GENERAL REPORT

Absa Group Limited
Absa Bank Limited

FirstRand Bank Holdings Limited
FirstRand Bank Limited

Investec Limited
Investec Bank Limited

Nedcor Limited
Nedbank Limited

Standard Bank Group Limited
Standard Bank of South Africa Limited

General Report by Adv J F Myburgh SC in terms of the Banks Act, 94 of 1990.

Date: 30 April 2003

List of abbreviations

Banks Act	The Banks Act, no 94 of 1990
the regulations	Regulations relating to Banks published in Government Notice R112 on 08/11/2000
Companies Act	Companies Act, no 61 of 1973
King II	King Report on Corporate Governance for South Africa, March 2002
NACD Report on Board Evaluation	Report of the National Association of Corporate Directors (“NACD”) Blue Ribbon Commission on Board Evaluation: Improving Director Effectiveness
the banks	The banks subject to the review in terms of the Banks Act
NACD Report on Director Professionalism	Report of the NACD Blue Ribbon Commission on Director Professionalism
the Code	The Code of Corporate Practices and Conduct incorporated in King II
NYSE	New York Stock Exchange
SEC	Securities Exchange Commission
the Listing Standards Committee	The NYSE Corporate Accountability and Listing Standards Committee
the Listing Standards Report	The Report of the New York Stock Exchange Corporate Accountability and Listing Standards Committee
BRT Principles of Corporate Governance	A White Paper from The Business Roundtable, May 2002, on Principles of Corporate Governance
OCC	Office of the Comptroller of the Currency

The Director's Book	The Director's Book: The Role of the National Bank Director.
HKMA	Hong Kong Monetary Authority
the HKMA Manual	Supervisory Policy Manual on Corporate Governance of Locally Incorporated Authorised Institutions
Absa Group	Absa Group Limited, Absa Bank Limited and its subsidiaries
FirstRand Holdings	FirstRand Bank Holdings Limited
Nedcor	Nedcor Limited
Investec	Investec Limited
Standard Bank Group	Standard Bank Group Limited

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GENERAL REPORT

Section A:

The establishment of the review

1 In the first week of August 2002, the Registrar of Banks directed the five major banking groups (‘the groups”) in South Africa to seek an independent review of certain corporate governance aspects of their business. The groups were directed, in terms of the Banks Act, no 94 of 1990 (“the Banks Act”) to furnish the Office of the Registrar of Banks with a report by me. The groups were informed that I would be supported in my responsibilities by a team from the Bank Supervision Department (“BSD”) of the South African Reserve Bank (“SARB”), who would also form part of the review process in terms of the Banks Act. The team comprised the following persons: Adv Hermann Krull (AGM and Divisional Head: Other Banks: BSD); Adv Jabu Kuzwayo (AGM: Legal Section: BSD) and Ms Judy Teixeira (analyst: BSD). The five major banking groups, subject to the review, are:

- Absa Group Limited, Absa Bank Limited and its subsidiaries (“Absa Group”);

- FirstRand Bank Holdings Limited ("FirstRand Holdings");
- Nedcor Limited ("Nedcor");
- Investec Limited ("Investec");
- Standard Bank Group Ltd ("Standard Bank Group").

2 The Terms of Reference of the review are the following:

"1. Purpose of the review

The purpose of the review is to investigate compliance with corporate governance best practices as laid down, for example, in the Banks Act, the Regulations Relating to Banks ("the regulations") and the recommendations of the King Committee on Corporate Governance ("King II") of March 2002.

In particular, and without limiting the generality of the aforementioned statement, the purpose of the review is to establish to what extent an adequate and effective process of corporate governance within the controlling company, the bank, and its subsidiaries has been established and maintained, and to what extent the overall effectiveness of the process is monitored by the board of directors.

2. Scope of the review

Although not limited to, the scope will be to establish, describe and express an opinion on the adequacy of, the following areas:

(a) The structure, composition role and functions of the board of directors.
(b) The role and functions of the risk management committee.
(c) The role and functions of the audit committee.
(d) The role and functions of the remuneration committee.
(e) The role of the chairperson of the board of directors.
(f) The role of the chief executive officer.
(g) Director selection, career path and development.
(h) The independence of directors.
(i) Leadership.
(j) Systems of control.
(k) The decision-making process and decision-making capability of the board.
(l) The reports from management to the board.
(m) Monitoring by the board of the activities reported to the board.
(n) Remuneration, including share incentives, of executive and non-executive directors.
(o) Incentive schemes for staff.
(p) The status, role and scope of the internal audit function.
(q) The role and function of the external auditors.

(r) Disclosure to stakeholders.
(s) Related party lending, conflicts of interests and related matters."

3 In addition to looking at the Banks Act and the regulations, this report refers to a set of amendments to the Banks Act dated September 2002 which are proposed by the SARB ("the proposed amendments"). Subsequent to the publication of King II in March 2002, two significant developments in corporate governance occurred, one in the United States of America and the other in the United Kingdom. Following on the collapse of Enron, the chairperson of the Securities Exchange Commission ("SEC") asked the New York Stock Exchange ("NYSE") to review its corporate governance listing standards. The NYSE then appointed a high-powered committee called the New York Stock Exchange Corporate Accountability and Listing Standards Committee ("the Listing Standards Committee") to review the NYSE's current listing standards, along with recent proposals for reform, with the goal of enhancing the accountability, integrity and transparency of the NYSE's listed companies. On 6 June 2002 that committee produced a report ("the Listing Standards Report"). In April 2002, the Chancellor of the Exchequer and the Secretary of State for Trade and Industry commissioned Derek Higgs to write a report on the role and effectiveness of non-executive-directors. On 20 January 2003, the report was published ("the Higgs' report"). Although the United Kingdom did

not have Enron-type corporate scandals, "…the Government had little choice but to undertake some financial tweaking of its own, once America started to clean up Wall Street and company boardrooms….Britain caught the reform bug because once the world's most important capital market started overhauling its financial practices, rivals have to follow those 'best practices'…Even though Britain has not suffered Enron-type scandals recently, major companies, notably Marconi and Cable and Wireless, have seen their share prices collapse, raising questions about proper financial reporting."[1]

Since its release, the Higgs' report has raised a storm of protest from UK businessmen. Some of the more choice words are those of Mr Donny Gordon, chairman of Liberty International, who described the bulk of the Higgs' recommendations as "unrealistic, impractical and likely to be seriously detrimental if fully adopted." Mr Gordon said that Higgs' proposed ban on chief executives becoming chairmen was "palpably absurd and unhelpful".[2] Sir Stanley Kalms, former chairman of Dixons, the electrical retailer, attacked the Higgs' report as "ludicrous" and as "a new high in lows".[3]

Because references to the Higgs' report are made throughout this Report, it is important to appreciate that the recommendations of Higgs

[1] "No Enrons here, thank you", The Guardian, 30 January 2003.
[2] "Malls boss mauls Higgs", The Guardian, 13 February 2003.
[3] "Kalms says that Higgs' report is ludicrous", Financial Times, 5 March 2003.

which generated the most heat – and which are *not* endorsed in this Report – are that:

- a senior independent director ("SID") be identified;
- the SID should be available to shareholders;
- the SID should chair meetings between non-executive directors where the chairman does not attend;
- the nomination committee should be chaired by an independent non-executive director, not the chairman of the board;
- non-executive directors should serve for 6 years rather than 9 years;
- senior non-executive directors should hold regular meetings with shareholders.

On 10 March 2003, the results of a survey conducted by the Confederation of British Industry ("CBI") were published. The survey showed that 82% of FTSE 100 chairpersons feel that if the SID's extra powers were enforced, their roles as chairmen would be undermined and their boards divided.[4]

The response of the UK Government was said to be that it would not be bullied by special interest groups.[5] Gordon Brown, the Chancellor of the Exchequer, said that the Government would press ahead with the Higgs

[4] "Corporate safeguards go back to the board", The Guardian, 10 March 2003; "Leave some room for the chairs", The Guardian, 10 March 2003, "Top chairmen condemn Higgs", Timesonline, 10 March 2003; "Higgs overlooks investor behaviour", Financial Times, 10 March 2003.
[5] "Ministers set to snub pleas on non-executives", Financial Times, 26 February 2003.

reforms.[6] Patricia Hewitt, the Trade and Industry Secretary, is reported to be unlikely to give way over barring chairmen from heading the nominations committee. The Government is also unsympathetic to pleas to allow non-executive directors to serve a maximum of 9, rather than 6, years.[7]

4 In a press release issued at the time that this review was commissioned, it was said that the SARB and the banking groups had agreed to undertake a review to assess compliance with corporate governance best practices. The purpose of the review was to establish to what extent an adequate and effective process of corporate governance within each group had been established and maintained, and to what extent the overall effectiveness of the process could be improved and enhanced by the board of directors and the regulatory authorities. It was stressed that the review was undertaken with the view to measuring to what extent the South African banking industry complied with international standards and norms as regards good corporate governance and best practice, and to ensure that the South African banking industry's credibility as a competitor in the global market was maintained.

[6] "Ministers support Higgs", Timesonline, 11 March 2003.
[7] "FTSE 100 chiefs oppose Higgs reforms", Financial Times, 10 March 2003.

5 While the United States experienced the dramatic failures of Enron and WorldCom, South Africa experienced a string of bank failures in the past decade or so, culminating in 2002 with the seventh largest bank, Saambou Bank Limited ("Saambou"), being placed under curatorship in terms of the Banks Act. Following on Saambou's collapse, there was a run on BoE Bank Limited ("BoE"), the sixth largest bank, which led to BoE being acquired by Nedcor. In his testimony in 2001 before the Commission of Inquiry into Regal Bank, the Registrar of Banks testified that approximately a bank a year had failed in the past decade due to corporate governance failures. A list of banks whose failures can be attributed to a lack of corporate governance is attached hereto marked "A".

6 The Registrar of Banks subsequently appointed Mr J Martin and Ms N Drutman of KPMG to prepare the reports on remuneration, including share incentives, of executive and non-executive directors and key staff. They have prepared reports which will be submitted to the Registrar of Banks independently of this report.

The review process

7 Before the interviews referred to later were held, the following preliminary steps were taken:

- the five banking groups were requested to provide various documents, including minutes of meetings for the period 1 January 2000 to date;
- the documents and minutes of meetings were analysed;
- Mr Phillip Armstrong, Managing Director, ENF Corporate Governance Advisory Services (Pty) Ltd and the principal convenor and main editor of King II, was requested to make a presentation to the review team. He provided the team with documents on corporate governance, many of which are referred to in this report;
- a meeting was held with members of the BSD in order to solicit the BSD's views on corporate governance at the five banking groups;
- on 4 September 2002 a memorandum on the applicable corporate governance principles and a list of questions were sent to the company secretary of each banking group for distribution amongst those who would be interviewed. The memorandum on corporate governance is not attached hereto as an annexure as its

contents, suitably expanded upon, are included in this report. The list of questions is attached hereto marked “B”. It will be seen, for example, that the executive and non-executive directors were required to consider no less than 94 questions, arising from the relevant corporate governance principles.

8 In order to avoid spending time on investigating in detail the *form* of corporate governance in each banking group, the company secretary of each group was requested to prepare a statement on corporate governance. The statements are attached to this report as annexures “F1” to “F5”.

9 During the period 9 September to 25 November 2002 interviews were conducted at the five banking groups with:

- all the directors of all the banks;
- the head of compliance;
- the head of internal audit;
- the head of risk management;
- both sets of external auditors.

In January and February 2003, follow-up interviews were conducted. The lists of interviews conducted, totalling 133, are attached hereto marked “C1” to “C5”. The company secretaries were later requested to furnish statements on their particular role in the corporate governance of the bank concerned.

10

10.1 In order to enable the review team, the SARB and the banks to learn from other people's mistakes, case studies were undertaken, all focussing on corporate governance failures. The case studies based on information in the public domain are:

- Enron - annexure "D1" hereto;
- WorldCom - annexure "D2" hereto;
- Regal Bank - annexure "D3" hereto.

What follows is a summary of some of the major points which emerge from those case studies.

10.2 On 2 December 2001, Enron Corporation, then the seventh largest publicly traded corporation in the United States, declared bankruptcy, at that stage the largest in American history. Enron employed 19 000 employees in more than 40 countries. According to Enron, it had a market capitalisation of $36 billion and assets of over $65 billion, of which $7.3 billion were current assets and $288 million was cash. Between 1996 and 2000, Enron reported an increase in sales from $13.3 billion to $100.8 billion.

(In 2001, the GDP of South Africa was $110 billion, when converted at an average rate of R8.60 to the US dollar).

10.3 According to one estimate, Enron lost $2 billion on broadband, $2 billion on water, $2 billion on a Brazilian utility and $1 billion on an electricity plant in India. Enron's balance sheets overstated its income by as much as $600 million during the 5 years preceding its bankruptcy. Within 2 months after filing for bankruptcy, Enron's assets plummeted to $24.7 billion, down by more than $40 billion. Enron's share price dropped from $90.56 in August 2000 to 67 cents on 10 January 2002.

10.4 The Permanent Subcommittee on Investigations ("PSI") of the Committee on Governmental Affairs, United States Senate, conducted an investigation into Enron and subsequently issued a report. The PSI made the following findings on the role of the board of directors in the collapse of Enron:-

(1) The Enron board of directors failed to safeguard Enron shareholders and contributed to the collapse of the seventh largest public company in the United States, by allowing Enron to engage in high-risk accounting, inappropriate conflict of interest transactions, extensive undisclosed off-the-books activities, and excessive executive compensation. The board witnessed numerous indications

of questionable practices by Enron management over several years, but chose to ignore them to the detriment of Enron shareholders, employees and business associates.

(2) The Enron board of directors knowingly allowed Enron's use of high-risk accounting practices.

(3) Despite clear conflicts of interest, the Enron board of directors approved an unprecedented arrangement allowing Enron's chief financial officer to establish and operate the LJM private equity funds which transacted business with Enron and profited at Enron's expense. The board exercised inadequate oversight of LJM transactions and compensation controls, and failed to protect Enron shareholders from unfair dealing.

(4) The Enron board of directors knowingly allowed Enron to conduct billions of dollars in off-the-books activity to make its financial condition appear better than it was, and failed to ensure adequate public disclosure of material off-the-books liabilities that contributed to Enron's collapse.

(5) The Enron board of directors approved excessive compensation for company executives, failed to monitor the accumulative cash drain caused by Enron's 2000 annual bonus and performance unit plans, and failed to

monitor or halt abuse by board chairman and chief executive officer Kenneth Lay of a company financed-multi million dollar, personal credit line.

(6) The independence of the Enron board of directors was compromised by financial ties between the company and certain board members. The board also failed to ensure the independence of the company's auditor, allowing Andersen to provide internal audit and consulting services while serving as Enron's outside auditor.[8]

10.5 On 21 July 2002, <u>WorldCom</u> filed for protection under chapter 11 of the bankruptcy code. In the bankruptcy petition it listed assets of \$107 billion as at 31 March 2002, against debts of \$41 billion. The petition for chapter 11 protection had been preceded by the disclosure on 27 June 2002 that company officials had misstated accounting figures in the sum of R3.8 billion, a figure later revised upwards to \$7.1 billion, and which could reach \$9 billion. According to a statement issued by the company, monies that were actually expenses were booked as capital, in contravention of generally accepted accounting practices ("GAAP"). The company apparently discovered the problems during a routine audit.

[8] The Case Study on Enron, Annexure "D1" hereto.

10.6 WorldCom claimed a profit of $1.4 billion in 2001 and $130 million in profit for the first quarter of 2002. Proper accounting would have resulted in a reduced cash flow of $6.3 billion in 2001 and $1.4 billion for the first quarter of 2002, forcing WorldCom to disclose a net loss in 2001 and the first quarter of 2002. WorldCom shares worth $64.50 per share in June 1999 are now worthless.

10.7 On 26 June 2002 the SEC filed a civil action complaint in the New York Federal District Court. The SEC alleged in its complaint that:

- from at least the first quarter of 2001 through to the first quarter of 2002, WorldCom defrauded its investors;
- in a scheme directed and approved by its senior management, WorldCom disguised its true operating performance by using undisclosed and improper accounting that materially overstated its income before tax and minority interests by approximately $3 billion 2001 and $797 million during the first quarter of 2002;
- by improperly transferring certain costs to its capital accounts, WorldCom falsely portrayed itself as a profitable business during the period in question;
- by this transfer, WorldCom violated GAAP;

- this improper transfer was not disclosed to investors in a timely fashion, and misled investors about WorldCom's reported earnings;
- this improper accounting was intended to manipulate WorldCom's earnings during the period in question to keep them in line with estimates by Wall Street analysts;
- by engaging in this conduct, WorldCom violated the anti-fraud and reporting provisions of the federal security laws.

10.8 Mr Sidgmore, who became CEO of WorldCom in April 2002, blamed past management and Arthur Andersen, the external auditors, for WorldComs plight. It has emerged that WorldCom's executives repeatedly brushed off warnings about shady accounting practices. It was reported that some seized documents revealed a strange pattern of people inside the corporation discovering bad practices, trying to do something about it and ultimately failing until recently. It took a woman "of demeanour but exceptional guts and sense", Cynthia Cooper, to explode the bubble that was WorldCom, when she informed its board that the company had covered up $3.8 billion in losses through phoney bookkeeping. Former SEC chairman, Arthur Levitt, who left in August 2001, conceded that the system of financial reporting was seriously flawed. He said the problem was that the accountants were compromised by the fact that they felt and acted as if their loyalties belonged to management rather than to the stakeholders.[9]

10.9 The enquiry into the collapse of Regal Bank made the following findings:

(1) Levenstein was not a fit and proper person to be an executive director, CEO and chairman of Holdings and the bank in that:

- he did not exercise the utmost good faith and integrity in his dealings with and on behalf of the bank;
- he did not exercise reasonable skill and care;
- he did not always act in the best interests of the bank, depositors and shareholders;
- he permitted a conflict of interest to arise between his interests and those of the bank, its depositors and shareholders;
- his management of the bank was incompetent and amateurish;
- he acted dishonestly and fraudulently;
- he confused corporate governance with thuggery.

[9] Case study on WorldCom, Annexure "D2" hereto.

In summary he lacked three of the qualities of a director required of a bank in terms of s1A(a) of the Banks Act, namely, probity, competence and soundness of judgment. He ran the bank with little sophistication. He had no idea of the concept of corporate governance and, even if he did have, he was indifferent to it. Levenstein carried on the business of the bank and Regal Holdings in a reckless manner.

(2) The directors, executive and non-executive of Regal Holdings and Regal Bank acted in breach of the Banks Act and the Regulations relating to Banks[10] in that they failed:

- to act exclusively in the best interests and for the benefit of Regal Holdings, Regal Bank and its depositors;
- to perform their functions with diligence and care and with such a degree of competence as could reasonably be expected from a person with their knowledge and experience;
- to ensure that the risks that were of necessity to be taken by the bank were managed in a prudent manner.

[10] Regulations published on 28 April 1996 in the Government Gazette 17115 ("the regulations").

(3) The directors acted in breach of the standards of corporate governance recommended by the King Report in that they failed:

- to exercise the utmost good faith, honesty and integrity in all their dealings with or on behalf of Regal Holdings and the bank;
- to exercise the care and skill which can reasonably be expected of persons of their expertise;
- to act in the best interests of Holdings and the bank;
- to ensure that the bank's strategies were collectively agreed by the board;
- to ensure that the boards of Holdings and the bank monitored the performance of management against budgets or business plans or industry norms.

(4) The directors failed to ensure that the audit committee operated in accordance with the Banks Act and the King Report and were knowingly party to the carrying on of business in a reckless manner.

(5) The non-executive directors were either not aware of their duties and responsibilities or were aware and acted in conflict with their duties and responsibilities. They were not prepared to do what Mark Springett described as

"facing the bully in the schoolyard". The non-executive directors might just as well have been playing bowls on a hot Sunday afternoon for all the energy they put into the discharge of their duties.[11]

11 At my request, Mr John Martin of KPMG prepared an analysis of performance trends of the big five banks from 1992 to 2001. A copy of the analysis is attached hereto marked "E".

The value of the process

12 The process of this enquiry in terms of the Banks Act was designed, not only to enable the reports to be written, but to enhance the awareness of corporate governance at the banks by:

- furnishing each director with the memorandum on the applicable corporate governance principles;
- requiring each director to apply his or her mind to the questions contained in Annexure "B" hereto;
- debating those principles in the interviews;
- by asking each director pertinently what his or her view was on what comprised effective corporate governance;

[11] Case study on Regal bank, Annexure "D3" hereto.

- debating possible failures of corporate governance that might have occurred in the experience of the directors.

13 The SARB's concerns about corporate governance at the five banking groups were put to the directors in order to enable them to deal with the concerns and to express *their* concerns. For example, during the course of the interviews, a number of directors expressed concerns that the present emphasis on corporate governance:

- would lead to a "tick-the-box" mentality which over-emphasised the *form* rather than the *substance* of corporate governance;
- would have the potential to inhibit the entrepreneurial spirit of a bank;
- could result in overregulation. Some directors complained that bank board meetings were increasingly dominated by compliance issues rather than focussing, as they should, on the business of the bank.

<u>Substance over form</u>

14 Any anxiety that form will trump substance deserves consideration. King II, p 142, in dealing with compliance and enforcement, quoted

with approval the statement by The Business Roundtable[12] that "…The substance of good corporate governance is more important than its form; adoption of a set of rules or principles or of any particular practice or policy is not a substitute for, and does not itself assure, good corporate governance." In its submissions to the Listing Standards Committee, the Business Roundtable made the same point in a different way, by stating: "Good governance is far more than a 'check-the-box' list of minimum board and management policies and duties. Even the most thoughtful and well-drafted policies and procedures are destined to fail if directors and management are not committed to enforcing them in practice. A good corporate governance structure is a working system for principled goal-setting, effective decision-making and appropriate monitoring of compliance and performance." In a White Paper from the Economist Intelligence Unit,[13] the author quotes two opinions, one by Peter Forstmoser, chairperson of Swiss Re and the other by Alistair Johnston, who is managing partner of Global Markets at KPMG International. Peter Forstmoser commented: "In America in particular there is too much emphasis on form. You hear stories about board members attending meetings flanked by their attorney and everyone having a very tick-box mentality. If you have that approach, you can't have an open discussion to find a solution to problems." Mr Johnson is quoted as saying: "We need to empower boards, the audit committee and the

[12] The Business Roundtable is an association in the United States of CEO's of leading corporations with a combined workforce of more than 10 million employees and $3.5 trillion in revenues.
[13] "Corporate Governance, the New Strategic Imperative" 2002 p 6

accounting profession, so whatever the detailed rules may say, they can assert that substance matters more than form".

15 An assertion that substance should take precedence over form, is a statement of the obvious. No-one contends that the banks should create the requisite committees, appoint the minimum number of non-executive directors, formulate mandates for the board and committees and so on, and then ignore the substance of corporate governance. Clearly, the banks must comply with the substance of corporate governance.

16 Nevertheless, it seems to me, having said that, that it is required of the banks to comply with the form of corporate governance required by the Banks Act, the regulations and King II (insofar as is relevant). The regulator (whose duty it is to regulate and supervise the business of banks), the shareholders, depositors and other stakeholders, will seek the assurance that, as a minimum, the banks meet corporate governance standards in regard to form. Any bank that does not comply with the form of corporate governance runs the risk that it will suffer reputational damage if it does not do so.

Entrepreneurial spirit

17 King II points out that it must constantly be borne in mind that entrepreneurship and enterprise are still among the important factors that drive business. The key challenge for good corporate citizenship is to seek an appropriate balance between enterprise (performance) and constraints (conformance) taking into account the expectations of shareowners for reasonable capital growth and the responsibility concerning the interests of other stakeholders of the company. Conforming to corporate governance standards results in constraints on management. Boards have to balance this with performance for financial success and the sustainability of the company's business.[14] The Economist Intelligence Unit, in dealing with the power of information, states:

"Tight governance can protect firms and investors from fraud, error and undue risk, but it can also threaten agility and innovation. Yet regulators, the media and the public are uncomfortable with the notion that accounting and governance are a legitimate area of discretion. The solution to the dilemma lies in transparency about a company's governance policies.

As long as key players within the company understand and approve governance policies, and as long as investors and shareholders are then given clear and accessible information about those policies, the market can be

[14] §'s 7 and 8 p 8 of King II.

allowed to do the rest, assigning an appropriate risk premium to companies that have too few independent directors or an overly aggressive compensation policy, or cutting the costs of capital for companies that adhere to conservative accounting policies."

In §1.17 p13 of his report, Derek Higgs states: "Good corporate governance must be an aid to productivity, not an impediment. It is an integral part of ensuring successful corporate performance, but of course only a part. It remains the case that successful entrepreneurs and strong management, held properly to account and supported by effective boards, drive wealth creation."

18 It is within the power of a board to ensure that compliance does not inhibit the board itself and management in being innovative and demonstrating entrepreneurial flair. The banks must learn to do business within the confines of the constraints, in the same way, to use a simple analogy, that one can enjoy driving a car using a safety belt.

Overregulation

19 The concern that the present post-Enron climate will lead to overregulation is legitimate. It is a natural reaction of a regulator increasingly to use its power to regulate in an endeavour to avoid the collapse of banks. The White Paper from the Economist Intelligence Unit revealed concern among executives that hasty regulation and overly

strict internal procedures might impair their ability to run their business effectively. An investment analyst is quoted as saying: "…Working on the something-must-be-done principle, the temptation for regulators is to come up with a new, stricter set of rules that won't be understood and indeed may even obfuscate things and fail to win respect."[15] In the Listing Standards Report, the Listing Standards Committee strongly urges policy makers to avoid imposing additional liability on directors.[16] In his covering letter to the Chancellor and the Secretary of State, Derek Higgs said: "The brittleness and rigidity of legislation cannot dictate the behaviour, or foster the trust, I believe is fundamental to the effective unitary board and to superior corporate performance."

20 The SARB, too, must avoid overregulation. A danger of overregulation, in addition to those dangers mentioned earlier, is that potential suitably qualified non-executive directors will be discouraged from making themselves available to serve on bank boards. The Banks Act, the regulations, and the proposed amendments appear to me to go far enough. I share the view expressed in the Listing Standards Report that the most crucial element of effective corporate governance is the service of competent, ethical people as directors of public companies. If directors enjoying those qualities are deterred from serving on bank

[15] p 4
[16] p 4 of Listing Report

boards because their responsibilities become too onerous, it does not matter how many committees or structures are put in place by way of regulation.

The value of corporate governance

21 Although due weight must be given to the concerns of bank directors about over-emphasis on corporate governance and overregulation, it is important to stress the value of corporate governance to a bank (or company). King II, after stating that South Africa may arguably offer investment returns comparable with some of the best in the world, even after accounting for political, currency and other risks, proposes that South Africa must visibly demonstrate impeccable governance standards in all sectors of commercial activity not only in principle, but also in practice, if it is to remain a destination of choice for emerging market global investors. King II quotes Arthur Levitt, the former chairperson of the US Securities and Exchange Commission ("SEC") who said: "If a country does not have a reputation for strong corporate governance practices, capital will flow elsewhere."

22 Derek Higgs expresses the view that corporate governance shortcomings have contributed to falling markets. A combination of the two has in

some cases been the trigger for corporate collapse. Corporate malpractice, lapses of governance and value destruction – all these raise questions about the role and effectiveness of non-executive directors.[17]

23 King II refers to a survey published in June 2000 by McKinsey and Company in which it was found that more than 84% of the more than 200 global institutional investors, together representing more than USD 3 trillion in assets, indicated a willingness to pay a premium for the shares of a well-governed company over one considered poorly governed but with a comparable financial record.

24 In an article in the Bank Director Magazine, "Putting a value on Corporate Governance", the authors provide three reasons why investors will pay a premium for good governance:

- some believe that a company with good governance will perform better over time, leading to a higher stock price;
- others see good governance as a means of reducing risk , as they believe it decreases the likelihood of bad things happening to a company; or
- when bad things do happen, they expect well-governed companies to rebound more quickly.

[17] Higgs' report on corporate governance §1.3 p11.

The importance of corporate governance

25 In a speech delivered on 17 March 2000 on "The importance of corporate governance in banks", David Carse, Deputy Chief Executive, Hong Kong Monetary Authority ("HKMA") said: "I do however believe that sound corporate governance is particularly important for banks. The rapid changes brought about by globalisation, deregulation and technological advances are increasing the risks in banking systems. Moreover, unlike other companies, most of the funds used by banks to conduct their business belong to their creditors, in particular to their depositors. Linked to this is the fact that the failure of a bank affects not only its own stakeholders, but may have a systemic impact on the stability of other banks. All the more reason therefore to try to ensure that banks are properly managed."

Section B: The board of directors of a bank

Statutory requirements

26 No South African bank may conduct the business of a bank unless it is a public company.[18] Every public company must have at least two

[18] s11(1) read with the definition of "banks" in s1 of the Banks Act.

directors.[19] The Banks Act draws a distinction between employees and non-employees of a bank or controlling company[20] in that not more than 49% of the directors of a bank or controlling company shall be employees of the bank or controlling company[21] and at least two of the members of the board of directors of a bank shall be employees of the bank.[22] It follows that a bank board must have at least five directors.

The size and composition of a bank board

27 The Banks Act and the regulations do not prescribe the maximum size of a bank board nor does King II recommend any particular size.

28 On the one hand, the board must be large enough to accommodate:

- executive directors and non-executive directors;
- a sufficient number of non-executive directors to serve on the ever growing number of board committees;
- the requirement that a company should consider the demographics of the board.

On the other hand, the board should not be so large that its size renders it ineffective; that its meetings are unnecessarily protracted; and that

[19]s208(1) of the Companies Act.
[20]A "controlling company" is defined in s1 of the Banks Act as a public company registered in terms of the Banks Act as a controlling company in respect of bank.
[21]s60(3)
[22] except when the Registrar grants consent to a deviation: reg 40(5).

directors are rendered passive by their anxiety not to unduly protract the meeting by asking questions or raising concerns.

29 The one way to limit the size of a bank board is to restrict the number of executive directors. It is unnecessary for the proper functioning of a board that there should be more than a few, say three or four, members of management on the board.

30 A survey conducted by Deutsche Bank Securities Inc of the 73 major South African companies found that the number of members on the boards ranged from 5 to 30, with the average board size being 12 members: "companies with too many board members are perceived poorly given the collegial approach that large boards tend to adopt."[23] Purely co-incidentally, the report of the Belgian Commission on Corporate Governance took the view that in most cases, the board of directors should not consist of more than 12 members. The experience of many members of The Business Roundtable suggests that smaller boards are often more cohesive and work more effectively than larger boards.[24] One survey showed that the average board of a bank in the United States consists of 16 directors.[25]

[23] Deutsche Bank Securities Inc, Global Corporate Governance, 19 August 2002, p12.
[24] A White Paper from The Business Roundtable, May 2002, p A-38.
[25] Bank Director Magazine for fourth Quarter 2002: "Scorecards on Governance: Are Banks Up to Par?"

31 An analysis of information provided by the banks reveals that the composition of the boards is the following:

Bank	Holding Company				Bank			
	EDS	NEDS (non-indepen-dent	Indepen-dent NEDS	Total	EDS	NEDS(non-indepen -dent	Indepen-dent NEDS	Total
Absa	3	2	11	16	9	3	11	23
FirstRand	6	2	5	13	6	2	5	13
Investec	4	3	6	13	11	5	8	24
Nedcor	9	7	9	25	9	7	9	25
Standard Bank	3	1	10	14	3	1	10	14

The average size of the holding company boards is 16. The average size of the bank boards is 19.

32 It is recommended that:-

- the board of a bank should consist of no more than about 16 members;
- the number of executive directors on the board of a bank should be restricted to no more than about four;
- the majority of non-executive directors should be independent directors with immediate effect;
- the banks should aim to have a majority of its directors to be independent directors within the next five years.

Executive and non-executive directors of a bank

33 The Banks Act and the regulations do not expressly draw a distinction between an executive director and a non-executive director of the board of a bank.

34 The Code of Corporate Practices and Conduct ("the Code") which is incorporated in King II applies to banks. In terms of the Code the board should comprise a balance of executive and non-executive directors, preferably with a majority of non-executive directors, of whom sufficient should be independent of management.[26] The Code provides that in the annual report, the capacity of the directors should be categorised as follows:

"- Executive director – an individual that is involved in the day-to-day management and/or is in full time salaried employment of the company and/or any of its subsidiaries.

- Non-executive director – an individual not involved in the day-to-day management and not a full-time salaried employee of the company or of its subsidiaries. An individual in the full-time employment of the holding company or its subsidiaries, other than the company concerned, would also be considered to be a non-executive director unless such individual by his/her conduct or executive authority could

[26] §2.2.1 p23 of King II

be construed to be directing the day-to-day management of the company and its subsidiaries.

- Independent director is a non-executive director who:
  (i) is not a representative of a shareowner who has the ability to control or significantly influence management;
  (ii) has not been employed by the company or the group of which it currently forms part, in any executive capacity for the preceding three financial years;
  (iii) is not a member of the immediate family of an individual who is, or has been in any of the past three financial years, employed by the company or the group in an executive capacity;
  (iv) is not a professional advisor to the company or the group, other than in a director capacity;
  (v) is not a significant supplier to, or customer of the company or group;
  (vi) has no significant contractual relationship with the company or group; and
  (vii) is free from any business or other relationship which could be seen to materially interfere with the individual's capacity to act in an independent manner."[27]

[27] § 2.4.3 page 25 of King II

35 Directors, irrespective of whether they meet the black letter definition of an independent director, should be independently minded:

"The independence of directors must be *de facto* as well as *de jure*. In practical terms, independence may be considered as:

- the ability to think independently;
- the ability to consider board matters with objectivity, impartiality, fairness and flexibility;
- the exercise of independent judgment about management's actions and competence;
- the courage to challenge management's current or projected future actions – and vote against them when this is warranted;
- the commitment to review and discuss all proposals of importance; and
- a governance environment that encourages directors to voice their opinions without the fear that they will incur the wrath or ridicule of other board members or management."[28]

36 In their representations to the Listing Standards Committee a number of organisations emphasised the need for, and importance of, independent directors. For example, the American Federation of Labor and Congress of Industrial Organisations submitted: "Corporate Governance starts with boards of directors. Public company boards need strong independent directors

[28]National Association of Corporate Directors ("NACD") Blue Ribbon Commission Report on Board Evaluation, p8. The NACD is based in Washington DC and is apparently the premier educational, training, publishing, research and consulting organisation in board leadership and the only membership association for boards, directors, director candidates and board advisors.

who are accountable to investors. Part of the problem with Enron was that Enron touted directors as independent who really had significant ties to Enron management, ties that Enron did not have to disclose." The Fidelity Management and Research Company, after calling for the creation of a nominations committee to nominate independent directors, stated: "This would enhance the likelihood that persons selected to serve as independent directors will not only meet the black letter test of 'independence' under the NYSE's listing rules, but also will serve with an independence of mind. Independent directors elected to the board through this process are unlikely to be beholden to management for their positions, and are more likely to maintain their independent-mindedness throughout their tenure on the board, guided by the interests of shareholders." The Institute of Internal Auditors submitted that: "The vast majority of the directors should be independent in both fact and appearance so as to promote arms-length oversight."

37 Following on those representations, the Listing Standards Committee recommended to the NYSE that listed companies should have a majority of independent directors: "Effective boards of directors exercise independent judgment in carrying out their responsibilities. We believe requiring a majority of independent directors will increase the quality of board oversight and lessen the possibility of damaging conflicts of interest."

38 The Office of the Comptroller of the Currency ("OCC") is the agency responsible for regulating national banks in the United States. In March 1997, the OCC issued guidelines for the banking industry, The Director's Book: The Role of the National Bank Director ("The Director's Book"). In The Director's Book, the OCC emphasises that directors of a bank should be objective and independent when overseeing the bank's affairs. Examples of situations in which a director could feel uncomfortable exercising independent judgment include:

- executive directors who may feel a need to support management actions to keep their jobs;
- executive directors who may have a biased judgment because of their involvement in specific bank operations;
- non-executive directors who may believe that they do not know enough about banking to evaluate meaningfully management's recommendations;
- non-executive directors invited by the CEO to join the board who may feel pressure to support management if they wish to remain directors;
- both executive and non-executive directors who may feel compelled to vote with a controlling shareholder, who is also a director, to keep their positions.

Despite these fears, pressures and concerns, individual directors must exercise independent judgment. Each director contributes an important perspective to the board. The exercise of objective judgment is critical to the board's effectiveness.[29]

39 On 21 September 2001 the HKMA issued a Supervisory Policy Manual on Corporate Governance of Locally Incorporated Authorised Institutions ("the HKMA Manual"). The manual stresses that the board of directors of a bank should maintain an appropriate level of checks and balances against the influence of management and shareholder controllers in order to ensure that decisions are taken with the bank's best interest in mind. The manual continues:

"Independent directors play an important role in corporate governance. They help to provide the necessary checks and balances to ensure that [a bank] operates in a safe and sound manner and that its interests are protected. Independent directors can also assist by bringing in outside experience and providing objective judgment. They are particularly useful in a monitoring role, eg as members of the Audit Committee."

40 According to Derek Higgs, a major contribution of the non-executive director is to bring wider experience and a fresh perspective to the boardroom. Although they need to establish close relationships with

[29] The Director's Book pp 72-73

executives and be well-informed, all non-executive directors need to be independent of mind and willing and able to challenge, question and speak up. Although there is a legal duty on all directors to act in the best interests of the company, it has long been recognised that in itself this is insufficient to give full assurance that these potential conflicts will not impair objective board decision-making. After referring to the new NASDAQ and NYSE listing rules, which require that the majority of the board must be independent, and the Bouton report on corporate governance in France which recommends that half the board should be independent, Derek Higgs concludes: "I agree with the conclusions of these reports that a board is strengthened significantly by having a strong group of non-executive directors with no other connection with the company. These individuals bring a dispassionate objectivity that directors with a closer relationship to the company cannot provide. In the light of the need to manage conflict of interests, the increasing role of the board committees, and the positive benefits of independence, I recommend that the [UK] Code should provide that at least half of the members of the board, excluding the chairperson, should be independent non-executive directors."[30]

[30] Higgs' report, §9.1 – 9.5 p35.

Non-executive directors to meet without executive directors

41 The Listing Standards Committee recommended to the NYSE that the non-management directors of each company must meet at regularly scheduled executive sessions without management and that the independent directors must designate, and publicly disclose the name of, the director who presided over the executive sessions. In motivating that recommendation, it is stated in the Listing Standards Report: "To promote open discussions among the non-management directors, companies must schedule regular executive sessions in which those directors meet without management participation. Regular scheduling of such meetings is important not only to foster better communication among non-management directors, but also to prevent any negative influence from attaching to the calling of such executive sessions."[31] Derek Higgs says that he received a number of submissions suggesting that non-executive directors should meet on their own to increase their effectiveness and to allow for more organised discussions of issues of governance and overall performance. His proposal is that the non-executive directors should meet as a group at least once a year without the chairperson or executive directors present. There should be a statement in the annual report on whether the

[31] Listing Standards Report p8.

non-executive directors had met without the chairperson or executives present.[32]

The Higgs' proposal that the non-executive directors should meet without the chairperson is not supported. Instead, the recommendation is that the non-executive directors, under the leadership of the chairperson of the board, should meet at least twice a year without the executives.

Qualifications of a director of a bank

42 Every director of a bank or of a controlling company is obliged by South African law to acquire a basic knowledge and understanding of the conduct of the business of a bank and of the laws and customs that govern the activities of a bank. Although not every member of the board of directors of a bank or of a controlling company is required to be fully conversant with all aspects of the conduct of the business of a bank, the competence of every director of a bank shall be commensurable with the nature and scale of the business conducted by that bank and, in the case of a director of a controlling company, shall be commensurable with the nature and scale of the business conducted by the banks in the group.[33]

[32] Higgs' report, §'s 8.7 and 8.8 p34.
[33] Reg 39(1).

43 Every director of a bank should have a basic knowledge and understanding of the risks to which the bank is exposed in that:

- the board of directors of a bank is ultimately responsible for the maintenance of effective risk management;[34]
- one of the matters on which a new director of a bank is required to furnish information in the form of a form DI020 is whether the director has a basic knowledge and understanding of the risks to which banks are exposed;[35]
- one of the prescribed duties of a director of a bank is to ensure that risks that are of necessity taken by such a bank in the conduct of its business are managed in a prudent manner.[36]

44 All members of the board of a bank must have absolute integrity to meet their onerous obligations and responsibilities.[37] On 18 November 1999 the Registrar of Banks issued Banks Act Circular 13/99 in which he reiterated that all bankers are required to be fit and proper: "This means that their behaviour must be ethical and that all their business dealings must be conducted with integrity. This is particularly important in view of the position of trust that bankers occupy in their positions and in relation to the integrity of the banking system as a whole. This Office therefore expects all bankers to

[34] Reg 38(1) and (2).
[35] s60(5)(a) of the Banks Act read with reg 41(1).
[36] Reg 39(3).
[37] §2 chapter 1 p47 of King II.

underscore and follow core ethical values, such as honesty, integrity, fairness, responsible citizenship and accountability."

45 The *non-executive* directors of a bank should be individuals of calibre and credibility, and have the necessary skill and experience to bring judgment to bear independent of management, on issues of strategy, performance, resources, transformation, diversity and employment equity, standards of conduct and evaluation of performance.[38]

46 The NACD Blue Ribbon Commission Report on Director Professionalism, having stated that the accepted governance paradigm is simple: management is accountable to the board, and the board is accountable to shareholders, continues:

"A professional boardroom culture requires that the governance process be collectively determined by individual board members who:

- are independent of management;
- are persons of integrity and diligence who make the necessary commitment of time and energy;
- recognise that the board has a function independent of management and explicitly agree on that function, and

[38]The Code §2.4.2 p25 of King II.

- are capable of performing that function as a group, combining diverse skills, perspectives and experiences."[39]

The report draws a distinction between the personal characteristics of directors and the core competencies of the board of directors. In terms of the report, to be considered for board membership, individual directors should possess all of the following *personal characteristics*:

"- *Integrity and accountability*. Character is the primary consideration in evaluating any candidate for board membership.

- *Informed judgment*. The ability to provide wise, thoughtful counsel on a broad range of issues ranks high among the quality sought in any director.
- *Financial literacy*. One of the important roles of a board is to monitor financial performance.
- *Mature confidence*. Directors who value board and team performance over individual performance, and who possess respect for others, facilitate superior board performance. Openness to other opinions and the willingness to listen should rank as highly as the ability to communicate persuasively.
- *High performance standards*. In today's highly competitive world, only companies capable of performing at the highest levels are likely to prosper."

[39]2001 Edition, p. xi.

The report goes on to state that a whole host of core competencies need to be represented on the board to adequately fulfil the board's complex roles – from overseeing the audit and monitoring managerial performance to responding to crises and approving the company's strategic plan. The recommendation is that the board *as a whole* should possess all of the following core competencies, with each candidate contributing knowledge, experience and skills in at least one domain:

"- *Accounting and finance*. Among the most important missions of the board is ensuring that shareholder value is both enhanced through corporate performance and protected through adequate internal financial controls.
- *Business judgment.* Shareholders rely on directors to make sensible choices on their behalf.
- *Management*. To monitor corporate managers, boards need to understand management trends in general and in relevant industries.
- *Crisis response*. Boards and the organisations they serve inevitably experience both short- and long-term crises. The ability to deal with crises can minimise very negative ramifications and limit the impact on firm performance.
- *Industry knowledge*. Companies continually face new opportunities and threats that are unique to the industries.
- *International markets*. To succeed in an increasingly global economy, companies need directors who appreciate the importance of global

business trends and who have first-hand knowledge of international business practices.

- *Leadership*. Ultimately, a company's performance will be determined by the directors' and CEO's ability to attract, motivate, and energise a high-performance leadership team.
- *Strategy/vision*. A key board role is to approve and monitor company strategy, so as to ensure the company's continued high performance."

47 The OCC is of the view that the principal qualities of an effective bank director includes strength of character, an inquiring and independent mind, practical wisdom, and sound judgment. The qualifications of a candidate seeking to become a member of the board of directors of a national bank include:

- basic knowledge of the banking industry, the financial regulatory system, and the laws and regulations that govern the operations of the institution;
- a willingness to put the interests of the bank ahead of personal interests;
- a willingness to avoid conflicts of interests;
- knowledge of the communities served by the bank;
- background, knowledge and experience in business or another discipline to oversee the bank;

- a willingness and ability to commit the time necessary to prepare for and regularly attend board and committee meetings.[40]

48 Derek Higgs states that in order to fulfil their role, non-executive directors must acquire the expertise and knowledge necessary to properly to discharge their responsibilities. They must be well-informed about the business, the environment in which it operates and the issues it faces. This requires a knowledge of the markets in which the company operates as well as a full understanding of the company itself. Understanding the company is essential to gain credibility and reduce the inevitable disparity in knowledge between executive and non-executive directors. Developing such knowledge cannot be done within the confines of the boardroom alone. The personal attributes required of the effective non-executive director are founded on:

- integrity and high ethical standards;
- sound judgment;
- the ability and willingness to challenge and probe; and
- strong interpersonal skills.[41]

[40] The Director's Book p4-5
[41] Higgs' report, §'s 6.11-6.17 pp 28-29.

49 The Listing Standards Report expressed the belief that "…the most crucial element of effective corporate governance is the service of competent, ethical people as directors of public companies."[42]

50 The business of a bank is so complex that it is impossible for a non-banker non-executive director to acquire knowledge of the bank's business and the risks associated with it by attending four or five board meetings a year. A good induction programme and continuing education are no substitute for "on the job training". In the case of a non-executive director, that means serving on at least one board committee, as a minimum. This view is shared by many of the directors who are not ex-bankers.

51 Another reason for involving non-executive directors in board committee work is to avoid a disparity of knowledge being created amongst the non-executive directors. An inequality in knowledge has the potential to create two classes of non-executive directors: one which can make a meaningful contribution to the board and another which cannot. The latter class will be disempowered and might over time become disillusioned and alienated.

[42] p. 5

Time

52 Being the director of a bank is increasingly taking more time. The director of a bank – and this applies particularly to a non-executive director – must have sufficient time to discharge his or her onerous duties. Executive directors usually can make the time. The difficulty that a non-executive director of a bank has who occupies a senior, time-consuming, position with another corporation, is to make time for his or her non-executive directorships. If the non-executive director does not have, or does not make, time for the bank's business, the non-executive director should be disqualified from being the director of a bank. "Part-time, ornamental 'star directors' may appear to add lustre to a board roster, but a director cannot provide outstanding professional service on a board unless his or her energies and competencies are truly available."[43] A similar point is made in The Bankers Magazine of March/April 1993 pp 46-48: "…it is increasingly difficult for outside directors not … involved in day-to-day bank operations to fulfil their legal responsibilities. … any person serving on the board must devote reasonable time to the bank's activities to fully comprehend its changing financial condition and performance. … it is important to emphasise that a bank is not a social institution or country club. The landscape is littered with the bodies of institutions such as the Bank of

[43] NACD Report on Director Professionalism p 13.

Credit and Commerce International with celebrity boards that failed to govern."

53 In the July 2002 Bank Directors' Briefing, the author of an article with the title "Keeping the 'Scandals of the Week' in Perspective" refers to a presentation entitled "Corporate Governance After Enron". The article states that directors who see the current crop of business disasters as a call to redouble the efforts can follow action points covered in the presentations. The one action point is to spend more time on the job. Reference is made to the view of one of the judges of the Delaware Court of Chancery. Most US corporations are Delaware corporations and that Court's rulings affect not only those companies but also those in states whose laws or courts recognise the importance of Delaware corporate law. The judge thought that directors should spend at least 200 hours a year, in total, on all aspects of their director duties, including preparation, meetings, and follow-up on meetings.

54 Having made the point that it is essential that non-executive directors commit the necessary time to the role, Derek Higgs recommends that the non-executive directors should undertake that they will have available sufficient time to meet what is expected of them, taking into account their other commitments. These commitments should be disclosed to the

company before appointment, with an indication of the time involved. He proposes that the nomination committee should articulate the time and responsibility envisaged in the appointment of a non-executive director and should annually review the time required and performance evaluation should be used to assess whether the non-executive director is spending enough time to fulfil their duties. Research undertaken for the purposes of the Higgs report suggested that in the United Kingdom the non-executive director role usually involves a time commitment of between 15 and 30 days a year.[44]

Remuneration of non-executive directors

55

55.1 The remuneration of non-executive directors on a bank board must be reconsidered in view of the increasing demands on the time of the non-executive directors; the complexity of the business of a modern bank; the need for properly qualified directors; the onerous responsibilities of a bank director; and the vital role that non-executive directors play in the effective corporate governance of a bank. The following principles enunciated by Higgs, in my view, are appropriate when

[44] Higgs' report, §'s 12.10 – 12.19 pp 54 – 55.

considering the remuneration of a non-executive director of a South African bank:

- remuneration for directors needs to be sufficient to attract and retain high calibre candidates but no more than is necessary for this purpose;
- the level of remuneration appropriate for any particular non-executive director role should reflect the likely workload, the scale and complexity of the business and the responsibility involved;
- in practice, it may be helpful in assessing remuneration for non-executive directors to use as a benchmark the daily remuneration of a senior representative of the company's professional advisors;
- the risk of high levels of remuneration prejudicing independence of thought is real and should be avoided.[45]

55.2 In an article in the Financial Times of 10 March 2003, "Boardroom pay levels could soar", reference is made to a report by Halliwell Consulting, which advised boards on directors' remuneration. According to the report, salaries on some committees would need to increase from between £1 500 to £3 000 to £10 000 - £15 000 to offset the extra demands placed on

[45] Higgs' Report §12.24, p56.

non-executives. Base levels of pay in main boardrooms will shoot up by 25% to about £40 000 a year. The report states: “There have been considerable changes to the roles and responsibilities of non-executive directors over the last twelve months due to the current business climate, regulation and corporate governance reports. As a result it is inevitable that non-executive remuneration levels will increase significantly over the coming months.”

56 In a separate exercise to that conducted by KPMG, the non-executive directors of the five banks were asked in the interviews that were conducted for the purposes of this review, for their views on the *quantum* and form of their remuneration. The dominant view was that:

- the form should be fees (and not share options);
- the fees had been low historically;
- the fees should be increased, particularly having regard to the increased responsibilities of a bank director.

Board appointments

57 King II recommends that non-executive directors should carefully consider limiting the number of appointments they take in that capacity in order to ensure that the board of companies on which they serve enjoy

the full benefit of their expertise, experience and knowledge.[46] The NACD Report on Director Professionalism makes the following recommendations:

"- CEO's and other senior executives of public corporations: Boards should prefer individuals who hold no more than one or two public-company directorships (including the position to be offered) in addition to membership on their own company board;

- other individuals with full-time positions: Boards should prefer individuals who hold no more than 3 or 4 public-company directorships (including the position to be offered) in addition to membership on their own organisation's board;

- other individuals: boards should prefer individuals who hold no more than 5 or 6 public-company directorships (including the position to be offered)".[47]

58 While the popular perception in the UK was that there were a large number of people holding multiple non-executive directorships, Derek Higgs found that less than one fifth of non-executive directors held more than one non-executive directorship in a UK listed company; thirteen individuals held five or more such posts; one in fourteen non-executive

[46] p60 King II
[47] pp 14-15.

directors also hold an executive director post. He believes that best practice should be that:

- a full-time executive director should not take on more than one non-executive directorship, nor become chairperson, of a major company, and
- no individual should chair the board of more than one major company.[48]

Induction and continuing education

59 King II recommends that the board should establish a formal orientation programme to familiarise incoming directors with the company's operations, senior management and its business environment, and to induct them in their fiduciary duties and responsibilities. Directors should receive further briefings from time to time on relevant new laws and regulations as well as on changing commercial risks.[49] In regard to a national bank in the US, the OCC recommends that a board should consider orientation programmes for new directors. These programmes should explain the operation of the bank and the banking industry, and clearly outline the responsibilities of board members both individually and as a group. Ongoing education programmes that describe the

[48] Higgs' report, §'s 12.15-12.19 p55.
[49] p 64 of King II.

emerging industry developments, opportunities, and risks also are often helpful.[50]

60 One of the conclusions of the Listing Standards Committee was the following:

"We end with a word about director education. It is not enough that, through our recommendations and otherwise, directors be given the tools they need to do their jobs. Rather, steps must be taken to assure that directors will actually know how to use all the instruments in their toolboxes. We therefore recommend that the NYSE encourage all public companies to establish orientation programmes for their new directors. Each company is unique, and an executive or directorial background with one company may not adequately prepare a person for a directorship with another company. An effective orientation programme will familiarise new directors with the company's strategic plans; its significant financial, accounting and risk-management issues; its compliance programmes; its conflict policies and other controls; its principle officers; and its internal and independent auditors. Through such orientation programmes, directors can be fully informed as to their responsibilities and the means at their disposal for the effective discharge of those responsibilities."[51]

[50] The Director's Book p 3.
[51] The Listing Standards Report p29.

61 Derek Higgs is of the view that to be effective, newly appointed non-executive directors quickly need to build their knowledge of the organisation to the point where they can use the skills and experience they have gained elsewhere for the benefit of the company. A comprehensive, formal and tailored induction should always be provided to new non-executive directors to ensure an early contribution to the board. As part of running an effective board, companies need to set aside adequate resources and ensure that sufficient time is allowed for a thorough induction for directors. The chairperson should take the lead in providing a properly constructed induction programme, facilitated by the company secretary. As part of the evaluation process, non-executive directors should regularly appraise their individual skills, knowledge and expertise, and determine whether further professional development would help them develop their expertise and fulfil their obligations as members of the board. Companies should acknowledge that to run an effective board they need to provide resources for developing and refreshing the knowledge and skills of their directors, including the non-executive directors.[52]

[52] Higgs' report, §'s 11.1 – 11.18 pp 47 – 49.

<u>The duties of the directors of the board of a bank</u>

62 Under the Banks Act, the directors of a bank or controlling company have the following obligations:

- to stand in a fiduciary relationship to the bank or controlling company;
- to act honestly and in good faith, and, in particular, to exercise the powers he or she may have to manage or represent the bank exclusively in the best interests and for the benefit of the bank and its depositors or controlling company.[53]

63 In terms of the regulations, all directors of a bank shall perform their functions with diligence and care and with such a degree of competence as can reasonably be expected from persons with their knowledge and experience. It is the duty of every director of a bank to ensure that risks that are of necessity taken by such a bank in the conduct of its business are managed in a prudent manner.[54]

64 The regulations prescribe that the board of a bank is ultimately responsible for ensuring that an adequate and effective process of corporate governance, which is consistent with the nature, complexity

[53] s60(1) and (2)(a).
[54] reg 39(2) and (3).

and risk inherent in the bank's on-balance sheet and off-balance sheet activities and which responds to changes in the banks environment and conditions, is established and maintained. The overall effectiveness of the process of corporate governance must be monitored on an ongoing basis by the board or by a committee appointed by the board.[55]

65 The Code provides that the board is the focal point of the corporate governance system. It is ultimately accountable and responsible for the performance and affairs of a company. The board must give strategic direction to the company, appoint the Chief Executive Officer ("CEO") and ensure that succession is planned. The board must retain full and effective control of the company, and monitor management in implementing board plans and strategies. The board should ensure that there is an appropriate balance of power and authority on the board, such that no one individual or block of individuals can dominate the board's decision taking.[56]

66 One must be careful to distinguish between what the functions of the board of a bank are and what are not the functions of the board. In regard to what the functions *are*, the NACD Report on Board Evaluation

[55] reg 38(1) and (4).
[56] §'s 2.1.1, 2.1.3, 2.1.4 and 2.4.1 pp 22-24 of King II.

states: "The tasks of the board of directors of a public company … are complex and delicate. Directors must approve the corporate mission and vision. They must select, monitor, evaluate, compensate and, if necessary, replace the CEO. They must oversee the development and implementation of the company's strategic plan, and ensure ethical behaviour and legal compliance. These are just a few of the many areas of oversight." The function of a board is not to manage the enterprise, and in this case, the bank: "…there is another line, that between a director who contributes ideas to company strategy and one who tries to manage the company. This is the line which separates governance from management, and … although the line need not be permanently fixed, once directors cross it, the company has real problems. Directors should not run the company, and the board should not interfere with the management's duty and capacity to do so."[57]

67 A similar distinction can be drawn between the roles of executive directors and non-executive directors:

"Although the law does not separate the competencies of executive and non-executive directors and all directors bear joint responsibility for the affairs of a corporation, the intended role of non-executive directors is quite clear. They are to provide an independent assessment of executive performance while being accountable for the power they vest with the executives. If this power is to be effective, managers must be spared undue interference with their

[57]In Search of Good Directors, Corporate Boards in Market and Transition Economies, 1998, p 8.

functions. This … makes the effectiveness of corporate boards very much a matter of non-executive directors' ability to balance the pressures of accountability against the requirements of non-interference."[58]

68 Derek Higgs asserts that the role of the non-executive director is frequently described as having two principal components: monitoring executive activity, and contributing to the development of strategy. He cautions that an over-emphasis on monitoring and control risks non-executive directors seeing themselves, and being seen, as an alien policing influence detached from the rest of the board. An over-emphasis on strategy risks non-executive directors becoming too close to executive management, undermining shareholder confidence and the effectiveness of board governance. The research conducted for the purposes of his report concludes that it is important to establish a spirit of partnership and mutual respect on the board. The role of the non-executive director is therefor both to support executives in their leadership of the business and to monitor and supervise their conduct.[59]

69 In his speech, "The importance of corporate governance in banks" referred to earlier, David Carse, the Deputy Chief Executive of the HKMA, said:

[58]In Search of Good Directors, supra, p 42.
[59] Higgs' report, §'s 6.1-6.8 pp 27-28.

> "While the day-to-day running of banks should certainly be left in the hands of the management, the board must play a leadership role in approving the objectives, strategy and business plans of the bank, monitoring the performance of management and ensuring that the internal control and risk management systems of the bank are effective. The board must also make sure that the bank conducts its affairs with integrity and in accordance with high ethical standards. The board is part of the system of checks and balances that ensures that neither large shareholders nor management abuse their power and that decisions are taken with the bank's best interest in mind. If the board does not play its full part, a vacuum in leadership will be created. This vacuum may be filled by the shareholders becoming directly involved in running the bank's affairs, or by the executive management acting more or less in isolation. In either case, the board of directors is bypassed and checks and balances are lost."

70 One of the primary functions of a board of directors is to "hire and fire" the CEO. In practice, it seldom comes to the actual dismissal of a CEO. Usually some more benign way is found for the board and the CEO to part their ways, often at great expense to the company and its shareholders and to the enormous benefit of the departing CEO. Perhaps the most important decision a board makes, however, is the *appointment* of the CEO. If the board gets that right, and the CEO, supported by the

board, puts the right management in place, the first round for good corporate governance has been won.

71 That is the American experience:

"…in the American board reality, non-executive directors have traditionally seen their primary responsibility as identifying, recruiting, and supporting a competent CEO. The following sample of outside directors' views reported in Lorsch's study of American corporate boards, is fairly typical: 'I guess the most important role that the board plays is selecting the CEO … The board doesn't run the company, but it has to make sure that the people who do are the best that are available'"[60]

The Business Roundtable supports the guiding principle that the paramount duty of the board of directors of a public corporation is to select a chief executive officer and to oversee the CEO and other senior management in the competent and ethical operation of the corporation on a day-to-day basis.[61] Having stated that a profitable and sound bank usually is the result of talented and capable management, the OCC expresses the view that one of the board's fundamental responsibilities is to select and retain competent management:

"When a bank hires a CEO, the board or a designated board committee should actively manage the selection process. Selection criteria should include

[60] In Search of Good Directors, supra, p 42.
[61] BRT Principles of Corporate Governance p A-32

integrity, technical competence, character and experience in the financial services industry. The board's choice for a CEO should share the board's operating philosophy and vision for a bank to assure that mutual trust and a close working relationship are maintained."[62] In the Bank Director Magazine, in an article entitled "Strengthening Corporate Governance", the following conclusion is reached:

"Finally, understand that in the end, it's all about people. The best intentions and the most carefully designed processes will be useless unless people at all levels have the intelligence, technical and industry skills and, most important, the strength of character to make the right and sometimes difficult decisions."

The modern banker

72 One of the issues that was debated in the interviews with the bank directors, was whether the board and senior management of the bank had sufficient "bankers" on board. That in turn raised the obvious question: what is a banker in the modern world? Is it someone who began his career at age 18 in the branch of the local bank in his home town, and 40 years later is the CEO? Is it the chartered accountant who has worked in a merchant bank for 20 years and who has had no intimate exposure to a retail bank? Is it possible, in fact, for any one person to know all the business of a large, diverse banking group, which

[62] The Director's Book p 23.

includes in its embrace retail banking, corporate banking, merchant banking, treasury, and so on?

73 The most complete answer was given by the chief executive of one of the five banks:-

73.1 A "pure" banker, in his view, was someone who developed in an environment where there was significant manual intervention, where credit decisions were taken, where companies of magnitude stood behind their subsidiaries. These days because business and the operating environment has changed, you assess the subsidiary of a major company when lending to the subsidiary. The CEO's sense today is that one's abilities at an executive level need to be very different. He is not denying in any way or lessening the need for pure banking, treasury, or credit skills, but at the same time one needs to understand that one's investments in technology are as mission-critical to the organisation as lending to a large conglomerate.

73.2 Fifteen years ago the banks had a very limited remit in terms of what they did and it was a lot easier to depict what a banker should be. Today banks can be classified as a universal financial services business. They are in a business that has credit risk, market risk, counterparty risk, and the dynamics of technology risk. A banker today is a technology expert, with regard to what he has to deliver. The industry performs 6 million transactions a day. You cannot do that with manual intervention, so you need to understand the issues of process management. If you look at the reality, banks run businesses that are very wide and diverse in activities. The real trick is to have some competencies that are highly technical in their nature, and other competencies which are highly general in their nature, and to find the ability to synthesise or fuse those in the way so that the businesses interact and react with each other. Then, at an executive level, one should make sure that the executives have skills that transcend in their general nature and in their specific nature; in other words, skills that can transcend all of those activities. Approximately ten years ago, the banks had too many pure bankers in the frame and not enough people who understood the dynamics of where the industry was going.

73.3 The concept of a banker means different things to different people. In the *retail* environment, a banker might be the branch manager or somebody who is a web-based, mobile-based, cellular-based person, who can distribute through a new channel. In the micro-lending environment, a banker is somebody who can explain the complexity of forms and processes and tangibility of money. In the *commercial* environment, a banker is somebody who is virtually part of the business, who understands the cash flows, the peaks and valleys, and has sensitivity around what happens in the geared business in high interest rates, sees the business through, understands where the value attribution lies and where the other stores of value are. A *corporate banker* is very different. The client wants to know that he or she gets quick turnaround times, that the internalisation of the problem is immediate, that the corporate banker's ability to multi-task is immediate or instantaneous around treasury answers on the one side, derivative answers on the other, securitisation on another, and so on. Those businesses may even transcend geographies; and may transcend vertical industries, they may evolve into conglomerates. One may in fact require of a banker to be knowledgeable about *full financial services*, issues of investment management, issues of multi management, of unit trust product offerings, of life product offerings, of credit life offerings, of issues relating to off-shore in terms of stores of value, in terms of yield protection, NAV protection. So, the CEO confesses, he does not honestly know how to define a banker in general terms.

