We do oversight in different forms ...

CHAIRPERSON: Oh is it covered in the ...

MS FELICITY MABASO: It is coming up. Yes.

CHAIRPERSON: Is it covered?

MS FELICITY MABASO: Yes. It is. Okay.

ADV JANNIE LUBBE SC: Paragraph 9.

MS FELICITY MABASO: Paragraph 9. The PIC managers are exclusively on behalf of the public sector entities manages assets exclusively on behalf of the public sector entities. It's clients are said to be ...

CHAIRPERSON: Sorry, let me take you back.

MS FELICITY MABASO: Yes.

CHAIRPERSON: What are debentures and scrutinised securitised debts?

10 **MS FELICITY MABASO**: Yes. It is securities and instruments, Mr Commissioner I just want to make sure that my colleagues at the back put together the right definition so that I can read it out for the Court.

CHAIRPERSON: You are looking at that now?

MS FELICITY MABASO: Yes.

CHAIRPERSON: They are going down the list to ...

MS FELICITY MABASO: Yes, we are going down the list and then I will revert back to those.

CHAIRPERSON: Thank you.

20 **MS FELICITY MABASO**: Okay and so I was on paragraph 9. The PIC manages assets exclusively on behalf of public centre entities. It is client asset to be pension funds, provident funds, social security funds and guardian funds. The PIC invests primarily in first income as it is properties and developmental projects. The FSCA's records indicate that the PIC has 22 clients with whom it has entered into full discretionary mandates.

ADV JANNIE LUBBE SC: I have asked you a list of those clients, but I believe there is

a confidentiality clause in the statute. But it would be correct as you have pointed out that these clients are pension funds, provident funds, social security funds, guardian funds etcetera.

MS FELICITY MABASO: Yes.

ADV JANNIE LUBBE SC: And we know from previous testimony that who are the major clients of the PIC, for instance the GEFF.

MS FELICITY MABASO: Yes, that is correct.

ADV JANNIE LUBBE SC: Thank you.

MS FELICITY MABASO: The authorisation of the PIC allows it to render advisory
10 services, intermediary services and discretionary intermediary services to clients in respect of the financial products listed in the above table.

ADV JANNIE LUBBE SC: Would it be correct to say that the services with regard to a category 1 FSB is very limited when it comes to the PIC?

MS FELICITY MABASO: Yes, because it has entered into discretionary mandates with all of its clients.

ADV JANNIE LUBBE SC: Thank you.

MS FELICITY MABASO: The PIC as an authorised financial services provider is subject to inter alia The General Code of Conduct for authorised FSPs and representatives and as well as the Code of Conduct for discretionary FSPs. Paragraph
20 5 of the letter, Code of Conduct.

MR EMMANUEL LEDIGA: Question. Question. Can you please try, you know talk more about what an FSP is because there is quite some difference between the company and FSP and all that.

MS FELICITY MABASO: An FSP is a Financial Service Provider that renders financial services on behalf of entities in respect of the financial products that we have listed in

the table that we have presented, that we present here today.

CHAIRPERSON: So someone, or call it an entity, that lends money for me to buy a car, would that fall under FSB?

MS FELICITY MABASO: At the moment if there is an element of insurance as part of the transaction, because sometimes you buy a car and that the same dealer would also sell insurance to you. Then that dealer would need approval as a or authorisation as a financial services provider in respect of that insurance. However, the credit aspect of the deal will be dealt with by a different regulatory authority.

CHAIRPERSON: Which is called what?

10 **MS FELICITY MABASO**: The National Credit Regulator. May I proceed?

CHAIRPERSON: Yes.

MS FELICITY MABASO: The PIC's specimen mandate was approved by the Registrar at licensing stage and the discretionary mandate affords the PIC full discretion regarding the investment decisions and choice of a national products in relation to client's investments.

ADV JANNIE LUBBE SC: Can I interrupt again? What is meant by specimen mandate?

20 **MS FELICITY MABASO**: A specimen mandate is the mandate that is required in terms of paragraph 5 of the specific Code of Conduct. And it contains just a minimum requirements that the FSPs have to comply with if you are authorised as a category 2 FSP. And if I may, I will take you through some of those minimum requirements. The mandates, the FSP or the applicant is actually required to have this mandate that will include amongst other things, you know the authority given to the discretionary FSP to act on behalf of the client. And the investment, that specimen mandate must make provision for the investment objectives of the client and it must also contain a general

statement pertaining the risks associated with investing in local and foreign financial products with particular reference to any currency risk. And it must also stipulate in whose name the financial products are to be registered and whether they are for example to be registered in the name of the client or any nominee company, nominated by the client or a nominee company of the discretionary FSP's or the nominee company of a product provider. And it also requires of the FSP to make provision in its mandate, you know for the bank account details of the FSP and a trust account details to be opened at the bank or other bank account opened in the name of the client in which the discretionary FSP must deposit and where applicable from which the discretionary FSP must withdraw monies received in connection with investments. So this is some – it is a long list. I can go through the list if you want me to Mr Commissioner, but it is available.

ADV JANNIE LUBBE SC: In what part of the Act is it? What Section?

MS FELICITY MABASO: It is the Financial Advisory and Intermediary Services Act and is the Code of Conduct for Discretionary FSPs, Section 5 of that code. It specifically deals with all the requirements that should be in the specimen mandate.

ADV JANNIE LUBBE SC: Thank you.

MS FELICITY MABASO: And it is just minimum requirements.

ADV JANNIE LUBBE SC: You can proceed.

20 **MS FELICITY MABASO:** The conditions of the license. The PIC is subject to the following license conditions imposed at the date of authorisation. And I just want to state here that this conditions are not just imposed on PIC, it is general conditions that apply to all licensed FSPs. The Financial Services Provider must inform the Registrar in writing, that was then because PIC was approved back in 2005 and the FSP was responsible for its approval. So it must inform the Registrar in writing by fax, mail or in

an appropriate electronic format within 15 days after the change has taken place of any change in respect of the business information or financial services of the Financial Services Provider as provided in form FSP1, form FSP3, FSP4, FSP9, 10 and 10(a) or FSP11. Those are license application forms, so if anything changes or the profile of the FSP changes in respect of the information contained in those forms, that must be reported to the authority. And if I may continue. And the second condition speaks to relates to Financial Services Provider must at all times during the currency of the provider's license maintain the services of any key individual or key individuals mentioned in the information submitted on the said application form. And must as

10 regards changes in respect of such information related, relating to a key individual or appointment of a new key individual of the provider in addition to acting also in such cases in accordance with the procedure and time limits sets out in Condition 1. Also ensure full compliance with Section 84(b) of the Act, the provisions of which must be regarded as included in this condition. The Financial Services Provider must within one month of the debt contemplated in Section 7 of the Act, submit a copy of the register kept in terms of Section 13(3) of the Act to the Registrar and must thereafter in accordance with the procedure and time limits set out in Condition 1, inform the Registrar of any change effected to the details as contained in that register. A Financial

20 Services Provider must not in any manner change the name of the financial services business as reflected on the license concerned or carry on any financial services business under such a changed name, unless a) the provider has fully complied with the provisions of any other law that than the Act which regulates such change of business name if any. And b) the provider has fully disclosed to the Registrar the details of such compliance with such other law. And c) the Registrar is satisfied that such change of name is otherwise lawful and has approved such change of name. And

lastly the Registrar has issued to the provider an appropriately amended license under the provisions of Section 85(b)(i) of the Act. The Financial Services Provider must at all times ensure that any financial product in respect of which the provider intends to render a financial service qualifies as a financial product contemplated in the Act and is or will be lawfully issues by the relevant product supplier by virtue of an authority approval or right granted to such supplier under a law as contemplated in the Definition of Product Supply in Section 1.1. of the Act. Supervision of PIC, for over the period January 2015 to December 2018. Statutory framework: The PIC is subject to compliance with inter alia the following legislation: The FAIS Act, the General Code of
10 Conduct for Authorised FSPs and Representatives, the Code of Conduct for Discretionary FSPs and the determination of the proper requirements published Board Notice 194 of 2017, which came into operation on 01 April 2018. The Board notices out the competency standards, that is your qualifications, experience, regulatory exams, continuous professional development applicable to all FSPs including operational liability, a good standing, honesty and integrity and financial soundness requirement. The 2017 Board Notice appeared in earlier notice on determination of the proper requirements for FSPs published under Board Notice 106 of 2008, which was applicable over the period January 2015 to March 2018.

MS GILL MARCUS: Can I ask you something in relation to that?

20 **MS FELICITY MABASO**: Yes.

MS GILL MARCUS: One of the points there is operational ability.

MS FELICITY MABASO: Yes.

MS GILL MARCUS: Would the number of acting positions in the PIC been a question for your consideration about continuity, expertise, cause for concern? Was it ever looked at by yourselves as part of the oversight?

MS FELICITY MABASO: The operational ability in this context will you know, will relate to the people or persons that are in regulatory positions for example your key individuals, your representatives of the asset manager, compliance officers and auditors. But other positions that are not regulated in terms of the phase, you know would not when it comes to those positions, would not necessarily look into that.

MS GILL MARCUS: Would you not think that given the oversight, the capacity and I mean at what point in time does a red flag come up about permanent staff – because you are talking about competency, ongoing viability and so on. I understand that you are looking at the regulatory side, but as a supervisory body, would it not be relevant to
10 see whether there is permanent staff in place or acting positions in place in the organisation as a whole? Does it fall under a different category of supervision that you look at?

MS FELICITY MABASO: No it would not, but when we look at the governance framework of FSPs and the structure of the different committees, then if there is lot of acting positions will interrogate that information to find out why if there is a risk that there might not be proper oversight of important activities, especially when it comes to investment decisions.

CHAIRPERSON: Okay are you able to say anything about the PAC, PIC, not PAC? About the PIC regarding these regulatory aspects?

20 **MS FELICITY MABASO**: Yes, we are actually going to come to that. We are going to comment on the various issues mentioned here, yes. The FAIS Act deals in Section 17 and 19 with the submission of statutory returns by FSPs. The submission of statutory returns plays an important part in the supervision of licensed entities. The structural design is such that the preparation of this returns include the involvement of external services providers such as the auditors. FSPs and FSPs must cause the financial

statements to be audited in accordance with auditing pronouncements as defined in the Auditing Profession Act 2005.

ADV JANNIE LUBBE SC: In the case of the PIC, the auditor, the external auditors are the Auditor General, is that correct?

MS FELICITY MABASO: Yes that is correct. Compliance reports: Section 17 of the FAIS Act deals with the appointment of compliance officers by FSPs. The compliance officer ...

ADV JANNIE LUBBE SC: Sorry to interrupt you. Can you just for the record state who is the Compliance Officer of the PIC?

10 **MS FELICITY MABASO:** The Compliance Officer of the PIC is Mr Deviliers Makonko. A Compliance Officer is approved by the authority to render compliance services to FSPs subject to prescribed fees and proper requirements. And these fees and proper requirements include inter alia competence requirements and thus your qualifications, regulatory examinations and experience, character qualities of honesty and integrity and operational ability. Compliance Officers are required to submit compliance reports to the FSCA bi-annually for the period 01 January to 30 June, the submission date is on or before the 31st of August every year. And for the period 01 July to 31st December the submission date is 28 February of the following year. The purpose of the compliance report is to determine whether the FSP complied with all applicable regulatory

20 requirements in terms of the FAIS regulatory framework. In compliance with the provision of the FAIS Act, the PIC has an approved compliance officer.

MS GILL MARCUS: Sorry. Advocate Lubbe, perhaps we could get a profile of the Compliance Officer?

ADV JANNIE LUBBE SC: Yes it will be put before the Commission. Thank you.

MS FELICITY MABASO: Throughout the relevant period, that is January 2015 to

December 2018, the PIC's compliance reports for each of the reporting periods were submitted and received by the FSB and FSCA after 01 April 2018. The compliance report submitted to the FSB and FSCA over the period in question did not indicate any issues of non-compliance or other irregularities that required regulatory action to be taken.

ADV JANNIE LUBBE SC: I am sorry to interrupt again. Because of evidence already lead before this Commission, we know by now that during 2018 there were various reports in the media regarding what is now known as the IO Transaction, that the PIC was hauled before the SCOPA in parliament, Special Committee On Public Accounts in
10 December 2018 and we had the situation that during this sitting of this Commission, there was a press statement by the PIC that officials in the PIC with regards to the IO Transaction flouted policies and procedures of the institution by signing off on this transaction. Now if I understand you correctly, none of this found any – into the report submitted by the PIC to the FSCA.

MS FELICITY MABASO: Yes and no, it would have been submitted you know in terms of Section 19(4) read with Section 17(1)(c) of the FAIS Act which deals with irregularity reports, so we have never received any irregular reports relating to the IO Transaction from PIC.

ADV JANNIE LUBBE SC: And we also know that as early as February 2018, there
20 was an audit query raised by internal audit regarding this transaction. So again it was not reported to the FSCA.

MS FELICITY MABASO: It was not reported to the FSCA.

ADV JANNIE LUBBE SC: Can you proceed with paragraph 23 then please?

MS FELICITY MABASO: Okay. In terms of Section 19 read with Section 17(1)(c) of the FAIS Act the compliance officer and auditor of an FSP must inform the FSCA in

writing of any irregularity or suspected irregularity in the conduct of the FAIS of that FSP of which the compliance officer or auditor became aware in the performance of their functions and in which in the opinion of the compliance officer or auditor is material. The requirement to submit regulatory reports applies to all FSPs required to appoint a compliance officer or auditor. There is no record of an irregularity report submitted by the compliance officer or auditor of the PIC for the period in question.

ADV JANNIE LUBBE SC: Carry on.

MS FELICITY MABASO: The FSPs are required ...

MR EMMANUEL LEDIGA: Something. If there are media reports that show there
10 could be problems, does the FSCA have any power to do something about it if it is not reported by the compliance officer?

MS FELICITY MABASO: Yes, we do and when we come to answered versus I will unpack it further, I will provide more information on that. Thank you. FSPs are required to submit their audited annual financial statements within four months of the financial year end. The PIC is required to submit audited financial statements on or before the 31st July annually. The PIC's audited annual financial statements over the relevant period were submitted and received by the FSB and FSCA. The annual financial statements must be accompanied by a Section 19(3) audit report in respect of money and financial products held on behalf of clients, which confirms at year end the amount
20 of money and financial products held on behalf of clients were kept safe and separate from the FSP's own files.

ADV JANNIE LUBBE SC: So just to make it clear to the Commission, this is a separate report.

MS FELICITY MABASO: Yes.

ADV JANNIE LUBBE SC: In terms of this specific statutory provision.

MS FELICITY MABASO: Yes.

ADV JANNIE LUBBE SC: That must be provided to the FSCA?

MS FELICITY MABASO: Yes but the Auditor General. The annual financial statements of the PIC are audited by the Auditor General and the FSCA's records indicate that the PIC has met the financial soundness requirements during the period in question and there were no adverse findings.

ADV JANNIE LUBBE SC: I mean, we must I think also put on record if I remember correctly during this period we are talking about the PIC received clean audits from the Auditor General.

- 10 **MS FELICITY MABASO**: Yes. The FSCA utilises a risk based supervisory model, on site visits, or onsite inspections referred to now in the Section 132 of the FSR Act are planned and conducted on FSPs base of this approach. On site visits are themed and limited to a specific scope. The scope of the ...[indistinct] onsite visits is informed by amongst others trends in the industry complaints received, as well as the outcome of a desk based supervision process. And if I may respond to the question that was raised before about what we do, are we doing with you know media reports, do we take action? The answer is yes, because this onsite visit in particular was also triggered by what was reported in the media in 2017. And onsite visit was conducted at the PIC on 06 February 2018 and the scope of the onsite visit was limited to mandate compliance,
- 20 governance framework and processes followed to make investments on behalf of clients. Having regard to the scope of the onsite visit, the PIC explained the procedures, processes and controls underpinning the Investment Management function. And based on the information provided by the PIC during the onsite visit the authority did not identify areas of non-compliance with the focus areas prescribed in the scope of the onsite visit.

ADV JANNIE LUBBE SC: Can I just ask you for the record, who were the representatives of the PIC that you met during this onsite visit?

MS FELICITY MABASO: Okay. The representatives of the PIC were Dr Dan Matjila, Mr Devilliers Makonko, Mr Paul Magula, Sholto Dolamo and Ernest Nesani, Robina Solomon, Lebogang Molebatsi, Melissa Breda, Leon Smit, Benedict Mongalo, Riabodai Nose, Amagolang Mokume, Lefuno Nemaghovhani, Kathu Nazamba and Methodus Nzibandi.

ADV JANNIE LUBBE SC: Just for the record again. I do not want to talk about all of them, but Paul Magula was at the time the Risk Officer?

10 **MS FELICITY MABASO:** Yes.

ADV JANNIE LUBBE SC: Chief Executive Head Risk. Ernest Nesani was the Executive Head Legal. The compliance officer was there.

MS FELICITY MABASO: Yes.

ADV JANNIE LUBBE SC: And the Head of Internal Audit.

MS FELICITY MABASO: He was also present.

ADV JANNIE LUBBE SC: He was also present.

MS FELICITY MABASO: Yes.

20 **MS GILL MARCUS:** Sorry, just in relation to that, how in hindsight when you have seen what has come out about say for instance internal audit having reported certain things about non-compliance or non-procedural issues, would you think that there was material non-disclosure to you as a regulator? Have you had a chance to look at what has come out both in the public arena at this point in time and whether in fact it was material non-disclosure or an interpretation of the scope of the onsite visit that limited, like I said was not part of the scope, we did not cover that? Have you had a chance to assess that in relation to the sort of public disclosures that have come out subsequent

to this onsite?

MS FELICITY MABASO: Actually following the appearance of the internal auditor before this Commissioner, we sent PIC a letter wanting to confirm the timelines of the IO Transaction because when we questioned the PIC, which was part of the scope of the mandate, whether there were any mandate breeches, we were informed at that point that there were no mandate breeches. So we wanted to confirm when the audit was conducted and whether it was before or after the onsite visits and when this findings were made. Because we only got to know about them when the witness appeared before the Commission.

10 **MS GILL MARCUS**: Have you had a reply to that?

MS FELICITY MABASO: We did have a reply and the PIC confirmed that the audit actually happened after the onsite visit and I think the findings were made on the 5th of March.

MS GILL MARCUS: And a question then ...

MS FELICITY MABASO: Sorry Ma'am, I just want to confirm my days with my colleague here. Oh apologies, the findings of that audit were made in May 2018 and they only confirmed to us on the 5th of March. But there was no mention of that particular audit during the onsite visit on the 6th of February 2018.

20 **MS GILL MARCUS**: And then in relation perhaps to that, so you would be satisfied with the response to your letter that they then have fully disclosed the process problem if you like, or that there was a material finding? Did they subsequent – would that satisfy you in terms of the reporting required about such a breach? What was contained in their letter?

MS FELICITY MABASO: Yes, we went through the letter and that satisfied us. And I think like I mentioned the most important thing we know was the timelines of this

particular audit, because we got very concerned that we are sitting with them in the same room, interrogating the mandate breeches and it was never mentioned. So they informed us that it happened after and by then at the same time that was never report to the FSCA, though it happened after the effect, after the onsite visit we never got any regularity report on a particular matter.

MS GILL MARCUS: And in relation to that the fact that you never got even now, have you not got a regulatory report?

MS FELICITY MABASO: We have not received any irregularity report.

MS GILL MARCUS: And therefore there would be follow-up from your side?

10 **MS FELICITY MABASO**: There will definitely be follow-up on our side, because we also following these proceedings, you know we are noting all the information that is coming you know from the witnesses and actually going back to our records to see what was disclosed and when that was disclosed in order for us to make an informed decisions about you know what the appropriate regulatory action should be in respect of the people who participated in all this processes, including those that were present in when we conducted the onsite visits in 2018.

MS GILL MARCUS: And also if I could ask you in relation to that, obviously you are monitoring it, if as the FSCA you identify areas of regulatory improvement, would you be willing to suggest, make suggestions to the Commission? It is part of our terms of
20 reference as well to see that we get, make recommendations about improvements to the system. If you are assessing and finding areas that you think could be improved, you would submit comments to us?

MS FELICITY MABASO: Yes, yes, will definitely do so.

