

VERBATIM NOTES
OF
COMMISSION OF ENQUIRY INTO CIRCUMSTANCES
THAT LED TO THE COLLAPSE OF THE FINANCIAL INSTITUTIONS
IN THE 1990s

HELD AT
THE JAMAICA PEGASUS HOTEL
81 KNUTSFORD BOULEVARD, KINGSTON 5

ON
TUESDAY, DECEMBER 1, 2009

PRESENT WERE:

DECEMBER 1, 2009

COMMISSIONER

The Hon. Mr. Justice Boyd Carey (Ret'd)

MEMBERS

Mr. Charles Ross
Mr. Worrick Bogle

COUNSEL FOR THE COMMISSION

Hon. R.N.A. Henriques OJ, QC, LL.M.

SECRETARY TO THE COMMISSION

Mr. Fernando DePeralto

MARSHALLING THE EVIDENCE

Mr. Ransford Braham - Attorney-at-law
Miss Kelley Wong - Attorney-at-law

REPRESENTING DR. OMAR DAVIES

Hon. Mr. Michael Hylton, Queen's Counsel

REPRESENTING JAMAICA REDEVELOPMENT FOUNDATION

Mrs. Sandra Minott-Phillips - Attorney-at-law

REPRESENTING DEBTOR

Miss. Melissa Cunningham - Attorney-at-law

GIVING EVIDENCE

Mr. Rohan Barnett
CEO - Financial Services Commission

1 ON RESUMPTION AT 9:45 A.M.

2 CHAIRMAN: Good morning. The Commission is now in
3 session. Yes, Mr. Braham.

4 MR. BRAHAM: Chairman, this morning we have Mr. Rohan
5 Barnett, he is the Executive Director of
6 the Financial Services Commission and I
7 think he could be sworn at this time.
8 (Mr. Barnett sworn)

9 CHAIRMAN: Thank you. You may be seated please.

10 Q: Could you state your name sir.

11 MR BARNETT: Rohan Barnett.

12 Q: And what is your position?

13 A: I am the Executive Director of the
14 Financial Services Commission.

15 Q: And you have occupied this position
16 since when?

17 A: Since January 5, 2009.

18 Q: The Financial Services Commission, could
19 you tell us when it was established?

20 A: The Financial Services Commission, or
21 FSC for easier reference, was
22 established in 2001 under the Financial
23 Services Commission Act.

24 Q: Now could you identify the type of
25 entities that the Financial Services

1 Commission is responsible for?

2 A: Yes, the FSC is responsible for all
3 insurance, securities and pension
4 service providers.

5 Q: In a sort of general way, would you be
6 able to say what sort of functions the
7 FSC carries out?

8 A: Comprehensive regulation of the
9 aforementioned industries. We look from
10 both a corporate governance perspective
11 as well as a prudential regulation
12 perspective to see to it that entities
13 are operating in a manner that's
14 efficient and consistent with our best
15 practices.

16 Q: I am just thinking probably, I don't
17 know if Chairman you are having a
18 difficulty?

19 CHAIRMAN: No, I am hearing you clearly.

20 MR. GRAHAM: Yes. Now could you indicate whether you
21 are aware as to the circumstances that
22 caused the set up of the Financial
23 Services Commission?

24 MR. BARNETT: Yes, I can speak to, from an academic
25 perspective, what led to the creation of

1 the FSC.

2 Q: Could you tell us what generally was
3 that as you understand it?

4 A: Yes. As I understand it, the macro
5 environment at the time had a number of
6 issues that essentially came together
7 to form the financial crisis of the 90s.
8 I think that's the term that you guys
9 generally use to refer to the condition
10 at the time. There were a number of...

11 CHAIRMAN: Sorry, what guys what?

12 A: You generally refer to conditions at the
13 time.

14 There are a number of issues
15 that due to varied circumstances
16 contributed. You had weak and
17 inefficient regulation by the
18 then regulator, regulation that
19 was ill-equipped to deal with
20 the way the market had developed
21 in the wake of a significant
22 period of privatization and
23 expansion within the sector.

24 CHAIRMAN: Just for completion, the weak regulator
25 would have been the Superintendent?

1 A: The office of the Superintendent of
2 Insurance at the time.

3 CHAIRMAN: That was the body?

4 A: You had a significant growth in the
5 number of insurance institutions and
6 financial institutions generally; you had
7 regulations or the regulatory environment
8 that permitted the formation of huge
9 financial conglomerates where an
10 insurance company had a sister company
11 that was a banking institution, a
12 commercial bank or a merchant bank or
13 building society falling under one
14 umbrella. You had significant credit boom
15 that translated to a very high degree of
16 inflationary pressure within the economy.
17 You had the decision taken to combat that
18 level of inflation by raising interest
19 rates; the raising of the interest rates
20 then translated into significant
21 liquidity pressure being placed on the
22 financial institutions, particularly the
23 insurance companies and then when that
24 liquidity pressure reached a certain
25 point you had the

1 insurance companies seeking financing
2 from their sister organizations, their
3 related banks or financial institutions
4 effectively spreading the crisis from
5 the insurance sector to the broader
6 financial sector. Then once those loans
7 or lines of credit it becomes non-
8 performing you had the balance sheets
9 and the capital of not just the
10 insurance companies but also the
11 insurance companies but also the banks
12 themselves coming under pressure of
13 being compromised. So the epicenter of
14 the financial crisis seems to have been
15 within the insurance industry and this
16 was in fact cited in a technical note
17 drafted by the IMF as part of its
18 financial sector assessment programme of
19 2005, where they referred to the genesis
20 of the crisis lying within the practices
21 and the policies of the insurance sector
22 at the time.

23 MR. BRAHAM: Okay. You had mentioned the issue of
24 weak regulatory and supervisory
25 situation and the terms of legislation

1 as well. Could you sort of give some
2 general idea of the areas of weakness
3 that existed at the time? Yes, and I
4 A: am going to focus again primarily on
5 the insurance industry because that
6 really is the crucible in which all of
7 the ingredients came together to
8 create the crisis. The nature of
9 regulation at the time permitted
10 insurance
11 companies to do many things
12 which would not be permissible in
13 today's environment, and they
14 were permitted to, in an
15 imprudent way, diversify away
16 from their core business. They
17 invested heavily in real estate;
18 they invested in tourism
19 projects; they were allowed to
20 create deposit like products,
21 what we refer to today as bank
22 assurance products, but these
23 product had an insurance wrapper
24 around them, so from a
25 regulatory perspective they were

1 regulated as though they were
2 insurance products when the core
3 product was a banking product.
4 The Regulation at the time
5 allowed the companies to
6 exercise what we know as
7 regulatory arbitrage, which is
8 the insurance regulations
9 obviously did not go to the
10 concepts or precepts related to
11 banking products so these
12 products were offered in a way
13 that was imprudently regulated
14 in terms of seeing to the
15 effective capitalization of the
16 insurance companies. This is a
17 significant point because those
18 products, I think more than
19 anything else, provided the
20 insurance companies with the
21 asset and liability mismatch
22 that ultimately led to their
23 liquidity being compromised.
24 Q: The products, do you have at hand the
25 names of some of those products that

1

estate?

2 A:

3

Well, yes, once the interest rates

4

environment no longer became conducive

5

to the maintenance of real estate values

6

then the insurance companies from the,

7

again the capitalization perspective,

8

came under threat. Also given that real

9

estate is an ill-liquid investment, the

10

insurance companies didn't have the

11

liquidity that was necessary to satisfy

12

their obligations of honoring these

13

fixed interest rates that applied to the

14

bank assurance type rather, and that

15

caused the insurance companies to turn

16

to their affiliated banking institutions

17

and effectively started a contagion from

18

the insurance industry to the banking

19 Q:

industry.