74 What flows from the above discussion is that the complete banker in the modern world is a mythical being. Rather than focussing on whether a particular individual is a "banker", one should look at the make-up of a management team, such as the executive committee ("exco") of a bank or the exco of a division or cluster (retail, corporate, treasury, whatever) and consider whether the exco contains an appropriate collection of skills and experience to manage the particular bank or division or cluster. In one bank a necessary skill on the team may be marketing, on another it may be human resources, on another it may be risk management, on another it may be information technology. On any team, of course, there must be executives with the requisite core skills. For example, on the exco of a retail bank there should be retail bankers, notwithstanding the other skills that are represented on the committee.

Separating the roles of chairperson and CEO

75 The Code recommends that there should be a clearly accepted division of responsibilities at the head of the company, to ensure a balance of power and authority, such that no one individual has unfettered powers

of decision-making. Given a strategic operational role of the CEO, this function should be separate from that of the chairperson.[63]

Section C: The chairperson

76 The Banks Act and the regulations prescribe that the chairperson of a bank or controlling company shall not be:

- an employee of the bank, any subsidiaries of the bank, the controlling company of the bank or any subsidiary of the controlling company;
- a member of the audit committee of the bank or the controlling company.[64]

77 In terms of the Code, the chairperson should preferably be an independent non-executive director.[65]

78 In its more detailed analysis of the role and function of the chairperson, King II recommends that:

- all boards should be subject to the firm and objective leadership of a chairperson who brings out the best in each director;

[63] §'s 2.3.1 and 2.3.3 p 24 of King II
[64] reg 40 and s64(3).
[65] §2.3.2 p 24 of King II.

- the chairperson's primary function is to preside over meetings of directors and to ensure the smooth functioning of the board in the interest of good governance.[66]

79 King II points out that the role and function of the chairperson will be influenced by such matters as the size or particular circumstances of a company, the complexity of its operations, the qualities of the CEO, the management team, and the skills and experience of each board member.[67]

80 There are a number of common, core functions performed by the chairperson, which usually include:

- providing overall leadership to the board without limiting the principle of collective responsibility for board decisions;
- actively participating in the selection of board members, as well as overseeing a formal succession plan for the board, CEO and senior management;
- arranging for new directors appointed to the board to be properly inducted and oriented, and monitoring and evaluating board and director appraisals;

[66] §1 & 2, Chapter 2, p 51 of King II.
[67] §3, Chapter 2, p 51 of King II.

- determining, normally in conjunction with the CEO and the company secretary, the formulation of an annual work plan for the board against agreed objectives and goals, as well as playing an active part in setting the agenda for board meetings;
- acting as the main informal link between the board and management, and particularly between the board and the CEO;
- maintaining relations with the company's shareowners and perhaps, some of its important stakeholders, although the latter may be more in the nature of an operational issue to be conducted by the CEO and the senior management team;
- ensuring that all directors play a full and constructive role in the affairs of the company and taking a lead role in removing non-performing or unsuitable directors from the board; and
- ensuring that all the relevant information and facts, objectively speaking, are placed before the board to enable the directors to reach an informed decision.[68]

81 After pointing out that in principle it is better that the functions of chairperson and CEO are kept separate, King II emphasises:

"The chairperson is primarily responsible for the working of the board. This position is made more onerous by the complex environment in which many

[68] § 3 Chapter 2, pp 51-52 of King II.

modern companies now operate. The Chief Executive Officer's task is to run the business and to implement the policies and strategies adopted by the board."[69]

82 Derek Higgs contends that a strong relationship between the chairperson and CEO lies at the heart of an effective board. The relationship works best where there is a valuable mix of different skills and experiences which compliment each other. The chairperson should not seek executive responsibility and should let the CEO take credit for his achievements. The chairperson can be an informed, experienced and trusted partner, the source of counsel and challenge designed to support the CEO's performance, without becoming an obstacle to questioning of the CEO by the non-executive directors.[70]

83 Derek Higgs, after stating that a degree of detachment from the executive can be valuable in ensuring objective debate on strategy and other matters, expresses the view that at the time of appointment the chairperson should meet the test of independence.[71] Once appointed, so says Derek Higgs, the chairperson will have a much greater degree of involvement with the executive team than the non-executive directors;

[69] §4 Chapter 2, p 52 of King II
[70] Higgs' report, §5.4 p24.
[71] Higgs' report §5.8 p24.

applying a test of independence at this stage is neither appropriate nor necessary.[72]

84 It is true that the chairperson is likely to interact more closely with management than the non-executive directors. It does not follow, however, that he should lose his independence. On the contrary, it is vitally important that, throughout his tenure as chairperson, he should retain his independence of mind, provide the necessary independent leadership of the non-executive directors, and ensure that the necessary checks and balances on the board are in place.

85 In addition to being an independent non-executive director, the chairperson of a bank should have the characteristics that are required of a non-executive director, which include:

- integrity;
- independence of mind;
- the ability to consider board matters with objectivity, impartiality, fairness and flexibility;
- having knowledge and understanding of the business of a bank;
- having knowledge and understanding of the risks to which the bank is exposed;
- being a person of calibre and credibility;

[72] Higgs' report §'s 5.8 and 5.9, p24.

- being financially literate.

86 Derek Higgs says that his research highlighted the potential difficulties of the chairperson being a former CEO of the same company. Having been responsible for the day-to-day running of the company and with the detailed knowledge of it that this brings, such a chairperson can sometimes find it difficult in practice to make room for a new CEO. In addition, a chairperson who was formerly the CEO of the same company may simply take for granted their inside knowledge and fail as an informational bridge to the non-executive directors. He recommends that the Code should provide that a CEO should not become chairperson of the same company.[73]

87 There may be other reasons for the CEO not to become the non-executive chairperson. The first is that the management team that the CEO leaves behind is one that he was instrumental in appointing and which remains beholden to him when he becomes chairperson. The other is the risk that the chairperson, who was the former CEO, might not look at the strategy of the company with the necessary detachment because the strategy was one he formulated and was in the process of

[73] Higgs' report, §'s 5.6 and 5.7 p24.

implementing as a member of management before being appointed chairperson.

88 The Higgs recommendation that a CEO should not become chairperson of the company is not feasible in the South African banking industry in which there is a severe shortage of ex-bankers to serve on bank boards as non-executive directors. Instead, it is recommended that a three-year period should elapse between the CEO retiring and becoming chairperson of the bank. This is consistent with King II.

89 There is another general principle. It would be placing form above substance if one were to split the roles of chairman and CEO and then have the two positions occupied by persons who were closely related or close friends or “blood brothers”, so to speak. In the context of a board of directors, one should avoid what happened in the 1960’s in the United States when George Wallace, the governor of Alabama, was prohibited from serving two terms in a row. He then arranged that his wife Lurleen would become governor *in name*. She won the election in 1966, and after she died, Wallace became governor again in 1970. The common belief was that George Wallace *in fact* remained governor throughout the period.

Section D: The CEO of a bank

90 The Banks Act and the regulations do not deal with the role and function of the CEO.

91 In terms of King II, the CEO:

- has a critical and strategic role to play in the operational success of a company's business;
- should maintain a positive and ethical work climate that is conducive to attracting, retaining and motivating a diverse group of top-quality employees at all levels of the company;
- is expected to foster a corporate culture that promotes ethical practices, encourages individual integrity, and fulfils social responsibility objectives and imperatives. [74]

92 Some of the functions that a CEO fulfils are usually to:

- develop and recommend to the board a long-term strategy and vision for the company that will generate satisfactory levels of shareowner value and positive, reciprocal relations with relevant stakeholders;

[74] §'s 1 and 3 of Chapter 3 p 53 of King II.

- develop and recommend to the board annual business plans and budgets that support the company's long-term strategy;
- strive consistently to achieve the company's financial and operating goals and objectives, and ensure that the day-to-day business affairs of the company are appropriately monitored and managed;
- ensure continuous improvement in the quality and value of the products and services provided by the company, and that the company achieves and maintains a satisfactory competitive position with its industry(ies);
- ensure that the company has an effective management team and to actively participate in the development of management and succession planning (including the chief executive officer's own position);
- formulate and oversee the implementation of major corporate policies; and
- serve as the chief spokesperson for the company.[75]

93 The following description of the prominent part played in fact and perception by a CEO could equally apply to the CEO of a South African bank:

[75] §1 of Chapter 3 p 53 of King II.

> "In the US and the UK … the Chief Executive Officer is seen as an individual leader who is much more 'equal' than others. To quote a commentator: 'shareholders in the market are far more interested in CEO's than directors. When we read about big business in the financial press, CEO's usually are the centre of attention and directors are obscure. In fact, under normal circumstances very little attention is paid to directors by shareholders, the market or the press.' True, the CEO has the support of able managers and there is often a management committee, but they are all picked by him and the relationship between them is definitely one of superior/subordinate. The gap between the CEO and the others is recognised both in their pay and in the public recognition of their contributions. Chief Executives are often the heroes of the media – until something goes wrong, when they quickly become the villains."[76]

Section E: Committees of the board of a bank

Introductory

94 As some South African banks have grown in size and complexity, it has become practice that more and more of the effective work of the board has to be done by the committees of the board. That is also the experience in the United States and United Kingdom:

[76] In Search of Good Directors, supra, p 108.

"Boards are busy and their tasks complex, and a growing number of them now make use of committees. This is undoubtedly true of the American and British boards, and it allows the directors to cope with the two factors that constrain their board involvement the most: the limited time they can devote to the company and the complexity of information with which they must deal."[77]

95 According to King II, committees of the board can help to efficiently advance the business of the board. At the same time, committees can demonstrate that directors' responsibilities are being adequately and properly discharged. However, the board is the focal point of the corporate governance system and is ultimately accountable and responsible for the performance and affairs of a company. Delegating authorities to board committees or management does not in any way mitigate or dissipate the discharge by the board and its directors of their duties and responsibilities. Board committees are merely a mechanism to aid and assist the board and its directors in giving detailed attention to specific areas of their duties and responsibilities in a more comprehensive evaluation of specified issues such as audit, internal control, risk management, remuneration, etc.[78] King II makes a number of recommendations in regard to board committees, four of which deserve emphasis in this report:

[77] In Search for Good Directors, supra, p 121.
[78] §1, Chapter 8 p 67 of King II.

- there should be a formal procedure for certain functions of the board to be delegated, describing the extent of such delegation, to enable the board to properly discharge its duties and responsibilities and to effectively fulfil its decision taking process;
- at a minimum, each board should have an audit and a remuneration committee;
- non-executive directors must play an important role in board committees;
- all board committees should preferably be chaired by an independent non-executive director, the exception being a board committee fulfilling an executive function.[79]

96 As will be seen from what follows, a bank board must have as a minimum:

- an audit committee (in terms of the Banks Act and King II);
- a remuneration committee (in terms of King II);
- and if the proposed amendments to the Banks Act are passed by Parliament, a directors' affairs committee and a risk committee.

[79] Chapter 8, p69 of King II.

Audit Committee

97 In terms of the Banks Act, the board of directors of a bank shall appoint at least 3 of its members to form an audit committee. All the members of the audit committee may be, and the majority of such members, including the chairperson of the audit committee, must be persons who are not employees of the bank, its subsidiaries or controlling company, provided that the chairperson of the board of directors of a bank shall not be appointed as the chairperson of the audit committee. The functions of the audit committee shall be to:

- assist the board of directors in its evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied within the bank in the day-to-day management of its business;
- facilitate and promote communication, regarding the matters referred to above or any other matter, between the board of directors and the executive officers of the bank, the external auditor and the internal auditor; and
- introduce such measures as in the committee's opinion may serve to enhance the credibility and objectives of financial statements and reports prepared with reference to the affairs of the bank.[80]

[80] s64 of the Banks Act.

98 In terms of the Code, the board should appoint an audit committee that has a majority of independent non-executive directors. The majority of the members of the audit committee should be financially literate. The chairperson should be an independent non-executive director and not the chairperson of the board. The better view is that the chairperson of the board should not be a member of the audit committee, but could be invited to attend meetings as necessary. The audit committee should have written terms of reference that deal adequately with its membership, authority and duties. Membership of the audit committee should be disclosed in the annual report. Companies should, in the annual report, disclose whether or not the audit committee has adopted formal terms of reference and, if so, whether the committee has satisfied its responsibilities for the year in compliance with its terms of reference.[81]

99 In its submissions to the Listing Committee, the NACD recommended that audit committees should meet independently with both internal and independent auditors.

[81] §6.3 p 39 of King II

100 In late July 2002, the UK Government asked the Financial Reporting Council ("FRC") to put in hand the development of the existing Combined Code guidance on audit committees. In September 2002, the FRC appointed a group chaired by Sir Robert Smith to prepare a report. The report was published in January 2003 ("the Smith report"). The Smith report should be circulated amongst all those who have an interest in the proper functioning of an audit committee, including the members of the audit committee, head of internal audit and the external auditors of the bank. Some of the more pertinent findings and recommendations are highlighted:

- While all directors have a duty to act in the interest of a company, the audit committee has a particular role, acting independently from the executive, to ensure that the interests of shareholders are properly protected in relation to financial reporting and internal control.
- The most important features of the relationship between the audit committee and the board, the executive management, internal auditors and external auditors cannot be put into a code of practice: a frank, open working relationship and a high level of mutual respect are essential, particularly between the audit committee chairperson and the board chairperson, the CEO and the finance director. The audit committee must be prepared to

take a robust stand, and all parties must be prepared to make information freely available to the audit committee, to listen to their views and to talk through the issues openly.

- The management is under an obligation to ensure the audit committee is kept properly informed, and should take the initiative in supplying information rather than waiting to be asked.
- Audit committees have wide-ranging, time-consuming and sometimes intensive work to do. Companies need to make the necessary resources available. This includes suitable payment for the members of audit committees themselves. They – and particularly the audit committee chairperson – bear a significant responsibility and need to commit a significant extra amount of time to the job. Companies also need to make provision for induction and training for new audit committee members and continuing training as may be required.
- No-one other than the audit committee's chairperson and members is entitled to be present at a meeting of the audit committee. It is for the audit committee to decide if non-members should attend for a particular meeting or a particular agendum item. It is to be expected that the external audit lead partner will

be invited regularly to attend meetings as well as the finance director. Others may be invited to attend.

- The audit committee should, at least annually, meet the external and internal auditors, without management, to discuss issues arising from the audit.
- Whistleblowing: the audit committee should review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting, financial control or any other matters

Remuneration Committee

101 King II recommends that companies should appoint a remuneration committee consisting entirely or mainly of independent non-executive directors to make recommendations to the board within agreed terms of reference on the company's framework of executive remuneration and to determine specific remuneration packages for each of the executive directors. This is ultimately the responsibility of the board. The committee must be chaired by an independent non-executive director. In order to obtain input on the remuneration of the other executives the committee should consult the CEO, who may attend meetings by

invitation. However, the CEO should play no part in decisions regarding his/her own remuneration.[82]

Nomination/Corporate Governance/Directors' Affairs Committee

102 In terms of King II, shareowners are responsible ultimately for electing or removing board members. In practice, the board as a whole usually plays a major role in selecting its own members, and should accordingly plan for its own continuity and succession. The board should select, appoint, induct, develop and remove board members as and when necessary. Incompetent or unsuitable directors (including those who fail to attend meetings without proper explanation) should be removed, taking relevant legal and other matters into consideration, with the chairperson usually leading the process.[83]

103 King II recommends that, in appropriate circumstances, a nomination committee can provide a useful forum in which to assist the board to identify suitable candidates for consideration. In looking at the skills mix for a board, there are three dimensions of board effectiveness requiring consideration:

[82] p 61 of King II.
[83] p 62 chapter 5 §'s 1 and 3 of King II.

- the knowledge or information required to fill a significant gap on the board;
- the capacity of an individual to influence preferred outcomes (internally and externally) through their involvement on the board;
- the extent to which an individual has the opportunity or availability to meaningfully contribute their time and abilities to the affairs of the board. The nomination committee could fulfil some broader functions by maximising the collective wisdom of the non-executive directors serving on the committee (which should comprise a majority of independent non-executive directors). Increasingly, the nominating process for new directors has been incorporated into a board committee dealing with a range of corporate governance issues referred to it by the board.

The name of the committee could simply be the corporate governance committee.[84]

104 The proposed amendments to the Banks Act seem to embrace the King II recommendation of a nomination/corporate governance committee. In terms of the proposed s64B(1) the board of a bank must establish a

[84] p 63, chapter 5 §'s 4 and 5 of King II.

directors' affairs committee consisting of only the non-executives of a bank. The functions of the committee shall be, *inter alia,* to:

(a) assist the board of directors in its determination and evaluation of the adequacy, efficiency and appropriateness of the corporate governance of the bank;

(b) establish and maintain a board directorship continuity programme to include as a minimum the review of performance and succession planning of executive directors; the continuity of non-executive directors; a regular review of the composition of the board of directors, including the skills, experience and other qualities required to enhance the effectiveness of the board of directors; and an annual self-assessment, under co-ordination of the chairperson, of the board as a whole and of the contribution of each individual director;

(c) assist the board in the nomination of successors to the key positions in the bank in order to ensure that a management succession plan is in place;

(d) assist the board in determining whether the employment of directors should be terminated;

(e) assist the board in ensuring that the bank is at all times in compliance with all applicable laws, regulations and codes of conduct and practices.

The proposal contained in s64B that the directors' affairs committee must consist of *all* the non-executive directors could make it unworkable. Some bank boards consist of between 11 and 16 non-executive directors.[85] A committee of that size is too large to be effective. It is recommended that s64B should rather refer to a defined number of non-executive directors, for example, three or five.

However, it is invaluable for non-executive directors to meet regularly and to assess the functioning of the bank and its executives. Consideration should be given to establishing sub-committees to deal with ongoing issues, and reporting to a full meeting of the committee at least twice a year.

105 The proposed directors' affairs committee, consisting as it will of only non-executive directors, can fulfil the function called for by the Listing Standards Report and Derek Higgs, namely, of meeting regularly without members of management present.

Managing Risk

106 The Code and King II place great emphasis on risk management.[86] For present purposes it is sufficient to refer only to some of the key

[85] See the analysis in §31 hereof.
[86] The Code §3 pp 30-34 of King II; s2 pp 73-85 of King II.

recommendations. King II begins the discussion on risk management by stating that *corporate governance* can, in part, be viewed as a company's strategic response to the need to assume prudent risks, appropriately mitigated, in exchange for measurable rewards. *Risk management* can be defined as the identification and evaluation of actual and potential risk areas as they pertain to the company as a total entity, followed by a process of either termination, transfer, acceptance (tolerance) or mitigation of each risk.[87] The recommendations include the following:

- the board should make use of generally recognised risk management and internal control models and frameworks in order to maintain a sound system of risk management and internal control to provide reasonable assurance regarding the achievement of defined organisational objectives;
- the board is responsible for the total process of risk management, as well as for forming its own opinion on the effectiveness of the process;
- management is accountable to the board for designing, implementing and monitoring the process of risk management, and integrating it into the day-to-day activities of the company;

[87] Chapter 1 §'s 3 and 4 p 73 of King II.

- the board should set the risk strategy policies in liaison with the executive directors and senior management;
- the board is responsible for ensuring that a systematic, documented assessment of the processes and outcomes surrounding key risks is undertaken at least annually for the purposes of making its public statement on risk management;
- risks should be assessed on an ongoing basis, and controlled activities should be designed to respond to risks throughout the company;
- companies should develop a system of risk management and internal control that builds more robust business operations;
- reports from management to the board should provide a balanced assessment of the significant risks and the effectiveness of the system of internal control in managing those risks;
- the board is responsible for disclosure in relation to risk management and should, at a minimum, disclose, for example, that it is accountable for the process of risk management and the system of internal control;
- there must be an ongoing process for identifying, and evaluating and managing the significant risks faced by the company;

- there must be an adequate and effective system of internal control in place to mitigate the significant risks faced by the company, and so on.[88]

107 In terms of the Code, a board committee, either a dedicated committee or one with other responsibilities, should be appointed to assist the board in reviewing the risk management process and the risks facing the company.[89]

108 In terms of the proposed amendments to the Banks Act, s64A(1) will provide that the board of a bank must appoint at least three of its members, of which at least two members shall be non-executive, to form a risk committee. S64A(2) will provide:

"The functions of the risk committee shall be to-

(a) assist the board of directors in its evaluation of the adequacy and efficiency of the risk policies, procedures, practices and controls applied within that bank in the day-to-day management of its business;

(b) assist the board in the identification of the build up and concentration of the various risks to which the bank is exposed;

(c) assist the board of directors in developing a risk mitigation strategy to ensure that the bank manages the risks in an optimal manner;

[88] Pp 75-84 of King II.
[89] §3.1.6 of the Code.

(d) assist the board in ensuring that a formal risk assessment is undertaken at least annually;

(e) assist the board in identifying and regularly monitoring all key risks and key performance indicators to ensure that its decision-making capability and accuracy of its reporting is maintained at a high level at all times;

(f) facilitate and promote communication, through reporting structures regarding the matters referred to in paragraph (a) or any other related matter, between the board of directors and the executive officers of the bank;

(g) ensure the establishment of an independent risk management function and in the case where the bank forms part of a group, a group risk management function (including any global activities), the head of which will act as the reference point for all aspects relating to risk management within the bank, including the responsibility to arrange training to members of the board of directors in the different risk areas that the bank is exposed to;

(h) introduce such measures as in the committee's opinion may serve to enhance the adequacy and efficiency of the risk management policies, procedures, practices and controls applied within that bank;

(i) co-ordinate the monitoring of risk management on a globalised basis; and

(j) perform such further functions as may be prescribed."

Section F: Company Secretary

109 In terms of the Code, the company secretary, through the board, has a pivotal role to play in the corporate governance of a company. The board should be cognisant of the duties imposed on the company secretary and should empower the company secretary accordingly to enable him or her to properly fulfil those duties. The company secretary must provide the board as a whole and directors individually with detailed guidance as to how their responsibilities should be properly discharged in the best interests of a company. The company secretary has an important role in the induction of new or inexperienced directors and in assisting the chairperson and CEO in determining the annual board plan and the administration of other issues of a strategic nature at board level. The company secretary should provide a central source of guidance and advice to the board, and within the company, on matters of ethics and good governance.[90]

Section G: Internal Audit

110 The Banks Act, the regulations and the proposed amendments do not deal with internal audit.

[90] §2.10 p 30 of King II and see chapter 10 pp 70-72 of King II.

111 The Code and King II contain detailed provisions relating to the status, role, function and scope of internal audit. In terms of the Code, *inter alia*, companies should have an effective internal audit function that has the respect and co-operation of both the board and management. Internal audit should operate at a level within the company that allows it to fully accomplish its responsibilities. The head of internal audit should report administratively to the CEO and should have ready and regular access to the chairperson of the company and the chairperson of the audit committee. Internal audit should report at all audit committee meetings. Internal audit is an independent, objective assurance and consulting activity to add value and improve a company's operations. It helps a company accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.[91]

Section H: Compliance function

112 A bank is obliged to establish an independent compliance function as part of its risk management framework in order to ensure that the bank continuously manages its regulatory risk, that is, the risk that the bank

[91] The Code, §4 pp 34-35 of King II; s3 pp 86-90 of King II

does not comply with applicable laws and regulations or supervisory requirements.[92] The primary responsibility of compliance with the provisions of the Banks Act and the regulations remains on directors and executive officers.[93] The compliance function must be headed by a compliance officer of the bank, who shall perform a compliance officer's functions with diligence and care and with such a degree of competence as can reasonably be expected from a person responsible for such a function.[94] The compliance function shall have adequate resources and stature in order to ensure that non-compliance with laws and regulations or supervisory requirements by the bank can be addressed adequately.[95] Reg 47(4) sets out minimum requirements in regard to effectiveness, monitoring, reporting, resources, and a compliance manual.

113 In terms of the proposed amendments to the Banks Act, the new s60A will require a bank to establish an independent compliance function as part of the risk management framework of the bank. This requirement was previously found only in the regulations. The compliance function must be headed by a compliance officer.

[92] Regulation 47(1).
[93] Regulation 47(5).
[94] Regulation 47(2).
[95] Regulation 47(3).

Section I: External auditors

114 In terms of the Banks Act, the appointment of the auditor of a bank must be approved by the Registrar of Banks. If the assets of a bank exceed R10 billion at the close of its last preceding financial year, the bank must appoint two auditors who are independent of each other.[96] In terms of proposed amendments to s61, the amount which will trigger the appointment of two auditors will not be R10 billion but rather a prescribed amount and the appointment of an auditor will be for a prescribed period and on prescribed conditions. In terms of s63(1)(a) and (b) of the Banks Act, the auditor of a bank is obliged to inform the Registrar of Banks:

- of an irregularity or suspected irregularity in the conduct of the affairs of the bank for which he has been appointed as auditor;
- of any matter relating to the affairs of a bank which, in the opinion of the auditor, may endanger the bank's ability to continue as a going concern or may impair the protection of the funds of the bank's depositors or may be contrary to the principles of sound management (including risk management) or amounts to inadequate maintenance of internal controls.

[96] S61(1).

115 The external auditors of a bank must annually review the process followed by the board of directors in assessing the corporate governance arrangements, including the management of risk and report to the Registrar whether any matters have come to their attention to suggest that they do not concur with the findings reported by the board of directors. If the auditors do not concur with the findings of the board, they must provide reasons therefore.[97] In terms of reg 39(4)(d) the external auditors of a bank must annually report to the Registrar whether or not they concur with the reports submitted by the directors of a bank to the Registrar in terms of reg 39(4)(a) and (b). Independently of the obligation which rests on the auditors to verify, so to speak, those reports which the directors of the bank are obliged to submit to the Registrar, the auditors must furnish reports to the Registrar:

- on the bank's financial position and the results of its operations;
- whether, in the auditors' opinion, the information contained in the returns at year-end in all material respects was complete or accurate or in accordance with the directives and instructions of the Banks Act and the regulations;
- on any significant weaknesses in the system of internal controls relating to financial regulatory reporting and compliance with the Banks Act and the regulations;

[97] Regulation 38(6).

- on any significant weaknesses in the system of internal controls that come to the auditors' attention while performing the necessary auditing procedures as regard to the policies, practices and procedures of a bank relating to the granting of loans, making of investments, ongoing management of the loan and investment portfolios, and loan provisions and reserves.[98]

116 It is not necessary to deal in any detail with the provisions in the Code and King II which refer to accounting and auditing.[99] In terms of King II, the external audit provides an independent and objective check on the way in which the financial statements have been prepared and presented by the directors when exercising their stewardship to the stakeholders. An annual audit is an essential part of the checks and balances required, and is one of the cornerstones of corporate governance. While external auditors have to work with management, they must be objective and consciously aware of their accountability to the shareowners. The auditors must be able to turn to the non-executive directors in regard to any concerns they may have about the company or its business. Auditors

[98] Regulation 45.
[99] Code §6 pp 38-39; s5 pp 125-129 of King II.

should observe the highest standards of business and professional ethics.[100]

117 The external auditors of banks face two dilemmas:

- the one is that the auditors have statutory obligations towards the SARB, which they must meet while retaining a cordial relationship with their client, the bank;
- the second is that the auditors are required to act independently and objectively and yet the audit of a large bank produces a substantial income for the auditors.

118 The external auditors of the five major banking groups are:

Auditors	Banking Group
Deloitte & Touche	FirstRand, Nedcor
Ernst & Young	Investec, Absa
KPMG	Standard Bank, Nedcor, Absa and Investec
PwC	Standard Bank, FirstRand

[100] Chapter 1 §'s 1.1, 1.2 and 1.5 p 125 of King II.

GENERAL REPORT

Corporate Governance Review in terms of the Banks Act, 1990

Annexures A - F

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<u>The General Report</u>

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Annexure A

BANK FAILURES WHICH CAN ULTIMATLY BE ASCRIBED TO CORPORATE GOVERNANCE

1989/1991
- Alpha Bank Limited
- Cape Investment Bank Limited
- Pretoria Bank Limited
- Sechold Bank Limited

1993
- Prima Bank Limited

1995
- The African Bank Limited

1996
- Community Bank Limited

1997
- Islamic Bank Limited

1999
- FBC Fidelity Bank Limited

2000
- New Republic Bank Limited
- Ons Eerste Volksbank Limited
- The Business Bank Limited

2001
- Real Africa Durolink Investment Bank Limited
- Regal Treasury Private Bank Limited

2002
- Saambou Bank Limited
- Southern Bank of Africa Limited
- TA Bank of South Africa Limited
- Unibank Limited

Annexure B

QUESTIONS

A QUESTIONS TO THE CHAIRPERSON OF A BANK

(To be answered in addition to the Questions to Non-executive Directors of the Bank)

1. Are you an employee of the bank, any of the subsidiaries of the bank, the controlling company of the bank or any subsidiary of the controlling company?

2. Are you a member of the Audit Committee of the bank or the controlling company of the bank?

3. If you are the Chairperson of the board of directors of a controlling company, are you an employee of the controlling company or any bank in respect of which that company is registered as a controlling company?

4. Are you a member of the Audit Committee of the controlling company or any bank in respect of which that company is registered as a controlling company?

5. Do you offer firm and objective leadership which brings out the best in each director on the board?

6. The chairperson of the board of directors of a bank is required to confirm, terms of a declaration attached to form DI 020 which is signed by each new director of a bank ("the deponent"), that he/she has carefully studied all information supplied in the statement by the deponent, and that after discussion with the deponent and all other members of the board, and after having taken into account any other information at his/her disposal or that has come to his/her attention, that he/she is of the opinion that the deponent is fit and proper to take up office in the bank.

   a) What steps did you take to satisfy yourself that each director on the board is fit and proper?

   b) What steps did you take to ensure that each director on the board has correctly and truthfully answered questions 37 and 39 of form DI 020?

   c) In retrospect, and based upon your assessment of the performance of each respective director, do you still believe that all directors on the board are fit and proper, with specific reference to the steps referred to in paragraphs a) and b) above?

7. What do you see as your primary function as Chairperson?

8. Do you always preside over meetings of the board of directors and ensure the smooth functioning of the board in the interest of good governance?

9. Do you usually also preside over the company's shareowner meetings?

10. Which issues and considerations influence your role and function as chairperson of the bank?

11. What influence does the size of the particular circumstances of your bank, the complexity of its operations, the qualities of the CEO, the management team and the skills and experience of each board member have on your role and function as chairperson?

12. What do you consider to be the common, core functions to be performed by the chairperson?

13. Do they include:

    a) Providing overall leaderships to the board without limiting the principle of collective responsibility of board decisions?

    b) Actively participating in the selection of board members as well as overseeing a formal succession plan for the board, CEO and senior management?

    c) Arranging for new directors appointed to the board to be properly inducted and oriented, and monitoring and evaluating board and director appraisals?

    d) Determining, normally in conjunction with the CEO and the company secretary, the formulation of an annual work plan for the board against agreed objectives and goals as well as playing an active part in setting the agenda for board meetings?

    e) Acting as the main informal link between the board and management, and particularly between the board and the CEO?

    f) Maintaining relations with the company's shareowners and, perhaps, some of its important stakeholders, although the latter may be more in the nature of an operational issue to be conducted by the CEO and the senior management team?

    g) Ensuring that all directors play a full and constructive role in the affairs of the company, and taking a lead role in removing non-performing or unsuitable directors from the board?

h) Ensuring that all the relevant information and facts, objectively speaking, are placed before the board to enable the directors to reach an informed decision?

14. Are the distinctive functions of chairperson and CEO kept separate in your bank?

15. What are you primarily responsible for as Chairperson, in running the bank?

16. Do you in any way share the CEO's tasks in running the business and implementing the policies and strategies adopted by the board?

17. Is there a clearly accepted division of responsibilities at the head of the company to ensure a balance of power and authority, so that no one individual has unfettered powers of decision making?

18. Are you an independent non-executive director, as defined in the King II Report?

19. Does your board of directors appraise your performance as Chairperson on an annual or such other basis as it may determine?

20. When were you appointed to the board of directors of the bank?

21. When were you appointed chairperson of the board of directors of the bank?

22. Did you serve in any executive position(s) with the bank before being appointed to the board of the bank? If so, in which position(s)?

23. Did you hold any position(s) on any board committee before being appointed chairman on the board of the bank? If so, in which position(s)?

24. Do you serve on any board committees (e.g. remuneration, audit, risk, credit, corporate governance) of the bank? If so, which meetings do you attend?

25. Do you attend meetings of any board committees of the bank? If so, which meetings do you attend?

26. Do you serve on the board of directors of the controlling company of the bank?

27. Do you serve on the board of directors of any companies which are subsidiaries of the controlling company of the bank, the bank, or any companies that are part of the group of companies to which the major shareholder of the bank belongs?

28. Are you a director of any other companies not related to the bank? If so, which companies?

29. In which position or capacity do you serve on such other boards?

30. What is the nature and quantum of the remuneration you receive in respect of each such directorship you hold?

31. Do any of the other companies of which you are a director, have a legal, commercial or other relationship with the bank?

32. Do you comply with the criteria for independent non-executive directors, as set out in paragraph 7.3 of the King II Report? If not, with which criteria do you not comply?

33. Do the Heads of the bank's Internal Audit, Risk Management, and Compliance Departments, respectively, have direct access to you to discuss any matters they may wish to bring to your attention? If so, has any of the said officers approached you in this regard during the past three years?

34. Are you conversant with the provisions of the Banks Act, 1990 (Act No. 94 of 1990, hereinafter referred to as "the Act"), and the Regulations issued under the Act, specifically Regulations 38 and 39?

35. How do you approach issues or matters raised at the bank's board level which you suspect may create a conflict of interest for yourself?

36. Have you ever recused yourself from any board discussions or decisions?

37. What amount of time per month are you able to devote to your responsibilities as chairperson of the bank?

38. What is the nature and quantum of the remuneration you receive in respect of your position as chairperson of the bank and/or holding company?

B QUESTIONS TO THE CHIEF EXECUTIVE OFFICER OF A BANK

(To be answered in addition to the Questions to Executive Directors of a Bank)

1. How do you implement and fulfil the following functions of a Chief Executive Officer ("CEO"):

   a) Develop and recommend to the board a long-term strategy and vision for the bank that will generate satisfactory levels of shareowner value, and positive reciprocal relations with relevant stakeholders?

   b) Develop and recommend to the board annual business plans and budgets that support the bank's long-term strategy?

   c) Strive consistently to achieve the bank's financial and operating goals and objectives, and ensure that the day-to-day business affairs of the company are appropriately monitored and managed?

   d) Ensure continuous improvement in the quality and value of the products and services provided by the bank, and that the bank achieves and maintains a satisfactory competitive position within its industry?

   e) Ensure that the bank has an effective management team and actively participate in the development of management and succession planning (including the CEO's own position)?

   f) Formulate and oversee the implementation of major corporate policies?

   g) Serve as the chief spokesperson for the bank?

2. How do you maintain a positive and ethical work climate that is conducive to attracting, retaining and motivating a diverse group of top quality employees of all levels of the company?

3. How do you foster a corporate culture that promotes ethical practices, encourages individual integrity, and fulfils social responsibility objectives and imperatives?

4. Is your performance appraised by the chairperson, or a sub-committee appointed by your board?

5. Is this done on an annual basis?

6. Are the results of such an appraisal considered by the remuneration committee to guide it in its evaluation of the performance and remuneration of your position?

7. What is your operational relationship with:

   a) The Chairperson of the board;

   b) The Chairperson of the Audit Committee;

   c) The head of the risk, internal audit and compliance function in the bank, respectively;

   d) The bank's external auditors?

C QUESTIONS TO EXECUTIVE DIRECTORS OF A BANK

1. What management position do you hold in the bank, and what are your main responsibilities?

2. How are you involved in the day-to-day management of the bank and any of its subsidiaries, insofar as this would fall outside your main field of responsibilities?

3. Do you hold any other non-executive directorships, and if so, to what extent to these interfere with your immediate management responsibilities?

4. Who determines specific remuneration packages for each of the executive directors of the bank?

5. What do you understand to be your fiduciary relationship to the bank in terms of section 60(1) of the Banks Act, 1990?

6. How do you interpret the requirement to act honestly and in good faith, and, in particular, to exercise the powers you may have to manage and represent the bank exclusively in the best interest and for the benefit of the bank and its deposits?

7. Are you aware of the guidelines and requirements as prescribed under section 90(1)(b) of the Banks Act in the performance of your functions as director of the bank?

8. Does the composition of the board of directors of your bank comply with the requirements of section 60(3) of the Banks Act, in that not more than 49 per cent of the directors of the bank are employees of the bank, its subsidiaries or controlling company and the vote of the directors of the board who are employees together do not exceed 49 per cent of the total vote cast by the directors present and voting at the meeting?

9. Are you aware that every bank shall, at least 30 days prior to the appointment of a new director, in writing furnish the Registrar with the prescribed information in respect of a proposed new director in terms of section 60(5) of the Banks Act?

10. How many members of the board of directors of your bank have been appointed to form an audit committee in terms of section 64(1) of the Banks Act, are any of the members of the audit committee persons who are employees of the bank or any of its subsidiaries, its controlling company or any subsidiary of its controlling company?

11. Has your board of directors appointed any supporting committees to assist with its responsibilities with regard to ensuring that an adequate and effective process of corporate governance is established and maintained?

12. Is there an adequate and effective process of corporate governance in place in your bank, which is consistent with the nature, complexity and risk inherent in the bank's on-balance sheet and off-balance sheet activities and which responds to changes in the bank's environment and conditions?

13. Does the process of corporate governance include the maintenance of effective risk management by a bank?

14. Are you aware of the types of risks set out in regulation 38(3)(a) to (k)?

15. How is the overall effectiveness of corporate governance monitored on an on-going basis, by the board of directors or by a committee appointed by the board of directors?

16. How often does the board of directors of your bank meet in order to assess and document whether the process of corporate governance implemented by the bank, successfully achieves the objectives determined by the board?

17. Questions 37 and 39 of the form DI 020 which you signed as a director of your bank, respectively require from you to state whether you have a basic knowledge and understanding of the risks to which banks are exposed, and whether you have acquainted yourself with, and whether you understand, the extent of the rights and powers, as well as your responsibilities and duties as a director of the bank, as contained in the applicable law.

    a) In retrospect, do you believe that you answered these questions accurately?
    b) Today, would you still answer the questions in the affirmative?

18. Do you have a basic knowledge and understanding of the conduct of the business of a bank and of the laws and customs that govern the activities of the bank?

19. How did you acquire such knowledge and understanding?

20. Are you fully conversant with all aspects of the conduct of the business of the bank?

21. Is your competence as a director of the bank commensurable with the nature and scale of the business conducted by the bank, and in the case of being a director of the controlling company, is it commensurable with the nature and scale of the business conducted by the banks in the group?

22. Are you adequately qualified and experienced to perform your functions with diligence and care and with such a degree of competence as can reasonably be expected from persons with your knowledge and experience?

23. How do you interpret your duty to ensure that risks that are of necessity taken by a bank in the conduct of its business, are managed in a prudent manner?

24. How does your board of directors report to the Registrar of Banks on the issues set out in regulation 39(4)(a) to (c)?

25. How do you interpret your duty towards the bank to:

    25.1 Act *bona fide* for the benefit of the bank?

    25.2 Avoid any conflict between the bank's interests and your interests?

    25.3 Possess and maintain the knowledge and skill that may reasonably be expected from a person holding a similar appointment to yours and carrying out similar functions as are carried out by you?

    25.4 Exercise such care in the carrying out of your functions in relation to the bank as may reasonably be expected of a diligent person holding the same appointed under similar circumstances, and who possesses both the knowledge and skill mentioned in the previous question and any such additional knowledge and skill as you may have?

26. Do you agree with the view that powers should be granted to the Registrar of Banks to institute action in terms of section 424 of the Companies Act against any director, CEO or executive officer of the bank who was knowingly a party to the carrying on of business of a bank in the manner envisaged in section 424?

27. Has your board of directors appointed a risk committee consisting of at least three of its members, of which two members are non-executive?

28. Has your board of directors established a directors' affairs committee, the membership of which will consist only of the non-executive directors of the bank?

29. Are you aware of, and conversant with, the proposed definition of corporate governance, to be introduced into section 1 of the Banks Act?

30. How do you interpret the collective responsibility of the board of directors to provide effective corporate governance that involves a set of relationships between the company, its board, its shareowners and other relevant stakeholders?

31. Is your board of directors constituted in a manner that provides a balance between enterprise and control?

32. Does your board comprise a balance of executive and non-executive directors, preferably with majority of non-executive directors of whom sufficient should be independent of management, minority interests to be protected?

33. Is your board composed of individuals of integrity, who can bring a blend of knowledge, skills, objectivity, experience and commitment to the board under the firm objective leadership of a chairperson (preferably an independent non-executive director), who accepts the responsibilities and the duties it entails to provide a direction necessary for an effective board?

34. Is your board able to exercise objective judgement on the corporate affairs of the business enterprise, independent from management but with sufficient management information to enable proper and objective assessments to be made by the directors collectively?

35. Does your board have a charter setting out its responsibilities, and which is disclosed in its annual report? If so, what is the content of that charter?

36. Has your board determined the company's purpose, values and stakeholders relevant to the business of the bank and developed strategies combining all these elements?

37. Has your board put procedures in place to monitor and evaluate the implementation of its strategies, policies, senior management performance criteria and business plans?

38. In directing the bank, does your board exercise leadership, enterprise integrity and judgement based on fairness, accountability responsibility and transparency?

39. Does your board give strategic direction to the bank, appoint a CEO and ensure that succession is planned?

40. Does your board retain full and effective control over the company and monitor management in carrying out board plans and strategies?

41. What is the balance between executive and non-executive directors on your board?

42. How does your board ensure that the bank complies with all relevant laws, regulations and codes of best business practice, and that it communicates with its shareowners and relevant stakeholders (internal and external) openly and promptly and with substance prevailing over form?

43. How often does your board review processes and procedures to ensure the effectiveness of the company's internal systems of control, so that its decision-making capability and the accuracy of its reporting are maintained at a high level at all level?

44. How often does your board meet?

45. Does it disclose in the annual report the number of board and committee meetings held in the year and the details of attendance of each director, as applicable?

46. Has your board defined levels of materiality reserving specific powers to itself and delegating other matters with the necessary written authority to management?

47. Are these matters monitored and evaluated on a regular basis?

48. Does your board have unrestricted access to all company information, records, and documents in property?

49. Are the information needs of the board well defined and regularly monitored?

50. Has your board developed a corporate code of conduct that addresses conflicts of interest particularly relating to directors and management, and is this regularly reviewed and updated as necessary?

51. Does the board have an agreed procedure whereby directors may, if necessary, take independent provision advise at the company's expense?

52. Have efficient and timely methods been determined for informing and briefing board members prior to meetings while each board member is responsible for being satisfied that, objectively, they have been furnished with all the relevant information and facts before making a decision?

53. What procedures are in place, and what steps are taken, to ensure that full, comprehensive and accurate information, including all existing and potential positive and negative facts pertaining to the matter in question, is provided by management of the bank to the board of directors to enable the board to make an informed decision, based on all known and relevant considerations?

54. Are the size, diversity and demographics of your board such that it operates effectively?

55. Do non-executive directors have access to management, and do they meet separately with management, without the attendance of executive directors?

56. Does your board ensure that each item of special business included in the notice of the annual general meeting, or any other shareowners' meeting, is accompanied by a full explanation of the effects of any proposed resolutions?

57. Has the board identified key risk areas and key performance indicators of the bank?

58. Are these regularly monitored, with particular attention given to technology and systems?

59. Has the board identified and does it monitor the non-financial aspects relevant to the business of the bank?

60. Does the board record the facts and assumptions on which it relies to conclude that the business will continue as a going concern in the financial year ahead or why it will not, and in that case, the steps the board is taking?

61. How does the board ensure that the correct balance is found between conforming with governance constraints and performing in an entrepreneurial way?

62. Have you been employed by the bank or the group of which it currently forms part, in an executive capacity for the preceding three financial years?

63. Are you a member of the immediate family of an individual who is, or has been, in any of the past three financial years, employed by the company or the group in an executive capacity?

64. Are you a professional advisor to the bank or the group other than in a directive capacity?

65. Are you a significant supplier to or customer of the bank or group?

66. Do you have significant contractual relationships with the bank or the group?

67. Are you free from any business or any relationship which could be seen to materially interfere with your capacity to act in an independent manner?

68. Do you serve on a remuneration committee or such other appropriate board committee appointed by the board of directors?

69. How many independent non-executive directors sit on that committee?

70. Who chairs that committee?

71. Does the CEO attend meetings of that committee by invitation?

72. Does the bank provide full disclosure of director remuneration on individual basis, giving details of earnings, share options, restraint payments and all other benefits?

73. Have you been granted share options?

74. Did the share owners give prior approval to the granting of such share options?

75. Have you received shares rather than share options?

76. How is your participation in share options schemes or receiving shares disclosed to share owners?

77. When were you appointed to the board of directors of the bank?

78. Did you serve in any executive position(s) with the bank before being appointed to the board of the bank? If so, in which position(s)?

79. Do you serve on any specific board committees (e.g. remuneration, audit, risk, credit, corporate governance) of the bank?

80. Do you attend meetings of any other board committees of the bank?

81. Do you serve on the board of directors of the controlling company of the bank?

82. Do you serve on the board of directors of any companies which are subsidiaries of the controlling company of the bank, the bank, or any companies that are part of the group of companies to which the major shareholder of XYZ Bank belongs?

83. Are you a director of any companies not related to the bank?

84. In which position or capacity do you serve on such other boards?

85. What is the nature and quantum of the remuneration you receive in respect of each such directorship you hold?

86. Do any of the other companies of which you are a director, have a legal, commercial or other relationship with the bank?

87. How do you approach issues or matters raised at the bank's board level which you suspect may create a conflict of interest for yourself?

88. Have you ever recused yourself from any board discussions or decisions?

89. What is the nature and quantum of the remuneration you receive in respect of your executive directorship of the bank?

90. Are details of the remuneration decisions of the Remuneration Committee of the Board published?

D QUESTIONS TO NON-EXECUTIVE DIRECTORS OF THE BANK

1. What do you understand to be your fiduciary relationship to the bank in terms of section 60(1) of the Banks Act, 1990?

2. How do you interpret the requirement to act honestly and in good faith, and, in particular, to exercise the powers you may have to manage and represent the bank exclusively in the best interest and for the benefit of the bank and its deposits?

3. Are you aware of the guidelines and requirements as prescribed under section 90(1)(b) of the Banks Act in the performance of your functions as director of the bank?

4. Does the composition of the board of directors of your bank comply with the requirements of section 60(3) of the Banks Act, in that not more than 49 per cent of the directors of the bank are employees of the bank, its subsidiaries or controlling company and the vote of the directors of the board who are employees together do not exceed 49 per cent of the total vote cast by the directors present and voting at the meeting?

5. Are you aware that every bank shall, at least 30 days prior to the appointment of a new director, in writing furnish the Registrar with the prescribed information in respect of a proposed new director in terms of section 60(5) of the Banks Act?

6. How many members of the board of directors of your bank have been appointed to form an audit committee in terms of section 64(1) of the Banks Act, are any of the members of the audit committee persons who are employees of the bank or any of its subsidiaries, its controlling company or any subsidiary of its controlling company?

7. Has your board of directors appointed any supporting committees to assist with its responsibilities with regard to ensuring that an adequate and effective process of corporate governance is established and maintained?

8. Is there an adequate and effective process of corporate governance in place in your bank, which is consistent with the nature, complexity and risk inherent in the bank's on-balance sheet and off-balance sheet activities and which responds to changes in the bank's environment and conditions?

9. Does the process of corporate governance include the maintenance of effective risk management by a bank?

10. Are you aware of the types of risks set out in regulation 38(3)(a) to (k)?

11. How is the overall effectiveness of corporate governance monitored on an on-going basis, by the board of directors or by a committee appointed by the board of directors?

12. How often does the board of directors of your bank meet in order to assess and document whether the process of corporate governance implemented by the bank, successfully achieves the objectives determined by the board?

13. Questions 37 and 39 of the form DI 020 which you signed as a director of your bank, respectively require from you to state whether you have a basic knowledge and understanding of the risks to which banks are exposed, and whether you have acquainted yourself with, and whether you understand, the extent of the rights and powers, as well as your responsibilities and duties as a director of the bank, as contained in the applicable law.

a) In retrospect, do you believe that you answered these questions correctly?
b) Today, would you still answer the questions in the affirmative?

14. Do you have a basic knowledge and understanding of the conduct of the business of a bank and of the laws and customs that govern the activities of the bank?

15. How did you acquire such knowledge and understanding?

16. Are you fully conversant with all aspects of the conduct of the business of the bank?

17. Is your competence as a director of the bank commensurable with the nature and scale of the business conducted by the bank, and in the case of being a director of the controlling company, is it commensurable with the nature and scale of the business conducted by the banks in the group?

18. Are you adequately qualified and experienced to perform your functions with diligence and care and with such a degree of competence as can reasonably be expected from persons with your knowledge and experience?

19. How do you interpret your duty to ensure that risks that are of necessity taken by a bank in the conduct of its business, are managed in a prudent manner?

20. How does your board of directors report to the Registrar of Banks on the issues set out in regulation 39(4)(a) to (c)?

21. How do you interpret your duty towards the bank to:

a) Act *bona fide* for the benefit of the bank?

b) Avoid any conflict between the bank's interests and your interests?

c) Possess and maintain the knowledge and skill that may reasonably be expected from a person holding a similar appointment to yours and carrying out similar functions as are carried out by you?

d) Exercise such care in the carrying out of your functions in relation to the bank as may reasonably be expected of a diligent person holding the same appointed under similar circumstances, and who possesses both the knowledge and skill mentioned in the previous question and any such additional knowledge and skill as you may have?

22. Do you agree with the view that powers should be granted to the Registrar of Banks to institute action in terms of section 424 of the Companies Act against any director, CEO or executive officer of the bank who was knowingly a party to the carrying on of business of a bank in the manner envisaged in section 424?

23. Has your board of directors appointed a risk committee consisting of at least three of its members, of which two members are non-executive?

24. Has your board of directors established a directors' affairs committee, the membership of which will consist only of the non-executive directors of the bank?

25. Are you aware of, and conversant with, the proposed definition of corporate governance, to be introduced into section 1 of the Banks Act?

26. How do you interpret the collective responsibility of the board of directors to provide effective corporate governance that involves a set of relationships between the company, its board, its shareowners and other relevant stakeholders?

27. Is your board of directors constituted in a manner that provides a balance between enterprise and control?

28. Does your board comprise a balance of executive and non-executive directors, preferably with majority of non-executive directors of whom sufficient should be independent of management, minority interests to be protected?

29. Is your board composed of individuals of integrity, who can bring a blend of knowledge, skills, objectivity, experience and commitment to the board under the firm objective leadership of a chairperson (preferably an independent non-

executive director), who accepts the responsibilities and the duties it entails to provide a direction necessary for an effective board?

30. Is your board able to exercise objective judgement on the corporate affairs of the business enterprise, independent from management but with sufficient management information to enable proper and objective assessments to be made by the directors collectively?

31. Does your board have a charter setting out its responsibilities, and which is disclosed in its annual report? If so, what is the content of that charter?

32. Has your board determined the company's purpose, values and stakeholders relevant to the business of the bank and developed strategies combining all these elements?

33. Has your board put procedures in place to monitor and evaluate the implementation of its strategies, policies, senior management performance criteria and business plans?

34. In directing the bank, does your board exercise leadership, enterprise integrity and judgement based on fairness, accountability responsibility and transparency?

35. Does your board give strategic direction to the bank, appoint a CEO and ensure that succession is planned?

36. Does your board retain full and effective control over the company and monitor management in carrying out board plans and strategies?

37. What is the balance between executive and non-executive directors on your board?

38. How does your board ensure that the bank complies with all relevant laws, regulations and codes of best business practice, and that it communicates with its shareowners and relevant stakeholders (internal and external) openly and promptly and with substance prevailing over form?

39. How often does your board review processes and procedures to ensure the effectiveness of the company's internal systems of control, so that its decision-making capability and the accuracy of its reporting are maintained at a high level at all level?

40. How often does your board meet?

41. Does it disclose in the annual report the number of board and committee meetings held in the year and the details of attendance of each director, as applicable?

42. Has your board defined levels of materiality reserving specific powers to itself and delegating other matters with the necessary written authority to management?

43. Are these matters monitored and evaluated on a regular basis?

44. Does your board have unrestricted access to all company information, records, and documents in property?

45. Are the information needs of the board well defined and regularly monitored?

46. Has your board developed a corporate code of conduct that addresses conflicts of interest particularly relating to directors and management, and is this regularly reviewed and updated as necessary?

47. Does the board have an agreed procedure whereby directors may, if necessary, take independent provision advise at the company's expense?

48. Have efficient and timely methods been determined for informing and briefing board members prior to meetings while each board member is responsible for being satisfied that, objectively, they have been furnished with all the relevant information and facts before making a decision?

49. What procedures are in place, and what steps are taken, to ensure that full, comprehensive and accurate information, including all existing and potential positive and negative facts pertaining to the matter in question, is provided by management of the bank to the board of directors to enable the board to make an informed decision, based on all known and relevant considerations?

50. Are the size, diversity and demographics of your board such that it operates effectively?

51. Do non-executive directors have access to management, and do they meet separately with management, without the attendance of executive directors?

52. Does your board ensure that each item of special business included in the notice of the annual general meeting, or any other shareowners' meeting, is accompanied by a full explanation of the effects of any proposed resolutions?

53. Has the board identified key risk areas and key performance indicators of the bank?

54. Are these regularly monitored, with particular attention given to technology and systems?

55. Has the board identified and does it monitor the non-financial aspects relevant to the business of the bank?

56. Does the board record the facts and assumptions on which it relies to conclude that the business will continue as a going concern in the financial year ahead or why it will not, and in that case, the steps the board is taking?

57. How does the board ensure that the correct balance is found between conforming with governance constraints and performing in an entrepreneurial way?

58. Are you an independent non-executive director as defined in the King II Report?

59. How do you assess yourself with regard to the requirement contained in the King II Report with regard to non-executive directors being individuals of calibre and credibility, having the necessary skill and experience to bring judgement to bear independent of management, on issues of strategy, performance, resources, transformation, diversity and employment equity, standards of conduct, and evaluation of performance?

60. Are you involved in the day-to-day management of the bank?

61. Are you a full-time salary employee of the bank or any of its subsidiaries?

62. Are you a representative of a shareowner who has the ability to control significantly influenced management?

63. Have you been employed by the bank or the group of which it currently forms part, in an executive capacity for the preceding three financial years?

64. Are you a member of the immediate family of an individual who is, or has been, in any of the past three financial years, employed by the company or the group in an executive capacity?

65. Are you a professional advisor to the bank or the group other than in a directive capacity?

66. Are you a significant supplier to or customer of the bank or group?

67. Do you have significant contractual relationships with the bank or the group?

68. Are you free from any business or any relationship which could be seen to materially interfere with your capacity to act in an independent manner?

69. Do you serve on a remuneration committee or such other appropriate board committee appointed by the board of directors?

70. How many independent non-executive directors sit on that committee?

71. Who chairs that committee?

72. Does the CEO attend meetings of that committee by invitation?

73. Does the bank provide full disclosure of director remuneration on individual basis, giving details of earnings, share options, restraint payments and all other benefits?

74. Have you been granted share options?

75. Did the share owners give prior approval to the granting of such share options?

76. Have you received shares rather than share options?

77. How is your participation in share options schemes or receiving shares disclosed to share owners?

78. When were you appointed to the board of directors of the bank?

79. Did you serve in any executive position(s) with the bank before being appointed to the board of the bank? If so, in which position(s)?

80. Do you serve on any specific board committees (e.g. remuneration, audit, risk, credit, corporate governance) of the bank?

81. Do you attend meetings of any other board committees of the bank?

82. Do you serve on the board of directors of the controlling company of the bank?

83. Do you serve on the board of directors of any companies which are subsidiaries of the controlling company of the bank, the bank, or any companies that are part of the group of companies to which the major shareholder of XYZ Bank belongs?

84. Are you a director of any companies not related to the bank?

85. In which position or capacity do you serve on such other boards?

86. What is the nature and quantum of the remuneration you receive in respect of each such directorship you hold?

87. Do any of the other companies of which you are a director, have a legal, commercial or other relationship with the bank?

88. How do you approach issues or matters raised at the bank's board level which you suspect may create a conflict of interest for yourself?

89. Have you ever recused yourself from any board discussions or decisions?

90. Do you and the other non-executive directors of the bank meet separately from the executive directors, either before or after board meetings, in order to discuss matters raised or to be raised at board meetings?

91. Have you ever taken up any issue pertaining to the operational management of the bank, with the CEO or management?

92. What amount of time per month are you able to devote to your responsibilities as a director of the bank?

93. What is the nature and quantum of the remuneration you receive in respect of your directorship of the bank?

94. Are details of the remuneration decisions of the Remuneration Committee of the Board published?

E QUESTIONS TO THE HEAD: COMPLIANCE OF THE BANK

1. What are your academic and other qualifications?
2. When were you appointed to the bank?
3. In which capacity have you worked within the bank?
4. Who is your immediate superior?
5. To whom to you report in the bank apart from your immediate superior?
6. Do you have unfettered access to the CEO of the bank?
7. Do you have unfettered access to the Chairperson of the Audit Committee?
8. Do you have unfettered access to the Chairperson of the Board of Directors?
9. If the answer to any of questions 6 to 9 is negative, what are the procedures and reporting lines you have to follow in order to gain access to the respective persons?
10. Do you have sufficient financial and other reserves and staff to perform your functions properly?
11. Are you and your staff adequately remunerated?
12. Do you have responsibility for the compliance function in any offshore subsidiaries of the bank, if any?
13. If not, who is responsible for the compliance function in respect of those subsidiaries?
14. Do you attend executive meetings of the bank?
15. Do you attend audit committee meetings of the bank?
16. Do you attend board meetings of the bank?
17. Are you involved in the process of corporate governance for which the board of directors is responsible in terms of regulation 38?
18. Are you involved in any training or induction of new directors of the bank?

19. Are you conversant with the provisions of regulation 47 of the Regulations pertaining to the compliance function?

20. Do you and/or your function enjoy the powers, status, independence and means to execute and comply with the requirements contained in regulation 47(4)?

21. If not, how can such deficiencies be rectified and addressed?

F QUESTIONS TO THE HEAD: INTERNAL AUDIT OF A BANK

1. Is the internal audit function in your bank independent, objective, and does it provide assurance in consulting activity designed to add value and improve the bank's operations?

2. How does it help the bank to accomplish its objectives in bringing a systematic, disciplined approach to evaluate and approve the effectiveness of risk management, control and governance processes?

3. How does the internal audit function provide:

   a) Assurance that the management processes are adequate to identify and monitor significant risks?

   b) Confirmation of the effective operation of the established internal control systems?

   c) Credible processes for feedback on risk management and assurance?

   d) Objective confirmation that the board receives the right quality of assurance and information from management and that this information is reliable?

4. Does the internal audit function in the bank have the respect and cooperation of both the board of directors and management?

5. Is the purpose, authority and responsibility of the internal audit activity formally defined in an internal audit charter approved by the board, consistent with the institute of internal auditors' definition of internal auditing?

6. Does the internal audit function report at a level within the bank that allows it fully to accomplish its responsibilities?

7. Do you report administratively to the CEO?

8. Do you have ready and regular access to the chairperson of the bank and the chairperson of the audit committee?

9. Do you report at all audit committee meetings?

10. Is the appointment or dismissal of the head of internal audit done with the concurrence of the audit committee?

11. What is the relationship between the internal audit function and the compliance function of the bank?

12. Do you have sufficient financial and other resources and staff to perform your actions properly?

13. Are you and your staff adequately remunerated?

14. Is the dialogue and coordination between the external auditors and the internal audit function formalised by an audit "partnership"?

15. Is there adequate coordination with the internal audit functions in other subsidiaries of the bank and its controlling company?

16. Do you report to a group internal audit function of the bank?

G QUESTIONS TO EXTERNAL AUDITOR OF A BANK

1. Have you had occasion to inform the Registrar of Banks of an irregularity or suspected irregularity in the conduct of the affairs of the bank for which you have been appointed as auditor?

2. Have you had occasion to inform the Registrar of Banks of any matter relating to the affairs of the bank which, in your opinion, might have endangered the bank's ability to continue as a going concern or may have impaired the protection of the bank's depositors or may have been contrary to the principles of sound management (including risk management) or amounts to inadequate maintenance of internal controls, in terms of section 63(1) of the Banks Act, 1990?

3. Do you annually review the process followed by the board of directors in assessing the corporate governance arrangements including the management of risk?

4. How do you review such process?

5. Have you reported to the Registrar of Banks whether any matters have come to your attention which suggests that they do not concur with the findings reported by the board of directors?

6. Have you provided reasons for not concurring with the findings of the board of directors to the Registrar of Banks?

7. On which basis, and using which criteria, do you annually report to the Registrar of Banks whether or not you concur with the report submitted by the directors of the bank to the Registrar of Banks in terms of regulation 39(4)(a) and (b), namely:

   a) whether or not:

      - the bank's internal controls provide reasonable assurance as to the integrity and reliability of the financial statements and safeguard, verify and maintain accountability of the bank's assets;

      - the internal controls are based on established policies and procedures and are implemented by trained, skilled personnel, whose duties have been segregated appropriately;

      - adherence to the implemented internal controls as continuously monitored by the bank;

- all bank employees are required to maintain high ethical standards, thereby ensuring that the bank's business practices are conducted in a manner that is above reproach;

- anything has come to the directors' attention to indicate that any material malfunction, as defined and documented by the board of directors, in the functioning of controls, procedures and systems has occurred during the period under review; and

b) whether there is reason to believe that the bank will not be a going concern in the year ahead and should there be a reason to believe so, having disclosed and explained such reason?

8. On which basis, and using which criteria, do you furnish to the Registrar of Banks in terms of regulation 45, various reports:

    - on the bank's financial position and the results of its operations;

    - whether, in your opinion, the information contained in the returns at year end in all material respects were complete or accurate or in accordance with the directives and instructions of the Banks Act and the Regulations;

    - on any significant weaknesses in the system of internal controls relating to financial regulatory reporting and compliance with the Banks Act and the Regulations;

    - on any significant weaknesses in the system of internal controls that came to your attention while performing the necessary auditing procedures as regards the policies, practices and procedures of a bank relating to the granting of loans, making of investments, ongoing management of the loan and investment portfolios, and loan provisions and reserves?

9. How do you ensure that you provide an independent and objective check on the way in which the financial statements of the bank had been prepared and presented by the directors when exercising their stewardship to the stakeholders?

10. How do you interpret your accountability to the share owners of the bank?

11. How are differences of opinion between yourself and the management of the bank aired, discussed and overcome?

12. Are you able to turn to the non-executive directors in regard to any concerns you may have about the company or its business?