MS GILL MARCUS: Thank you.

MS FELICITY MABASO: Thanks. Based on the information provided by the PIC – I'm on 33 now.

ADV JANNIE LUBBE SC: Sorry Mr Commissioner we passed 11 o'clock which is normal tea time. If it's okay with the Commission can we proceed and finish this witness?

COMMISSIONER: Let's proceed with this lady.

MS FELICITY MABASO: "Based on the information provided by the PIC during the onsite visit the authority did not identify areas of non compliance with the focus areas prescribed in the scope of the onsite visit."

10 **MR EMMANUEL LEDIGA:** A question – question. In terms of investment processes, you said you went to the PIC to look at those.

MS FELICITY MABASO: Yes.

MR EMMANUEL LEDIGA: Do you sort of – as a first question. Do you check the standard – the level of good practice of those processes as a first question? The second question is do you have a way to find out if those processes are not being complied with you know? Can the compliance officer be able to tell you if they work within the PIC?

MS FELICITY MABASO: Yes the compliance officer – to answer your second question first. The compliance officer must be able to report this – mend these breaches or any
20 breach of internal controls or processes that had been prescribed and also just to add on that.

When we conducted the onsite visit we did verify that you know the PIC had proper governance framework in place. They had structures that supported that framework and you know but some of the information that is coming out of here, you

know tells to that. What is one paper is actually not happening in reality or in practice. That's what we've observed.

MR EMMANUEL LEDIGA: Yes because the worry could be that the compliance person there might not – might be part of the management and not have the independence. Does that worry you?

MS FELICITY MABASO: We've conceded that as well and perhaps the independence of the compliance officer in this regard was compromised. They are supposed to be reporting any irregularities to the FSP.

Whether one used the services of the – to the FSB rather. Rather one uses
10 the services of an external or internal compliance services, their independence must not be compromised but it could be that it happened. I'm not saying it happened, it could be that it happened.

“After the completion of the onsite visit some allegations of irregularities concerning a loan by the PIC to Afric Oil (Pty) Ltd appeared in the media. The media reports stated that the initial loan request by Afric Oil had rejected by the PIC but the decision was subsequently reversed. During the onsite visit the FSB team was provided with a list of rejected deals including loan applications. The loan application by Afric Oil was not included in the list.

The FSB therefore directed follow up queries to the PIC on 15
20 June 2018. A response was received on 21 June 2018 and copies of the correspondence are attached to this. We do have copies of it.”

ADV JANNIE LUBBE SC: And the response to this query was signed by the then CEO Dr Matjile ...(intervenes).

MS FELICITY MABASO: Yes.

ADV JANNIE LUBBE SC: ... on the 22nd June 2018 and this letter is attached to your presentation, is that correct?

MS FELICITY MABASO: Yes it is.

ADV JANNIE LUBBE SC: Now were you satisfied with the response?

MS FELICITY MABASO: We were satisfied with the response because our focus went in with this query was on the action or lists of the rejected deals and it concerned us you know we hearing about this deal in the media that does not even appear on that.

In terms of the response Dr Daniel Matjila confirmed that the reports in the media are actually inaccurate. The deal went through the due proc – you know due
10 diligence processes as prescribed through the different governance processes and structures and at some point there was additional information you know required for the matter to be finalised and they did exactly that. They obtained that information and then the deal was subsequently approved.

ADV JANNIE LUBBE SC: If I can again ask you. In August, September last year the PIC was also in the news regarding the CEP – then CEO Dr Matjila. An alleged transaction involving MST. Did it come to the notice of your organisation, did you investigate it?

MS FELICITY MABASO: Yes we saw the media reports and we did not investigate that particular transaction.

20 **ADV JANNIE LUBBE SC:** The other transaction in the news at the time was that of VBS Bank. Did you do anything about that?

MS FELICITY MABASO: Yes we investigated VBS Bank and currently the matter is at finalisation stages and some of the people that are implicated in the VBS matter will – you know some of them ...(indistinct) when we take appropriate regulatory action and some of their licenses may actually be withdrawn as well.

ADV JANNIE LUBBE SC: Now taking into account as we all know by now that the two employees of the PIC involved with VBS Bank – sitting on the board were the Chief Risk Officer and the Head of Legal.

They are implicated and they sat on the board. Is that not a red light of a trigger for the FSCA to look at other issues at the PIC?

MS FELICITY MABASO: It is you know a trigger, you right because the two gentlemen that you referring to have already been debarred from the financial services industry and our investigations team is looking into this and at the appropriate time, you know the necessary action will be taken in terms of what – how we need to proceed with this
10 matter.

Who we going to investigate and the scope of the investigation.

ADV JANNIE LUBBE SC: Do I understand you correctly – did I hear correctly that they've been debarred?

MS FELICITY MABASO: Yes.

ADV JANNIE LUBBE SC: From the FSCA.

MS FELICITY MABASO: They have been debarred from the Financial Services Industry yes.

MS FELICITY MABASO: The debarment was initiated by the PIC as the asset manager.

20 **ADV JANNIE LUBBE SC:** Thank you.

MS FELICITY MABASO: Thanks.

MR EMMANUEL LEDIGA: Question. What do you look at when you debar a person? What are the key issues that you look at?

MS FELICITY MABASO: We look at you know the facts in front of us and whether the person based on the complaints or the conduct of the person whether they still meet the ...(indistinct) and proper requirements in respect of honesty and integrity.

What will happen is that we interrogate that information that if there is sufficient evidence that points that the person does no longer meet the fit and proper requirements in respect of honesty and integrity then that will result in a debarment.

So the outcome of any investigation will inform that process. Whether the person still needs to participate in the industry and the financial system or not.

MR EMMANUEL LEDIGA: And the integrity and the honesty what will it mean? Will it mean what? Stealing money? What will it mean?

MS FELICITY MABASO: Yes its fraud, theft, if I may I can also take you – if it's okay with you Mr Commissioner?

COMMISSIONER: Yes please.

MS GILL MARCUS: While you doing that if you could just perhaps add that if you finding fraud is it only applicable to the individuals involved or what or how do you deal with the organisation itself?

MS FELICITY MABASO: We look at the organisation. The contrast and the organisation processes, procedures, you know the governance structures and we also look at the individuals implicated in that fraud.

20 **ADV JANNIE LUBBE SC:** Can you just bear with us a moment Mr Commissioner?

MR EMMANUEL LEDIGA: We can check and come back to it. She can proceed ja. She can proceed.

MS FELICITY MABASO: Okay thank you.

“Alright on 25th May 2017 the FSB received a letter from the organisation and doing tax abuse after dealing with the investment of funds by financial

services providers into mal administered state owned entities. Although not a specific complaint about the PIC the letter demanded of the FSB registrar to as a matter of urgency declare such investments in Eskom by financial service providers. Be they the PIC or any provider public or private to be undesirable practice in terms of Section 34 of the FAIS Act.

10 The FSB subsequently sought and obtained advice from senior council about the provision of Section 34 of the FAIS Act within the ambit of the regulatory framework and inter alia the requirement of FSP's to comply with the provisions of the code of conduct. The registrar decided not to declare investments and SOE's an undesirable practice. On 17 August 2018 correspondence was received from Mr Abraham Du Plooy who essentially commented on the President's decision to establish a commission of enquiry into the PIC. The correspondence was not specific on any issue and the request for additional information did not elicit such information. The FSCA was therefore unable to investigate the matter."

Okay Commissioner if I may can I take you through the incidence indicating when persons are not honest or lack integrity of good standing?

ADV JANNIE LUBBE SC: Just refer to the specific section in the act.

20 **MS FELICITY MABASO:** It's Section 9 of the Determination of Fit and Proper Requirements.

"Without limiting the generality of Section 8.1 of the FAIS Act any of the following constitutes *prima facie* evidence that a person does not qualify in terms of Section 8.1 of the FAIS Act.

- The person has been found guilty and the conviction has not been expunged in any criminal proceedings or labile in any civil proceedings

by a court of law under any law in any jurisdiction of an offence under a law relating to the regulation on supervision of a financial institution as defined in the Financial Institutions Protection of Funds Act 2001 or a corresponding offence under the law of the foreign country.

- Theft, fraud, forgery, uttering a forged document, perjury or any offence involving dishonesty, breach of fiduciary duty, dishonourable or unprofessional conduct or an offence under the Prevention of Corruption Act 1958. The Corruption Act 1992 or parts 1 to 4 or Section 17, 20 or 21 or the Prevention and Combating of Corrupt Activities Act 2004 or a corresponding offence under the law of a foreign country.

10

- And the person has been convicted and that conviction has not been expunged of any other offence committed after the Constitution of the Republic of South Africa 1996 took effect where the penalty imposed for this offence ...(indistinct) may be imprisonment without the option of a fine or a significant fine.

- The person has accepted civil liability for or has been the subject of a civil judgment in respect of the theft, fraud, forgery, uttering of forged documents, prudery or any other conduct involving dishonesty, breach of fiduciary duty, misrepresentation or negligent, dishonourable and unprofessional conduct.

20

- The person has been subject of frequent of material preventative remedial or enforcement action by the registrar or regulatory authority.
- The person has been removed from an office of trust for theft, fraud, forgery, uttering of forged documents, misrepresentation, dishonesty, breach of fiduciary duty or business conduct.

- The person has breached fiduciary duty or the person has been suspended, dismissed or disqualified from acting as a director, managing executive, public officer, auditor or statutory actuary under any law or any action to achieve one of the above mentioned outcomes that has been instituted against the person and ...(intervenes).”

MR EMMANUEL LEDIGA: Alright.

MS FELICITY MABASO: Is that sufficient okay. So that is Section 9 of the Determination of Fit and Proper Requirements.

MR EMMANUEL LEDIGA: Ja we can have a look at that one ja.

10 **MS FELICITY MABASO**: Okay.

MR EMMANUEL LEDIGA: Thank you.

MS FELICITY MABASO: “The analysis undertaken by the FSB and FSCA of the statutory return submitted by or concerning the PIC over the period in question did not reveal any material findings that cause the regulator to believe that the PIC is not – did not comply with all prescribed regulatory requirements. At the onsite visit of 6 February 2018 the PIC explained the procedures, the processes and controls that are followed to make investment decisions and how mandate breaches are dealt with. The onsite visit team was satisfied given the regulatory framework which does not prescribe how a category 2 FSP such as ...[indistinct] invest lines of the type of investments other than to comply with the required code of conduct.”

20

I trust that the information provided may be of assistance to the registrar and the FSC and its personnel we here to provide any other assistance.

ADV JANNIE LUBBE SC: .(Indistinct).

MS FELICITY MABASO: Ja we going to come back to this.

ADV JANNIE LUBBE SC: Are you ready for this?

MS FELICITY MABASO: Ja I just want to check with my ...(indistinct).

COMMISSIONER: Is it not convenient to take the break now?

ADV JANNIE LUBBE SC: Perhaps it is Mr Commissioner not to waste the time. Can we have ten, fifteen minutes break?

COMMISSIONER: We'll adjourn until 11:40.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV JANNIE LUBBE: Thank you, Commissioner. I think we are now in a position to
10 provide the answers.

MS FELICITY MABASO: Thank you, Mr Commissioner. You asked for the definition of the different financial products, so we ... (intervention)

CHAIRPERSON: Is it listed somewhere in some piece of legislation, or...?

MS FELICITY MABASO: It is listed in the Act but, you know they refer you to different Acts as well and some of the definition are not that clear, so...

SIMULTANEOUS SPEECH

MS FELICITY MABASO: ...paraphrase it and, ja.

ADV JANNIE LUBBE: If I can assist, the definitions in the Act are very complicated and they refer to other Acts.

20 **MS FELICITY MABASO:** Ja. It's... Ja, it's... H'm.

ADV JANNIE LUBBE: My request to the witness was to put it in just normal terms so that everybody can understand it.

MS FELICITY MABASO: Okay. If I may continue? I'll start with the definition of money-market instruments. Those are desk (?) instruments that give the owner the unconditional right to receive a stated fixed sum of money on a specified date and

debentures and instruments, those are securitised that – they are debt instruments, rather, and it's – a debenture is a debt instruments that accompanies the issues of shares in order to raise capital. Details of debentures are documented in the agreement entered into between the issue of the debenture and the holder and companies pay interest for the term of that debenture. And moving on to warrants, warrant – a warrant is a security that entitles the holder the right to buy the underlying stock of the issuing company at a fixed price called the exercise price until the expiry date of that warrant. And bonds: A bond is a fixed-income instrument that represent a loan by an investor to the borrower and this is a long-term investment and the issuer of that bond will present the – their bond – the investor with a bond coupon and the money will – at the end of the term of that investment the investor will get their money back. And then there is relative (?) instruments. Those are financial securities whose value is reliant or dependent on the underlying asset. And lastly, you have your collective investment schemes. They are simply a unit trust. We used to call them unit trust investments. That is a scheme in pursuance of which members of the public are invited or permitted to invest money or assets in a pooled portfolio. And your defined, they're short-term and long-term deposits exceeding 12 months or less than 12 months. Those are your bank deposits. So any advice or, you know, discretionary services relating to that simply refers to ES, to those bank deposits, just your normal, simple bank deposits. I hope that helps a bit. That gives more or less a sense. But we can later on provide a definitions. Those, they are technical. We can also give you the relevant Sections of the Act that deals with those definitions.

MR EMMANUEL LEDIGA: Okay, great stuff. (Indistinct)

ADV JANNIE LUBBE: Mr Commissioner, there is just one aspect I want to clarify. I think it's clear, but I just want to make sure it's clear. If there is a transgression of the

licence, let's talk about the PIC and the FSCA, the PIC can debar those people who transgress the licence conditions, but the FSCA can also do that. But what is important in the case of the PIC in terms of the ACT, and I want to read it to the commissioner, is:

“The corporations must, in terms of the FIS Act, obtain authorisation from the Registrar as a financial service provider.”

But then section 9(2) says the following:

“Neither the Registrar nor the corporation may terminate the authorisation referred to in Subsection 1 without the consent of the Minister.”

10 That's important to note that.

CHAIRPERSON: So meaning that the FSCA cannot unilaterally terminate the PIC's ... (intervention)

ADV JANNIE LUBBE: Correct. Correct.

CHAIRPERSON: Yes. Yes. Licence. Yes?

MR EMMANUEL LEDIGA: Just as a follow-up, maybe you want to take another bite on explaining the difference between advice, you know, somebody can just give advice, and somebody can be an intermediary and what do we mean by category 1 and 2, just for clarity for the house.

MS FELICITY MABASO: H'm. Okay.

20 **MR EMMANUEL LEDIGA:** Yes, yes. And sort of financial planners, where would they fit in there versus asset managers? Can they do both? Those kind of issues.

MS FELICITY MABASO: Your financial adviser, for example, will give you advice and you also have, you know, your brokers that will give you advice and that simply refers to any recommendation. So the FSP, who is the financial adviser, would, you know, do a financial means analysis to determine, you know, your financial needs and the

appropriate and suitable products based on your – on the outcome of the financial needs analysis and they'll make recommendations and provide guidance or make proposals in respect of which financial products a client has to buy, or a financial customer, and it's up to that client really to decide whether they want to accept that advice or not because it's simply a recommendation. And when it comes to intermediary services.

MR EMMANUEL LEDIGA: Would that person fall under what we call ... (intervention)

MS FELICITY MABASO: Category 1.

MR EMMANUEL LEDIGA: Category 1? Okay.

10 **MS FELICITY MABASO:** Yes. FSP.

MR EMMANUEL LEDIGA: Okay.

MS FELICITY MABASO: Yes. Ja. And still on category 1 FSPs, in respect of intermediary services, you know, intermediary services means any act other than finishing off advice performed by a person for – on behalf of a client or a product supplier, the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier or with a view of buying or selling or otherwise dealing, managing or administering, you know, keeping in custody financial assets, and in the context of PIC this simply means that a client can approach PIC, an institutional client, and they can enter into a
20 nondiscretionary mandate with PIC, and that will fall under category 1 and PIC will always act on instructions of the client. So they will not have discretion in this regard. So they just accept instruction and then execute those instructions.

MR EMMANUEL LEDIGA: Yes. So meaning that before that financial planner buys a financial product they will have to ask the client first? Is that what you're saying?

MS FELICITY MABASO: Before ... (intervention)

MR EMMANUEL LEDIGA: Ja?

MS FELICITY MABASO: Before and as a... Actually, the FSP, in this particular regard, cannot act without instructions from client, yes, because they have to execute their client's instructions.

MR EMMANUEL LEDIGA: That's all within the cat 1?

MS FELICITY MABASO: That's the cat 1, yes.

MR EMMANUEL LEDIGA: And cat 2?

MS FELICITY MABASO: Cat 2, that's where the FSP has full discretion. They enter into a mandate with the client and the mandate of the client will specify certain
10 objectives, you know, what they want to achieve, you know, in monetary terms, maybe in five to 10 years' time and, you know, taking into account the objectives of the client the asset manager would have to make decisions as to what the suitable financial products would be to place a client's money in and manage that, you know, to make sure that they – the clients get their returns.

MR EMMANUEL LEDIGA: Can one say cat 2 will include advice section?

MS FELICITY MABASO: No, it does not include advice section. The client... The asset manager has full discretion.

MR EMMANUEL LEDIGA: H'm?

MS FELICITY MABASO: So they don't have to consult the client about how or where
20 they should be investing their money. As long as they make sure that they achieve the objectives of the clients and they deliver the returns on the investment.

CHAIRPERSON: And the PIC falls under what? Cat 2?

MS FELICITY MABASO: The PIC falls under cat 2. Though they have a cat 1 licence they have entered into full discretionary mandates with all their clients, the 22 clients, yes.

MR EMMANUEL LEDIGA: So meaning you could have cat 1, FSP doing the advice section, and then you could have somebody with cat 2 doing the investment section.

MS FELICITY MABASO: Yes.

MR EMMANUEL LEDIGA: Am I correct? Am I correct?

MS FELICITY MABASO: Ja. And there is nothing wrong with an FSP doing both, you know. It depends on the structure and business model of the FSP. And sometimes it's safer to have the other categories just in case, you know, you have clients approaching you for advice only and not intermediary services. So a company can apply for cat 1 without cat 2, you know, or for both.

10 **MR EMMANUEL LEDIGA:** Thank you.

MS FELICITY MABASO: Thanks.

MS GILL MARCUS: Can you tell us what your maximum sanction is to a financial service provider if there is fraud, non – material nondisclosure, apart from the question of barring – disbarring?

MS FELICITY MABASO: The maximum sanction?

MS GILL MARCUS: Ja, maximum sanction should you have a financial service provider as an organisation or entity as well as individuals within that. What is your maximum sanction in terms of what law you can do?

20 **MS FELICITY MABASO:** Okay. Can I just consult my counsel on the monetary sanctions? And then I can speak to the other sanctions. Mr Commissioner, okay, the sanctions, the maximum sanctions that we impose on financial services providers and, you know, persons within those FSPs would be your debarment from the industry, the withdrawal of licences and they will also – we also impose penalties. But there is no limit on penalties. I guess the severity of the matter that you're dealing with will inform the quantum of that penalty.

CHAIRPERSON: When you say financial penalty, in criminal law terms it would be fines?

MS FELICITY MABASO: H'm. Yes, it does, Commissioner.

MS GILL MARCUS: You don't have prosecutorial reference? You would have to refer prosecutorial matters to the relevant entities responsible for prosecution, or investigation for prosecution?

MS FELICITY MABASO: Yes, we have to refer that to the prosecutorial authorities for assistance.

MR EMMANUEL LEDIGA: Two more questions. In terms of the number of the FSPs
10 that you sort of regulate, just give us a sense of the number. I understand it runs into thousands and thousands. Just give us a sense.

MS FELICITY MABASO: That's correct. We regulate almost 11 500 FSPs.

MR EMMANUEL LEDIGA: H'm.

MS FELICITY MABASO: Yes.

MR EMMANUEL LEDIGA: And do you find that you got enough, what, manpower, person-power to regulate those?