20

Now, there is a claim that the return on

21

investment was low, is that true? And if

22

it **is**, did that create any issues in

23 A:

relation to these insurance companies? I

24

am not quite sure I know which claim in

25 Q:

particular.

I am looking at a document produced from

1
2 A: your office that said so.
3 Okay, yes, I thought you meant there was
4 a specific claim that you were dealing
5 with; you mean in general. The return on
6 investments being low, again translates,
7 really further exacerbates the liquidity
8 problems that the insurance companies had
9 to address. All of this occurred in a
10 context where the companies were able to
11 turn to their affiliated institutions for
12 these loans and extensions of these
13 credit facilities that allow the
14 companies, at least in the short run, to
15 address the liabilities that they had in
16 the form of these bank accounts that I
17 referred to. So it was very much a chain
18 reaction; the marketing environment
19 permitted development of the products
20 which due to the nature of regulation at
21 the time, weren't properly regulated,
22 which in turn adversely impacted on the
23 capitalization of the companies which
24 caused them to seek financing from an
25 external source which was their

1
2 Q: affiliated company.
3 Was there a problem with the commission
4 A: that was being paid in the industry?
5 I am not sure I understand your question
6 Q: sir.
7 Well, the commission that was paid to
8 agents and the amounts or renewals that
9 A: occurred, was there a problem?
10 Q: Yes, from the agent's perspective...
11 Mr. Barnett, you were entitled to have
12 the documents that you supplied on the
13 A: table if you wish.
14 Q: Okay, thank you.
15 A: It would help you.
16 From the agent's perspective the
17 Q: commission .
18 A: From the what?
19 The agent's perspective, the commission
20 was predisposed to the writing of new
21 policies as opposed to renewal of
22 Q: existing policies.
23 Is there anything particularly wrong
24 A: with that?
25 Well, yes, because the incentive is to
get the client in the door, so to speak,

1 to push the policies, whereas if you
2 focus on a renewal of the policies you
3 are more dealing with the long term
4 effectiveness of the policy, the extent
5 to which clients were interested in
6 maintaining a relationship; two
7 different incentives from a business
8 perspective. As S was saying, two
9 different incentives from a business
10 perspective.

11 CHAIRMAN:

12 Just hold a minute. Mr. Barnett, you
13 spoke of the high commissions paid to
14 agents, but that was a decision of the -
15 let's call it the board of the insurance
16 companies, would it not, that wouldn't
17 be a contrail issue, that wouldn't be a
18 regulatory issue, would it?

19 A:

20 Sir, there were many business practices
21 that at the time were not regulatory
22 issues and you are right, that that
23 would be considered one that was more a
24 business issue than a regulatory issue
25 per se, but in terms of looking at the
nature of the industry from a prudential
perspective, that is, when we look at

1 the governance of the companies, the
2 risk management of the companies, in
3 terms of the control of the companies
4 and nature of their business practices,
5 I think hindsight being what it is we
6 can now appreciate that that commission
7 structure led to the development of a
8 more focussed approach towards writing
9 of a new policy as opposed to retention
10 of existing policies.

11 CHAIRMAN:

12 You see I am trying to understand, from
13 our perspective, if that falls under the
14 regulatory responsibilities of what the
15 agency was then at the time, because we
16 have to look to see what was the
17 regulatory situation at the time and how
18 far that impacted on what we now know,
19 what happened, the collapse, so I want
20 to know that the distinction between bad
21 business decision, core bad decision,
22 you mean as a businessman, is that what
23 a reasonable businessman ought to do or
24 a reason insurance company or whatever?
25 Maybe insofar as the commission,

MR. BRAHAM:

Mr. Chairman, maybe I could ask

1 Mr. Barnett, whether these commissions,
2 the FSC now, are you in the habit of
3 regulating commissions?

4 A: If you are asking me whether or not there
5 was a specific FSC regulation related to
6 the amount of commissions, my answer
7 would be no, but there is a more
8 prudential corporate governance
9 regulation that exists today as a result
10 of the Insurance Act that's in effect
11 today, the 2001 Insurance Act as compared
12 to the Insurance Act of 1971 which was in
13 effect at that time. That was
14 subsequently repealed and replaced by the
15 Insurance Act of 2001. I want the
16 Commission to also appreciate that the
17 nature of regulation has changed.
18 Regulation at that time was unable to
19 deal with many of the issues that I have
20 cited to this point. There was no real
21 prudential regulation. There was some
22 degree of market-conduct regulation but
23 not at the most efficient level. In
24 addition there was little or no
25 regulation related to the extent to

1 which the principals of the insurance
2 companies were fit and proper, so that
3 level simply did not occur.

4 Q: Was there any regulation related to
5 solvency?

6 A: There was no regulation related to
7 solvency. Had there been any regulation
8 related to solvency there would have
9 been certainly early warning tests in
10 place that would have identified the
11 weakness of the insurance institutions.

12 CHAIRMAN: I am sorry. Before you develop that,
13 could we just return to this low return
14 for a moment.

15 COMM. ROSS: Could you just give us a little better
16 understanding as to what were the
17 circumstances that led to those
18 regulatory returns and whether some of

19 the activities of the institutions were
20 as a result of how that situation and
21 the attempts to improve on the returns?

22 Q: Not in a great detail, with all due
23 respect, because I wasn't *here* at the
24 time but what I can speak to is the
25 market environment being such that the

1 let me back up a step. The life insurance
2 industry we bifurcated into two segments
3 here, general and your life insurance so
4 it's not one sort of homogeneous
5 industry; they are two different
6 industries with two different nuances.

7
8 CHAIRMAN: From the perspective of the... Is the
9 life insurance aspect that failed
10 generally?

11 A: The general insurance industry generally
12 survived, the life insurance industry was
13 the industry that contained... Contagion.

14 CHAIRMAN: That caused the contagion and contained
15 A: many of the, to use the vernacular, the
16 toxic products, that ultimately led to
17 the insolvency in the institutions. But
18 for the sake of completeness, in the
19 context of the general insurance
20 industry, we have what's known as a
21 Minimum Asset Test and in the life
22 insurance industry we have
23 what's known as the Minimum Continuing
24 Capital and Surplus Requirement, MCSR,
25 and both of those tests are there to do

1 the same thing; to look at the level of
2 solvency of the institutions and
3 determine whether or not there is an
4 institution that is sounds or if it is in
5 some danger of becoming ill-liquid or
6 undercapitalized. The purpose of those
7 solvency tests are to deal with the very
8 issue that we are citing; whether or not
9 the company, even if it's functioning on
10 a day to day basis could be considered as
11 insolvent.

12 Q:

This test was in place prior to the
13 establishment of the FSC?

14 A:

No, neither test was in place prior to
15 the establishment of the FSC which
16 performs its functions, discharges its
17 duties pursuant to the FSC Act the
18 Insurance Act of 2001, the Securities
19 Act and the Pensions Act. So these are
20 the legislative Acts that we used to
21 determine what regulatory steps need to
22 be taken.

23 CHAIRMAN:

24 Ecuse me, these test were devised by the
25 Act?

A:

Not by the Act specifically.