13. What impact do you have on the quality of the internal control system, and what leverage do you have in recommending improving internal controls?

14. What is the relationship between yourself and the internal audit function?

15. Is the dialogue and coordination between the external auditors and the internal audit function formalised by an audit "partnership"?

16. What is your opinion of the extent to which the bank and/or holding comply with the principles of corporate governance set out inter alia in the accompanying memorandum: "Some corporate governance principles"?

Absa Bank Limited

Annexure C1

List of those interviewed

The board

1. Dr Brigalia Bam (NED)
2. Dr Steve Booysen (Executive director)
3. Mr Nallie Bosman (CEO)
4. Ms Santie Botha (Executive director)
5. Mr Leslie Boyd (NED)
6. Mr Dave Brink (Deputy Chairperson)
7. Mr Brian Connellan (NED)
8. Dr Danie Cronje (Chairperson)
9. Mr Attie du Plessis (NED)
10. Mr Frans du Toit (Executive director)
11. Mr Charles Erasmus (Executive director)
12. Mr Bert Griesel (Executive director)
13. Mr Garth Griffin (NED)
14. Mr Lourens Jonker (NED)
15. Mr Paul Kruger (NED)
16. Dr Dirk Mostert (NED)
17. Mr Rupert Pardoe (Executive director)

18. Mr Tokyo Sexwale (NED)

19. Mr Israel Skosana (Executive director)

20. Dr Franklin Sonn (NED)

21. Mr Peter Swartz (NED)

22. Mr Pieter van der Merwe (Executive director)

23. Mr Theo van Wyk (NED)

24. Mr Louis von Zeuner (Executive director)

Members of management

25. Mr Eddie Swanepoel (Risk management)

26. Mr Gert van der Linde (Internal audit)

27. Mr Gert van Wyk (Compliance)

External auditors

Ernst and Young:

28. Mr Phillip Hourquebie

    Mr Pieter Strydom

    Mr Dirk Reyneke

KPMG:

29. Mr David Broom

Mr Edwyn O'Neill

Mr Rob Newsome

Mr William Somerville prepared tow documents: The Report on Corporate Governance, and the Company Secretary statement.

FirstRand Bank Limited

Annexure C2

List of those interviewed

The board

1. Mr Viv Bartlett (Deputy CEO)
2. Mr Michael Brogan (Executive director)
3. Mr Johan Burger (Executive director)
4. Mr Laurie Dippenaar (Executive director)
5. Mr Denis Falck (NED)
6. Mr GT Ferreira (Chairperson)
7. Mr John Gafney (NED)
8. Mr Pat Goss (NED)
9. Mr Paul Harris (CEO)
10. Mr Michael King (NED)
11. Mr Mac Maharaj (Executive director)
12. Mr Sadek Vahed (NED)
13. Mr Robert Williams (NED)

Members of management

14. Ms Wendy Lucas-Bull (CEO: Retail Cluster)
15. Mr Hillie Meyer (CEO: Wealth Cluster)

16. Mr E B Niewoudt (CEO: Corporate Cluster)

17. Mr Jurie Bester (Risk management)

18. Mr Rob Foltan (Compliance)

19. Mr Eric Poalses (Internal Audit)

External auditors

Deloitte and Touche:

20. Mr Clive Beaver

    Mr Niel Cilliers

PwC:

21. Mr Tom Winterboer

    Mr Deon Viljoen

Mr Bruce Unser prepared two documents: The Corporate Governance Report and the Company Secretary statement.

Investec Bank Limited

Annexure C3

List of those interviewed

The board

1. Mr John Abeli (NED)
2. Mr Sam Abrahams (NED)
3. Mr George Alford (NED)
4. Mr Reg Berkowitz (NED)
5. Mr Glynn Burger (Managing director)
6. Mr Richard Forlee (Executive director)
7. Mr Sam Hackner (Executive director)
8. Mr Hugh Herman (Chairperson)
9. Mr Don Jowell (NED)
10. Mr Bernard Kantor (Managing director, London)
11. Mr Ian Kantor (NED)
12. Sir Chips Keswick (NED)
13. Mr Stephen Koseff (CEO)
14. Mr David Kuper (NED)
15. Mr David Lawrence (Deputy Chairperson)
16. Mr Andy Leith (Managing director)
17. Mr Peter Malungani (NED)

18. Ms Carole Mason (Executive director)

19. Dr Renosi Mokate (NED)

20. Ms Daphne Motsepe (NED)

21. Dr Morley Nkosi (NED)

22. Mr David Nurek (Executive director)

23. Mr Alan Tapnack (Executive director)

24. Mr Bradley Tapnack (Executive director)

25. Mr Peter Thomas (NED)

26. Mr Fani Titi (NED)

27. Mr Russel Upton (NED)

<u>Members of management</u>

28. Mr Geoffrey Cook (Compliance)

29. Ms Brigid Schrieder (Internal audit)

<u>External auditors</u>

<u>Ernst and Young:</u>

30. Bill McClure

    Jeremy Crist

    Anneke Grobbelaar

    JC Quinn

KPMG:

31. John Louw

Tracy Middlemis

Mr Bradley Tapnack prepared two documents: The Report on Corporate Governance, and the Company Secretary statement.

Nedcor Bank Limited

Annexure C4

List of those interviewed

The board

1. Mr Chris Ball (NED)
2. Mr Tom Boardman (Executive director)
3. Dr Isak Botha (Executive director)
4. Mr Warren Clewlow (NED)
5. Mr Barry Davison (NED)
6. Mr Nick Dennis (NED)
7. Mr Barry Hore (Executive director)
8. Mr Peter Joubert (Deputy chairperson)
9. Prof Michael Katz (Executive director)
10. Mr Richard Laubscher (CEO)
11. Mr Michael Levett (NED)
12. Mr Chris Liebenberg (Chairperson)
13. Mr JB Magwaza (NED)
14. Mr Mafika Mkwanazi (NED)
15. Mr Eric Molobi (NED)
16. Mr Stuart Morris (Financial director)
17. Mr Derek Muller (Executive director)

18. Mr Lot Ndlovu (Executive director)

19. Mr Phutuma Nhleko (NED)

20. Ms Hixonia Nyasulu (NED)

21. Mr Julian Roberts (NED)

22. Mr Tony Routledge (Executive director)

23. Mr Cedric Savage (NED)

24. Mr Jim Sutcliffe (NED)

<u>Members of management</u>

25. Mr Gerhard Hechter (Internal audit)

26. Ms Kriba Moodley (Compliance)

27. Mr Rene van Wyk (Risk management)

<u>External auditors</u>

<u>Deloitte and Touche:</u>

28. Mr Louis Hyne

    Mr Gerry Schipper

<u>KPMG:</u>

29. Ms Heather Bruce

    Mr John Louw

McKinsey's

30. Mr Lars Jacob Bo

Mr Nobert Dorr

Mr Gawie Nienaber prepared two documents: The Report on Corporate Governance, and the Company Secretary statement.

The Standard Bank of South Africa Limited

Annexure C5

List of those interviewed

The board

1. Mr Roy Andersen (NED)
2. Mr Doug Band (NED)
3. Ms Elizabeth Bradley (NED)
4. Mr Derek Cooper (Chairperson)
5. Mr Buddy Hawton (NED)
6. Mr Reuel Khoza (NED)
7. Mr Graham Mackay (Deputy Chairperson)
8. Mr Saki Macozoma (Deputy Chairperson)
9. Mr Jacko Maree (CEO)
10. Mr Rick Menell (NED)
11. Mr Robin Plumbridge (NED)
12. Mr Pieter Prinsloo (Executive director)
13. Mr Myles Ruck (Deputy CEO)
14. Dr Chris Stals (NED)
15. Dr Conrad Strauss (NED)
16. Mr Eddie Theron (NED)

Members of management

17. Mr Rob Leith (Standard Bank, London)

18. Mr Keith Gill (Internal audit)

19. Mr Paul Smith (Risk management)

20. Mr John Symington (Compliance)

External auditors

PwC

21. Mr Colin Beggs

    Mr Fulvio Tonelli

    Mr Steve Ball

KPMG

22. Mr Tom Grieve

    Mr Trevor Hoole

Ms Loren Wulfsohn prepared two documents: The Report on Corporate Governance, and the Company Secretary statement.

Annexure D1

Enron

Corporate Governance Issues

The role of a director, as described by Agatha Christie in her novel *The Seven Dials*, is hopefully no longer appropriate:

"[Coote] got me in as a director of something or other," declares one character. "Very good business for me – nothing to do except go down into the City once or twice a year to one of those hotel places – Cannon Street or Liverpool Street – and sit around a table where they have some very nice new blotting paper. Then Coote or some clever Johnny makes a speech simply bristling with figures, but fortunately you needn't listen to it – and I can tell you, you often get a jolly good lunch out of it."

Part 1 – Executive Summary

1. On December 2, 2001, Enron Corporation, then the seventh largest publicly traded corporation in the United States, declared bankruptcy. That bankruptcy, the largest in US history at that time, sent shock waves throughout the world. Thousands of Enron employees lost not only their jobs but a significant part of their retirement savings; Enron shareholders saw the value of their investments plummet; and hundreds, if not thousands of businesses around the world, were turned into Enron creditors in bankruptcy court and are likely to receive only a small portion of the dollars owed to them.

2. The implications for directors, managers, board committees, investment analysts, asset mangers, pension funds, the accounting profession, regulators, politicians and the man on the street have been enormous. The manner in which business leaders conduct their business affairs is now under much closer scrutiny: with corporate governance practices at the forefront of this scrutiny. Remuneration policies are now being questioned far more frequently and closely; in a nutshell, business practices will never be the same.

3. In a report compiled by the Permanent Subcommittee on Investigations of the Committee On Governmental Affairs, United States Senate entitled "The Role of the Board of Directors in Enron's Collapse"; the Board was found to have failed in its duties in the following areas:

   - Fiduciary failure,
   - High-risk accounting,
   - Inappropriate conflicts of interest,
   - Extensive undisclosed off-the-books activity,
   - Excessive compensation,
   - Lack of independence.

   The report was scathing in its findings of the role of the Board of Enron; in particular in the way it failed to execute its fiduciary duties.

4. What has been learned from the multi-billion dollar Enron lesson? Enron has shown that it was not merely an individual or group of individuals that destroyed the 7th largest corporation in the United States. This was the same as was the case with Nick Leeson and Barings Bank. Both cases clearly illustrate the dangers of weak systems and controls, acceptance by directors of what was being fed to them by management; both masked by the apparent success and profitability of the entities.

5. Accountants failed by not deciding how to account for energy contracts. Auditors failed by not maintaining their integrity and independence. The company failed by not giving enough real power to their risk committees and internal controls.

6. For each of these groups, the thing they failed at was not something of a secondary nature to them; it was the prime reason for their existence.

7. Independence of directors is critical to achieving the required level of probing of management. Directors can no longer just attend meetings, they have to understand the business, the risks it faces and the extent of the power granted to and the responsibility imposed on them.

8. Audit committees need to proactively monitor management and decisions taken to ensure that a realistic picture is presented to the users of the financial statements.

9. Corporate governance is not just an optional extra, in today's business world, it is the life-blood of the corporate world, carrying away waste, providing the antibodies to fight disease, carrying life giving oxygen to the cells.

10. Corporate governance is the check and balance as it ensures that controls work as expected, risks are managed and a "comply or explain" environment fostered.

11. The implications of the collapse of Enron (and other large corporate entities such as Worldcom) have led to massive revisions of, *inter alia,* the role and independence of auditors, the role of audit committees, the role and independence of non-executive directors, the role of investment analysts and investment banks. Almost all modern economies are questioning business ethics, including the implications of the excessive compensation paid to CEOs and executives in many cases. In the USA the Sarbanes-Oxley Act, passed in mid-2002, will have a number of major implications for businesses conducting business there. In certain cases the legislation will also impact on entities in other countries; almost the entire business world, regardless of location will be affected.

Part 2 - Introduction

Aim of this study

12. The aim of this case study is to examine the Enron collapse looking specifically at corporate governance issues. This case study will, *inter alia*, point out: why the independence of directors is critical to transparent operations of a company; why effective boards are necessary for companies to avoid disasters such as Enron; why the audit committee should be a working committee comprising a majority of independent non-executive directors.

13. Underlying all these findings and recommendations are the seven characteristics of corporate governance, namely: discipline, transparency, independence, accountability, responsibility, fairness and social responsibility[1].

14. This case study will also identify some of the global impacts of the breach of corporate governance at Enron. This case study is not the

[1] OECD document "Principles of Corporate Governance", dated 21 June 1999

definitive case study of Enron but rather an insight to corporate governance lessons that have been learnt from Enron.

15. Before we examine the corporate governance failures and lessons, it would be useful to give a brief background to Enron and the economic climate it operated in.

Background

16. As a company that was generally considered to be the largest natural gas and electricity trader in the world, and one that sparked international awe for having had the Midas touch, any indications that Enron may have faltered were quickly dispelled. In just 15 years, Enron grew from nowhere to be America's seventh largest company, employing 19,000 staff in more than 40 countries.

17. How had Enron managed to become such a large player? Some factors that set the scene in which Enron operated are[2]:

- Years of US restructuring/reorganisation limited the viability of cost based strategies.

[2] KWR International – Board of Directors retreat 2002. (www.kwrintl.com)

- Need to "compete" with, and seek the same inflated valuations, as the highflying Internet and tech companies.
- Low interest rates throughout the 1990's helped to perpetuate an already overheating economy.
- Insufficient income/revenue growth created the need for ever more aggressive accounting/business practices.
- The US economy was during the 1990's experiencing the longest bull market in its history.

18. In 1985, after the deregulation of the natural gas pipelines, Enron was born from the merger of two market players. In the process of the merger, Enron incurred massive debt and as the result of deregulation, no longer had exclusive rights to its pipelines. In order to survive, the business had to alter its business strategy. It did this by employing Jeffery Skilling. From his background in banking and asset and liability management, he proposed that Enron become a "gas bank" whereby Enron would buy gas from a network of suppliers and sell it to a network of consumers, contractually guaranteeing supply and price.

19. By the end of 1997, after a number of strategic acquisitions, Enron developed a division called "Enron Capital and Trade Resources" into the largest wholesale buyer and seller of natural gas and electricity in the

world. Revenue grew from $2 billion to $7 billion and the number of employees in this division grew to 2000 from 200. Using the same concept that had been so successful with the "gas bank", Enron was ready to create a market for anything that anyone was willing to trade including weather derivatives.

20. Enron Online, created in late 1999, was an electronic commodities trading website and was one of Enron's most progressive developments. Firstly, Enron were the counterparty to every transaction conducted on the platform. This allowed them to receive valuable information regarding the market players, "long" and "short" views, as well as the products' prices in real time. Secondly, given that Enron was either a buyer or a seller in every transaction, credit risk management was crucial and Enron's credit rating was the cornerstone that gave the energy community the confidence that Enron provided a safe transactions environment. Enron Online became an overnight success, handling $335 billion in online commodity trades in 2000[3].

21. Early in 2001, Enron had plans for greater earnings for the year after two consecutive quarters of earnings increases; however the company faced

[3] The Rise and Fall of Enron – C William Thomas, Journal of Accountancy April 2002.

one key obstacle - concentration risk associated with its energy trading business. It was hoped that Enron's strong second quarter earnings report could help offset the liquidity risks it had thus far faced. Liquidity risk fears appeared to have been offset by the fact that Enron was a world-class company with a worldwide network and a market capitalization of $36 billion and assets of over USD 65 billion of which $7.3 billion were current assets and reportedly $288 million in cash[4].

22. Enron earned more than 90% of its revenue from a business it called "wholesale services," Enron's euphemism for trading. Enron, in its 2000 annual report described that activity as follows: "Enron builds wholesale businesses through the creation of networks involving selective asset ownership, contractual access to third-party assets and market-making activities." The statement, as one market commentator at Forbes[5] said, is "*characteristic of Enron's discussion of its finances as it reads like something written in German, translated to Chinese and back to English by way of Polish.*"

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[4] Financial Services Board strategic planning workshop 5 February 2002 – Enron Case Study

[5] Forbes – Enron the Incredible (http://www.forbes.com/2002/01/15/0115enron.html)

23. In fact, 97 percent of Enron's profits came from the company's wholesale services division, which included its trading unit. In addition to its concentration exposure, Enron was exposed to the added risk-drivers of softening demand, dropping market prices for energy and the belief that the California energy crisis had peaked.

Revenue

24. Most of the attention paid to Enron's finances has focused on its balance sheet - in particular how it hid debt by allocating it to supposedly independent private partnerships. But the jet engine of Enron's share-price rise was not its asset and liability picture, but its otherworldly increase in revenue: between 1996 and 2000, Enron reported an increase in sales from $13.3 billion to $100.8 billion. To put Enron's 57% five-year sales growth rate in perspective, during that same period, Cisco Systems enjoyed a 41% sales growth rate. Intel's rate was 15%[6].

25. Enron more than doubled its reported sales between 1999 and 2000. Before it declared bankruptcy, Enron said it was on track to double revenue again. Had it done so, it would have become the second-largest

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[6] Forbes – Enron the Incredible (http://www.forbes.com/2002/01/15/0115enron.html)

corporation in the world in terms of revenue. It might even have edged Exxon Mobil (2000 revenue: $206 billion) for the number-one slot. By way of comparison, in 2001, the current GDP of South Africa, when converted at an average rate of R8.60 to the US Dollar, was $110 billion. It is highly unlikely that a relatively obscure energy-trading company would after a fairly short period of time be the world's largest company by revenue. Yet this did not seem to generate a lot of questions from the market.

How did Enron make this revenue?

26. Enron was able to book such large revenues by exploiting an accounting loophole. This loophole occurred because the Financial Accounting Standards Board (FASB) could not decide how energy contracts should be accounted for. Enron booked revenue from huge energy-derivative contracts at their gross value, not their net value as is done with other securities transactions.

27. But beyond the trading of energy futures contracts back and forth with huge notational values, Enron's sales grew because it was a "market maker" serving as the middleman on deals. It would put a buyer together

with a seller, take "delivery" of the contract for one fleeting moment and book the entire "sale" as revenue to Enron.

The People at Enron

28. Forbes believes Enron's reported performance is even more incredible when observing revenue generated per employee. As of 2000, Enron had 19,000 employees and per employee, Enron claims it generated $5.3 million per employee in revenues. This figure is more than triple that of Goldman Sachs, which generated $1.7 million per employee. The men and women of Enron made the monopolists at Microsoft (revenue per employee: $610,256) look like slackers. They put the workers of Citigroup ($469,748 per employee) and IBM ($283,333) to shame. Once again these signs failed to arouse the suspicions of the market.

Part 3 - The end of the seventh largest corporation in the US

The end

29. Enron filed for the largest bankruptcy in US history on 2 December 2001. Enron lost, according to Newsweek's estimates, $2 billion on broadband, $2 billion on water, $2 billion on a Brazilian utility and $1 billion on the electricity plant in India[7]. The collapse destroyed the awe surrounding Enron to reveal the crippling debt that Enron had managed to hide from the market.

30. Billions of US dollars had been consistently concealed in annual balance sheets, which overstated Enron's income by as much as $600 million during the last five years. Over the period of the next two months, the company's assets plummeted to $24.7 billion, down by more than $40 billion. As mentioned, shares of Enron, which had once ranked seventh on the Fortune 500 list of large corporations, last traded at 67c on January 10, a far cry from a record $90.56 in August 2000[8]. One

[7] www.thedailyenron.com

[8] Financial Services Board strategic planning workshop 5 February 2002 – Enron Case Study

analyst's report stated that the company had burned through $5 billion in cash in 50 days leading to the December bankruptcy[9].

31. Since December 2001, when Enron filed for Chapter 11 protection in the USA, it has been subject to several investigations surrounding its accounting and disclosure policies. Untangling the collapse of Enron has been hindered by its secretive culture. But while rivals ascribe Enron's downfall to arrogance in the face of investors' concerns, those who have known the company from its inception also cite lack of internal control.

32. The debacle revolves around a number of off-balance-sheet partnerships. In order to hide their debt, Enron engaged in what has been termed "aggressive accounting". Enron created partnerships with nominally independent companies, some of which were based offshore. These were used to obscure debt exposure and allegedly to cover losses at Enron's broadband entity. These companies had been set up by and headed by Andrew Fastow, the former chief financial officer and were backed, ultimately, by Enron stock.

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[9] The Rise and Fall of Enron – C William Thomas, Journal of Accountancy April 2002.

33. Enron never regarded their partners debt as their own, using "off-balance-sheet" accounting. Companies can use off-balance-sheet financing legitimately; however Enron's aggressive use of partnerships was questionable because it failed to disclose the extent of its contingent liabilities.

34. As the company was being liquidated, shareholders saw their investments of over $50 billion vanish. Worse still, the implosion wiped out Enron's employees' savings in pension funds, part of which were converted into equities through the purchase of Enron stock.

<u>Why did Enron end up in this predicament?</u>

35. Management use stock options to align management interests with shareholders without causing undue strain on the balance sheet. Jeffrey Skilling, former Enron CEO in his Senate testimony has the following comment on share options, "*There are cases where you can use equity to impact your income statement, the most egregious, or the one that's used by every corporation in the world is executive stock options ... what you do is you issue stock options to reduce compensation expense and increase your profitability.*" In effect companies manage to pay directors excessive salaries as was the case at Enron without impacting the income

statement. This allows the share price to grow, which benefits not only the shareholder, but the director who has share options.

Who was responsible apart from management for this disaster?

36. Arthur Andersen ("Andersen") signed off on Enron's books and helped structure its deals. Andersen, on whom the general public relied on for accurate information clearly failed in their job. They earned more in 2001 providing consulting services ($27million) to Enron, than they did from the entire audit ($25million). This raised serious questions that will be looked at in the "Post Enron" section of the report.

37. Enron's law firm, Vinson & Elkins ("V & E"), investigated alleged irregularities. They asked few real questions, failed to talk to key witnesses and blessed Enron's controversial partnerships.[10] V&E issued their report one day before Enron restated its financials on November 8 2001 to reflect consolidation of the special purpose entities it had omitted. The restatement added another $591 million in losses and a further $628 million of debt because of those partnerships[11].

[10] Forbes (www.forbes.com)

[11] The Rise and Fall of Enron – C William Thomas Journal of Accountancy April 2002.

38. Another group that has let the public down are the analysts who work for stock brokerage houses. Even when the problems of Enron were beginning to be highlighted by newspapers, out of 17 analysts who followed Enron, 16 had 'strong buy' or 'buy' recommendations and one had 'hold'. These are so-called experts who are knowledgeable about the firm and the industry and they failed in their duty[12].

39. Conversations with Wall Street analysts who covered Enron indicate they had little or no understanding of how Enron reported such huge numbers. Asked to compare how Enron or Dynegy booked revenue with other businesses, most analysts said that Enron was a trading business and that revenue was not important. Asked to compare the energy traders to securities firms, who are also engaged in trading, one stumbled for an answer and finally said, "You know, that's a really good question".

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[12] Corporate governance failures at Enron – C Gopinath

Impacts

40. In summary, these are the main impacts that Enron had on the financial landscape:

- Decreasing investor confidence (negative).
- Retreat to simplicity & easy-to-understand models (positive and negative).
- Increased call for corporate transparency (positive).
- Review of bank/analyst and auditor/consultant relationships (positive and negative).
- Return to fiscal conservatism and practices (positive and negative).
- Call for increased regulation and scrutiny (positive and negative).
- Political fallout and manoeuvring on all levels (negative).

41. According to a range of companies, energy experts and bankers, the collapse of Enron, so far a political, legal, accounting and investor crisis as detailed above, is now imposing widespread costs on the US economy.

42. The case of Enron employees who invested a large proportion of their retirement savings in company stock is, if anything, even more catastrophic. Some employees have brought a separate suit against the

company under employee retirement law, claiming the company recklessly endangered their retirement funds and illegally prevented share sales that would have prevented some losses. Enron denies these allegations.

43. Shareholders are unlikely to recover more than a fraction of their losses, even if they can prove they were defrauded. Proving securities fraud is normally extremely difficult and proving fraud against auditors is even tougher. Shareholders cannot bring securities fraud lawsuits against Enron, because the company is involved in bankruptcy proceedings, which automatically freezes suits against it. In any case, shareholders would have to take their place behind secured creditors; little, if anything, is likely to be left for them. Investors are therefore largely left with only Enron's directors and its auditors to sue. Even if they prevail, and can tap combined insurance coverage estimated at several hundred million dollars, this will do little to recoup their losses.

44. The insurance industry's losses are estimated at around $2 billion. These losses are expected to be manageable if they are well diversified among insurers and reinsurers.

45. Consequently, there is a search for anything that smacks of the excesses of the 1990s – bloated CEO bonuses, large debt build-ups by companies, and bad corporate practices. The danger is that many practices that are above-board and are, if anything, merely innovative, will get caught in the crossfire. Knee-jerk regulatory changes, often motivated by nothing more than political posturing, can also have unintended negative consequences and should be guarded against.

Part 4 - Corporate Governance

Background to corporate governance at Enron

46. The Financial Services Board reported that as more details of Enron's demise emerged, industry insiders saw similarities with a trading scandal that Enron faced in the late 1980s - in Kenneth Lay's early years as chairman and chief executive. The affair led the company to incur a loss of $142m, a substantial amount, as it reported just $6m in revenues in 1987[13].

47. The trading case, which was settled in 1990 when two former senior Enron executives pleaded guilty to fraud charges, received scant attention at the time because Enron was a much smaller company. The case revealed loose controls that allowed Louis Borget, head of its oil contracts trading subsidiary, and Thomas Mastroeni, the unit's vice-president and treasurer, to operate a trading scheme that eventually cost Enron $142m in petroleum trade losses between October 1985 and October 1987. The two men defrauded Enron by setting up four phony offshore shell corporations to "arrange sham oil trading contracts" with

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[13] Financial Services Board strategic planning workshop 5 February 2002 – Enron Case Study

Enron. They masked the unauthorised trading activity by keeping false financial records. Perhaps more troubling, in the light of recent events, is that no explanation to shareholders appeared in subsequent annual reports.

48. The oil-traders scandal showed that Enron did not have a "checks and balances" system in place. Expert opinion was that Enron's actual track record over the years, with regard to both trading incidents and new business development, suggested a consistent difficulty in managing their own risks.

Was there a conspiracy to commit fraud?

49. While certainly extreme and clearly over the line, it appears unlikely the Enron cover-up began as a widespread conspiracy to commit fraud. Rather it seems mostly a case of a business strategy not delivering expected results (quickly enough) and a short-term solution getting totally out of hand. A widening circle of basically good people appear to have gotten swept up in the pressure to behave in a manner mandated by the "frenzy of greed" that characterized U.S. business practices at the time.

50. Despite the trading scandal it suffered in the late 1980s, Enron did not seem to have done much to strengthen its corporate governance and to mitigate further failures in its internal controls. In addition to its poor reporting practices, there were insufficient controls over employees thus allowing many executives to enrich themselves at the expense of the company.

51. Following Enron's acknowledgment of an inquiry by the Securities and Exchange Commission in October 2001, Lay sought to reassure investors, which included many employees, by stating that there was a "Chinese wall" between the partnership (LJM) and Enron. By November 8 2001, however, Lay was forced to admit that several of these special purpose vehicles, which helped to shift debt from the balance sheet, should have been consolidated with the records of Enron for accounting purposes. Many industry peers saw a pattern of delegation, and subsequently poor monitoring of management, emerging.

Overview of the US corporate governance environment

52. Forbes[14] in a recent article wrote, "What do an abandoned child, a stray dog and a derelict automobile have in common with the modern U.S. corporation? They all need someone to be responsible for them. They have no owners. No matter how many segments of society are moved by their plight, how many volunteer agencies work in their behalf, or how many laws and regulations are enhanced for their benefit, there is no substitute for the responsible owner. This vacuum is the appropriate context for understanding the situation of Enron".

The role of the Enron Board

53. In May 2002, five directors of Enron swore before the Senate subcommittee that they were not responsible for the company's collapse. Whether true or false, there is an element of truth about their testimony; corporate directors are not really directing companies. This may seem unconscionable negligence, but it is more fundamentally a result of the design of corporate governance. There is a view that boards of directors

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[14] Forbes.com: Where are Enron's owners? (www.forbes.com/2001/11/28/1128enron.html)

don't govern because all essential governance happens before the board meets. In the US, state law mandates directors must act in the best interests of the corporation and its shareholders; which courts interpret to mean maximum share price. So as long as the share price remains high, directors feel confident. Yet it was precisely the hyperinflation of the share price that destroyed Enron.

54. "When the stock is rising and shareholders are getting rich, there is little incentive for the board ...and investment community to question the executives ...closely. The board is at fault for permitting the suspension of Enron's own code of conduct to permit the conflicts ...inherent in the off-books corporations ...A few analysts recommended (to)...stay out of Enron, but not many."[15]

55. Management theory tells us that the board performs three roles: control (overseeing the functioning of the corporation and its management), service (being a link between the corporation and its external stakeholders), and strategy (providing a direction for the enterprise into the future). Of these three roles, control is the most basic and traditional role that provides the raison d'etre for a board.

[15] Interview with Kirk Hanson, Executive Director of the Markkula Center for Applied Ethics, in Nikkei Newspaper

Findings of the Permanent Subcommittee on Investigations ("the PSI") of the Committee on Governmental Affairs, United States Senate

56. In a report ("the PSI Report") compiled by the PSI entitled "The Role of the Board of Directors in Enron's Collapse"; the Board was found to have failed in its duties in the following areas:

    a) Fiduciary failure,

    b) High-risk accounting,

    c) Inappropriate conflicts of interest,

    d) Extensive undisclosed off-the-books activity,

    e) Excessive compensation,

    f) Lack of independence.

    Each of these is covered in more detail below.

a) Fiduciary failure[16]

57. Finding: "*The Enron Board of Directors failed to safeguard Enron shareholders and contributed to the collapse of the seventh largest public company in the United States, by allowing Enron to engage in high-risk accounting, inappropriate conflict of interest transactions, extensive undisclosed off-the-books activities, and excessive executive*

[16] The PSI Report – pages 11 to 14

compensation. The Board witnessed numerous indications of questionable practices by Enron management over several years, but chose to ignore them to the detriment of Enron shareholders, employees and business associates."

58. During interviews before the PSI, Enron Directors indicated that they were as surprised as everyone at the demise of the company. There were, however, more than a dozen incidents over the years that should have raised Board concerns. Examples of these incidents are the following:

- Board members were advised in February 1999 that the company was using accounting practices that were "at the edge" of acceptable practice.
- LJM, an unconsolidated associate, produced over $2 billion funds inflow for Enron in only 6 months and Enron's gross revenues jumped from $40 billion in 1999 to $100 billion in 2000. Although these figures are striking, no Board member questioned them.
- In April 2001, the Board was advised that 64 per cent of assets were "troubled" or performing "below expectations". They were also told of international assets that were overvalued on Enron's books by $2.3 billion.

- Sherron Watkins wrote to Ken Lay and warned him that the market perceptions surrounding Jeff Skilling's abrupt departure would be extremely negative. Neither Lay nor the Board used Skilling's resignation as a warning to more closely scrutinize the company's operations.

59. Although there are indications that, in some instances, Enron Board members were misinformed or misled, the PSI investigation found that overall the Board received substantial information about Enron's plans and activities and explicitly authorised or allowed many of the questionable Enron strategies, policies and transactions. Enron's high-risk accounting practices, for example, were not hidden from the Board. The Board knew of them and took no action to prevent Enron from using them.

60. During their interviews, all thirteen Enron Board members strongly refuted that the Board had failed in its oversight duties. They contended that they had reasonably relied on assurances provided by Enron management, Andersen, and V & E, and had met their obligation to provide reasonable oversight of company operations. During the hearing, all five Board witnesses explicitly rejected any share of responsibility for Enron's collapse.

61. The failure of any Enron Board member to accept any degree of personal responsibility for Enron's collapse is a telling indicator of the Board's failure to recognize its fiduciary obligations to set the company's overall strategic direction, oversee management, and ensure responsible financial reporting.

b) High-risk accounting[17]

62. Finding: "*The Enron Board of Directors knowingly allowed Enron's use of High-risk accounting practices.*"

63. There is much evidence that the Board knowingly allowed the use of high-risk accounting practices. Outside experts concluded that the Board, after having being told that the accounting practices being followed were high-risk, should have asked a lot of questions. Furthermore, being told of high-risk activities by the auditors "is a giant red flag".

[17] The PSI Report – pages 15 to 24

64. There are several instances where Andersen advised the Audit Committee that Enron was engaging in accounting transactions that could be deemed high-risk.

65. Andersen's legal team stated that one document provided to the Audit Committee was intended to advise the Audit Committee that, even with Andersen's backing, Enron's use of the identified accounting practices invited accounting scrutiny and ran the risk that the company could later be found to be in non-compliance with generally accepted accounting principles. In addition, Andersen's legal counsel indicated that the firm intended to convey to the Audit Committee that Enron's use of highly structured transactions, with multiple special purpose entities and complex overlapping transactions, ran the risk that, if one element failed, the entire structure might fail and cause the company to fall into noncompliance.

66. On February 7, 1999, Andersen informed the Audit Committee members that Enron was engaged in accounting practices that "push limits" or were "at the edge" of acceptable practice. In the discussion that followed, Andersen did not advocate any change in company practice, and no Board member objected to Enron's actions, requested a second opinion of Enron's accounting practices, or demanded a more prudent approach.

67. In addition to the Audit Committee's receipt of explicit briefings on Enron's high-risk accounting practices, many other documents demonstrate that the Board knowingly allowed Enron to use high risk accounting techniques, questionable valuation methodologies, and highly structured transactions to achieve favorable financial statement results.

68. When confronted by evidence of Enron's high-risk accounting, all of the Board members interviewed by the Subcommittee pointed out that Enron's auditor, Andersen, had given the company a clean audit opinion each year. None recalled any occasion on which Andersen had expressed any objection to a particular transaction or accounting practice at Enron, despite evidence indicating that, internally at Andersen, concerns about Enron's accounting were commonplace. But a failure by Andersen to object does not preclude a finding that the Enron Board, with Andersen's concurrence, knowingly allowed Enron to use high-risk accounting and failed in its fiduciary duty to ensure the company engaged in responsible financial reporting.

c) *Inappropriate conflicts of interest*[18]

69. Finding: *"Despite clear conflicts of interest, the Enron Board of Directors approved an unprecedented arrangement allowing Enron's Chief Financial Officer to establish and operate the LJM private equity funds which transacted business with Enron and profited at Enron's expense. The Board exercised inadequate oversight of LJM transaction and compensation controls and failed to protect Enron shareholders from unfair dealing".*

70. The Board waived the company's code of conduct and allowed its CFO, Andrew Fastow to establish and operate off-the-books entities designed to transact business with Enron. This arrangement allowed inappropriate conflict of interest transactions as well as accounting and related party disclosure problems, due to the dual role of Fastow as a senior officer at Enron and an equity holder and general manager of the new entities. Nevertheless, with little debate or independent inquiry, the Enron Board approved three code of conduct waivers enabling Fastow to establish three private equity funds in 1999 and 2000.

[18] The PSI Report – pages 24 to 39

71. The Enron Board approved code of conduct waivers for Fastow knowing that the LJM partnerships were designed to transact business primarily with Enron, and controls would be needed to ensure the LJM transactions and Fastow's compensation were fair to Enron. The Board failed, however, to make sure the controls were effective, to monitor the fairness of the transactions, or to monitor Fastow's LJM-related compensation. The result was that the LJM partnerships realized hundreds of millions of dollars in profits at Enron's expense.

72. Most of the interviewed Board members said they had not been troubled by the conflicts of interest posed by the LJM partnerships due to the controls adopted to mitigate the conflicts.

73. The Enron Board failed to uncover the deficiencies in the LJM controls or to make up for them through its own oversight efforts.

74. The Board's role in overseeing Fastow's LJM compensation was also very lax. For the first year, the Board apparently relied on Skilling to review Fastow's LJM-related income and asked no questions. In October 2000, after LJM1 had been operating for more than one year and the Finance Committee was told that LJM1 and LJM2 were engaging in multiple, high dollar transactions with Enron, the Finance Committee

asked the Compensation Committee to conduct a one-time review of Fastow's compensation.

75. In October 2000 the Chairman of the Compensation Committee attempted to obtain information requested by the Finance Committee relating to Fastow's compensation from the company's senior compensation officer but was fobbed off and the matter dropped. It was only after an article in the Wall Street Journal in October 2001 stating the Fastow had received compensation from the LJM transactions exceeding \$7 million, was the matter pursued further. It was then ascertained that the compensation received by Fastow was actually in the region of \$45 million.

76. A number of Board members claimed that the Board had been misled or misinformed regarding key aspects of the LJM partnerships. However, the information it did have should have triggered a demand for more detailed information and, ultimately, a change in course. But the Board allowed the LJM-Enron transactions to go forward with few questions asked. All of the consequences that followed flowed from the initial Board decision to allow the LJM partnerships. While the Board was advised that Enron management and Andersen supported going forward, the final decision on whether to allow Fastow to form, manage and profit

from the LJM partnerships rested with the Board itself. The Board cannot shift the responsibility for that decision to any other participant in the matter.

d) Extensive undisclosed off-the-book activity[19]

77. Finding: *"The Enron Board of Directors knowingly allowed Enron to conduct billions of dollars in off-the-books activity to make its financial condition appear better than it was, and failed to ensure adequate public disclosure of material off-the-books liabilities that contributed to Enron's collapse."*

78. Enron's multi-billion dollar, off-the-books activity was disclosed to the Enron Board and received Board approval as a explicit strategy to improve Enron's financial statements. In fact, Enron's massive off-the-books activity could not have taken place without Board action to establish new special purpose entities, issue preferred Enron shares, and pledge Enron stock as the collateral needed for the deals to go forward. In the end, the Board knowingly allowed Enron to move at least $27 billion or almost 50 percent of its assets off-balance sheet.

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[19] The PSI Report – pages 38 to 52

79. During their interviews, only one Board member expressed concern about the percentage of Enron assets that no longer appeared on the company balance sheet; the remaining Board members expressed little or no concern.

80. Accounting and corporate governance experts were of the opinion that Enron's off-the-book transactions were "at the top of the scale in terms of extent". Although it is sometimes appropriate to have some items off-balance sheet, they should not be to the same extent as Enron's.

81. The Board's lack of knowledge of certain aspects of certain transactions (the Raptor transactions), however, does not justify its handling of these transactions. At best, it demonstrates a lack of diligence and independent inquiry by the Board into a key Enron liability. It does not excuse or explain the Board's approval of these transactions based upon what they did know nor does it excuse the Board's failure to ensure adequate public disclosure of Enron's ongoing liability for the transactions.

82. The Enron Board failed in its fiduciary duty to ensure adequate public disclosure of Enron's off-the-books assets and liabilities. Enron's initial public disclosures regarding its dealings with its "unconsolidated

affiliates" such as JEDI, Whitewing, LJM, and the Raptor SPEs are nearly impossible to understand and difficult to reconcile with the transactions now known to have taken place.

83. In October 2000, the Finance Committee reviewed a chart showing that $27 billion out of $60 billion of Enron's assets, or almost 50 percent, were held off Enron's books in "unconsolidated affiliates". No Board member objected to this corporate strategy or urged Enron to change course.

84. When asked about Enron's extensive off-the-books activity, one of the Board members, Mr. Blake, stated during his interview that transferring assets off a company's books "is not immoral as long as disclosed." But here, too, the Enron Board failed in its fiduciary duty to ensure adequate public disclosure of Enron's off-the-books assets and liabilities.

e) Excessive compensation[20]

85. Finding: "*The Enron Board of Directors approved excessive compensation for company executives, failed to monitor the cumulative cash drain caused by Enron's 2000 annual bonus and performance unit plans, and failed to monitor or halt abuse by Board Chairman and Chief Executive Officer Kenneth Lay of a company-financed, multi-million dollar, personal credit line.*"

86. Enron provided its executives with lavish compensation. On more than one occasion, it paid tens of millions of dollars to a single executive as a bonus for work on a single deal. Stock options were distributed in large numbers to executives. One executive, Lou Pai, accumulated enough stock options that, when he exercised them and sold the underlying stock in 2000, he left the company with more than $265 million in cash. Kenneth Lay alone accumulated more than 6.5 million options on Enron stock. In 2000, Lay's total compensation exceeded $140 million, including $123 million from exercising a portion of his Enron stock options, an amount which exceeded average CEO pay at U.S. publicly

[20] The PSI Report – pages 52 to 54

traded corporations by a factor of ten and made him one of the highest paid CEOs in the country.

87. The Enron Board, through its Compensation Committee, was not only informed of the company's lavish executive compensation plans, it apparently approved them with little debate or restraint. One Board member said during his interview that Enron's philosophy was to provide "extraordinary rewards for extraordinary achievement"; others claimed that the company was forced to provide lavish compensation to attract the best and brightest employees.

88. The Compensation Committee appeared to have exercised little, if any, restraint over Enron's compensation plans, instead deferring to the compensation plans suggested by management and the company's compensation consultants. During their interviews, the Committee members said it had not occurred to them that, by giving Enron executives huge stock option awards, they might be creating incentives for Enron executives to improperly manipulate company earnings to increase the company stock price and cash in their options. One Board member admitted, however, that Enron was a culture driven by compensation. Another said, when asked why Enron executives misled the Board and cheated the company, that he "only can assume they did it for the money".

f) Lack of independence[21]

89. Finding: *"The independence of the Enron Board of Directors was compromised by financial ties between the company and certain Board members. The Board also failed to ensure the independence of the company's auditor, allowing Andersen to provide internal audit and consulting services while serving as Enron's outside auditor."*

90. With regard to **board independence**, the PSI found as follows:

- Expert witnesses testified that financial ties between Enron and certain Directors had weakened the independence and objectivity of the Enron Board. These financial ties, which affected a majority of the outside Board members, included the following:
  - Since 1996, Enron paid a monthly retainer of $6,000 to Lord John Wakeham for consulting services, in addition to his Board compensation. In 2000, Enron paid him $72,000 for his consulting work alone.
  - Since 1991, Enron paid Board member John A. Urquhart for consulting services, in addition to his Board compensation. In

[21] The PSI Report – pages 54 to 58

2000, Enron paid Urquhart $493,914 for his consulting work alone.

- Enron Board member Herbert Winokur also served on the Board of the National Tank Company. In 1997, 1998, 1999, and 2000, the National Tank Company recorded revenues of $1,035,00, $643,793, $535,682, $370,294 from sales to Enron subsidiaries of oilfield equipment and services.
- In the five years prior to 2002, Enron and Kenneth Lay donated nearly $600,000 to the M.D. Anderson Cancer Center in Texas. In 1993, the Enron Foundation pledged $1.5 million to the Cancer Center. Two Enron Board members, Dr. LeMaistre and Dr. Mendelsohn, have served as president of the Cancer Center.
- Since 1996, Enron and Belco Oil and Gas engaged in hedging arrangements worth tens of millions of dollars. In 1997, Belco bought Enron affiliate Coda Energy. Enron Board member Robert Belfer is former Chairman of the Board and CEO of Belco.
- Since 1996, Enron and the Lay Foundation donated more than $50,000 to the George Mason University and its Mercatus Center in Virginia. The Mercatus Centre employs Enron Board member Dr. Wendy Gramm. (In addition, Gramm

(spouse of a Republican Senator) was formerly Chairman of the Commodities Futures Trading Commission ("CFTC") of the federal government. Enron's trading in energy derivatives was exempt from regulation by the CFTC. Shortly after that decision, she quit the commission and joined Enron's board. She is presently Director of Regulatory Studies Program at George Mason University.)

- Charls Walker, a noted tax lobbyist, was an Enron Board member from 1985 until 1999. In 1993-1994, Enron paid more than $70,000 to two firms Walker/Free and Walker/Potter that were partly owned by Walker, for government relations and tax consulting services. This sum was in addition to Walkers's Board compensation. Enron was also, for more than ten years ending in 2001, a major contributor of up to $50,000 annually to the American Council for Capital Formation, a non-profit corporation that lobbies on tax issues and is chaired by Walker.

91. With regard to **auditor independence** the PSI found as follows:

- The Enron Board and its Audit Committee were criticised for inadequate oversight to ensure the independence and objectivity of Andersen in its role as the company's outside auditor.

- Enron Board members told the PSI staff that they had been unaware of any tensions between Andersen and Enron and unaware of the many concerns Andersen had with Enron's accounting practices.
- The Board members observed that they had given Andersen regular opportunities outside the presence of Enron management to communicate any concerns about the company, including whether company officials were pressuring Andersen accountants who raised objections to company proposals. They expressed shock and dismay that Andersen had never conveyed its many concerns about Enron's accounting and transactions to the Enron Board.
- The interviewed Board members indicated that they had not considered whether Andersen might be reluctant to express serious concerns about Enron accounting practices out of an unwillingness to upset Enron management or endanger its fees.

Role of the chairman

92. For many years, Lay was both the Chairman and CEO. For a brief while the two positions were separated, when Skilling functioned as the CEO. When Skilling resigned in August 2001, Lay again took on both roles.

His claim that he did not know too much of the details of the accounting falsification that was going on is, at best, disingenuous.

93. On the eve of January 23, 2002, Lay resigned as Chairman and CEO of the Enron Corporation, under pressure from outside creditors. The resignation came after a string of revelations that raised questions about the conduct of Enron's top executives, including Lay himself. Disclosures by Congressional investigators have shown that Lay helped create and oversee some of the financial arrangements that helped lead to Enron's collapse. Investigations into the collapse of Enron have revealed the following transactions, among others, by Lay[22]:

- Lay had used his shares to repay a loan extended by Enron to him. The value of the loan was not disclosed, and neither was the timing of the transaction, so it could not be determined what value the company placed on these shares.
- Lay was a big seller of Enron stock. Even as he was selling his own shares of Enron stock in September and October, he was reassuring employees that the company would rebound and encouraging them to buy.

[22] Financial Services Board strategic planning workshop 5 February 2002 – Enron Case Study

- In early 2001, Lay sold Enron shares on almost every business day. He acquired these shares by exercising stock options and made a cumulative profit of $21 million on these sales.
- Lay was among a group of 29 Enron executives and directors who made $1.1 billion by selling 17.3 million shares from 1999 to mid-2001. Insider trading investigations continue.

Audit Committee[23]

94. The charter of the Enron Audit Committee explicitly required the Committee to ensure the independence of the company's auditors, assess Enron's internal controls and the quality of its financial reporting, and review Enron's financial statements.

95. The Audit Committee had very limited contact with Andersen, essentially communicating with Andersen personnel only at Board meetings. The Audit Committee Chairman for more than ten years was Dr. Jaedicke. Despite his long tenure on the Audit Committee, the PSI Report concluded that Jaedicke had "rarely" had any contact with Andersen outside of an official Audit Committee or Board meeting.

[23] Extracted from The PSI report pages 1 to 59.

None of the other interviewed Audit Committee members had ever contacted anyone from Andersen regarding Enron outside of an official Enron Committee or Board meeting. None had ever telephoned Andersen directly.

96. Materials produced by the Enron Audit Committee and Andersen indicate that Andersen personnel regularly briefed the Enron Audit Committee about Enron's accounting practices, and that Andersen regularly informed the Audit Committee that Enron was using accounting practices that, due to their novel design, application in areas without established precedent, or significant reliance on subjective judgments by management personnel, invited scrutiny and presented a high degree of risk of non-compliance with generally accepted accounting principles.

97. The Audit Committee formally reviewed Andersen's independence annually, and Committee members told the PSI staff there had never been any sign of a problem. The evidence suggests, however, that the Audit Committee did not probe the independence issue, nor did it initiate the type of communications with Andersen personnel that would have led to its discovering Andersen concerns with Enron accounting practices.

98. The Audit Committee members indicated that they had thought Andersen and Enron had a good working relationship, and taken great comfort in knowing that Andersen was more than Enron's outside auditor, but also provided Enron with extensive internal auditing and consulting services, combining its roles into what Enron called "an integrated audit." Jaedicke maintained that it was a significant benefit to Enron for Andersen to be involved with Enron's activities on a day-to-day basis and to help the company design its most complex transactions from the start. Although one Board member, Lord Wakeham, indicated that he had been concerned that this high level of involvement meant Andersen might be too close to Enron management, most Board members indicated that issue had not been a concern. No Board member expressed any concern that Andersen might be auditing its own work, or that Andersen auditors might be reluctant to criticize Andersen consultants for the LJM or Raptor structures that Andersen had been paid millions of dollars to help design.

99. The Audit Committee was charged by the Board with performing an annual review of the LJM transactions. This task was apparently assigned to the Audit Committee, because its charter included ensuring compliance with Enron's code of conduct and the LJM transactions were

being reviewed to ensure that Fastow was complying with his fiduciary obligations to Enron.

100. On paper, the Audit Committee conducted two annual reviews of LJM transactions in February 2000 and February 2001. In reality, these reviews were superficial and relied entirely on management representations, with no supporting documentation or independent inquiry into facts. The Audit Committee's second review of LJM transactions was equally cursory.

101. An audit committee is almost a 'working' committee and needs to meet more frequently than a full board. Having non-residents on the committee hampers its functioning. One of the Enron members, Mr Ronnie Chan, missed 75 per cent of the meetings in 2001[24].

102. CFO Magazine notes[25] "In the wake of the Enron scandal, shareholders are tightening the screws on audit committees. Now all they have to do is find executives who are willing to serve on the things." Companies should consider board members with corporate finance or Wall Street

[24] Corporate governance failures at Enron – C Gopinath

[25] CFO.com February 28 2002

experience, argue institutional investor Bert Denton, "rather than wooing former senators. " At the very least, corporate stakeholders, will spend the next year meticulously reevaluating the makeup of audit committees.

Education of Directors

103. The PSI report states: "The board was denied important information that might have led it to action, but the Board also did not fully appreciate the significance of some of the specific information that came before it.[26]" Here is another acknowledgement of responsibility; if they did not have sufficient information, they should have gone seeking it. Reports suggest that Enron operated about 3,500 Special Purpose Entities, that is, partnerships that shifted debt and losses off Enron's balance sheet. If the directors did not understand what was being reported to them, it was their job to educate themselves more about it by asking the right questions and getting more information. This they failed to do.

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[26] William Powers, Jr., Member of the Enron Board of Directors and Chairman of the Special Investigation Committee, 1 February 2002

Part 5 - Post Enron

104. *"The rules are already in place; we just have to figure out how to enforce them effectively. When someone runs a stop sign, you don't change the law, you enforce it."* - Bob Williamson, CFO, vFinance Inc.

105. 2001 will go down in the history books as the one that almost brought Corporate America to its knees with the collapse of Enron and several others.

106. Many successful companies suffer from one or more of the faults described above in the corporate governance section. When the company performance is satisfactory, the tendency is to overlook these drawbacks. In Enron's case too many of their faults came together at the same time, causing the company to implode.

107. The US government recognised that there was an immediate and greater need for independent direction in the running of a company. Also, in the public interest, some thus far self-regulating professions had to be more open to scrutiny.

The Sarbanes-Oxley Act - reporting, controls and other provisions

108. As a result, the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley) was enacted on July 30, 2002, largely in response to a number of major corporate and accounting scandals involving some of the most prominent companies in the United States. Sarbanes-Oxley establishes new standards for corporate accountability as well as penalties for corporate wrongdoing. The legislation contains 11 titles, ranging from additional responsibilities for audit committees to tougher criminal penalties for white-collar crimes such as securities fraud. The US Securities and Exchange Commission (SEC) is required to issue rules implementing several of these provisions.

109. Although Sarbanes-Oxley has implications beyond the US borders, South African companies unless registered with the SEC, will not be directly affected by this Act. Nevertheless, we need to take heed of some of the key lessons and adapt some of the best practices in our market when applicable[27].

[27] PricewaterhouseCoopers – Implications of Sarbanes-Oxley – www.pwcglobal.com

110. In terms of additional disclosures, the Sarbanes-Oxley requires new or more expeditious disclosures and directs the SEC to issue rules requiring other disclosures:[28]

a) Quarterly CEO/CFO certification of periodic reports that the information contained in the report "fairly presents, in all material respects, the financial condition and results of operations of the issuer" [§ 906(a)].

b) Quarterly CEO/CFO certification and report on internal controls. The CEO and CFO must certify that based on their knowledge, there are no materially false statements or material omissions therein; that the report fairly presents the issuer's financial condition, cash flows and results of operations; that the signing officers are "responsible for establishing and maintaining internal disclosure controls and procedures", have designed the controls and procedures to be effective, and have evaluated their effectiveness of the controls within the last 90 days, and that they have presented their conclusions about the effectiveness of the controls in the report; that they have disclosed internal control deficiencies and any fraud by management or employees with a significant role in internal those controls (regardless of materiality) to the auditors and

[28] Summary Of Sarbanes-Oxley Act By David Priebe and Paul Blumenstein. Updated August 30, 2002

the Audit Committee, and that they have disclosed any material weaknesses in internal controls to the auditors.

c) Other quarterly disclosures regarding finance-related procedures in each periodic report include: has the senior finance code of ethics been adopted, who is the Audit Committee financial expert and what non-audit services the auditors provided?

d) Any changes to the senior finance code of ethics need to be reported [§ 406(b)].

e) Section 16(a) requires that stock transaction reports be provided within two days and with next-business-day Internet posting by issuer and the SEC.

f) An annual management report on internal controls which will state the responsibility of management for establishing an adequate internal control structure and procedures for financial reporting, and assess the internal control structure and procedures [§ 404(a)(1)].

g) Quarterly disclosure of off-balance sheet transactions that may have a material current or future effect on financial condition, results of operations, and other metrics [§ 401(a)].

h) Other corporate governance provisions. The Act also establishes new rules affecting other areas of corporate governance. In particular, several provisions affect officer and director compensation and stock trading.

i) No loans to directors or executive officers. Issuers cannot make loans to directors and executive officers, subject to very limited exceptions [§ 402(a)]. Issuers also cannot materially modify or renew any existing loans.

j) New crimes and enhanced penalties. The Act establishes new crimes and increases the maximum penalties for certain existing crimes.

The Sarbanes-Oxley Act - Auditors

111. The auditing profession has until the Sarbanes-Oxley been a self-regulated profession. The Sarbanes-Oxley has the following impact on the auditing firms and the way they do business[29]:

a) The auditors must also attest to and report on the annual management report on internal controls; the Act does not state whether this document is to be included in the report or otherwise made publicly available [§ 404(b)].

b) Auditing firms will "report directly" to the Audit Committee, which is "directly responsible" for the appointment and compensation of the auditors and the "oversight" of their audit-related work [§ 301].

[29] Summary Of Sarbanes-Oxley Act By David Priebe and Paul Blumenstein. Updated August 30, 2002

In selecting auditors, Committees should be aware that auditors cannot audit an issuer if the CEO, CFO, Controller or Chief Accounting Officer of the issuer was employed by the auditing firm and participated during the previous year on the audit of that issuer [§ 206]. Committees also should note that lead audit partners now must rotate every 5 years [§ 203].

c) Restrictions on non-audit services. Registered public accounting firms cannot perform a list of specified non-audit services for their audit clients, subject to a case-by-case exemption by the SEC [§§ 201(a), (b)]. Any non-audit services that are still allowed by auditors must be pre-approved by the Audit Committee and disclosed in periodic reports [§ 202].

112. Post-Enron, it is clear that the pursuit of profits must stay within ethical bounds, and that executives and shareholders may not enrich themselves by extorting the public or employees. Toothless codes of ethics like Enron's are no help. Ethical concerns must grow teeth – which means biting into reform of corporate governance. While most proposals for reform today merely tinker at the margins, some get to the heart of the matter such as the ones mentioned below:[30]

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[30] www.business-ethics.com/corporate

- Ensure auditors really audit by making them fully independent.
- Bar law-breaking companies from government contracts.
- Create a broad duty of loyalty in law to the public good.
    - Today a corporate duty of loyalty is due only to shareholders, not to other stakeholders, and Enron behaved accordingly. Such piracy against the public good would be outlawed under a state Code for Corporate Citizenship, proposed by Robert Hinkley, formerly a partner with Skadden, Arps. His change to the law of directors' duties would leave the current duty to shareholders in place, but amend it to say shareholder gain may not be pursued at the expense of the community, the employees, or the environment.
- Find truly knowledgeable directors: Employees.
    - If Sherron Watkins had been on the Enron board, the whole scandal might have been averted.
- Regulators should be encouraged to enforce sanctions against delinquent directors and to be more pro-active in monitoring governance issues. The Registrar of Companies should establish a register of delinquent directors, which should be available for public scrutiny.

113. Enron will no doubt be viewed as the beginning of a new corporate governance world. Some of the most pertinent issues coming out of the Enron debacle include:

- Financial literacy and an "inquiring mind " are more important than ever, particularly on the Audit Committee.
- Board Membership requires more responsibility than ever before and should not be seen as a retirement hobby.
- Directors need to be actively involved in understanding a company's business - its operation, finances & management.
- Directors cannot simply rely upon the word of management, auditors, and outside professionals.
- Directors must be independent and able to represent the interests of shareholders as they relate to other stakeholders.
- Directors must seek to balance short-term performance pressures with the need to sustain and expand value over the long term.

The Sarbanes-Oxley Act - Audit Committee

114. The Sarbanes-Oxley Act establishes new rules for the composition and duties of Audit Committees. Audit Committees also will be affected by

regulations applicable to auditors, and some of the disclosure rules noted in the Act[31].

- All Audit Committee members must be "independent", meaning that they cannot be an affiliated person of the issuer or any subsidiary thereof, and that they cannot accept any "consulting, advisory, or other compensatory fees" from the issuer (other than in the capacity as a Board or Committee member) [§ 301].
- The Act introduces the concept of an Audit Committee member who is a "financial expert". While the Act does not require that any member be a financial expert, as noted above, it directs the SEC to issue rules requiring each issuer to disclose whether any member of the Audit Committee is a financial expert, and if not, why not [§ 407(a)].
- Audit Committees must establish procedures for the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and for the "confidential, anonymous submission by employees" of "concerns regarding questionable accounting or auditing matters" [§ 301].

[31] Summary Of Sarbanes-Oxley Act By David Priebe and Paul Blumenstein. Updated August 30, 2002

- Audit Committees are authorized to engage independent counsel and other advisers, and issuers must provide appropriate funding for such advisers (as well as for auditors) [§ 301].

115. The time of turning a blind eye or saying that you as a director did not know what was going on has passed. As in England, a comply or explain environment is being developed in the post Enron environment.

Part 6 - Conclusion

116. Hindsight is the only exact science and looking at Enron it's easy to ask, "how could that have happened?" In all honesty - too easily. We all know instances where things are not as they are supposed to be for a number of reasons but we don't speak out for fear of rocking the boat.

117. What has been learned from the multi-billion dollar Enron lesson? Enron has shown that it was not merely an individual or group of individuals that destroyed the 7th largest corporation in the United States. This was the same as was the case with Nick Leeson and Barings Bank. Both cases clearly illustrate the dangers of weak systems and controls, acceptance by directors of what was being fed to them by management, both masked by the apparent success and profitability of the entities.

118. Accountants failed by not deciding how to account for energy contracts. Auditors failed by not maintaining their integrity and independence. The company failed by not giving enough real power to their risk committees and internal controls.

119. For each of these groups, the thing they failed at was not something of a secondary nature to them; it was the prime reason for their existence.

120. Independence of directors is critical to achieving the required level of probing of management. Directors can no longer just attend meetings, they have to understand the business, the risks it faces and the extent of the power granted to and the responsibility imposed on them.

121. Audit committees need to proactively monitor management and decisions taken to ensure that a realistic picture is presented to the users of the financial statements.

122. Corporate governance is not just an optional extra, in today's business world, it is the life-blood of the corporate world, carrying away waste, providing the antibodies to fight disease, carrying life giving oxygen to the cells.

123. Corporate governance is the check and balance as it ensures that controls work as expected, risks are managed and a comply or explain environment fostered.

JA Martin

Partner

KPMG

WORLDCOM CORPORATE SCANDAL- LESSONS FOR CORPORATE GOVERNANCE?

Background

1 The corporate world was rocked by the disclosure by US telecommunications giant, WorldCom, on Tuesday, 25 June 2002, that company officials had misstated accounting figures in the amount of $3,8 billion.[1] This figure was later revised to a staggering $7.1 billion and could now reach $9 billion, according to sources close to the case.[2]

2 The company, which emerged from obscurity in 1997 with a $37 billion takeover of long-distance provider, MCI, became one of the major success stories of the 1990s economic boom.[3]

3 According to a statement released by the Clinton, Mississippi-based company, monies that were actually expenses were booked as capital. This was accomplished outside of the generally accepted accounting rules, the company said.[4]

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[1] Mail & Guardian, Multi-billion WorldCom fraud unveiled, 26 June 2002, M72
[2] News24.com, WorldCom scandal could hit $9bn, 20 September 2002
[3] Business report, WorldCom will try to stay intact despite bankruptcy, 22 July 2002, M132; Business Report, WorldCom bankruptcy filing marks milestone in corporate failures, 22 July 2002, M134

4 The company notified the US securities regulator, the US Securities and Exchange Commission ("SEC"), of the impropriety.[5]

5 WorldCom CFO, Scott Sullivan, and the controller, David Myers, were the first to be relieved of their duties soon after the news broke.[6]

6 WorldCom's recently appointed CEO since April 2002,[7] former Vice-Chairman[8] John Sidgmore, said at the time that the company's management team was "shocked by these discoveries". They remain "committed to operating WorldCom in accordance with the highest ethical standards".[9]

7 The company said it discovered the problems during a routine internal audit.[10]

8 Proper accounting would have resulted in a reduced cash flow of \$6,3 billion in 2001 and \$1,4 billion for the first quarter of 2002 and thus forced WorldCom to report a net loss in 2001 and for the first quarter of

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[4] *ibid.*
[5] *ibid.*
[6] *ibid.*
[7] Business Report, Former SEC chairman appointed as WorldCom watchdog, 3 July 2002, M85
[8] Business Report, The rise and fall of a giant, 4 August 2002, M155
[9] Mail & Guardian, Multi-billion WorldCom fraud unveiled, 26 June 2002, M72
[10] Mail & Guardian, WorldCom charged with fraud, 28 June 2002, M75; Business Report, Watchdog slaps fraud charges on WorldCom, 28 June 2002, M77

2002, the company admitted in late June 2002.[11] Instead, WorldCom claimed $1,4 billion in profit in 2001 and $130 million in profit for the first quarter of 2002.[12] Final numbers for those five quarters are awaiting another audit.[13] By late December 2002 they had still not been revealed to the public.