MS FELICITY MABASO: There will never be enough manpower to regulate all FSPs. That's why we have a risk-based – we follow a risk-based approach when supervising these FSPs. You know, this approach actually assists us, as the regulator, to assess,
20 you know, the level of risks in the operations of different financial institutions and collect data from those assessments, including data relating to complaints or data, you know, from the – that we extract from the analysis of tertiary (?) returns and that actually gives you an idea. You can... You are in a position to identify areas of concern and risk areas and, you know, the process helps you, actually, to allocate your resources, the very limited resources that you have, to those areas you deem to be posing the greatest

risks to clients and also make sure that you, you know, the resources that you are – that you currently have, you know, place more time and effort on the supervision of those entities.

MR EMMANUEL LEDIGA: And are you happy with the budget and the staff complement generally at the FSCA?

MS FELICITY MABASO: We are currently in the process of recruiting for more staff because we have an extended mandate now that will include the provisions of credit and payment services and this is something that we've not done before. And we're also capacitating the authority with research capabilities, so we have to get more people.

10 You know, there's a dedicated division – or department in the regulatory policy division that will look at that and we have to get more staff. So it would be nice if we can get one person to look after one FSP and then that means that we'll have 12 000 employees, but we cannot afford that. Ja.

MR EMMANUEL LEDIGA: And then the final question. It's a broad one.

MS FELICITY MABASO: H'm?

MR EMMANUEL LEDIGA: During the, you know, people have come here to talk and we have noted that there are professionals that have been forced to do things that they don't want to do or it's against the processes or against the laws and all that and sometimes they cannot say no because they are scared that they will be fired or
20 victimised and all that. Is there a way in which FAIS or the FSCA can assist the employees that are under pressure from bosses to, you know, in terms of doing wrong things? I mean, you've got chartered accountants who can get their, you know, accreditation removed and you can be debarred and all that. Is there a way in which the FSCA actually can help there?

MS FELICITY MABASO: Yes. Actually, in terms... I'll just... I'll get the necessary

Section in the FSR Act where any person can report any regulatory to the FSPs without, you know, disclosing such. Obviously they won't disclose it to their employers, but the information will be safe with the FSP. Your whistle-blowing services, we've got that, where people report irregularities all the time and we take action against those individuals.

MR EMMANUEL LEDIGA: Alright. And it does help? I mean, have you found it helps that ... (intervention)

MS FELICITY MABASO: It does help because some of the information, they trigger... We've done lots of onsite business that were informed by whistle-blowers and – or
10 some reports that were – or information that was reported to the authority anonymously, so it has helped previously.

CHAIRPERSON: If you have somebody who has been debarred from – or his or her licence taken away is that usually for good? Or do they rehabilitate themselves and make a comeback?

MS FELICITY MABASO: They do rehabilitate themselves. They do make a comeback. But also, even that does not mean that we will just accept them into the financial services because their term of debarment was 10 years and it has expired. We don't do that. We still interrogate their applications and we still look at the extent of, you know, the irregularities or any contact that they've been engaged in previously that
20 led to the debarment. Because we have to test whether the person is – has indeed been rehabilitated before you accept them back into the financial system.

CHAIRPERSON: If you look at page 8 of this document that you took us through, it's signed – it's not signed by you, is it?

MS FELICITY MABASO: H'm? No, it's not signed by me. It's signed by the commissioner, Mr Abel Sithole.

CHAIRPERSON: Is it Mr Sithole's signature? Is that Mr Sithole's signature?

MS FELICITY MABASO: That was signed on his behalf by Mr Dube Tshidi.

CHAIRPERSON: By who?

MS FELICITY MABASO: Mr Dube Tshidi.

CHAIRPERSON: Ja?

MS FELICITY MABASO: He is part of the Transitional Management Committee and the former CEO of the Financial Services Board.

CHAIRPERSON: Alright. But you yourself have knowledge of what you have gone through with us through this document?

10 **MS FELICITY MABASO:** I do have knowledge of the content of that document, Commissioner.

CHAIRPERSON: Yes, thank you.

ADV JANNIE LUBBE: Mr Commissioner, before we finish, I was requested by Mrs Tshombe, the Head, Legal, to make another addition to the question raised by Ms Marcus about Mr Sithole. Can...? With your leave can she just put it on record?

20 **MS NOMKOMBULO TSHOMBE:** Thank you. Thank you, Mr Commissioner. This is just to ensure that I put the position of the Principal Officer of the GEPF accurately. What the Principal Officer's responsibility is in terms of the board in the meetings of the board is that he ensures that the board meets its fiduciary and oversight obligations in terms of the GP law and other regulations that are applicable. It also... The PO also assists the board on a policy level where policy discussions... For instance the board generally gets represented by the PO sometimes in the – in parliamentary discussions and also at National Treasury level. He also ensures that the financial responsibilities, which are about reporting and disclosure, consolidation and amending the fund's rules and value – and also valuating the liabilities of the fund, he is responsible for all of that.

He implement's the board's decisions, ensures that the board strategy is implemented and he is obviously assisted and supported by an executive team within the GEPF. I just wanted to put that into proper perspective.

CHAIRPERSON: Does the GEPF not have its own CEO?

MS NOMKOMBULO TSHOMBE: No, Chairperson. It's... The... I would say the board, if I start with the board, the board has got a chairperson and then the GEPF has got the Principal Officer and not a Chief Executive.

MR EMMANUEL LEDIGA: So to add, is that generally pension funds don't have CEOs? They've got POs, isn't it?

10 **MS NOMKOMBULO TSHOMBE:** Yes, that's my... In fact, even in terms of the Pension Funds Act Pension Funds have got Principal Officers as opposed to CEOs.

MS GILL MARCUS: But I just want clarity in terms of accountability, where the buck stops. If there is an issue which the GEPF is it the chairperson of the board who is accountable for the operational functioning of the GEPF in all its entities, or is the Principal Officer?

MS NOMKOMBULO TSHOMBE: I am not sure, but I would – if I were to express an opinion I would think that it is the Principal Officer that is – that reports to the board, but at the end, at the end of the day the ultimate responsibility for the fund is – lies with the board and therefore with the chairperson of the board. The Principal Officer assists the
20 board.

ADV JANNIE LUBBE: Mr Commissioner, we undertake to clarify that and place it in proper context before the commission. Can I ask for a brief adjournment. The next witness is available and ready. He will be presented by my colleague, Mr Monnahela. Three or four minutes just to rearrange the scenery will suffice.

CHAIRPERSON: We'll adjourn until you call us.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV ISAAC MONNAHELA: Thank you Mr Commissioner our next witness is Mr Sunil Varghese he's ready to take the oath.

CHAIRPERSON: Can you pronounce your surname for me?

MR SUNIL VARGHESE: Varghese.

CHAIRPERSON: Varghese?

MR SUNIL VARGHESE: Yes.

CHAIRPERSON: You don't have any objection to taking the prescribed oath?

10 **MR SUNIL VARGHESE**: No Commissioner.

CHAIRPERSON: Do you swear that the evidence you're about to give will be the truth, the whole truth, nothing but the truth, so help me God?

MR SUNIL VARGHESE: So help me God.

CHAIRPERSON: Thank you. You may be seated.

ADV ISAAC MONNAHELA: Thank you Commissioner may I just ask to be seated while leading the witness.

CHAIRPERSON: Though you are young you can be seated.

20 **ADV ISAAC MONNAHELA**: Mr Varghese you've made a statement which you are about to present to the Commission, could you please start at paragraph 1 of your statement?

MR SUNIL VARGHESE: I'm an adult male currently employed by the Public Investment Corporation, the PIC, as a Portfolio Manager Non-Consumer Industrial Listed in the Listed Equities Division. Save where the context indicates to the contrary or where it is otherwise stated the facts contained in this statement are within my personal knowledge and are to the best of my belief both true and correct. I have to a

limited extent being following the statements made by the witnesses who have given evidence to this Commission as well as following some of the media coverage from various media outlets.

In this statement I respond to allegations that Mr Seanie has made directly against me in a statement or in his testimony. Where I have failed to respond to any particular allegation that refers to me or that affects me or my rights I reserve the right to respond to that particular allegation. To the extent that any such allegations are inconsistent with what is set out in this statement I deny those allegations. Commissioner may I pause here to say ordinarily I would not make statements against
10 others, I do not have anything personal against Mr Seanie who I hold in the highest regard but given that he has made certain statements against me I just want to clarify in the later part of my statement.

CHAIRPERSON: I'm just wondering how to interrupt what you say in reserving your rights, you say I reserve the right to respond to that particular allegation, you see that? I'm just wondering whether it means you'll call us back and say hey I want to respond to that, come and sit.

MR SUNIL VARGHESE: No I said where I have failed to respond I reserve the right in future if somebody tells that, that's how I said that.

CHAIRPERSON: Yes that's what I'm saying how are you going to get here to exercise
20 that right?

MR SUNIL VARGHESE: Commissioner I would probably go through them.

CHAIRPERSON: I think I'm being facetious okay.

ADV ISAAC MONNAHELA: Commissioner may I just ask him this question, is there any particular allegation that was made against you that you did not or have not addressed in your statement?

MR SUNIL VARGHESE: Not to my knowledge Commissioner.

CHAIRPERSON: That answers it.

MR SUNIL VARGHESE: Ja. May I continue? My education and background. I have a Bachelor of Commerce Degree from the University of Botswana where I was a top student. I'm also a fellow of the Chartered Association of Certified Accountants in the UK and an associate of the Chartered Institute of Management Accountants in the UK and also a Chartered Global Management Accountant. I have an MBA from the Edinburgh Business School which is part of the Heriot-Watt University and completed a certificate in Portfolio Manage from the New York Institute of Finance.

10 I served my articles with a small accounting firm in the city of London largely involved in audits. Upon arrival in South Africa in 1992 I joined Pricewaterhouse as a Senior Corporate Tax Consultant dealing with large corporate. Subsequently I moved on to the Management Consulting Division and later to the Value Based Management Division where I was primarily involved with the valuation of companies. I joined the financial markets in 1998 as Vice President of Research at Deutsche Morgan Grenfell which later became Deutsche Bank. Here I was responsible for cell side research in the telecommunications utilities and industrial sectors. I subsequently left for HSBC in 2003 where I was a Senior Investment Analyst until 2005 covering industrial companies and oil and gas sectors.

20 I was top rated in the telecommunications and industrial sectors in the Financial Mail and Reuters service from 2000 to 2005. I was responsible for conducting investment research and marketing to institutional investors across South Africa, Europe, Asia and the US these include Oman, Sim, Coronation, Fidelity, Templeton, Prudential, Alliance Capital, Wellington Capital Research, Goldman Sachs Asset Management, Stanlib, JP Morgan Asset Management, Schrodgers, Allan Gray and R & B

Asset Management.

In 2006 I joined the PIC as an Investment Analyst and was promoted to the position of Portfolio Manager in 2008. Over this period I have largely covered industrial companies and am currently responsible for the Non-Consumer Industrials portfolio. My sector experience includes daily communications ... (intervention)

CHAIRPERSON: Sorry can you enlighten me about non-consumer industrials?

MR SUNIL VARGHESE: Yes so the JSE is classified into various sectors so you have the resources, the financials and the industrials. Now industrials is a broad statement so we split into two sectors one which is mostly consumer facing and other which is
10 non-consumer facing so these could be manufacturing, well to be specific what falls within non-consumer space is healthcare at the moment, TMT then there's building and construction, transportation and diversified industrials in the broader sense, thank you
Commissioner.

Point 5.6 I'm also a licensed lay minister of the Anglican Church. Now I go to the Internal Listed Equities Division. This division manages a portfolio of stocks that are listed on the Johannesburg Stock Exchange and other exchanges in Africa. At 31st January 2019 the value of the equities managed in-house was approximately 700 billion. Of this approximately 475 billion is a Pure Index Tracker Fund managed by the Coins and Derivatives Team and the balance of approximately 225 billion is an
20 Enhanced Indexation Fund. Our clients prescribed the benchmark index that is tracked or enhanced. Broadly this would be the all swix adjusted index. So we strip out things like gambling stocks etcetera but the client tells us how our benchmark should look like.

May I pause here and make a comment, you know this is a very large portfolio, the equities portfolio which is under the PIC is about R1 trillion. On average we own say roughly 11 to 12% of most companies on the exchange so we are a

significant player and we're the largest asset manager in Africa. I mean if I had to use an analogy of boxing it would be heavyweight or if there was a classification called super heavyweight that's where we would be punching. Okay so it's a big asset manager and the plusses and minuses of that being so big if you start selling a large quantity or buying a large quantity you have market impact so we are constrained into our size so I wanted to put that in perspective.

The enhanced ... (intervention)

MS GILL MARCUS: Sorry, can I just ask a question in relation to that because I can see obviously the PIC can impact the market in all of its decisions.

10 **MR SUNIL VARGHESE:** Yes Commissioner.

MS GILL MARCUS: It can do that, does it not have a different implication as well that because you deal with such big amounts that billions are actually small to you and are small change and therefore you can become careless with the billions?

MR SUNIL VARGHESE: I think yes in the materiality context yes the numbers might look small but we take care of whatever decisions we do, I mean we have a process which we will go through, I think my colleague and my boss Lebogang Molebatsi touched on it so we will go through that research and how we implement the monies into the portfolio.

MS GILL MARCUS: Ja I'm raising the question because obviously from the evidence
20 that has been coming before us there have been questions about, you know because of non-materiality in the overall does not make a billion small and I would be a bit concerned about the way billions, individual billions per billions have been spent or allocated. So I appreciate the process but what we're seeing in the evidence before us is flaws in the process.

MR SUNIL VARGHESE: Commissioner I can only speak for myself and I believe that

is the view of the rest of the Listed Equities team as well, you know we are quite aware that it's hard earned pensioners money and we don't take that lightly and myself being the son of a teacher who used to contribute to this fund, I'm well aware who we are working for.

Point 6.2 the Enhanced Index Fund makes tactical decisions to deviate from the benchmark where the team is of the opinion that a stock is expensive or cheap. I'm a member of the Enhanced Indexation team which is headed by a general manager Mr Lebogang Molebatsi who is my line manager. He reports to the Executive Head Listed Investments Mr Fidelis Madavo. The portfolio is divided into four sector teams namely
10 resources, financials, consumer industrials, and non-consumer industrials. In addition a separate team looks at listed properties. The organogram also makes provision for a listed Africa portfolio. Each sector team is divided into three individuals made up of a portfolio manager, assistant portfolio manager and an analyst.

The Listed Equity team is made up of, I think there was a typo there so it should read as approximately 20 individuals with varied levels of financial markets or industry experience and include CFA charter holders, chartered accountants, engineers, MBA's, graduates and post-graduates. The Non-Consumer Industrial Listed Equities team is made up of me, Mr Victor Seanie who is the Assistant Portfolio Manager and Mr Desmond Sibuyi the analyst. The Internally Managed Listed Equity
20 Composite Portfolio has beaten the client benchmark by 213 basis points over three years and 131 basis points over five years for the period 31st January 2019 according to our internal calculations. We have a separate performance and attribution division who gives us these numbers.

The fee structure is low at three basis points on listed equities which if I compare to the private sector you know it could be 10 times and higher than what we

charge.

MR EMMANUEL LEDIGA: A question.

MR SUNIL VARGHESE: Yes Commissioner?

MR EMMANUEL LEDIGA: Mr Varghese it's been a long time hey ... (intervention)

MR SUNIL VARGHESE: Yes Chief.

MR EMMANUEL LEDIGA: Since we last met, ja I just want to double-check point 7, point 7 if you could give me roughly your broad performance you know which includes fixed income, money market you know for one particular client over the past couple of years, can you give us that say the GEPF ... (intervention)

10 **MR SUNIL VARGHESE:** Commissioner ... (intervention)

MR EMMANUEL LEDIGA: Lebogang did speak a bit about it, ja?

MR SUNIL VARGHESE: Commissioner I don't have it handy at the moment, can I pass it through the evidence leaders?

MR EMMANUEL LEDIGA: Okay that's fine.

MR SUNIL VARGHESE: And I think if you look at our annual report which is obviously a bit stale at the moment because it's a few months old, it does make it clear the performance of all categories there.

MR EMMANUEL LEDIGA: Thanks.

20 **MR SUNIL VARGHESE:** Commissioner if I may pause and comment on this performance. In our view this is an excellent result so in other words we're a proxy for the market and we are actually competing against ourselves with a tracking at our budget of 1.5% given by the client and a return of 213 basis points that would, what we call in our industry there's an information ration which is active returns divided by active risk that gives to 1.42. Anything over .5 is considered good to excellent so I think we've done well and if I may pause to lighten the mood slightly and use the boxing analogy

again and borrow the quotation from Muhammad Ali I think we've earned the right to say we float like a butterfly and sting like a bee, thank you for that.

MR EMMANUEL LEDIGA: Can I just ask you to say it again those performance figures please?

MR SUNIL VARGHESE: Yes, 213 basis points over three years and 131 basis points over five years.

MR EMMANUEL LEDIGA: The outperformance?

MR SUNIL VARGHESE: The outperformance yes, it's the outperformance. Point 8 the research process. PIC follows a four factor approach when analysing stocks, competitive advantage and quality, ESG and stewardship, valuation and uncertainty rating and risk. This process was introduced to our team by Mr Lebogang Molebatsi who made a statement last week to yourselves. Now let's unpack the four factors competitive advantage and quality they use the Porter's five forces as framework to determine the competency advantage and quality of a company. That broadly looks at the strength of the customer, the strength of the supplier, industry, rivalry, barriers to entry etcetera so that is the Porter's five forces framework.

10

The ESG and stewardship good corporate governance and adherence to best practices on ESG leads to sustainable returns. We use the reports and scoring done by the EST team in our analysis and engagement with the board and management of companies to ensure that best practices are adhered to and influence our thinking in proxy votes. Valuation; our key assumption is that fundamental fair value is discoverable. So the tools that we use include DCF, IRR, Exit PE, Price to Book and EV2, EBITDA amongst others. Uncertainty rating and risk; this is a measure of how uncertain an analyst is on his/her fair value call using operating leverage and financial leverage into consideration.

20

Now we go through the various decision-making structures that we have within the team and the broader church. Morning meetings, these meetings occur on a weekly basis and used to track market developments including results and economic data releases. They are used as red flag generators in that any information that may impact the house view is highlighted at this level for a detailed analysis to follow. Then we have the deep dive research meetings. Once detailed analysis on a stock is done then a deep dive research document is presented to the team using the four factor analysis framework. The merits of the document are debated by the team and a stock haul is agreed upon. The research report is then loaded onto the code red system, periodically updates on the stock are presented when the analyst's view has changed on the company or when results are announced.

If I may pause there, the code red system is available to the decision-makers within the PIC at any time they can pull out stock, see the PIC's view on it, what is the upside, downside, there's a ranking table etcetera in there.

MR EMMANUEL LEDIGA: Question, ja question, if you have a deep dive report on Steinhoff and the unlisted side is doing a transaction will they have access to that report or it's a separate department and all that?

MR SUNIL VARGHESE: Yes Commissioner the way these Chinese walls work including from when the days of, including my days at investment banks the other side of the Chinese wall, meaning the unlisted or in investment banks it's corporate finance they can have access any time into our work but not the other way around.

MR EMMANUEL LEDIGA: And it's like it's done the same way within the PIC?

MR SUNIL VARGHESE: Yes Commissioner.

MR EMMANUEL LEDIGA: Oh say they cannot look what the other guys have done ... (intervention)

MR SUNIL VARGHESE: Ja let me quote the Steinhoff example, until we are made in insiders and if we are made in insiders we embargo the stock. So until we are made insiders we will have no clue what the unlisted team will be doing.

Sector focus meetings, these meetings are held periodically to discuss the overall sector views. Portfolio manager meetings these are held on an ongoing basis if possible weekly to ensure that the portfolio reflects the views of the team and risk budgets are within the parameters set by the client. Portfolio Management Committee Listed so now we are entering the broader church, the other three meetings were within the team. This committee is the oversight body for listed investments and members are
10 executive staff of the PIC. The Chairman of the committee is the CEO. This committee approves deals that are between R3 billion and R10 billion according ... (intervention)

MR EMMANUEL LEDIGA: Question, a question.

MR SUNIL VARGHESE: Yes Commissioner?

MR EMMANUEL LEDIGA: If you could explain a bit what risk budget is?

MR SUNIL VARGHESE: Oh risk budget?

MR EMMANUEL LEDIGA: Yes on 9.4 you talk about risk budgets.