1 Q: What I mean is, were these tests always
2 there but were not utilized or not part
3 of the environment here?

4 A: These tests did not exist in Jamaica.

5 CHAIRMAN: They existed in the world?

6 A: They existed in the world and in fact
7 they are heavily modeled on the Canadian
8 solvency requirement so that at that
9 time...

10 CHAIRMAN: They did exist.

11 A: Well, they existed but again not ..

12 CHAIRMAN: As far as Jamaica is concerned, it
13 wasn't tabled, it didn't form any part
14 of, well, not within our...

15 MR. BRAHAM: Practice.
16 CHAIRMAN: Whatever; environment, practice,
17 culture.

18 A: Right. Again, that's correct. Regulation
19 at the time didn't test these companies
20 from that perspective, regulation at the
21 time sir, monitored what market
22 performance looked like and was based on
23 reports that the company provided to the
24 Superintendent of Insurance, but as far
25 as having this

1 prudential regulation this was a direct
2 result of the crisis of the '90s and
3 Jamaica's effort to improve it's
4 regulatory structure; which I think the
5 country has done quite well.

6 Q: If it is that there was the standard for
7 solvency, do you think it would have
8 made a difference and in what way?

9 A: Yes, it would have made a difference.
10 Number one -- what I can do I can relate
11 it to today and how we would respond.
12 If we were able to identify a company
13 that had the potential for some threats
14 to its capital, we have what is known as
15 a supervisory ladder and we use that to
16 profile all members of the industry and
17 that ladder essentially tells us from a
18 risk perspective where the companies are
19 with respect to their capital. It's a
20 four stage ladder from 0-3. Stage 0,
21 essentially, that's giving you the all
22 clear, that there are no issues, to
23 Stage 4 which suggests that the
24 viability of the company may be
25 compromised. Based on how the company

1 profiles with respect to that ladder, we
2 then know what steps to take from a
3 regulatory perspective and that can range
4 from no action to seeking an order for
5 liquidation, and everything in between
6 which can be direction, it can be an
7 undertaking by the Board of Directors, we
8 can suspend a company, we can take
9 temporary management of a company; we
10 have all of these tools available to us
11 now. At that time the Office of the
12 Superintendent of Insurance had the
13 ability to suspend but as far as any
14 actual intervention, taking control of
15 the company and dictating what needed to
16 be done in order to take corrective
17 action, that facility did not exist in
18 the Insurance Act of 1971, and as such
19 translated to a significant deficiency on
20 the part of the regulator with respect to
21 the ability to both identify potential
22 threats and then once identified to
23 actually intervene and take corrective
24 action.

1 Q:

Were there standards in relation to
investment and accounting during the
time of the melt down and if there
were -- well, just answer that first
part.

6 A:

Well, the short answer is no. There were
no standards that follow through
investment and accounting and one of the
things that the Insurance Act of the 2001
also introduced were those standards,
regulations around the whole investment
activity of insurance companies as well
as accounting standards and auditing
standards.

16

17

Continued....

18

19

20

21

22

23

24

25

1 MR. BRAHAM: Was there a deficiency in accounting
2 standards during the melt down that you
3 thought affected the situation? Could
4 you give us an elaboration on both the
5 accounting and investment standard and
6 why you think this is so important?

7 A I would add to that question, sir, if I
8 may, the actuarial standard as well,
9 because I think all three of those
10 standards were necessary to properly
11 identify risk particularly as it relates
12 to the actuaries and once identified to
13 cause the companies to properly resolve
14 to address any potential shock to their
15 capitalisation. If you don't have an
16 actuary that is able to perform then
17 it's as if you are flying blind because
18 you don't know what your risks have and
19 you don't know what the potential
20 threats to your capital base are.

21 Q So you are saying an actuary was in
22 demand during the period of the melt
23 down?

24 A Yes, but the Insurance Act at that time
25 did not require the appointment of an

1 actuary. That was not until 2001. The
2 Insurance Act at that time also did not
3 have the standard auditors which, while
4 we don't regulate auditors, we do today
5 have the capability to review
6 submissions that the auditors have made
7 and if we are uncomfortable with them we
8 will direct the company to retain a
9 different auditor.

10 CHAIRMAN: May I just ask this question. Could the
11 insurance company, was there any
12 insurance company operating without an
13 actuary?

14 A Based on my review...

15 CHAIRMAN: Even before it was required mandatorily?

16 A Based on my review there appears to have
17 been companies that did not have
18 actuaries.

19 CHAIRMAN: Life Insurance Companies?

20 A Yes.

21 CHAIRMAN: Really, they didn't?

22 A They did not have an actuary retained on
23 staff. They might have had an actuary
24 on a contract basis but as far as one
25 being embedded in the company that is

1 enabled to a great extent enabled this
2 asset to liability mismatch, dealing with
3 longer term assets, dealing with short
4 term liabilities and by that I mean there
5 was this strategy that evidently became
6 quite popular, where the insurance
7 companies diversified away from their
8 core business and by that I mean they
9 turned to real estate, they turned to
10 tourism, they turned to investments that
11 at the end of the day were not consistent
12 with what they did as insurance
13 companies. I think, again hindsight being
14 20/20, the companies that survived in the
15 aftermath were those that were truer to
16 their core business; that had less of the
17 speculative investments on their balance
18 sheets, focused more on maintaining the
19 trueness of their core business model and
20 thereby avoiding any threat to their
21 liquidity. So they were able to function
22 in the high interest rate environment
23 because their capital had been secured
24 and weren't threatened by

1 these other products of investments.

2 Q You refer to companies that survived.

3 You mean Life Insurance Companies that
4 actually survived the melt down, you
5 meant some of those?

6 A I am speaking about financial
7 institutions generally, not specifically
8 Life Insurance Companies.

9 CHAIRMAN: Go ahead.

10 A I was just making the point that I am
11 referring to financial institutions
12 generally and what you will find is that
13 companies that survived due to their
14 business model or their corporate
15 governance decided that they were going
16 to avoid many of these speculative
17 products that compromised their
18 liquidity and served to constrain their
19 capital. You had, to name one, Scotia
20 survived. So that's about it. In fact
21 many of these bank insurance products
22 which I referred to wound up through
23 FINSAC going to Scotia's portfolio and I
24 think, just by reading, I know that's
25 not the only example, but that's an

1 example of a company that again
2 maintained a trueness to its core
3 business.

4 CHAIRMAN: Just one moment. Mr. Barnett, you spoke
5 of insurance companies that survived,
6 how many you know survived?

7 A Well, I spoke of financial institutions
8 that survived.

9 CHAIRMAN: Okay. But insofar as insurance
10 companies are concerned, which of those
11 survived?

12 A There seems to have been essentially
13 systemic compromise in the Life
14 Insurance industry at that time, so as
15 far as being able to cite a company that
16 survived and continues to thrive, I
17 would not be able to cite that.
18 Obviously that's in the absence of any
19 intervention of FINSAC. So to the best
20 of my knowledge there is no company that
21 survived per se, meaning was able to
22 continue to operate without any
23 additional support.

24 CHAIRMAN: As far as we know, I think First Life
25 may have survived. Yes, we understand

1 compares to regulation today because
if
2 the objective is to avoid another
3 financial crisis, we have to look at the
4 lessons that were learned from the 90s
5 with respect to the institutions, with
6 respect to supervision, with respect to
7 general market conduct. I think that
8 being structured as far as how we would
9 avoid a similar crisis in the future.

10 MR. BRAHAM: The issue of corporate governance during
11 the time, just prior to the melt down
12 was there the ability to regulate
13 corporate governance and was that of
14 importance?