9 WorldCom's stock, once valued at $64.50 per share in June 1999[14] at the height of the high-tech investment boom, is now worthless.[15] WorldCom's shares had closed at 15c a share on Thursday, 30 July 2002.[16]

10 WorldCom is to lay-off 17000 workers, about a fifth of the total workforce in an effort to stay in business.[17]

11 Arthur Andersen had been the auditors to the WorldCom accounts during the critical period. They were replaced earlier in 2002.[18] Already in the spotlight on charges of criminal wrongdoing after their

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[11] Mail & Guardian, WorldCom files for bankruptcy, 22 July 2002, M129; see also Business report, WorldCom will try to stay intact despite bankruptcy, 22 July 2002, M132 and Business Report, WorldCom bankruptcy filing marks milestone in corporate failures, 22 July 2002, M133

[12] *ibid.*

[13] *ibid*; Mail & Guardian, Multi-billion WorldCom fraud unveiled, 26 June 2002, M72

[14] Business Report, The rise and fall of a giant, 4 August 2002, M154

[15] See also Business report, WorldCom will try to stay intact despite bankruptcy, 22 July 2002, M132

[16] Business Report, US gets tough with WorldCom's greased palms, 4 August 2002, M154; At one point its stock price went as low as six cents a share, leading to its de-listing from the Nasdaq exchange (see Mail & Guardian, WorldCom files for bankruptcy, 22 July 2002, M130);

[17] *ibid*; Mail & Guardian, WorldCom charged with fraud, 28 June 2002, M75

[18] Mail & Guardian, WorldCom cooked the books back in 2000, 15 July 2002, M115

misdemeanours were revealed after the collapse of Enron, Arthur Andersen released a statement to the effect that it had acted in accordance with "professional standards at all times" and that it had been kept in the dark about the WorldCom CFO Sullivan's actions.[19]

12 WorldCom said it had received word from Arthur Andersen that in the light of these revelations, audits for 2001 conducted by Arthur Andersen "could not be relied upon".[20]

13 The damage to confidence is deep and serious.[21] However reassuring the statements by WorldCom may be, the scandal has further eroded confidence in the markets, and people are no longer confident about the accuracy of information that is transmitted to the public.[22] At issue is the question of trust. "If you can't trust the accountants or the companies then the whole thing falls down like a pack of cards", said one investment analyst.[23] "The problem is more than WorldCom", charged another, "it's which companies, which people can you trust? We all knew about Enron and we hoped it would stop the scandals".[24]

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[19] *ibid.*
[20] *ibid.*
[21] Business Report, US's claim to corporate supremacy is badly dented, 3 July 2002, M83
[22] Business Report, Watchdog slaps fraud charges on WorldCom, 28June 2002, M77, quoting statement by Canadian Prime Minister Jean Chretien
[23] Mail & Guardian, WorldCom charged with fraud, 28 June 2002, M75
[24] *ibid.*

Other problems

14 It seems that this transgression of WorldCom was just one in a series of problems that were subjecting the company to Securities Exchange Commission ("SEC") scrutiny. It has recently emerged that the company was already being investigated by the SEC because of its accounting practices,[25] loans to directors, Wall Street "boosterism", as one reporter put it, "and much else besides".[26]

15 As far back as April 2000, the then CFO rebuffed complaints from at least two employees that it was artificially inflating profits.[27] It emerged that already beginning in 2000, the company began shifting ordinary expenses over to capital accounts.[28]

16 On 11 March 2002, WorldCom received a request for information from the SEC relating to accounting procedures and loans to officers.[29]

17 It has also been revealed, for instance, that WorldCom attracted the scrutiny of the SEC when it emerged that the company's board had

[25] Mail & Guardian, WorldCom charged with fraud, 28 June 2002, M75
[26] Business Report, US's claim to corporate supremacy is badly dented, 3 July 2002, M83
[27] Mail & Guardian, WorldCom cooked the books back in 2000, 15 July 2002, M115
[28] *ibid.*
[29] Business Report, The rise and fall of a giant, 4 August 2002, M154

approved massive loans to its former CEO, Bernie Ebbers, who quit in April 2002. He now owes the company $408 million.[30]

18 In April 2002, WorldCom announced it would cut 3700 jobs or 6% of its staff.[31]

19 The latest fraud is of an unprecedented magnitude.[32] Patrick Comack, an analyst with Guzman and Co in Miami seemed to express the views of everyone when he said: "One can't help but be blown away by the magnitude of the malfeasance. I'm not surprised they are finding more fraudulent activity but I'm certainly surprised by the size of it".[33]

Court actions

20 The scandal has been followed by court actions launched by various stakeholders.

21 The SEC filed a civil action complaint on Wednesday, 26 June 2002 US District Court in the federal district court in New York. The court

[30] Mail & Guardian, WorldCom charged with fraud, 28 June 2002, M76; Cf Mail & Guardian, WorldCom files for bankruptcy, 22 July 2002, M130 and Business report, WorldCom will try to stay intact despite bankruptcy, 22 July 2002, M132, which both say other federal regulators were already investigating *inter alia* the way in which WorldCom covered $360 million in loans to Ebbers for stock margin calls
[31] Business Report, The rise and fall of a giant, 4 August 2002, M154
[32] Mail & Guardian, WorldCom charged with fraud, 28 June 2002, M75
[33] News24.com, WorldCom scandal could hit $9bn, 20 September 2002

granted preliminary relief. The trial date has been tentatively set for Friday, 21 March 2003.[34]

22 On Sunday, 21 July 2002, WorldCom filed, in the US District Court for the southern district of New York, for protection under Chapter 11 of the bankruptcy code

23 The US Justice Department has launched a criminal investigation into the scandal.[35] Such a probe would look for any evidence of criminal wrongdoing by current and former WorldCom executives.[36]

<u>The SEC civil action and court order</u>

24 It is necessary to restate the complaint in full to understand the issues. The SEC alleged for its complaint that:

- From at least the first quarter of 2001 through to the first quarter of 2002, the defendant, WorldCom, defrauded its investors.[37]
- In a scheme directed and approved by its senior management, WorldCom disguised its true operating performance by using undisclosed and improper accounting that materially overstated its

[34] Business Report, Former SEC chairman appointed as WorldCom watchdog, 3 July 2002, M85
[35] Mail & Guardian, Multi-billion WorldCom fraud unveiled, 26 June 2002, M72; Mail & Guardian, WorldCom charged with fraud, 28 June 2002, M75; Business Report, Former SEC chairman appointed as WorldCom watchdog, 3 July 2002, M85; Mail & Guardian, WorldCom cooked the books back in 2000, 15 July 2002, M115

income before income taxes and minority interests by approximately $3,055 billion in 2001 and $797 million during the first quarter of 2002.[38]

- By improperly transferring certain costs to its capital accounts, WorldCom falsely portrayed itself as a profitable business during the period in question.[39]
- By this transfer, WorldCom violated the established standards of generally accepted accounting principles ("GAAP").[40]
- This improper transfer was not disclosed to investors in a timely fashion, and misled investors about WorldCom's reported earnings.[41]
- This improper accounting action was intended to manipulate WorldCom's earnings during the period in question to keep them in line with estimates by Wall Street analysts.[42]
- By engaging in this conduct, Worldcom violated the anti-fraud and reporting provisions of the federal securities laws and, unless restrained by the court, will continue to do so.[43]

25 The specific fraudulent scheme, it is alleged, revolves around WorldCom's so-called "line costs", which are one of WorldCom's major

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[36] Business Report, Former SEC chairman appointed as WorldCom watchdog, 3 July 2002, M85
[37] SEC civil action against Worldcom, 20 June 2002, M71.1, paragraph 1
[38] *ibid.*
[39] *ibid*, paragraph 2
[40] *ibid.*
[41] *ibid.*
[42] *ibid.*

operating expenses. The "line costs" represent fees WorldCom paid to third party telecommunication network providers for the right to access the third parties' networks. Under GAAP, these fees must be expensed and may not be capitalised. WorldCom's senior management, however, improperly directed the transfer of line costs to its capital accounts in amounts sufficient to keep WorldCom's earnings in line with Wall Street's expectations. In this manner, WorldCom materially understated its expenses, and materially overstated its earnings, thereby defrauding investors.[44]

26 As a result of this improper accounting scheme, WorldCom materially underreported its expenses and materially overstated its earnings in its filings with the SEC.[45] The filings failed to disclose the company's accounting treatment of its line costs, that such treatment had changed from prior periods, and that the company's line costs were actually increasing substantially as a percentage of its revenues.[46]

27 The SEC sought the following relief (briefly stated):[47]

a. Restraining WorldCom from engaging in the aforementioned scheme in violation of the enabling Exchange Act.

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[43] *ibid*, paragraph 3
[44] *ibid*, M71.2, paragraph 5
[45] *ibid*, M71.2, paragraph 6
[46] *ibid*, M71.2, paragraph 9

b. Restraining WorldCom from filing factually inaccurate statements or reports in violation of the enabling Exchange Act.

c. Imposing civil monetary penalties.

d. Prohibiting WorldCom and its affiliates, officers, directors, employees and agents from destroying, altering, or removing from the court's jurisdiction any documents relevant to this matter.

e. Prohibiting WorldCom and its affiliates from making any extraordinary payments to any present or former affiliate, or officer, or director, or employee of WorldCom or its affiliates, including, but not limited to any severance payments, bonus payments, or indemnification payments.

f. Appointing a corporate monitor to ensure compliance with d and e above.

g. Additional relief.

28 Apparently the relief sought in §d seeks to pre-empt the shredding of important documents, such as that occurred in Enron[48]. §e was also a controversial issue during the collapse of Enron, which paid out millions in last-minute bonuses to executives before filing for bankruptcy in December 2001.[49]

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[47] *ibid*, M71.4
[48] Mail & Guardian, WorldCom charged with fraud, 28 June 2002, M75
[49] Business Report, Former SEC chairman appointed as WorldCom watchdog, 3 July 2002, M85

29 On 28 June 2002, US District Court Judge Jed S Rakoff entered an order, based upon a joint agreement between the SEC and WorldCom, directing WorldCom to, *inter alia*, preserve "all items relating to WorldCom's financial reporting obligations, public disclosures required by the federal securities laws, or accounting matters".[50] The Court also approved the appointment of a corporate monitor having oversight responsibility with respect to all compensation paid by WorldCom. The corporate monitor will have responsibility "to prevent unjust enrichment as a result of the conduct alleged in the Commission's complaint and to ensure that WorldCom's assets are not dissipated by payments that are not necessary to the operation of WorldCom's business".[51]

30 Former SEC chairman, Richard Breeden, who headed the SEC from 1989 to 1993,[52] was appointed corporate monitor on Wednesday, 3 July 2002.[53] (Interestingly, before he could assume his $800 an hour job at WorldCom,[54] Breeden was required to sell roughly 6000 shares he owned in WorldCom, which had become worthless, closing at 22c at the time of his appointment[55]).

[50] SEC: Court order by agreement between SEC & Worldcom, 28 June 2002, M73.1
[51] *ibid.*
[52] Business Report, Former SEC chairman appointed as WorldCom watchdog, 3 July 2002, M85
[53] *ibid.*
[54] *ibid.*
[55] *ibid*, M86

Bankruptcy protection

31 On Sunday, 21 July 2002, WorldCom filed, in the US District Court for the southern district of New York, for protection under Chapter 11 of the bankruptcy code, which allows it to continue operating while it works out a plan to pay its debts, according to court records.[56] Sidgmore said the company expects to remain under bankruptcy protection until at least the first quarter of 2003.[57]

32 In the bankruptcy petition, WorldCom listed assets of $107 billion as of 31 March 2002 against debts of $41 billion.[58] Therefore it is still solvent. By comparison, Enron listed $63,4 billion in assets when it sought the bankruptcy petition in December.[59] This makes WorldCom's failure twice as large as the record-breaking bankruptcy filed by Enron in December 2001.

33 WorldCom's bankruptcy filing was accompanied by a deal that would give WorldCom $2 billion in so-called debtor-in-possession ("DIP")

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[56] Mail & Guardian, WorldCom files for bankruptcy, 22 July 2002, M129; see also Business Report, WorldCom bankruptcy filing marks milestone in corporate failures, 22 July 2002, M133

[57] Business report, WorldCom will try to stay intact despite bankruptcy, 22 July 2002, M131; See also Mail & Guardian, WorldCom files for bankruptcy, 22 July 2002, M130

[58] Mail & Guardian, WorldCom files for bankruptcy, 22 July 2002, M130; see also Business report, WorldCom will try to stay intact despite bankruptcy, 22 July 2002, M132 and Business Report, WorldCom bankruptcy filing marks milestone in corporate failures, 22 July 2002, M133

financing, giving the company cash to continue its operations.[60] This financing was received from JPMorganChase Bank, Citibank and GE Capital Corporation.[61] The court approved $750 million of this amount as interim financing for operations, staff and services to customers.[62] The deal would give these banks priority for any repayment ordered by the court.[63] The court also granted all of WorldCom's motions meant to support its customers, employees and other business partners, and provide other forms of operational and financial stability as it reorganizes its finances.[64]

34 In a rare move, the court also approved a Justice Department request to name an independent examiner to investigate Worldcom with broad authority to delve into its books.[65] The use of an examiner is rare in bankruptcy cases, albeit one was appointed in the Enron bankruptcy cases.[66]

35 It is hoped that the appointment of an independent examiner will further contribute to improving public confidence in the conduct of the case. It

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[59] *ibid.*
[60] Business report, WorldCom will try to stay intact despite bankruptcy, 22 July 2002, M131; Business Report, WorldCom bankruptcy filing marks milestone in corporate failures, 22 July 2002, M134; Business Report, US judge approves naming of independent WorldCom examiner, 23 July 2002, M135
[61] *ibid.*
[62] Business report, WorldCom will try to stay intact despite bankruptcy, 22 July 2002, M131; Business Report, US judge approves naming of independent WorldCom examiner, 23 July 2002, M135
[63] Business report, WorldCom will try to stay intact despite bankruptcy, 22 July 2002, M131
[64] Business Report, US judge approves naming of independent WorldCom examiner, 23 July 2002, M135
[65] *ibid.*

is also hoped that it would provide transparency to the process and enhance accountability.[67]

The Federal criminal investigation

36 Five WorldCom executives are accused of being co-conspirators in the accounting scandal. New charges may yet be levelled and new defendants may still be indicted, according to the federal prosecutors[68], as they continue their probe. They are:

- Former Chief Financial Officer, Scott Sullivan, who has pleaded not guilty. He is free on a $10 million bond.[69]
- Former Controller, David Myers. He pleaded guilty before US District Judge Richard Casey in Manhattan Federal Court on Thursday, 26 September 2002, to false filing of documents with securities regulators, conspiracy to commit fraud and to securities fraud.[70] Judge Casey accepted Myers' guilty plea and set a tentative sentencing date of 26 December 2002.[71] Myers was the first to plead guilty in the alleged conspiracy.[72]

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[66] *ibid.*
[67] *ibid.*
[68] News24.com, WorldCom scandal could hit $9bn, 20 September 2002
[69] News24.com, Another WorldCom exec pleads guilty, 10 October 2002
[70] News24.com, Ex-WorldCom 'was following orders', 27 September 2002
[71] *ibid.*
[72] *ibid.*

- Ex-director of general accounting, Buford Yates, who reported directly to David Myers[73], became the second company official to plead guilty on Monday, 7 October 2002. He pleaded guilty to conspiracy and securities fraud.[74]
- Former director of management reporting in the General Accounting Department, Betty Vinson, who reported directly to Buford Yates[75], pleaded guilty on Thursday, 10 October 2002 to charges of conspiracy to commit securities fraud in a US District Court in Manhattan before magistrate Judge Andrew J. Peck.[76]
- The director of legal entity accounting in the general accounting Department, Troy Normand, who also reported directly to Buford Yates[77], also pleaded guilty to charges of conspiracy to commit securities fraud.[78]

37 All the last four defendants are expected to provide evidence against Scott Sullivan.[79]

38 Former Chief Executive Officer, Bernard Ebbers, has not been charged but is under investigation. He has denied any knowledge of the fraud.[80]

[73] News24.com, Another WorldCom exec pleads guilty, 10 October 2002
[74] News24.Com, Former Worldcom exec pleads guilty, 8 October 2002
[75] News24.com, Another WorldCom exec pleads guilty, 10 October 2002
[76] *ibid.*
[77] *ibid.*
[78] *ibid.*

39 Myers' and Yates' cooperation could help prosecutors build a case against both Sullivan and Ebbers.[81]

40 Myers told the court that he had been instructed on a quarterly basis by senior management to ensure that entries were made to falsify WorldCom's books to reduce WorldCom's reported actual costs thereby increasing reported earnings. He said further that he worked with others under his supervision at the direction of senior management to make these accounting adjustments "for which I knew there was no justification of documentation".[82]

41 Yates, who also insisted that he was following orders from top-level management, stating that he was instructed by supervisors to misreport expenses, admitted he helped WorldCom hide billions of dollars in expenses.[83]

42 Prosecutors say both Vinson and Normand carried out orders from Sullivan and Myers to disguise $3.8 billion in operating expenses as

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[79] *ibid.*
[80] News24.Com, Former Worldcom exec pleads guilty, 8 October 2002
[81] News24.com, Ex-WorldCom 'was following orders', 27 September 2002; *ibid.*
[82] News24.com, Ex-WorldCom 'was following orders', 27 September 2002
[83] News24.Com, Former Worldcom exec pleads guilty, 8 October 2002

capital expenses.[84] "As Sullivan, Myers, Yates, Vinson and Normand well knew, there was no justification in fact or under generally accepted accounting principles for these entries," according to the indictment.[85]

Could the collapse have been prevented?

43 There is little new in the WorldCom debacle, only hard lessons. These lessons emerged even before the Enron scandal. It should therefore not take another collapse before these lessons are learnt and corrective measures are put in place to counter these undesirable practices. Enron should have been the wake-up call,[86] but the call was not heeded.

44 In any event, scandals of this nature need not happen or come as a surprise anymore. Certain types of conduct or activities have evolved into a pattern of malfeasance over the years and, as a matter of course, it is essential that one should always be on the alert for wrongdoing. For example, to charge operational expenses as capital spending is one of the oldest accounting fiddles in the book.[87] It should no longer be an excuse for stakeholders, especially the board and executive management, to maintain, only when the company has collapsed, that

[84] *ibid.*
[85] *ibid.*
[86] Business Day, Corporate health means reform across the board, 12 July 2002, M111
[87] Business Report, US's claim to corporate supremacy is badly dented, 3 July 2002, M83

they were unaware of any wrongdoing. Similarly transactions involving a rapid-fire series of acquisitions should also raise red flags. It should *always* be assumed that such companies are a pack of cards,[88] ready to collapse at any moment owing to efforts by management to employ whatever tactics to stave off the costs that come with such acquisitions. It is known that WorldCom had been involved in 17 mergers between 1994 and 1998.[89] The Audit Committee[90] or the auditors should have scrutinized the financial statements more closely. Another activity that should raise red flags without question is when a company cuts jobs on a large scale.

45 These events highlighted above are but some of the examples that should spur stakeholders to be on a state of high alert when they occur and should motivate them to sharpen their tools of monitoring in order to prevent or mitigate a crisis. To be unprepared for crises soon after these occurrences or events could suggest not only that standards of corporate probity and disclosure have slumped, or analysts' tools for producing reliable forecasts have failed, but also that standards of supervision and oversight are suspect.

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[88] Business Report, US's claim to corporate supremacy is badly dented, 3 July 2002, M83
[89] Business Report, WorldCom's ousted CFO drove growth strategy, 1 August 2002, M150
[90] Business Day, Corporate health means reform across the board, 12 July 2002, M111

46 It can strongly be argued, however, that stakeholders cannot always be effective if they act in isolation from each other and not be complementing to each other. This could be done by maintaining an active, yet prudent (given the interests they protect and confidentially issues), relationship with each other. All stakeholders therefore need to holistically address corporate governance in business.[91] It has thus been argued that the reformation process must go beyond the audit profession and regulatory bodies, but should encapsulate management, bankers, non-executive directors, analysts, shareholders/investors and perhaps even the uncritical media.[92] But what are they to do differently to make the world a safer place for investors[93] and, indeed, taxpayers?

The external auditors and accountants

47 There has been strong calls, in the US and SA, for the establishment of an independent oversight body for the auditing and accounting professions.[94] This comes in the wake of investors' questions about the role of accountants in not picking up problems before the collapse of Enron, or closer to home, Regal Bank, LeisureNet and Masterbond,[95] to name a few. To have an oversight body would follow the example of

[91] *ibid.*
[92] *ibid*, M110
[93] *ibid*, M111
[94] Business Report, Reserve Bank joins calls for body to supervise auditors & accountants, 5 July 2002, M90

UK and Ireland, where such independent oversight bodies for the auditing profession have been created.[96]

48 Lewis Gottschalk, the executive partner at Moores Rowland Chartered Accountants, a member of Moores Rowland International, has also suggested that a new body be established for the profession, to be named the Public Audit Control Panel.[97]

49 Among the areas to be regulated by this proposed body and thereby increase the profession's accountability[98] include:

- Award audits of listed companies and those firms that met certain turnover and asset criteria.[99]
- Auditors to rotate after serving a certain period.[100]
- Introduce more rigorous criteria for appointing auditors and assessing their independence.[101] It has been suggested that the profession spends too much time on auditing techniques and procedures and not sufficient time of assessing independence.[102]
- Introducing protection for auditors reporting unorthodox accounting treatments.

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[95] *ibid.*
[96] *ibid.*
[97] *ibid.*
[98] *ibid.*
[99] *ibid.*
[100] *ibid.*
[101] *ibid.*

50 Experts have however expressed concern that it is difficult even for conscientious auditing staff in large firms to detect senior management collusion.[103]

Management

51 Sidgmore, who took the helm in April 2002, has blamed past management and Arthur Andersen for the company's plight and pledged cooperation as the government investigates.[104]

52 As already stated, the problems were discovered during a routine internal audit.[105] The company had been accounting for day-to-day costs, such as network maintenance, as capital investments, and therefore not offsetting them against earnings. As a result, they say, they were unaware of the losses.[106]

53 However, in the case of WorldCom, it has emerged that its executives had repeatedly brushed off warnings about shady accounting

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[102] *ibid*, M91
[103] *ibid.*
[104] Business Report, Former SEC chairman appointed as WorldCom watchdog, 3 July 2002, M85
[105] See footnote 9 above
[106] Mail & Guardian, WorldCom charged with fraud, 28 June 2002, M75

practices.[107] It was reported that certain documents that were seized have revealed a strange pattern of people inside the corporation discovering bad practices, trying to do something about it, and ultimately failing, that is, until recently.[108] A finance department employee, for example, pointed out bookkeeping problems in 2000 to Sullivan and Myers, and contemplated resigning after he was assured that there was nothing wrong.[109] In a separate incident in April 2000, a London employee contacted Arthur Andersen after Sullivan reclassified \$33,6 million in expenses as capital spending, allowing the charges to be written off over several years.[110]

54 These examples suggest that bad practices in a company can and often are detected earlier, or can simply be prevented, if the pleas of the four WorldCom executives under indictment are anything to go by. However, due to a lack or weakness of systems or mechanisms to communicate them effectively or to protect "whistleblowers", no decisive action is taken. It took a woman "of demeanour but exceptional guts and sense"[111], Cynthia Cooper, to explode the bubble that was WorldCom, when she informed its board that the company had

[107] Mail & Guardian, WorldCom files for bankruptcy, 22 July 2002, M129; see also Mail & Guardian, WorldCom cooked the books back in 2000, 15 July 2002, M115; Business Report, WorldCom bankruptcy filing marks milestone in corporate failures, 22 July 2002, M134
[108] Mail & Guardian, WorldCom cooked the books back in 2000, 15 July 2002, M115
[109] *ibid.*
[110] *ibid.*
[111] Expression used by Time Magazine issue of December 30, 2002/January 6, 2003, page 38

concealed $3.8 billion in losses through the prestidigitations of phony bookkeeping.[112] Ms Cooper has since been honoured by Time Magazine in its December 30, 2002/January 6, 2003 issue as one of its three Persons of the Year for 2002 for her courageous conduct.

Non-executive directors

55 The objectivity of non-executive directors should be beyond reproach and should not be questioned. This could not have been the case in Enron where some non-executive directors are reported to have offered consulting services to the company.[113] As independent agents, non-executive directors have a particular responsibility.[114] They should have leadership, a full understanding of the business and thereby maintain an effective check on executive actions.[115] The ultimate responsibility for ensuring effective corporate governance rests with the board as a whole,[116] especially non-executive directors.

56 Audit committees who oversaw the preparation of the financial statements, or the non-executive directors who are by definition consultants to the company, should have been more vigilant. Audit

[112] Time Magazine issue of December 30, 2002/January 6, 2003, page 38
[113] Business Day, Corporate health means reform across the board, 12 July 2002, M110
[114] *ibid.*
[115] *ibid.*

committees are an essential cog in the governance wheel of the modern organisation, and should be concerned about the independence of the auditor, rather than what happened in Enron where the audit committee sanctioned practices such as the internal audit being carried out by the auditors.[117]

Investors/shareholders

57 Investors also have a duty to protect themselves.[118] Not many companies can continue to grow at the rate Enron or WorldCom grew. It comes back to the same perception that some investors are greedy too. One often sees investors in SA caught out by iniquitous schemes that offer disproportionate high rates of interest. It must always be borne in mind by the investors that the higher the return, the higher the risk.[119]

58 Shareholder apathy, such as the propensity of shareholders to not attend the oft-crucial shareholders' meetings, thereby allowing for executive actions to go unchecked, has also contributed to corporate failures.

[116] *ibid.*
[117] *ibid*, M111
[118] *ibid.*
[119] *ibid.*

Bankers

59 Using Enron specifically as an example, banks played an important role in aiding it to create its special purpose entities.[120] Surely these banks knew Enron was shifting liabilities "off balance sheet"?[121] In addition the banks are accused of having been aware that loss-making contracts were also being shifted into the entities.[122] It is ironic, therefore, that some of the main losers in these disasters have been the banks themselves.[123]

Analysts

60 Analysts have also been asleep at the switch. Is it not the analysts who should have detected that profit was not backed by cash flows?[124] The news of the resignation of Jack Grubman, an analyst with the Salomon Smith Barney brokerage house, a firm sullied by the WorldCom crisis, on Thursday, 15 August 2002[125] should come as a reassuring step in the right direction to interested persons, for it recognizes the vital, but often understated, role played by analysts in the fortunes of corporate

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[120] Business Day, Corporate health means reform across the board, 12 July 2002, M110, M111
[121] *ibid*, M110
[122] *ibid.*
[123] *ibid.*
[124] *ibid*, M111
[125] News24.com, Shamed WorldCom analyst quits, 16 August 2002

institutions. Grubman, who earned US$20 million a year, failed to foresee the meltdown of the telecommunications industry, or of WorldCom.[126] He also testified before Congress in 8 July 2002 that despite repeated meetings with WorldCom directors, he had no idea of the company's questionable accounting practices.[127]

The Regulator

61 The scandal has thrown the spotlight on the SEC and the role of regulators in general. Has the SEC's reputation as the most powerful and feared watchdog been compromised, as some people seem to think? It has been attacked for its lack of independence and its inability or failure to push through regulatory changes that would have helped prevent the series of US corporate meltdowns.[128]

62 What of its independence? Apparently Harvey Pitt, the Bush-appointed SEC chairman, made his name as a private lawyer by defending insider-trading kingpins.[129] And defended them well he did too! One columnist has said Pitt's old client list reads like "a rogue's gallery of the

[126] *ibid.*
[127] *ibid.*
[128] Business Report, The feared watchdog that refuses to bite, 30 June 2002, M80
[129] Business Report, US trading watchdog blamed for pit bull past, 17 July 2002, M117

corporations accused of driving the economy south".[130] Is this probe a needless diversion, or should one be wondering whether Pitt's CV is fit for the SEC chairman?[131] Some critics, including a few Republicans, strongly feel that somebody totally independent[132] should be appointed. Question is, how do you define "totally independent"? Indeed, is it fair to hold his past against him? Some will argue that defending unsavoury clients is par for the legal course.[133] One academic has even said forcing Pitt out because of past clients was a precedent that would make filling the job nearly impossible.[134] Even former SEC chairman, Arthur Levitt, credited for his tough regulatory policies, blew hot and cold on this tactic to unseat Pitt.[135]

63 However, Pitt has also been accused of being too close to the business community to be truly independent.[136] He has been criticised for his recent meetings with former client, KPMG, an accounting firm whose audits of Xerox are being investigated by the SEC. He also met with the CEO of Xerox. However, SEC officials note that after meeting with Pitt, Xerox agreed to pay a stiff $10 million civil fine to settle the

[130] *ibid.*
[131] *ibid.*
[132] *ibid.*
[133] Pitt, *ibid.*
[134] *ibid*, M118
[135] *ibid.*
[136] Business Report, The feared watchdog that refuses to bite, 30 June 2002, M80

allegations.[137] This raises the question of the extent and depth of the regulator's interaction with people from whom it is supposed to save its clients. At the end of the day, the regulator should take care to protect its image against negative perceptions.

64 The SEC's efforts to push through regulatory changes have either been frustrated by influential members of Congress or come under pressure from the business lobby[138] because they were seen as being too tough[139], or were trivialised in order to undermine them.[140]

65 Some of the measures the SEC has sought to introduce, but were apparently frustrated or undermined, include:

- The proposal to separate the audit and consultancy functions of the big accountancy firms so that they would have been able to undertake either audit or consultancy work for clients, not both.[141]
- To introduce a system whereby listed companies would be required to disclose how much they were paying in audit fees and how much for consultancy. Consultancy fees typically dwarf audit fees by seven to one.[142]

[137] Business Report, US trading watchdog blamed for pit bull past, 17 July 2002, M117-M118
[138] Business Report, The feared watchdog that refuses to bite, 30 June 2002, M80
[139] *ibid.*
[140] *ibid.*
[141] *ibid.*
[142] *ibid.*

66 Former SEC chairman, Arthur Levitt, who left in August 2001, conceded that the system of financial reporting was seriously flawed.[143] He said the problem is that the accountants were compromised by the fact that they felt and acted as if their loyalties belonged to management rather than to the stakeholders.[144]

67 The SEC has since tabled a fresh set of proposals designed to tighten regulation of company auditors. On 20 June 2002, less than a week before the Worldcom scandal broke, but six weeks after the Enron crisis, the SEC proposed a series of rules designed to restore reliability and integrity of the financial reporting process.[145] Key elements of the proposals include:

- Introduction of a public accountability board, which would regulate the accountancy profession but not be controlled by it.[146]
- Instead of being funded by the profession on a voluntary basis, there would be mandatory contributions from the audit firms and the public companies whose books they monitor.[147]

[143] *ibid*, M81
[144] *ibid.*
[145] *ibid.*
[146] *ibid.*
[147] *ibid.*

68 This would replace the existing self-regulatory system of "peer reviews" where firms periodically review other firms. Cynics say that such reviews have rarely found anything untoward.[148]

69 The SEC is expected to publish additional proposals on the subject of auditor independence. The strongest element is a move to bar audit partners from having any part of their pay or bonuses affected by the fees from other services such as management consultancy.[149]

70 Other suggestions include:

- Firms must be able to undertake both audit and consultancy work for clients if approved by the audit committee, and not just by the CEO.[150] But what of companies that are dominated by one senior figure such as a combined chairman and CEO? This remains to be addressed.[151]
- A disclosure of the non-audit fees.[152]
- The compulsory rotation of a company's auditors every five or six years.[153]

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[148] *ibid*, M81
[149] *ibid.*
[150] *ibid*, M82
[151] *ibid.*
[152] *ibid.*
[153] *ibid.*

The Government

71 President Bush, already under a cloud after revelations of his own record as a Texan oil executive,[154] promised to pursue executive lawbreakers and restore trust in corporate America. The Bush administration has argued for rigorous enforcement of existing laws instead of introducing new legislation.[155] He has called for:

- Stiffer prison terms for executives guilty of criminal fraud, and doubling the maximum prison term for mail and wire fraud to 10 years.[156]
- Tougher laws for the shredding of documents or obstructing justice.[157]
- A 20% increase in funds and greater powers for the SEC. He urged Congress to approve a $20 million funding request to allow the regulator to hire 100 new enforcement officers, and an extra $100 million in the fiscal year ending September 2003.[158]

[154] Mail & Guardian, Bush vows to rein in corporate crooks, 9 July 2002, M100; Business Report, Scandal spotlight now on Bush, 5 July 2002, M87
[155] Business Report, Bush seeks to double prison term for fraud, 11 July 2002, M107
[156] Business Report, Bush lashes boardroom criminals, 10 July 2002, M104
[157] *ibid.*
[158] *ibid*, M105

Indeed, as some legal experts argue, prosecutors already can put executives in prison for securities fraud, obstructing justice and falsifying business records in terms of the existing laws. [159]

Stock markets

72 President Bush has said stock markets should require that the majority of company directors be truly independent, including all members of the audit committee and compensation committee.[160]

73 It has also been suggested that stock markets should require listed companies to receive shareholders' approval for all stock option plans.[161]

Media

74 The media has been accused of being uncritical in their reporting.[162] A major acquisition or investment has often been met with praise by the media rather than scepticism. Deals are rarely questioned. If anything,

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[159] Business Report, Bush seeks to double prison term for fraud, 11 July 2002, M107
[160] Business Report, Bush lashes boardroom criminals, 10 July 2002, M104
[161] *ibid.*
[162] Business Day, Corporate health means reform across the board, 12 July 2002, M110

once a major deal is pulled off, it makes a celebrity of the executive involved.

Conclusion

75 On the face of it, there is nothing to suggest that WorldCom's corporate governance structures were lacking in form. A clear lesson here is that "corporate governance" is not a list of procedures[163] and the quantity of board committees. Rather, it is the old principle of substance over form. It is a state of mind.[164]

Adv Jabu Kuzwayo
Assistant General Manager
Bank Supervision Department
South African Reserve Bank
Date: 19 February 2003

[163] *ibid.*
[164] *ibid.*

Annexure D3

Case Study:

Regal Treasury Private Bank Limited ("Regal")

A. Background

1 In July 1991 Wingate Holdings Ltd (a small finance company) applied to the Registrar of Banks ("the Registrar") to establish a bank. Wingate Holdings Limited ("Wingate") was the holding company of Wingate Finance Limited. The application was unsuccessful. Mr Jeff Levenstein ("Levenstein") was the person who acted on behalf of Wingate Holdings Ltd.

2 On 12 July 1995 Rand Treasury Ltd ("RTL") was incorporated with Levenstein again as shareholder and chairman. On 17 August 1995 Levenstein became deputy chairman. On 2 October 1995 the directors agreed that application should be made for authorisation to establish a bank. The bank's services would be offered to "a niche market of professionals and select net worth individuals". On 1 March 1996 the Rand Treasury Shareholders Trust was created to buy (and sell) Holdings shares purportedly with the intention of moving shares from "weak hands" to "strong hands", but in reality to support the Holdings share price.

3 RTL applied to establish a bank on 15 April 1996. Qualifications of directors who would play a prominent part in the affairs of the bank, were described in the application. As at 10 July 1996, RTL had a share capital of R39.3m, debenture capital of R25m and revenue reserves of R1.3m. It was anticipated that RTL would have an income of R6.8m for the first year, with anticipated expenditures of R2.9m. On August 20 1996 the application for authorisation to establish a bank was granted. On 16 September 1996 RTL changed its name to Regal Treasury Private Bank Limited ("Regal Bank"). On 2 January 1997 a certificate to conduct business of a bank was issued to Regal.

4 As at 31 August 1997, the income of Regal was R5m, expenses R2.3m and share capital was R55m. During the last six months of 1997 signs of conflict between Mr Peter Springett ("Springett"), the chairman and Levenstein, the chief executive officer ("CEO"), emerged. Thereafter negotiations were in progress for the acquisition of a stockbroking firm. On 8 October 1997 Levenstein called a special meeting of the board to discuss his differences with the chairman and their apparent incompatibility. The latter was called upon to resign.

5 The financial results for 1 March 1997 to 27 February 1998 reflected a growth in share capital from R51.6m to R54.6 m, and profit after tax had grown to R8.3m. There were 500 shareholders.

6 In 1998 the chairman resigned and Levenstein took over the office, remaining on in the position of CEO. The reasons for Springett's resignation were various. Levenstein informed the Bank Supervision Department ("BSD") of the South African Reserve Bank ("SARB") that there was constant disagreement on strategic issues. Springett stated that Levenstein wanted to run the bank as a one man bank and that the majority of the board supported Levenstein. In Springett's words, it was a "classic case" of a lack of corporate governance leading to problems. The bank lost an independent chairman who understood and applied sound corporate governance principles.

7 On 18 February 1998 Levenstein met with the BSD. Disapproval was expressed with Levenstein's holding the office of chairman and CEO. After some further developments, the Registrar of Banks addressed a letter to Levenstein on 30 September 1998 giving notice that a suitable non-executive chairman should be appointed. Regal Treasury Bank Holdings Ltd ("Regal Holdings") later applied to register as a holding company. On 17 November 1998 the Registrar informed Levenstein that he could remain as chairman until the new Regal Holdings was listed.

8 On 7 July 1998 the Registrar granted an application for the allotment of 20% of the total share capital of Regal Bank to Worldwide Africa Investment Holdings Limited ("Worldwide"), however, on 15 December 1998 the Reserve Bank

informed Regal Bank that an application by Worldwide to acquire more than 15% of the shares in Regal Holdings, would have to be made to the Reserve Bank.

9 The activities of the bank expanded. A stockbroking branch became operative on 2 March 1998. On 23 July 1998, the authorised share capital was doubled to 200 000 shares. On 5 November 1998, the BSD informed Regal that non-banking business was to be structured under a controlling company as opposed to under a bank and that it did not object to the registration of Regal Holdings as the controlling company. Regal Holdings was incorporated on 27 November 1998 and in the course of the year a unit trust company was formed.

10 At the commencement of 1999, the board of directors of Regal Holdings consisted of six executive directors and eight non-executive directors.

11 On 17 November 1998 the Registrar gave the bank a period of grace until the listing of Regal Holdings to appoint a non-executive chairman but Levenstein remained in that position. On 10 May 1999 the Registrar informed Levenstein that reasons for not separating the offices of chairman and CEO were insufficient and a deadline by 31 July 1999 was set. On 19 July 1999 Levenstein responded that the deadline could not be reached. The Registrar then gave notice that separation had to be effected by 30 September 1999. On

29 September 1999 Mr Lurie, founding shareholder of Wingate and brother-in-law of Levenstein, was appointed as chairman.

12 During 1999 and 2000 Regal Bank's internal audit function was poor. After this continued for two years, PriceWaterhouseCoopers ("PwC") was appointed as internal auditors.

13 On 25 February 1999 Regal Holdings was listed. The share price eventually was R7.50, well below the expectations of employees and management, and in an attempt to boost the Holdings share price, the Shareholders Trust was used to buy Regal Holdings shares. Shares were bought by the trust to "channel shares into stronger hands". In 1999 the first Mettle Limited ("Mettle") transaction was concluded. It resulted in "back to back" preference share structures.

14 From what occurred during July 1999 it appears that the concept of corporate governance was foreign to Levenstein and the directors involved; that Levenstein was unfit as bank chairman or CEO; and that the directors, including non-executive directors, failed to act in accordance with their statutory duties and the recommendations of the King Report on Corporate Governance (King I).[1]

[1] The King Report on Corporate Governance, 29 November 1994.

14.1 On 6 July 1999 Levenstein gave an instruction to the asset management division to stop "front running", namely, to use Regal shares inappropriately, causing Regal shares to be pushed down artificially. There were other versions of the instruction, for example, that asset management was no longer allowed to sell any shares in Regal Holdings on behalf of any of its clients. Levenstein later appeared to be lying about this issue. Moreover, the Levenstein instruction was unlawful.

14.2 On 14 July 1999 Levenstein fired Mark Springett, a director of the asset management company, without a hearing. Accusations of breach of fiduciary duty and grossly subordinate behaviour made by Levenstein against Mark Springett were later found without substance. Levenstein furthermore accused Mark Springett of theft of millions of rand, fraud and theft of client's money. The charges were never proved and were eventually abandoned.

14.3 Levenstein instituted civil proceedings against Mark Springett and others for return of their Regal Holdings shares. The civil action was later converted into an arbitration. The arbitration was eventually settled on the basis that the shares/proceeds could be retained. The proceedings cost the bank R806 945,69. Costly litigation was also pursued against others.

14.4 Levenstein succeeded in removing two other non-executive directors.

15 In September 1999 Levenstein nevertheless told the BSD that there was strong adherence to corporate governance in Regal Bank.

16 Regal Holdings results for the 6 months ended 31 August 1999 were published without the auditors' input and without the approval of the audit committee.

17 In December 1999 Levenstein told the directors of Holdings and the bank that he deserved a cash bonus of R2 million and a structural redesign of his restraint share allocation. He was paid the R2 million on 15 February 2000, but the requested 5 million shares were never issued to him. He nevertheless received R650 000 during 2000 as "dividends". The payment was described as "dividends" to avoid the payment of personal income tax. This additional remuneration was never authorised and at variance with Levenstein's policy on remuneration ("culture of sacrifice"). The "dividends" together with the payment of R2 million should have been disclosed as remuneration.

18 Early in 2000 the BSD conveyed concerns about corporate governance at Regal Bank to Ernst & Young and the bank. The BSD intimated that Levenstein was playing an over-dominant role. In February of that year the Registrar confirmed previous advice that new non-executive directors had to be appointed. The Registrar questioned the independence of the non-executive directors. He stressed that the BSD wanted to avoid a situation where the executive directors prescribed to the non-executive directors whereby the latter were not in a position to be totally independent. In April 2000 a meeting was

held to address the problem. Once again, however, Holdings and Regal Bank ignored the BSD. No independent chairman was appointed in 2000 nor were non-executive directors appointed.

19 Preliminary results for year-end 29 February 2000 were never published nor approved by the audit committee or the board of directors. In April 2000 highly disparate valuations for Kgoro and RMI were obtained. Ernst & Young threatened to qualify their report and an offer to resign was not taken up. Instead Levenstein informed to the Registrar that Ernst & Young struggled to blend former accounting standards with his own new highly complex banking model. Ernst & Young met with the Registrar and the latter informed Levenstein that if the 2000 financial statements were qualified by Ernst & Young, the Registrar would appoint an independent advisor (KPMG) in terms of section 7 of the Banks Act[2] to give another view, which the Registrar then did.

20 Before KPMG produced its report on 15 May 2000, Levenstein continued to make a case that Ernst & Young was wrong. In their report KPMG set out Levenstein's "branding concept" (boosting profits and balance sheet by booking income expected to be earned in future from companies in which investments were made) and measured it against AC000. The eventual finding was that branding income could not be measured in monetary terms with

[2] Act 94 of 1990 ("Banks Act").

sufficient reliability and that it was then also inappropriate to recognise any such income.

21 In May 2000, the Registrar held four meetings with the relevant parties. The Registrar later conceded that Levenstein's rejection of the opinions of Ernst & Young and KPMG and his intention to go ahead with publication of the audited results even if qualified (which would effectively have led to the closure of Regal Bank), was irrational and stubborn but that he lacked powers to do anything about it. With some changes the results of the audited statements for the year ended 29 February 2000, published on 16 May of that year, were not approved by Ernst & Young, the audit committee or the board. These results contained a number of material fraudulent misrepresentations. On 17 May 2000 Ernst & Young requested a correcting statement, and a retraction by Holdings was published on 19 May which satisfied Ernst & Young. These actions were hopelessly inadequate and Ernst & Young seemed to have been suffering from battle fatigue.

22 The statutory financial results were published in September 2000 but the results were never approved at any of the prior board meetings. The statements contained a host of misleading aspects. However Regal Holdings published unaudited results for the period ending 31 August 2000 on 5 September 2000, this time with the approval of the audit committee. Ernst & Young (for various reasons stated by Levenstein) were not invited to the above-mentioned

audit committee meeting, although their presence was necessary. The firm only attended one out of five meetings held in 2000. For various reasons, the failure to invite Ernst & Young to attend these meetings was egregious. More importantly if adjustments proposed by Ernst & Young had been made to the interim results of 31 August 2000, a nominal profit of R650 000 would have been shown instead of the stated profit of R49.5m.

23 On 14 August 2000 a director of Holdings and the bank, and the chief operating officer of the bank, met with the Registrar and made over 30 allegations of mismanagement. The Registrar reacted quickly and a section 7 review in terms of the Banks Act on corporate governance by Deloitte and Touche was commissioned. Various meetings were held as reporting progressed and a final report prepared by Mr Gerry Schipper was later tabled to which Holdings had to respond. The Registrar later stated that he would have removed Levenstein and reconstituted the board, if he had the power to do so. The eventual report highlighted more than 20 unsatisfactory matters as regards the inner workings of Regal Bank. The time for reaction by the BSD had arrived: Levenstein had to be removed, and at least four suitably qualified independent non-executive directors and a new chairman and CEO had to be appointed, but unfortunately the required action was neither swift nor decisive, leaving Levenstein as CEO until 18 June 2001.

24 A response by Holdings to the report could not have persuaded that the required steps were not warranted but, instead of acting, the BSD solicited certain legal advice, insisted on certain corrective steps and instructed Ernst & Young to verify that certain remedial steps had been taken.

25 During 2000 and early 2001 various improvements were effected, but on 25 June 2001 Ernst & Young notified the BSD that it intended withdrawing consent to preliminary results of Holdings for 2001. Reasons advanced included that certain information had been withheld and that certain untrue representations had been made. As became apparent later, the 2001 preliminary results were inaccurate because (a) Holdings did not make full and accurate disclosure of material information; (b) of Levenstein's non-disclosures, and (c) Ernst & Young did not request certain material information.

26 The share price plunged, confidence in the bank was lost and eventually on Wednesday 27 June 2001 the bank was put under curatorship. It was one of the smallest banks to have failed, with only 1 600 depositors and a balance sheet of R1,6 billion.

B. Failure of corporate governance

27 Levenstein was not a fit and proper person to be an executive director, CEO and chairman of Holdings and the bank in that:

- he did not exercise the utmost good faith and integrity in his dealings with and on behalf of the bank;
- he did not exercise reasonable skill and care;
- he did not always act in the best interests of the bank, depositors and shareholders;
- he permitted a conflict of interest to arise between his interests and those of the bank, its depositors and shareholders;
- his management of the bank was incompetent and amateurish;
- he acted dishonestly and fraudulently;
- he confused corporate governance with thuggery.

28 In summary he lacked three of the qualities of a director required of a bank in terms of s1A(a) of the Banks Act, namely, probity, competence and soundness of judgment. He ran the bank with little sophistication. He had no idea of the concept of corporate governance and, even if he did have, he was indifferent to it. Levenstein carried on the business of the bank and Regal Holdings in a reckless manner.

29 The directors, executive and non-executive of Regal Holdings and Regal Bank acted in breach of the Banks Act and the regulations relating to banks[3] in that they failed:

[3] Regulations published on 28 April 1996 in the Government Gazette 17115 ("the regulations").

- to act exclusively in the best interests and for the benefit of Regal Holdings, Regal Bank and its depositors;
- to perform their functions with diligence and care and with such a degree of competence as could reasonably be expected from a person with their knowledge and experience;
- to ensure that the risks that were of necessity to be taken by the bank were managed in a prudent manner.

30 The directors acted in breach of the standards of corporate governance recommended by the King Report in that they failed:

- to exercise the utmost good faith, honesty and integrity in all their dealings with or on behalf of Regal Holdings and the bank;
- to exercise the care and skill which can reasonably be expected of persons of their expertise;
- to act in the best interests of Holdings and the bank:
- to ensure that the bank's strategies were collectively agreed by the board;
- to ensure that the boards of Holdings and the bank monitored the performance of management against budgets or business plans or industry norms.

31 The directors failed to ensure that the audit committee operated in accordance with the Banks Act and the King Report and were knowingly party to the carrying on of business in a reckless manner.

32 The respects in which the audit committee operated in breach of the Bank's Act and the King Report were the following:-

- While Levenstein was chairman of the bank of Holdings he was a member of the audit committee.
- The auditors, Ernst and Young, were not invited to all audit committee meetings.
- The audit committee did not consider, let alone approve, the interim financial results of 31 August 1999.
- The audit committee did not consider, let alone approve the results of 16 May 2000.
- The audit committee did not review the Mettle transactions.
- The audit committee did not revise the Pekane transaction in terms of which Regal Bank paid Pekane R60m for its Regal shares.
- The audit committee did not review the transactions in terms of which Regal Bank financed the acquisition of Regal Holdings shares by the trusts and related parties.
- The CFO from August 2000, de Castro, was not invited to attend audit committee meetings.

33 In terms of the King Report, every director, whether an executive or a non-executive director has equal responsibility. Directors have an equal and heavy responsibility when it comes to the question of good faith. It cannot be said that because someone is a non-executive director the duties are less onerous than they would have been if the director had been an executive director. One of the priorities of a non-executive director is to monitor and review the performance of the executive management more objectively than the executive director.

34 The inherent problem lay with the composition of the non-executive directors. The non-executive directors were elderly retired men or friends or relatives of Levenstein with the exception of one non-executive director. After the bonus dispute he had with Levenstein in January 2000, he played no further part in the affairs of the bank until Worldwide sold its shares.

35 The non-executive directors were either not aware of their duties and responsibilities or were aware and acted in conflict with their duties and responsibilities. They were not prepared to do what Mark Springett described as "facing the bully in the schoolyard". The non-executive directors might just as well have been playing bowls on a hot Sunday afternoon for all the energy they put into the discharge of their duties.

36 The non-executive directors of Holdings and the bank received no remuneration. The value of their contribution to Regal Bank was equal to their remuneration.

37 In addition, the external auditors, Ernst & Young, acted in breach of the Public Accountants and Auditors Act[4] and the Banks Act during the 2000 audit and gave consent to the release of the 2001 preliminary financial results of Regal Holdings when they had not completed the 2001 audit properly.

38 The directors were elected by the shareholders of Regal Holdings. The shareholders who held Regal Holdings shares at the date of curatorship have lost their whole investment. They have no one else to blame but themselves. It was the directors that *they* elected whose actions were the main cause of the collapse of Regal Bank. In mitigation, the board of directors, its chairman, Lurie and Levenstein, its chief executive officer, kept the shareholders in the dark about the "dark side" of "Levenstein and company". The shareholders were always given a (distorted) rosy picture containing vistas of riches.

Source: Report of the Commissioner, Adv JF Myburgh SC, in terms of s69A (11) of the Banks Act, 94 of 1990, 15 November 2001

[4] Act 80 of 1991 ("PAAB Act")

South African Reserve Bank

Analysis of performance trends of the big five banks from 1992 to 2001

Ratio analysis

Glossary

“Standard”	-	Standard Bank Group Limited
“FirstRand”	-	FirstRand Bank Holdings Limited
“Investec”	-	Investec Group Limited
“ABSA”	-	ABSA Group Limited
“Nedcor”	-	Nedcor Limited

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3	Return on total average assets	6
4	Return on average equity	8
5	Average net interest margin	10
6	Non-interest income as a percentage of operating income	13
7	Cost-to income ratio	16
8	Bad or doubtful debt charge as a percentage of average advances	19
9	Annual growth in advances	22
10	Non-performing advances as a percentage of total advances	25
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1 Introduction

The purpose of this analysis is to provide a high-level overview of the performance of the "big five" banking groups in South Africa. The analysis is **background** to the review of corporate governance practices in these banks in terms of section 7 of the Banks Act, 1990, and must be viewed in this light.

The process followed in compiling the report is as follows:

- The annual KPMG Banking Survey was used as a starting point to compile the ratios (all the banks covered in the Survey contribute a comprehensive number of ratios for inclusion therein).
- The tables, graphs and commentary were compiled and submitted to each bank for comments.
- The tables, graphs and commentary were revised, based on the inputs received from the banks.
- Comments and/or changes were made and circulated to the banks, final comments requested and the document finalised.

It must be borne in mind that each of the banking groups has its own particular strengths and weaknesses, business focus areas, group structures, mix of assets and liabilities, capital structures etc, that makes meaningful comparisons difficult without detailed and deep analysis. This is not the purpose of this document; rather it is to provide the reader with an overview of the relative performances from 1992 to 2001. Furthermore, during this time, each of these banks has been involved in one or more major strategic initiatives that can have influenced one of more of the ratios that have been selected for this limited review. Examples are the following:

- Standard – the divisionalisation of Standard Merchant Bank, the establishment of the London operation and entry into a number of African countries.
- FirstRand – formed after the merger between Rand Merchant Bank and First National Bank.
- Investec – the establishment of operations in, *inter alia*, London, Israel, the USA, Mauritius and the acquisition of Fedsure and a large stake in Saambou. During this period Investec also acquired a number of other banking and financial operations and built up a large asset management business.
- ABSA – is the result of the merger of several banks in the early 1990's. A large degree of management time and effort has been directed towards integrating the various businesses, which obviously has an effect on the running of the business.

- Nedcor – acquired FBC Bank that was in curatorship and also made the failed bid for Standard Bank. The strategic alliances with Didata and others also differentiated Nedcor from the other banks.

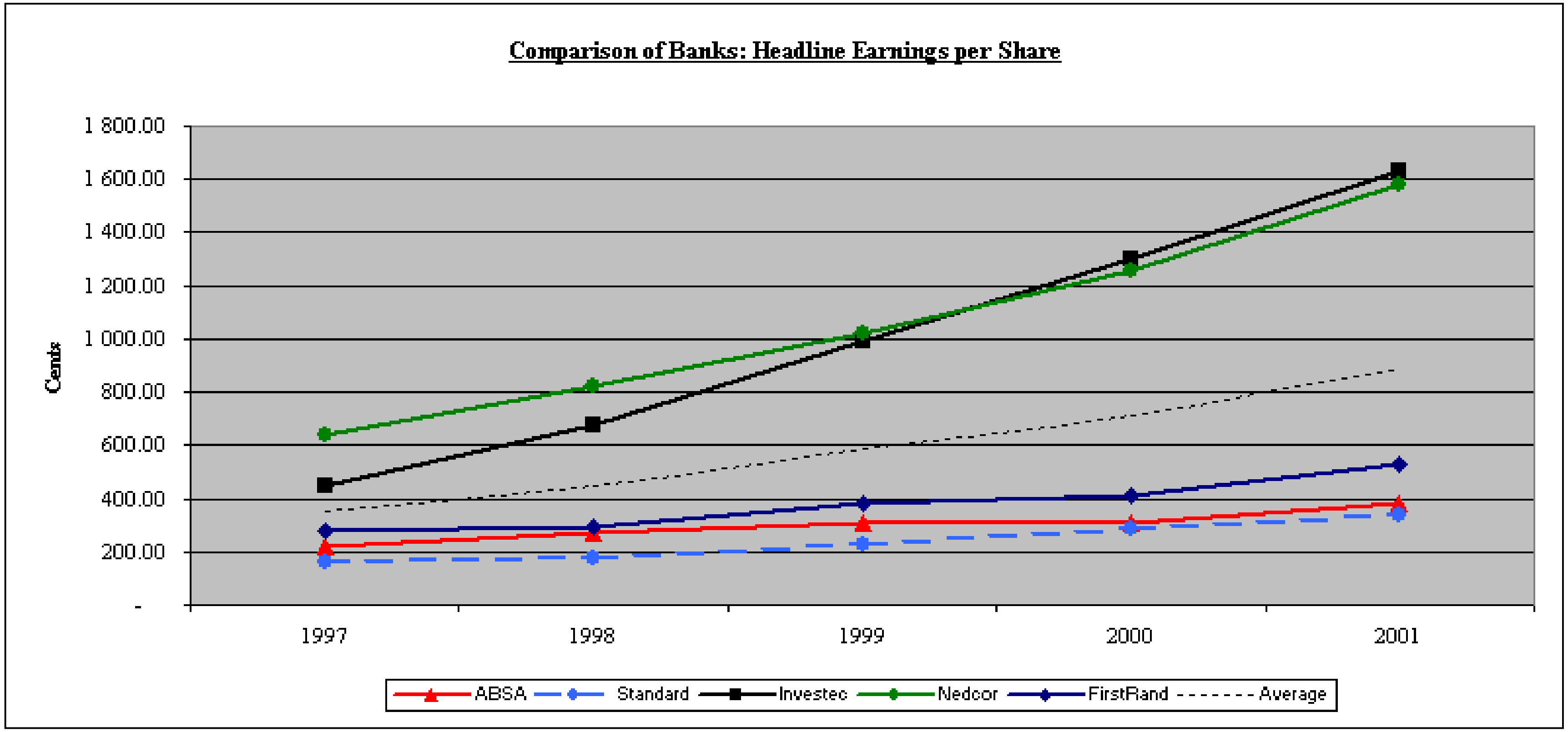
From the above, it is clear that there are many factors that can influence the ratio analysis, both positively and negatively, and that these must taken into account.

2 Headline earnings per share

Over the period 1997 to 2001, Investec (264,3%) had the best growth in HEPS, followed by Nedcor (145.9%), Standard (104.5%), FirstRand (88,8%) and ABSA (70.43%).

Financial year ended	ABSA	Standard	Investec	Nedcor	FirstRand	Average
1992						
1993						
1994						
1995						
1996						
1997	222.20	164.59	447.00	641.00	279.30	350.82
1998	271.30	177.81	672.90	822.00	295.62	447.93
1999	309.70	226.47	989.60	1 024.00	384.78	586.91
2000	310.30	283.45	1 300.90	1 260.00	413.15	713.56
2001	378.70	336.54	1 628.20	1 576.00	527.32	889.35
Average	298.44	237.77	1 007.72	1 064.60	380.03	597.71
Max	378.70	336.54	1 628.20	1 576.00	527.32	889.35
Min	222.20	164.59	447.00	641.00	279.30	350.82

Headline earnings per share



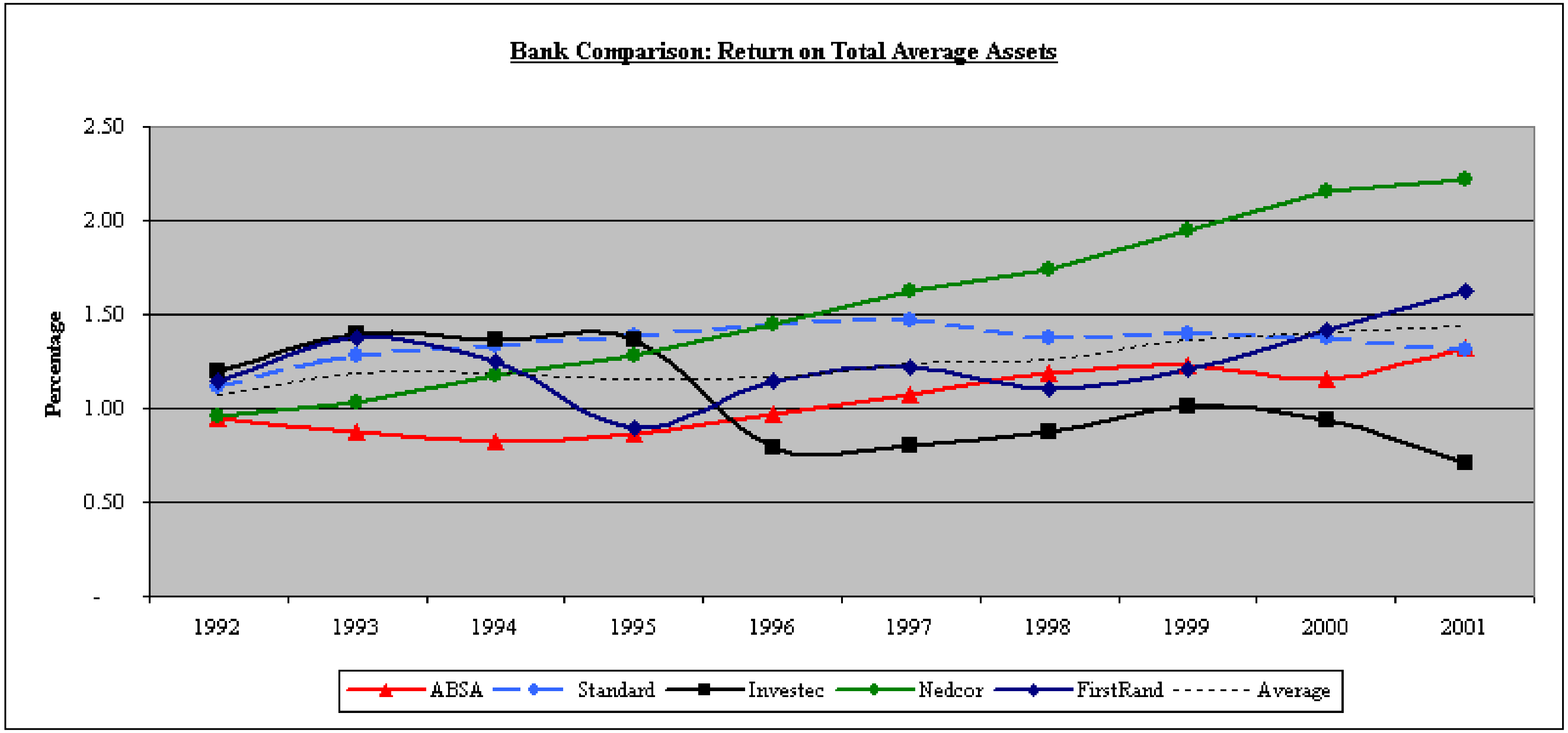
Comparison of Banks: Headline Earnings per Share
1 800.00
1 600.00
1 400.00
1 200.00
1 000.00
800.00
600.00
400.00
200.00
-
Cents
1997
1998
1999
2000
2001
ABSA
Standard
Investec
Nedcor
FirstRand
Average

3 Return on total average assets

For the period 1992 – 1994, Investec showed the best ROA. Nedcor ranked 4th in each of these years. Nedcor improved to 3rd in 1995 and since then have recorded the best ROA in every year up to 2001. Investec have had the worst ROA of the banks since 1997. ABSA, 5th from 1992 to 1995 improved to 3rd or 4th during 1996 – 2001.