MR SUNIL VARGHESE: Yes so let me give you a mental picture of an index, which is the benchmark right, so in the instance of GEPF which is our largest client they say any deviation from the benchmark when you sum it all up because sometimes you stray
20 from the benchmark say .3 of a percent some you take 2 to 4% but when you average it all out the deviation from the benchmark or your bet size should not be more than 1 ½% so that is the risk budget. So in simplistic terms let's say Naspers or Anglo American, let's take Naspers it's almost 25% of the benchmark so we can deviate from the benchmark if we are positive on the company, say I can take 27% of my fund into Naspers as opposed to 25% in the benchmark or if we are negative about the company

we would go minus, not minus 24% which is minus 1% to the 25% in the index. So what the key number is that when you sum it all up it should not exceed the client prescribed deviation from the benchmark the tracking error and the client specifies if due to market movements you know you have breached this then you must report to us and rectify it ASAP.

MR EMMANUEL LEDIGA: So meaning that there are some positions you can take that are not beyond certain limits and all that, is that what you are saying?

MR SUNIL VARGHESE: Yes.

MR EMMANUEL LEDIGA: In various stocks?

- 10 **MR SUNIL VARGHESE:** Yes, so if I could clarify again although it's 1.5% at the aggregate level on individual you could go to 3 to 4% if you want but because the other ones are taking very small bets it cancels it out and on average you end up at 1 ½%.

So I think we have dealt with the PMC, the next one on 9.6 is the Investment Committee. This is the board delegated committee that has an oversight function of the entire investments managed by the PIC. The membership is made of non-executive directors and executives of the PIC. The chairman is a known executive director. This committee approves deals that are above R10 billion or smaller deals if they have been referred to that committee by the PMC. Initial public offering or the IPO process; IPO's do not occur on a regular basis ordinarily only a handful of IPO's happen in a given
20 year. All specific deals such as IPO's BEE funding or taking up strategic stakes should be accompanied by an origination report with our initial analysis and view of the event that request permission from PMC Listed Committee to do a due diligence along with legal, risk and ESG department. This is commonly referred to as the PMC1.

At that point the legal, risk and ESG departments are engaged and a due diligence process is undertaken along with the equities department.

MR EMMANUEL LEDIGA: Question, a question sorry. Ja would BEE funding fall under listed in strategic stakes what would those be?

MR SUNIL VARGHESE: Commissioner it can be enlisted or unlisted right, that's BEE means what percentage of the company is held by you know previously disadvantaged communities so my answer to that it could be in either space.

MR EMMANUEL LEDIGA: What, meaning that what that you would be taking a stake brought by a BEE company you know how would it arise in the listed space?

MR SUNIL VARGHESE: In the listed space there could be two opportunities, there could be more but that's two that I am aware of. One it's an initiative where a bunch of
10 potential BEE you know candidates come to the PIC and say this is a company that is already listed on the JSE as far as we're concerned it's not transformed we've got the funding *etcetera* would you support us so that is one way. The other one is when the company itself does a BEE deal and comes to us so I could quote one which is work in progress at the moment which is the Barloworld one they are, ja they are doing a BEE deal at the moment and they use their external advisors they met their committees *etcetera* and now they come into the market to inform us of the BEE deal.

MR EMMANUEL LEDIGA: And that transaction wouldn't go to the unlisted PMC and all that, it will go to the listed PMC?

MR SUNIL VARGHESE: In my understanding it would go to the unlisted if unlisted
20 finances that consortium because sometimes the banks are reluctant to finance and then PIC makes it own decision on the unlisted side, I don't know how they operate but I'm aware they have funded certain BEE deals.

MR EMMANUEL LEDIGA: (Inaudible) ... other strategic stakes, the IPO's we know now?

MR SUNIL VARGHESE: Ja as strategic stakes as far as the GEPF mandate says they

will let us know what is strategic to them in the interest of the country so they will let us know and we will follow their mandate.

MR EMMANUEL LEDIGA: Give an example, say one example what would it be?

MR SUNIL VARGHESE: I cannot name a company *per se* but let's say there is a flagship South African company that has been built over hundreds of years or 50 years or whatever, so I can talk about a transaction that already has happened and it's gone but SAB Miller it's a South African born South African raised quite successful across the globe and now there's a hostile takeover attempt by AB InBev. Now the client could have had the view that you know this could lead to so many job losses *etcetera* and it's
10 a flagship of the South African economy we don't want it to be owned by foreigners
etcetera, I don't know what criteria they use, and that could be classified as a strategic investment.

MR EMMANUEL LEDIGA: Ja I get you because there was the one issue about Anglo about selling stakes in SA and I think there was an issue about the establishment of a black bank also, would those be part of the ... (intervention)

MR SUNIL VARGHESE: I think those are along the lines that we are discussing about, thank you Commissioner. 10.3 after the due diligence has been completed a final PMC submission should be made after the document has been provided for submission by the Executive Head of Listed Investments. This is then prepared to a follow up meeting
20 of the PMC Listed Committee to approve or reject the deal and this is called PMC2.

I pause to note that there is segregation of duties between the different teams that submit a report for approval, the PMC, investment administration team who are the back office and finance team who disburses the funds post-approval. Once a deal is approved by the PMC or IC the finance team needs to receive a payment memo that is certified by the legal team to ensure that all conditions precedent have been met,

confirmation by the CFO that funds are available and approval by the CEO to proceed with the payment. This ordinarily is also accompanied by a copy of the resolution approving the deal by the PMC or IC. So finance can check that this has already been approved by the PMC.

The Ayo transaction, the Ayo transaction leading up to the PMC meeting of the 20th December 2017 I start off by giving just a background of the company and then we'll go into the details. Ayo is an empowered ICT group, ICT meaning information communication technology offering numerous end to end solutions to a host of industries. Ayo was established in 1996 and has evolved over this time through
10 continually adapting to the local and international ICT landscape. The process of adaption was enabled by acquiring new businesses, partnerships and sourcing innovative technology within its existing portfolio.

The AEEI Group which is the holding company of Ayo had a 30% stake in British Telecom South Africa and upon Ayo's listing it was to be transferred to Ayo. Through its superior empowerment credentials and strategic alliance with BT, Ayo recognised a clear opportunity to aggressively grow its business in order to continue to increase shareholder value and drive through transformation in the South African and African ICT markets sector.

Commissioner may I pause here and say I will give you the events that led
20 up to the 20th then there's a section later where I touch on the investment case and our valuation. So I will discuss those matters when I get to that stage with your permission.

MS GILL MARCUS: And perhaps in that if you could identify where in the timeline you became aware that the BT transaction was not part of or was not going to happen?

MR SUNIL VARGHESE: Yes I can tell you already.

MS GILL MARCUS: Okay.

MR SUNIL VARGHESE: Commissioner our mindset or our thought process at that time when we did this deal was that the BT transaction was a sure thing because the associate company or the affiliate company rather AEEI already owned a 30% stake, they wanted to move it to the Ayo's table and then BT also would be happy to be empowered and using those two or using that combination the vision was to have a proper BEE ICT company that could challenge the likes of the already listed peers you know like EOH, Adapt IT *etcetera*. So that was our thought process at that point in time. When did we get ... (intervention)

MS GILL MARCUS: Sorry can I just ask you on that as you elaborate, not necessarily
10 now, is that would you have had a different view of the transaction if you had known that the BT was not part of it?

MR SUNHIL VARGHESE: I think Commissioner I might have had a different view, but I remember BT was a cornerstone of this investment and unless they brought something else. But that was not in the PLS. They – I touched on what they disclosed in the PLS or rather the thought process, *etcetera*. Can we discuss that when we get there with you permission? So now here is a nuance that I would like to introduce. I think Mr Molebatsi touched on it. I just want to expand on it. So if you took a step back what was going to be their business model? This IO? It was going to be a BEE company that was going to raise funds in the market and deploy those funds to buy BT and they
20 listed about 10 other companies. So in our view, although in the strict interpretation as the law states, it is not a special purpose acquisition company, it displayed all the characteristics of a special purpose acquisition company that raises funds in the market to acquire businesses to fuel growth. On the 15th of November 2017, Mr Madavo received an email from the Executive Assistant to the AEI CEO asking him to sign the attached NDA which would be collected on the 16th of November 2017 when he meets

him in person. Then on the 16th of November 2017, Mr Victor Seanie the APM of Non - Consumables and Mr Desmond Sibuyi who is the analyst held a first meeting with the AEI Head of Corporate Finance, Mr Abdul Malick Salie, Mr Kevin Hardy who was the CEO, Mr Siphwe Nodwele CIO and two others on the instruction of Mr Madavo. The purpose of the meeting was for the AEI to present an investment opportunity in the upcoming IP of IO Technology Solutions Limited. Usually such meetings are meant to gage the appetite of the PIC to participate in the IPO. Upon returning from the meeting, Mr Seanie came and briefed me. He actually dropped a copy of the presentation on my table and we had a brief chat on it. I was unable to attend as I was tied up with other work and could not attend the meeting. On the 17th of November 2017, Mr Salie sent a non-disclosure agreement, a NDA for PIC to sign. PIC returned the NDA to Mr Salie who became the PIC's main contact for information on IO. Mr Seanie at that point became the primary contact at the PIC for IO. Mr Seanie also asked Mr Salie to send the main listing documents and historic financials for at least three years on entities that will be acquired by IO. I paused to note that Mr Seanie was working closely with the PIC CEO's office on this transaction. And I was filled in on a need to know basis. I think the evidence team can look at the emails and testify to that. On the 24th of November 2017 ...

MR EMMANUEL LEDIGA: Question. On your last note there that is it sort of regular that the Assistant Portfolio Manager like Mr Seanie can work directly with the CEO or the Ex CEO?

MR SUNHIL VARGHESE: I think he was briefed in the sense that if the CEO calls you to his office, you cannot say you cannot go, alright. So I think he went there and he got updated on a regular basis. And I think it is not normal, but it happened and it is a statement of fact than just a mere statement. So I just want to put it to the Commission,

so to give you a broad ...

MR EMMANUEL LEDIGA: Sure, sure. Just to double check the structure and the culture at the PIC, so the Heads can go above the Line Managers and all that and just say we are zooming in on the Assistant Portfolio Manager. Is that how it is done? I mean normally at the PIC?

MR SUNHIL VARGHESE: I would not say so, but I suppose in the Ex CEO's words, he had an open-door policy. So people were invited to walk in and explain to him what is happening etcetera, so I don't know what happened. But that is my assumption sir. On the 24th of November 2017, Mr Salie sent the requested financials, except BT financial
10 statements to Mr Seanie. Mr Seanie started working on the pre- due diligence request analysis and requested documents on IO. I will touch on that a bit later. Mr Seanie, between the 27th to the 30th of November 2017, Mr Seanie contacted the ESG Legal and Risk Teams to inform them of a pending IPO of IO and sent them the draft documents received from AAEI and requested them to start working on the due diligence documents in the interest of time. I point out that neither I nor to the best of my knowledge Mr Molebatsi were copied in on this communication. We were not aware of the steps that Mr Seanie had taken to secure the due diligence. I only discovered this fact after we started gathering evidence for the Commission and going through printed copies of his emails. On the 4th of December 2017, Mr Seanie emailed a list of
20 36 due diligence questions to Mr Salie. On the 5th of December 2017, Mr Seanie sent the request for due diligence documents for review by Mr Molebatsi and myself for submission to a PMC meeting of the 6th of December 2017 to seek permission to conduct the due diligence. This document included an investment case, valuation and recommendation that Mr Seanie used preparing the draft listing statement and other financial information provided to him by AEEI. Mr Molebatsi was in Cape Town and

refused to review it since he received it at the last minute. Consequently the PMC1 meeting of the 6th of December 2017 was postponed. I would kindly request you to note the intention to follow process of PMC1 at that date. On 7th of December 2017, EEEI sent the responses to the 36 questions asked by Mr Seanie and informed him that all forecasts are organic and do not include acquisitive growth. They also mentioned that BT has international policies around confidentiality, so they cannot send the audited financials. However the extracts of the BT financials were included in the pre-listing statements which have been reviewed by the reporting accountants.

MS GILL MARCUS: Sir, just at this point, this response reconfirms the involvement or
10 that BT was part of the deal?

MR SUNHIL VARGHESE: Yes. And it was in the – Commissioner if you go through the PLS which is ...

MS GILL MARCUS: It is there.

MR SUNHIL VARGHESE: Then released by – it is there. There is a proforma with BT and without BT and with other acquisitions and then they had four or five years of the – what can I say? The pre-existing IO business before they would deploy this money and add onto that. And ...

MR EMMANUEL LEDIGA: You, just a quick – can you recall what value was the BT? What valuation was put on BT?

20 **MR SUNHIL VARGHESE**: By the reporting accountants?

MR EMMANUEL LEDIGA: No, by IO, you know they were trying to purchase a stake from a BT stake. Can you recall what evaluation IO had put on BT?

MR SUNHIL VARGHESE: Commissioner I cannot respond to that at this point in time on what value they purchased, but I think if I again go through the statement by Mr Seanie he indicated that they were going to deploy about a billion rand or something for

the BT acquisition.

MR EMMANUEL LEDIGA: One billion rand?

MR SUNHIL VARGHESE: Yes.

MR EMMANUEL LEDIGA: Oh.

MR SUNHIL VARGHESE: Yes. Now on the 8th of December 2017, Mr Seanie approached me and we discussed whether it was realistically possible for the PIC to meet the IPO date of the 15th of December 2017. We both agreed that it was not realistically possible. Mr Seanie further discussed this with Molebatsi and accordingly notified Mr Salie that the earliest that PIC could make a decision on the IO IPO is near
10 the end of January 2108. He informed IO that the PIC view is that the 15th of December 2017 deadline is not realistic. On the 13th of December 2017, private placement was opened to the public and would close on the 15th of December 2017. The finalised PLS was also released. The document requesting PMC to approve a due diligence was signed by Mr Seanie, Mr Lebogang Molebatsi and me. We signed this document because we were instructed by the PIC CEO Dr Matjila that the IO IPO would not be moved and therefore the DD had to be completed urgently. The PMC meeting to request approval for due diligence was scheduled for 15:00 to 17:00pm, but the meeting was cancelled as it was not correct, not again our second attempt to follow process on PMC1. On the 14th of December 2017, at 08:30am Mr Molebatsi informed
20 Mr Seanie that he had received instructions from the CEO Dr Matjila or Dr Dan to participate in the IPO. Subsequently Mr Seanie and I were notified by Mr Molebatsi that Dr Dan has instructed the team to have the PMC2 document which is the post-due diligence appraisal document ready for a round robin approval by the close of business on that day. Dr Dan told Mr Molebatsi that the failure to obtain PMC1 approval would be ratified by the PMC and that we did not have to be concerned about this. You will

note that this was ratified accordingly by the PMC on 20th December 2017. At 09:50am Mr Seanie gave a heads-up to our back office or Investment Administration Division who are responsible for the processing of payments and capturing all the data into our systems that the PIC is going to participate in the IO private placement. And at 09:54am he alerted our advisory teams, you know the ESG Legal and Risk teams that they should submit their PMC2 document ASAP for a round robin resolution that would take place on the 15th of December 2017. At 11:03am, the subscription form signed by Mr Molebatsi pp'd for Mr Fidelis Madavo was sent to Dr Dan for his signature. At around 11:30am a corrected subscription form was signed by Mr Molebatsi, again
10 pp'ing for Mr Madavo and Dr Matjila for 4,3 billion rand. Upon hearing this I went to Mr Molebatsi's office and expressed my disappointment and frustration with the CEO's action that he had signed a subscription form ahead of the PMC2 approval. And Mr Molebatsi shared my sentiment. This was the first time I had ever seen anything like this in my career at the PIC. At 12:03pm the signed subscription form was signed by Mr Seanie to the Investment Administration Division. At 16:27pm Mr Seanie left a signed PMC2 submission on my desk and asked me to review and get Mr Molebatsi's approval. Mr Molebatsi and I signed it after reviewing. For intents and purposes this was an identical document to the one sent to the company secretariat seeking permission to do DD on the 13th of December or to the document he prepared for the
20 5th of December, except for the amount of 4,3 billion that was going to be subscribed. PIC ESD team submitted its completed its due diligence report on IO after studying the PLS. Again all these statements are for the 14th of December. I will request the Commission to kindly note that I signed off from the PIC on that day for annual leave with the knowledge that an appraisal report was prepared by Mr Seanie, reviewed by myself, recommended and approved for submission to PMC by Mr Molebatsi for the

Committee's consideration by the round robin resolution on the 15th of December 2017 where the approval will be dependent on the merits of submissions of the listed equities, ESG Risk and Legal Departments after these had been studied by the members of the Committee. So if I may pause here, I left on the impression that a round robin would happen on the 15th and they would make a decision prior to the close of the you know deadline to submit subscription forms. This 14th of December 2017 was the last working day for the year for me. From the 15th of December 2017 to the 1st of January 2018 I was on annual leave and left to India to see family. Over this period I did not receive any communication on the deal, except for the 20th of December 2017
10 when Mr Seanie asked me if I should be allocated to a strategic fund. And I replied in the affirmative.

CHAIRPERSON: Would this be a convenient place to adjourn for lunch?

MR EMMANUEL LEDIGA: Mr Commissioner can he just proceed until paragraph 11.24 which is on the next page?

MR SUNHIL VARGHESE: Okay. Now I am going to state some points for events that happened between the 15th of December 2017 to the 31st of December 2017. These are based on documented evidence in our possession, given that I was away from the PIC at that point in time.

MR EMMANUEL LEDIGA: Just a quick check, so by the time you went on leave you
20 were aware that this transaction is a done deal really in many ways because the subscription form was signed?

MR SUNHIL VARGHESE: Subscription form was signed but if the PIC overruled that they could advance the custodians or who processes these things to say, hold on don't release it to the counterparty until we made a final decision. Because we sometimes do it, sometimes we send these forms, you know a proxy vote or something like that ahead

of a certain decision, but we say, we are just adhering to timetable but please don't forward it on until we give you the final go. So on the 15th of December 2017, PIC's legal team submitted its complete legal due diligence report on IO. PIC Risk Team submitted a completed risk due diligence report on IO. Both reports were compiled after studying the PLS. So in other words what I am trying to say there is, all four reports was submitted ahead of the PMC meeting. Request to waive PMC1. The approval to due diligence due to the fact that due diligence had been performed was approved for submission to PMC. Round robin request for request approval was sent to PMC members by email from company secretariat. Also copied were Head of

10 Internal Audit, Head of Investment Management, Head of Corporate Affairs, company secretariat and Mr Seanie. They did not complete the round robin resolution on that day, perhaps due to lack of responses from the PMC members. Remember it is the eve of the week before Christmas, so probably they left. On the 18th of December 2017, IO Technologies put out a ...[indistinct] announcement that it had received applications for subscriptions for 5,3 billion rand. In other words an over subscription of rand 1 billion to the size of the private placement.

MS GILL MARCUS: Do you know if that was accurate given that in the end the only take up, take was by the PIC for 4,3 billion? So what happened to the other billion?

MR SUNHIL VARGHESE: Ja, Commissioner I am also asking the same question, why

20 did they not give us a pro rata you know? So the question remains unanswered at this point in time. On the 19th of December 2017, Dr Matjila sent an instruction to the Acting General Manager Ms Gaanewe Adams to proceed with the payment settlement process. Dr Matjila stated that the PMC will be asked to ratify the payment. The payment memo was signed noting that the transaction will be ratified at the next PMC meeting. Investment Administration Division sent confirmation from PSG that PIC had

received its full allocation of IO shares worth 4,291 billion rand. Investment Administration Division contacted Mr Seanie to document that PMC approval has not been received yet for the above allocation.

MR EMMANUEL LEDIGA: Thank you Mr Commissioner. We make take the lunch adjournment.

CHAIRPERSON: We will adjourn until 14:00.

MR EMMANUEL LEDIGA: Yes Mr Commissioner.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **COMMISSIONER**: Mr Varghese you still under oath.

MR SUNIL VARGHESE: Yes Commissioner.

ADV ISAAC MONNAHELA: Thank you Mr Commissioner the witness ended at paragraph 11.24 before the lunch adjournment. You may proceed from paragraph 12 on page 14.

MR SUNIL VARGHESE: Thank you Commissioner.