15 A It was certainly of importance but there
16 was no ability to regulate corporate
17 governance, today there is.

18 4 What aspect of corporate governance
19 created a problem?

20 A Several aspects. There was a lack of
21 adequate interim controls that
22 contributed to a lot of the intercompany
23 lending and the financial arrangements
24 that ultimately resulted. There was a

25
the

lack of any real risk management on

1 part of the companies so that even
2 though they became more aggressive in
3 their investment activity there wasn't a
4 corresponding increase in the level of
5 their risk management and risk
6 management is central to your ability to
7 effectively identify your reserve
8 capital in order to survive into the
9 future. There was a lack of any real
10 provisioning on the part of the related
11 banking institutions.

12 If you remember, gentlemen, when I spoke
13 earlier I said that the loans to the
14 insurance companies became nonperforming
15 and without the banking institutions
16 properly provisioning for nonperforming
17 loans the liquidity problems transferred
18 from the insurance company to the bank
19 and that's the contagion that I referred
20 to. And then again you had the lack of
21 any real regulatory muscle on the part of
22 the then regulator to intervene and to
23 direct the company to perform in a way
24 that will preserve capital. So it was
25 several issues that happened as a

1 result of the deficiency of the
2 Insurance Act of '71. In the world of
3 the Insurance Act of 2001 we have
4 remedied essentially all those issues.
5 Well, except for any issues dealing with
6 bank provisioning because that would
7 fall under the Bank of Jamaica, but with
8 respect to the insurance companies we
9 now have an Act that focuses on
10 corporate governance, has mechanisms in
11 that require that an insurance company
12 have various management committees to
13 see to the quality of their conduct of
14 business. The Act requires in the
15 formation of these committees
16 essentially include outside directors,
17 so you have an objective view of what
18 the company is doing as opposed to an
19 inside director that might not be as
20 objective as we would like him to be.

21 Q What is an inside director?

22 A An inside director is an employee of the
23 company that serves on the board. You
24 also have the ability of the FSC, once
25 these corporate governance practices do

1 not meet with our satisfaction we are
2 able to issue directions and the company
3 correct itself and adjust so that it
4 comes into conformity and again all of
5 this was non-existent in the context of
6 the Act of '71.

7 Q You referred to the question of loans
8 that the banks made and that caused a
9 problem but wasn't that a matter for
10 the banks' regulators?

11 A That's an instance where both regulators
12 should have been involved. Number one,
13 the supervisor of insurance or
14 Superintendent of Insurance rather,
15 should have taken on a more proactive
16 stance as it relates to why industry
17 wide there was an obvious need for
18 capital in the future that wasn't being
19 met by banking institutions. That
20 certainly would have been a red flag in
21 today's world, but again there was a
22 systemic issue across the life insurance
23 industry. But again given the
24 inefficiency of the regulator at the
25 time from having any real mechanism or

1 practical approach they could have
2 been undertaken to intervene, there was
3 none. So even though had it been
4 identified I am not aware of a manner in
5 which it would have been implemented in
6 an efficient manner.

7 With respect to the relationship at that
8 time, there also should have been a
9 degree of communication between the Bank
10 of Jamaica and the insurance regulator.
11 So that if there does seem to be a
12 systemic problem that requires increase
13 in the direction by a banking
14 institution, there should have been more
15 cooperation in identifying what the issue
16 was and trying to determine how best to
17 address it. So that also seems to have
18 been something that at that time led to
19 the Bank of Jamaica problem. In today's
20 environment given the level of
21 communication and interaction between the
22 FSC and the Bank of Jamaica that would
23 not have occurred; either the conduct of
24 institution would have popped up on the
25 FSC radar and we would alert

1 the Bank of Jamaica or if under the
2 banking institution, would have popped
3 up on the Bank of Jamaica's radar and
4 they would alert the FSC.

5 CHAIRMAN: Tell me something, the Superintendent of
6 Insurance was a low level civil servant?
7 I don't mean it derogatorily, but he
8 wasn't at the level of a permanent
9 secretary or just below, was he?

10 A I couldn't speak to where he fell on
11 that hierarchy.

12 CHAIRMAN: Obviously where he fell is important.
13 A Certainly it just stands to reason that
14 the supervisor of your insurance
15 industry would be a high ranking
16 official, but I can't speak to that.

17 CHAIRMAN: You mean he should be?
18 A Should be; if he wasn't at the time
19 certainly should have been.

20 CHAIRMAN: Anyway, presumably we will hear from him;
21 hopefully.

22 MR. BRAHAM: So there were regulatory and statutory
23 weaknesses? The insurance regulator and
24 the supervisor or the Superintendent of
25 Insurance, did he have staff or it was

1 just himself alone? What was the staff
2 was it adequate?

3 A Well, I couldn't speak of what the staff
4 complement was at that time but I know
5 that it was much, much less than the
6 FSC's current staff complement.

7 CHAIRMAN: And of course you have tools, you have
8 weapons; he was given a slingshot.

9 MR. BRAHAM: Earlier you had mentioned that the
10 insurance industry was the epicentre of
11 the entire melt down, could you
12 elaborate a little bit more as to why
13 you have that view?

14 A The imprudent practices, the development
15 of what I referred to as the, I believe I
16 used the term` 'toxic assets', their
17 origination was within the insurance
18 industry. So you had bad business
19 practices, you had questionable
20 investments given the nature of an
21 insurance company and on top of that you
22 had poor governance, poor risk
23 management. All of that being
24 exacerbated by the inflationary
25 environment at that time and the

1 tightening of monetary policy that
2 resulted in the raising of interest
3 rates. But for that chain of causation
4 you would not have had the liquidity
5 crunch that the insurance companies came
6 under, and without that liquidity crunch
7 you don't have the companies turning to
8 their affiliated banking institutions for
9 these loans that sort of spread the
10 liquidation through the banking system.
11 So, that's why I referred to it as the
12 epicenter of the crisis, and the
13 practices that at that time seemed to
14 have permeated the insurance industry
15 ultimately reached the point where the
16 insurance companies had to turn to the
17 banking industry and in effect
18 compromised the banks that were there to
19 bail out the insurance companies.

20 Excuse me, just a moment. What is
21 CHAIRMAN: interesting to discover is what was the
22 economic state of the country at the
23 time because the reason I ask the
24 question, some of these insurance
25

1 companies were running for quite a long
2 time and were flourishing and yet at a
3 particular time all of them had to go
4 and plant paw paw or go into to buying
5 property, rent or whatever. Was that
6 prompted by the economic state of the
7 country? I mean, you see we hear about
8 the bad practices and that, but from
9 their perspective what could they do,
10 given the economic situation of the
11 country?

12 A As an alternative I think rather than
13 becoming more aggressive and creative in
14 the nature of their investment they
15 could have focused more on really
16 maintaining the integrity of their
17 insurance practice. An insurance
18 company is not there to speculate on how
19 things grow or agriculture and I think
20 that that...

21 CHAIRMAN: One second. Before that you said 20/20,
22 is genius. But these bodies were
23 operating in an environment, poor
24 economic environment, casting about to
25 survive and if they say you can't leave

1 out consideration of the fact some of
2 them were there for quite a long time.
3 I mean Mutual Life was over a century
4 old. That's not a juvenile organization
5 that's an old man, a very old man.