Financial year ended	ABSA	Standard	Investec	Nedcor	FirstRand	Average
1992	0.95	1.11	1.20	0.96	1.15	1.07
1993	0.87	1.28	1.40	1.03	1.38	1.19
1994	0.82	1.33	1.36	1.18	1.25	1.19
1995	0.86	1.39	1.36	1.28	0.90	1.16
1996	0.97	1.45	0.79	1.45	1.15	1.16
1997	1.07	1.47	0.80	1.62	1.22	1.24
1998	1.19	1.37	0.88	1.74	1.10	1.26
1999	1.23	1.40	1.01	1.95	1.21	1.36
2000	1.16	1.37	0.94	2.16	1.42	1.41
2001	1.32	1.31	0.71	2.22	1.62	1.44
Average	1.04	1.35	1.05	1.56	1.24	1.25
Max	1.32	1.47	1.40	2.22	1.62	1.44
Min	0.82	1.11	0.71	0.96	0.90	1.07

Return on total average assets



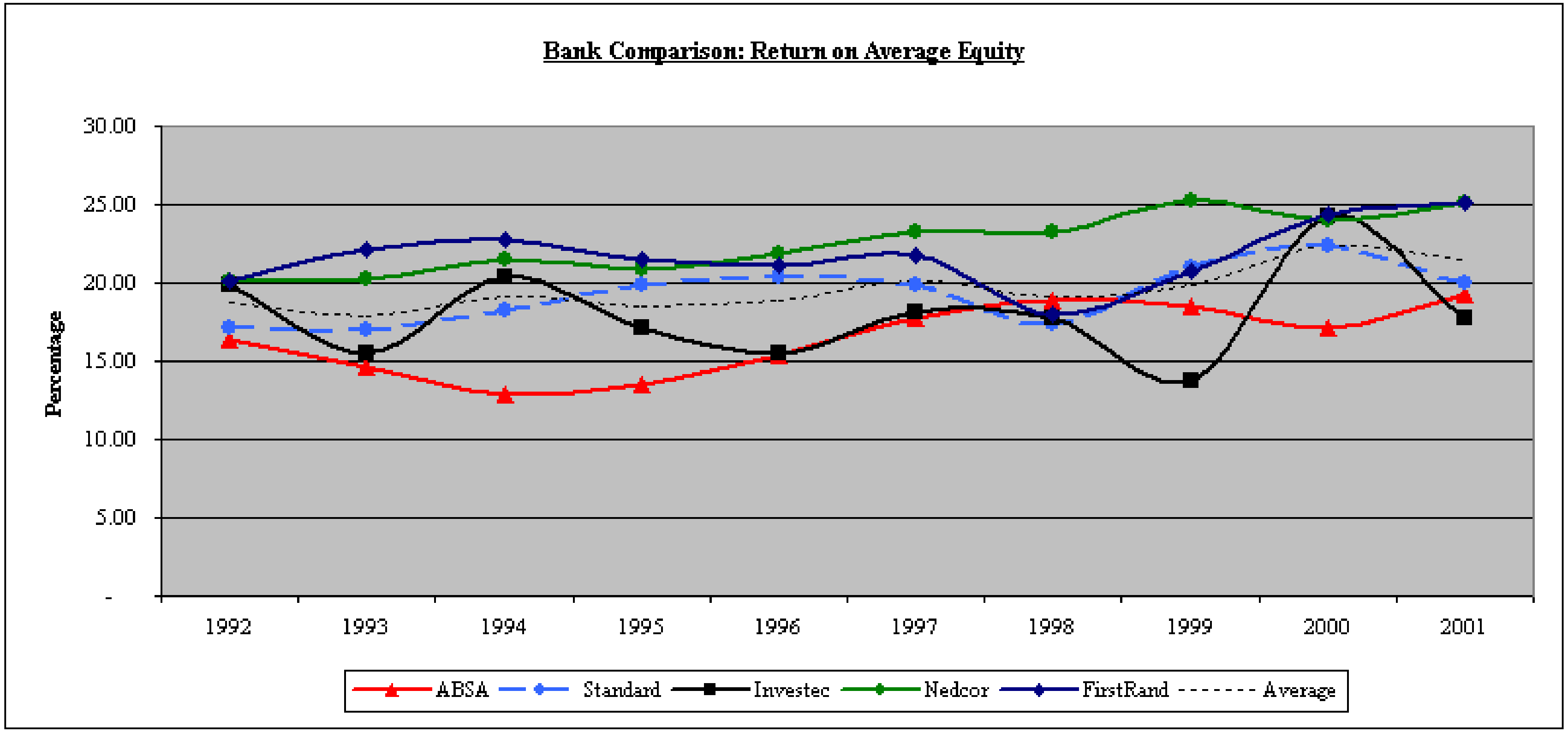
Bank Comparison: Return on Total Average Assets
Percentage
2.50
2.00
1.50
1.00
0.50
-
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
ABSA
Standard
Investec
Nedcor
FirstRand
Average

4 Return on average equity

Nedcor has consistently been one of the best two performing banks over the entire period. This is indicated in Nedcor's average ROE of 22,56% which is the highest. This is followed by FirstRand at 21,76%, which has also been a good performer over the period. ABSA has shown the weakest performance over the period, with an average ROE of 16,43%, but has shown marked improvement since 1997.

Financial year ended	**ABSA**	**Standard**	**Investec**	**Nedcor**	**FirstRand**	**Average**
1992	16.34	17.16	19.90	20.13	20.09	18.72
1993	14.67	17.01	15.50	20.30	22.17	17.93
1994	12.88	18.24	20.40	21.52	22.72	19.15
1995	13.45	19.90	17.10	20.84	21.48	18.55
1996	15.39	20.37	15.50	21.89	21.13	18.86
1997	17.80	19.85	18.10	23.22	21.70	20.13
1998	18.87	17.42	17.80	23.30	18.05	19.09
1999	18.50	20.94	13.70	25.30	20.75	19.84
2000	17.08	22.35	24.20	24.00	24.40	22.41
2001	19.30	20.02	17.80	25.07	25.15	21.47
Average	16.43	19.33	18.00	22.56	21.76	19.62
Max	19.30	22.35	24.20	25.30	25.15	22.41
Min	12.88	17.01	13.70	20.13	18.05	17.93

Return on average equity


Bank Comparison: Return on Average Equity
30.00
25.00
20.00
15.00
10.00
5.00
-
Percentage
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
ABSA
Standard
Investec
Nedcor
FirstRand
Average

5 Average net interest margin

The type of assets on a bank's balance sheet will influence this ratio. Investec's ratio, which is the lowest, is impacted by large intra-group loans and the relatively greater amount of trading assets on its balance sheet.

All the banks' ratios have declined since 1995. Nedcor's ratio, which is the 2nd lowest on average (but still more than double the average of Investec), has shown the greatest decline since 1992 (1992 – 4,31% and 2001 – 3,15%). ABSA ratio has shown the least erosion and was the highest in 2001 at 4,23%.

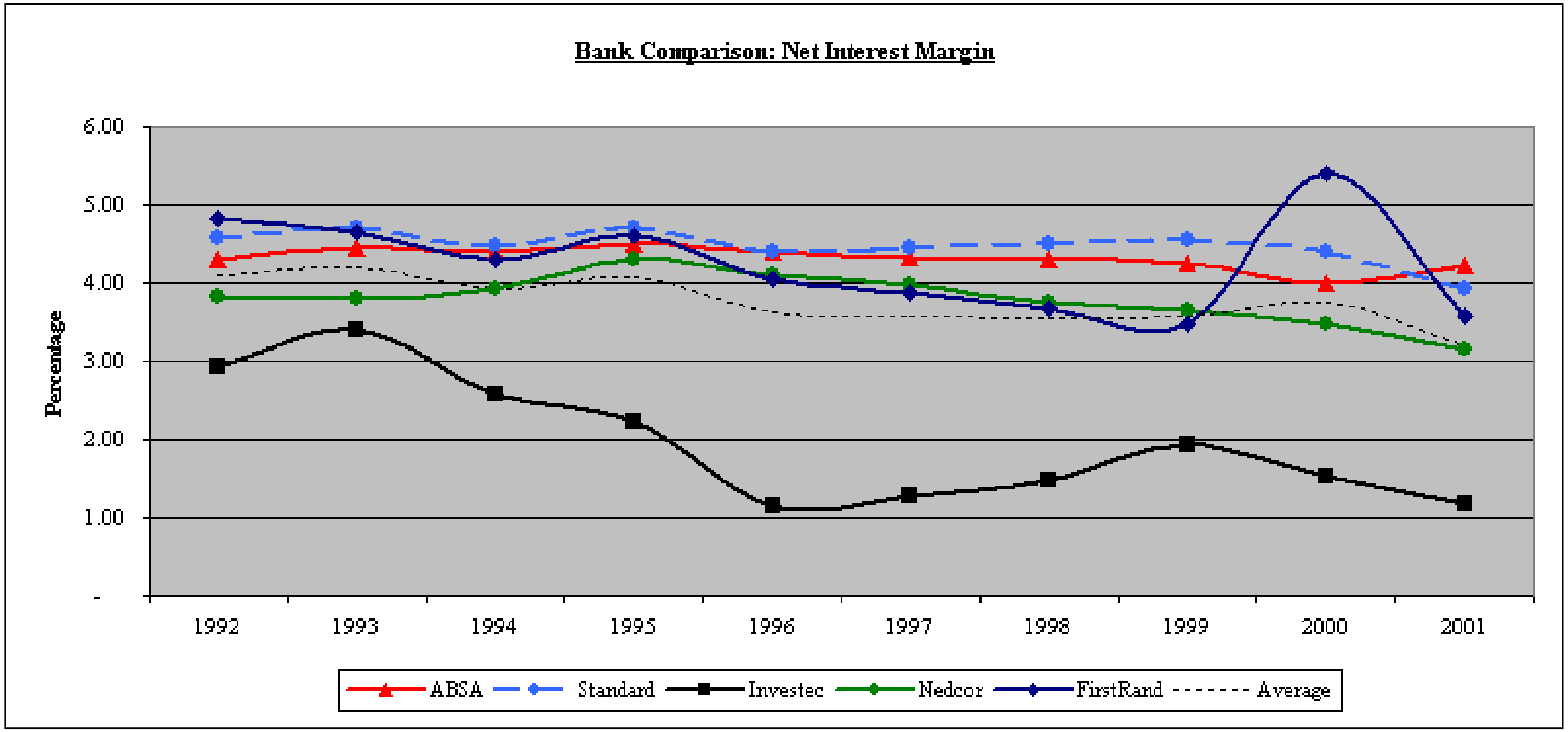
Financial year ended	ABSA	Standard	Investec	Nedcor	FirstRand	Average
1992	4.31	4.57	2.92	3.82	4.82	4.09
1993	4.45	4.71	3.40	3.80	4.64	4.20
1994	4.41	4.48	2.57	3.93	4.29	3.94
1995	4.51	4.69	2.23	4.31	4.59	4.07
1996	4.40	4.41	1.15	4.09	4.05	3.62
1997	4.33	4.44	1.28	3.97	3.87	3.58
1998	4.30	4.51	1.48	3.75	3.68	3.54
1999	4.26	4.55	1.92	3.64	3.48	3.57
2000	3.99	4.40	1.52	3.47	5.40	3.76
2001	4.23	3.92	1.18	3.15	3.58	3.21
	Note 1					
Average	4.32	4.46	1.86	3.79	4.18	3.72
Max	4.51	4.71	3.40	4.31	5.40	4.20
Min	3.99	3.92	1.15	3.15	3.48	3.21

Average net interest margin

Note 1:

For the years 1995 to 2001 Net Interest Margin is calculated as: Net interest income divided by average interest earning assets.

For the years 1992 to 1994 Net Interest Margin is calculated as: Net interest income divided by average total assets.



Bank Comparison: Net Interest Margin
6.00
5.00
4.00
3.00
2.00
1.00
-
Percentage
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
ABSA
Standard
Investec
Nedcor
FirstRand
Average

6 Non-interest income as a percentage of operating income

Banks globally are trying to increase this ratio. South African banks are part of this trend and all of the 5 banks managed to show good increases from 1992 to 2001.

Using 1992 as a base, the percentage increases for each bank up to 2001are as follows:

- ABSA – 64,95%
- Standard – 45,69%
- Investec – 36,53%
- Nedcor – 31,47%
- FirstRand – 17,06%

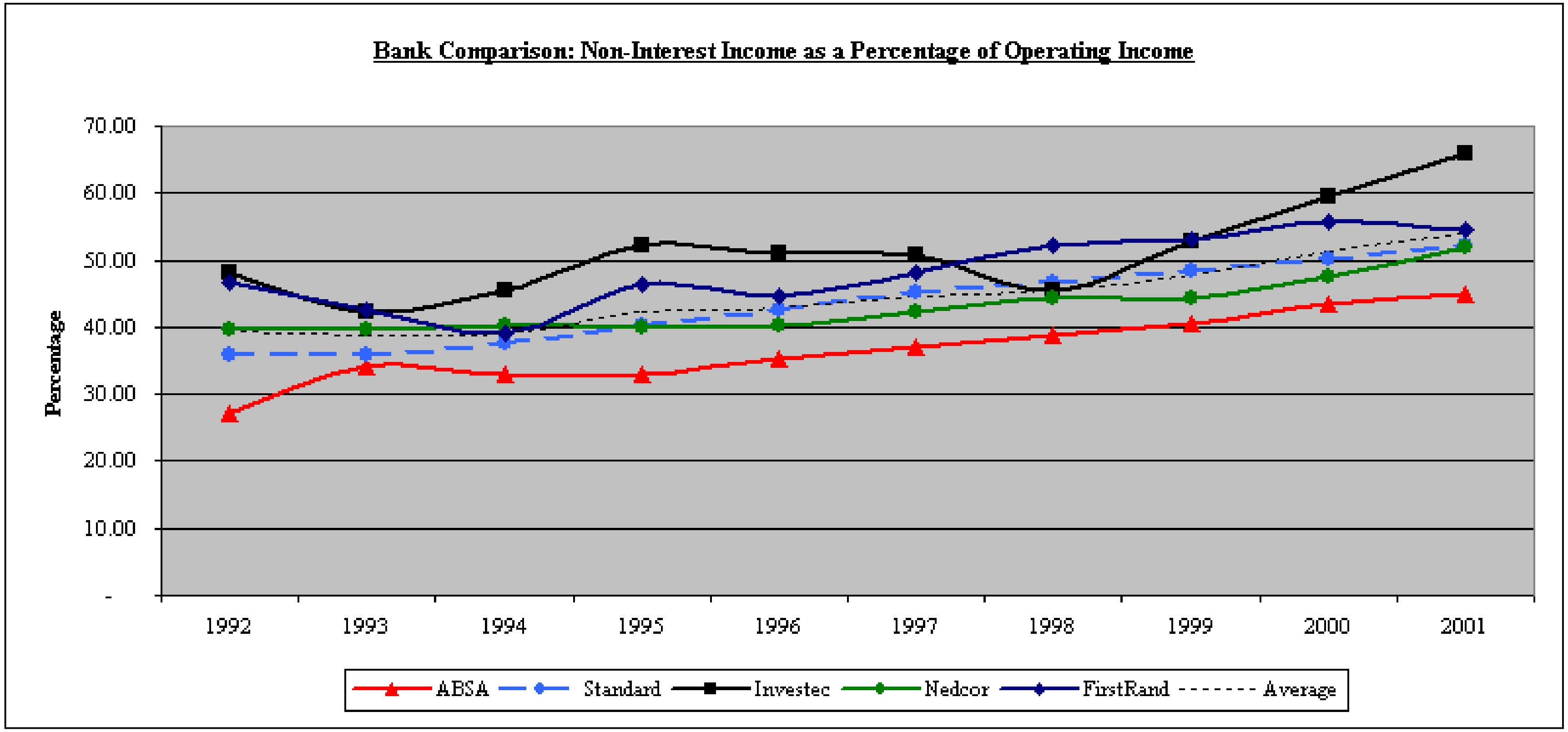
It must be stressed that the above ratios will be influenced by the base ratio, i.e. 1992. Consequently, whilst ABSA have shown the greatest growth, it still has the lowest ratio at 2001, namely 44,9% compared to Investec at 65,85%.

Financial year ended	ABSA	Standard	Investec	Nedcor	FirstRand	Average
1992	27.22	35.81	48.23	39.56	46.60	39.48
1993	34.17	35.80	42.37	39.68	42.60	38.92
1994	33.08	37.63	45.55	40.24	39.03	39.11
1995	32.93	40.27	52.10	39.91	46.25	42.29
1996	35.16	42.53	51.11	40.20	44.72	42.74
1997	37.00	45.07	50.73	42.29	47.98	44.61
1998	38.80	46.66	45.61	44.35	52.16	45.52
1999	40.50	48.55	52.83	44.40	53.00	47.86
2000	43.60	50.04	59.64	47.56	55.63	51.29
2001	44.90	52.17	65.85	52.01	54.55	53.90
	Note 2					
Average	37.79	44.30	51.75	43.40	48.44	45.14
Max	44.90	52.17	65.85	52.01	55.63	53.90
Min	32.93	35.80	42.37	39.68	39.03	38.92

Non-interest income as a percentage of operating income

Note 2

For the years 1992 to 1995 Non-Interest Income as a % of Operating Income is not provided in the Bank Survey. The ratio shown has been calculated from information provided in the Bank Survey.


Bank Comparison: Non-Interest Income as a Percentage of Operating Income
70.00
60.00
50.00
40.00
30.00
20.00
10.00
-
Percentage
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
ABSA
Standard
Investec
Nedcor
FirstRand
Average

7 Cost-to income ratio

The cost-to-income ratio is one of the most important performance indicators for banks and banks, both locally and globally; direct a significant degree of resources towards driving this ratio down. The SARB issued a circular during 2001 barring certain practices that were distorting the ratio.

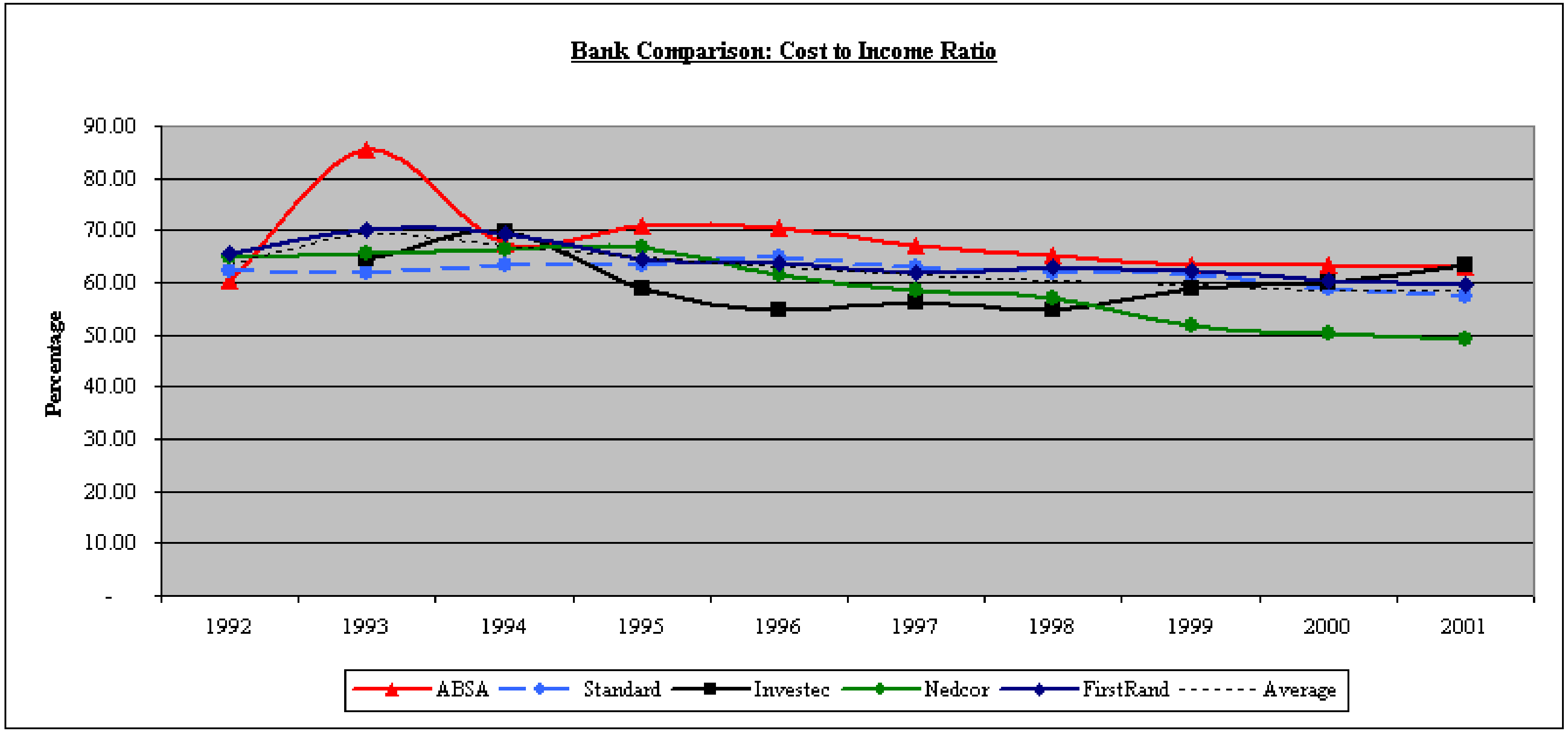
Nedcor has been the most successful of the big five in decreasing its cost-to-income ratio, which now stands at less than 50% (2001: 49,27%). ABSA has struggled more than the other banks to reduce its ratio; mainly due to its very broad client base, wide geographical representation and the costs involved in integrating the banks that formed part of the merger.

Financial year ended	ABSA	Standard	Investec	Nedcor	FirstRand	Average
1992	60.23	62.16		65.01	65.61	63.25
1993	85.36	62.06	64.48	65.65	70.16	69.54
1994	67.63	63.27	69.62	66.56	69.42	67.30
1995	70.84	63.54	58.87	66.61	64.66	64.90
1996	70.47	64.91	54.80	61.38	63.84	63.08
1997	67.20	63.11	56.23	58.67	61.78	61.40
1998	65.40	62.03	54.71	56.83	62.89	60.37
1999	63.30	61.61	58.90	51.68	62.40	59.58
2000	63.50	58.80	59.89	50.30	60.30	58.56
2001	63.00	57.26	63.21	49.27	59.50	58.45
	Note 3					
Average	68.52	61.84	60.08	58.55	63.88	62.58
Max	85.36	64.91	69.62	66.61	70.16	69.54
Min	63.00	57.26	54.71	49.27	59.50	58.45

Cost-to income ratio

Note 3

For the years 1992 to 1995 the Cost to Income Ratio is not provided in the Bank Survey. The Cost Income Ratio shown has been calculated from information provided in the Bank Survey.



Bank Comparison: Cost to Income Ratio
Percentage
90.00
80.00
70.00
60.00
50.00
40.00
30.00
20.00
10.00
-
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
ABSA
Standard
Investec
Nedcor
FirstRand
Average

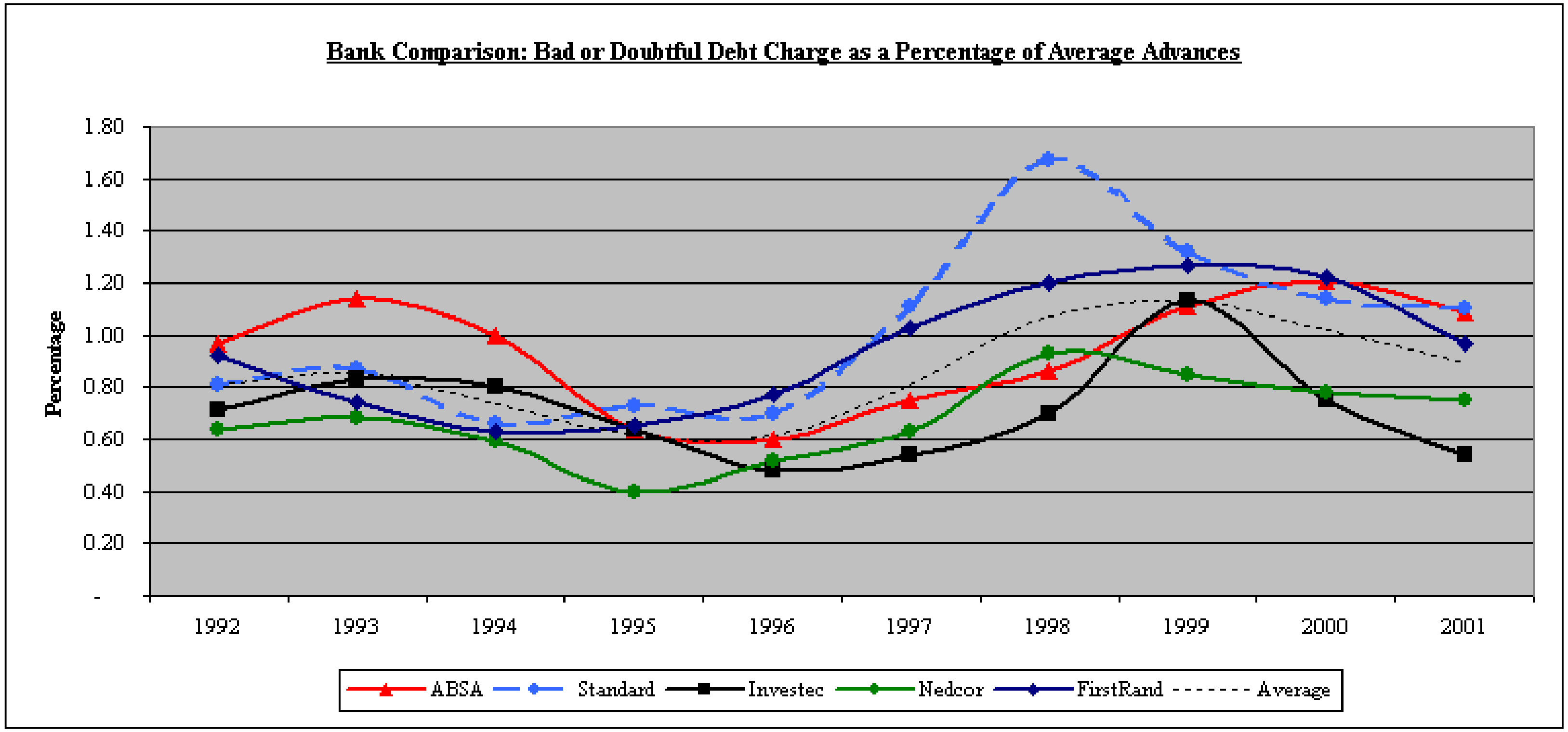
8 Bad or doubtful debt charge as a percentage of average advances

Investec and Nedcor have traditionally had the lowest bad debt to advances ratio of the big five banks. On an average basis, Nedcor is the lowest at 0,68% followed by Investec at 0,71%. Standard has the highest average over the period, namely 1,01%. Standard's ratio was negatively impacted by the losses incurred by Standard Bank London in 1998 through its exposures to Russia. If these losses were "stripped out", the average ratio would be 0,94%, the same as both ABSA and FirstRand.

All the banks were affected by the large increase in interest rates in 1998. Only in 2000 did the ratios start to decline. At the end of 2001 the ratios were more or less at 1997 levels.

Financial year ended	ABSA	Standard	Investec	Nedcor	FirstRand	Average
1992	0.97	0.81	0.71	0.64	0.92	0.81
1993	1.14	0.87	0.83	0.68	0.74	0.85
1994	1.00	0.66	0.80	0.59	0.63	0.74
1995	0.64	0.73	0.64	0.40	0.65	0.61
1996	0.60	0.70	0.48	0.52	0.77	0.61
1997	0.75	1.11	0.54	0.63	1.03	0.81
1998	0.86	1.67	0.70	0.93	1.20	1.07
1999	1.11	1.32	1.13	0.85	1.27	1.14
2000	1.21	1.14	0.75	0.78	1.22	1.02
2001	1.09	1.10	0.54	0.75	0.97	0.89
Average	0.94	1.01	0.71	0.68	0.94	0.86
Max	1.21	1.67	1.13	0.93	1.27	1.14
Min	0.60	0.66	0.48	0.40	0.63	0.61

Bad or doubtful debt charge as a percentage of average advances


Bank Comparison: Bad or Doubtful Debt Charge as a Percentage of Average Advances
Percentage
1.80
1.60
1.40
1.20
1.00
0.80
0.60
0.40
0.20
-
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
ABSA
Standard
Investec
Nedcor
FirstRand
Average

9 Annual growth in advances

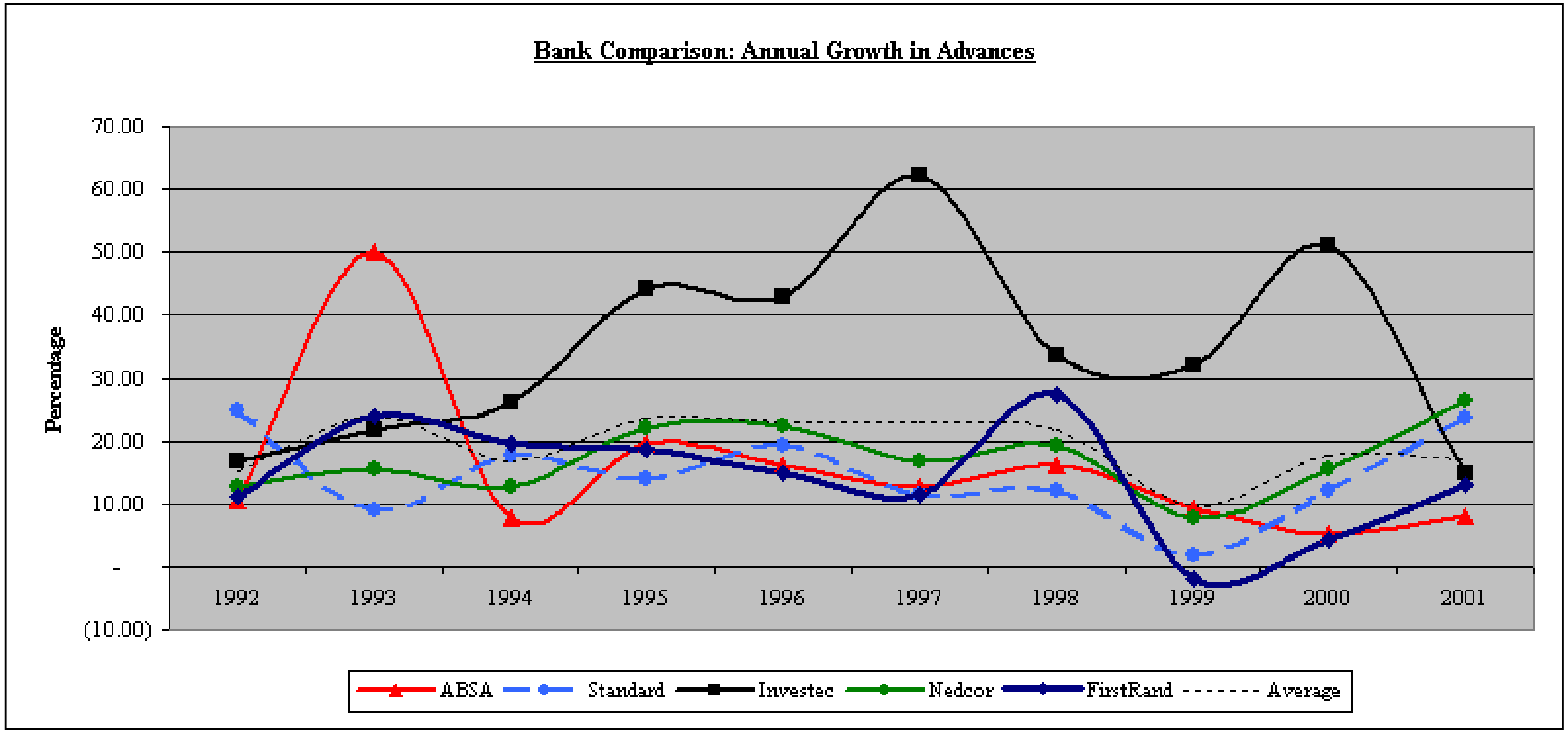
Investec has shown by far the largest growth in advances over the period (an average of 34,53% per annum), but it must be remembered that this was largely through acquisitions.

Nedcor grew by 26,35% in 2001, influenced by the acquisition of FBC.

ABSA has consistently shown the least growth over the period, probably due to an inward focus whilst the merger was bedded down. Its ratio was heavily influenced in 1993 because of the merger.

Financial year ended	ABSA	Standard	Investec	Nedcor	FirstRand	Average
1992	10.49	24.80	16.86	12.62	11.05	15.16
1993	50.05	9.14	21.80	15.40	23.83	24.04
1994	7.62	17.70	25.97	12.57	19.66	16.70
1995	19.42	14.08	44.12	22.15	18.52	23.66
1996	16.25	19.33	42.95	22.33	14.75	23.12
1997	12.60	11.56	62.14	16.64	11.51	22.89
1998	16.26	11.95	33.69	19.14	27.27	21.66
1999	9.28	1.88	31.89	7.60	(1.95)	9.74
2000	5.24	11.99	50.93	15.40	4.23	17.56
2001	8.00	23.53	14.98	26.35	13.10	17.19
Average	15.52	14.60	34.53	17.02	14.20	19.17
Max	50.05	24.80	62.14	26.35	27.27	24.04
Min	5.24	1.88	14.98	7.60	(1.95)	9.74

Annual growth in advances


Bank Comparison: Annual Growth in Advances
Percentage
70.00
60.00
50.00
40.00
30.00
20.00
10.00
-
(10.00)
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
ABSA
Standard
Investec
Nedcor
FirstRand
Average

10 Non-performing advances as a percentage of total advances

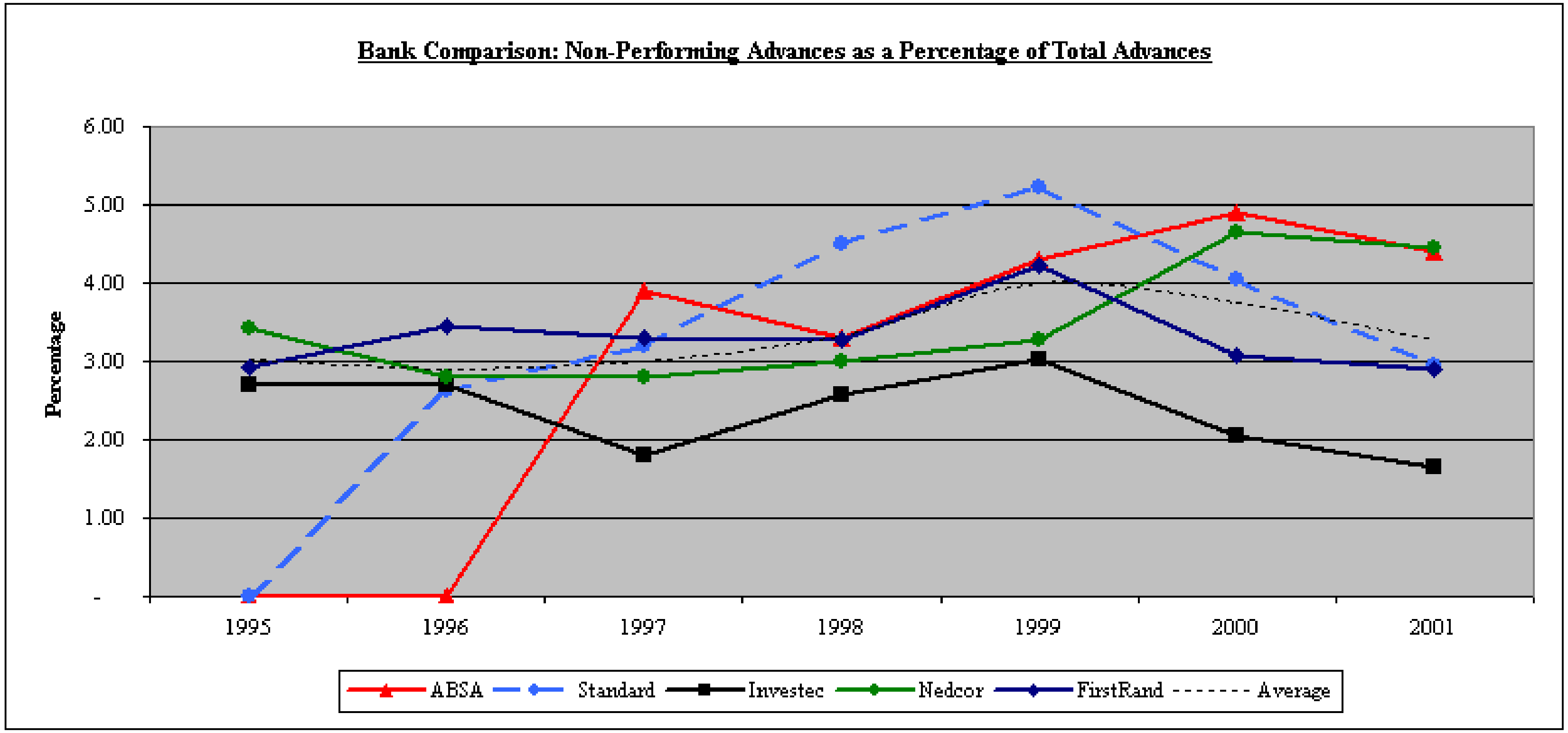
On average, ABSA has the highest ratio of non-performing advances to total advances (4.16%) and Investec the lowest at 2,36%.

Nedcor has shown the most deterioration and has risen from 3,42% in 1995 to 4,46% in 2001. From being the second lowest (2,79%) in 1997 it now has the highest ratio.

Standard has shown significant progress and has improved from 5,22% in 1999 to 2,95% in 2001.

Financial year ended	ABSA	Standard	Investec	Nedcor	FirstRand	Average
1992	N/A	N/A	N/A	N/A	N/A	N/A
1993	N/A	N/A	N/A	N/A	N/A	N/A
1994	N/A	N/A	N/A	N/A	N/A	N/A
1995	N/A	N/A	2.70	3.42	2.92	3.01
1996	N/A	2.62	2.70	2.80	3.45	2.89
1997	3.90	3.21	1.79	2.79	3.30	3.00
1998	3.30	4.49	2.57	3.00	3.27	3.33
1999	4.30	5.22	3.03	3.27	4.23	4.01
2000	4.90	4.04	2.06	4.66	3.08	3.75
2001	4.40	2.95	1.65	4.46	2.91	3.27
Average	4.16	3.76	2.36	3.49	3.31	3.32
Max	4.90	5.22	3.03	4.66	4.23	4.01
Min	3.30	2.62	1.65	2.79	2.91	2.89

Non-performing advances as a percentage of total advances


Bank Comparison: Non-Performing Advances as a Percentage of Total Advances
6.00
5.00
4.00
3.00
2.00
1.00
-
Percentage
1995
1996
1997
1998
1999
2000
2001
ABSA
Standard
Investec
Nedcor
FirstRand
Average

11 Conclusion

Based on the restricted nature of the ratios used in this review, Nedcor and Standard have been the best performers over the period under review.

FirstRand's performance has tended to be fairly consistent, with the last 3 to 4 years being largely spent on bedding down the merger (Rand Merchant Bank/First National Bank).

ABSA has tended to consistently under-perform the other banks, although almost all the ratios have improved in recent years. A significant amount of management time has been spent over a number of years integrating the merger of the banks making up ABSA.

Investec is difficult to analyse due to the aggressive acquisition strategy that it has followed over a number of years, which made comparisons from year to year difficult. Furthermore, its business differs significantly from the other four banks in many areas.

John Martin

Partner

KPMG

Share price movements

Glossary

“Standard”	-	Standard Bank Group Limited
“FirstRand”	-	FirstRand Bank Holdings Limited
“Investec”	-	Investec Group Limited
“ABSA”	-	ABSA Group Limited
“Nedcor”	-	Nedcor Limited

Contents

1	Standard	1
2	FirstRand	1
3	Investec	1
4	ABSA	2
5	Nedcor	2

1 Standard

During the period March 1999 to December 2002, Standard's share price increased from R17.55 to R30.58; a 74.25% increase. The increase was steady from March 1999 to September 2001, whereafter it has traded in a range between approximately R29.00 and R35.00.

Since the middle of January 2003, the share price has declined (as have the other "big five" banks in South Africa) and on 14 February 2003 closed at R29.40.

2 FirstRand

FirstRand's share price has traded in a range between R6.50 and R8.50 during the period March 1999 to December 2002. There were no major transactions or incidents during this period that caused the price to move up or down significantly.

More recently, the share price has recovered from R6.90 on 27 January 2003 to close at R7.35 on 14 February 2003.

3 Investec

Of all the shares of the banks covered in this analysis, Investec has shown by far the greatest decline in value over the period 31 March 1999 to 31

December 2002. during this period the share price declined from R226.36 to R119.66, a decline of 47%.

As is clearly illustrated by the attached graphs, Investec’s price has continued to decline during 2003, and closed at R88.80 on 14 February.

Although not depicted on the Investec graphs, the share closed at R79.00 on 19 February 2003.

4 ABSA

ABSA closed at R29.38 on 31 March 1999. By 28 September 2001 the closing price had increased to R38.16, some 34%. However, the Unifer debacle in early 2002 drove the price down significantly, closing on 28 March 2002 at R28.58, which was lower than the 31 March 1999 close.

By the end of 2002 the share price had recovered to R32.60 and stood at R33.80 on 14 February 2003.

5 Nedcor

Nedcor’s share price has also performed poorly during the period 31 March 1999 to 31 December 2002. The share closed at 126.64 on 31 March 1999 and rose steadily to close at 162.79 on 30 March 2001, an increase of 29%. Subsequently, however, the share has declined steadily and closed at R112.23

on 31 December 2002. By 14 February 2003, the share price had dipped further, closing at R104.90.

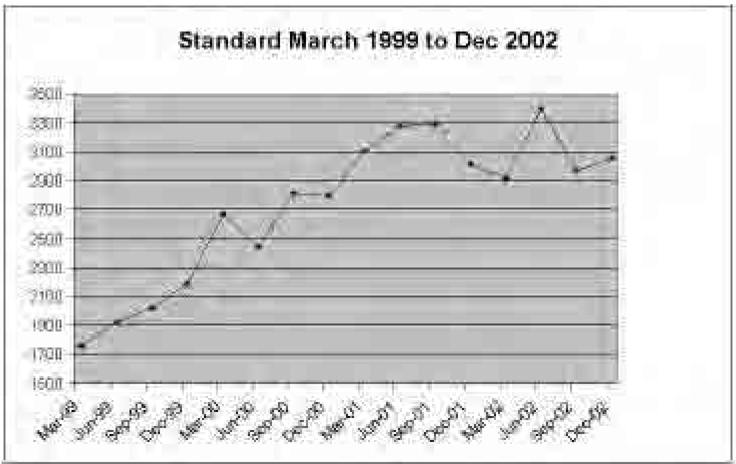
Between 31 March 2001 and 30 June 2001, Nedcor’s share price dropped from R162.79 to R147.81. This was around about the same time that the Didata share incentive controversy occurred. However, it is not possible to say whether the controversy was the only cause of the decline in price. What is evident, however, is that since March 2001, the share has shown a steadily declining trend.

John Martin

Partner

KPMG

Standard


Standard March 1999 to Dec 2002
3500
3300
3100
2900
2700
2500
2300
2100
1900
1700
1500
Mar-99
Jun-99
Sep-99
Dec-99
Mar-00
Jun-00
Sep-00
Dec-00
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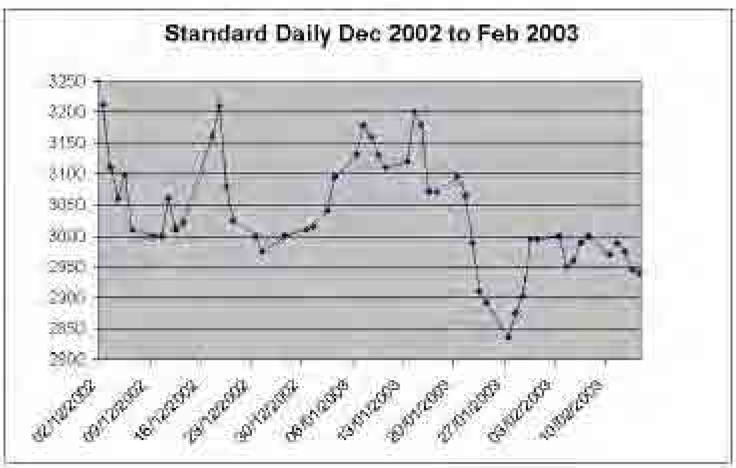
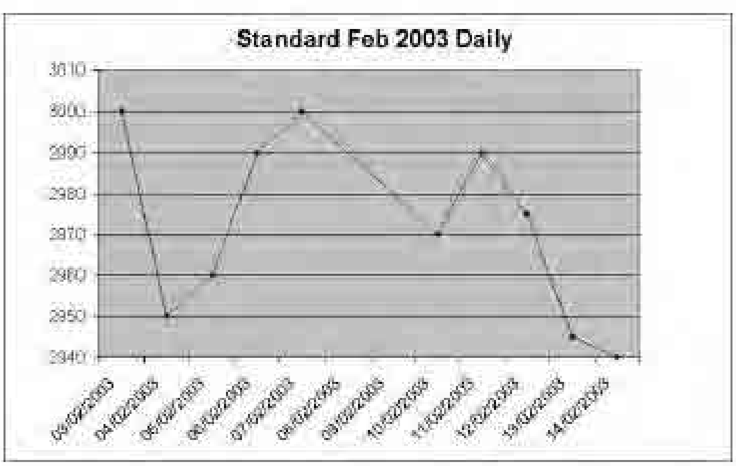
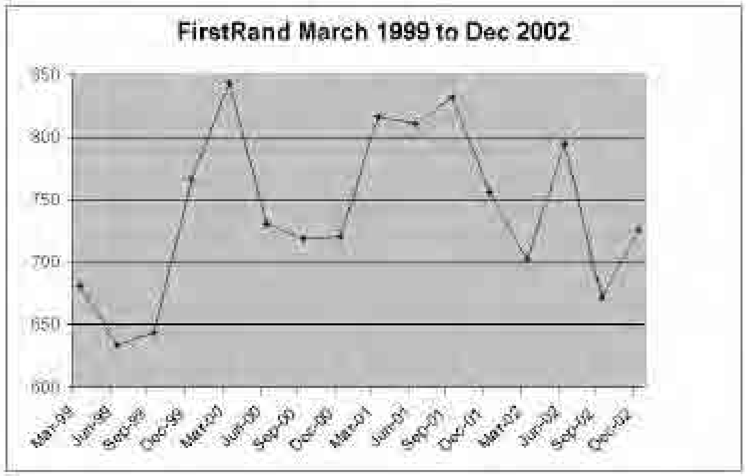
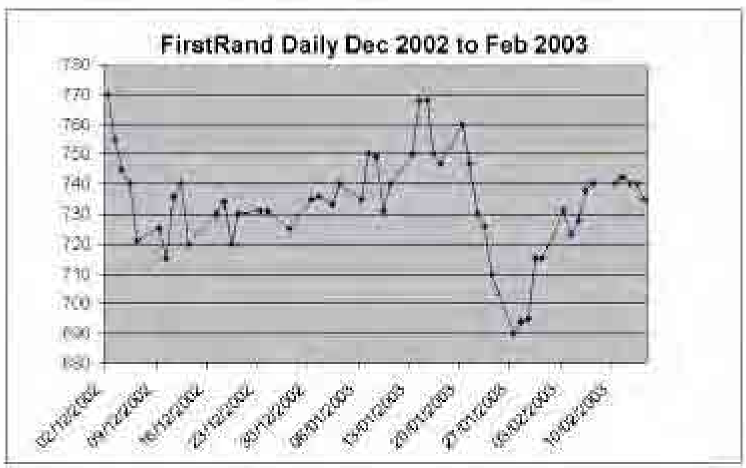
Jun-01
Sep-01
Dec-01
Mar-02
Jun-02
Sep-02
Dec-02

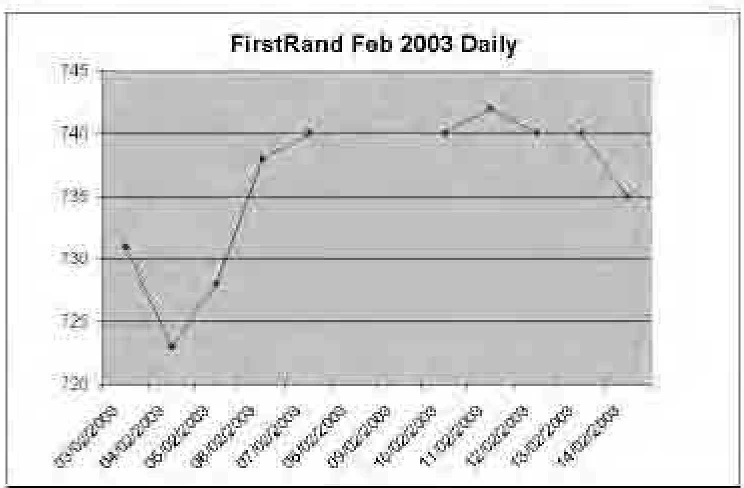

Standard Daily Dec 2002 to Feb 2003
3250
3200
3150
3100
3050
3000
2950
2900
2850
2800
02/12/2002
09/12/2002
16/12/2002
23/12/2002
30/12/2002
06/01/2003
13/01/2003
20/01/2003
27/01/2003
03/02/2003
10/02/2003


Standard Feb 2003 Daily
3010
3000
2990
2980
2970
2960
2950
2940
03/02/2003
04/02/2003
05/02/2003
06/02/2003
07/02/2003
08/02/2003
09/02/2003
10/02/2003
11/02/2003
12/02/2003
13/02/2003
14/02/2003

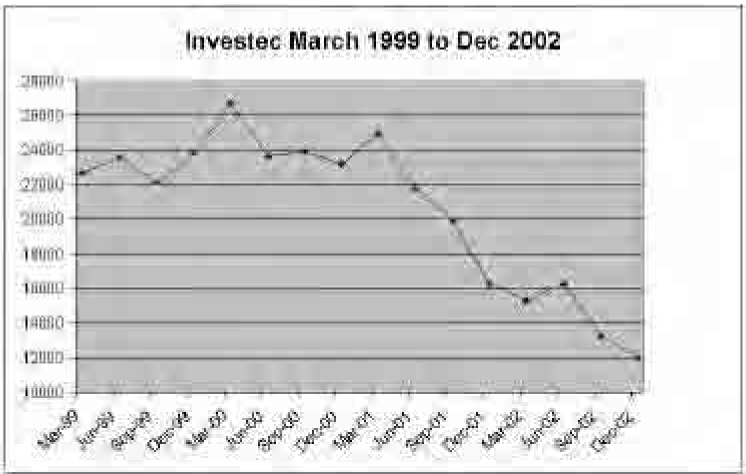
FirstRand

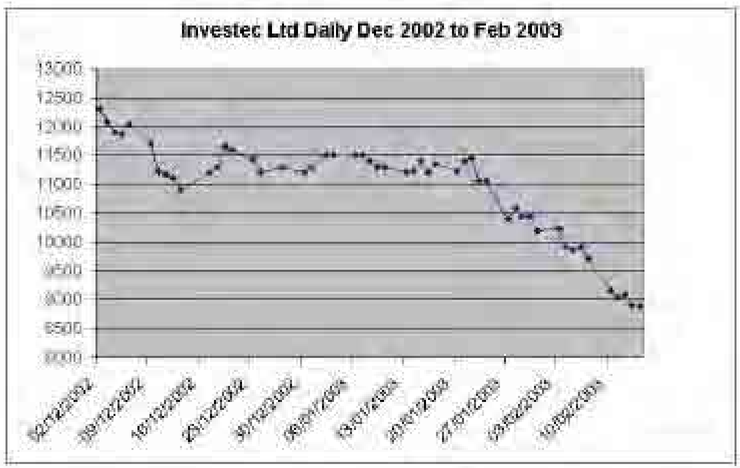

FirstRand March 1999 to Dec 2002
850
800
750
700
650
600

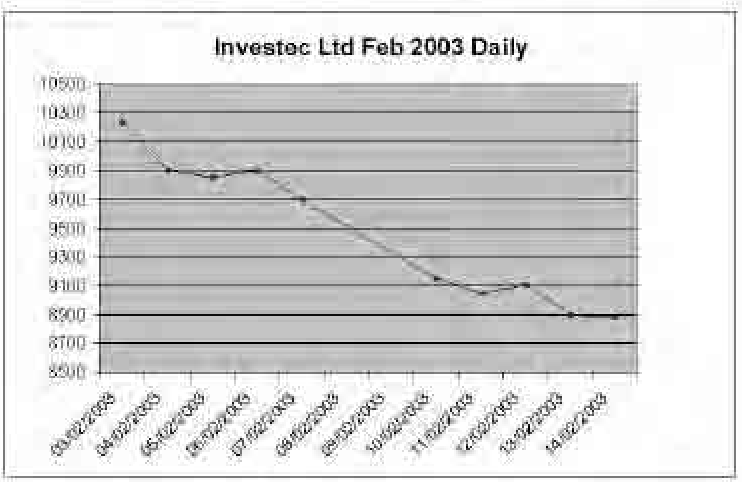

FirstRand Daily Dec 2002 to Feb 2003


FirstRand Feb 2003 Daily
745
740
735
730
725
720

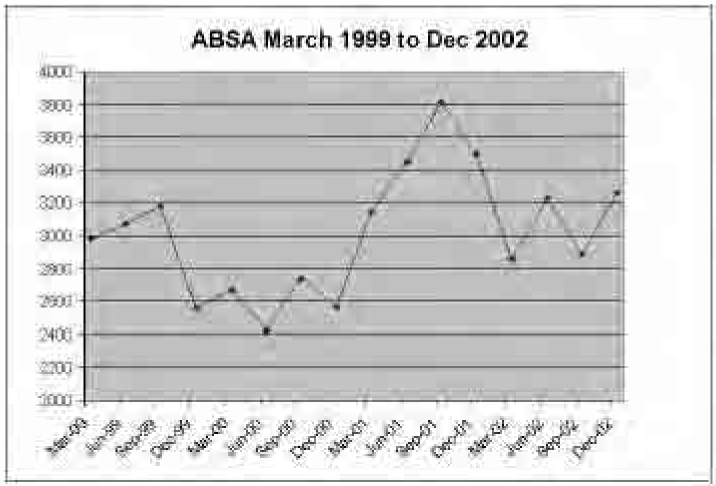
Investec

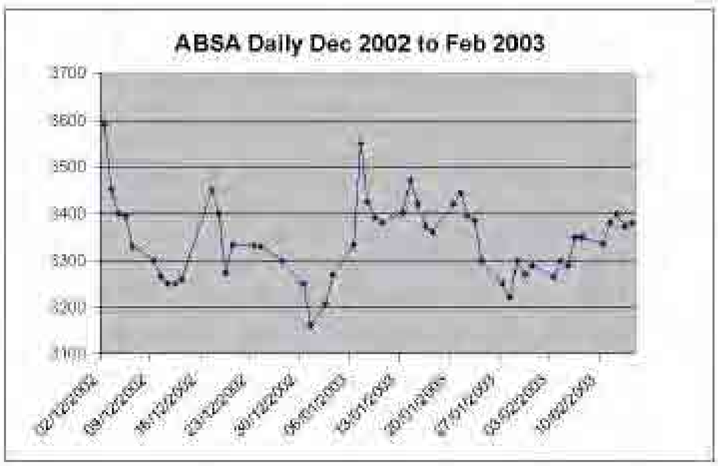

Investec March 1999 to Dec 2002

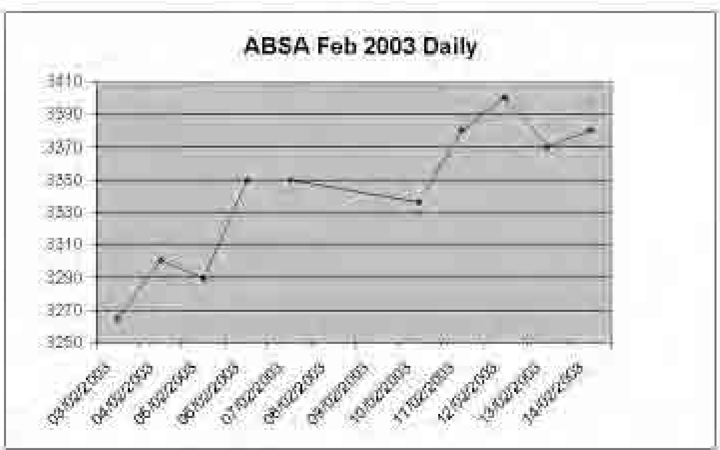

Investec Ltd Daily Dec 2002 to Feb 2003


Investec Ltd Feb 2003 Daily

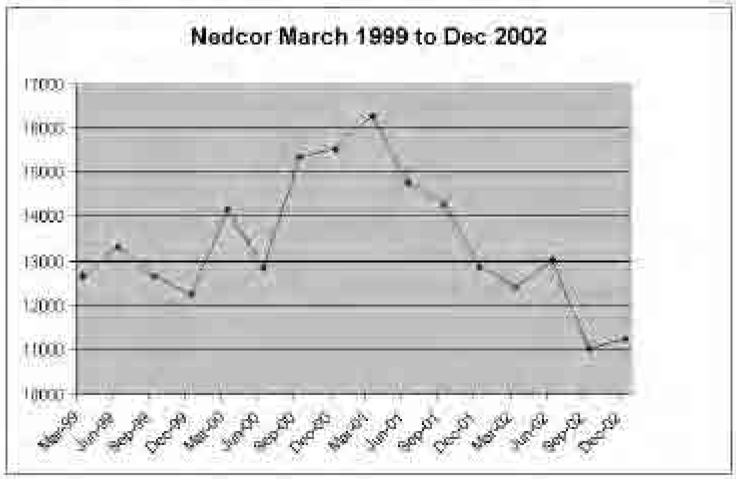
ABSA

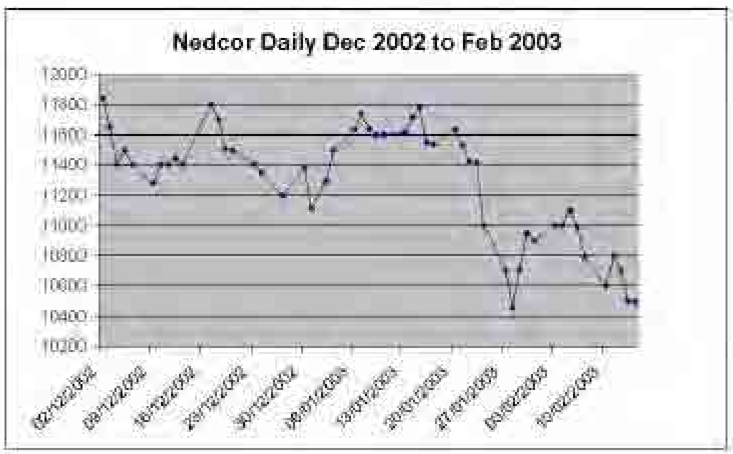

ABSA March 1999 to Dec 2002
4000
3800
3600
3400
3200
3000
2800
2600
2400
2200
2000
Mar-99
Jun-99
Sep-99
Dec-99
Mar-00
Jun-00
Sep-00
Dec-00
Mar-01
Jun-01
Sep-01
Dec-01
Mar-02
Jun-02
Sep-02
Dec-02

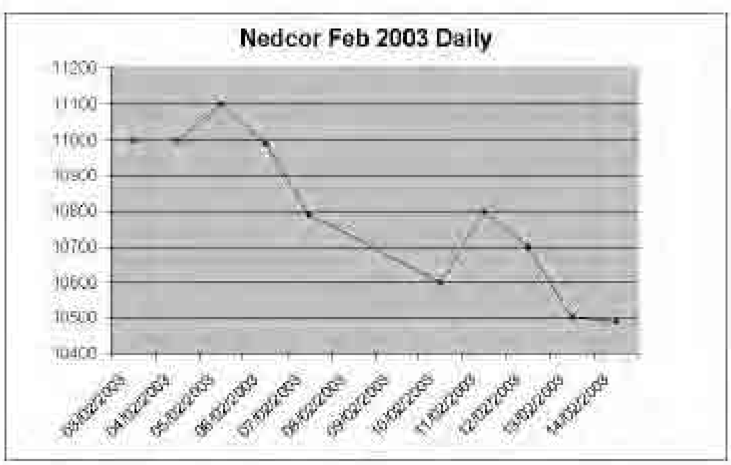

ABSA Daily Dec 2002 to Feb 2003
3700
3600
3500
3400
3300
3200
3100


ABSA Feb 2003 Daily
3410
3390
3370
3350
3330
3310
3290
3270
3250

Nedcor


Nedcor March 1999 to Dec 2002
17000
16000
15000
14000
13000
12000
11000
10000
Mar-99
Jun-99
Sep-99
Dec-99
Mar-00
Jun-00
Sep-00
Dec-00
Mar-01
Jun-01
Sep-01
Dec-01
Mar-02
Jun-02
Sep-02
Dec-02


Nedcor Daily Dec 2002 to Feb 2003
12000
11800
11600
11400
11200
11000
10800
10600
10400
10200


Nedcor Feb 2003 Daily
11200
11100
11000
10900
10800
10700
10600
10500
10400

Annexure "F1"

CORPORATE GOVERNANCE STATEMENT OF ABSA BANK LIMITED

CORPORATE GOVERNANCE

The Absa board is the focal point of the Group's corporate governance system.

INTRODUCTION

The Absa Group is fully committed to the principles of the Code of Corporate Practices and Conduct set out in the King Committee Report on corporate governance (King II).

The directors have considered the implications of King II and are of the opinion that Absa substantially complies with, and has applied, the requirements of King II with regard to the period under review. Areas requiring further attention will be considered by the board during the 2003 financial year. In supporting the code, the directors recognise the need to conduct the enterprise with integrity and in accordance with generally accepted corporate practices.

APPLICATION OF THE CODE AND APPROACH TO CORPORATE GOVERNANCE

All entities in the Absa Group are required to subscribe to the spirit and principles of the code. In addition, the code is applied to all operating entities of the nature and size identified in King II.

Whereas the Absa board reviews overall Group compliance with the code and is the focal point of the Group's corporate governance system, the directors of specific companies in the Group are responsible for ensuring compliance. The Group facilitates a comprehensive process to review compliance with the code by all relevant entities each year. This includes:

- a full and effective review during the year by the Absa board of all aspects relating to on-going corporate governance during the year and the inclusion of statements in this regard in the annual report; and
- a review of current and emerging trends in corporate governance and the Group's systems of governance and their benchmarking against local and international best practice.

RISK MANAGEMENT

Disclosure of Absa's overall risk management philosophy, policy, methodologies and governance structure is set out in the risk management report on page 88 of this annual report. The report also details the Absa board and its principal committees, risk management and other responsibilities.

BOARDS OF DIRECTORS AND NON-EXECUTIVE DIRECTORS

Board composition

Absa has unitary board structures in all South African companies in the Group. The Absa board is a balanced board with a majority of non-executives and a strong contingent of independent non-executive directors. Details on the categorisation of the directors appear on page 18 of this annual report. Within subsidiary companies in the Group, the roles of chairpersons and managing directors do not vest in the same persons and the chairpersons are non-executive directors of the entities of which they are chairpersons.

Board procedures and related matters

The board meets regularly, retains full and effective control over the companies concerned and monitors executive management in implementing board plans and strategies. Additional board meetings, apart from those planned, are convened as circumstances dictate. The number of meetings held during the year under review (including meetings of board-appointed committees) and the attendance of each director is set out on page 117 of this annual report.

The board annually reserves a number of days with management to consider and debate the proposed Group strategy and long-term issues facing Absa, prior to formulation of the Group's annual financial budget.

The board has identified and monitors key risk areas, key performance areas and non-financial aspects relevant to Absa. The directors are entitled to obtain independent professional advice at the Group's expense, should they deem this necessary.

In addition, the board has unrestricted access to all company information, records, documents and property to enable it to discharge its responsibilities. The information needs of the board are reviewed annually. Efficient and timely methods of informing and briefing board members prior to board meetings have been developed.

Directors are afforded the opportunity to propose additional matters for discussion at board meetings. Management ensures that board members are provided with all relevant information and facts to enable the board to reach objective decisions.

The board considers a number of key performance indicators, variance reports and industry trends quarterly. A range of non-financial information is also provided to the board to enable it to consider qualitative performance factors that involve broader stakeholder interests.