“The Ayo investment case

20 The Ayo investment case was premised on a high strategic holding of a 30% stake in BT South Africa that will be acquired by Ayo using some of the proceeds of the capital raised in IPO. Significant BT clients with multibillion ICT budgets were seeking to address their preferential procurement through supporting truly transformed ICT providers. Additional scope would be given to those service providers that showed true transformation initiatives., specifically ownership criteria. Thus there was a gap in the market for a truly empowered IT company and the most empowered company would be Ayo. Post listing black shareholding of 70,5% and black female ownership of 32%.

There would have been technology transfers between BT and Ayo and sharing of IP.

They would have hired ex BT SA CEO Mr Kevin Hardy and ex BOH Divisional Director of Industrial Technologies Mr Sipiwe Madwele as its CTO. Furthermore consolidation of players in the industry using the cash pile from the IPO. Ayo had a pipeline of acquisitions with revenues of R3,5-billion an average ...(indistinct) margin of 18%. Attaining a market share of 4 to 6% of 227 ICT market in South Africa as estimated by Gardener. So in substance and I repeat that it was similar to a special purpose acquisition company, meaning the funds raised was going to be used for acquisitions to fuel growth.

10

The Ayo valuation

The Ayo valuation was based on the premis that we expected it to win market share in the IT and related services industry due to its superior BEE credentials. A key pillar of the investment thesis was the acquisition of BT South Africa and bolt on acquisitions thereafter meaning more businesses on that platform using BEE credentials. In a sense Ayo was like a special purpose acquisition company ...(indistinct) that would raise funds from the market to pursue specific target acquisitions using those funds to grow the business.

20

The PLS gave broad outlines of around ten businesses that Ayo was targeting. A key challenge was the lack of historical financials of BT SA. But the PLS included pro-forma focus that included BT which were verified by reporting accountants Grant Thornton. Based on the focus revenues presented in the PLS approved by the JSE Ayo would have had a modest

market share of 3,4% in 2019. The market focus was given in ...(indistinct). We then use these focus and peer group analysis to determine a normalised priced earnings evaluation. In order to calculate a normalised earnings number one would project earnings forward to a normalised level. Three years in the case of Ayo because the first two years had substantial acquisitions and then discounted back to current level.

10 To determine the normalised earnings one would have to determine an average margin which is EBIT or revenue and apply that to focus revenue. Note EBIT means earnings before interest and taxation. To determine the margins we used industry peer groups. These had EBIT margins ranging from 7 to 25%. We used the EBIT margin of around 15,5% as a base case for Ayo given its focus for higher service offering. We then added profit from associates and deducted tax to get to net earnings. We used POH as a proxy because the company had up to the valuation date been highly acquisitive.

20 Ayo has peaked ten year EBIT compounded growth rate was approximately 41% at the time of our analysis and the stock traded at 22 times price to earnings multiple which is a ten year median as a result. At that IT was also used as a comparison. We applied at 28% to discount to this PE. The table below shows the ten year median PE of the comparables. What we used for Ayo. Again we give the peak ten year EBIT compound average growth – our average growth rate and then the PF's used and how many acquisitions we were thinking of in the pipeline. The normalised PE evaluation give a base case of R43,00 per share, ie derive EPS of 268 per share multiplied by 16 times PE.

Mr Sianie is very familiar with the normalised PE valuation methodology and it his approach when he values companies. He also did a DCF valuation as a backup but this was not annexed to the PMC submission of 20 December 2017. The DCF valuation indicated a fair value of 45,29 per share. Another valuation method used in his model was EBIT to EBITDA which indicated a fair value of R47,00 per share. The Ayo transaction ...(intervenenes).”

MR EMMANUEL LEDIGA: Question, a question.

MR SUNIL VARGHESE: Yes Commissioner.

- 10 **MR EMMANUEL LEDIGA:** Yes it’s quite interesting that when you look at the two other companies their PE’s are similar. 22,6, 22,9 but their earnings growth, you know the ten year earnings growth, the compound earnings growth is very different. I mean the other one is almost double that. What – I don’t know if the market doing this but it seems to be you know out of kilter a bit.

MR SUNIL VARGHESE: Commissioner my response to that question will be that yes it’s true EOH had grown historically 41% right and yes Adapt IT Group 25% historically but from that point onwards maybe the market thought both were growing at similar rates and hence the 22,9 and 22,6. I would assume Adapt IT is slightly higher than EOH in that table.

- 20 **MR EMMANUEL LEDIGA:** The Ayo was packed at 32% growth, was that based on the value on the deals that you guys were looking at or it was just an extrapolation?

MR SUNIL VARGHESE: You see Commissioner Victor did basically a ten year forecast or more and we have it on file. We have given it to the evidence leaders. So I think he calculated that number for that full focus period.

MR EMMANUEL LEDIGA: But was it based on the deal pipeline it looks like?

MR SUNIL VARGHESE: Yes.

MR EMMANUEL LEDIGA: Or just on a normal extrapolation?

MR SUNIL VARGHESE: So what we did is for the first – the explicit forecast in his model had his assumptions and then we compared it to what the management forecast – it wasn't out of kilter for that explicit forecast and then we reversion to mean is what we term it. So we slowed it down into the period beyond that ja.

MR EMMANUEL LEDIGA: And the PE – you gave it the PE of 16, just if you could explain to us there also?

MR SUNIL VARGHESE: I suppose the 16 PE was derived on the basis that – to be on
10 the cautious side and also remember we didn't have or he didn't have at that point in time the full BT financials. We relied on what was in the PLS. To just give some colour Commissioner on the BT financials.

Eventually, say the second half of 2018 they did come to the PIC. The brought the file with the BT financials but we were not allowed to take pictures or anything like that. But we were – because the MDA was still in place between themselves and PLC – BT PLC.

Right so Victor did capture the numbers. Johan and ...(indistinct) was satisfied that they agreed to what was in the PLS. Number 14.

“The Ayo transaction PMC meeting of 20th December 2017

20 The committee resolved to ...(indistinct) the waiving of the due diligence approval process, the PMC1 and the combining of the PMC1 and the PMC2 approval process. The committee further resolved to up role the acquisition of a 29% stake in Ayo Technology Solutions Limited for a consideration of R4,3 billion ahead of its listing subject to the PIC and Ayo entering into a put option to protect PIC's clients against a share price decline.

A commitment that Ayo will spend the equity funds raised only on acquisitions for growth and within 24 months. The legal and ESG teams performing a complete due diligence and providing feedback to the PMC listed investments. Ayo implementing a conflict of interest policy. The appointment of independent non executive directors to the board of Ayo and shareholder approval for all acquisitions other than BT that are greater in value than 10% of Ayo's market cap. Conditions 2, 5 and 6 are typical of conditions that we impose on a special purpose acquisition company when we invest in it. Meaning that you will spend the money only for an acquisitions for growth and there is a timeframe of 24 months which is also applicable respects. Then number 5 have a properly constituted board.

We did engage with the Chairman and our ESG team had interactions with them and they changed their board structure accordingly and then number 6 saying you must come back to shareholders for any acquisition greater than 10% and we must give you the nod before you invest in such target companies.”

Point 15, subsequent events to that ...(intervenes).

MR EMMANUEL LEDIGA: A question, a question.

MR SUNIL VARGHESE: Yes Commissioner?

20 **MR EMMANUEL LEDIGA:** Looking at 13.9 in terms of the numbers that came out from various valuation methods ja - 13.9. Would it be right to say the valuation per say was not an issue. The issue was more like the processes followed and the BT you know transaction didn't happen. What I'm trying to say, do you have issues with the valuation or – ja, ja or issues are somewhere else?

MR SUNIL VARGHESE: Commissioner I think ...(intervenes).

MR EMMANUEL LEDIGA: Or including the valuation ...(indistinct).

MR SUNIL VARGHESE: Commissioner remember these were our views put to PMC and now PMC having after having looked at the risk report etcetera came to a view that perhaps it was on the expensive side and therefore they insisted to have a put option.

I think it was well discussed in earlier submissions here that – I mean was it a wise thing to have a put option after the deal you know. So I shall not go into that.

MR EMMANUEL LEDIGA: So because of the price, they just said we will follow the price but let's have a put option on that?

MR SUNIL VARGHESE: Yes that's my understanding Commissioner.

10 **MR EMMANUEL LEDIGA:** Okay alright.

MR SUNIL VARGHESE: "Subsequent events to the 20th December 2017 on Ayo.

On 29th March 2018 the PIC met with Ayo Non-Executive Mr Saleem Young, Kevin Hardy the Ayo CEO and Mr Sipiwe Nodwele, Ayo CIO and Mr Khaleed Abdullah who is the AEEI CEO and he is the shareholder representative to discuss the five conditions. I was not in that meeting as far as I recall and then the 4th and 5th May ...(intervenes)."

MS GILL MARCUS: Sorry before you move on from that point. This just reflects that there was a meeting to discuss the so called – your questions of your conditions.

MR SUNIL VARGHESE: Yes.

20 **MS GILL MARCUS:** Now obviously the outcome of that did not reflect that the conditions were accepted because other information was that this has never really been implemented and if you've got – you would already - in essence the horse had bolted.

What actually occurred in relation to all of these people who were part of that meeting and did they give you at any point in time thereafter undertakings to meet the conditions president?

MR SUNIL VARGHESE: Commissioner if I may respond. Yes they were happy with the appointment of the board. With majority of non-executive directors and then a commitment that if they spent anything over 10% of the market cap they will come to us.

I mean if you looked at their latest reported financials. I think in August of last year they had not spent that money, so it was I think if I'm not mistaken they had 4,5 billion or something like that. So they had not yet done that deal. So but they had given us a commitment that they will come back to us.

The only outstanding point at that point in time was the put option which went
10 into a serious to and fro and eventually was concluded towards the end of 2018. I think October – I will touch on that put option in the next few paragraphs.

MS GILL MARCUS: What you've just raised ask the question for me what was the urgency? Was the urgency because you had to have a deal and again at what point did you know that the BT transaction was not part of it?

Because if we looked at the evidence that has come before us. There wasn't a liquidity, the liquidity had to be created to be able to provide the R4,3 billion. When they did the deal they had to write to the JSE saying they don't have the funds although they said they had the funds.

And yet from December to August 2018 the 4,3, 4,5 is still sitting in the bank
20 with no deal.

MR SUNIL VARGHESE: Yes.

MS GILL MARCUS: How does that relate to the strategy, the acquisitions, the efforts made to provide the funding in such a short period of time and under that kind of pressure that you were all under and yet then it just sits in the account?

MR SUNIL VARGHESE: Commissioner if I may respond to that. Look we have asked

them why have you not concluded the BT deal as of today. So the response that we've been given is that now that a negative publicity has been raised with this whole transaction in the media etcetera, BT has now got second thoughts whether they want to be associated with the Ayo name.

Perhaps they might consider it at a later stage when things have cooled down but not at this point in time and secondly they had the alliance already with AAEI which owns that 30% already which is in that stable and they have subsequently won contracts with Sasol etcetera using that alliance.

MS GILL MARCUS: But they had the alliance before the deal.

10 **MR SUNIL VARGHESE:** Yes.

MS GILL MARCUS: So therefore the argument that they had to have a BEE to make the deal falls away because if they had it with that – if the structure is valid now it was valid then.

MR SUNIL VARGHESE: Commissioner my response would be that the expectation as per the what was said in the PLS was that not only would deals like Sasol be there but assuming things had been smooth and been sailing as expected then it would create more momentum and more market share gains for them.

20 “Then around the 4th and 5th May 2018 internal audit notified Mr Mathebula and Mr Molebatse about the audit finding on the Ayo approval process followed. Internal audit informed them that the PMC approved the transaction on the 20th December 2018 should have rectified that transaction, not approved. As the irrevocable subscription form was signed on the 14th December 2018. On the 7th May 2018 ...(intervenes).

MS GILL MARCUS: Sorry can we just check here. On 52. Inform them that PMC approved the transaction on the 20th December 2018 – 2017.

MR SUNIL VARGHESE: 2017 a typo. Typo my apologies. Both should read 2017, then 15.3.

“On the 7th May 2018 a PMC submission was made asking for the approval to be changed to rectification. On the 11th May 2018 PMC changed its approval to rectification of the Ayo transaction via Round Robin Resolution. On the 8th October 2018 a memo was prepared advising against signing the Ayo put option.”

May I pause there Commissioner. Yes there were several versions of the put option presented to the PIC and all were not favourable for the PIC and we push and
10 eventually we wrote a memo to the CEO to capture our thoughts versus what the company was proposing.

After that decision was made by the CEO himself on the 16th October 2018 and he signed the put option.

MS GILL MARCUS: Just to clarification on that. That was the put option that you had done, the memo, there were no changes to that. That you had done the memo to say this unfavourable to the PIC?

MR SUNIL VARGHESE: Yes.

MR EMMANUEL LEDIGA: And that option who actually worked the number? Was it from the PIC side or it came from the other side?

20 **MR SUNIL VARGHESE:** It came from the other side as a proposal and we read it and we said we happy or not happy and at the back page obviously if you happy you will have that signature line with witness. You know so I think the CEO signed that on the 16th October.

MR EMMANUEL LEDIGA: And he never sort of communicated back with your guys, say I'm going to sign this, I've heard your views but I'm going to sign this.

MR SUNIL VARGHESE: I don't recall sir. I don't recall. I will be lying to you ja.

Number 16.

“Steps done to safeguard the investment process.

Appraisal documents

10 Pre due diligence documents was compiled for submission on 5th December 2017 that was not submitted for our meeting of 6 December 2017 due to not being reviewed by the GM in time. A subsequent document was submitted for ...(indistinct) to due diligence on the 13th December 2017. But appraisal team did not have an opportunity to present to PMS since there was not quorum. Post due diligence reports were submitted by the 15th December 2017 for a Round Robin Approval and subsequently tabled at the PMC of 20th December 2017 after a desktop due diligence was conducted by studying the prelisting statement and other information shared by Ayo, the listed equities, legal, ESG and risk teams.

20 This meeting also waived a requirement for PMC1 as stated in 14.1. It is on record that the listed equities team requested the company to postpone the listing to the end of January 2018 to give ample time to consider the investment. Acting general manager Ms Gaanewe Adams pointed out to the CEO on the 19th December 2017 that the PMC has not approved the subscription and if she could go ahead with the settlement. The CEO asked her to proceed and stated the PMC will be asked to ratify. The investment administration division requested Mr Seanie to document that the PMC had not yet approved the transaction when they were approached to start the settlement process.

It is sad that the action of the CEO to sign the subscription

agreement ahead of the PMC approval process has lead to the situation that we find ourselves in today. In hindsight the CEO should have done the honourable thing to declare to the PMC that the subscription document and payment memo was signed ahead of the approval process and the business of the day was the rectification thereof.”

Now I move onto the process followed in the Sagamartha IPO.

10 “Sagamartha Technologies Limited or SGT is an integrated African technology platform group with aspirations to become the African leader in e-commerce, digital media and syndicated content and technology ventures as part of the fourth industrial revolution. This company was supposed to list on JSE in April 2018 and PIC was requested to subscribe for 9,6%, 67% of the company for a consideration of 4,5 billion at R39,62 per share. The funds raised were to be used to build a Pan African median and e-commerce Company. Sagamartha and Ayo are co-subsidiaries of ultimate effective controlling shareholder the Serve family through their Sekunjalo Investment Holding Company.

20 On the 21st December 2017 Mr Madavo contacted the listed equities, risk, legal and ESG teams to alert them of an IPO with a target date of February 2018. He also told them to get all internal process done ahead of that date. On the 22nd December 2017 Mr Seanie asked Mr Madavo to give him details of the person to contact at Sagamartha. Mr Madavo duly gave him the contact details of the CFO, Mr T Gowe. On the 11th January 2018 the Sagamartha team came to the PIC and did an extensive presentation on their vision for the company and their credentials. Initial assessment by the PIC team was that this set of individuals did not have the

experience to execute the grand vision presented. In other words they were presenting to us that they wanted to build this Amazon slash Facebook everything of Africa and they were going to use this platform to build that.

10 The intention was to create an e-commerce and media company on the JSE and later list it on the NASDAQ to attract tech savvy investors who were willing to pay higher multiples for the growth strategy of the company. On the 12th January 2018 PIC received a draft prospectus and this indicated the potential sale of the unlisted interest held by the PIC in independent news media South Africa to Sagamartha. This was later moved in the final prospectus. I'll touch on that in a couple of paragraphs. Independent media had a negative EBIT of R22 million in 2017. But the revenue of R1,647 billion. Start up tech companies are usually valued on price to sales ratios since they are not yet profitable. Perhaps their intent was to get a price to sales multiple on the revenue of R1,647 billion.

20 On the 24th January 2018 permission to do due diligence meeting was held, the PMC won. The resolution was not to go ahead with the DD but to do further work on the valuation of the Sagamartha and their assumptions presented. It was brought to the attention of the PMC that PEPSFIB and IC had made a resolution that the consideration received for independent media South Africa cannot be through a swap of chairs.”

Commissioner I revert back to the previous comment that it was removed from the final prospectus. So I would assume that the message was taken across to Sagamartha that thou shall not exchange your liability with shares in Sagamartha and hence it was removed from the final prelisting statement.

ADV ISAAC MONNAHELA: Can you explain that swap please? Can you explain the

swap?

MR SUNIL VARGHESE: Yes so I don't know the exact amount but let's say it was 1,5 billion that something that independent media owed to the PIC in terms of a debt or whatever the instrument was.

In that first draft the view was that that would be repaid using the shares of Sagamartha but then it would be like robbing Peter to pay Paul you know, so because here is the PIC's own money being used to pay back that debt and I'm sure if the client was asked that question they would have nothing of that as well. But to be fair, Commissioner, I think our internal committees, the IC and ... (indistinct) had made that
10 decision as early as the first week of December of 2017 and I think that is what transpired. Now, on 22nd of March 2018 Mr Seanie asked for details on how the external valuations were done for the draft prospectors. The company sent him detailed valuations done by Redwood Valuation Partners and the University of the District of Columbia, both from the United States of America. These were experts in the field of valuing tech companies. Mr... On the 28th of March 2018 Mr Seanie informed Sagarmatha CEO Takudzwa Hove that the valuations were too rich and the listing price should be reduced. In other words, Commissioner, what we saw in that – those valuations of Redwood and University of Columbia, you know, they assumed that Africa is similar to the US with similar GDPs and ability to deploy and grow the business and
20 bring back to that R39-something value that they proposed and we felt it was stretching the truth a bit too far and we had a more conservative valuation.

“On the 4th of April 2018 Company Secretary requested that a special PMC should be held on the 6th of April 2018. Mr Seanie emailed the other teams to make sure that their reports are ready by then. On the 6th of April 2018 a special PMC was held and the

deal team indicated that listing price is too high at R39,62 and we should subscribe at or below our intrinsic value of 7,06 per share.

This valuation was reviewed by Mr Varghese, Mr Molebatsi and Mr Madavo.”

Commissioner, if I may add some colour, because you will say why did we agree to subscribe at 7,06? That was our intrinsic value and the CEO was pro the deal and our valuation indicated otherwise, so it was, if I can use the word, a diplomatic way of saying no to the deal by putting an intrinsic value, which is actually our real intrinsic value, but there was a big valuation gap between the 39,62 and the 7,06, of by virtue of
10 that then the deal couldn't go through, so that was our thinking when we put into the PMC document.

ADV ISAAC MONNAHELA: So basically you wanted to kill this deal by the valuation?

MR SUNIL VARGHESE: Yes. Ja.

ADV ISAAC MONNAHELA: Alright.

MR SUNIL VARGHESE: “The PMC resolved to subscribe if the price is 7,06
or below and enter into a PUT option and not pay a dividend. The
Assistant Company Secretary notified IC of the PMC resolution
that morning and requested their availability for a special telecon
that morning. On the 10th of April 2018 the IC telecon was held.
20 IC pushed back the decision to management to deal with the
matter, which was within the DOA, and instructed that no deals are
– more than R1-billion in future should be scheduled for approval
by a telecon. Sekunjalo sent a downside protection agreement to
the PIC to consider along with the collateral they would provide.”

MS GILL MARCUS: Can I just go back to 17.15?

MR SUNIL VARGHESE: Yes, ma'am.