6 A Yes, but again if you go back and look
7 at the chain of causation that T
8 discussed, one of the issues that
9 concerned me and would concerns me today
10 is the creation of an insurance product
11 that in every sense of the word looked
12 like a deposit account and not being
13 properly regulated and while the
14 development of that product may be good
15 from the perspective of attracting new
16 policy holders, it's bad if you don't
17 deal with it appropriately in the way
18 you reserve or in the way you match up
19 your assets and your liabilities.
20 That's worsened by the fact that these
21 products guaranteed a level of interest
22 return as a deposit account would. So
23 when there was some interest rate shock
24 the capital of companies were unable to
25 address what their liabilities were. So

1 from that perspective even if a company
2 is becoming creative in its investments
3 or the nature of its product offering,
4 there has to be a corresponding level of
5 creativity in how the company is reserved
6 and try to ensure their capital base
7 should there be some shock, be it
8 exogenous or indigenous and the
9 companies, when it reaches that point in
10 the analysis, I think that's where
11 imprudence enters the picture because the
12 focus was on developing the business and
13 driving these new products rather than
14 developing the business driving the new
15 products and simultaneously trying to
16 mitigate against risks, and what in an
17 extremely sensitive interest rate
18 environment, what potential risk would be
19 presented to the viability of the company
20 if there became any significant
21 compromise of the capital of the company.

22

23

Continued. .

24

25

1 real estate subsequently served to not
2 bolster the industry but compromise it,
3 and that is why you see the US
4 Government bailing out the industry and
5 many countries across the world, it's the
6 same issue, it's creativity and
7 entrepreneurship not being culpable with
8 an appreciation for risk and properly
9 provisioning in the event that there is a
10 shock to your business activities. What I
11 am saying is, you know, certainly as the
12 regulator of these institutions, I
13 welcome their creativity and the extent
14 to which they feel that they can create a
15 product that the market can benefit from,
16 but it's not efficient to stop at that,
17 there are many steps beyond that which
18 deal with shoring up the company's
19 solvency, so that if there is some
20 unforeseen event, they are able to
21 survive into the future and more
22 importantly their investors or policy
23 holders are able to receive their assets,
24 that their assets aren't lost or
25 dissipated.

1 MR. BRAHAM: Since the melt-down, there has been
2 statutory and regulatory reforms, is
3 that not so, Mr. Barnett
4 A Yes.
5 Q Could you tell us as best as you can
6 what are the nature of reforms and the
7 purpose and effect?
8 A Generally, we had the introduction of
9 the Insurance Act of 2001, the
10 introduction of the FSC Act of 2001, we
11 have improvement to the Securities Act
12 and we had the introduction of -- well
13 at least as far as Phase 1 goes of the
14 Pensions Act.
15 Q The Insurance act of 2001, could you say
16 what regulation it has permitted that
17 did not exist before?
18 A I can and I have been, but let me say it
19 again for completeness, because I think
20 it's an important point, given the
21 difference in the regulatory environment
22 today and how things were at the time,
23 we had actual prudential regulations,
24 that is where these capital tests fall
25 into the equation; we had, just to re-

1 fresh your recollection, the minimum
2 asset test as it relates to the general
3 sector and the MCCSR, Minimum Continuing
4 Cashflow/Surplus Requirement as it
5 relates to the Life Insurance Sector. We
6 have a fit and proper review that didn't
7 exist at the time; we have regulation
8 around the types of investments and loans
9 that insurance companies were able to
10 indulge in, there was regulation around
11 the actual governance of the institution,
12 again these Committees of the Board that
13 deal with conduct of the institution; we
14 have regulation around the nature of
15 advertising and the information that the
16 insurance companies can put into the
17 public arena, the veracity of the
18 information; there is regulation around
19 the asset that the insurance companies
20 can hold, and we look to see whether or
21 not there is a potential for any mismatch
22 in terms of those assets and potential
23 liabilities; there is regulation
24 surrounding the extent to

1 which there can be intervention by FSC
2 in the event there is a perceived threat,
3 capital misconduct; there is also
4 regulation around, again from a
5 prudential perspective, the risk,
6 furtherance of risk that a company may be
7 exposed to. The FSC is now able to
8 conduct examinations of the companies and
9 that can be on site, meaning at the
10 company, depending on what information we
11 have, either from a complaint or some
12 other source of intelligence, or from the
13 submissions that the company makes to the
14 FSC in its required quarterly/ annual
15 filings and then there is management -
16 well, again for the FSC to intervene in a
17 number of ways to correct the course of
18 the company if we see it moving in a
19 direction that we deem as being imprudent
20 and alternate to the company's survival
21 or certainly to the solvency of the
22 company. So in general, and there are a
23 number of tools,
24 probably weapons is a better term, that
25 we have today that didn't exist at that

1 time. The regulation at that time was
2 less proactive than the nature of the
3 regulation today and certainly the
4 interaction between regulator and the
5 regulated institutions also are quite
6 different in terms of the dynamics; we
7 are more active in our communication
8 with the institution, and with the
9 industry, we have quarterly meetings
10 with the industry organizations;
11 whenever we are uncomfortable with the
12 conduct of an industry member, we call
13 that institution in and sit down with
14 their senior management to determine
15 what the nature of the conduct is, and
16 in this regard we may also conduct
17 examinations. Where we are
18 uncomfortable with the conduct of senior
19 management, we can determine that they
20 are not fit and proper to serve in that
21 capacity which has a ripple effect in
22 terms of the extent to which they can
23 continue to participate in the industry,
24 so there are many tools, weapons that we
25 have today that are due to the revisions

1 and improvement in the Insurance Act,
2 the extent and requisite from the
3 Insurance Act of 2001 and serves to
4 correct the deficiencies that existed in
5 the Insurance Act of 1971.

6 Q You had mentioned earlier about
7 regulatory arbitrage, is that it?

8 A Yes.

9 Q Could you tell me briefly what that is?

10 CHAIRMAN: Just one moment, before you answer that
11 question. Mr. Ross.

12 COMM. ROSS: Mr. Barnett, could you tell us what
13 extent the FSC has autonomy to act in
14 the capacities you just mentioned and
15 what extent do they need to get the
16 approval of Minister before taking
17 certain actions.

18 A The FSC is an autonomous institution,
19 it's self-financed, and has far and
20 wide-reaching power with respect to
21 power to investigate, our sanctions, our
22 supervisor. With respect to the
23 relationship to the Ministry of Finance,
24 there are certain issues, and again I
25 point you back to that standard document

1 of November 2005, that from the
2 perspective of the IMF, they identified
3 as not being the most efficient in that
4 the Ministry of Finance was able to
5 direct as opposed to advise on, and those
6 were issues that on a day-to-day basis, I
7 would say, from my perspective, don't pose
8 any risks to our efficiency of
9 regulation. Certainly, any systemic issue
10 that transcends the Insurance Industry
11 and goes to the heart of the fiscal or
12 monetary position of the jurisdiction,
13 falls within the Ministry of Finance, not
14 within the FSC, so in that regard, we
15 would have jurisdiction. But at the end of
16 the day, from a perspective of being able
17 to effectively deal with the issues that
18 we saw in the 90s, the proliferation of
19 weak
20 regulation, I am comfortable that the
21 current dynamic is sufficient and in fact
22 allows us to do quite well in terms of
23 being able to take a look at what
24 companies are doing and where necessary
25 take the necessary steps to intervene.