The board also recognises the importance of promoting entrepreneurial flair while continuing to ensure conformance to governance and other compliance restraints. The directors bring a wealth of experience from their own fields of business to the board and ensure that debate on matters of strategy, performance, resources, transformation, diversity, employment equity, standards of conduct and policy, is robust, informed and constructive.

Subject to the prior agreement of the board, non-executive directors have access to management and may meet separately with management without the attendance of executive directors.

Directors are kept appropriately informed of key developments affecting the Group between board meetings.

As recommended by King II, the board is presently developing a charter, regulating how business is to be conducted by the board in accordance with the principles of good corporate governance. The charter will set out responsibilities to be discharged by board members collectively as well as the individual roles they are expected to fulfil. Many existing governance practices that have been in place in Absa for a number of years will be codified into the board charter.

The board recognises the importance of promoting entrepreneurial flair while continuing to ensure conformance to governance and other compliance restraints.

The Absa board reserves to itself a range of key decisions to ensure that it retains proper direction and control of the Group.

Board appointments, director training and development and succession planning

Non-executive directors on the Absa board are appointed for specific terms and reappointment is not automatic. The maximum term of office of directors is three years. A third of the directors retire by rotation annually. If eligible, their names are submitted for re-election at the annual general meeting. Non-executive directors are obliged to retire at the annual general meeting following their 70th birthday. The board as a whole, within its powers, selects and appoints directors, including the Group chief executive and executive directors, on the recommendation of the Group Remuneration Committee.

All appointments are in terms of a formal and transparent procedure and are subject to confirmation by the shareholders at the annual general meeting. Prior to appointment, potential board appointees are subject to a "fit and proper" test, as required by the JSE Securities Exchange South Africa and as prescribed by the Banks Act. Re-election to the board is considered subject to performance and continued eligibility.

Training and orientation workshops covering topics such as the Group's business, corporate governance, fiduciary duties and responsibilities, asset and liability management, new laws and regulations and risk management are provided to both new and existing directors. Directors (particularly new directors) are encouraged to attend development programmes with regard to their duties, responsibilities, powers and potential liabilities.

The Group Remuneration Committee annually considers executive, non-executive and senior management succession planning.

Board committees

A number of board-appointed committees have been established to assist the board in discharging its responsibilities. Details of these committees are set out in the accompanying pages and in the risk management report.

The board recognises that it is ultimately accountable and responsible for the performance and affairs of the Group and that the use of delegated authorities to board committees and management in no way mitigates or dissipates the discharge by the board and its directors of their duties and responsibilities.

Specific responsibilities have been delegated to these committees, which operate under written terms of reference confirmed by the board. There is transparency and full disclosure from board committees to the board. In this regard, the minutes of committees represented by non-executive directors as well as the minutes of all significant divisional and subsidiary boards are submitted to the Absa board for noting. Board committees are free to take independent outside professional advice as and when necessary.

Notwithstanding the establishment of the various board committees and delegated authorities, the Absa board reserves to itself a range of key decisions to ensure that it retains proper direction and control of the Group. A comprehensive framework, setting out authorities and responsibilities with regard to matters affecting the businesses of the boards and committees in the Group, assists in the control of the decision-making process and ensures that there is a balance of power and authority to ensure that no individual has unfettered powers of decisionmaking. All board-delegated authorities are reviewed and updated annually by the board.

The Group Remuneration Committee is chaired by an independent non-executive director of Absa.

GROUP REMUNERATION COMMITTEE

Members: D C Brink (chairman), L Boyd, B P Connellan, D C Cronjé and T van Wyk

The Group Remuneration Committee is chaired by an independent non-executive director of Absa and comprises mainly independent non-executive directors of Absa. The Group chief executive attends meetings by invitation but does not participate in discussions and decisions regarding his own remuneration and benefits.

Its specific terms of reference include direct authority for, or consideration and recommendation to, the boards on matters such as succession planning, general staff policy, remuneration and benefits, profit bonuses, executive remuneration, directors' remuneration and fees, service contracts, the share purchase and option schemes, Group retirement funds and potential board appointees. In addition it annually considers the size, diversity, demographics, skills and experience of the board and makes appropriate recommendations to the board with regard to these matters.

Executive directors' emoluments, share and option allocations and other benefits are considered by the committee, taking account of responsibility, individual performance and retention. To this end, the committee relies on external market surveys and industry reward levels as benchmarks. Remuneration packages are structured in such a way that short and long-term incentives depend on the achievement of business objectives and the delivery of shareholder value.

Non-executive directors receive fees for their contribution to the boards and committees on which they serve. The Group chairman recommends proposed fees for consideration by the committee and approval by the Absa board, after considering comparable fee structures and market practices.

The committee annually undertakes a performance assessment of the Group chairman and the Group chief executive. The Group chairman and Group chief executive's remuneration is considered, taking the above assessment into account.

The committee also conducts an effectiveness evaluation of the Absa board to review its performance in meeting its key responsibilities. A key outcome of this process, which was introduced last year, has been the initiation of an annual board strategy session. The board effectiveness evaluation deals with issues such as compliance, board meetings, the board's structure and functions, financial reporting and performance review, risk management, strategy and non-financial matters.

The internal and external auditors as well as the compliance officer have unrestricted access to the Group Audit and Compliance Committee, which ensures that their independence is in no way impaired.

Directors' remuneration is subject to shareholders' approval at the annual general meeting. Full details of remuneration matters (including a statement of remuneration philosophy) are contained in the remuneration report set out on pages 118 to 121 of this annual report.

GROUP AUDIT AND COMPLIANCE COMMITTEE

Members: A S du Plessis (chairman), P du P Kruger, D F Mostert and T van Wyk

The chairman and members of the Group Audit and Compliance Committee are non-executive directors on the board of Absa. A third of the members of the Group Audit and Compliance Committee retire annually by rotation and are considered for re-election by the Absa board.

The internal and external auditors as well as the compliance officer have unrestricted access to the Group Audit and Compliance Committee, which ensures that their independence is in no way impaired.

Meetings are held at least five times a year and are attended by the external and internal auditors and the compliance officer as well as appropriate members of executive management, including those involved in risk management and control and finance, and the Group chairman (who is not a member of the committee). All of the members of the committee are financially literate.

The committee's terms of reference have been expanded to include various additional compliance aspects. The board, through a comprehensive evaluation (based on the recommendations of King II, the Banks Act, the Group Audit Policy and generally accepted accounting and auditing practices), annually reviews the performance of the Group Audit and Compliance Committee to evaluate how effectively it has discharged its terms of reference.

GROUP RISK COMMITTEE

Members: P du P Kruger (chairman), E R Bosman, D C Cronjé, G Griffin and P E I Swartz

The Group Risk Committee is chaired by an independent, non-executive director and consists of a further three non-executive directors and the Group chief executive. The committee's responsibilities are documented in the risk management section of this annual report.

The committee, which meets four times a year, also reviews issues for consideration as identified by the Group Audit and Compliance Committee, with specific reference to the risk implications of issues such as major control breakdowns and weaknesses and losses affecting the Group resulting from illegal or criminal conduct or activities.

BOARD LENDING COMMITTEE

Non-executive directors' panel: L Boyd, D C Brink, B P Connellan, D C Cronjé and A S du Plessis

The Board Lending Committee considers and approves credit exposures that exceed the mandated approval limits of the Exco lending committee.

All directors have access to the advice and services of the company secretary.

EXECUTIVE DIRECTORS AND THE GROUP EXECUTIVE COMMITTEE

There are a number of executive directors on the board of Absa and the boards of the Group's main subsidiaries. There are no service contracts exceeding three years relating to the position of any Group executive director. Executive directors are required to retire from the board (as executive directors) on reaching the age of 60. There is full disclosure in the remuneration report of various remuneration matters in respect of the Group executive directors.

The board appoints executive management, taking into account the recommendations of the Group chief executive and the Group Remuneration Committee. The remuneration and benefits of executive directors are determined by the Group Remuneration Committee.

The Group Executive Committee established by the board is chaired by the Group chief executive and comprises the executive directors of Absa and of the Group's major subsidiary, Absa Bank Limited. It meets once a week and deals with all material matters relating to the strategic management and development of the Group.

Executive directors hold non-executive directorships only to the extent that these do not interfere with their immediate management responsibilities.

SHARE DEALINGS

In terms of the Group's "closed period" policy, directors, officers, participants in the share incentive scheme and staff who may have access to price sensitive information are precluded from dealing in Absa shares for approximately two and a half months prior to release of the Group's interim and final results. Details of directors' dealings in Absa shares are disclosed to the board and the JSE Securities Exchange South Africa through the Stock Exchange News Service (SENS). In addition, details of trades in Absa shares by staff who may have access to price sensitive information are disclosed to the Group Remuneration Committee.

THE COMPANY SECRETARY

All directors have access to the advice and services of the company secretary, who provides guidance to the board as a whole and to individual directors with regard to how their responsibilities should properly be discharged in the best interests of the company.

The secretary also oversees the induction of new directors and assists the Group chairman and the Group chief executive in determining the annual board plan and formulating governance and board-related issues.

INTERNAL CONTROL

The directors are responsible for ensuring that the Group maintains adequate records, which disclose, with reasonable accuracy, the financial performance and position of the Group. In the case of a banking group in particular, great reliance is placed on information contained in its financial statements, not least by the investing community, depositors, other banks and the regulatory authorities.

The board recognises the importance of ensuring an appropriate balance in meeting the diverse needs and expectations of the Group's stakeholders, building lasting relationships with them and reporting to them in a balanced and comprehensible manner, reflecting openness and favouring substance over form.

To enable the directors to meet these responsibilities, the board sets standards and management implements systems of internal control, comprising policies, standards, procedures, systems and information, to assist in:

- safeguarding assets and reducing the risk of loss, error, fraud and other irregularities;
- ensuring the accuracy and completeness of accounting records; and
- the timely preparation of reliable financial statements and information in compliance with relevant legislation and generally accepted accounting policies and practices.

The Group's internal audit function and the external auditors independently appraise the adequacy and effectiveness of the internal controls. The Group Audit and Compliance Committee, with extensive input by the internal and external auditors, plays a major role in assisting the directors in satisfying themselves regarding the adequacy and effectiveness of the accounting systems, records and internal controls. The directors' report on this aspect is contained in the statement on the responsibility of directors for annual financial statements. For details on Absa's internal audit function and risk management see page 88 of this annual report.

The board of directors reports annually on the Group's controls in terms of Regulation 39(4) of the Banks Act. The view of the directors in this regard is contained in the statement on the responsibility of directors for the annual financial statements.

GOING CONCERN

The board has considered and recorded the facts and assumptions on which it relies to conclude that the business will continue as a going concern in the financial year ahead. The directors are of the opinion that the business will be a going concern in the year ahead and their statement in this regard is also contained in the statement on the responsibility of directors for annual financial statements.

INTEGRATED SUSTAINABILITY REPORTING

Stakeholder communication and relationships

The Group has various policies governing communication, relationships and conduct with stakeholders. Absa's stakeholders include shareholders, employees, customers, the community and various resource providers. The board recognises the importance of ensuring an appropriate balance in meeting the diverse needs and expectations of the Group's stakeholders, building lasting relationships with them and reporting to them in a balanced and comprehensible manner, reflecting openness and favouring substance over form. Absa reports annually on the nature and extent of its social, transformation, ethical, safety, health and environmental policies and practices.

Absa has an investor relations department responsible for ensuring appropriate communication with shareholders and the investment community. Regular contact is maintained with domestic and international institutional shareholders, fund and asset managers and analysts by means of a

The Group recognises the need for full, equal and timeous disclosure to all shareholders.

comprehensive investor relations programme. This includes meetings with executive management, investor roadshows, presentations to the investment community as well as liaison with private shareholders.

With regard to the above, the Group recognises the need for full, equal and timeous disclosure to all shareholders, as prescribed by the Listings Requirements and guidelines of the JSE Securities Exchange South Africa. It uses a broad range of communication channels, including the Absa website, www.absa.co.za, to achieve this.

The Group recognises the importance of its shareholders' attendance at its annual general meetings, which offers an opportunity for shareholders to raise issues and participate in discussion relating to items included in the notice of meeting. Explanatory notes setting out the effects of all proposed resolutions accompanies the notice of meeting.

The chairmen of board-appointed committees attend annual and other general meetings to respond to questions from shareholders. Where appropriate, shareholders' meetings are conducted on the basis of a poll. Following the August 2002 annual general meeting, extracts of the minutes of shareholders' meetings, reflecting decisions taken at the meeting, will be posted on SENS.

Shareholders will continue to have access to the full set of minutes of such meetings in accordance with the requirements of the Companies Act.

An ***employee report,*** detailing employment equity issues, training and development initiatives, occupational health and safety matters and Absa's strategy, plan and policy with regard to the potential impact of HIV/Aids on the company's activities, appears on pages 125 of this annual report.

A ***social report,*** detailing Absa's role in the community as well as health and environmental matters, can be found on pages 129 to 133 of this annual report.

Code of Banking Practice

By endorsing the Code of Banking Practice, Absa has undertaken to apply the underlying values embodied in the code. Absa is committed and dedicated to providing its customers with professional and friendly service, in a manner that is transparent, approachable and in line with what is "fair and just". For this reason, Absa regards the existing code as a living document.

To ensure adherence to the code, training is constantly provided to staff, customers are made aware of the company's commitment to the code and it is also made available through the branch network. Further, Absa's Compliance Department constantly monitors procedures and practices against the code as well as other legislation applicable to the various divisions and business units within Absa.

Of all the customer complaints lodged through Absa's Actionline during the year under review, only 2% required the further intervention of the Office of the Banking Adjudicator. In these cases, Absa was in many instances found to have acted fairly and justly. Absa is consistently striving to improve the delivery of its products and service to ensure an ongoing improvement in customer satisfaction.

In Absa, through various risk control procedures, the effects of unethical behaviour are limited.

Ombudsmen for the long- and short-term insurance industries

Members of the long- and short-term insurance industries contribute subscriptions to the offices of the ombudsmen for long-term and short-term insurance.

The ombudsman for long-term insurance mediates in disputes between the subscribing members of the industry and policyholders. In so doing, the ombudsman endeavours to ensure that principles of fairness, equity and independence prevail.

The ombudsman for short-term insurance seeks to resolve disputes between industry members and consumers in an independent, impartial, cost-effective, efficient, informal and fair way.

As a subscribing member, Absa co-operates fully with the offices of the ombudsmen with regard to the resolution of disputes and constantly seeks to maintain positive relationships with their offices.

Organisational integrity and the code of ethics

Unethical behaviour in the broader South African community is reported regularly in the media. A company such as Absa, which represents a sample of the broader community, does not escape these trends. It is therefore crucial for management to ensure that there is an appropriate focus on preventing losses owing to unethical behaviour. In Absa, through various risk control procedures, the effects of unethical behaviour are limited.

Absa's code of ethics is constantly refined, applying input from various interested parties and stakeholders within the organisation. The status of ethical behaviour in the workplace was independently audited during the period under review and the recommendations are presently being considered with a view of improving existing practices.

Management demonstrates its commitment to the ethical code by entrenching various principles. These include rewards and incentives for ethical behaviour and disciplinary procedures, criminal and civil charges for unethical or dishonest behaviour. In addition, employees found guilty of dishonesty during internal procedures are reported to the Banking Council for listing in the industry's register.

Furthermore, newly appointed employees and employees appointed in sensitive positions are assessed for ethical risks. Appropriate training in procedures and laws relating to the prevention of crime is provided and awareness of ethical behaviour is stimulated by regular communication with employees in the Group.

All incidents involving potentially fraudulent activities are formally investigated and corrective actions taken. Procedures are adapted when deemed prudent to prevent further incidence of unethical behaviour.

RECORD OF ATTENDANCE AT MEETINGS

		Absa Group Board	Group Remuneration Committee	Group Audit and Compliance Committee	Group Risk Committee
Meetings planned		6	4	6	4
Meetings held		9	6	9	4
Directors	**Note**				
Cronjé, D C		9	6		4
Brink, D C		9	6		
Bosman, E R		9			4
Bam, N B	(1)	5			
Boyd, I		7	6		
Connellan, B P		9	6		
Du Plessis, A S		9		9	
Du Toit, F J	(2)	8			
Griffin, G	(3)	5			
Jonker, L N		7			
Kruger, P du P		9		8	4
Mostert, D F		6		6	
Sexwale, T M G	(4)	4			
Shill, H L	(5)	3			2
Sonn, F A		6			
Swartz, P E I		7			4
Van Wyk, T		9	6	9	

Notes:

(1) Appointed on 21 May 2001

(2) Appointed on 1 April 2001

(3) Appointed to the board on 15 October 2001 and to the Group Risk Committee on 1 March 2002

(4) Appointed on 14 May 2001

(5) Retired on 24 August 2001

Annexure "F2"

CORPORATE GOVERNANCE STATEMENT OF FIRSTRAND BANK LIMITED

FirstRand Banking Group

Corporate Governance Statement

The FirstRand Banking Group ("the Banking Group") comprises FirstRand Bank Holdings Limited ("FRBH"), and its wholly owned subsidiaries FirstRand Bank Limited ("FRB"), Rand Merchant Bank Limited ("RMB") and Saambou Bank Limited ("Saambou").

1. Current Status

Following a "Compliance with King II" survey by the Board undertaken in 2002 and the publication of the proposed amendments to the Banks Act, a review, in conjunction with auditors PricewaterhouseCoopers Inc and Deloitte & Touche, taking account of the requirements of King II, the Banks Act amendments, the Higgs report and global best practice was initiated.

As a consequence of that review, recommendations which will result in a restructure of some of the governance process in the Banking Group, have been formulated. These have been considered by a governance ad-hoc committee ("the governance committee") of the board appointed in March 2003, and approved for submission to the Board for its consideration in May 2003. The Banking Group will be compliant with King II, except in a few respects (which will be disclosed in its audited financial statements) by the June 2003 financial year-end.

This review has covered:

- the broad governance structure within the Banking Group;
- the board and board committees;
- composition of the board and committees;
- board charters proposed;
- charters for existing board committees and proposed new committees.

The governance processes at board and board committee level, including the audit and risk committee processes have been reviewed and restructured to comply with the proposed new requirements.

A second phase of the governance review has commenced which will focus on sub-governance (i.e. cluster and business unit) structures within the Banking Group and reporting.

2. Corporate Governance Structure

Following the Corporate Governance review and board approval, the Banking Group governance structure will be as follows:

Banking Group Boards

Audit Committee	Remuneration Committee	Directors' Affairs and Governance Committee	Risk Committee	Large Exposures Credit Committee	Credit Committee

New Board appointed committees are proposed for:

- Directors' Affairs and Governance
- Risk (which currently reports to the Audit Committee)
- Large Exposures Credit

3. Corporate Governance Principles applied by the Banking Group

Accountability for corporate governance and risk management is vested at all levels within the Banking Group in keeping with the FirstRand business philosophy.

There are accordingly, in addition to those existing structures at board level and those that will in future report at board level, sub-governance structures at cluster and divisional level.

The Retail Cluster for example has an executive committee (referred to as the strategic committee), an audit committee, a risk committee and a remuneration committee. Its significant business units have, in turn, layers of governance. Hence, Wesbank, for example, has an advisory board, an audit committee, a credit and risk committee, an Alco committee and a remuneration committee. The committees and boards at sub-governance level are manned by executives, (in the case of significant committees some of these executives are drawn from other business units within the FirstRand Group, hence they are "non-executive" to the business unit) and in some cases, non-executives.

Issues surfaced at the committees and boards at sub-governance levels are cascaded upwards, and, as necessary, reported at board committee level.

In practice therefore, issues are more rapidly identified, acted upon, and in need escalated, given that the management processes around governance and risk management are at business unit level.

4. The Board and Directors

4.1 Charters

New board charters for FRBH and FRB have been reviewed by the governance committee for approval by the board.

4.2 The Board

The Banking Group directors are common to the boards of FRBH and the three banks that comprise the Banking Group (FRB, RMB and Saambou). The Board has a unitary structure with a chairman who is a non-executive director. The roles of chairman and chief executive officer are separate with segregated roles and duties.

4.3 The Directors

4.3.1 Composition

The Board comprises thirteen directors and an alternate (Mr R Spilg) to the international director (Mr MPC Brogan). The majority of the directors are non-executive. Their capacity is categorized as follows:

Executive	Non-Executive Non-independent	Non-Executive Independent
VW Bartlett MPC Brogan * JP Burger LL Dippenaar *** PK Harris (Chief Executive Officer) SR Maharaj R Spilg ** (Alternate)	DM Falck GT Ferreira (Chairman)	JW Gafney PM Goss MW King AS Vahed RA Williams
* Australian ** British *** Executive of FirstRand Limited		

The Board comprises individuals of high calibre and diverse backgrounds.

The necessary statutory requirements for the appointment of the directors have been complied with.

Executive directors do not hold non-executive directorships outside of the FirstRand Group other than those, which could be considered to be of an industry nature or of a corporate responsibility nature.

4.3.2 Elections

Proposals for the appointment of new directors are usually made by the existing directors, to the chairman accompanied by curriculum vitae and other pertinent particulars.

As a permanent board committee to oversee nominations has not previously been in place (but will become a responsibility of the proposed Directors' Affairs and Governance Committee), ad-hoc committees are established to oversee this process.

A nomination process is currently under way and for this purpose, the board committee is:

GT Ferreira (Chairman)
MW King
SR Maharaj

Nominations are evaluated by the ad-hoc committee and selected proposals passed forward to the Board with recommendations, for consideration.

Comprehensive documentation is provided to the Board for its deliberations on the nominations and decisions on appointments are made by the full board.

4.3.3 Induction and Orientation Programme

A formal induction and orientation programme for new directors has been implemented.

Regular updates, particularly on risk management and the related processes, are undertaken. This ongoing "continuing education" process will be accelerated in 2003.

4.3.4 Performance and rotation

The rotation of directors is prescribed by the Articles of Association of the individual Banking Group companies.

Directors hold office until rotation (for three years generally), thereafter becoming eligible for re-election. Compulsory retirement age is 70 years.

As FRBH and FRB are wholly owned, a resolution in terms of Sec 179(7) of the Companies Act is passed in lieu of an Annual General Meeting, by the shareholder. Directors who qualify and have stood for re-election are re-elected in terms of the resolution.

Performance reviews of individual directors have not taken place in the past. This responsibility will fall to the proposed Directors' Affairs and Governance Committee in future.

4.3.5 Succession planning

The responsibility for formal succession planning for directors will fall to the proposed Directors' Affairs and Governance Committee in the future.

4.3.6 Corporate Code of Ethics

A Corporate Code of Ethics which applies to directors and officials of the Banking Group and which has been approved by the Board, is in place.

4.3.7 Directors interests

Directors declare their interests by means of the submission of a General Declaration of Interest (which is amended as necessary by the director and renewed at the beginning of each financial year) or by means of verbal declarations made at board meetings. The directors acknowledge having viewed the general declarations and amendments thereto and verbal declarations are minuted.

A register of declarations of interest is maintained.

4.3.8 Banking business undertaken with directors

Banking business undertaken with directors, their immediate family and their personal business interests is done so at rates and within the criteria applied to customers from the general public.

The external auditors annually audit such business and report thereon to the Audit Committee.

4.3.9 Directors' ability to take independent professional advice

In terms of the Articles of Association of the Banking Group companies, directors are able to take independent professional advice, the cost of which is borne by the companies.

In practice, where a director has need to do so, he/she will advise the chairman, chief executive officer or financial director and the secretary of his/her requirement and brief the advisor/s. His/her action is advised to the Board.

In due course, a copy of the report is laid before the Board.

4.3.10 Non-Executive directors have access to management

Non-executive directors are able to meet separately or have access to management (i.e. without executive directors present).

Non-executive directors have in the past not considered this necessary.

The charter of the proposed Directors' Affairs and Governance Committee anticipates two such meetings scheduled annually and the ability of the non-executive directors to schedule more as required.

4.4 Chairman and Chief Executive Officer

The roles of chairman and chief executive officer are separate. Neither has unfettered powers of decision-making.

While the chairman is a non-executive director, he is not an independent non-executive as defined by King II. His position is in compliance with Reg 40 (1) of the Bank's Act.

The responsibility for the formal appraisal of the performance of the chairman and the chief executive officer will fall to the proposed Directors' Affairs and Governance Committee in the future.

The performance of the chief executive officer is currently appraised on an ongoing basis by the Board, which receives reports on:

- the financial performance of the Banking Group and its constituent parts and the achievement of financial objectives
- the achievements of strategic objectives

- customer value surveys
- capability study measures (which include leadership, organizational climate organizational goals, culture, job structure and communication)
- a 360° leadership effectiveness survey.

4.5 Director's remuneration

Remuneration for non-executive directors is reviewed annually and proposals for adjustments made to the Board for consideration and approval. Share options are not granted to non-executive directors.

Remuneration, performance bonuses and share option allocations for executive directors are approved by the FRBG Remuneration Committee. The FirstRand Group remuneration ethos dictates that a substantial portion of these packages is performance related.

4.6 Meetings

The Banking Group Board meets eleven times a year as follows:

- eight are normal board meetings
- two are devoted to the planning and budget process
- one is devoted to the annual financial statements

Matters included on the agenda for a "normal meeting" include:

- apologies and leave of absence
- presentations of a strategic nature
- election of directors as necessary
- appointment of chief executive officer, deputy chief executive officer and executive officers, as necessary
- chief executive officer's report, including achievement of employment equity to targets
- reports of the cluster chief executives
- chief financial officer's report, including management accounts, comparisons to forecast and budget, reports on the key performance areas of the clusters, key competitor information
- minutes of previous meeting for approval and discussion of matters arising
- minutes of board committees and reports by the chairmen thereon
- declarations of interest of the directors
- credit matters including limits for ratification in terms of the Banks Act and minutes of all credit approval committee meetings
- risk reports, including the market risk report, the Alco report, a monthly loss report and a detailed quarterly loss report by Risk and Audit Services
- compliance report in terms of the Banks Act Regulation 47(4), which includes details of any instances of non compliance and action taken thereon.
- governance matters, including mandates, signing powers and resolutions taken by available directors.
- Any other matters requiring the approval of the board.

Matters dealt with annually at normal meetings include:

- election / re-election of the chairman and deputy chairman
- approval of the interim financial statements
- interim dividends, profit announcement and related matters
- performance against employment equity targets
- review of the "effectiveness of the board" survey
- review of the "effectiveness of the risk management process"
- review of material malfunction and the reporting threshold as required by Reg 39(4) of the Banks Act
- review the limits and authorities (e.g. credit, market risk) granted by the Board
- review the Banking Group's insurances

Matters dealt with at meetings convened specifically therefore include:

- the business plan and budgets
- the annual financial statements, review of valuations of listed and unlisted investments, final dividend, profit announcement and related matters.

A comprehensive pack including memoranda on all of the matters before the board (usually excluding the presentations) is dispatched to directors around six days prior to each meeting.

4.7 Effectiveness of the Board

An annual survey (completed by the directors themselves) is undertaken on the effectiveness of the Board, the results of which are consolidated and reported to the Board.

Actions deemed necessary by the directors, taken at the report-back session are implemented.

4.8 Board Committees

4.8.1 Audit Committee

The Banking Group Audit Committee is a Board appointed audit committee and acts as the main audit committee to the Banking Group.

The Audit Committee comprises:

Executive	**Non- Executive Non-Independent**	**Non- Executive Independent**
VW Bartlett	DM Falck	MW King (Chairman)
PK Harris		RA Williams
AH Arnott (ex officio)		
JP Burger (ex officio)		

The charter has been reviewed by the governance committee.

A quorum comprising a majority of non-executives is necessary for the committee's business.

The committee meets five times a year, each meeting having a distinctive focus as follows.

February
Interim Financial Statements
May
Risk (which will in future fall to the proposed board appointed Risk Committee)
Internal Audit Planning
Financial Year-end External Audit Planning
August
Annual financial Statements
September
Governance and Compliance
November
Review of year-end External Audit
Planning for the half year (interim financial statements) External Audit review
External Audit planning for the forthcoming year

Minutes of Audit Committee meetings and reports thereon by its chairman are made at board meetings.

Regular meetings are held by the chairman of the committee with the external auditors.

The regular meetings held with the external auditors by the Chief Financial Officer are attended by the chairman of the committee.

4.8.2 <u>Remuneration Committees</u>

There are three Board appointed remuneration committees.

The FRBH Remuneration Committee comprises:

Executive	**Non- Executive Non-independent**	**Non- Executive Independent**
	GT Ferreira (Chairman)	PM Goss
		MW King
		RA Williams

A new charter for the committee has been reviewed by the governance committee for approval by the Board.

Minutes of these meetings and reports thereon are submitted to the Board by the committee chairman.

The committee undertakes the following functions:

- approves general principles of remuneration policies and practices
- ensures that appropriate performance management practices are in place

- approves the general principles applied to the award of salary increases, incentive bonuses and share incentives
- approves the quantum of the salary increase and incentive bonus awards
- approves salary increases and bonuses on a name by name basis for identified employees and executives
- approves share incentive awards on a name by name basis.

The FRBH Remuneration Committee is assisted in its duties by two sub-committees.

The RMB Remuneration Sub-committee comprises:

Executive	Non- Executive Non-independent	Non- Executive Independent
	GT Ferreira (Chairman)	PM Goss
		MW King

The FNB Remuneration Sub-Committee comprises:

Executive	Non- Executive Non-independent	Non- Executive Independent
		RA Williams (Chairman)
		MW King

Minutes of the sub-committee meetings are tabled at board meetings.

The sub-committees, which are focused on the two distinctly different remuneration needs, policies and practices of the retail and merchant banking industries are tasked with reviews and approvals prior to submission to the FRBH Remuneration Committee, to enable that committee to perform its functions.

The three remuneration committees meet three times a year for the following business.

May
For the development of the policies and processes for the annual salary review, and the annual bonus and share incentive awards which are made in August.
Early July
To set the financial parameters for the annual salary review and the annual bonus and share incentive awards.
End July
For the approval of the final cost of the annual salary review and the annual bonus award.
For the approval of individual salary packages for identified employees.
For the approval of share incentive scheme awards.

4.8.3 Credit Committee

The credit governance structure and membership of the Credit Committee are approved by the Board.

Credit limits requiring ratification by the Board in terms of the Banks Act are brought before the Board at its meetings. The minutes of the committee's meetings are tabled at Board meetings and matters discussed as required by the Board.

The Credit Committee comprises:

Executive	**Non- Executive Non-independent**	**Non- Executive Independent**
JP Burger (Chairman)	AP Cloete	L Kingma
JJH Bester		
C Botes		
M Oberholzer		
J Schroeder		
F Swanepoel		

All credit approvals require a quorum of five members, one of whom should be a non-executive member.

4.8.4 Committees not appointed by the Board

The following committees which are not appointed by the Board but render reports to it, or to the Audit Committee, are established:

4.8.4.1 Banking Group Treasury Board
(Asset and Liability Management Committee - "Alco")

Alco sets prudential limits for the liquidity and interest rate risks of the banking book. These limits are approved by the Board and adherance thereto and excesses reported at board meetings.

The members are all executives.

4.8.4.2 Credit and Market Risk Committee

The committee sets prudential limits for the credit and market risk exposures of the Banking Group.. These limits are approved by the Board and adherance thereto reported at board meetings.

The members are all executives.

4.8.4.3 Operational Risk Committee

The committee co-ordinates the risk control processes within the Banking Group and ensures that the business risks are identified and that appropriate governance, policies and methodology are in place to address them.

The committee submits its reports to the Audit Committee.

The members are all executives.

The governance processes for these committees are currently under review following the requirements of the amendments to the Banks Act.

4.9 Boards of Subsidiary Companies

5.9.1 Banking and other subsidiaries

The boards of banking subsidiaries are appointed in terms of the Banks Act, other subsidiaries in terms of the relevant legislation and in terms of the requirements of the jurisdiction in which they operate.

The significant boards are:

Ansbacher Holdings plc

Executive	**Non- Executive Non-independent**	**Non- Executive Independent**
B Erikson	MPC Brogan * (Chairman)	A Frew
A Evans		MW King
M Hodgson		D Mann
F Jennings		J Rawlings
R Spilg (CEO)		
* Executive of RMB Australia Limited		

First National Bank of Namibia Limited

Executive	**Non- Executive Non-independent**	**Non- Executive Independent**
SH Moir (CEO)	VW Bartlett *	HD Voigts (Chairman)
		HWP Bottger
		EP Shiimi
		II Zaamwani
* Executive of FirstRand Bank Limited		

First National Bank of Botswana Limited

Executive	Non- Executive Non-independent	Non- Executive Independent
AW Park (CEO)	VW Bartlett *	HCL Hermans (Chairman)
		DA Kgostetsile
		JT Mynhardt
		RD Vaka
		MT Sekgororoane
		S Thapelo
* Executive of FirstRand Bank Limited		

First National Bank of Swaziland Limited

Executive	Non- Executive Non-independent	Non- Executive Independent
A Pawson	VW Bartlett *	D von Dissell (Chairman)
		AD Dlamini
* Executive of FirstRand Bank Limited		

The boards of these subsidiaries have in place board committees including, inter alia,

- Audit
- Remuneration
- Credit
- Risk
- Compliance
- Alco
- Market risk

Memberships of these committees includes non-executives and executives.

4.10 Non Statutory Advisory / Management Boards

4.10.1 Cluster Boards

4.10.2 Boards of Significant Business Units

The clusters and the significant business units (e.g. RMB, WesBank, HomeLoans, FNB Corporate) all have management boards, some of which include non-executive directors.

4.11 Cluster and Business Unit committees

The cluster and significant business units have in place sub-committees dependent upon their needs, including, inter alia,

- Audit
- Remuneration
- Credit

- Risk
- Compliance
- Alco
- Market risk

Memberships of most of the committees comprise FirstRand Group executives. Some committees have non-executive membership.

5. Related Party Transactions

Related Party Transactions in terms of Accounting Standard AC126 will be reported on at the 2003 year-end.

Disclosure is expected to include:

- nature of relationship
- type of transaction
- elements of transactions e.g. volume (amount or proportion), outstanding items and pricing policies.

6. Business Success and Risk Management Framework

The Banking Group Business Success and Risk Management Framework is in place.

The effectiveness of this framework is assessed by the Audit Committee and the Board annually.

Elements of the Risk Management processes are currently under review.

7. Sustainability

The Board annually considers the basis for its "going concern" statement recorded in the Banking Group's annual financial statements and in its confirmation to the Registrar of Banks in terms of Regulation 39(4) of the Banks Act.

A process to enable the Board to consider on a structured basis the non-financial aspects which influence sustainability as envisaged in King II has been initiated for the June 2003 financial year-end.

8. Social Transformation

Employment Equity

The Banking Group has in place an Employment Equity plan which has been submitted to the Department of Labour in terms of the Employment Equity Act and accepted.

Employment Equity targets to meet the overall Banking Group plan are in place in all of the clusters and business units, which have in place plans to achieve their targets. Diversity management is dealt with at cluster and business unit level.

Performance against target is reported on at the cluster and business unit board meetings.

Performance against the Banking Group targets are reported on in the chief executive officer's report to the Board. A detailed presentation on the Banking Group's performance is made annually to the Board.

Black Economic Empowerment ("BEE")

The Banking Group is engaged in industry discussions, as a member of the Banking Council, on the proposed Financial Services Charter.

Within the clusters and business units of the Banking Group, ventures with BEE partners have been successfully undertaken. These initiatives are an area of focus for the Banking Group.

Initiatives around procurement from BEE companies are in place and successfully pursued.

9. Compliance

The Banking Group has an established compliance office in terms of Regulation 47 of the Banks Act.

The office is headed by a senior, appropriately qualified, officer who is appointed by the Board.

The development of the office and the compliance officials has been granted appropriate priority and the funds necessary to achieve their objectives.

There are appropriately staffed compliance functions within the clusters and business units which liaise with the Banking Group office.

FirstRand Banking Group
30 April 2003

Annexure "F3"

CORPORATE GOVERNANCE STATEMENT OF INVESTEC BANK LIMITED

INVESTEC LIMITED

Directors' Responsibility and Corporate Governance

The information provided in this document reflects the situation at March 2003 after the implementation of the Dual Listed Companies structure in July 2002.

Responsibility

The directors are responsible for monitoring and reviewing the preparation, integrity and reliability of Investec Limited group financial statements, accounting policies and the information contained in the annual report.

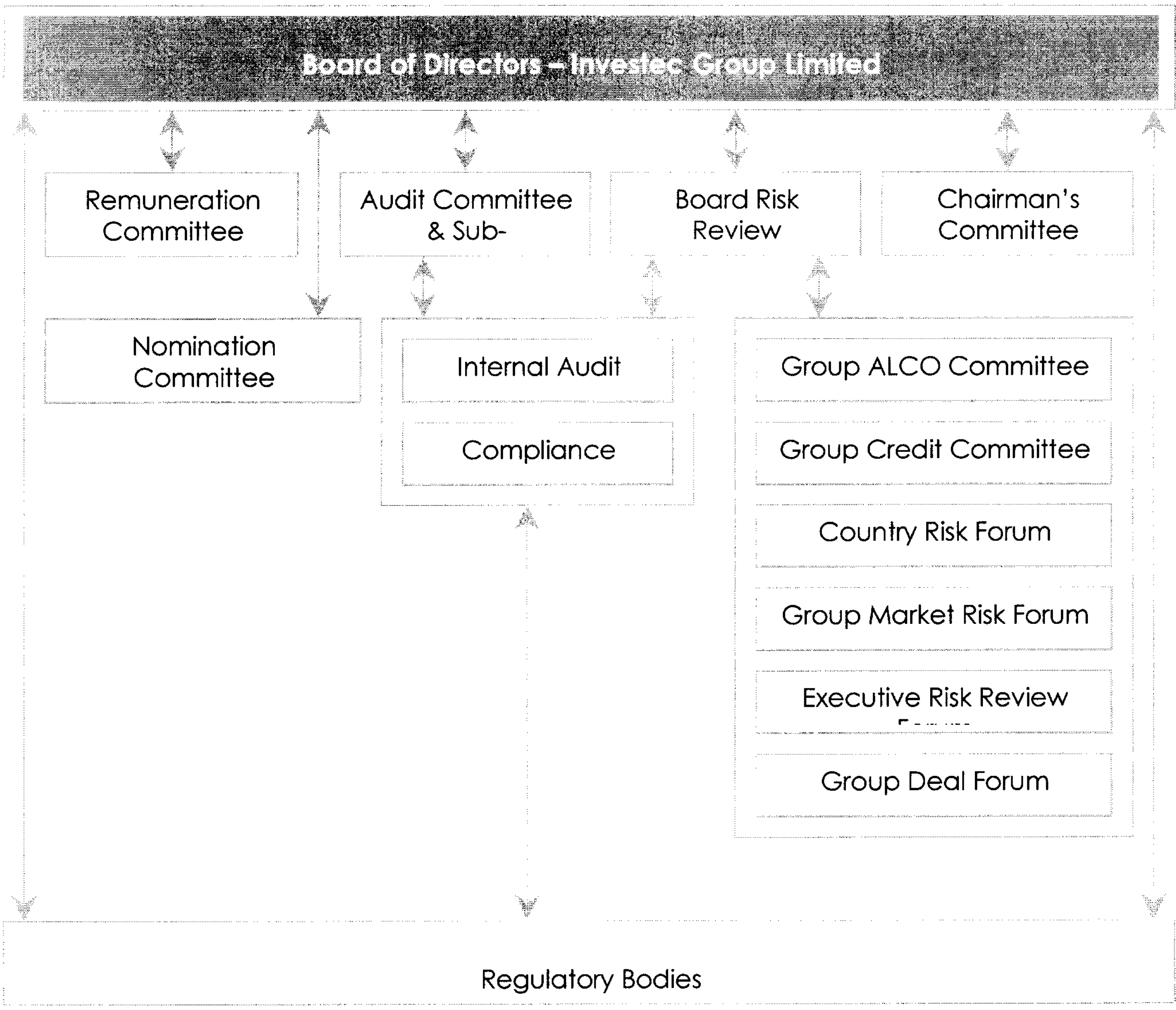
In discharging this responsibility, the directors are supported by an ongoing process for identifying, evaluating and managing the significant risks faced by the company, which was in place for the year under review and up to the date of approval of this annual report and accounts. The process is implemented by Investec management and independently monitored for effectiveness by the audit, risk and other sub-committees of the board which are referred to below.

Corporate governance

Investec has long had an entrenched corporate culture, which emphasises above all the need to conduct the affairs of the Group in accordance with the highest standards of corporate ethics.

Corporate governance, in essence, is the formal maintenance of the necessary balance between entrepreneurial thrust and enterprise on the one hand and prudential restraint, within the boundaries of regulation, on the other. Accordingly, corporate governance, embodied in Investec's written Statement of Values (which serves as its Code of Ethics) has always been a pillar of Investec's culture. The Group has over time created (and continues to refine) the structures necessary to formalise oversight and to ensure that the values remain embedded in all businesses and processes.

Corporate Governance structure



The Group endorses the South African King II Code of Corporate Governance and operates in broad compliance with its recommendations. International business units operate in accordance with the governance recommendations of their jurisdiction, but with clear reference at all times to Group values and culture. In addition, the Group has adopted the "Turnbull Guidance", containing principles for consideration by directors on the implementation of the Accountability and Audit Principles of the UK "Combined Code" on good governance and best practice. This requires management and the board to assess the control and risk management environment, identify risks and risk information, embed a culture of risk awareness and control consciousness, obtain assurance of implementation of risk management processes and review the governance process.

The Group recognises its responsibility as a financial institution to conduct its affairs with prudence and integrity and to safeguard the interests of all stakeholders.

Annexure B is an assessment by Investec of its compliance with Corporate Governance Principles in the Banks Act and Regulations, including the proposed amendments, and King II.

Board of Directors

Composition

For the year under review Investec Limited had a unitary board comprising four executive and nine non-executive directors. The board is balanced so that no individual or small group can dominate decision making.

Details of the directorate are contained in Annexure A to this document. This board is identical to the board of Investec plc.

All board members are suitably experienced, have a clear understanding of their role in corporate governance and are not subject to undue influence from management or outside concerns. Non-executive directors comprise individuals of high calibre with diverse backgrounds and expertise. They provide objectivity and independence to board deliberations and decision-making processes.

Executive directors are encouraged to hold other non-executive directorships, but only to the extent that these do not interfere with their immediate management responsibilities.

Independence of non-executive directors

The majority of the non-executive directors are considered to be independent of management and/or do not have any other relationship which could materially interfere with the exercise of their independent judgement. Hugh Herman, Donn Jowell and Ian Kantor are not considered to be independent. The Directors consider that Sam Abrahams and Peter Thomas are independent, notwithstanding the remuneration they receive to sit on various of Investec's compliance and decision making committees (such as the Group Audit Committee, Group Credit Committee, Board Risk Review Committee and various Audit Sub-Committees) in an advisory capacity as non-executive directors.

Appointment and selection

The Nominations Committee is chaired by Hugh Herman and its other members are Sir Chips Keswick and Sam Abrahams. In accordance with the Combined Code and King II all members of the Nominations Committee are Non-Executive Directors. The Nominations Committee is responsible for nominating candidates to fill board vacancies and for making recommendations on board composition and balance. In exercising this role, the Directors will have regard to the recommendations put forward in the Combined Code and King II.

Board effectiveness is subject to regular self-assessment.

New directors may hold office only until the next annual general meeting, at which they retire and become available for re-election. All directors are subject to retirement by rotation and re-election by shareholders at least once every three years. Directors have no fixed term of appointment and their contributions are subject to ongoing review. An executive director is required to retire from the board at the age of 65, while a non-executive director is required to retire at the age of 70.

All non-executive directors, on appointment, are appropriately familiarised with the operations of the Group, senior management and its business environment and are inducted in terms of their fiduciary duties and responsibilities.

Role and responsibility

The board retains full and effective control of the company and is ultimately accountable and responsible for the performance and affairs of the Group. This includes the responsibility for reviewing and guiding corporate strategy, through the establishment of key policies and objectives.

The board has defined the limits of delegated authority and is ultimately responsible for assessing and managing risk policies and philosophies; overseeing major capital expenditures, acquisitions and disposals; approving the establishment of businesses; and approving the introduction of new products and service offerings.

In discharging its responsibilities, the board is supported by members of Investec management, who are required to implement the board plans and strategies. The board monitors management's progress in this regard on an ongoing basis.

Furthermore, the board, directly or through its sub-committees:

- Continually assesses both the quantitative and qualitative aspects of the Group's performance, through a comprehensive system of financial and non-financial monitoring, involving an annual budget process, detailed monthly reporting and management strategic and operational updates.
- Approves the annual budgets and business plans.
- Monitors the Group's compliance with relevant laws, regulations and codes of business practice.
- Monitors the Group's communication with all stakeholders.
- Identifies and monitors key risk areas and key performance indicators.
- Reviews processes and procedures to ensure the effectiveness of the Group's internal systems of control.

The board is accountable to all Investec's stakeholders for exercising leadership, integrity and judgement in pursuit of its strategic goals and objectives. This is to achieve long-term sustainable growth and prosperity for the Group.

All directors are regularly kept abreast of statutory, regulatory, accounting, non-financial and industry developments, which may affect the activities of the Group. Furthermore, all non-executive directors have unrestricted access to management, including the Group Company Secretary, and to such information, records and documents as needed to carry out their duties and responsibilities comprehensively and effectively. To facilitate this, non-executive directors participate in key board sub-committees and other forums, as indicated elsewhere in this section. Furthermore, all directors are able to take independent professional advice, as is necessary to fulfill their duties, at the Group's expense.

Board meetings

Board meetings are scheduled at the commencement of each calendar year at least once per quarter and directors are provided with full board papers to enable them to consider in advance the issues on which they will be requested to give decisions.

Management has an obligation to provide the board with appropriate and timely information. Board packs typically include:

- Monthly management accounts.
- Quarterly status reports from Group Risk Management, Compliance and Internal Audit.
- Report and minutes of the Audit Committee.
- Report of the Chief Executive Officer, which includes an update on financial and non-financial aspects/developments within each of the operating divisions.
- Reports on proposed acquisitions.
- Reports on significant regulatory issues.

Chairman and Chief Executive Officer

The roles of the Chairman and Chief Executive Officer are separate, so that no individual has unfettered powers of decision making. Both the Chairman and the Chief Executive Officer are appointed by the board. The board is led by the Chairman, Hugh Herman, who is considered a Non-Executive Director. The board appraises the Chairman's performance annually. The Chief Executive Officer is Stephen Koseff, who is responsible to the board for the implementation of its strategies and policies. The Chairman of the board and non-executive directors review the performance of the Chief Executive Officer annually.

Company Secretary

The Company Secretary of Investec Group Limited is suitably qualified and experienced and was appointed by the board in February 1994. Removal of the Company Secretary would be a matter for the board as a whole.

The Company Secretary is responsible for the duties stipulated in section 268G of the Companies Act. The Company Secretary is supported in the role he plays in the Group's corporate governance process by the Head of Corporate Governance and Compliance and is empowered by the board so that he may properly fulfill these duties.

In addition to the statutory duties, the Company Secretary is required to provide the directors of the company, collectively and individually, with guidance on how their responsibilities should be properly discharged in the best interests of the company. The Company Secretary plays an important role in the induction of new directors and also assists the Chairman and Chief Executive Officer in determining the annual board plan. Furthermore, the Company Secretary is required to ensure that the directors are aware of all legislation relevant to, or affecting, the Group and reporting at any meetings of the shareholders of the Group or of the Group's directors, any failure to comply with such legislation.

Management

Global business unit and geographic management are appointed by the board, based on the skills and experience deemed necessary to perform the required function. In general, managers do not have fixed term employment contracts and there are no employment contracts with managers with a term of more than three years. Investec's management structure, reporting lines and the division of responsibilities have been built around a geographic, divisional and functional matrix, as depicted on pages 49 and 50 in the 2002 Investec Group Annual Report (which is available at www.investec.com).

Furthermore, each strategic business unit has its own executive management committee and is responsible for taking and implementing operational decisions, managing risk and aligning divisional objectives with the Group strategy and vision.

Executive managers are required to provide the board with appropriate and timely financial and non-financial information necessary for it to fulfill its responsibilities.

On an operational level, below the Investec Limited and Investec plc boards are two principal forums: the Global Operations Forum and the Global Group Management Forum (Global GMF). In addition, there are regional management forums in the UK and South Africa.

Global Group Management Forum

The Global GMF meets bi-monthly, alternating between the UK and South Africa. The purpose of this forum is to identify and discuss key strategic and policy issues and opportunities facing the divisions, geographic operations and Investec as a whole. Typically, acquisition proposals, critical Investec projects, and other key growth and development recommendations are raised and debated at the Global GMF and approved by the directors. The Global GMF serves as an effective integrating mechanism, allowing for constant feedback and input from all members. The forum has given the Group's management teams the opportunity to remain in touch with developments in the Group as a whole, thereby helping to eliminate duplicated effort and to enhance synergies across businesses and geographies.

It also provides a forum for communication between senior management and the executive directors.

The members of the Global GMF are:

Name	Title	Joined Investec	Residence	Age
Stephen Koseff	Chief Executive Officer	1980	South Africa	50
Bernard Kantor	Managing Director	1980	UK	52
Glynn Burger	Global Head of Group Risk Management and joint managing director of Investec's South African operations	1990	South Africa	45
Fred Carr	Head of Private Client Portfolio Management and Stockbroking - UK	1997	UK	57
Perry Crosthwaite	Head of Investment Banking - UK	1998	UK	53
Steve Elliott	Executive director Carr Sheppard Crosthwaite	1989	UK	48
Richard Forlee	Global Head of Treasury and Specialised Finance and Regional Head of Investec's Asian operations	1988	UK	41
Bradley Fried	Joint Global Head of Investment Banking and Joint Regional Head of Investec's United Kingdom operations	1999	UK	36
Sam Hackner	Global Head of Private Banking	1982	South Africa	46
Rayanne Jacobson	Global Head of Group Finance	1996	South Africa	33
David Lawrence	Deputy Chairman of South Africa and Global responsibility for banking, institutions and corporate relations	1996	South Africa	51
Andy Leith	Joint managing director of Investec's South African operations and Joint Global Head of Investment Banking	1994	South Africa	42
Geoff Levy	Chief Executive Officer of Investec's Australian operations	2001	Australia	43
Patsy McCue	Global Head of Human Resources	1984	South Africa	39
Farrel Meltzer	Managing director of Investec's Australian operation	2000	Australia	37
Simon Shapiro	Global Head of Group Information Technology	1990	South Africa	43
Caryn Solomon	Head of Organisational Development	2000	UK	48
Alan Tapnack	Joint Regional Head of Investec's UK operations and Head of Investec's Israeli operations	1991	UK	55
Bradley Tapnack	Global Head of Corporate Governance & Compliance	1986	South Africa	55
Hendrik du Toit	Global Head of Investec Asset Management	1991	UK	41
Raymond van Niekerk	Global Head of Group Marketing	2001	South Africa	39
Allen Zimbler	Chief Integrating Officer	2001	UK	52

Global Operations Forum

The Global Operations Forum meets monthly, with half the meetings in the UK and half in South Africa. The key role of this forum is the implementation of Investec's strategy and global operational responsibility and coordination.

The members of the Global Operations Forum are:

Name	Title	Joined Investec	Residence	Age
Stephen Koseff	Chief Executive Officer	1980	South Africa	50
Bernard Kantor	Managing Director	1980	UK	52
Glynn Burger	Global Head of Group Risk Management and joint managing director of Investec's South African operations	1990	South Africa	45
Richard Forlee	Global Head of Treasury and Specialised Finance and Regional Head of Investec's Asian operations	1988	UK	41
Bradley Fried	Joint Global Head of Investment Banking and Joint Regional Head of Investec's United Kingdom operations	1999	UK	36
Sam Hackner	Global Head of Private Banking	1982	South Africa	46
Andy Leith	Joint managing director of Investec's South African operations and Joint Global Head of Investment Banking	1994	South Africa	42
Hendrik du Toit	Global Head of Investec Asset Management	1991	UK	40
Allen Zimbler	Chief Integrating Officer	2001	UK	52

Regional Management Forums

Investec has Regional Management Forums in each of the principal geographies in which it operates. The forums meet fortnightly and are responsible for the day-to-day management of their respective geographies. Each forum plays an instrumental role in communications and in the sourcing of debates and ideas that are ultimately presented to the relevant boards. The two principal Regional Management Forums are based in the UK and South Africa.

Various other formal and informal processes promote interactive dialogue and independent review between Group management and the non-executive directors.

Succession planning

Succession planning is initiated at management level where the depth, scope and diversity of talent is identified and nurtured. This ensures that the Group maintains a substantial pool of talent from which senior management and executives can be replenished when required.

The executive has identified successors for key executive management positions.

Board sub-committees

To assist the board in the discharge of its duties, a number of board sub-committees have been established. The features of these committees are as follows:

- The committees all have specific terms of reference that include roles and responsibilities, and are accountable to the board.
- The board evaluates the performance and effectiveness of each board committee on a regular and ongoing basis.
- The committees are composed of individuals with the requisite skills commensurate with the committee's objectives/scope of activity.
- Non-executive board members have been assigned to all of these committees.
- Various members of management are invited to attend committee and board meetings whenever appropriate.
- The board sub-committees are free to take independent outside professional advice as and when necessary.

The board sub-committees are outlined below.

Chairman's Committee

The Chairman's Committee is responsible for implementing the Group's strategy and managing its business affairs. Responsibility for the day-to-day operations of the business is delegated to senior management as described above. The committee is chaired by Hugh Herman (Chairman of the board and a Non-Executive Director). Members of the Chairman's Committee are:

- Glynn Burger (Global Head of Risk Management and Joint Managing Director of Investec's South African operations)
- Donn E Jowell (Non-Executive director)
- Bernard Kantor (Managing Director)
- Stephen Koseff (Chief Executive Officer)
- David M Lawrence (Executive Director – Investec Bank Limited)
- Bradley Tapnack (Executive Director – Investec Bank Limited)

The Chairman's Committee met five times during the year.

Nomination Committee

The nomination committee is discussed under "Appointment and selection" above.

Remuneration Committee

The Remuneration Committee is chaired by John Abell and the other members are Sir Chips Keswick and George Alford. In accordance with the requirements of the Combined Code and King II all members of the Remuneration Committee are Non-Executive Directors and are independent directors for the purposes of the Combined Code and King II.

This committee has responsibility for the determination, within agreed terms of reference, of Investec's policy on the remuneration of senior executives and specific remuneration packages for each of the Executive Directors including pension rights, any compensation payment and implementation of employee share plans. The Remuneration Committee will also administer and establish performance targets for Investec's employee share schemes. In exercising this role, the terms of reference of the Remuneration Committee require it to comply with the Combined Code and King II. The policy on the remuneration packages for the Non-Executive Directors are agreed by the Directors as a whole.

Director's remuneration

The remuneration of executive directors comprises both current reward and future entitlements. For the year under review directors did not have service contracts. Remuneration elements are detailed below:

- Executive directors in the Group receive a salary and economic value added driven rewards based on corporate and individual performance. Executives' remuneration packages are designed so that a substantial portion is performance related. Salaries are reviewed annually by reference to performance and the market.
- Executive directors participate in various share incentive schemes.
- Executive directors participate in the defined contribution pension fund and provident fund schemes.
- Non-executive directors receive fees for their services as directors and for services on the various board sub-committees and, where applicable, subsidiary boards and ancillary trusts. The policy on the remuneration packages for the non-executive directors is agreed to by the directors as a whole.

Detail of directors remuneration is published in the remuneration report in the 2002 Investec Group Annual Report.

Audit Committee

The Audit Committee is chaired by Donn Jowell and its other members are Sam Abrahams and Peter Thomas. In addition members of the plc audit committee and Dr Morley Nkosi may attend. In accordance with the requirements of the Combined Code and King II all members of the Audit Committee are Non Executive Directors and a majority of the voting members are, in the opinion of the Group, independent directors. This committee has responsibility for, among other things, the planning and reviewing of Investec's combined consolidated report and accounts and the supervision of Investec's auditors in the review of such reports and accounts. The Audit Committee will focus particularly on Investec's compliance with legal requirements, accounting standards and the relevant listing requirements and will seek to ensure that effective systems of internal financial controls and for reporting non-financial operating data are maintained. The ultimate responsibility for reviewing and approving the annual and half yearly report and accounts will remain with the Boards.

The risk and compliance managers, internal auditors, respective firms of external auditors, non-executive directors and various supervisory and regulatory bodies all have unrestricted access to the Chairman of the Audit Committee and to each other. They submit formal reports to the committee at its meetings throughout the year.

Board Risk Review Committee

The Board Risk Review Committee is chaired by Stephen Koseff (Chief Executive Officer) and comprises:

- Sam E Abrahams (Non-Executive Director)
- Glynn Burger (Global Head of Risk Management and Joint Managing Director of Investec's South African operations)
- Richard Forlee (Global Head of the Treasury and Specialised Finance division)
- Donn E Jowell (Non-Executive Director)
- Bernard Kantor (Managing Director)
- David M Lawrence (Executive Director – Investec Bank Limited)
- Alan Tapnack (Chief Executive Officer of Investec Bank (UK) Limited)
- Bradley Tapnack (Executive Director – Investec Bank Limited)
- Peter R S Thomas (Non-Executive Director)

The committee acts as agent of the board. Its purpose is to ensure that all decisions of the board on risk management policies and procedures are implemented and monitored throughout Investec, and that the risk management structure is adequate with sufficient resource and budget and will report exceptions to the board. It also ratifies exposure limits for market and credit risk. In addition, the committee ensures that there is an ongoing process of risk and control identification, particularly for any changes to business objectives and the bases of measuring risk.

The Board Risk Review Committee defines the processes by which internal financial control risk is assumed and monitored. The Audit Committee is responsible for reviewing these processes, which are the domain of the Board Risk Review Committee. The independent Group Risk Management division provides the expertise and basic materials from which the processes can be built and monitored daily.

A number of committees are dedicated to aspects of risk management and report directly to the Board Risk Review Committee and the Board of Directors. These include the Group ALCO Committee, Group Credit Committee, Country Risk Forum, Group Market Risk Forum and Group Deal Forum. Details of these committees can be found in the section on Risk Management on pages 100 to 126 in the 2002 Investec Group Annual Report.

The Board Risk Review Committee meets monthly and before each board meeting.

There is a clear distinction between the governance and implementation of risk processes. The former is vested in the Board of Directors and the board committees, while the latter is the responsibility of management who report to these committees regularly. Management has unrestricted access to these committees.

Risk management

Risk management is critical to Investec. The Group strives to understand and measure risks in order to make considered judgements and decisions and to limit loss situations. The board is responsible for the total process of risk management and the system of internal control and has implemented a number of committees (as mentioned above) to assist it in this regard.

An independent Group Risk Management division, which is accountable to the board, is responsible for implementing, designing and monitoring the process of risk management and integrating it into the day-to-day activities of Investec.

The board has developed and set the Group's risk strategy and philosophies together with executive directors and senior management, and is responsible for the ongoing assessment of the effectiveness of the Group's risk management processes. Furthermore, the Group continues to embed a culture of risk awareness, control and compliance in its activities.

The effectiveness of any bank's polices and procedures for managing risk can never be completely or accurately predicted or fully assured. The board is of the view that there are sufficient ongoing processes, which have steadily improved over the years, for identifying, assessing and monitoring the significant risks faced by the Group. These processes have been in place for the year under review and up to the date of approval of the annual report and financial statements.

For further details on the Group's risk management process refer to pages 100 to 126 in the 2002 Investec Group Annual Report.

Internal financial control

Financial controls throughout the Group focus on critical risk areas. These areas are, as appropriate, identified by operational management, confirmed by Group management, monitored by the board, reviewed by Group Risk Management, assessed by the risk assurance functions of Internal Audit and Compliance, and evaluated by the independent auditors.

Internal financial controls are based on established policies and procedures (see "Responsibility" above). Management is responsible for implementing internal financial controls, ensuring that personnel are suitably qualified and that an appropriate segregation exists between duties and independent review. Processes are in place to monitor internal control effectiveness, identify and report material breakdowns and ensure that timely and appropriate corrective action is taken.

The directors consider that the Group's system of internal financial control is adequately designed (within reason) to:

- Provide reasonable assurance of both the integrity and reliability of financial information.
- Safeguard, verify and maintain accountability of assets.
- Prevent and detect fraud.
- Support business objectives and sustainability under normal and adverse operating conditions.
- Ensure compliance with applicable laws and regulations.

Controls are reviewed and evaluated regularly for appropriateness and effectiveness. The Board Risk Review Committee and the Audit Committee assist the board in this regard (as discussed above). Best practices are reinforced through active risk management processes and initiatives. During the previous financial year, the Group initiated a programme to implement the "Turnbull Guidance", which specifically relates to the accountability and audit aspects of corporate governance practices as set out in the "London Combined Code".

This programme continues to be monitored and enhanced to support the board in its responsibilities regarding risk management and internal control as envisaged by the London Combined Code and King II.

Internal and external audit

An Internal Audit function is based in each significant jurisdiction in which the Group operates. Internal Audit operates independently from executive management, with unrestricted access to the Chairman of the Group Audit Committee. The Audit Committees review the mandate, authority, resources, scope of work and effectiveness of Internal Audit annually. The review also includes an assessment of the work conducted by internal and external audit. For further details on the Group's Internal Audit function, refer to page 120 in the 2002 Investec Group Annual Report.

The Group's external auditors are KPMG and Ernst & Young. The Group encourages consultation between external and internal auditors within defined parameters that does not in any way impair the independence of either party.

Group Compliance

Investec has an independent Group Compliance function within its risk management framework which is responsible for assisting management in complying with statutory, regulatory, supervisory and policyholder protection rule requirements. The Compliance division has unrestricted access to the Chairman of the Group Audit Committee. For further details on the Group's Compliance function, refer to page 121 in the 2002 Investec Group Annual Report.

Communication, disclosure, transparency and relations with stakeholders

The Board of Directors subscribes to a philosophy of providing meaningful, transparent, timely and accurate financial and non-financial information to its primary stakeholders, which include shareholders, employees, rating agencies, regulatory bodies, clients and industry investment analysts. This is to help these stakeholders make meaningful assessments and informed investment decisions about the Group.

Investec endeavors to present a balanced and understandable assessment of the Group's position, addressing material matters of significant interest and concern, and showing a balance between the positive and negative aspects of the activities of the Group, in order to achieve a comprehensive and fair account of its performance.

The board recognises the importance of ensuring an appropriate balance in meeting the diverse needs and expectations of all the Group's stakeholders and building lasting relationships with them.

All shareholders are encouraged to attend the annual general meeting and any other meetings of Investec, and to raise issues and participate in discussion on items included in the notice of the meeting.

The Group has an Investor Relations division which is responsible for ensuring appropriate communication with its stakeholders. Regular contact is maintained with domestic and international institutional shareholders, fund and asset managers, analysts and rating agencies through a comprehensive investor relations programme. This includes meetings with executive management, investor road shows, presentations to the investment community, communication by e-mail, regular telephone conferences and liaison with private shareholders in response to their enquiries. The Investor Relations division regularly reports back to the operating divisions, the Group executive and the board on various matters/concerns raised by stakeholders.