MS GILL MARCUS: And the IC decision to push back to management. It's not whether something's within your DO – your delegations of authority, I would have thought. It's a question that this matter had come before the IC and clearly by pushing it back they decided it wasn't their decision to take given the information and the differentials. Between what the CEO was willing to do and what your team was willing to do how did you view this and had this happened previously? Because the way I would read it, it's an abdication of responsibility. You had something before you. Yes, technically you could have pushed it back and you did, but you also had a responsibility
10 to do the right thing. You had this kind of position put to you. So had this kind of referral back occurred before, and in what circumstances? Or are you not aware of anything of that nature?

MR SUNIL VARGHESE: Commissioner, I can't recall something at this point in time, any other pushbacks, but I would assume that sometimes IC would say yes, we agree with the PMC decision but please note it is not our job, it's your job, it's within your DOA. I think that's how I would interpret this paragraph here. Then, on the 10th of April, at night, at 8:07 p.m., the CEO, Dr Matjila emailed Mr Molebatsi, Mr Madavo and Mr Seanie stating:

20 "Dear Colleagues,
We have been able to move closer to our base case. The deal now is to subscribe for shares worth R3-billion at the proposed listing price and also get full downside. Sagarmatha will provide us with ran-once strike call option on a number of shares that gives us an average price of R8,50 per share, price exercisable on the date of listing. This will put our shareholding at about 32%. If

the price of 39.9 holds then our value will be quite significant.

Please prepare a submission on this basis. We will firm up the numbers as soon as a letter is received from Sagarmatha.”

In my view, Commissioner, this still would not have flown because the R8,50 is not of our intrinsic value. Now, on the ... (intervention)

ADV ISAAC MONNAHELA: Tell me, who negotiated this deal that was referred to in Dr Matjila’s email?

MR SUNIL VARGHESE: Commissioner, my understanding, that there was a letter coming from the Sekunjalo Group to that effect.

10 “On either the 10th or 11th of April 2018 the listed equities team was involved in this deal. Mr Seanie, Mr Varghese, Mr Molebatsi and Mr Madavo met with Dr Matjila to convince him the price is too high and we are not happy with the collateral. He reluctantly agreed and he promised to inform Sekunjalo.”

MS GILL MARCUS: Sorry, just on that...

MR SUNIL VARGHESE: Yes?

MS GILL MARCUS: Because obviously the JSE comes to the party after that.

MR SUNIL VARGHESE: Yes.

20 **MS GILL MARCUS:** Was he willing in that...? Let me ask it differently. Was he willing to pay a price and it didn’t really matter what price as long as R3-billion was raised? Was he willing to say okay, it’s R8,50 but he’ll talk to Sekunjalo, maybe it comes down a bit and we may – we come to our value that you – or your value that you had put, as long as the total came to 3-billion? Was the 3-billion material to the decision?

MR SUNIL VARGHESE: Commissioner, my response to that would be that that perhaps he was accommodative to negotiate it further down to the 7,05, but at that

point in time it was the R8,50 or thereabouts. And, besides, they posted a bit of collateral in all their unlisted shareholding companies and when we looked at it we said this is unlisted, this is the collateral you're kind of posting here. We can't put a number to this. To be blunt, between the three of us – or four of us we said is it worth the paper that it's written on, right? So hence we had the pushback. But in my humble opinion the – there was an urgency by the company itself to make this listing successful because they had irrevocables from ambassadors and Russian tycoons and whatever else and other influential families here in South Africa, so perhaps Mr Survé wanted to save his face and have the listing happen because he promised them a dream of building the next Ecommerce company in Africa. My next section, as I mentioned right at the beginning, that I will be responding to a couple of assertions made by Mr Seanie on what he presented to the Commission of Inquiry on the 30th of January. So in paragraph 19.

“The following was in paragraph 15 and 16 of his statement. I

quote:

‘In my experience at PIC I have had no control over the conclusion and recommendation sections of the equity reports that I compiled. The essential content of the conclusion and its investment recommendation sections are dictated by Sunil Varghese, Lebogang Molebatsi and Fidelis Madavo, who reviewed these reports. In many instances this lack of control extends to other sections of these reports such as valuation. Therefore the most important aspects of the report, valuation, conclusion

and recommendation, are dictated by my reviewers.

My lack of control over and final say on the content of the conclusion sections of the PMC equity reports that I compile particularly concern me in the case of Ayo, Vodacom Tanzania and Distell.”

My response:

10 “All invested professionals in the listed team are encouraged to express their professional opinion. Reports are usually compiled by the analyst, Assistant Portfolio Manager or Portfolio Manager. Before a report goes to a broader forum such as the listed equities team, PMC or IC it is reviewed by the Line Manager and/or his/her superiors to ensure that the recommendation is arrived at logically. The views are debated by a compiler and reviewer before it is passed on to a broader forum. I believe in giving room to my subordinates to express their own opinion. In my supervisory duty I have the freedom to debate with my colleagues why I differ with their opinion. Our views are debated and not dictated for all transactions. In the case of Ayo the report was largely in line with the request for due diligence prepared on the 13th of December 2017 and draft report prepared on the 5th of December 2017, which, in my view, was Mr Seanie’s opinion. Any revisions made were made in my capacity as the reviewer and exercising my professional judgement.”

In paragraph 20:

“The following was in paragraph 23 and 24 of his statement:

‘In June 2017 I recommended that the PIC not invest up to 1.15-billion in Vodacom Tanzania, VTZ, at Tanzanian shillings 850 per share because I valued the company at Tanzanian shillings 683 per share. This was agreed to by all my seniors and we signed a notification memo on 4th of July 2017 informing PMC of this. However, on Tuesday 18 July 2017 my Line Manager, the Portfolio Manager of Non-Consumer Industrials, Sunil Varghese, sent me an email stating:

10

We will be holding a special PMC on Monday or Tuesday next week in favour of VTZ. They have agreed to give us a PUT option of 680 shillings exercisable after three years and an underwriting fee of 1%. Hope you can amend the report on the weekend.”

My response:

“It is true that in the PMC of 04 July 2017 we decided to not partake in the IPO of Vodacom Tanzania due to a valuation gap between the IPO price of 850 Tanzanian shillings and the intrinsic value of Tanzanian shillings 683. We were then approached by the company, which asked if we would participate if they gave the PIC a PUT option and an underwriting fee of 1%. We negotiated a three-year PUT option that gave us downside protection of 20%

20

of the listing price protected for any decline in price from Tanzanian shillings 850 to Tanzanian shillings 680 and slightly below our intrinsic value of Tanzanian shillings 683. We then reviewed his original valuation and found it to be too punitive on a company that is a market leader in a fast-growing economy and requested a revision. The revised value, which whilst conservative, still indicated an intrinsic value of Tanzanian shillings 868 in a country with GDP growth of more than 5% in the short to medium term and inflation of 4%. This was taken back to committee and approved.”

May I pause here and give some colour there? So if you look at the DCF projections *et cetera* in the second version, which we can make it available to the evidence team, top line, growing in Tanzania, in his model, in the revised model, was growing at 6%, EBIT margin about 11.5%, capital intensity was high, about 15.5% or thereabouts, and then on that we used, I'm not too sure about that work, a weighted average cost of capital around 49% or 15% (*sic*) and that gave us that revised value, so we were comfortable with that. I mean, it was growing, you know, 6%, thereabout. Top line isn't too far stretching the truth, you know. Note, by his own admission in paragraph 24 the wording I used was 'hope you can amend the report'. This was meant as a request and not as a dictation. If Mr Seanie felt strongly about this matter he was welcome to discuss it further with me or my superiors and we would have debated it.

MR EMMANUEL LEDIGA: Okay, question. What was he supposed to amend? Which parts of the report was he supposed to amend?

MR SUNIL VARGHESE: Only the valuation and recommendation, right?

MR EMMANUEL LEDIGA: Yes?

MR SUNIL VARGHESE: Because 683 was his original.

MR EMMANUEL LEDIGA: H'm?

MR SUNIL VARGHESE: We firmed up the numbers *etcetera* and we got a new number, right?

MR EMMANUEL LEDIGA: H'm. H'm.

MR SUNIL VARGHESE: So that was to be revised and because of that, and now with the PUT option *etcetera* it became a more attractive one so therefore the recommendation would have been to invest.

MR EMMANUEL LEDIGA: H'm. H'm. And then changing the valuation to 868
10 Tanzanian shillings, was that something you guys came to, and why? I mean, is that, you know, from the original time to the new time? What triggered that?

MR SUNIL VARGHESE: Commissioner, if I may respond, is that originally we didn't have the PUT option or the sweetener of 1% of the underwriting fee, *etcetera*. And perhaps our strategy was also to tell the company the committee has not approved so and come back. And then we knew that the Regulator had imposed this listing on them and the retail market could not absorb all of that issue, so eventually we knew that they would come back to us, you know. So we were in a strong position to bargain and hence I think I touch on it on the next paragraph and I think it will get a bit more clearer, if I may? Okay.

20 "The following was in paragraph 25 of the statement:

'Given that PIC is a long-term investor and intended to hold the Vodacom Tanzania shares for a long period, more than three years. I did not believe that the PUT option provided adequate long-term downside protection for our clients. I communicated

this view to my Line Manager.”

My response:

10 “Counterparties do not ordinarily give downside protection for more than 12 months. We believe that we negotiated well and hard for our clients to get downside protection of 20% over 36 months. Note that share is currently trading at Tanzanian shillings 800. The terms of the option contract is a strike price of 850 Tanzanian shillings and a floor of Tanzanian shillings 680. In simple terms, the PIC is protected for the falling share price from Tanzanian shillings 850 to Tanzanian shillings 680. Whilst it is a long-term investment there is nothing that prevents us from divesting at any period in time if there is an adverse change in the investment case. Also, in hindsight, Vodacom Tanzania would have lost its licence if the listing was cancelled and this would have been detrimental to the holding company, which is the Vodacom Group in South Africa, where we were already shareholders.”

Then paragraph 22:

“The following was in paragraph 65 of his statement:

20 ‘Given that the Ayo investment had already been irrevocably entered into by Dr Dan signing the irrevocable subscription agreement my equity report review (?) with Sunil Varghese and Lebogang Molebatsi in accordance with what I deduct – deduced to be Dr Dan’s wishes dictated that the

conclusion and recommendation sections of the equity report reflect a favourable investment recommendation for Ayo. This report was presented to PMC on 20 December 2017.”

My response:

10 “Neither Mr Molebatsi nor I dictated to Mr Seanie what the conclusion should be. If I recall the events of the day, Mr Molebatsi spoke to Mr Seanie and myself and said that Dr Matjila has given us an instruction that we prepare a round robin solution or the PMC2 report for the Ayo transaction to be circulated by close of business on that day, the 14th of December 2017. This was duly done. Furthermore, the commission should kindly note that the conclusion and valuation did not significantly differ from the request for DD document that was submitted to Company Secretariat on the 13th of December 2017 or the first request for a due diligence document that he drafted on the 5th of December 2017.”

24:

“The following was in paragraph 83 of his statement:

20 ‘As a result, on 5th April 2018 I compiled and signed an equity report recommending that PIC invest in Sagarmatha at a price of R7,06 or less per share compared to a listing price of 39,62 per share set by Sagarmatha. I did this because I believed that Sagarmatha would not accept R7,06 and as a result

probably about its plans (?) to list on the JSE. I believe Sagarmatha was closest to the bottom end of my valuation range of R4,39 per share, if not less. Despite this, on the 6th of April 2018 the PMC recommended the transaction for approval to the investment committee, the PIC board subcommittee.”

My response:

10 “The above statement clarifies that we are not in the business of dictating to anyone what their professional judgement should be. We review and recommend changes if it make no – and if it makes no logical sense before passing on to the next signatory to a document. I told Mr Seanie that we should invest in the company only if the price was at or below our intrinsic value and the appraisal document must state as such. The decision of the PMC reflected the above decision, namely that the PIC invest in Sagarmatha only if the offer price was at or below our intrinsic value of R7,06.”

Paragraph 25:

20 “The following was on page 30 of the transcript of the hearings with Mr Seanie on day 6:

‘Mr Victor Seanie. Ja. So the Distell transaction, essentially that transaction, I can’t remember exactly who said it, but, you know, it was my view was that the price was too high, but then the pushback that I

got that, in the end, overall me (*sic*) was from those above me and those above me are the only – are only three people, essentially, that I received direct communication from on a day to day basis at work and those three are Fidelis Madavo, Lebogang Molebatsi and Sunil Varghese. Those are the three who are the reviewers and those are the three that essentially dictate the final valuation, recommendation and conclusion. So I can't remember exactly what happened with Distell because I think that was in early 2017. It is two years ago in terms of who I received the information from, but it could have been any one of them.”

My response:

“The Distell transaction sits in the consumer portfolio managed by Ms Matlakala Sekgobela. The GM, Mr Lebogang Molebatsi requested Mr Seanie, who is in my team, to appraise the opportunity. I agreed that he could be released to look at the opportunity. Mr Seanie prepared a document requesting permission to do DD, which I signed as reviewer.”

I mean, for me, I had no issues of signing that PMC1 document as the reviewer because I was his boss.

“The commission should kindly note that other than me signing the request for a DDS reviewer the entire DD process up to the reviewing of the appraisal document did not involve me. As far as

I recall the day to day interaction was between Mr Seanie, Mr Molebatsi and transaction advisors Tirisano Partners and Mr Madavo. Once the due diligence was done and an appraisal report was prepared Mr Seanie brought the report to me and asked me to review and sign. I declined to do so since I was not part of the due diligence process and it is not a non-consumer industrial stock and suggested that he take it to Ms Matlakala Sekgobela, the PM of Consumer Industrial, to review and sign. She also declined and my view is that she probably was not involved in that DD process. Mr Molebatsi and Mr Madavo then came to me and told me that I should review it since I had the expertise in the beverage and brewing sector. I duly reviewed the document in the interests of the team. Based on what was presented to me the forecast and valuation did not look unreasonable and signed the document and reviewed accordingly. The commission should kindly note that Mr Seanie did not disclose to me that he did not agree with the valuation before I reviewed the document or any point after that.”

Let me conclude my submission by stating that the PIC is an institution that I am proud to be associated with by performance, transformation agenda and market leadership in areas such as ESG, something that the nation should be proud of. I thank you, Commissioner, for the opportunity to present today.

ADV ISAAC MONNAHELA: Thank you, Commissioner. Mr Varghese, if I may ask you a question? It appears from your statement that when you dealt with the Ayo and Sagarmatha transactions you initially relied on a draft prelisting statement.

MR SUNIL VARGHESE: Yes.

ADV ISAAC MONNAHELA: Is that permissible?

MR SUNIL VARGHESE: Through you, Commissioner. Let me give some colour to how some of these IPOs happen. So ordinarily an investment bank will phone you and say ‘there is a company that we want to bring to the market. Would you be prepared to see them? If so, please sign an NDA’. Then, once we’ve signed the NDA, they bring across the company, in certain cases when they want us to be an anchor shareholder because they need some leverage that the PIC is investing. They do tend to share a draft PLS with us because of the NDA and then we rely on that draft PLS to prepare the submission for the PMC1, but by PMC2 the full PLS that was released by the JSE is used to verify that the numbers haven’t changed and the assumptions haven’t changed. So that is our duty, but we make sure that by PMC2 the final PLS has been released by the JSE, which in the case of Ayo it was released on the 13th of December 2017 to the market.

ADV ISAAC MONNAHELA: Okay, if I may ask another question? In terms of Section 6.1.1 of the JSE prelisting – of the JSE Listings Requirements:

“A prelisting statement must be formally approved by the JSE before publication. Such approval will only be given if the JSE considers that the information in the prelisting statement is complete.”

Is reliance on a draft prelisting statement not a violation of this Section?

MR SUNIL VARGHESE: Commissioner, my interpretation of what I heard now, it says it should not be published. They have not published it yet. They have given it to us in draft. We take it to our committee for permission to do due diligence on the draft PLS and an authorised and published PLS that the JSE has suggested is what we do the

final check on. If it's received a week earlier then much the better to make sure that what we present to PMC2 is using numbers and facts in the published PLS.

ADV ISAAC MONNAHELA: Thank you, Commissioner. I have no further questions.

MR EMMANUEL LEDIGA: One question. In your paragraphs, the last few paragraphs, you give different versions of what Mr Seanie say, you know. You give your own version. I'm trying... Just reading them I'm trying to find out what you are doing. Is that...? Are you rebutting? Are you clarifying, you know? What is the aim, yes.

MR SUNIL VARGHESE: Chair... Commissioner, I am just clarifying my point of view.

10 **MR EMMANUEL LEDIGA:** H'm. H'm.

MR SUNIL VARGHESE: That's all I'm doing.

MR EMMANUEL LEDIGA: H'm. Are you ... (intervention)

MR SUNIL VARGHESE: So, for example, if you look at the Distell one, he is not sure which of his superiors told him what to do *etcetera*.

MR EMMANUEL LEDIGA: H'm.

MR SUNIL VARGHESE: And I am making clear that, that as an example, that I had nothing to do with that transaction except as a reviewer.

MR EMMANUEL LEDIGA: Ja. Ja. Ja.

MR SUNIL VARGHESE: Ja. And I wouldn't have interacted with the conclusion,
20 *etcetera*, as stated in my submission.

MR EMMANUEL LEDIGA: Are there points where you are agreeing or disagreeing with him and all that?

MR SUNIL VARGHESE: On Vodacom Tanzania we were disagreeing on our points of view on the transaction only and, for example, I think in his submission he said in question time, when Commissioner Mr Lediga asked what should be the timeframe for

a PUT option and he said medium to long term because we are long-term investors, but the practical reality is that you don't get those long-term PUT options. You will get it for a price but then it becomes unattractive, you know. So a three-year at a 20% protection rate, in my opinion, is like, I think, if I had to quote my own words, it would be like the Vodacom probably thought they came to see Whitey Basson as Tiger Brands and left something on the table, you know.

MR EMMANUEL LEDIGA: Alright, so on that one you are basically saying the market practice is this?

MR SUNIL VARGHESE: H'm.

10 **MR EMMANUEL LEDIGA:** This is not... What he said was not right because the market practice is this way. Is this what you are telling us?

MR SUNIL VARGHESE: Yes, it's a clarification. It's a clarification, yes, that in practice it will be very difficult to get a PUT option for five years and beyond and it depends on the size of the company. For example, if you want to have a PUT option on Naspers for 5% I don't think this market will be able to afford that, you know.

MR EMMANUEL LEDIGA: And then on the issue about the debate of transactions what are saying there? Are you disagreeing? Are you ... (indistinct)

MR SUNIL VARGHESE: No, my... What I wanted to bring to you, Commissioner, is that the word 'dictate' is a liberal interpretation of the Oxford Dictionary definition of
20 'dictate, so what I wanted to clarify to the commission is we give – at least in my team I can safely say I give them the freedom they need to come to their decision. In fact, I can quote Mr Molebatsi telling me, 'you know, this khumbaya style of yours, you know, maybe we need to tighten a bit more, you know'.

MR EMMANUEL LEDIGA: Then you mentioned that you asked him to please amend, you emphasised the word 'please', if you can, hopefully you can amend. Would a

subordinate take that as a request or they would take it as an instruction?

MR SUNIL VARGHESE: No, I ... (intervention)

MR EMMANUEL LEDIGA: I just need to understand the culture at the PIC when you ask. Is that an asking or is that, you know, you're going to do this, I'm your boss, you know?

MR SUNIL VARGHESE: Well, Commissioner, I meant it generally, but I did bounce it off a legal friend of mine and he said the interpretation can be the other way as well, so I don't want to contest that. Ja.

MR EMMANUEL LEDIGA: Sort of he could have taken it as saying this is my boss, he
10 is saying I must do this?

MR SUNIL VARGHESE: Ja. Yes. Ja. But I just wanted to clarify what was in my mind when I sent that statement.

MR EMMANUEL LEDIGA: Yes. Yes, yes.

MR SUNIL VARGHESE: Yes.

MR EMMANUEL LEDIGA: Alright. Okay. Ja. Alright. So it's a mixture of clarifications, disagreements, there and there?

MR SUNIL VARGHESE: Yes. Yes.

MR EMMANUEL LEDIGA: And issues of interpretation?