1 We report such intervention to the
2 Ministry of Finance, where necessary the
3 results of our examinations, we also
4 report them to the Ministry of Finance,
5 so the Ministry of finance is completely
6 up to speed as far as where we are with
7 respect to the conduct of our insurance
8 providers. With respect to legislation,
9 we dialogue directly with the Ministry of
10 Finance; with respect to any proposed
11 legislation, we run it by them so that
12 they are comfortable with the nature of
13 the regulation and what it's meant to
14 remedy and then we rely on their offices
15 to help us actually see through to full
16 legislation and passage into law.
17 With respect to any industry misconduct,
18 and any decision by the FSC to take
19 further action against a company, we
20 notify the Ministry of Finance so they
21 are aware of any shock that would happen
22 to the financial sector based on such
23 action. So we keep them up to speed and
24 we are able to respond accordingly based
on our conduct.

1 where the Ministry of Finance would have
2 to approve the further action.

3 COMM. ROSS: Okay. I just wanted to be clear on that,
4 because it was an issue with the Bank of
5 Jamaica's monetary responsibilities and
6 I just want to find out how similar the
7 FSC is in terms of those issues?

8 A Yes, and there are various similiarities
9 there. My concern again, which is why I
10 hasten to make the point, is -- can I
11 cite for you an instance where that
12 hierarchy would compromise our
13 efficiency as a regulator? And my
14 answer to that would be no, because
15 today, the level of intervention and the

16 responsiveness of the organization, I
17 think, is much improved from what we saw
18 under the old regulatory regime. Is there
19 room for improvement? My answer to that
20 would be yes and I think that in many
21 ways one of the things that we are trying
22 to do is improve regulation going forward
23 to allow for greater swiftness in our
24 response in certain instances. Just for
25 CHAIRMAN: completeness, I take it that

1 companies were able to do without being
2 in breach of the terms of the Insurance
3 Act.

4 Q Are there any provisions to deal with
5 that type of situation now?

6 A Yes, because there are provisions around
7 the product offering that the insurance
8 companies are able to make and there are
9 provisions around their investment and
10 lending activities and from a systemic
11 perspective, there is much improved
12 relationship between the Bank of Jamaica
13 and the FSC in that there is better
14 communication, better ability to
15 forecast, predict any imprudent
16 activity and better ability to respond
17 in the event of crisis. There was an
18 IMF technical note also as part of the
19 financial sector assessment programme of
20 2005 that dealt with the crisis response
21 mechanism and they found that the nature
22 of the relationship was much improved
23 contributing to freer flow of
24 information and which redound to the
25 authorities to respond more effectively.

1 Q Are there any sort of formal interaction
2 between the regulators in Bank of
3 Jamaica and FSC or is it as either
4 regulator determines, is there a
5 requirement to meet and report to each
6 other, what is in place, if any?

7 A Well, it is not a reporting requirement
8 per se, but we do have a Financial
9 Review Policy Committee, that meets
10 quarterly. That's the FSC, Bank of
11 Jamaica, Jamaica Deposit Insurance
12 Corporation, other stakeholders are in
13 the financial sector to ensure the
14 quality of the financial sector and to
15 see whether or not there is systemic
16 issues that are on the horizon. In
17 addition to that the Bank of Jamaica, the
18 FSC, the Ministry of Finance meet on a
19 weekly basis to discuss issues of systemic
20 importance; informally the FSC and Bank of
21 Jamaica will speak quite frequently and
22 that is to determine whether or not, if
23 there is a one-off instance that cannot
24 wait for the next weekly meeting, we
 interact directly

1 with each other and then on a monthly
2 basis the FSC and Bank of Jamaica meet
3 just to discuss what the goings on are
4 and the extent to which there needs to
5 be any corrective action taken between
6 both regulators.

7 CHAIRMAN: This is a convenient time Mr. Braham.
8 We take a break now.

9 ON RESUMPTION:

10 CHAIRMAN: May we resume. Mr. Barnett you are
11 still on your oath.

12 COMM. BOGLE: Mr. Barnett, the FSAP, in their
13 recommendation, there is one
14 recommendation, the Insurance Act or
15 regulations should be amended to
16 explicitly enable the FSC to deny an
17 application for registration if the
18 insurer's organizational or group
19 structure hinders effective supervision.
20 The status per the document we received
21 from you state "not yet implemented",
22 could you comment on this? It's page 8
23 of the document, the last paragraph,
24 have you seen it?

25 COMM. BOGLE: At the bottom, the IA or regulations

1 should be...

2 A On I see.

3 COMM. BOGLE: And the reason why I asked this is
4 because part of the problem that you
5 speak about and other persons spoke
6 about is the fact that insurance
7 companies weren't able to or companies
8 were able to move things from one
9 company to another to avoid regulation
10 and so this actual recommendation is
11 saying that the FSC should be able to
12 deny, if such a situation arose, in
13 other words, if someone is seeking
14 registration but the FSC feels that the
15 group structure hinders effective
16 supervision, can you comment on that?

17 A Yes. What this is referring to is
18 whether or not the current regulatory
19 framework permits the FSC to, on it's
20 face, deny an application based on group
21 structure and as a matter of practice,
22 an application is not denied based on
23 group structure; what happens is further
24 investigation into the group structure
25 takes place, so even though there maybe

1 issues with the group structure, an
2 application is still approvable if the
3 applicant is able to sufficiently
4 demonstrate for the FSC that our
5 concerns....

6 (Short power cut)

7 CHAIRMAN: You were shedding light, were you?

8 A I thought I was. Yes Chairman I hope
9 that is not indicative of your
10 unhappiness with my response but the
11 point I was simply making was that - so
12 rather than an application being denied
13 outright based on the FSC's concern
14 about a group structure, we will take a
15 heightened review of the application to
16 see whether it is a matter that we can
17 become comfortable with, and if there
18 still presents a concern then the
19 application would be denied, but what
20 this is referring to is the automaticity
21 of the denial.

22 COMM. BOGLE: It's just that the last paragraph says,
23 the structure hinders, which would mean
24 that there is evidence that the
25 structure hinders effective supervision.

1 A Right, and respectfully what I am trying
2 to highlight is the fact that there is a
3 difference between the structure
4 appearing to hinder evidence and being
5 denied, and the structure appearing to
6 hinder evidence and being subject to
7 further review. This is suggesting that
8 once the structure appears to be a
9 hindrance that it should be denied, and
10 I am saying as a matter of practice, the
11 structure of an applicant appears to be
12 a hinderance after effective
13 supervision, we take a deeper look to
14 see whether or not there is a real
15 hindrance there and then if that is the
16 case the application would be denied, so
17 I think it's a more reasonable approach
18 for the regulation, in that you are
19 taking a heightened level of scrutiny
20 of the application rather than merely
21 dismissing it based on the appearance of
22 there being a hindrance to supervision.

23 CHAIRMAN: Thank you. Yes Mr. Braham.

24 MR. BRAHAM: Mr. Barnett, are you aware of Basel 11?

25 A Yes I am.

1 difference between the Bank of Jamaica
2 versus the FSC, there are issues that we
3 look to at the end and given the nature
4 of our licensees and the institutions
5 falling under our jurisdiction, there
6 are issues that we look to that the Bank
7 of Jamaica would not look to because of
8 the nature of the business that they
9 regulate and if you have an amalgamation
10 in regulation, there is a sufficient
11 risk that those nuances may be lost and
12 decisions that maybe prudent from the
13 perspective of a securities dealer may
14 not be prudent from the perspective of a
15 deposit taking institution, it's just
16 the fundamental differences there, so I
17 think in the context of Jamaica, it is
18 sensible to have a division in the
19 manner in which regulation occurs.

20 Q Would it lend to efficiency if there was
21 a regulator for the Insurance Industry
22 alone as against the insurance industry,
23 securities and many others that you are
24 responsible for?