Furthermore, the Group maintains a comprehensive investor relations web site, which ensures that all stakeholders readily have access to historical and current information, including credit ratings, financial results and share price information. The contact details of the Investor Relations division are provided at the beginning of this report.

The Group's Marketing team, in close co-operation with the executive and the Investor Relations division, liaises with the media to ensure that the public is kept fully informed. The Group has also employed an external public relations specialist to assist in this regard.

The Group's ongoing commitment to providing timeous, detailed and relevant disclosure to its stakeholders was rewarded during the year under review, when it received the following awards:

- Best Investment Analyst Society Presentation - Investment Analysts Society of Southern Africa.

- Best Annual Report in the Financial, Insurance and Property Services Sector - South African Institute of Chartered Secretaries and Administrators.
- 10th place out of the top 100 listed companies on the JSE - Ernst & Young Excellence in Financial Reporting Award.

Investec's communication policy focuses on ensuring that all employees in all jurisdictions in which the Group operates are kept informed of its aspirations and activities. The Group produces a quarterly magazine, *Impact*, for all its employees, which provides information on the latest happenings within Investec. Furthermore, the Group has established a comprehensive intranet site in South Africa and the UK, which provides employees with prompt communication on Group developments and topics of interest. Urgent notices are sent out to all staff through the Group's internal e-mail systems.

Communication between the board, the Group executive and senior management is facilitated by the Global GMF and the regional management forums, as discussed on pages 132 and 133. In addition, the Group holds an annual management conference at which approximately 400 of its senior management from all around the world meet to discuss strategic initiatives as well as key business and industry developments and issues.

Regulation and supervision

The Group is subject to external regulation and supervision by various South African and international statutory bodies and regulators. The Group strives to achieve an open and active dialogue with its regulators and supervisors to comply with the various regulatory and supervisory requirements. The Group reports to regulators and supervisory bodies regularly. Where appropriate, the Group participates in industry committees and discussion groups to maintain and enhance the regulatory environment in which it operates.

Values and code of conduct

The Group has a strong culture of entrenched values, which forms the cornerstone of the expected behaviour of the Group towards all stakeholders, both internal and external. These values are embodied in a written Statement of Values, which serves as the Group's Code of Ethics and is continually reinforced. The Group's Code of Ethics is updated from time to time. Investec's values demand that the directors and employees of the Group conduct all internal and external dealings with integrity, consistently and uncompromisingly displaying moral strength and behaviour which promotes trust.

The Group views all employees as the custodians of ethical behaviour, which is reinforced through internal processes, policies and procedures. As such, all new employees are invited to attend induction processes at which the Group's philosophies, values, culture and compliance procedures are explained and discussed. Furthermore, the Group's Organisational Development team plays an important role in facilitating the understanding and ongoing practice of the Group's values, philosophies and culture. For further information in this regard, refer to page 97 in the 2002 Investec Group Annual Report.

Investec continually strives to conduct its business with uncompromising integrity and fairness so as to promote complete trust and confidence in the banking industry.

Dealings and securities

Investecs' policy on Personal Account Dealing is based on the Position Paper and guidelines issued by the regulators and is established on international best practice. The policy includes the following features:

- The policy prohibits trading by staff for speculative purposes (and therefore requires a 30-day holding period for securities).
- The Group's Compliance division is required to sign-off on all employee dealings in securities.
- It facilitates the compilations of a restricted list and imposes a closed period for staff dealing in Investec securities prior to the publication of the financial statements. In terms of this "closed period" policy, directors, officers, participants in the share incentive scheme and staff who may have access to price sensitive information are precluded from dealing in Investec shares approximately two months prior to the release of the Group's interim and financial results.

The Group's Compliance divisions administer compliance with the Group's Personal Account Dealing policy. Each employee is required to sign the undertaking on this policy, whereby they agree to disclose all their personal and connected party accounts. The policy, furthermore, requires that all staff dealings be facilitated internally and not through an external broker.

Details of directors' dealing in Investec shares are disclosed to the board and, in accordance with the JSE Listings Requirements, are also made publicly available.

Employee participation and skills

Investec aspires to be one of the world's great specialist banking groups and its success depends on its employees. Investec recognises that its people are the most important asset and, therefore, the Group's philosophy is to employ the highest calibre individuals, who are characterised by integrity, intellect and innovation, and demonstrate compatibility with Investec's philosophy and core values. Investec has a flat, integrated structure, where individuality is encouraged.

The directors believe that, ultimately, Investec's success depends on its people working together in the interests of Investec's clients. For this reason, Investec emphasises strongly the processes of recruitment, education and development. To this end, Investec has an internal business learning centre which, together with the various divisions, has created a wide range of training programmes aimed at enhancing employee potential. The Group's culture values employee participation in the decision-making process, and encourages communication throughout the Group, achieved in part by both permitting and encouraging wide participation in formal forums and processes.

Material employee ownership - staff share schemes

Material employee ownership is one of Investec's fundamental philosophies. As at 31 March 2002, management and staff held an effective interest in Investec Group Limited of approximately 20%. Ownership of the Group is devolved on employees through the staff share scheme, and participation in ownership by all employees is actively encouraged. The purpose of the staff share scheme is to promote an "esprit de corps" within the organisation, create an awareness of Investec's performance and provide an incentive to maximise individual and Group performance by allowing all staff to share in the risks and rewards of the Group.

The Group makes shares or debentures available to staff members through the underlying share trusts. The particular instrument used varies from time to time depending on taxation legislation and factors affecting the Group structure. Nevertheless, whatever the instrument chosen, its underlying value depends solely on the performance of the Group and stock market conditions.

At present the practice of the Group is to give all permanent staff members a share allocation in proportion to their annual package after completing six months of employment. In line with the objective of providing a long-term incentive for staff, participants may not deal in any shares acquired in terms of the scheme within two years of accepting them. Thereafter they may acquire them over a minimum or maximum period of a further three or eight years respectively. After the initial allocation referred to above, additional allocations are made to staff members at the discretion of Group management and depending on the individual performance of, and contribution made by, the respective staff members.

From July 2002, there are performance criteria relating to the vesting of instruments, granted after that date.

In addition to the staff share scheme, other incentive schemes are operated by the Group. While the objectives of such schemes are identical to the staff share scheme, membership of them is not extended to all staff members but to key members of the Group whom executive membership believe are in a position to add significant value to the Group. While housed in different structures from the staff share scheme, the underlying assets in them are Group instruments. Any benefits the members derive from such schemes thus totally depend on the performance of the Group.

Sustainability reporting

The Group is aware of the requirement as laid out by King II to report on its "triple bottom line". While the Group does report on, and implement processes regarding these non-financial matters, it is continually improving its reporting in this regard.

Investec has strategically focused on education, economic growth and entrepreneurship in addressing empowerment in society and the workplace. The Group's societal focus is on developing the skills pool of the country and the organisation. The historical make-up of the financial skills sector and the vast skills deficit created by years of systemic inequality within the formal education system in South Africa, will only be overcome with commitment, creativity, focus and hard work. Progress will require extensive investment in training and development, both with employees and in educational institutions. Further aspects of the Group's employment equity strategy concentrate on creating a learning environment, ensuring equal opportunity in recruitment and providing growth and development opportunities for all employees.

The Group recognises that the creation of a diverse workforce will better position it to meet the needs of a diverse client base and the challenges of a global economy. Within this context, the Investec Group in South Africa has developed an employment equity philosophy, which captures its employment equity objectives. Further details of the Group's employment equity, internal skills building, black economic empowerment, environmental and corporate social responsibility processes and initiatives are set out in the handout accompanying the Annual Report.

Annexure A
Directors

Corporate governance and the implementation of the Dual Listed Companies Structure

As discussed on page 26 in the 2002 Investec Group Annual Report, Investec was given permission in November 2001 to dual list the Group on the JSE and LSE. The implementation of the Dual Listed Companies structure has not, in any way, altered the Group's commitment to conducting its affairs in accordance with the highest standards of corporate governance. The directors continue to seek to comply with the requirements of all applicable guidelines on corporate governance, including the London Combined Code and the King II Code. They also seek to operate procedures required to comply with appropriate internal control aspects of all applicable corporate governance provisions, including the Combined Code in accordance with the Turnbull Report.

The board of Investec Limited and Investec plc will comprise the same persons and will consist of four executive directors and 9 non-executive directors. The details of the individuals who comprise the reconstituted board of directors, are set out below:

Executive Directors

Stephen Koseff, aged 50, Chief Executive Officer, BCom CA (SA) H Dip BDP MBA. Stephen joined Investec in 1980. He has had diverse experience within Investec as Chief Accounting Officer, and General Manager of Banking, Treasury and Merchant Banking. His directorships include the JSE Securities Exchange, South Africa, Investec Group Limited, Investec Bank Limited, Investec Bank (UK) Limited and The Bidvest Group Limited.

Bernard Kantor, aged 52, Managing Director. Bernard joined Investec in 1980. He has had diverse experience within Investec as a Manager of the Trading division, Marketing Manager and Chief Operating Officer. His directorships include Investec Group Limited, Investec Bank Limited and Investec Bank (UK) Limited.

Glynn Burger, aged 45, Executive Director responsible for Finance and Risk, MBL, B.Acc, CA (SA). Glynn joined Investec in 1980. He has had diverse experience within Investec as Chief Accounting Officer, Group Risk Manager and Joint Managing Director for South Africa. His directorships include Investec Bank Limited.

Alan Tapnack, aged 55, Executive Director, BCom, CA (SA). Alan practised as a chartered accountant and is a former partner of Price Waterhouse and former Managing Director of Grey Phillips Bunton Mundell and Blake. Alan joined Investec in 1991 and subsequently became Chief Executive Officer of Investec's UK operations. He is also responsible for Investec's Israeli operations. His directorships include Investec Bank (UK) Limited and Carr Sheppards Crosthwaite Limited.

Non-Executive Directors

Hugh S Herman, aged 61, Non-Executive Chairman, BA, LLB. Hugh practised as a lawyer before joining Pick 'n Pay, a leading South African supermarket group, where he became Managing Director. He joined Investec in 1994. His directorships include Investec Group Limited and Investec Bank (UK) Limited, and he is a non-executive director of Pick 'n Pay Holdings Limited and Pick 'n Pay Stores Limited.

John Abell, aged 70, Non-Executive Director, MA (Hons). John is former Chairman and Chief Executive of Orion Royal Bank and former Chairman of CIBC Wood Gundy Europe. His directorships include Investec Group Limited and Investec Bank (UK) Limited.

Sam E Abrahams, aged 63, Non-Executive Director, FCA CA (SA). Sam is a former international partner and South African Managing Partner of Arthur Andersen. His current directorships include Foschini Limited, Super Group Limited, Investec Group Limited and Investec Bank Limited.

George Alford, aged 54, Non-Executive Director, FCIS, FIPD, MSI. George was appointed Head of Private Banking at Kleinwort Benson Group in 1991 and is currently a senior adviser to the FSA. His directorships include Investec Group Limited and Investec Bank (UK) Limited.

Donn E Jowell, aged 60, Non-Executive Director, BCom, LLB. Donn is Chairman of Jowell Glyn & Marais Inc, the South African legal advisers to the company. His current directorships include Anglovaal Mining Limited, Comparex Holdings Ltd, Investec Group Limited and Investec Bank Limited and various other Investec companies.

Ian R Kantor, aged 55, Non-Executive Director, BSc (Eng), MBA. Ian is former Chief Executive of Investec Bank Limited, resigning in 1985 and relocating to the Netherlands. His current directorships include Insinger de Beaufort Holdings SA (where he is Chairman of the management board and in which Investec holds an 8,6% interest), Bank Insinger de Beaufort NV, Investec Group Limited, Investec Bank Limited and Investec Bank (UK) Limited.

Sir Chips Keswick, aged 62, Non-Executive Director. Sir Keswick is former Chairman of Hambros Bank Limited and Hambros PLC and a former director of Anglo American Plc and was on the Court of the Bank of England. His directorships include De Beers SA, De Beers Consolidated Mines Limited, IMI Plc, Persimmon Plc, Investec Group Limited and Investec Bank (UK) Limited.

Peter Malungani, aged 44, Non-Executive Director, BCom, MAP, LDP. Peter is Executive Chairman and founder of Peu Investment Group and Chairman of Phumelela Gaming and Leisure Limited. His current directorships include SA Rail Commuter Corporation Limited, Super Group Limited and Investec Bank Limited.

Peter R S Thomas, aged 57, Non-Executive Director, CA (SA). Peter is a chartered accountant and former Managing Director of The Unisec Group Limited. His current directorships include Investec Group Limited and Investec Bank Limited.

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Corporate Governance Principles in the Banks Act and Regulations including proposed amendments and in King II

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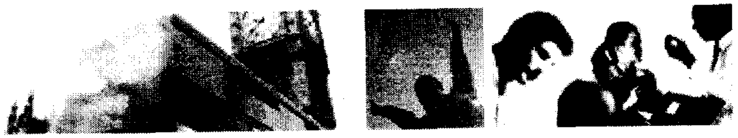

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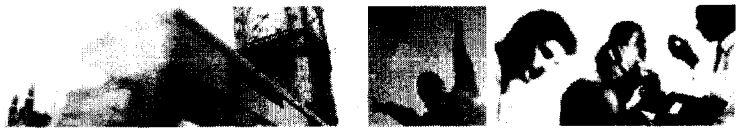
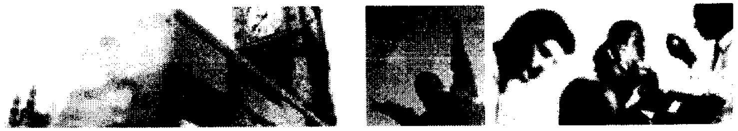
Commentary	Applies Y/N/NA	NOTE
<u>Some corporate governance principles</u> **I <u>The Board of directors</u>** **<u>The Banks Act</u>** 1 In terms of <u>s60</u> each director of a bank or controlling company shall: - stand in a fiduciary relationship to the bank or controlling company <u>(ss(1))</u>; - act honestly and in good faith, and, in particular, must exercise the powers he or she may have to manage or represent the bank exclusively in the best interests and for the benefit of the bank and its depositors or controlling company <u>(ss2(a))</u>; - in the performance of his or her functions as director of the bank or controlling company observe such guidelines and comply with such requirements as may be prescribed under <u>s90(1)(b)</u>.	Yes Yes Yes	
2 Not more than 49% of the directors of a bank shall be employees of the bank, its subsidiaries or controlling company and the vote of the directors of a board who are employees shall together not exceed 49% of the total vote cast by the directors present and voting at the meeting <u>(s60(3))</u>. Every bank shall, at least 30 days prior to the appointment of a new director, in writing furnish the Registrar with	Yes* Yes	***Investec Bank Limited** **23 directors of which 13 are non-executive directors** ***Investec Group Limited** **13 directors of which 9 are non-executives**



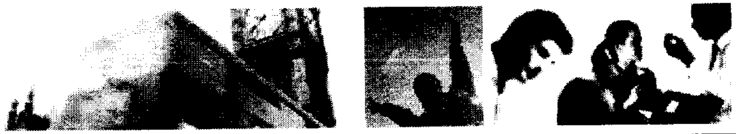
the prescribed information in respect of the proposed new director (s60(5)). The appointment of a director is not subject to the approval of the Registrar (s60(6)).		
3 The board of directors of a bank shall appoint at least three of its members to form an audit committee (s64(1)). All of the members of the audit committee may be, and the majority of such members, including the chairman of the audit committee, shall be, persons who are not employees of the bank nor any of its subsidiaries, its controlling company or any subsidiary of its controlling company (s64(3)).	Yes	**D Jowell, S Abrahams and P R Thomas (Non-Executive Directors)**
Regulations relating to banks		
Corporate Governance		
4 The board of directors of a bank is ultimately responsible for ensuring that an adequate and effective process of corporate governance, which is consistent with the nature, complexity and risk inherent in the bank's on-balance-sheet and off-balance-sheet activities and which responds to changes in the bank's environment and conditions, is established and maintained. The board of directors may appoint supporting committees to assist it with its responsibilities (reg 38(1)). The process of corporate governance includes the maintenance of effective risk management by a bank (reg 38(2)). In terms of reg 38(3), the conduct of the business of a bank entails the management of risks, which may include the following types of risks: (a) solvency risk; (b) liquidity risk; (c) credit risk; (d) currency risk;	Yes	**The board has appointed an Audit Committee, Board Risk Review Committee and a Nomination Committee to assist with its responsibilities.**

	(e) market risk (position risk); (f) interest-rate risk; (g) counterparty risk; (h) technological risk; (i) operational risk; (j) compliance risk; (k) any other risk regarded as material by the bank. The overall effectiveness of the process of corporate governance shall be monitored, on an ongoing basis, by the board of directors or by a committee appointed by the board of directors (reg 38(4)). The board of directors of a bank shall at least once a year assess and document whether the process of corporate governance implemented by the bank successfully achieves the objectives determined by the board (reg 38(5)).	Yes Yes	
5	Every director of a bank shall acquire a basic knowledge and understanding of the conduct of the business of a bank and of the laws and customs that govern the activities of the bank. Although not every member of the board of directors of a bank is required to be fully conversant with all aspects of the conduct of the business of a bank, the competence of every director of a bank shall be commensurable with the nature and scale of the business conducted by that bank and, in the case of a director of a controlling company, shall be commensurable with the nature and scale of the business conducted by the banks in the group (reg 39(1)). All directors and executive officers of a bank shall perform	Yes	

their functions with diligence and care and with such a degree of competence as can reasonably be expected from persons with their knowledge and experience (reg 39(2)). It shall be the duty of every director and executive officer of a bank to ensure that risks that are of necessity taken by such a bank in the conduct of its business are managed in a prudent manner (reg 39(3)). The directors of a bank shall report to the Registrar on the issues set out in reg 39(4)(a) – (c).	Yes Yes Yes	
Proposed amendments to the Banks Act		
6 6.1 The following definition of "corporate governance" may be introduced into section 1: " 'corporate governance', in relation to the management of a bank or a controlling company, includes all structures, processes, policies, systems and procedures whereby a bank or controlling company is governed with the objective of achieving its strategic and business objectives efficiently, effectively, ethically and equitably (within acceptable risk parameters); and in particular, but not exclusively, to ensure- (a) compliance with the strategic framework and guidance of the bank or controlling company; (b) commitment by executive officers of a bank or a controlling company to adhere to corporate behaviour that is universally recognised and accepted as correct and proper; (c) a balance of interests of the shareholders and other interested persons who may be affected by the conduct of directors or executive officers of a bank or a controlling company within a framework of effective accountability;	Yes Yes Yes Yes	



(d) that mechanisms and procedures are established and maintained to minimise or avoid potential conflicts of interests between the business interests of the bank or controlling company and the personal interests of directors or executive officers of such a bank or controlling company; (e) responsible conduct by the directors and executive officers of a bank or controlling company; (f) the achievement of the maximum level of efficiency and profitability of the bank within an acceptable risk profile for the bank or controlling company; (g) the timely accurate and meaningful disclosure of matters that are material to the business of the bank or controlling company or the interests of the shareholders or other interested persons in the bank or controlling company; (h) that the board retains control over the strategic and business direction of the bank or controlling company, whilst enabling its executives to manage the bank's or controlling company's operations and the achievement of the agreed strategic and business objectives; and (i) compliance with all applicable laws and regulations."	Yes Yes Yes Yes Yes	
6.2 S60 may be amended as follows: (a) by the substitution for subsection (1) of the following subsection: "(1) Each director, chief executive officer and executive officer of a bank owes a fiduciary duty and a duty of care and skill to the bank, of which such a person is a director, chief executive officer or executive officer."	Yes	



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(b) By the insertion after subsection (1) of s60(1A): "Each director, chief executive officer and executive officer of a bank owes a duty towards the bank to – (a) act bona fide for the benefit of the bank; (b) avoid any conflict between the bank's interests and the interests of such a director, chief executive officer or executive officer, as the case may be; (c) possess and maintain the knowledge and skill that may reasonably be expected of a person holding a similar appointment and carrying out similar functions as are carried out by the director, chief executive officer or executive officer of that bank; and (d) exercise such care in the carrying out of his or her functions in relation to that bank as may reasonably be expected of a diligent person holding the same appointment under similar circumstances, and who possesses both the knowledge and skill mentioned in paragraph (c) and any such additional knowledge and skill as the director, chief executive officer or executive officer in question may have."	Yes Yes Yes Yes	
6.3 In terms of a proposed new s60(1B) the Registrar may institute action in terms of s424 of the Companies Act against any director, CEO or executive officer of a bank who was knowingly a party to the carrying on of business of bank in the	Noted	

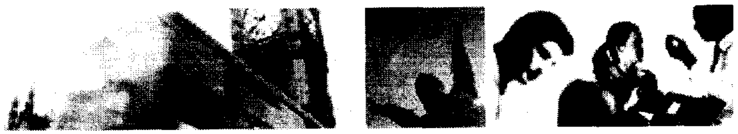
	manner envisaged in s424.		
6.4	The following definition of "director" may be introduced into section 1: "director" includes non-executive director and executive director unless expressly stated otherwise.	Noted	
6.5	The definition of "executive officer" may be amended to read: "executive officer", in relation to any institution: (a) that is not a bank includes any manager, a compliance officer, the secretary of the company and any director who is also an employee of such an institution; (b) that is a bank, includes any employee who is a director or who is in charge of a risk management function of the bank, the compliance officer, secretary of the company or any manager of the bank who is responsible, or reports, directly to the chief executive officer of the bank.	Noted Noted	
7 7.1	In terms of the proposed amendments: - a bank shall establish an independent compliance function as part of the risk management framework of the bank (s60A); - the board of directors and executive officers of a bank shall establish and maintain an adequate and effective process of corporate governance, which shall be consistent with the nature, complexity and risks inherent in the activities and the business of the bank concerned (s60B(1));	Yes Yes Yes	

bank concerned (s60B(1)); - a bank shall establish and maintain a process of corporate governance subject to such requirements and conditions as the Registrar may from time to time determine in the regulations relating to banks (s60B(2)); - the board of directors of a bank shall appoint at least three of its members, of which at least two members shall be non-executive, to form a *risk committee* (s64A); - the board of directors of a bank shall establish a *director's affairs committee*, the membership of which will consist only of the non-executive directors of a bank (s64B).	Yes No	**S E Abrahams, D E Jowell and P R S Thomas** **We do not have a directors' affairs committee at present but the responsibility is shared amongst other committees i.e. Nomination Committee, Audit Committee. Board as a whole retains responsibility for key matters of governance. This matter will be considered in the future.**
7.2 It is proposed to amend reg 1 as follows: (a) by the substitution for subregulation (2) of the following subregulation: "(2) In order to achieve the objective relating to the maintenance of effective risk management by banks and controlling companies, every bank and every controlling company shall have in place comprehensive risk-management processes and board-approved policies, and procedures to- (a) identify; (b) measure; (c) monitor; (d) control; and (e) report,	Yes	

amongst others, the risks referred to in regulation 38(3)." (b) by the substitution for subregulation (3) of the following subregulation: "(3) As a minimum, the risk-management processes, policies and procedures referred to in subregulation (2) shall- (a) be adequate for the size and nature of the activities of the bank or controlling company and shall periodically be adjusted in the light of the changing risk profile of the bank or controlling company, and external market developments; (b) clearly specify the business strategy of the reporting bank or the controlling company; (c) clearly specify the limits and allocated capital relating to the various risks; (d) be subject to adequate internal controls and appropriate internal audit coverage; (e) include appropriate board and senior management oversight."	Yes Yes Yes Yes Yes	
King II		

8 All companies should be headed by an effective board, which can both lead and control the company. It should have executive and non-executive directors (including independent directors) to the extent appropriate. The board has a collective responsibility to provide effective corporate governance that involves a set of relationships between the management of the company, its board, its shareowners and other relevant stakeholders (§1).[1] The board should be constituted in a manner that provides a balance between enterprise and control (§2). The board should comprise a balance of executive and non-executive directors, preferably with a majority of non-executive directors of whom sufficient should be independent of management for minority interests to be protected (§3). The board should be composed of individuals of integrity, who can bring a blend of knowledge, skills, objectivity, experience and commitment to the board under the firm and objective leadership of a chairperson (preferably an independent non-executive director), and who accepts the responsibilities and duties that the post entails, to provide the direction necessary for an effective board (§4). The board should be able to exercise objective judgment on the corporate affairs of the business enterprise, independent from management but with sufficient management information to enable a proper and objective assessment to be made by the directors collectively (§5).	Yes to all	
9 King II makes the following recommendations: - Every board should have a charter setting out its responsibilities, which should be disclosed in its annual report. At a minimum, the charter should confirm the board's responsibility for the adoption of strategic plans, monitoring	Yes	**Refer to Annual Report**

1 Section 1 Chapter 1 of King II.



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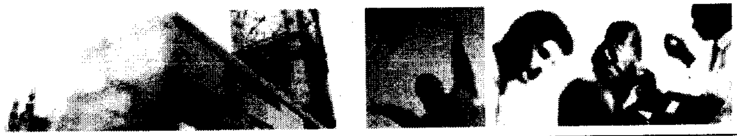
of operational performance and management, determination of policy and processes to ensure the integrity of the company's risk management and internal controls, communications policy, and director selection, orientation and evaluation.	Yes	
- The board should determine the company's purpose, values and stakeholders relevant to the business of the company and develop strategies combining all three elements. The board should ensure that procedures are in place to monitor and evaluate the implementation of its strategies, policies, senior management performance criteria and business plans.		
- In directing the company the board should exercise leadership, enterprise, integrity and judgment based on fairness, accountability, responsibility and transparency.	Yes Yes	
- The board must give strategic direction to the company, appoint the CEO and ensure that succession is planned.	Yes	
- The board must retain full and effective control over the company, and monitor management in carrying out board plans and strategies.	Yes	**Comprising of 4 executive directors and 9 non-executive directors**
- Companies should be headed by an effective board that can both lead and control the company. The board should comprise a balance of executive and non-executive directors, preferably with a majority of non-executive directors, of whom sufficient should be independent of management for shareowner interests (including minority interests) to be protected. An obvious consideration for South African companies would be to consider the demographics in relation to the composition of the board.	Yes	
- The board should ensure that the company complies with all relevant laws, regulations and codes of best business		

practice, and that it communicates with its shareowners and relevant stakeholders (internal and external) openly and promptly and with substance prevailing over form.	Yes	
- The board should regularly review processes and procedures to ensure the effectiveness of the company's internal systems of control, so that its decision-making capability and the accuracy of its reporting are maintained at a high level at all times.	Yes	
- The board should meet regularly, at least once a quarter if not more frequently as circumstances require, and should disclose in the annual report the number of board and committee meetings held in the year and the details of attendance of each director (as applicable).	Yes Yes	**This also includes non-executive directors**
- The board should define levels of materiality reserving specific powers to itself and delegating other matters with the necessary written authority to management. These matters should be monitored and evaluated on a regular basis.	Yes	**At this point in time the compliance manuals and staff manual address these issues.**
- The board should have unrestricted access to all company information, records, documents and property. The information needs of the board should be well-defined and regularly monitored.	Yes	
- The board should consider developing a corporate code of conduct that addresses conflicts of interest particularly relating to directors and management, which should be regularly reviewed and updated as necessary.	Yes	
- The board should have an agreed procedure whereby directors may, if necessary, take independent professional advice at the company's expense.	Yes	
- Efficient and timely methods should be determined for	Yes	



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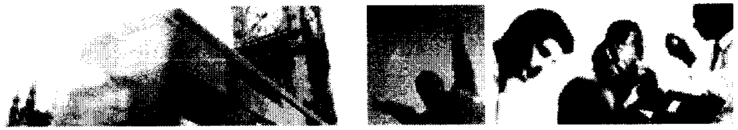
informing and briefing board members prior to meetings while each board member is responsible for being satisfied that, objectively, they have been furnished with all the relevant information and facts before making a decision.		
- Every board should consider whether or not its size, diversity and demographics make it effective.	Yes	
- Non-executive directors should have access to management and may even meet separately with management, without the attendance of executive directors. This should, however, be agreed collectively by the board usually facilitated by the non-executive chairperson or lead independent non-executive director.	Yes Yes	**Key performance indicators have been identified for most of the business units. These will be presented to the board for its annual review.** **Triple bottom line – full report published with annual report. The GRI guidelines are being reviewed.**
- The boards should ensure that each item of special business included in the notice of annual general meeting, or any other shareowners' meeting, is accompanied by a full explanation of the effects of any proposed resolutions.	Yes	
- The board must identify key risk areas and key performance indicators of the business enterprise. These should be regularly monitored, with particular attention given to technology and systems.	Yes	
- The board should identify and monitor the non-financial aspects relevant to the business of the company.		
- The board should record the facts and assumptions on which it relies to conclude that the business will continue as a going concern in the financial year ahead or why it will not, and in that case, the steps the board is taking.		
- The board must find the correct balance between conforming with governance constraints and performing an entrepreneurial way.		



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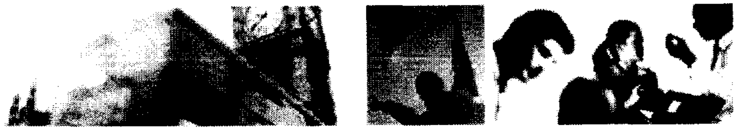
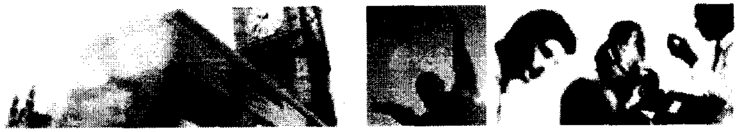
II **The chairperson**		
The Banks Act		
10 In terms of s64(3) the chairman of the board of directors shall not be appointed as a member of the audit committee.	Yes	
Regulations relating to banks		
11 The chairperson of the board of directors of a bank shall not be: - an employee of the bank, any of the subsidiaries of the bank, the controlling company of the bank or any subsidiary of the controlling company (reg 40(1)); - a member of the audit committee of the bank or the controlling company of the bank (reg 40(2)).	* Yes	***This issue is being discussed with Adv. Myburgh currently. We contend that H. Herman is non-executive but his full time employment, incentive bonus and investment in the group have been raised.**
12 The chairperson of the board of directors of a controlling company shall not be: - an employee of the controlling company or any bank in respect of which that company is registered as a controlling company (reg 40(3)); - a member of the audit committee of the controlling company or any bank in respect of which that company is registered as a controlling company (reg 40(4)).	* Yes	***This issue is being discussed with Adv. Myburgh currently. We contend that H. Herman is non-executive but his full time employment, incentive bonus and investment in the group have been raised.**
King II		
13 All boards should be subject to the firm and objective leadership of a chairperson who brings out the best in each director (§1).[2] The chairperson's primary function is to preside over the meetings of directors and to ensure the smooth functioning of the board in the interest of good governance. The chairperson will usually also		

[2] All references are to s1 Chapter 2 of King II.



interest of good governance. The chairperson will usually also preside over the company's shareowner meetings (§2). The role and function of the chairperson will be influenced by such matters as the size of particular circumstances of a company, the complexity of its operations, the qualities of the CEO, the management team, and the skills and experience of each board member. There are a number of common, core functions performed by the chairperson, which usually include:	Yes	
- providing overall leadership to the board without limiting the principle of collective responsibility for board decisions;	Yes	
- actively participating in the selection of board members, as well as overseeing a formal succession plan for the board, CEO and senior management;	Yes	
- arranging for new directors appointed to the board to be properly inducted and oriented, and monitoring and evaluating board and director appraisals;	Yes	
- determining, normally in conjunction with the CEO and the company secretary, the formulation of an annual work plan for the board against agreed objectives and goals, as well as playing an active part in setting the agenda for board meetings;	Yes	
- acting as the main informal link between the board and management, and particularly between the board and the CEO;	Yes	
- maintaining relations with the company's shareowners and perhaps, some of its important stakeholders, although the latter may be more in the nature of an operational issue to be conducted by the CEO and the senior management team;	Yes	
- ensuring that all directors play a full and constructive role in	Yes	

the affairs of the company and taking a lead role in removing non-performing or unsuitable directors from the board; and - ensuring that all the relevant information and facts, objectively speaking, are placed before the board to enable the directors to reach an informed decision.(§3)		
14 In principle it is better that the distinctive functions of chairperson and CEO are kept separate. The chairperson is primary responsible for the working of the board. The CEO's task is to run the business and to implement the policies and strategies adopted by the board (§4).	Yes	
15 King II contains the following *recommendations*: - there should be a clearly accepted division of responsibilities at the head of the company to ensure a balance of power and authority, so that no one individual has unfettered powers of decision-making; - the chairperson should preferably be an independent non-executive director; - the boards should appraise the performance of the chairperson on an annual or such other basis as the board may determine.	Yes No No	 **H. Herman is not independent** **Not formally done or disclosed**
III <u>Chief Executive Officer ("CEO")</u> **<u>King II</u>**		



16	The CEO has a critical and strategic role to play in the operational success of a company's business (§1)[3]. Some of the important functions that a CEO fulfils are usually to: - develop and recommend to the board a long-term strategy and vision for the company that will generate satisfactory levels of shareowner value and positive, reciprocal relations with relevant stakeholders; - develop and recommend the board annual business plans and budgets that support the company's long-term strategy; - strive consistently to achieve the company's financial and operating goals and objectives, and ensure that the day-to-day business affairs of the company are appropriately monitored and managed; - ensure continuous improvement in the quality and value of the products and services provided by the company, and that the company achieves and maintains a satisfactory competitive position with its industry(ies); - ensure that the company has an effective management team and to actively participate in the development of management and succession planning (including the chief executive officer's own position); - formulate and oversee the implementation of major corporate policies; and - serve as the chief spokesperson for the company. (§2)	Yes Yes Yes Yes Yes Yes Yes	
17	The CEO should also maintain a positive and ethical work climate that is conducive to attracting, retaining and motivating a diverse	Yes	

3 S1 Chapter 3 of King II.

group of top quality employees at all levels of the company. In addition, the CEO is expect to foster a corporate culture that promotes ethical practices, encourages individual integrity, and fulfil social responsibility objectives and imperatives (§3).	Yes	
18 One of the recommendations is that the chairperson, or a subcommittee appointed by the board, should appraise the performance of the CEO. The board should satisfy itself that an appraisal of the CEO is performed at least annually. The results of such appraisal should also be considered by the Remuneration Committee to guide it in its evaluation of the performance and remuneration of the CEO.	No	**The chairperson will consider this going forward.**
IV <u>Executive and non-executive directors</u>		
<u>The Banks Act, the regulations relating to banks and the proposed amendments</u>		
19 The Banks Act does not draw a distinction between executive and non-executive directors. The only distinction which is drawn is that between directors who are employees of the bank in <u>s60(3)</u> and <u>s64(3)</u> and, by implication, directors who are not employees.	Yes	
20 Similarly, no distinction is drawn between executive and non-executive directors in <u>regulations 38 and 39</u>.	Yes	
21 A similar situation will prevail if the proposed amendments are made to the Banks Act. The additional duties and obligations imposed, for example, in <u>s60(1A)</u>, to establish an independent compliance function (<u>s60A</u>), to establish and maintain an adequate and effective process of corporate governance (<u>s60B</u>) and to establish	Yes No	**We do not have a directors' affairs committee at present but the responsibility is shared amongst**

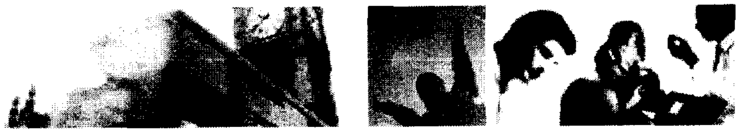
	the various new committees of a board, such as the risk committee and the directors' affairs committee, are shared equally between executive and non-executive directors.		**other committees i.e. Nomination Committee, Audit Committee. Board as a whole retains responsibility for key matters of governance. This matter will be considered in the future.**
22	It follows that the duties and obligations of directors in terms of the Banks Act, the regulations relating to banks and the proposed amendments are those of all directors, irrespective of whether they are executive or non-executive directors.	Yes	
<u>King II</u>			

23	Some of the recommendations of King II are the following:-
	- The board should ensure that there is an appropriate balance of power and authority on the board, such that no one individual or block of individuals can dominate the board's decision taking.
	- Non-executive directors should be individuals of calibre and credibility, and have the necessary skill and experience to bring judgment to bear independent of management, on issues of strategy, performance, resources, transformation, diversity and employment equity, standards of conduct, and evaluation of performance.
	- In the annual report, the capacity of the director should be categorised as follows:
	  - *Executive director* – an individual that is involved in the day-to-day management and/or is in full time salaried employment of the company and/or any of its subsidiaries.
	  - *Non-executive director* – an individual not involved in the day-to-day management and not a full-time salaried employee of the company or its subsidiaries. An individual in
		Yes
		Yes
		Yes
		Yes	

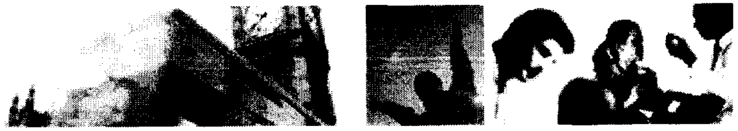
the full-time employment of the holding company or of its subsidiaries, other than the company concerned, would also be considered to be a non-executive director unless such individual by his/her conduct or executive authority could be construed to be directing the day-to-day management of the company and its subsidiaries.	Yes	
- *Independent director* – is a non-executive director who:		
(i) is not a representative of a shareowner who has the ability to control or significantly influence management;	Yes	
(ii) has not been employed by the company or the group of which it currently forms part, in an executive capacity for the preceding three financial years;	Yes	
(iii) is not a member of the immediate family of an individual who is, or has been, in any of the past three financial years, employed by the company or the group in an executive capacity;	Yes	**Ian Kantor is Bernard Kantor's brother**
(iv) is not a professional advisor to the company or the group, other than in a director capacity;	Yes	**D Jowell is a professional advisor**
(v) is not a significant supplier to or customer of the company or group;	Yes	**Our position re S Abrahams and P Thomas is that they are independent**
(vi) has no significant contractual relationship with the company or group; and	Yes	
(vii) is free from any business or other relationship which could be seen to materially interfere with the individual's capacity to act in an independent manner.	Yes	
- Executive directors should be encouraged to hold other non-executive directorships only to the extent that these do not interfere with their immediate management responsibilities. Non-	Yes	

executive directors should carefully consider limiting the number of appointments they take in that capacity in order to ensure that the companies on which they serve enjoy the full benefit of their expertise, experience and knowledge. - Levels of remuneration should be sufficient to attract, retain and motivate executives of the quality required by the board. - Companies should appoint a remuneration committee or such other appropriate board committee, consisting entirely or mainly of independent non-executive directors, to make recommendations to the board within agreed terms of reference on the company's framework of executive remuneration and to determine specific remuneration packages for each of the executive directors. This is ultimately, the responsibility of the board. This committee must be chaired by an independent non-executive director. In order to obtain input on the remuneration of the other executives the committee should consult the CEO who may attend meetings by invitation. However, a CEO should play no part in decisions regarding his/her own remuneration. - Companies should provide full disclosure of director remuneration on an individual basis, giving details of earnings, share options, restraint payments and all other benefits. - Performance-related elements of remuneration should constitute a substantial portion of the total remuneration package of executives in order to align their interests with the shareowners, and should be designed to provide incentives to perform at the highest operational standards. - Share options may be granted to non-executive directors but must be the subject of prior approval of shareowners (usually at the annual general meeting) having regard also to the specific	Yes Yes Yes Yes No Yes No Yes	**Detail provided will need enhancement** **Not done historically** **Will need to enhance extent of disclosure**

	requirements of the Companies Act. Because of the apparent dilution of "independence", in some international markets the view is that non-executive directors should preferably receive shares rather than share options. - The overriding principle of full disclosure by directors, on an individual basis, should apply to all share schemes and any other incentive schemes proposed by management. - It is not considered appropriate that an executive director's fixed-term service contract, if any, should exceed three years. If so, full disclosure of this fact with reasons should be given, and the consent of shareowners should be sought. - Companies should establish a formal and transparent procedure for developing a policy on executive remuneration, which should be supported by a Statement of Remuneration Philosophy in the annual report.	Yes	
V	**<u>Committees of the board of a bank</u>**		
A	**<u>Introductory</u>**		
24	King II makes the following recommendations in regard to board committees (<u>at p69</u>): - There should be a formal procedure for certain functions of the board to be delegated, describing the extent of such delegation, to enable the board to properly discharge its duties and responsibilities and to effectively fulfil its decision taking process. - Board committees with formally determined terms of reference, life span, role and function constitute an important element of this process, and should be established with clearly agreed upon reporting procedures and scope of authority	Yes Yes Yes	



authority. - As a general principle, there should be transparency and full disclosure from the board committee to the board, except where the committee has been mandated otherwise by the board. - At a minimum, each board should have an audit and a remuneration committee. Industry and company specific issues will dictate the requirements for other committees. - Non-executive directors must play an important role in board committees. - All board committees should preferably be chaired by an independent non-executive director, whether this is the board chairperson or some other appropriate individual. The exception should be a board committee fulfilling an executive function. - Board committees should be free to take independent outside professional advice as and when necessary. - Committee composition, a brief description of its remit, the number of meetings held and other relevant information should be disclosed in the annual report. The chairpersons of the board committees, particularly those in respect of audit, remuneration and nomination, should attend the company's annual general meeting. - Board committees should be subject to regular evaluation by the board to ascertain their performance and effectiveness.	Yes Yes Yes Yes Yes Yes	
B **<u>Audit Committee</u>**		
<u>Banks Act</u>		
25 The board of directors of a bank shall appoint at least three of its	Yes	



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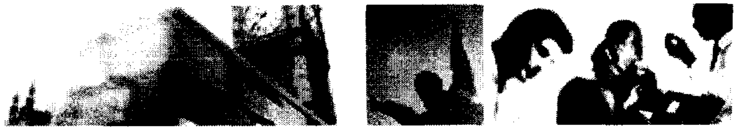
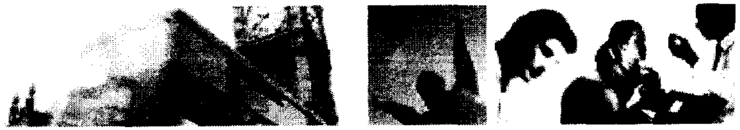
member to form an audit committee (s64(1)). The functions of the audit committee shall be to: - assist the board of directors in its evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied within the bank in the day-to-day management of its business; - facilitate and promote communication, regarding the matters referred to above or any other matter, between the board of directors and the executive officers of, the external auditor and the employee charged with the internal auditing of the transactions of, the bank; and - introduce such measures as in the committee's opinion may serve to enhance the credibility and objectivity of financial statements and reports prepared with reference to the affairs of the bank (s64(2)); - all the members of the audit committee may be, and the majority of such members, including the chairman of the audit committee shall be, persons who are not employees of the bank nor any of its subsidiaries, its controlling company or any subsidiary of its controlling company: provided that the chairman of the board of directors of a bank shall not be appointment as the chairman of the audit committee (s64(3)).	Yes Yes Yes Yes Yes	
Regulations relating to banks		
26 The chairperson of the board of directors of a bank shall not be a member of the audit committee of the bank or the controlling company of the bank nor shall the chairperson of the board of directors of a controlling company be a member of the audit	Yes	



committee of the controlling company or any bank in respect of which that company is registered as a controlling company (reg 40(2) and (4)).		
Proposed amendments to the Banks Act		
27 The only material amendment is to s64(2) by the addition of the following function of the audit committee, namely: "Perform such further functions as may be prescribed".	Noted	
King II		
28 King II contains the following *recommendations*: - The board should appoint an audit committee that has a majority of independent non-executive directors. The majority of the members of the audit committee should be financially literate. - The audit committee should select a chairperson that is an independent non-executive director. The chairperson of the audit committee should be selected without cronyism or tokenism, be acknowledgeable of the status of the position, have the requisite business, financial and leadership skills, and be a good communicator. - The board chairperson should not chair the audit committee. In addiction, the better view is that the board chairperson should not be a member of the audit committee at all but could be invited to attend meetings as necessary by the chairperson of that committee. The board should consider whether or not it is desirable for the CEO to a member of the audit committee, or to attend only by invitation.	Yes Yes Yes Yes Yes Yes	**Stephen Koseff attends only by invitation**

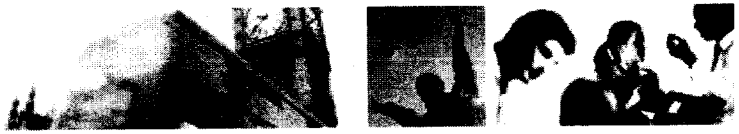
- The audit committee should have written terms of reference, dealing adequately with its membership, authority and duties. The terms should be confirmed by the board and shareowners should, on request, be able to obtain a copy of the current terms of reference of the audit committee at the company's registered office.	Yes Yes Yes	
- The audit committee should review: - the functioning of the internal control system; - the functioning of the internal audit department; - the risk areas of the company's operations to be covered in the scope of the internal and external audits; - the reliability and accuracy of the financial information provided to management and other users of financial information; - any accounting or auditing concerns identified as a result of the internal or external audits; and - the company's compliance with legal and regulatory provisions, its articles of association, code of conduct, by-laws and the rules established by the board.	Yes Yes Yes Yes	
- The duties of the audit committee include reviewing the scope and results of the external audit and its cost effectiveness, as well as the independence and objectivity of the external auditors. Where the auditors supply non-audit services to the company, the audit committee should review the nature and extent of such services, seeking to balance the maintenance of objectivity and value for money.	Yes	
- Companies should avoid opinion shopping in regard to audit opinions. The audit committee can prevent opinion shopping by acting as arbiter between management and the external	Yes	



	auditors when there is a disagreement over accounting policies or disclosure in the financial statements. The audit committee should enquire whether or not opinion shopping has occurred on issues within the scope of its activities. Where opinion shopping has occurred, the reasoning for the opinion adopted should be obtained. - The audit committee should draw up a recommendation to the board for consideration and acceptance by the shareowners for the appointment of the external auditors. - Companies should, in their annual report, disclose whether or not the audit committee has adopted formal terms of reference and, if so, whether or not the committee satisfied its responsibilities for the year in compliance with those terms. - Membership of the audit committee should be disclosed in the annual report. The chairperson of the committee should be available at the annual general meeting to answer questions about its work. - The audit committee's activities and effectiveness should be assessed periodically and reviewed with the board.	Yes Yes Yes	
C	**<u>Nomination Committee / Directors' Affairs Committee</u>**		
29	Neither the Banks Act, nor the regulations relating to banks provide for the establishment of a nomination committee or directors' affairs committee.	Noted	
<u>King II</u>			

30	According to King II, a board should plan for its own continuity and succession (§1).[4] All boards should adopt a process of staggered continuity and re-election of their boards to ensure continuity of experience and knowledge (§2). The board should select, appoint, induct, develop and remove board members as and when necessary. Incompetent or unsuitable directors (including those who fail to attend meetings without proper explanation), should be removed (§3).	Yes	
31	In appropriate circumstances, a *nomination committee* can provide a useful forum in which to assist the board to identify suitable candidates for consideration. In looking at the skills mix for a board, there are three dimensions of board effectiveness requiring consideration: - the knowledge or information required to fill a significant gap on the board; - the capacity of an individual to influence preferred outcomes (internally and externally) through their involvement on the board; - the extent to which an individual has the opportunity or availability to meaningfully contribute their time and abilities to the affairs of the board (§4).	Yes	
32	The nomination committee could fill broader functions by maximising the collective wisdom of the non-executive directors serving on the committee (which should comprise a majority of independent non-executive directors). Increasingly, the nominating process for new directors has been incorporated into a board		

[4] Section 1 Chapter 5 of King II



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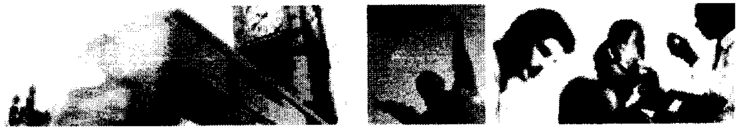
	committee dealing with a range of corporate governance issues referred to it by the board. The name of the committee could be the Corporate Governance Committee (§5).		
33	King II contains these recommendations:		
	- Procedures for appointments to the board should be formal and transparent, and a matter for the board as a whole, assisted where appropriate by a nomination committee. This committee should constitute only non-executive directors, of whom the majority should be independent, and be chaired by the board chairperson.	Yes	
	- Board continuity, subject to performance and eligibility for re-election, is imperative, and a programme ensuring a staggered rotation of directors should be put in place by the board to the extent that this is not already regulated.	Yes	
	- The board should establish a formal orientation programme to familiarise incoming directors with the company's operations, senior management and its business environment, and to induct them in their fiduciary duties and responsibilities. Directors should receive further briefings from time to time on relevant new laws and regulations as well as on changing commercial risks.	Yes	
	- New directors with no or limited board experience should receive development and education to inform them of their duties, responsibilities, powers and potential liabilities.	Yes	
	- The company secretary, in consultation with the chairperson, should play a substantial role in the orientation process for directors, and in attending to any educational or development requirements.	Yes	
	- The board, through the nomination committee or similar	Yes	

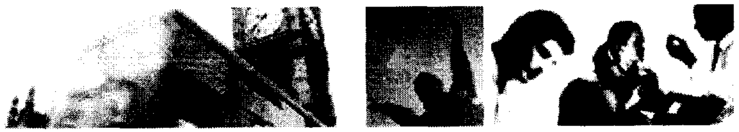
board committee, should regularly review its required mix of skills and experience and other qualities such as its demographics and diversity in order to assess the effectiveness of the board. This should be by means of a self evaluation of the board as a whole, its committees and the contribution of each individual director. - The evaluations should be conducted at least annually.	No	The chairman will address this issue
The proposed amendments to the Banks Act		
34 The amendments propose the establishment of a directors' affairs committee which seems to embrace the King II recommendation of a nomination or Corporate Governance Committee: "Director's Affairs Committee s64B (1) Subject to the provisions of subsection (3), the board of directors of a bank shall establish a director's affairs committee, of which the composition shall consist of all the non-executive directors of the bank. (2) The functions of the director's affairs committee shall be to- (a) assist the board of directors in its determination and evaluation of the adequacy, efficiency and appropriateness of the corporate governance of the bank; (b) establish and maintain a board directorship continuity programme to include the following: (i) the review of performance and succession planning of executive directors; (ii) the continuity of non-executive directors	No	**We do not have a directors' affairs committee at present but the responsibility is shared amongst other committees i.e. Nomination Committee, Audit Committee. Board as a whole retains responsibility for key matters of governance. This matter will be considered in the future.**

	(iii) a regular review of the composition of the board of directors, including the skills, experience and other qualities required to enhance the effectiveness of the board of directors; and (iv) an annual self-assessment of the board of directors as a whole and of the contribution of each individual director, which self-assessment shall be co-ordinated by the chairperson of the board. (c) assist the board of directors in the nomination of successors to the key positions in the bank and ensuring that a management succession plan is in place and; (d) perform such further functions as may be prescribed by the Registrar from time to time in the Regulations relating to banks."		
D	**<u>Risk Committee</u>**		
35	The Banks Act and the regulations relating to banks do not require the establishment of a risk committee.	Noted	
36	The amendments propose the insertion after <u>s64</u> of the following: "<u>Risk Committee</u> 64A (1) Subject to the provisions of subsection (3), the board of directors of a bank shall appoint at least three of its members to form a risk committee. (2) The functions of the risk committee shall be to- (a) assist the board of directors in its	Yes Yes	

evaluation of the adequacy and efficiency of the risk policies, procedures, practices and controls applied within that bank in the day-to-day management of its business;	Yes	
(b) assist the board in the identification of the build up and concentration of risk, including reputational, technological, legal and product risk, to which the bank is exposed;	Yes	
(c) assist the board of directors in developing risk mitigation strategy to ensure that the bank manages the risks in an optimum manner;	Yes	
(d) assist the board of directors in ensuring that a formal risk assessment is undertaken at least annually;	Yes	
(e) assist the board in identifying and regularly monitoring all key risks and key performance indicators to ensure that its decision-making capability and accuracy of its reporting and financial results are maintained at high levels at all times;	Yes	
(f) facilitate and promote communication, through reporting structures regarding the matters referred to in paragraph (a) or any other related matter, between	Yes	**Group Risk Management Function**



the board of directors and the executive officers of the bank; (g) ensure the establishment of an independent risk management function, and in the case where the bank forms part of a group, a group risk management function, including the international activities of that group, the head of which will act as the reference point pertaining all aspects relating to risk management within the bank, including the responsibility to arrange training to members of the board of directors in the different risk areas that the bank is exposed to;	Yes	
(h) introduce such measures as in the committee's opinion may serve to enhance the adequacy and efficiency of the risk management policies, procedures, practices and controls applied within that bank;	Yes	
(i) co-ordinate the monitoring of the efficiency and effectiveness of the risk management policies, procedures, practices and controls applied within the bank or banking group on a globalised basis; and (j) perform such further functions as may be prescribed by the Registrar from time to time in the Regulations relating to	Yes	



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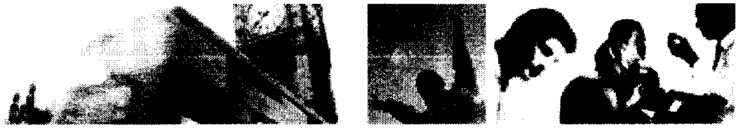
Banks."		
King II		
37 King II contains the following recommendations in section 2 on risk management: Chapter 1: Introduction and Definition: - The board must decide the company's appetite or tolerance for risk – those risks it will take and those it will not take in the pursuit of its goals and objectives. The board has the responsibility to ensure that the company has implemented an effective ongoing process to identify risk, to measure its potential impact against a broad set of assumptions, and then to activate what is necessary to proactively manage these risks. - Risk management and internal control should be practised throughout the company by all staff, and should be embedded in day-to-day activities. - The board should make use of generally recognised risk management and internal control models and frameworks in order to maintain a sound system of risk management and internal control to provide reasonable assurance regarding the achievement of organisational objectives with respect to: - the effectiveness and efficiency of operations; - the safeguarding of the company's assets (including information); - compliance with applicable laws, regulations and supervisory requirements; - supporting business sustainability under normal as well as adverse operating conditions;	Yes Yes Yes Yes Yes to all Yes	



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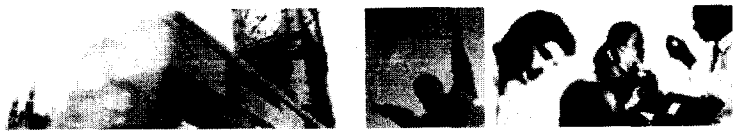
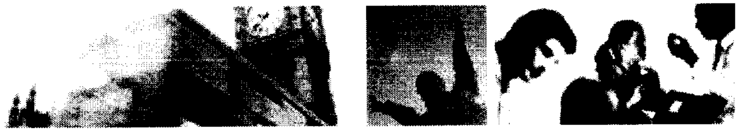
- the reliability of reporting; and - behaving responsibly towards all stakeholders. - Risk should not only be viewed from a negative perspective. The review process may identify areas of opportunity, such as where effective risk management can be turned to competitive advantage.		
<u>Chapter 2: Responsibility for Risk Management</u> - The board is responsible for the total process of risk management, as well as for forming its own opinion on the effectiveness of the process. Management is accountable to the board for designing, implementing and monitoring the process of risk management, and integrating it into the day-to-day activities of the company. - The board should set the risk strategy policies in liaison with the executive directors and senior management. These policies should be clearly communicated to all employees to ensure that the risk strategy is incorporated into the language and culture of the company. - The board is responsible for ensuring that a systematic, documented assessment of the processes and outcomes surrounding key risks is undertaken at least annually for the purposes of making its public statement on risk management. It should, at appropriately considered intervals, receive and review reports on the risk management process in the company. This risk assessment should address the company's exposure to at least the following: - physical and operational risks; - human resource risks; - technology risks;	Yes Yes Yes Yes to all	



- business continuity and disaster recovery; - credit and market risks; and - compliance risks. - A board committee, either a dedicated committee or one with other responsibilities should be appointed to assist the board in reviewing the risk management process and the significant risks facing the company. - The board is responsible for disclosures in relation to risk management in the annual report and should acknowledge that it is accountable for the risk management procedures. - The internal audit function should not assume the functions, systems and processes of risk management, but should be used to provide independent assurance in relation to management's assertions surrounding the effectiveness of risk management and internal control. If a compliance function exists it will provide assurance in relation to compliance with applicable laws, regulations and supervisory requirements.	Yes Yes Yes Yes	**Board Risk Review Committee**
Chapter 3: Assimilating risk to the control environment - A comprehensive system of control should be established by the board to ensure that risks are mitigated and that the company's objectives are attained. The control environment should also set the tone of the company and cover ethical values, management's philosophy and the competence of employees. - Risks should be assessed on an on-going basis, and control activities should be designed to respond to risks throughout the company. Pertinent information arising from the risk assessment, and relating to control activities, should be identified, captured and communicated in a form and	Yes Yes Yes	**The board is responsible for the total process of risk management and the systems of internal control and has implemented a number of committees to assist in this regard.** **Corporate culture of risk awareness and control is embedded in day to day activities.** **There are sufficient ongoing processes, which have steadily improved over the years, for identifying, assessing, controlling and monitoring the significant risks faced by the group.**

timeframe that enables employees to carry out their responsibilities properly. These controls should be monitored by both line management and assurance providers.	Yes	**Line management and assurance providers such as Internal Audit and operational Risk monitors controls on an ongoing basis.**
- Companies should develop a system of risk management and internal control that builds more robust business operations. The systems should demonstrate that the company's key risks are being managed in a way that enhances shareowners' and relevant stakeholders' interests. The system should incorporate mechanisms to deliver:	Yes Yes to all	
- a demonstrable system of dynamic risk identification; - a commitment by management to the process; - a demonstrable system of risk mitigation activities; - a system of documented risk communications; - a system of documenting the costs of non-compliance and losses;		
- a documented system of internal control and risk management; - an alignment of assurance efforts to the risk profile; and - a register of key risks that could affect shareowner and relevant stakeholder interests.	Yes	**As per Investec's Risk Management's process. Key Risk areas focused on is: Credit, Market, Operational, Reputational , Liquidity, Interest Rate, Country risk, etc.**
- The board must identify key risk areas and key performance indicators of the company, and monitor these factors as part of a regular review of processes and procedures to ensure the effectiveness of its internal systems of control, so that its decision-making and the accuracy of its reporting are maintained at a high level at all times.	Yes/No	**In the process of being formalised in SA. In place in the UK.**
- In addition to the company's other compliance and enforcement activities, the board should consider the need for a confidential reporting process ("whistleblowing")		

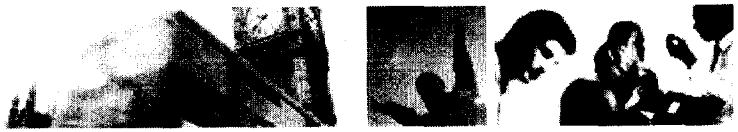
covering fraud and other risk areas.		
Chapter 4: Application of Risk Management - Reports from management to the board should provide a balanced assessment of the significant risks and the effectiveness of the system of internal control in managing those risks. Any significant control failings or weaknesses identified should be covered in the reports, including the impact that they have had, or may have had on the company, and the actions being taken to rectify them.	Yes	**Reporting is done through the various Board Sub committees.**
- The board is responsible for disclosures in relation to risk management and should, at a minimum, disclose: - that it is accountable for the process of risk management and the system of internal control, which is regularly reviewed for effectiveness, and for establishing appropriate risk and control policies and communicating these throughout the company;	Yes	
- that there is an ongoing process for identifying, evaluating and managing the significant risks faced by the company, which has been in place for the year under review and up to the date of approval of the annual report and accounts;	Yes	
- that there is an adequate and effective system of internal control in place to mitigate the significant risks faced by the company to an acceptable level. Such a system is designed to manage, rather than eliminate, the risk of failure, or to maximise the opportunity to achieve business objectives. This can only provide reasonable, but not absolute, assurance;	Yes Yes	
- that there is a documented and tested process in	N/A	



place that will allow the company to continue its critical business processes in the event of a disastrous incident impacting on its activities; - where material joint ventures and associates have not been dealt with as a part of the group for the purposes of applying these recommendations. Alternative sources of risk management and internal control assurance applied to these activities should be disclosed, where these exist; - any additional information in the annual report to assist understanding of the company's risk management processes and system of internal control, as appropriate; and - where the board cannot make any of the disclosures set out above, it should state this fact and provide a suitable explanation.	Yes Yes	**Under the Risk Management section** **Full disclosure**
VI **<u>Internal audit</u>**		
38 The Banks Act, the regulations relating to banks and the proposed amendments do not deal expressly with internal audit.	Noted	
<u>King II</u>		
39 Section 3 of King II contains the following recommendations: - Internal audit is an independent, objective assurance and consulting activity designed to add value and improve a company's operations. It helps a company accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.	Yes	

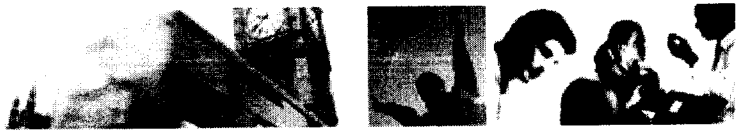
Investec

- An effective internal audit function should provide: - assurance that the management processes are adequate to identify and monitor significant risks; - confirmation of the effective operation of the established internal control systems; - credible processes for feedback on risk management and assurance; and - objective confirmation that the board receives the right quality of assurance and information from management and this information is reliable. - Companies should have an effective internal audit function that has the respect and co-operation of both the board and management. - Consistent with the Institute of Internal Auditors' ("IIA") definition of internal auditing, in an internal audit charter approved by the board, the purpose, authority and responsibility of the internal audit activity should be formally defined. - Internal audit should report at a level within the company that allows it fully to accomplish its responsibilities. The head of internal audit should report administratively to the CEO, and should have ready and regular access to the chairperson of the company and the chairperson of the audit committee. - Internal audit should report at all audit committee meetings. - The appointment or dismissal of the head of internal audit should be with the concurrence of the audit committee.	Yes Yes Yes Yes Yes Yes Yes Yes Yes	



VII Compliance function		
Banks Act		
40 The Banks Act does not contain any provisions relating to the compliance function.	Noted	
Regulations relating to compliance function		
41 In terms of reg 47(1), a bank shall establish an independent compliance function as part of its risk-management framework, in order to ensure that the bank continuously manages its regulatory risk, that is, the risk that the bank does not comply with applicable laws and regulations or supervisory requirements. The compliance function must be headed by a compliance officer (sub reg (2)), who must have senior executive status in the bank, have direct access to and demonstrable support from the CEO of the bank, and function independently from functions such as internal audit and should be demonstrably independent (sub reg (4)). The primary responsibility for compliance with the provisions of the Banks Act and the regulations nevertheless remains with the directors and executive officers (sub reg (5)).	Yes Yes Yes Yes	
Proposed amendments		
42 The proposal is to insert s60A after s60. In terms of s60A, a bank shall establish an independent compliance function as part of the risk management framework of the bank. The compliance function shall be headed by a compliance officer (ss(2)). The compliance officer must perform the duties of a compliance officer subject to such requirements and conditions as the Registrar may from time to time determine in the regulations relating to banks (ss(3)).	Yes Yes Yes	

VIII <u>External Auditors</u>		
<u>The Banks Act</u>		
43 The appointment of the auditor of a bank must be approved by the Registrar (<u>s61(1)(a)</u>). If the assets of a bank exceed R10 billion at the close of its last preceding financial year, a bank must appoint two auditors who are independent of each other (<u>s61(1)(b)</u>).	Yes	
44 The auditor of a bank is obliged to inform the Registrar: - of an irregularity or suspected irregularity in the conduct of the affairs of the bank for which he has been appointed as auditor; - of any matter relating to the affairs of a bank which, in the opinion of the auditor, may endanger the bank's ability to continue as a going concern or may impair the protection of the funds of the bank's depositors or may be contrary to the principles of sound management (including risk management) or amounts to inadequate maintenance of internal controls (<u>s63(1)(a) and (b)</u>).	**Yes**	
<u>Regulations relating to banks</u>		
45 The external auditors of a bank shall annually review the process followed by the board of directors in assessing the corporate governance arrangements, including the management of risk, and report to the Registrar whether any matters have come to their attention to suggest that they do not concur with the findings reported by the board of directors. If the auditors do not concur with the findings of the board of directors, they shall provide reasons therefore (<u>reg 38(6)</u>).	Yes	



46 In terms of <u>reg 39(4)(d)</u>, the external auditors of a bank shall annually report to the Registrar whether or not they concur with the reports submitted by the directors of a bank to the Registrar in <u>reg 39(4)(a) and (b)</u>, namely: (a) whether or not: - the bank's internal controls provide reasonable assurance as to the integrity and reliability of the financial statements and safeguard, verify and maintain accountability of the bank's assets; - the internal controls are based on established policies and procedures and are implemented by trained, skilled personnel, whose duties have been segregated appropriately; - adherence to the implemented internal controls as continuously monitored by the bank; - all bank employees are required to maintain high ethical standards, thereby ensuring that the bank's business practices are conducted in a manner that is above reproach; - anything has come to the directors' attention to indicate that any material malfunction, as defined and documented by the board of directors, which definition has to be submitted to the Registrar, in the functioning of controls, procedures and systems has occurred during the period under review; (b) whether there is no reason to believe that the bank will not be a going concern in the year ahead and should there be reason to believe so, such reason shall be disclosed and explained.	Yes	

Investec

47 In terms of reg 45, the auditor of a bank shall furnish various reports to the Registrar: - on the bank's financial position and the results of its operations (sub reg (1)); - whether, in the auditor's opinion, the information contained in the returns at year-end in all material respects were complete or accurate or in accordance with the directives and instructions of the Banks Act and the regulations (sub reg (2)); - on any significant weaknesses in the system of internal controls relating to financial regulatory reporting and compliance with the Banks Act and the regulations (sub reg (3)); - on any significant weaknesses in the system of internal controls that came to the auditor's attention while performing the necessary auditing procedures as regards the policies, practices and procedures of a bank relating to the granting of loans, making of investments, ongoing management of the loan and investment portfolios, and loan provisions and reserves (sub reg (4)).	Yes	
Proposed amendments		
48 The proposed amendments do not appear to impact on the role of the external auditors, save that, in terms of the proposed amendment to s61: - it is proposed that s61(1)(b) be amended to delete the amount of R10 billion as the trigger for the appointment of two auditors to a bank and to provide that the amount be		

prescribed by regulation; - it is proposed that the following subsection be inserted after s61(5): "(6) A person appointed under subsection (4) as auditor of a bank shall be appointed for such a period and on such conditions as may be prescribed."		
King II		
49 The external audit provides an independent and objective check on the way in which the financial statements have been prepared and presented by the directors when exercising their stewardship to the stakeholders. An annual audit is an essential part of the checks and balances required, and is one of the cornerstones of corporate governance. (§1.1)[5] While external auditors have to work with management, they must be objective and consciously aware of their accountability to the shareowners. An audit committee, comprising a majority of non-executive directors with an independent non-executive director chairperson, can maintain the objectivity between the auditors and management. Differences of opinion between the two can be aired, discussed and overcome in that committee. The auditors should also be able to turn to the non-executive directors in regard to any concerns they may have about the company or its business (§1.2). Auditors, through their audit activities, have an important impact on the quality of the internal control system and may recommend improving internal controls (§1.3). Auditors should observe the highest standards of business and professional ethics (§1.5).	Yes Yes Yes	

5 Section 5 Chapter 1 of King II.

50	One of the *recommendations* is that the audit committee should consider whether or not an interim report should be subject to an independent review by the external auditor.	Yes	
51	The roles and responsibilities of external and internal auditors are different. External auditors have a statutory duty to report their independent opinion to the shareowners, on the company's financial statements, and to consider statutory requirements and standards for financial reporting, as well as auditing. This contrasts with the internal audit, which is a service to the company focussing on the system of internal control and which reports to the executive management and the audit committee (§4.1). The degree of reliance that the external auditors may wish to place upon an internal audit function should be maximised by dialogue and co-ordination. *These matters could be formalised by an audit* "partnership" (§4.3).	Yes Yes	

Annexure "F4"

CORPORATE GOVERNANCE STATEMENT OF NEDCOR BANK LIMITED

ANNEXURE F4

NEDCOR

Corporate governance

Corporate governance philosophy, strategy and objectives

'The landscape of corporate governance, both locally and internationally, has changed dramatically in recent times.