MR SUNIL VARGHESE: Yes.

20 **MR EMMANUEL LEDIGA**: Alright. Thank you very much.

ADV ISAAC MONNAHELA: Do you know who is entitled to be paid a transaction fee?

MR SUNIL VARGHESE: Sorry, Commissioner, I didn't hear you.

ADV ISAAC MONNAHELA: Do you know who would be entitled to receive a transaction fee?

MR SUNIL VARGHESE: A transaction fee, Commissioner, is paid if we use an advisor

to a transaction. This, from what I have seen in certain contracts, ranges between 1 and 2%, and that is also market practice when investment banks bring, you know, listings to the JSE.

ADV ISAAC MONNAHELA: I guess what I would like to find out is whether if I am the sole shareholder in a particular business and I want to approach the PIC to help me out with some funds for my business would I be entitled to a transaction fee? I brought it, but it's my business.

MR SUNIL VARGHESE: I can't respond on that, Mr Commissioner. We will have to ask our Legal Department or somebody like that. I can't...

10 **ADV ISAAC MONNAHELA:** Fair enough.

MR SUNIL VARGHESE: Yes.

ADV ISAAC MONNAHELA: Fair enough. Alright, we're just going to try to ask this question differently on transaction fees.

MR SUNIL VARGHESE: Okay.

ADV ISAAC MONNAHELA: So when somebody comes and brings a transaction, the first point, who do they pay for those transaction costs? Or are they paid by the PIC? What is the general practice?

MR SUNIL VARGHESE: Commissioner, my response would be if they are appointed an advisor there is a legal contract signed and then, depending on the success rate, if
20 the transaction goes through then the size of the deal times the percentage quoted will be the transaction fee. And I can ... (intervention)

ADV ISAAC MONNAHELA: The percent of the transaction?

MR SUNIL VARGHESE: Ja.

ADV ISAAC MONNAHELA: The .75 or 2% of the transaction?

MR SUNIL VARGHESE: Ja. Yes.

ADV ISAAC MONNAHELA: Yes? Yes?

MR SUNIL VARGHESE: And from my experience, I have done transactions which are in our Africa portfolio. Because time and again we are pulled in to advise because we don't have an Africa Portfolio Manager at this time so the sector experts are pulled in. Say there is a consumer or non-consumer transaction, say in Kenya or somewhere else, then we are pulled in, as long as it's on the listed side. Now, what does the transactor do? He or she or that company brings that idea first to us, number one. Number two, they arrange all the due diligence logistics.

10 **ADV ISAAC MONNAHELA:** Just a bit. So I'm talking about when there is somebody, a sponsor.

MR SUNIL VARGHESE: H'm.

ADV ISAAC MONNAHELA: Say they want to do an IP or so.

MR SUNIL VARGHESE: Yes.

ADV ISAAC MONNAHELA: Or something. They come to the PIC and they have a transaction advisor already because that person has structured that transaction and that.

MR SUNIL VARGHESE: H'm. Ja.

ADV ISAAC MONNAHELA: Who pays that particular person? I'm not speaking about the one where a transaction advisor comes to you guys.

20 **MR SUNIL VARGHESE:** Yes.

ADV ISAAC MONNAHELA: I'm talking about where a sponsor comes to you.

MR SUNIL VARGHESE: Okay. Okay.

ADV ISAAC MONNAHELA: Yes.

MR SUNIL VARGHESE: I get you, Commissioner.

ADV ISAAC MONNAHELA: Yes. Yes.

MR SUNIL VARGHESE: So that, that fee is paid by the company, the company that is raising the funds. So of... Let's take the case of Ayo as an example. 4.3-billion, thereabouts, was raised and then they paid, I don't know the exact amount but they paid – Ayo paid those fees to PSG and – is it Three Loss Capital (?) or something like that? Ja, they paid.

ADV ISAAC MONNAHELA: And does it happen that the PIC ends up paying those transaction fees?

MR SUNIL VARGHESE: No. Commissioner, no. The shares that we subscribe for, it had a consideration, right?

10 **ADV ISAAC MONNAHELA:** H'm.

MR SUNIL VARGHESE: In this case 4.2-billion.

ADV ISAAC MONNAHELA: H'm.

MR SUNIL VARGHESE: So part of those funds that were raised would be used to pay these advisors.

ADV ISAAC MONNAHELA: Yes. They will... Yes. Yes. Yes. Ja, but ...
(intervention)

MR SUNIL VARGHESE: Because remember that transaction fee also includes getting approval from the JSE, putting all those thick legal documents together, marketing it, *etcetera*, so it's part of the cost of raising the funds.

20 **ADV ISAAC MONNAHELA:** So typically, you are saying, it is market practice that when somebody raises funds out of the proceeds of the funds transaction fees will be deducted from them?

MR SUNIL VARGHESE: Yes. Yes. Yes. Because I ... (intervention)

ADV ISAAC MONNAHELA: Ja. So, in effect, if the funder is only the PIC it follows that the PIC will pay the funds, but if there were other funders they will pay them on a

pro rata basis. Is that correct?

MR SUNIL VARGHESE: That is correct, Commissioner.

ADV ISAAC MONNAHELA: Ja. That would be the way ... (intervention)

MR SUNIL VARGHESE: Because... Commissioner, because that 4.2-billion, if it was, let's say, raised from a broad base, 200 people for example, then the funds raised would still be 4.2 and out of that now it's sitting in a (Pty) Ltd company, right, and that (Pty) Ltd company pays the transaction fees.

ADV ISAAC MONNAHELA: So it is then technically is that those fees are paid through market practice?

10 **MR SUNIL VARGHESE**: Yes. Because ... (intervention)

ADV ISAAC MONNAHELA: Would you say that?

MR SUNIL VARGHESE: Yes, we have a submission which we can give to the evidence leaders which we put in front of the board, or IC, and we go through and the actual percentage they paid was lower than what Dischem paid on its IPO and some other company raised on its IPO.

ADV ISAAC MONNAHELA: Yes.

MR SUNIL VARGHESE: So it was quite market related.

ADV ISAAC MONNAHELA: Okay. Can you also just talk about the other one which you were talking about on the African stuff when somebody – an advisor brings a
20 transaction? How do the fees work there?

MR SUNIL VARGHESE: Around the same percentage terms and it's negotiated. Usually it will be negotiated slightly down. It can be ranging from 1%, 2%. Perhaps if the size of the deal is bigger we have more leverage to push it below the 1% level. But they do deliver a lot of value for that advisory. Not only did they bring the transaction, they would make sure that other specialist advisors... Let's say it's a deal in the

electricity sector and we might have an opinion how these assets, you know, from a technical point of view... So they will go and appoint those technical advisors, *etcetera*, then they would also do a model for us and bring it to us and make sure that the subscription goes through smoothly at the end of the process. If we have conditions precedent like having a board seat *etcetera* they will negotiate on our behalf to the target company. So they do add a lot of value.

ADV ISAAC MONNAHELA: These people, do you – do they bring a transaction to you? Or do you look for a company and say you want to invest in Ecobank or something and then you go and seek advisors? How does the process work?

10 **MR SUNIL VARGHESE:** My understanding, it is they bring us an idea and it something they thought about with their own connections and there – it could be that there is an existing shareholder who wants to exit and they were trying to find a buyer for that exit and thence they approached the PIC because we have an interest to expand our Africa Portfolio, *etcetera*. So it's a meeting of minds more than anything else.

ADV ISAAC MONNAHELA: And do you pay them on funds raised? Or do you pay them on a straight-line basis?

MR SUNIL VARGHESE: No, it would be based... What I have seen, the general practice, it may differ, but what I have seen is depending on the value of the
20 transaction, so if a 5% or 10% of a company is, I'm just using a number, \$100-million and the transaction fee is 1% then that advisor is entitled to that \$1-million transaction fee.

CHAIRPERSON: Yes, thank you very much.

MR SUNIL VARGHESE: Thank you, Commissioner.

CHAIRPERSON: Mr Varghese, thank you for your time. It's much appreciated.

MR SUNIL VARGHESE: Thank you.

ADV ISAAC MONNAHELA: Thank you, Mr Commissioner. Mr Commissioner, may I just ask for a five-minute break? Our next witness is ... (indistinct), but I will just like to ask for a five-minute break.

CHAIRPERSON: Let's make it 10, just to be sure.

ADV ISAAC MONNAHELA: Thank you, Commissioner.

CHAIRPERSON: We'll adjourn for 10 minutes.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **ADV ISAAC MONNAHELA:** Thank you, Mr Commissioner. Mr Commissioner, our next witness is Mr Tatenda Makuti. He is ready to take the oath.

CHAIRPERSON: Do you have any objection to taking the oath?

MR TATENDA MAKUTI: No objection.

CHAIRPERSON: No objection. Do you swear the evidence you are about to give, will be the truth, the whole truth, nothing but the truth? Raise your righthand and say, so help me God.

MR TATENDA MAKUTI: So, help me God.

TATENDA MAKUTI: (d.s.s.)

CHAIRPERSON: Thank you. You may be seated.

20 **MR TATENDA MAKUTI:** Thank you.

ADV ISAAC MONNAHELA: Mr Makuti, you have read a statement which you are about to present to the commission. Can I request you to start at paragraph 1 of your statement?

MR TATENDA MAKUTI: Thank you, Commissioner.

"I am an adult male employed by the PIC as a legal advisor in the

listed investment space. The facts contained herein are within my personal knowledge and are both true and correct save where the contexts indicates otherwise. I was admitted as an attorney in 2010 and I obtained a master's degree in Corporate Law at the University of Wits in 2011, where I majored in Common Law, Competition Law, Banking and Finance Law. I worked for the FNB as a legal advisor from 2010 to 2014. I joined then FSB, which is now FSCA, as a specialised analyst in the Capital Markets Department. Where my duties included the supervision of exchanges, central security depositories and clearing houses, amongst others. I was also involved in the reviewing of the JSE listing requirements, JSE rules and strategy rules. Further than that, I was also involved in the drafting of the OTC derivative regulations and associated notices such as margin requirements..."

I move on to paragraph 5 to talk about my PIC experience.

ADV ISAAC MONNAHELA: Can I just ask you? What is this clearing houses? What does that mean?

MR TATENDA MAKUTI: Clearing houses... So, after... Okay, how can I put it? Because I had prepared a presentation for you to explain to you.

CHAIRPERSON: Does it explain further?

MR TATENDA MAKUTI: Yes, I prepared a document for you. So, I will move on to paragraph 5 where I talk about my PIC experience.

"I joined PIC in April 2017 and from the time I joined, I was assisting on ad hoc projects like, reviewing and updating broker

...[indistinct] in line with the Financial Markets Act, amongst others. If memory serves well, I only had an opportunity to be involved in a transaction in 2018, if not late 2017. That is the Sagarmatha transaction. As I was told that there was no transaction for me to work on...”

CHAIRPERSON: If I may ask? What were you doing in the meantime, before you were given a transaction to work on?

MR TATENDA MAKUTI: Mainly I would look at the broker ...[indistinct] and trying to align them with the financial – the current Financial Markets Act and the National
10 Regulations like MIFI to just mention a few. Although, I typed a lot about that later on, Mr Commissioner. Moving on to the Sagarmatha transaction, Commissioner. The email with the instruction came from my colleague, Sasa Fargo sometime in January 2018 and I was provided with a draft prelisting statement of Sagarmatha to formulate a legal report there. I ...[intervenes].

ADV ISAAC MONNAHELA: Sorry, just for the record. Sasa Fargo is a legal advisor or was?

MR TATENDA MAKUTI: Sasa Fargo at the time was a legal advisor, but now she is my senior manager. Paragraph 8:

20 “I raised my concerns with the transaction team, especially Victor and my executive head of legal. At the time, Mr Ernest Nesane on relying of – on the draft prelisting statement, as I knew from my experience from the Security Regulation Environment, that this would be contrary to the JSE Listing Requirements. More specifically, Section 6.11 which provides that a prelisting statement must be formally approved by the JSE before

publication...”

I think I must also pause to explain that in terms of the Listing Requirements, publication also means disassembling the document or giving to anybody. Such approval will only be given if the JSE considers that the information in the prelisting statement is complete. You understand the importance of this as I explain later on the importance of the prelisting statement.

On paragraph 9:

10 “I was instructed to provide a legal report with the valuable information and on my legal report to PMC, I raised a couple of issues which included conflicts of interest as I recall two of the issuers directors were also directors of the issuers promoter which was still 3 Laws Capital or ...[indistinct] capital. I also provided my ...[intervenes]...”

CHAIRPERSON: Can you come again there? You were are going too fast. You are going too fast.

20 **MR TATENDA MAKUTI:** My apologies, Commissioner. I said I raised a couple of issues which included conflict of interest. That is in my legal report that I have submitted to the PMC. Every time or the information, which was before us, indicated that two of the ...[indistinct] directors which is Sagarmatha, were also directors of the ...[intervenes] promoters which is 3 Laws Capital. So, that was one of the issues I raised in my legal report.

Paragraph 10. So, this was a topical issue with the regulator. That is the Financial Services Board. Then, especially the capital markets, deputy registrar.

“As we were busy with lessons in exchanges and also this was in Section 62 of the Financial Markets Act, which stipulates that a

market infrastructure must, where applicable, take necessary steps to avoid, eliminate, disclose. In other words, manage possible conflicts of interest between his regulator function and his commercial services...”

So, just for the record. A market infrastructure includes the exchanges, the clearing houses, CSD’s and CCP’s. I also give my advocate that information he wanted with regards to clearing house, for the record. Paragraph 11.

CHAIRPERSON: I hope he does not forget to pass it onto us.

ADV ISAAC MONNAHELA: I will make sure he will pass it on, Mr Commissioner.

10 **MR TATENDA MAKUTI:** Paragraph 11:

“As a result, I did not recommend the transaction, but requested more information before I could provide a proper recommendation as to whether we can support the transaction or not. Again, I provided the legal report to the evidence leader. The legal report to PMC and the ISIS submission...”

CHAIRPERSON: I just want to check something. Your attachments are named A, B, C but here you are talking about annexures. So, I am not sure.

MR TATENDA MAKUTI: That is correct. This ...[intervenes] was just supposed to rearrange the annexures, but I think the evidence leader can assist with that.

20 **CHAIRPERSON:** Okay.

ADV ISAAC MONNAHELA: Mr Commissioner, the witness has just gave me copies of the annexures. So, I will make sure that we make them available to the commission.

CHAIRPERSON: Or the Annexure 3 will be Annexure 3.

MR TATENDA MAKUTI: Yes, that is correct.

CHAIRPERSON: And four will be four for...

MR TATENDA MAKUTI: For the record purposes, Commissioner.

CHAIRPERSON: A will be A. B will B. Also, there is missing annexures, basically.

ADV ISAAC MONNAHELA: If I may assist? It looks like the A, B and C were used by those who printed the documents. They were not used by the witness.

CHAIRPERSON: What are they supposed to be? What is A supposed to be in according to the statement.

ADV ISAAC MONNAHELA: The statement does not refer to Annexures A, B, C. It refers to Annexure 1, 2, 3 and so on.

10 **CHAIRPERSON:** That is precisely what I am trying to establish. Is A supposed to be one?

ADV ISAAC MONNAHELA: No, Commissioner. We have the annexures that are properly numbered. We will make them available to the commission.

CHAIRPERSON: So, shall we ignore A, B and C?

ADV ISAAC MONNAHELA: Yes.

MR TATENDA MAKUTI: Okay. On paragraph 12.

20 “I was instructed by my executive head to amend my legal report for investment committee purposes and he advised me that legal must not be a hindrance but we should rather put condition of precedence and recommend that the transaction proceed. That information again, you will see it on amended IC submission...”

As I was ...[intervenes].

CHAIRPERSON: Sorry, sorry. So, was that in keeping with the market, you know, protocols? I mean, to say, we can put it as conditions precedent. It would not be a big issue, *ja*?

MR TATENDA MAKUTI: Thank you, Commissioner.

CHAIRPERSON: *Ja*, would it be?

MR TATENDA MAKUTI: To me that time, I think the next paragraph is listed to what you are asking, because I was new in this area. All along, I was not receiving transactions. So, I would not have known the market practice at that time. So, I think, let me just for the record put it that, as I was new to this area, I duly complied. Although, the issues raised were not altered.

The IC meeting resolved, amongst others, that the matter be referred back to PMC to make a decision on whether to invest or not. I do not recall attending the further PMC which dealt with the issue, but I understand that the transaction did not go
10 through.

I think I will then move on to the next paragraph which talks about the importance of this prelisting statement. The prelisting statement provides important information of issuer which a potential investor will rely on in the decision making process on whether to invest or not.

MS GILL MARCUS: Sorry, can I just ask a question on that? Your point here is, the issuer or a potential investor will rely on. The question there is that, is the only information that a potential investor has about the company and therefore it should be – it will and can rely on? Because this is basically what an investor takes a decision on whether to participate or not.

20 **MR TATENDA MAKUTI:** Yes, that is correct.

MS GILL MARCUS: Okay.

MR TATENDA MAKUTI: It is therefore imperative that the prelisting statement be approved by the exchange before anyone can rely on its contents. Paragraph 16 talks about the listing. What is listing? So, listing means, the admission of securities of an incumbent to try it on a stock exchange. Once securities are listed on a stock

exchange, the company has to comply with the requirements of that exchange.

CHAIRPERSON: Question. So, are you saying that, say the PIC cannot take a draft PLC and take it to PMC?

MR TATENDA MAKUTI: I am concerned with that, because the information that is there, no one can actually rely on it. It is still a draft and as you will see later on, I think it is a prelisting 6.5. You realise that the approved prelisting statements must also be signed by directors to affirm that the correct – the information contained therein, you know, is correct and they can be held accountable for it.

CHAIRPERSON: So, you do not think it is prudent to actually use a draft PL list?

10 **MR TATENDA MAKUTI:** That is correct.

CHAIRPERSON: H'm.

MR TATENDA MAKUTI: That is correct. I do not think it is. From my security ...[indistinct] and experience, ja. Because no one will be held accountable for the reliance of that draft.

CHAIRPERSON: Yes. So, it must not be touched. You are saying, it should not be touched. The promoter must be told to prepare a complete one and submit that. Is that what you are saying?

MR TATENDA MAKUTI: That is my submission, because as you will see, that is also what the prelisting statements require, is that, it must be approved before you can
20 publish or disseminate to other people.

CHAIRPERSON: Yes, yes.

MR TATENDA MAKUTI: For obvious reasons.

CHAIRPERSON: Before you can send it to other parties. Ja. Oh, yes. I get you. I get it. Okay.

MR TATENDA MAKUTI: That is correct, Commissioner. I was on paragraph 17. What

are listing requirements? So, these are conditions that a firm issuing a security, such as stocks, shares, bonds must meet before the security is officially listed on an exchange for public trading.

Also, I tried to attach the process of what that is followed at the JSE when someone wants to issue and I also provided to the lead investigator. And what is important, however, shows the process that first of all, the prelisting statement must be approved before you can actually disseminate it or publish to the public. I think that is the most important thing to come out of it.

CHAIRPERSON: And so, it needs to be approved by the JSE?

10 **MR TATENDA MAKUTI:** That is correct, Commissioner.

CHAIRPERSON: Ja. Before it must be in-house and up until it is approved it cannot be disseminated to anyone. Is that what you are saying?

MR TATENDA MAKUTI: That is what I am saying and that is what 6.11 also says, Commissioner.

CHAIRPERSON: Yes, yes.

MR TATENDA MAKUTI: I will move on to touch on the relationship between FSCA and JSE. The FSCA is responsible for the supervision for the conduct of financial institutions, including market infrastructure. I have attached a document with a brief description of this entities. The JSE acts as a frontline regulator and regulate
20 authorised users which are the brokers and issuers, which are your listed companies and it also reports to FSCA as the lead regulator.

So, in essence, the JSE operates what it stems itself regulator organisation and its powers are derived from the financial market sector. Paragraph 22, also talk about that relationship. These powers are limited to matters that are dealt within the listing requirements and when provisions of the listing requirement are contravened, it

has the power to take appropriate action.

JSE has regulatory authority over the following the regulated parties. That is issues of securities listed on the JSE, including new applicants for listing, your directors, your company secretaries, your sponsors and designated advisors.