25 A Yes, I would suggest that would drive

1 inefficiency.

2 Q How would it drive inefficiency?

3 A If there was a stand alone insurance
4 regulator. Why? Because at the FSC we
5 are able to take a more comprehensive
6 look at the non-deposit taking segment
7 of the Financial Services Industry.
8 What that means is that you can look at
9 what activity an insurance company is
10 involved in relative to its investment,
11 relative to the nature of its portfolio,
12 relative to the manner in which there is
13 a provisioning and reserving in
14 anticipation of risk. We can do that in
15 the context of not just the insurance
16 sector, but also the pension sector
17 which strongly is related to the
18 Insurance Industry, and the securities
19 sector, which happens. There is an
20 interconnectiveness to a lesser extent,
21 so we have a more holistic perspective of
22 the non-deposit taking segment of the
23 financial sector, and again the nuances,
24 in that aspect of the Financial Services
Industry differ from those in the

1 deposit taking sector of the Financial
2 Services Industry.

3 If you recall, prior to the break, I
4 testified as to the extent to which
5 there is a lack of communication between
6 regulators and my thing is, our focus
7 was right in rectifying that, to the
8 extent that there is significant
9 communication between the regulators, we
10 come to the same objective which is
11 ensuring that we all have the same
12 degree of information and we are able to
13 respond uniformly to addressing
14 any sytemic risks.

15 Q You mentioned the weaknesses and the
16 legislative and regulatory improved
17 setting in place, in your view are there
18 still any weaknesses now existing that
19 need attention?

20 A Weaknesses, I would say, no, and by
21 weaknesses I mean the issues that
22 allowed the proliferation of imprudent
23 practices and ultimately compromise of
24 the industry. I think we have done a
25 very good job of remedying those issues.

1 Is their room for regulatory
2 improvement? I think so, I think
3 regulation has to be fluid, it has to be
4 dynamic, we change as the industry
5 changes and we have to be nimble enough
6 to respond as the industry grows and
7 matures. Being a financial regulator,
8 it's an interesting sort of a
9 relationship that you have with your
10 industry, because on the one hand you
11 want to create a regulatory environment
12 that allows the industry players to
13 strive, to sort of, you know, be
14 creative in probably developing their
15 products and how they relate to the
16 market; you want Jamaica to be a
17 jurisdiction that attracts investment,
18 you want everything to be conducive to
19 driving the quality of our industry; at
20 the same time while you are encouraging
21 that, once the foundation is in place for
22 that to happen, you also need to standby
23 to see to it that any imprudent
24 practices, inappropriate activity,
25 anything that presents a risk to your

1
2
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

clients, your investors, indeed the very
viability of the industry, you are
prepared to respond to.

Continued...

1 CHAIRMAN: What I meant was that so far as you are
2 aware -- I know you weren't around that
3 time. But so far as you are aware the idea
4 at the time was to encourage
5 entrepreneurialism. If I may be colloquial,
6 "Black man time come now", you know, so
7 you are encouraging indigenous growth in
8 the financial sector. And I am *just* asking
9 you if anything was done to discourage
10 people departing from what you now say is
11 the core business? Because I mean we just
12 didn't suddenly wake up, did we, and
13 realise, but this is not your core
14 business? What was in historical terms the
15 position?

16 A I don't know from a financial perspective
17 what was done to encourage companies to
18 avoid venturing into aggressive products
19 that would compromise their liquidity. I
20 just don't know. I don't know if it was
21 done and if it was I don't know what was
22 done. But I what do know is that when the
23 crisis came, when it presented it's clear
24 that there were no measures in place for
25 the regulator to effectively respond, which

1 says to me that balance that I speak of
2 wasn't achieved. If there was encouragement
3 or perhaps, regulatory silence that allowed
4 these products to proliferate from the
5 perspective of being able to regulate to
6 mitigate risk, everything that I spoke to
7 prior to break needed to happen in the
8 development of these products. It's clear
9 that that didn't happen and I think that is
10 what ultimately led to the compromise of the
11 quality of the insurance companies. So if
12 you recall, the issue isn't innovation, the
13 issue is regulation. Innovation has to
14 occur. Innovation is what drives the market
15 but you need to have the corresponding
16 regulation to ensure that the innovation
17 doesn't present an inappropriate level of
18 risk to your industry which unfortunately in
19 the '90s is what happened; the
20 innovation, the very sort of market
21 activity that became the driver of the
22 market and what would have been a very
23 bouyant market, ultimately served to
24 undermine market. And as I mentioned
25 before, and I think it's worth noting that

1 the dynamics that created that is not
2 specific to Jamaica, it happens the world
3 over. We are now seeing the same thing in
4 Iceland today where the very bouyant market
5 driven by this acceptance that the market
6 was sufficiently capitalised and that the
7 market functioning insolvent and they went
8 into their own FINSAC. So it happens and
9 what we have to do as a jurisdiction is
10 learn from our mistakes and move forward,
11 which I think we have done quite well. This
12 year, earlier this year - if I may just be
13 permitted to continue. Earlier this year we
14 saw in Trinidad the inclusion of CLICO which
15 regionally was probably the most significant
16 player and has really created real issues in
17 many jurisdictions as far as the extent to
18 which it became
19 systematically important. I was at a
20 conference a couple months back and what was
21 communicated by the Pensions Regulator,
22 Monsterrat was that the fall off from Clico
23 was indeed worse than the volcano. So at the
24 end of the day that's the degree of severity
25 that improper regulation can pose

1 to a jurisdiction, efficient functioning of
2 a financial sector. However,
3 notwithstanding all of that, CLICO had
4 negligible impact on Jamaica and that again
5 is because of the strength of insurance
6 regulation. It shielded us and when the
7 sort of nature of the collapse or damage
8 was trying to be quantified, Jamaica came
9 through it unscathed because our insurance
10 regulation was too robust and too
11 significant to allow the company to enter
12 the jurisdiction.

13 CHAIRMAN: You see the reason why I am putting all of
14 these things you is because we were told
15 about moral suasion. The Bank of Jamaica
16 has readily acknowledged that they didn't
17 have any tools, weapons to deal with
18 certain things but they used moral suasion
19 insofar as the banks were concerned. So I
20 am just wondering whether self-help
21 procedure perhaps, wasn't sort of probably
22 used by the regulatory body for the
23 insurance companies.

24 A Yes, I would be extremely concerned if in
25 the midst of a crisis we had to default a

1 certain -- the nature of there being an
2 efficient regulator of the industry is to
3 avoid some sort of ad hoc or inconsistent
4 resolution to a crisis.

5 CHAIRMAN: I accept that. It is just that -- well,
6 the reality of the situation is that you
7 don't have draconian weapons; you have no
8 means; no sanctions but you can't stand by
9 and watch things fold, so the Bank of
10 Jamaica thought that moral suasion was a
11 method of remedying the situation.

12 A Yes, I appreciate your point but again,
13 respectfully the point I am making is,
14 moral suasion is only as effective to the
15 extent to which the players buy into
16 whatever you are suggesting as a regulator.
17 I am saying that moral suasion isn't enough
18 to regulate. Moral sausion is me saying to
19 you...

20 CHAIRMAN: I readily agree.

21 A Right.

22 CHAIRMAN: I have said that to the Bank.

23 A Moral suasion is me saying to you, this is
24 what I think you guys should do.

25 CHAIRMAN: Indeed.

1 people's assets.