'Nedcor believes that investors and all other stakeholders will now ascribe a governance premium to companies that have high-quality reporting and governance, and a corresponding governance discount to those that are found wanting.

'The new Nedcor Group's governance strategy, objectives and structures have been designed to ensure that the group earns its governance premium.' **Chris Liebenberg**

Enhanced corporate governance strategy

In tandem with the arrival of Legal Day One on 1 January 2003 (the day on which the merger of the banking licences within the group occurred) for the new Nedcor Group, an enhanced process, structure and strategy for corporate governance were implemented.

The following summarises the salient aspects of these enhancements.

New risk management strategy

Regulation 1 of the Banks Act states that the objective of the regulations '. . . is to provide for the establishment of basic principles relating to the maintenance of effective risk management . . .'. Regulation 38 states that the '. . . process of corporate governance includes the maintenance of effective risk management'. The King Report on Corporate Governance 2002 ('King II' or 'the code') contains comprehensive references to and requirements with respect to risk management. The proposed new Basel Capital Accord ('Basel II') will enforce internationally a significant increase in risk management sophistication and reporting.

Risk management in the financial services industry is now accepted as being of fundamental strategic importance to profitability, growth and long-term sustainability. It is a dynamic process that is constantly evolving.

Nedcor has adopted a new risk management strategy and methodology, enterprise-wide risk management, which has the principles of corporate governance best practice embedded in its foundation. See the Risk management section of this report for a comprehensive discussion on this.


Adv Selby Baqwa
Head Corporate Governance

Corporate governance executive office established

The group was proud to announce, in the second half of 2002, the appointment of Selby Baqwa to establish an executive office championing corporate governance on a day-to-day basis across the group.

Significantly, though, Selby reports directly to the Chairman of the Nedcor Board of Directors on all aspects related to corporate governance. Selby is an official invitee to all board and board committee meetings.

Corporate governance continued

Specifically Selby's role is:

- in conjunction with the Company Secretary, to place a strong focus on the corporate governance role, duties and responsibilities of the board and individual directors, from both an advisory and a compliance with best practice perspective;
- to set up a corporate governance unit focused on championing and driving, with the guidance and support of the new Social and Environment Board Committee, the principles of good corporate citizenship and measurement of the group's non-financial performance, resulting in the achievement of a balanced and integrated economic, social and environmental performance (triple bottom line), which is further outlined in the Risk Management section of this report under the heading 'Non-financial risks and corporate citizenship';
- to interact with and actively support, through his direct report line to the board, the other key roleplayers in the group championing corporate governance, eg the new Group Risk Division responsible for inter alia championing enterprise-wide risk management implementation and providing audit and compliance assurance, and the Investor Relations and Group Communications Units addressing stakeholder engagement and rising disclosure and reporting standards;
- to review and consult on the corporate governance practices and processes in Nedcor's alliances, and report on these to the board; and
- to assess and report to the board on the overall corporate governance process in the group – strategically and not just in respect of formal compliance with specific requirements.

Enhanced internal audit and compliance governance functions

Two key internal functions of the corporate governance system in the group are performed by Internal Audit and Compliance.

Internal Audit

Internal Audit in Nedcor performs an effective independent appraisal function that examines and evaluates the group's activities. The purpose, authority and responsibility of the function are formally defined in line with the definition of internal auditing of the Institute of Internal Auditors in a charter approved by the board.

Internal Audit reports at meetings of the Group Audit, Risk and Compliance ('ARC') Committee and has unrestricted access to the chairman of that committee, the Chief Executive and the Chairman of the board. Functionally, Internal Audit reports to the Chief Risk Officer as it is an integral component of the enterprise-wide risk management strategy.

A new major thrust of Internal Audit is to coordinate throughout the group the risk identification and assessment methodology ('Barnowl') being implemented across the group, referred to in the Risk Management section of this report, as well as the control self-assessment process.

These processes will also greatly assist and enhance the risk-assessment-based audit approach adopted by Internal Audit, as well as reporting on risk and internal control to management and the Group ARC Committee.

The Nedcor and BoE Internal Audit Divisions have been successfully integrated, and planning and audit strategy across the new Nedcor Group has been completed for 2003.

Compliance

Compliance performs a fully established independent function within the Nedcor Group and also has unrestricted access to the Chairman of the Group ARC Committee, the Chief Executive and the Chairman of the board. Compliance is an essential part of the structure of internal control needed to manage regulatory and reputational risk.

Nedcor operates within a framework created by legislation and various regulatory authorities. This is far-reaching and complex, and therefore requires the specific attention and skills of the group's compliance officers.

It is the compliance officers' role, among other things, to provide guidance, assess, monitor and report on the following:

- material breaches of the legal, regulatory, corporate governance and internal control environments;
- the impact of new legislation/regulations and the implementation of appropriate policies and procedures;
- the group's personal-account trading rules;
- the group's code of ethics and its enforcement;
- contact with regulators; and
- policies and procedures established to protect the group against loss incurred due to:
  - financial fraud;
  - insider trading;
  - market abuse; and
  - money laundering.

An effective compliance framework is regarded by the board as a necessary prerequisite for ensuring Nedcor's financial success.

It is two years since regulation 47 of the Banks Act required the establishment of an independent compliance function, and the new Nedcor Group is now well-positioned in this regard. A comprehensive Group Compliance Framework for the new Nedcor Group has been introduced.

Group compliance and divisional compliance functions have been established. The group function includes senior regional heads based in Johannesburg, Durban and Cape Town reporting to the Group Chief Compliance Officer at the centre.

Divisional compliance officers have been formally appointed and functions established in every cluster and/or division across the group. These officers have dual reporting lines to the heads of the business divisions and Group Compliance.

Nedcor's King II implementation plan

As a JSE-listed financial services company the Nedcor Group is very clearly an affected company to which King II applies.

Nedcor fully subscribes to and supports the code and has developed a comprehensive implementation and monitoring plan to meet its requirements and recommendations. This plan incorporates the corporate governance requirements of the Regulations to the Banks Act.

The plan has been approved by the board and its implementation will be monitored by the newly established board committee, the Group Corporate Governance Committee.

The new Nedcor Group is already in substantial compliance with the code, the main area of work in progress being integrated sustainability reporting and will be a major focus for 2003.

The Enterprise-wide Risk Management Framework referred to earlier was designed incorporating all relevant aspects of the code.

Corporate governance continued

The only areas of anticipated non-compliance with the code in Nedcor, which the board is satisfied do not impair the governance system or perceptions of it, are as follows:

- The Chairman of the board is a non-executive director but is not an independent director as defined by the code only by virtue of the fact that he also serves on the board of the group's holding company, Old Mutual plc.

  The Chairman has greater involvement in the group than the other non-executive directors. In the opinion of the board this level of involvement is considered necessary for the effective running of the board, but does not constitute the exercise of executive powers. The Chairman, in particular, plays a leading role in spearheading corporate governance in the Nedcor Group.

  Peter Joubert is the Deputy Chairman and fulfils the role of lead non-executive director in line with international best practice, as is also recommended in King II.

- Chairmen of the following board committees are not independent directors as defined by the code, again only by virtue that they also serve on the board of Old Mutual plc:
  - Group Audit, Risk and Compliance Committee (Peter Joubert)
  - Chairman's Committee, Group Corporate Governance Committee and Nomination Committee (Chris Liebenberg).

- The Group Audit Risk and Compliance ('ARC') and Nomination Committees do not have a majority of independent non-executive directors for the same reason as outlined above.

Corporate governance framework

The key features of Nedcor's corporate governance process, and incorporation of the code, are included in the board-approved Corporate Governance Framework presented on page 73.

Vital elements of the framework and the corporate governance process in Nedcor are the interaction between executive management and non-executive directors, and the significant emphasis, resources and structure given to independent executive management functions to champion corporate governance on a day-to-day basis and proactively assist the board, board committees and individual non-executive directors with corporate governance responsibilities.

Revised board committees

Board committees have been established to assist the board in the discharge of its duties and responsibilities.

In the new Nedcor Group nine board committees have been established with formal written terms of reference. The new committees introduced include a Risk Committee, which has been combined with the Audit Committee and will serve and be known as the 'Group Audit, Risk and Compliance Committee' (refer to the Risk Management section on page 90 for details on this), a Group Corporate Governance Committee, a Nomination Committee, a Group Social and Environment Committee and a Group Market Risk Committee.

Details on the composition, meetings and key terms of reference, as well as the key risk areas they are responsible for monitoring, are addressed in the Corporate Governance Framework and layer 2 of the Enterprise-wide Risk Management Framework on page 105 respectively.

Three of the key components that will be addressed by the new committees are the formal process of appointment of directors to the board, board continuity, and board and individual director evaluation.

The board is satisfied that the board committees have effectively discharged their duties and responsibilities in 2002.

Formalised corporate governance objectives

The board has formalised its corporate governance objectives, which are listed in the Corporate Governance Framework on page 73. At least annually the board will assess and document whether the process of corporate governance implemented by the group successfully achieves these objectives.

The board of directors

Role and composition

Nedcor has a unitary board structure comprising 25 directors. Of these, nine are considered to be independent non-executive, as defined by King II, seven non-executive and nine executive directors.

Of the seven non-executive directors, five (including the Chairman) are disqualified as independent only by virtue of the fact that they also serve as non-executive directors on the board of the group's holding company, Old Mutual plc.

The details of all directors appear on pages 217 and 218.

The directors come from diverse backgrounds and bring to the board a wide range of experience in commerce, industry and banking. The strong independent composition of the board provides for independent and objective judgement in the decisionmaking process and ensures that no one individual has unfettered powers of decision and authority.

In general, directors are given no fixed term of appointment, while executive directors are subject to short-term notice periods. An executive director is required to retire from the board at age 60, while a non-executive director is required to retire at age 70. Reappointment of non-executive directors is not automatic.

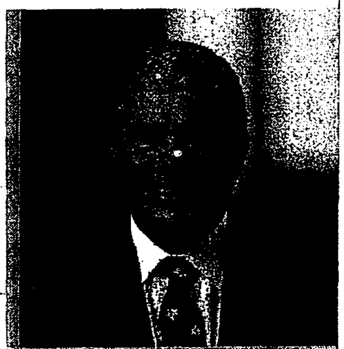
The board has formal written terms of reference that have been updated in respect of, among other things, new requirements, best practice and King II. The main functions of the board are:

- determining the overall objectives (purpose) for the company;
- developing strategies to meet those objectives;
- formulating company policies;
- rating the company's own performance;
- appointing a chief executive officer for the company; and
- rating the performance of the company directors.

Within this framework, the board has identified a range of strategic and operational objectives and risks as more fully described on pages 73 and 79.

The board is responsible to the shareholders for setting the direction of the group through defined strategic objectives and key policies, which are articulated through a formal process to the applicable levels of the organisation.

Corporate governance continued



Gawie Nienaber
Company Secretary
Nedcor Limited

Stringent investment and performance criteria are determined and defined by the board. These are regularly monitored through business plan reviews, key operational and management performance indicators, economic policies and trends, annual budgets and major capital expenditure programmes, significant acquisitions, disposals and other transactions, as well as criteria important to Nedcor's relations with its primary stakeholders and its reputation and conduct as a good corporate citizen.

This is supported by a schedule of matters reserved for the board to ensure that the directors maintain full and effective control over the group of companies, specifically for significant strategic, financial, organisational and compliance matters.

The board is accountable to Nedcor's shareholders for exercising leadership, enterprise, integrity and judgement in directing the organisation to achieve continuing prosperity for the Nedcor Group by obtaining the necessary balance between entrepreneurial enterprise and conformance with legislation, regulations and increasingly stringent governance practices.

Chairman and Chief Executive

The roles of Chairman and Chief Executive are separate. The board is led by the Chairman, Chris Liebenberg, and the executive management of the group is the responsibility of the Chief Executive, Richard Laubscher.

This clearly accepted division of responsibilities at the head of the company ensures a balance of authority and power, so that no one individual has unfettered powers of decisionmaking.

As regards the 'independence' of the Chairman, and his non-executive classification in terms of King II, by virtue of his position as Chairman and his appropriate greater involvement in the organisation, this would most likely not render him as fully independent. Recent findings in the UK query whether the Chairman should be classified as independent or not for this very reason. Notwithstanding this, his position/independence is supported by virtue of the lead non-executive director and Vice-Chairman, Peter Joubert.

Company Secretary

All directors have access to the advice and services of the Company Secretary, who is responsible for ensuring that board procedures and applicable rules and regulations are fully observed. The removal of the Company Secretary would be a matter for the board as a whole. Moreover, the board has agreed and established a procedure in furtherance of its duties whereby directors may obtain independent professional advice at the expense of the company.

Board meetings

In 2002 the board met 11 times. It is policy for the board to meet frequently, and a formal schedule of matters is required to be submitted to the board on the basis of an annual work plan. Additional or other matters of significance to Nedcor and the group are required to be brought to the board's attention timely and in a number of instances this has required the board to convene outside the scheduled plan of meetings.

Nedcor's Corporate Governance Framework

The board's corporate governance objectives

- Maximum level of efficiency and profitability of the group within an acceptable risk profile.
- Implementation of the group's strategy and compliance with the strategic framework of the group.
- Commitment by executive officers of the group to adhere to corporate behaviour that is universally recognised and accepted as correct and proper.
- Balancing the interests of shareholders and other stakeholders, who may be affected by the conduct of directors or executive officers of the group, within a framework of accountability.
- Establishing and maintaining mechanisms to minimise or avoid potential conflicts of interest between the business interests of the group and the personal interests of directors or executive officers.
- Timely and accurate disclosure of matters that are material to the business of the group or the interests of stakeholders.
- Finding the correct balance between conforming with governance constraints and performing in an entrepreneurial way.
- Achievement of a balanced and integrated economic, social and environmental performance ('triple bottom line') and implementation of a best-practice corporate citizenship framework.
- Efficient and effective functioning of the Enterprise-wide Risk Management Framework.
- Compliance in substance with the provisions of the Code of Corporate Practices and Conduct of the King Report on Corporate Governance – 2002 ('King II'), the Banks Act, regulations, other sources of corporate governance best practice and requirements of Nedcor's holding company, Old Mutual plc.

Corporate governance is the system by which the group is directed and controlled, and is also concerned with optimising the balance between the group's economic and social goals – to align as closely as possible the interests of individuals, society and the organisation as a whole. The Nedcor Group fully subscribes to best practice and behaviour in corporate governance, the King Report on Corporate Governance ('King II'), and compliance with regulation 38 of the Banks Act.

The board of directors ('the board')

The board is the focal point of the corporate governance system in the Nedcor Group. It is ultimately accountable and responsible for the performance, affairs and behaviour of the group. There are formalised terms of reference ('charters') for the board and all the board committees. Salient features of these are recorded below.

Composition of the board
- Unitary board structure consisting of non-executive and executive directors.
- Majority of non-executive directors of whom sufficient are independent, as defined by King II.
- Chairman of the board not an employee nor a member of the Group Audit, Risk and Compliance Committee.

Membership of the board
- Roles of the Chairman and Chief Executive separate and a clearly accepted division of responsibilities.
- No one individual having unfettered powers of decisionmaking.
- Board size, diversity and demographics reviewed at least annually.
- Board Directorship Continuity Programme established.
- Procedures for appointments to the board – formal and transparent, assisted by the Nomination Committee.

Meetings of the board
- At least six times a year or at the call of the Chairman of the board.

Board evaluations
- Evaluation is done annually on composition, performance, processes and procedures.

Board's key roles and responsibilities
- Promoting the interests of shareholders.
- Ultimate accountability and responsibility for the performance and affairs of the company.
- Retaining full and effective control.
- Monitoring management's performance and implementing board plans and strategies.
- Appointing and reviewing the performance of the CEO.
- Ensuring financial statements are true and fair, and contain proper and adequate disclosures.
- Enforcing high standards of ethics and corporate behaviour.
- Enforcing appropriate risk management, internal controls and regulatory compliance.
- Implementing and maintaining Corporate Governance Framework and corporate code of conduct.
- Ensuring transparent and prompt communication with shareholders and all relevant stakeholders.
- Identifying and monitoring non-financial aspects relevant to the business of the company.
- Recording facts and assumptions to conclude that the company will continue as a going concern.
- Identifying and monitoring director selection and orientation, and evaluation processes put in place.

Board's key roles and responsibilities (continued)
- Ensuring that the company is achieving its goal and that the correct balance between conforming to governance constraints and performing in an entrepreneurial way is achieved.
- Reviewing performance of the board committees.
- Defining levels of materiality, reserving specific power to itself and delegating other matters, with the necessary written authority to management.
- Responsibility for the total process of risk management, including disclosures on risk management and ensuring that a risk assessment is undertaken at least annually.
- Identifying and maintaining key risk areas and key performance indicators, with particular attention to technology and systems.
- Reviewing and approving remuneration policies and practices following REMCO recommendations.
- Ultimately responsible for ensuring an adequate and effective process of corporate governance is established and maintained.

Induction of new directors
- An induction programme is conducted for all newly appointed directors.

Board committees

Chairman's Committee
Chair: CF Liebenberg
WAM Clewlow
PG Joubert
ME Mkwanazi*
JH Sutcliffe
RG Cottrell*

(* = independent)
Meetings at least quarterly
Key terms of reference
- Conveys evaluation(s) and/or recommendations only to the board and has no decisionmaking powers, unless authorised on an ad hoc basis by the board.
- Issues of fundamental strategic importance to the group.
- Utilisation of capital to ensure it is optimised.
- Sounding board for issues proposed by management that are material to the group's strategies and objectives.

Group Strategic Innovation Management Committee ('SIMCO')
Chair: ME Mkwanazi*
CF Liebenberg
CML Savage*
GS van Niekerk

(* = independent)
Meetings at least quarterly
Key terms of reference
- Monitors all issues pertaining to information technology, both operational and strategic.
- Ensures alignment of the prioritisation and magnitude of IT development spend and investment with overall group strategy.
- Ensures that the group has a well-coordinated, efficient, effective and properly resourced IT strategy.
- Approves and monitors large projects.

Nomination Committee
Chair: CF Liebenberg
WAM Clewlow
PG Joubert
ME Mkwanazi*
JH Sutcliffe
RG Cottrell*
MJ Levett

(* = independent)
Meetings at least quarterly
Key terms of reference
- Recommends appointment of new executive and non-executive directors and composition of the board.
- Reviews the succession planning of directors.
- Assesses conduct and competence of directors and board committees.
- Board self-evaluation.

Group Remuneration Committee ('REMCO')
Chair: N Dennis*
CJW Ball*
PG Joubert
CF Liebenberg
JB Magwaza*
JH Sutcliffe

(* = independent)
Meetings at least quarterly
Key terms of reference
- Ensures the right calibre of executive senior management is attracted, retained, motivated and rewarded.
- Recommendations on the remuneration of the Chairman and non-executive directors and executive directors.
- Approves remuneration levels for senior executives.
- Reviews remuneration policies.
- Ensures that a greater portion of remuneration is linked to variable pay as opposed to guaranteed pay.
- Reviews all aspects of remuneration, including incentive schemes.

Group Social and Environment Committee
Chair: B Figaji*
MJ Leeming
CF Liebenberg
TH Nyasulu*
GF Richardson
CC Parker

(* = independent)
Meetings at least quarterly
Key terms of reference
- Monitors all issues pertaining to the integrated economic, social and environmental performance.
- Approves framework, policies and guidelines for social, environmental, and non-financial risk management.
- Receives reports covering matters relating to social, environment and non-financial risks and potential liabilities.
- Reviews measures of sustainability, socially responsible investment and corporate citizenship.
- Reviews management of and reporting on social risks, eg HIV/Aids.

Group Corporate Governance Committee
Chair: CF Liebenberg
WAM Clewlow
PG Joubert
ME Mkwanazi*
RG Cottrell*
MJ Levett
JH Sutcliffe

(* = independent)
Meetings at least quarterly
Key terms of reference
- Acts as a board's expert monitor of the group's reputational risk and in particular the corporate governance requirements of the Code of Corporate Practices and Conduct ('King II') and regulation 38 of the Banks Act.
- Maintains a board directorship continuity programme.
- Functions prescribed by the board and Registrar of Banks.
- Monitors the group's performance against the board's corporate governance objectives.

Group Credit Committee ('CROM')
Chair: CJW Ball*
RG Cottrell*
CF Liebenberg
G F Richardson

(* = independent)
Meetings at least quarterly
Key terms of reference
- Approves advances in excess of authority levels sanctioned by itself.
- Approves credit risk policies.
- Approves credit authority/mandate levels.
- Monitors the Group Credit Risk Framework.
- Assesses adequacy of provisions for credit losses.
- Assesses trends in asset and portfolio quality.
- Monitors the watch list, large exposures, country risk exposures, etc.
- Provides guidance with regard to specific industries, geographical locations and clients, and generally acts as a sounding board for management.

Group Market Risk Committee
Chair: BE Davison*
CML Savage*
CF Liebenberg
PF Nhleko
GF Richardson

(* = independent)
Meetings at least quarterly
Key terms of reference
- Monitors across the group the management and assessment of financial risks, including:
  - market trading risks
  - financial instruments (derivatives) usage
  - ALCO risks and the ALCO process and function
  - private equity, private property and debt investment risks
  - investment exposures intragroup
  - risks related to underwriting of share issues.
- Reviews and approves market risk policies, limits and authority levels.

Group Audit Risk and Compliance ('ARC') Committee
assisted by two subcommittees

Chair: PG Joubert
Deputy: WAM Clewlow
RG Cottrell*
BE Davison*
JVF Roberts
CJW Ball*

(* = independent)
In attendance (minimum):
Group Internal Audit, Group Compliance, External Audit, executive directors, Chief Risk Officer, Head: Basel II & ERM, SAM Baqwa.
Meetings at least quarterly
Key terms of reference
- Monitors that an effective control, risk management and compliance environment is enforced.
- Monitors that the internal audit and compliance functions are effective.
- Monitors that the external auditors are effective and efficient.
- Considers non-audit services rendered.
- Reviews published financial statements and reporting for proper and complete disclosure of timely, reliable and consistent information and confirms that the accounting policies used are appropriate.
- Receives regular reporting from key management functions, board committees and alliances.
- Ensures formal risk assessment is undertaken annually.
- Monitors the implementation and ongoing maintenance of an Enterprise-wide Risk Management Framework and group policies and authority levels.
- Understands the requirements, reviews plans and monitors implementation of the pending new Basel Capital Accord ('Basel II').

Group Executive Committee ('Group EXCO')

Group EXCO is delegated by the board the authority for the day-to-day running of the business and governance of the group's activities. Group EXCO is assisted by various executive committees as listed below and executive management functions laid out adjacently. The executive management committees also report into the board committees listed above. (Refer Enterprise-wide Risk Management Framework for detail).

Group Executive Management Committees

- Group Capital Management Committee – Chair: IJ Botha
- T&O Clusters (IT Strategic risk) – Chair: BJS Hore
- Management Remuneration Committee – Chair: AA Routledge
- Group Corporate Citizenship Committee ('Triple bottom line') – Chair: SAM Baqwa
- Credit Risk Management Committees ('CRAMS')
- Group Alco Committee – Chair: CJ Pearce
- Group Trading Risk and Derivatives Committee – Chair: MG Pasko
- Group Accounting and Management Info Committee – Chair: SG Morris
- Cluster Operational Risk Committees (meet quarterly) – Chairs: various executive directors
- Basel II Steering Committee – Chair: IJ Botha
- Pre-Simco – Chair: AA Routledge
- Group Human Resources Council – Chair: I Mamela
- Corporate Governance Management Committee – Chair: SAM Baqwa
- Technical forums: Corporate Cluster – Chair: W Ross; Retail Cluster – Chair: S Cuddle; Wealth Management – Chair: [illegible]
- Capital Markets Investment Committee – Chair: B Kennedy
- Property Investment Committee – Chair: M Brown
- Group Tax Committee – Chair: SG Morris
- Divisional Operational Risk Committees (meet monthly) – Chairs: various divisional directors

Executive management governance champions

SAM Baqwa – Head of overall corporate governance groupwide (Reports directly to the chairman of the board and invitee to all board committees)	GS Nienaber Company Secretary

Key corporate governance components / Executive functions driving the key components / Key duties of the executive functions

Internal Audit	Risk Management	Board and directors	Corporate citizenship	Accounting and Auditing	Relationships with shareholders	Communication
Group Internal Audit Division GJ Hechter	Group Risk Division R van Wyk	Corporate Governance SAM Baqwa	Corporate Governance SAM Baqwa	Office of the GFD SG Morris	Investor Relations E Muller	Communications P Abrey
■ Internal Audit charter approved by the board. ■ Direct report line to Group ARC Committee and Board Chairman. ■ Independent, objective assurance provider. ■ Risk-based audit approach.	■ Designing, implementing and monitoring the process of risk management and integrating it into the day-to-day activities of the group. ■ Championing enterprise-wide risk management.	■ Pivotal role in championing corporate governance. ■ Direct report to the board. ■ Providing the board and directors with guidance. ■ Advice to the board, and across the group, on good governance.	■ Social and environmental risks identified, measured, managed and reported effectively. ■ Framework of corporate citizenship best practice 'triple bottom line' reporting.	■ Recommendations only to the Group ARC Committee on: – auditing and non-auditing services – reporting of financial and non-financial information.	■ Dialogue with institutional investors based on constructive engagement.	■ Information based on the principles of transparency and substance over form. ■ Reports and communications transparent. ■ Comprehensive and objective assessment of group business and socio-economic activities.

Independent monitoring functions of corporate governance

Internal

Group compliance functions
- To ensure that the group continuously manages its regulatory risk, that is the risk that the group does not comply with applicable laws, regulations and supervisory requirements. This includes all corporate governance provisions.
- To promote a compliance culture throughout the group that contributes to the overall objective of prudent risk management by the group including sound corporate governance and ethical standards.
- The continual review and enhancement of compliance frameworks, policies and procedures to ensure they correctly and timeously reflect any changes in the laws, regulations or supervisory requirements.
- To develop and formulate compliance frameworks, policies and procedures proactively to assist all business divisions/companies in the practical implementation of effective and efficient compliance functions.
- To monitor that effective compliance functions are in operation in all business units/companies in the group.
- To report on concerns, deficiencies or breakdowns in compliance at all levels and bring these to the attention of the CEO/board of directors/Audit, Risk and Compliance Committee and Cluster Operational Risk Committee, and assist with the prompt resolution thereof.

Group Compliance is an integral component of the Group Risk Monitoring Division, but has a direct report line to the Group ARC Committee and the Chief Executive.

Divisional compliance functions
- Primary responsibility for compliance rests with the divisional directors and line management.
- Divisional compliance officers report directly to the divisional directors and have a dotted line to Group Compliance.

External

Independent firms of accountants and auditors
Deloitte & Touche KPMG Inc

Alliances

Peoples Bank	Imperial Bank	Capital One
Board representation from Nedcor		Capital One Nedcor Alliance ('CONA') Governing Board
CF Liebenberg RCM Laubscher 5 other directors	SG Morris E Molobi RG Cottrell	Peoples Bank, Amex
Audit, Risk and Compliance Committee representation from Nedcor		AA Routledge BJS Hore TA Boardman
SG Morris R van Wyk	SG Morris R van Wyk	

Nedcor independent executive monitoring
- Nedcor Group Internal Audit discharges internal audit functions
- Nedcor Group Compliance monitors compliance framework and environment
- Nedcor Group Risk monitors Credit, Market & Operational risks
- Nedcor Group Risk reviews adequacy of risk management frameworks

Nedcor independent external supervision
- Joint external auditors (KPMG Inc and Deloitte & Touche)
- common regulatory supervision team

Old Mutual
- Six Nedcor non-executive directors are also directors on the Old Mutual plc Board of Directors.
- Three Old Mutual plc directors sit on the Nedcor Board of Directors, including the Old Mutual plc CEO and FD who are also members of the Corporate Governance, Nomination, Chairman's, Remuneration and Group ARC Board Committees.
- The Nedcor Group ARC Committee Chairman reports at the Old Mutual plc Audit Committee.

Corporate governance continued

The record of attendance at board and board committee meetings for Nedcor Limited and Nedbank Limited for 2002

		Nedcor Limited Board	Nedbank Limited Board	Chairman's Committee	Remu-neration Committee	Audit Committee	Strategic Innovation Management Committee	Group Finance Committee	Credit Risk-Monitoring Committee
Number of meetings		11	7	4	6	7	3	4	4
Directors	*Status*								
CJW Ball[1]	xx	3/3	2/2		1/1	2/2			0/1
TA Boardman[1]	*	3/3	2/2						
IJ Botha[1]	*	2/3	1/2						
WAM Clewlow	#	9/11	6/7			6/7	1/1	1/1	
RG Cottrell[2]	xx	2/2	1/1			6/7			1/1
PTW Curtis[3]	xx	4/8	3/5			3/5		4/4	2/3
BE Davison[2]	xx	1/2	0/1			0/1			
N Dennis[2]	xx	0/2	0/1		0/1				
JF de Blanche[3]	*		5/5						
B de L Figaji[2]	xx	1/2	0/1						
BJS Hore	*	11/11	7/7	4/4			3/3		
PG Joubert	#	10/11	7/7	4/4	6/6	7/7		3/4	
MM Katz	*	10/11	6/7	4/4			3/3		3/4
RCM Laubscher	*	11/11	7/7	4/4			2/3		
MJ Leeming[4]	*	4/4	2/2	1/3			0/1		2/2
MJ Levett	#	9/11	6/7	2/4					
CF Liebenberg	#	11/11	7/7	4/4	6/6		3/3	2/4	2/4
JB Magwaza	xx	5/11	5/7		5/6				
ME Mkwanazi	xx	6/11	5/7	1/4			2/2		1/3
E Molobi[3]	xx	5/8	4/5						
SG Morris	*	10/11	7/7	4/4			1/3		4/4
DGS Muller	*	10/11	6/7	4/4			3/3		
ML Ndlovu	*	11/11	7/7						
PF Nhleko[2]	#	1/3	0/1						
TH Nyasulu[5]	xx	6/6	4/4						
CC Parker[3]	xx	7/8	4/5				2/3	3/4	3/3
JVF Roberts	#	10/11	7/7		5/5	6/7			
AA Routledge	*	10/11	7/7	4/4			3/3		
CML Savage[1]	xx	2/3	1/2						
JH Sutcliffe	#	9/11	6/7	1/1	0/1				
GS van Niekerk[3]	#	8/8	6/6				3/3		
WP Venter[3]	xx	4/8	2/5		4/5				
Committee members									
GH Bulterman									4/4
JN Hamman					7/7				
A Racov							1/3		

* *Executive*
\# *Non-executive*
xx *Independent non-executive*
[1] *Appointed – 1 November 2002*
[2] *Appointed – 25 November 2002*
[3] *Resigned – 31 October 2002*
[4] *Retired – 28 May 2002*
[5] *Appointed – 29 July 2002*

Director development and board evaluation

All non-executive directors, on appointment, are appropriately familiarised with the operations of the group, senior management and the business environment and, where relevant, inducted in terms of their fiduciary duties and responsibilities as well as matters specific to the board.

New directors, where relevant, are provided with appropriate training in their duties and responsibilities.

Briefing of the board takes place on a regular basis to ensure that members are familiarised with local and international developments, risk management and corporate governance as well as the impact of each of these individually and collectively.

Succession planning

Considerable emphasis is placed on succession planning at executive and senior management level by the board. Detailed and intensive planning is conducted through the Chairman's Office in consultation with the Group Corporate Governance and Nomination Committees.

The Chief Executive is required to report regularly to the board on the group's management development and employment equity programmes.

Remuneration

The board's Group Remuneration Committee consists of non-executive directors only. In addition, the Chairman and two of the other five members are independent as defined by King II.

A separate Remuneration Report, commencing on page 90, covers all the corporate governance aspects and disclosure with respect to remuneration of executive directors.

Personal share dealings

Nedcor has adopted a formal policy and set of rules for personal-account trading, which is based on current legislation and international best practice.

These rules prohibit directors and employees from dealing in Nedcor shares during defined closed periods prior to the announcement of interim and final results or in any other period considered sensitive.

All personal-account trading is subject to authorisation by the independent group compliance function. Such dealings also require the prior approval of an individual's senior.

Any non-compliance with policy is reported to the Group ARC Committee by the Group Chief Compliance Officer, and disciplinary action is taken.

All dealings by directors in Nedcor shares are advised to the Listing Division of the JSE, as required in terms of the JSE Listing Requirements, and such information is published through SENS. These dealings are also reported at the quarterly board meetings.

The group also has an insider-trading policy to assist directors and affected employees in their commitment towards maintaining a culture of integrity, adhering to legislative requirements and enforcing zero tolerance of crime.

Corporate governance continued

Risk management

The Nedcor Board acknowledges its responsibility for the entire process of risk management, as well as for forming an opinion on its effectiveness. Management is accountable to the board for designing, implementing and monitoring the process of risk management, and integrating it with the day-to-day activities of the group.

The Enterprise-wide Risk Management Framework, approved by the board, formalises the management of risk throughout the group.

This, as well as the application of and reporting on risk management, is detailed in the separate Risk Management section of this annual report.

The Group ARC Committee is responsible for assisting the board in reviewing the risk management process and the significant risks facing the group.

A formal risk assessment of the new group will be undertaken annually, including a risk profile and appetite analysis. This is in conjunction with the Barnowl and control self-assessment processes that will be implemented throughout the group and enforced by the Group ARC Committee on behalf of the board.

Internal control

The directors have responsibility for maintaining a system of internal control that provides reasonable assurance of effective and efficient operations, internal financial control and compliance with laws and regulations. In this context the directors have regard to what, in their judgement, is appropriate to the group's business, to the materiality of the financial risks inherent in the business and to the relative costs and benefits of implementing specific controls.

The directors have established an organisational structure with defined responsibility for internal control in each of the group's businesses. This, together with the associated responsibility for reviewing periodically the effectiveness of such internal control, is formally acknowledged by the head of each business unit once a year.

Regulation 39(4) of the Banks Act requires that the board of directors annually report to the Registrar of Banks on the adequacy of internal controls, adherence to these, maintenance of ethical standards, any material malfunctions and whether a bank will continue as a going concern.

The heads of each business unit throughout the group (including the non-bank operations) are required to sign a representation letter based on regulation 39(4). They are presented to the Group Audit, Risk and Compliance Committee, together with consolidated Nedbank Limited and Nedcor Limited representation letters.

The letters are in turn presented to the board for review and endorsement. Internal and external auditors are required formally to comment on these letters as to whether they concur, based on their audit procedures and investigations, on the representations made by senior management.

The board reports that:
- no material malfunction in the group's internal control system has occurred during the period under review;
- it is satisfied with the effectiveness of the group's internal controls and risk management;
- it has no reason to believe that the group will not operate as a going concern for the year ahead;
- it has no reason to believe that the group's code of ethics has been transgressed in any material respect;

NEDCOR

Reporting on internal control – the process and hierarchy

Shareholders | Regulators | Other stakeholders

- Reports yearly on internal control systems.
- Reviews and considers Group Audit, Risk and Compliance Committee's recommendation.
- Agrees to wording of disclosure report in annual report and reports to South African Reserve Bank.

Group Audit, Risk and Compliance Committee

- Agrees board paper that summarises findings and recommends appropriate reporting.
- Considers reported malfunctions (if any) for materiality.
- Reviews report from Group Risk Division.
- Reviews internal and external audit and compliance reports.

Group EXCO and Group Risk Division

- Provide a basis for Group Audit, Risk and Compliance Committee.
- Review letters of representation from business units.
- Consider Barnowl project reporting and red-risk report.
- Evaluate completeness of coverage.
- Develop a report practice and structure.

Business unit management structures and committees

- Manage Barnowl and control self-assessment processes.
- Manage compliance officers' reporting.
- Implement and maintain policies, procedures and authority levels.

Business risk management

- Identifies and evaluates risks.
- Sets and enforces internal control standards, procedures and risk management processes.

- Report on directors' attestation.
- Submit reports to Group Audit, Risk and Compliance Committee.
- Test management's representations.
- Identify any gaps.

Corporate governance continued

- it has no reason to believe that the group's policies and authority levels have not been enforced and adhered to in any material respect; and
- there have been no material breaches of compliance with any laws and regulations applicable to the group during the period under review.

In the new Nedcor Group a process and hierarchy for reporting on internal control have been approved by the Group ARC Committee on behalf of the board. This is presented on the previous page.

Financial statements and external review

Going concern

The directors of Nedcor confirm that they are satisfied that the group has adequate resources to continue in business for the foreseeable future. These assumptions are recorded at the time of the approval of the annual financial statements by the board. For this reason the Nedcor Board continues to adopt the going-concern basis for preparing the financial statements.

Directors' declaration

The directors of Nedcor confirm and acknowledge:

- that it is the directors' responsibility to prepare financial statements that fairly present the state of affairs of the company at the end of the financial year, and the profit or loss and cash flows for that period;
- that the auditors are responsible for reporting on whether the financial statements are fairly presented;
- that adequate accounting records and an effective system of internal control and risk management have been maintained;
- that appropriate accounting policies, supported by reasonable and prudent judgements and estimates, have been used consistently, except as otherwise disclosed; and
- that applicable accounting standards have been adhered to or, if there has been any departure in the interest of fair presentation, this has been disclosed, explained and quantified.

External auditors

The group's joint external auditors are Deloitte & Touche and KPMG Inc.

The Report of the Independent Auditors on page 153 sets out the responsibilities of the external auditors with regard to reviewing the financial statements and the group's compliance with both statutory and accounting standard requirements. The external audit is structured to provide sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement. The audit review also considers the external auditors' support of the directors' statements on going concern and adequacy of the internal control environment.

Relations with shareholders and other stakeholders

Nedcor's business is about wealth creation, built on a sound foundation of relationships with people and taking account of their needs, values and cultures, as well as the environment in which the Nedcor Group operates.

Code of ethics

A charter of employment, which serves as the group's code of ethics, commits management and employees to high standards of ethical behaviour in their dealings with one another and with the group' s shareholders and other primary stakeholders. Failure to maintain ethical standards may result in disciplinary action.

Code of banking practice

The Nedcor Group subscribes to the Code of Banking Practice endorsed by member banks of the Banking Council of South Africa. This code governs Nedcor's conduct regarding relationships with authorities, clients, competitors, employees, shareholders, local communities and other primary stakeholders. The group has put in place appropriate procedures and mechanisms to ensure that all elements of the code are adhered to fully. The Nedcor Group also works constructively with the Banking Adjudicator's Office to ensure that client complaints are resolved appropriately and timely.

Further initiatives are being planned as part of the group's corporate citizenship strategy driven by Selby Baqwa, which embrace the high commitment to ethical conduct and entrenching a sound corporate ethic.

Internet site

Nedcor's internet site (www.nedcor.com) has extensive information on the group, its annual, preliminary and interim reports and the price of its shares. It also provides a regular update on business developments and other matters of interest in relation to the Nedcor Group.

Occupational health and safety

Nedbank is committed to complying with all aspects of the Occupational Health and Safety Regulations. SA Emergency Care, the foremost company in providing training in first aid and fire fighting, awarded Nedbank the floating trophy as the number-one company for 'overall contribution to safety awareness'.

Annexure "F5"

CORPORATE GOVERNANCE STATEMENT OF THE STANDARD BANK OF SOUTH AFRICA LIMITED

Standard Bank Group Corporate Governance

Codes

The group is committed to the highest level of corporate governance and is satisfied that it has complied with the provisions of the King Report on corporate governance (King II) for the reporting period.

The group supports the Code of Banking Practice and endorses the principles contained therein.

The implementation of governance structures is dynamic. During the course of 2003, compliance with relevant governance codes and the evolution of the group's governance policies and processes will continue as priorities.

Boards and directors

Board structure

For most of the year, the board comprised 16 directors, four of whom were executive. There are currently 14 directors. Details of board changes are provided in the Directors' report on page 102. It is a unitary board with a mix of executive (3) and non-executive (11) directors. The majority of board members are independent non-executive directors (as defined in King II). The board is accountable and ultimately responsible for all actions of the board, board committees and management.

The board is responsible for the appointment of the Chief Executive. The board ensures that, as part of succession planning, it familiarizes itself with the executive management team at meetings (both formal and informal). Considerable attention is given to leadership development throughout the group in order to develop and retain a pool of talented individuals. The board has agreed an appointment process that ensures appointments to group subsidiary and associated entity boards receive the requisite consideration.

Strategy

The board is responsible for ensuring that clear strategic direction is provided to the group.

As part of this process, the Chief Executive and senior executives annually present their strategic plans to the board for review and approval.

Board mandate

The board operates in terms of a mandate which sets out its roles and responsibilities. This mandate has been updated taking into account the provisions of King II. The key terms of reference set out in the mandate are:

- agree the group's objectives;
- agree the strategies and plans for achieving those objectives;
- annually review and assess achievement against objectives;

- review board and committee mandates at least annually and approve recommended changes;
- delegate to the Chief Executive or any director holding any executive office or any senior executive any of the powers, authorities and discretions vested in the board, including the power of sub-delegation. Delegate similarly such powers, authorities and discretions to any committee and subsidiary company boards as may be created from time to time;
- determine the terms of reference of all board committees and review reports and/or minutes of committees and significant subsidiary companies;
- review and monitor the performance of the Chief Executive and the executive team which includes the consideration and evaluation of reports;
- establish and review annually and approve major changes to the group's policies;
- approve the remuneration to be paid to non-executive directors for board and committee membership based on recommendations made by the Group Remuneration Committee;
- approve capital funding for the company and the group and the terms and conditions of rights or other issues and any prospectus in connection therewith;
- ensure that an adequate budget and planning process exists, that performance is measured against budgets and plans and approve annual budgets for the group;
- approve significant acquisitions, mergers, take-overs, divestments of operating companies, equity investments and new strategic alliances by the company or its subsidiaries;
- consider and approve capital expenditure recommended by the Group Executive Committee;
- consider and approve any significant changes proposed in accounting policy or practice and consider the recommendations of the Group Audit Committee;
- consider and approve the annual financial statements, interim statements, dividend announcements and notices to shareholders and consider and agree the basis for considering the group to be a going concern;
- have ultimate responsibility for ensuring the adequacy of financial and operational systems and internal controls, the review of which is delegated to sub-committees. The board ensures that reporting on these issues is acceptable;
- have ultimate responsibility for regulatory compliance and ensure that reporting to the board is comprehensive; and
- review non-financial matters which have not been specifically delegated to a sub-committee.

Delegation of authority and effective control

The board retains effective control over the operations of the organisation through a well-developed governance structure that comprises various board committees. These regularly report to the board in terms of their agreed mandates. Management performance is monitored through effective and regular reporting against board agreed strategies and budgets.

Compliance with all relevant laws, regulations and codes of business practice is monitored by the board through the group's governance structures and processes.

In terms of the Banks Act Regulations, the board has adopted a suitable definition of a material malfunction. This definition is reviewed by the board annually. In addition, the board's mandate requires certain material matters to be brought to its attention.

The board has formally delegated defined authority to the Chief Executive by virtue of a resolution with the power of delegation, and this process is continually monitored.

In order to facilitate effective control, the information needs of the board are continually assessed. Board members can request further information they require from management. Management reporting is constantly modified to keep pace with changing legislative and other requirements of the board. The board has unrestricted access to all organisational information, records, documents and property that it may need or request.

Chairman and Chief Executive

The roles and responsibility of Chairman and Chief Executive remain separate and distinct.

The performances of the Chairman and Chief Executive are assessed by the Remuneration Committee when determining remuneration.

Board effectiveness

The board again agreed a corporate governance process and objectives in terms of that process. Achievements against this were considered by the board.

The board, through the Governance and Nominations Committee (GNC), regularly reviews and considers its effectiveness and structure. Similarly, consideration is given to the demographic diversity of the directors.

The effectiveness of the board as a whole is evaluated by the GNC in its annual review of performance against mandates. In terms of this, the performance of the board and the committee is benchmarked against their respective mandates. The results are reviewed by the external auditors and, a report submitted to the GNC for discussion and, where necessary, remedial action is taken. In addition the GNC considers board and committee composition and attendance at meetings on an annual basis.

All board and committee mandates specify that members are entitled to take independent advice at the company's expense.

Directors

The board's deliberations are free from the domination of any individual or group of individuals. The non-executive directors (NEDs) possess the caliber, credibility and experience required for them to deliberate, where necessary, independently of management. There are no shadow directors on the board.

No executive directors hold non-executive directorship positions outside the group.

Induction

On appointment, an induction programme designed to meet the needs of each new director, is implemented. The Group Secretary manages the induction programme. The board's code of conduct is provided to new directors on their appointment. New and prospective directors are required to complete the necessary formalities in terms of the relevant legislation and regulations. Directors are advised of new laws and regulations and changing risks to the organisation on an ongoing basis.

Board meetings

The board meets, at a minimum, once every quarter with an additional meeting scheduled annually to discuss strategy. Additional meetings are held whenever deemed necessary. Seven board meetings were held during the year and details of individual attendance at board meetings are set out below.

Directors are provided with comprehensive board documentation at least four days prior to each of the scheduled meetings.

Board meeting attendance

Member	Feb	Mar	May	Aug	Oct	Nov	Dec
Derek Cooper (Chairman)	✓	✓	✓	✓	✓	✓	✓
Roy Anderson	✓	✓	✓	✓	✓	✓	✓
Doug Band	✓	✓	✓	✓	✓	✓	✓
Elisabeth Bradley	✓	✓	✓	✓	✓	A	A
Anthony Evans *	A	✓					
Buddy Hawton	✓	A	✓	✓	✓	✓	✓
Reuel Khoza**	A	A	✓	✓	✓	A	
Selwyn MacFarlane*	✓	✓					
Graham Mackay	✓	✓	✓	A	✓	✓	✓
Saki Macozoma	A	A	A	✓	✓	✓	A
Jacko Maree	✓	✓	✓	✓	✓	✓	✓
Barbara Masekela*	A	A					
Rick Menell	✓	✓	A	✓	✓	A	✓
Robin Plumbridge	✓	✓	A	✓	✓	A	✓
Pieter Prinsloo ***	✓	✓	✓	✓	✓	A	A
Michael Rapp*	✓	✓					
Alan Romanis*	✓	✓					
Myles Ruck	✓	✓	✓	✓	✓	✓	✓
Chris Stals	A	✓	✓	✓	✓	✓	✓
Conrad Strauss	✓	✓	✓	✓	✓	✓	✓
Eddie Theron	✓	✓	✓	✓	✓	✓	✓

* Resigned 12 March 2002
** Resigned 29 November 2002
*** Resigned 31 December 2002

✓ Present
A Apologies

Board committees

The board has established a number of committees to which certain of its functions have been delegated. The committees, except for Group Credit, comprise a majority of independent NEDs and all are chaired by an independent NED. The membership of the committees for the year under review was as follows:

- Governance and Nominations – Derek Cooper (Chairman), Doug Band, Reuel Khoza[1], Graham Mackay and Saki Macozoma.
- Group Audit – Robin Plumbridge (Chairman), Doug Band, Elisabeth Bradley and Alan Romanis[2]
- Group Risk Management – Robin Plumbridge (Chairman), Derek Cooper, Buddy Hawton, Selwyn MacFarlane[3], Rick Menell, Chris Stals and Eddie Theron.
- Group Credit – Derek Cooper (Chairman), Doug Band, Jacko Maree, Simon Ridley, Myles Ruck and Paul Smith.
- Transformation – Saki Macozoma (Chairman), Derek Cooper, Reuel Khoza[1], Jacko Maree and Barbara Masekela[3], and
- Group Remuneration – Buddy Hawton (Chairman), Doug Band, Derek Cooper, Graham Mackay and Rick Menell.

Each of the above committees operates in terms of a mandate approved by the board. These mandates describe:

- the extent of its powers;
- the responsibility delegated to it;
- its term;
- its role and function;
- procedure for reporting to the board; and
- its authority to act.

At board meetings, relevant minutes are submitted and the chairman of each committee reports on the committee's activities.

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1 Resigned 29 November 2002.

2 Alan Romanis who resigned as a non-executive director on 12 March 2002, has remained on the committee. As a member of the Liberty Group Audit Committee and Chairman of the Stanlib Audit Committee, he provides valuable insight from a group perspective.

3 Resigned 12 March 2002.

Risk management framework

The group's risk management processes are detailed in the risk management review. Fundamental to the management of risk in the group, is the risk framework endorsed by the board. The board has ultimate responsibility for ensuring the adequacy of internal controls. Where appropriate, certain of the board's risk management functions have been delegated to board committees.

The board regularly reviews processes and procedures to ensure the effectiveness of the internal systems of risk control. The framework and structure of the risk committee ensure the recognition of their status within the group.

Governance and nominations committee

The membership of the committee and the attendance at meetings were as follows:

Member	May	Dec
Derek Cooper (Chairman)	✓	✓
Doug Band	✓	✓
Reuel Khoza*	✓	
Graham Mackay	✓	✓
Saki Macozoma	A	A

* Resigned 29 November 2002

The committee's key terms of reference include the following:

- Setting criteria for the nomination of directors and committee members of the board and group subsidiaries and identifying, evaluating and recommending nominees for appointments;
- Reviewing the composition of the board;
- Considering corporate governance best practice and statutory compliance;
- Considering corporate governance best practice and statutory compliance;
- Conducting an annual assessment of the performance of the board and reviewing the effectiveness of all board committees; and
- Periodically reviewing the format and content of the board and committee structures and mandates.

Group Audit Committee

The board has established a Group Audit Committee (GAC) with subsidiary audit committees where required by regulation or deemed appropriate. The majority of the members are independent and all of the members are financially literate. The Chief Executive, external and internal auditors, together with relevant management are required to attend meetings. The board chairman attends meetings by invitation. The committee membership and attendance at the six meetings held during the year were as follows:

Member	Feb	Mar	May	Aug	Nov
Robin Plumbridge (Chairman)	✓	✓	✓	✓	✓
Doug Band	✓	✓	✓	✓	✓
Elisabeth Bradley	✓	✓	✓	✓	✓
Alan Romanis	✓	✓	✓	✓	✓

The GAC operates in terms of a written mandate that deals comprehensively with its membership, authorities and duties. The key terms of reference are divided into the following:

External auditors and external audit – this includes the review or approval of:

- the group audit plan for the year ahead;
- guidelines for the appointment of the external auditors for non-audit related services and for the disclosure thereof. There is separate disclosure in the notes to the financial statements of the amounts paid to the external auditors for non-audit related services;
- reports from the external auditors relating to the systems of accounting and operational controls and the effectiveness of management's response thereto, and;
- the external audit fee.

Financial reporting and financial controls – this includes a review of:

- the adequacy of capital, provisions for bad debt and any material diminution in the value of other assets;
- accounting policies and proposed changes thereto;
- the effectiveness of financial management and the quality of the accounting control systems and financial reporting;
- reports on material defalcations; and
- the group's interim results, annual financial statements, dividend announcements and all financial information for publication in the media.

Internal audit – this includes consideration of:

- the internal audit mandate and an evaluation of the independence and effectiveness of the internal audit function;
- the internal audit plan for the year ahead;
- quarterly reports on the activities of the internal audit function, including the identification of control weaknesses and of remedial action taken by management; and
- reports on the activities of the Forensic Audit department.

Compliance –this includes a review of:

- the compliance plan for the year ahead;
- the internal control structure;
- the effectiveness of the compliance function and the adequacy of its resources; and
- the level of compliance with relevant external legislation, regulations and codes, and with internal policies, procedures and controls. This includes identification of incidents of non-compliance and of remedial action taken by management.

Ethics – this includes monitoring ethical conduct throughout the group.

In addition to the above, the GAC undertakes such other reviews as may be considered necessary in the fulfillment of its responsibilities or as may be requested by the board.

Other relevant activities of the GAC include:

- the attendance by the chairman of the GAC at the annual general meeting and his availability to respond to questions from shareholders on the activities of the committee;
- a recommendation to the board on the appointment of external auditors. In this regard, the group is informed and has no reason to doubt that the external auditors are required to observe, and do so observe, high levels of business and professional ethics; and
- ensuring that there is reasonable and responsible integration of the activities of the external and internal audit functions.

In May 2003, the GAC will consider whether or not the interim financial reports should be reviewed by the external auditors.

Group Risk Management Committee

The Group Risk Management Committee (GRMC) had the following membership and attendance during the year:

Member	Mar	May	Aug	Nov
Robin Plumbridge (Chairman)	✓	✓	✓	✓
Derek Cooper	✓	✓	✓	✓
Buddy Hawton	✓	✓	✓	✓
Selwyn MacFarlane*	✓			
Rick Menell	✓	✓	A	✓
Chris Stals	✓	✓	✓	✓
Eddie Theron	✓	✓	✓	✓

*Resigned 12 March 2002

The GRMC's mandate includes the following key terms of reference:

- review reports which detail the adequacy and effectiveness of the group's risk management function and control its implementation by management;
- ensure that risk definitions and policies are formally and regularly reviewed. Further details on the group's approach and the risks considered are details in the risk management review;
- review the acceptability of the group's risk profile and its overall risk appetite; and
- review risk identification and measurement methodologies.

Key non-financial aspects are included in the quarterly GRMC reporting process. Some of the aspects reported on are:

- new products and services;
- people risk;
- environmental risk and sustainability issues; and
- information risk management.

Asset and liability risk issues are managed through the group Asset and Liability Committee (ALCO). The Group Strategic Technology Forum focuses on technology and systems risk issues.

Group Credit Committee

The credit governance structure of the group was reviewed during the course of 2002. There is now a Group Credit Committee with regional credit committees in Africa and London.

The committee's main terms of reference include:

- setting the group credit governance structure to ensure that there are clearly defined mandates and delegated authorities within the structure;
- reviewing the group credit portfolio, including trends and provisions, to ensure alignment with group credit strategy and risk appetite; and
- noting or approving large exposures as defined by the regulatory authorities.

The membership and attendance at Group Credit Committee meetings were as follows:-

Member	Jan	Feb	Mar	Apr	May	Jun	Oct
Derek Cooper (Chairman)	A	A	✓	A	✓	✓	✓
Doug Band	✓	✓	✓	✓	✓	✓	A
Jacko Maree	✓	✓	A	✓	✓	A	A
Simon Ridley*							✓
Myles Ruck	✓	✓	A	✓	✓	✓	✓
Paul Smith	✓	✓	✓	✓	✓	✓	✓

* Appointed 3 October 2002

Transformation Committee

The Transformation Committee was established to accelerate the achievement of equity targets. The membership of the committee and attendance at meetings for the year were as follows:

Member	Feb	Aug
Saki Macozoma (Chairman)	✓	✓
Derek Cooper	✓	✓
Reuel Khoza*	✓	A
Jacko Maree	✓	✓
Barbara Masekela**	A	✓

* Resigned 29 November 2002

** Resigned 12 March 2002

Dealings in securities

The group has a formal policy restricting trading in securities by certain employees (as defined in the policy) during closed periods. No embargoed employees are permitted to trade in any Standard Bank instruments or securities from one month prior to the end of an accounting period (interim or final) until the announcement of results. This embargo includes directors.

All trading in Standard Bank instruments or securities by an employee must take place through the Group Share Incentive Scheme administration area. Compliance with the policy is monitored on an ongoing basis. In addition, certain nominated employees (as defined in the policy) are prevented from trading in shares of other companies during specified periods.

Group Secretary

In order to enable her to fulfill her duties, the Group Secretary has been fully empowered by the board and has complete access to people and resources to facilitate this.

The Group Secretary plays an important role in supporting the Chairman and the Chief Executive.

The Group Secretary provides a central source of guidance and advice on business ethics and good governance. In addition, guidance is provided to directors both together and individually on an ongoing basis. Relevant information on new regulations and legislation that may impact directors is tabled when necessary.

Going concern

In accordance with Companies Act requirements, the board records its opinion on going concern aspects in the annual report. The Banks Act Regulations also require the group to report on the going concern status of the bank.

The board considers the going concern concept in the context of its deliberations on the annual financial statements. The facts and assumptions underlying the board's assessment are documented. The directors' approval of the annual financial statements containing the going concern declaration is set out in the annual report.

Sustainability

The group recognises its obligation to contribute to broader socio-economic goals and general social upliftment. This is done primarily through the Standard Bank Foundation.

Greater details on the group's sustainability activities are contained in the annual report. The format of this report follows the Guidelines released by the Global Reporting initiative with consideration given to the group's relationship with various stakeholders including shareholders, customers, employees, suppliers, government and regulatory agencies, society and the community, and the environment.

Organisational integrity / ethical behaviour

Information on the group's Code of Business Ethics is set out in the sustainability report in the annual report.

Currently, the forensic audit team assists in monitoring adherence to the group's ethical values. Attention will be given to further monitoring of the code in the year ahead.

Communication with shareholders

The group is involved in meaningful and constructive dialogue with investors. Further detail on the role of the investor relations function is provided in the annual report.

Shareholders are invited by the Chairman, Derek Cooper (who is also chairman of the Group Credit and Governance and Nominations Committees) to attend the annual general meeting (AGM). The chairman of the Group Audit and Remuneration Committees, Robin Plumbridge and Buddy Hawton respectively, are available to respond to questions from shareholders.

A brief CV of the directors standing for re-election is set out in the notice of the AGM.

The group is at all times mindful of its statutory and regulatory obligations regarding the dissemination of information. The effects of any proposed resolutions are fully explained in the AGM notice and in the letter from the chairman. The chairman provides adequate time for discussion of proposed resolutions at general meetings. Poll forms are prepared and available at a general meeting if required. The results of all special business at general meetings are publicly disseminated as soon as possible after the conclusion of the meeting.

The directors acknowledge their responsibility for the fair presentation in the financial statements of the:

- state of affairs of the group as at the end of the financial year under review;
- net income for that period; and
- cash flows for that period.