Commissioner, with your permission. Now I move to the next paragraph which deals with the legal issues. So, it is potential breach of the Financial Markets Act and Listing requirements.

Paragraph 23:

10 “By forwarding the drafting prelisting statements to a potential investor before it is approved by the JSE, Sagarmatha may have breached the JSE listing requirements, contained in Section 6 which provides, amongst others.

6.5. The prelisting statement must by signed by every director of the applicant or issuer or by his agent or attorney with a copy of the authoritative any such agent or attorney.

6.11. The prelisting statements must be formally approved by the JSE before publication. Such approval will only be given if the JSE considers that the information in the prelisting statement is correct.

20 Moving onto paragraph 24:

“Section 11.1(g) of the Financial Markets Act *inter alia* describes the penalty or the fines which must be met on an issues who breaches the listing requirements. It provides, amongst others, that an exchange to the extent applicable to the exchange in question, make listing requirements which prescribes for any contravention or a failure to comply with listing

requirements, any one or more of the following penalties, that may be imposed by the exchange or by a person to whom the exchange as delegated as disciplinary functions.

1. A reprimand.
2. A fine not exceeding R7.5 million to be adjusted by the raise or annually to reflect the Consumer Price Index, as published by the Statistics South Africa.
3. Disqualification. In the case of a natural person from holding the office of director or officer of a listed company for any period of time.
4. Suspension or determination of listing.
5. Any other penalty that is appropriate in this circumstances...”

10

Paragraph 25:

“It is also my submission that there was a potential breach of regulations under the FSB or FSCA. If you like, especially, Section 402(f) of the Financial Markets Act by Sagarmatha. In that, they acted as if shares were already listed at the time when the draft prelisting statement was forward to PIC. Section 402(f) of the FMA provides entirely that a person who is not in issue of listed securities may not purport an issue of listed securities as the guest maybe or behave in a manner or use a name or a description which suggests, signifies or implies that there is some connection between that person and an exchange, where in fact, no such connection exists...”

20

So, as you can see, at that time when the draft was forwarded to PIC, Sagarmatha was not yet listed.

CHAIRPERSON: Ja, just a question. So, the draft, had it gone through the JSE?

MR TATENDA MAKUTI: I think I also touched on that, but I believe that it was submitted to the JSE, because Sagarmatha at the time that what they call conditional listing. But allow me, with your permission to touch on that later on.

Paragraph 27:

10 “At the stage when the draft prelisting statements was forwarded to PIC, Sagarmatha was not listed. So, Sagarmatha’s failure to list. According to the draft PLS, Sagarmatha was conditionally listed by the JSE and they had to comply with certain requirements which included that Sagarmatha was to satisfy the outstanding listing requirements regarding the spread of public shareholders and a minimum prescription of 3 billion, in terms of the private plus bin(?). If the conditions fail, the private plus bin shall not be of any force or effect and no person shall have a claim whatsoever against the issuer and its advisors, their respective affiliates or any other person, as a result of the failure of the conditions. It is also my believe that Sagarmatha failed to meet these requirements identified above, which then made the JSE to cancel their conditional listing. However, the JSE may
20 need to provide the commission with the actual reason or reasons why Sagarmatha was not successful...”

CHAIRPERSON: Ja, I have a question. So, when you say it was a conditional listing. What do you mean? I mean, do you mean there was a share price? It was trading or what? It was – what was it?

MR TATENDA MAKUTI: Okay. When conditional listing, according to the information

that I had. The JSE – when you provide them with certain information, they will look at that at that information. Then they say: We are happy. However, we are not going to confirm your listing until you provide certain conditions. Until you meet certain conditions which will be outstanding. Like, that spread of shareholding and the raise for the 3 billion.

CHAIRPERSON: But that stock is not trading on the market. It is a conditional approval, is it not?

MR TATENDA MAKUTI: Yes. So, that stock is not yet ...[intervenes].

CHAIRPERSON: It is not...

10 **MR TATENDA MAKUTI:** It is not... Ja.

CHAIRPERSON: Yes, okay.

MR TATENDA MAKUTI: So, the issue is not yet listed, in other words.

CHAIRPERSON: Ja. okay.

MR TATENDA MAKUTI: Paragraph 31. It talks about the sale of shares agreement:

“When I finished with my draft legal report, I was informed of the existence of a share purchase agreement between GPF and Sagarmatha concluded in 2017. This agreement was ...[indistinct] before my involvement in the Sagarmatha transaction...”

I have also provided the late with the document.

20 “I was also worried about this document and I wanted to understand the history of the legal agreement from my executive head and I proposed a meeting with him and Sunil Varghese from the Transaction Team. However, the meeting never materialised as the executive head ignored me. I also wanted to confirm if the attorneys shown on the legal document, who were appointed,

followed our normal procurement processes...”

Paragraph 33:

“We have since established that TG Attorneys, whose name appears on the agreement, actually acted for Sagarmatha and not PIC. We still do not know if the document was reviewed by external legal counsel, as is normally the process, before the agreement was signed...”

ADV ISAAC MONNAHELA: If I may ask? Do you know whose signed this agreement on behalf of the GPF?

10 **MR TATENDA MAKUTI:** It was Doctor Dan Matjila. As shown on the agreement. Paragraph 34. The heading is, FMA breach and CEO meeting.

“After the Sagarmatha transaction the drought continued where I did not receive transaction and this eventually prompted me to seek an audience with the CEO, where in essence, I wanted to highlight the Lakuna that I had identified it PIC with regards to Security Regulations Compliance. I was also act by the information I had received from my colleagues at FSB that PIC had breached Sections 24 and 25 of the Financial Markets Act with the Disto(?) transaction...”

20 **ADV ISAAC MONNAHELA:** Okay, if I may ask again. You say that the drought continued after the Sagarmatha transaction and according to paragraph 1 of your statement, you are a legal advisor in the Listed Investment Space. Do you have colleagues in that space?

MR TATENDA MAKUTI: Thank you, Chair. Yes, I have a colleague. My manager. Sassa Fargo and that time we also had a graduate at the time and I want to believe that most of the work or – was just going to them, at the time.

ADV ISAAC MONNAHELA: Were you given any explanation or reason why you had

approached the FSB because they have done an off market transaction in line with Section 24(c).

“Section 25 essentially imposes a duty on the buyer and seller of listed securities, to report that transaction to the registrar if the transaction was with regards to Section 24(c) and (d) the Financial Markets Act. From the litho I gathered about the Disto transaction, PIC hold an off market transaction as provided by Section 24 of the FMA. However, they did not adhere to Board Notice 233 of 2015...”

10 I also attached it.

“Although, I cannot confirm really if this is what transpired, as I was not privy to what happened with the transaction. My concern was that no one had run the transaction passed me, so that I could provide views or needs, due to my security regulation experience. It also made sense for PIC to use an internal resource to consider these issues, as I had already assisted in the reviewing of mandates with international asset managers, Robico(?) to align with MIFI2 requirements, amongst others...”

CHAIRPERSON: Question. Let us go back a bit. So, off market transaction. The PIC did that. Do they not report to the JSE? I mean, just explain the offer market first for the house and then... You know, where does the PIC go after that particular
20 transaction?

MR TATENDA MAKUTI: Okay. Thank you, Chair. So, generally all listed securities are traded at the JSE Exchange. So, Section 24 is more of an exception to the general rule which provides certain categories of individuals who wants to use that off market road, maybe because of ...[indistinct] and, you know, different things.

And also, it excludes what is termed as financial institutions and that is also

defined in the Financial Markets Act. It include the pension funds, amongst others. So, it also makes sense for them. If they meet the requirements of Section 24(c) to us that route, but, however, Section 25 requires them to report to the registrar at the FSB. Now FSCA. And the JSE, as well.

CHAIRPERSON: What are you saying? So, are you saying to fund managers can trade a share outside of the JSE?

MR TATENDA MAKUTI: That is correct.

CHAIRPERSON: Is that what you are saying? So, they can trade a share, you know, outside of the JSE, but you are saying then, they must report it?

10 **MR TATENDA MAKUTI:** That is correct.

CHAIRPERSON: Okay. Where must they report it?

MR TATENDA MAKUTI: They must report to the registrar at FSB. The Capital Markets Department and also at the JSE.

CHAIRPERSON: Okay.

MR TATENDA MAKUTI: Paragraph 39 I was sort of giving meat to what is MiFID, MiFID is ropes, markets in financial instruments directive and is intended to, amongst others improve competition and investor outcomes in financial markets. This is important legislation as some of our assets are managed externally.

20 Paragraph 40, I also knew our compliance department as it currently stands would not have been aware of security regulation aspects as they focus more on FAIS and other associated issues. PIC needed someone who could interpret amongst others the following, OTC derivative regulations and margin requirements when we transact or when we use our ISDA agreements which PIC enters with counterparties for over the counter derivatives which are not centrally cleared. Number two, JSE rules to ensure that our brokers are in compliance with the JSE rules. The JSE listing requirements to

ensure our investee companies or issuers listed on the JSE are also complying with the relevant requirements.

Number four, CSD rules to ensure that the central securities depository participants we use currently are compliant and to what extent they embrace Blockchain Technologies which will eventually see us cutting costs in the clearing and settlement environment. Number five, our externally managed funds and if it's in compliance with international regulations of course I've already talked about MiFID too. Number six whether we should have a central counterpart for all our OTC derivatives to cut the capital and margin costs associated with ... (intervention)

10 **MR EMMANUEL LEDIGA:** Question, so there's a bit of a concern because you are saying the PIC normally concentrate on FAIS, the FAIS Act and all that and there are sort of what one would call dealing issues you know that are not take care of, I mean how, I cannot understand how that can happen, surely people write exams and these issues are put forward generally or people should know about listings requirements and all that, I mean how does this not get attended to?

MR TATENDA MAKUTI: I think maybe just to answer you, to give you a short answer I think me I realise that well maybe people may have written their board exams, their FAIS exams and all that but when you talk about security regulations aspects it was given little attention and that actually that will now answer the issue you are raising that
20 how can people ignore listings requirements or not adhere to them. Ja so as it currently stands that's the position.

MR EMMANUEL LEDIGA: Would that area where would it fall into for a legal department or would it be in the compliance or broadly where would it sit in a typical asset manager?

MR TATENDA MAKUTI: In a typical asset manager it sits with the compliance section.

MR EMMANUEL LEDIGA: With the compliance?

MR TATENDA MAKUTI: Yes it does sit in a typical asset management environment.

MR EMMANUEL LEDIGA: And then you say the compliance is really focused on FAIS it doesn't look at the FMA and all that?

MR TATENDA MAKUTI: From the experiences and the evidence ja they don't and if I may just add with your permission Chair of course of 2016, that's when I got to know about PIC inasmuch as when the same complex, at that time the executives or the members from PIC they came to FSB they wanted also an interpretation of section 24, I think they wanted to do a Vodacom transaction if memory serves well, they wanted to
10 do it over-the-counter and I had an opportunity to address them when I was given the go-ahead by my executive head back then when I was at FSB. So from that time until I joined I just, caused me to realise that that area has not been given much attention.

MR EMMANUEL LEDIGA: Let me ask you a question differently, say do PIC employees do they get maybe training on legal sort of requirements of their jobs and all that, does it happen?

MR TATENDA MAKUTI: I think our compliance department will be able to answer to that because I'm ... (intervention)

MR EMMANUEL LEDIGA: But have you seen it I mean personally sort of have you seen training on legal aspects of people's jobs?

20 **MR TATENDA MAKUTI:** Well I recall attending a CIC, CIS I think training yes for collective investment schemes training. So as legal we also call the attorneys to come and help us if there're any changes in the regulations but in conjunction with our compliance guys. So I'm not sure whether it's done from the legal side or it was being requested by the compliance team.

MR EMMANUEL LEDIGA: Okay thanks.

CHAIRPERSON: Sorry I might have missed it if you did explain, what is OTC derivatives?

MR TATENDA MAKUTI: Okay so most of the derivatives that are traded on the exchange are the ones that they call listed derivatives so OTC derivatives are those derivatives that are, can be traded between two houses or two banks without necessarily going the route of an exchange or relying on the exchange rules. However it's being now regulations that have been drafted to deal with that area because it was identified as one of the problems in the financial markets crisis.

CHAIRPERSON: So OTC means over-the-counter?

10 **MR TATENDA MAKUTI:** Thank you, yes it means over-the-counter, thank you Chair.

CHAIRPERSON: I was helped by my colleague.

MR EMMANUEL LEDIGA: Just to follow up, just to talk about something I mentioned aren't there policies in the PIC you know policies, operating policies that one could have seen that sort of regulate how staff can trade stocks and all that you know and then insider trading and other things, there must be something around there?

MR TATENDA MAKUTI: There is a policy or with regards to insider trading and staff you know that mandates how staff can do that but it ends there. So now we're talking about the securities regulations aspect the Financial Markets Act what is contained therein and looking at the CSD and that is trade you know some of the advantages that
20 are happening out there you know when you engage your CSDP you know because the clearing and settlement environment as you know is changing daily and a prudent person within and any asset manager should be worried about those changes, your Brexit and also Blockchain how will it shape the environment going forward to cut the costs.

MR EMMANUEL LEDIGA: Get it, thanks.

MR TATENDA MAKUTI: Thank you Chair. Paragraph 41, the CEO agreed to meet me and he considered my presentation, I've also given my presentation to the evidence leader, which amongst others highlight the issues above and he advised that he would consult with his executives. I believe this was overtaken by events as I never heard anything from him. Paragraph 42 we just talk about the legal process you know that is followed in our department. So ja indeed there's a legal process that has been laid out however I don't know if it's followed all the way as the transaction team at times bring instructions directly to legal advisors instead of going via the executive head.

The legal process as I've got to understand it from the few transactions I
10 worked on includes the following; number one, a transaction is assigned to a legal advisor during a DD phase. Then number two, a legal advisor will then draft a legal report highlighting the risks identified and providing recommendations. Number three, if PMC approved the transaction then legal will move to appoint external legal counsel to draft legal agreements. Number four, where legal agreements are executed and before disbursement the legal advisor must confirm that the condition precedents have been met. Number five, if the legal advisor is happy then he will issue a letter confirming that OCP's have been met and the disbursement fairs will then kick in. With that I thank you Chair.

MS GILL MARCUS: I would like, can you just confirm or otherwise that you are still
20 employed in the same position in the PIC as at today?

MR TATENDA MAKUTI: That is correct, I'm still a legal advisor.

MS GILL MARCUS: Okay and are you still having no transactions to look at?

MR TATENDA MAKUTI: It's a new year and nothing much has happened this year.

ADV ISAAC MONNAHELA: Mr Makuti if I may ask you and I'm taking you back to that agreement that was signed by Dr Matjila, do you know what that agreement is about?

MR TATENDA MAKUTI: Now that you ask that question I was requested about two weeks ago to go through the agreement and just give a summary of what it is about. I've also prepared a summary for the Commission just to give them the highlights of that agreement as well.

CHAIRPERSON: (Inaudible – microphone not switched on).

MR TATENDA MAKUTI: Chair?

CHAIRPERSON: Is it amongst the annexures?

MR TATENDA MAKUTI: I don't think so but I have it as annexures here, maybe let me just double-check. Thank you Chair the summary I'll actually hand it over to the
10 evidence leader.

MS GILL MARCUS: Perhaps, sorry can you just refer us to the paragraph in the submission that you've made so far that you'll be talking to?

MR TATENDA MAKUTI: Sorry may ...

CHAIRPERSON: (Inaudible) ... or is it 33, I think it's 33.

MS GILL MARCUS: That's the share purchase agreement between Sagarmatha and the GEPF paragraph 31.

MR TATENDA MAKUTI: Yes that is correct Chair.

ADV ISAAC MONNAHELA: You said you were called to a meeting, who called you to the meeting?

20 **MR TATENDA MAKUTI:** The Acting CEO Matshepo called various members, myself, my manager Sasha, I think and guys from the unlisted side because she wanted also to understand the history of the agreement I think it was also new to her. So we, I rather think she wanted to know if the agreement was still valid and all those kind of things so I was then tasked by my manager just to provide a summary of the issues and whether we can cancel the agreement.

ADV ISAAC MONNAHELA: If I may ask you once again are you aware that PIC internal processes were complied with before the agreement was signed or not?

MR TATENDA MAKUTI: Definitely I'm not really sure, that's something that we were also trying to figure out when we contacted TGR Attorneys just to check if you know, especially on the part of legal, whether we followed our process before signing off the agreement.

ADV ISAAC MONNAHELA: Do you know when was the agreement signed by Dr Matjila?

MR TATENDA MAKUTI: Sometime in December 2017, I think 13 December I speak
10 under correction.

ADV ISAAC MONNAHELA: Thank you Commissioner those will be my questions to the witness.

ADV JANNIE LUBBE SC: Mr Commission can I just ask a question? To my surprise I've learnt that once legal has completed the drafting of the contracts, all the legal documents, risk is nowhere involved is that correct?

MR TATENDA MAKUTI: Ja in the drafting of the legal agreements risk is not involved it's mainly legal that deals with those legal issues if you like and mainly will be dealing with external counsel and the drafting of documents.

MR EMMANUEL LEDIGA: But that would be, I mean drafting of transactions
20 documents comes after everything has been done so that would be the proper way isn't it?

MR TATENDA MAKUTI: I would imagine, I don't want to say that that's the correct thing because given my lack of transactions if you like to give me much experience but I'd imagine so because when PMC approves everything that means risk is happy and other assurance providers are happy as well.

MR EMMANUEL LEDIGA: Ja this is like the final stage to put everything in a legal form and all that isn't it?

MR TATENDA MAKUTI: That is correct Chair.

MR EMMANUEL LEDIGA: Okay.

ADV JANNIE LUBBE SC: Mr Commissioner the purpose of my question was it is an essential part of the risk process after the legal documents are finalised for risk to make sure that issues raised by them are incorporated in the legal agreements and the reason why I'm asking this question is we will bring evidence to the Commission where it happened that legal agreements contained clauses that at the end nobody knows
10 where it comes from. So that's the purpose of my question.

CHAIRPERSON: Understood. I just want to make sure the copy of your statement that I have is unsigned. Did you sign the original?

MR TATENDA MAKUTI: Yes I have a signed, I signed the statement Commissioner.

CHAIRPERSON: And that is with the evidence leaders?

MR TATENDA MAKUTI: That is correct.

CHAIRPERSON: Right and this statement you've made it freely and voluntarily?

MR TATENDA MAKUTI: That is correct Commissioner.

CHAIRPERSON: Yes is there nothing that you were instructed by the legal team to include that you didn't want to include?

20 **MR TATENDA MAKUTI:** No, no Commissioner.

MR EMMANUEL LEDIGA: And you are fine, everything is fine, the work is now fine or what?

MR TATENDA MAKUTI: You mean with the statement or with my work experience Commissioner?

MR EMMANUEL LEDIGA: With the work, you said the work was dry and all that?

MR TATENDA MAKUTI: Oh yes I can say that beginning of I think October or so, ja I had a couple of transactions that were now coming my way as well.

MR EMMANUEL LEDIGA: I see and there's no DC, you're not under any DC and all that?

MR TATENDA MAKUTI: Not that I know of Commissioner.

MR EMMANUEL LEDIGA: Alright, okay thank you very much, thank you.

CHAIRPERSON: Any problems with bonuses?

MR TATENDA MAKUTI: I think it's just a PIC employee story at the moment so I can just add to those voices as well that you know the bonuses, especially the calculation
10 one would not know exactly how it's done.

CHAIRPERSON: It's not transparent?

MR TATENDA MAKUTI: That is correct Commissioner.

CHAIRPERSON: Thank you very much, thanks for your time. I have told other witnesses at the end that it's possible that they might be called back to come and clear up certain things, I think I need to tell you that as well although I doubt that you'll be recalled okay.

MR TATENDA MAKUTI: Thank you.

CHAIRPERSON: Thank you for your time, it's very much appreciated.

MR TATENDA MAKUTI: Thank you Commissioner.

20 **CHAIRPERSON:** Thank you.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner that's the business for the day.

CHAIRPERSON: We will then adjourn until 10 o'clock tomorrow.

ADV JANNIE LUBBE SC: Thank you.

INQUIRY ADJOURNS UNTIL 19 MARCH 2019