2 MR. BRAHAM: I see. And the FSC has taken any actions
3 in relation to these UFOs?

4 A Yes, we have. We have issued several cease
5 and desist orders, we have in one instance,
6 litigation currently pending and we publish
7 as watch-list on a quarterly basis of
8 institutions that we are aware of.

9 CHAIRMAN: That is the Glint sort of thing?

10 A Say that again, sir.

11 Q That's the kind of Glint sort of situation?

12 A Well, Glint is an example of what we
13 consider a UFO.

14 CHAIRMAN: UFOs.

15 A Unregistered Financail Organisation.

16 CHAIRMAN: Glint is referred to as UFO?

17 A Well, we were deliberate in our acronym.
18 But to the extent that we are able to
19 regulate these institutions which I think
20 is the direction that you are going in. If
21 they are are operating in a manner that is
22 illegal, meaning that they haven't applied
23 to the FSC for registration and we are not
24 able to identify what they are doing then
25 we are very aggressive in warning the

1 public to avoid placing their assets with
2 these institutions.

3 Q Did you...

4 CHAIRMAN: Just one moment.

5 COMM BOGLE: Mr. Barnett, dealing with the UFOs do you

6 think that the FSC could have done more at
7 a faster pace than they did regarding those
8 in Jamaica, even now. We see our list but
9 is there anything else that of the FSC is
10 doing regarding these UFOs?

11 A Well, yes. And unfortunately I am not at
12 liberty to discuss what we do in this
13 forum. The publication of the list and the
14 purpose of list is to identify these
15 schemes, to identify who the primary
16 individuals with responsibility for
17 marketing the schemes are we say as far as
18 our intelligence tells us and make sure
19 that the public is sufficiently aware of
20 the fact that this is not an institution
21 that is regulated and if you place your
22 assets with them you are placing your
23 assets at risk.

24 There seems to have been the perception
25 that a number of these institutions were

1 really there to benefit the investors
2 public in an altruistic way and as a result
3 of that they were guaranteeing fantastic
4 returns through infinity, which frankly
5 there is no market in the world that has an
6 investment strategy or institution that is
7 able to guarantee ten, fifteen, twenty
8 percent return month after month. The only
9 place where that existed in the world was in
10 the United States is in the context of
11 Bernard Madoff which became a Ponzi Scheme,
12 it was guaranteeing 10% per year rather than
13 per month. And the level patronage as it
14 relates to these institution. And lets stick
15 with the Madoff Ponzi scheme. It is driven
16 by this irrational acceptance of these
17 returns without a corresponding degree of
18 scrutiny on the part of investor. Without
19 the placement of people's hard earned money
20 with these UFOs, they don't proliferate,
21 they die. They need the constant flow of
22 capital in order to survive because they
23 take money in and pay money out to the later
24 investors. So if you stop the flow of money
25 to the institution

1 it stops. And that's just the dynamic of a
2 Ponzi. And the question is how do you stop
3 the flow of assets to that institution when
4 as the regulator you have no legislative
5 authority over what they do?

6 COMM BOGLE: Just wondering. You mentioned Madoff and
7 also we can look at Stanford. What I am
8 getting at now is that in the United
9 States, they seem to me to be able to take
10 action against these people but we don't
11 seem to take any action in Jamaica. I mean,
12 Madoff came up and in a short stake he was
13 in prison, Stanford is still in prison, but
14 our legislation out here seems to lack -- I
15 don't know if it's the legislation or will
16 to do anything in Jamaica seem to be not
17 there, because we have situations I can
18 remember one that kept saying they have
19 applied, they have applied, the FSC saying,
20 "we have no application" But nothing
21 further has done. Only that we have
22 applied; we have applied, no, you have not
23 applied and that's what we see in the media
24 but we don't seem to see any steps being
25 taken as against when I said, when we look

1 in the United States?

2 A It's not a fair comparison. In the case of
3 Madoff, Bernard Madoff admitted that he was
4 running a Ponzi scheme and surrendered to
5 the authorities and then when the matters
6 was taken to court he pleaded guilty.
7 That's why he is in jail for one hundred
8 and fifty year,s, not because of any
9 significant regulatory action in the U.S.
10 In fact, I think it's clear that as early
11 as ten years ago there were a number of
12 reports to the Securities of Change
13 Commission which is the United States
14 version of FSC, to use a crude analogy,
15 there are a number of complaints to the FSC
16 about the extent to which what Madoff was
17 doing was a Ponzi and that maybe they need
18 to take further regulatory action. But
19 interestingly at that time there was this
20 significant relaxation in regulation that
21 allowed Madoff to continue thriving and in
22 fact attracting capital. This is despite
23 the fact that Madoff ran a fund that was
24 comprised of your blue chip stocks. So not
withstanding the fact that the blue chip

1 stocks were falling off in value the
2 Madoff's fund was still appreciating. It
3 just didn't make sense and the very
4 fundamental issue, but given the
5 irrational support for Madoff and
6 everything that happened over of the. course
7 of the twenty years that it was in
8 existence, people assumed that what he was
9 doing was effectively investing their
10 assets. For whatever reason a similar
11 dynamic occurred in Jamaica. It's in a sense
12 that you knew someone who invested in a UFO
13 and they had been getting their return so I
14 am going to place my assets with them as
15 well. Not well, let me look at what they are
16 doing; how they are investing your assets.
17 Show me your account. I want to see your
18 statements and see what exactly the nature
19 of your activity is and investors are
20 entitled to this and that's why it's
21 imperative that you have a regulator between
22 the
23 individual and the institution to confirm
24 that they are ensuring that they disclose
25 information because without that you are

1 investing blindly and you are just going
2 on blind trust, blind faith that the scheme
3 does what it claims to do.
4 So with respect to the Olint matter that's
5 currently pending in court, it has been now
6 for some eight or nine months and we are
7 awaiting a decision. There are others that
8 for one reason or another seem to have
9 fallen upon hard times, I don't know if it's
10 an increase in investor awareness about the
11 risks of patronizing these institutions, or
12 it is that the fact that the FSC acted,
13 regardless of when it acted, it acted and it
14 heightened investors sensitivity to the
15 risk. I don't know, but probably something
16 that would be interested to take a look at.
17 But the fact of the matter is, without the
18 patronage of the public and the continued
19 placement of these assets UFOs can't
20 proliferate, they can't fly and I think that
21 has to be the focus and in large part,
22 that's why we are focussing on financial
23 literacy within Jamaica to avoid a
24 recurrence of any sort of suspicious scheme
25 that's promising these

1 irrational returns.

2 COMM ROSS: I just like to ask whether or not it is
3 legal to offer financial services without a
4 licence? Whether or not a deposit-taking
5 licence is required by the FSC?

6 A The extent to which a license is required
7 depends on what you do. So for example,
8 foreign exchange trading which seems to
9 have been the smoke that these UFOs use to
10 attract investors is something that's
11 currently regulated by the Bank of Jamaica,
12 and at that time, the interpretation that
13 was applied the contract that the UFOs used
14 to induce clients to invest or to place
15 their assets resulted in the conclusion
16 that that contract was an investment
17 contract falling under the Securities Act.
18 So with respect to that aspect, it fell
19 under the jurisdiction of the FSC. So if
20 they were interested in operating in
21 compliance with the regulation in the
22 jurisdiction there would be a dual
23 registration; one with the FSC from the
24 perspective of there being an investment
25 contract and one with the Bank of Jamaica

1 as far as there being trading in foreign
2 exchange.

3 COMM ROSS: Well, I am trying to find out about the
4 legality. In other words, if someone goes
5 out and sets up shop trading foreign
6 exchange or maybe just offering people ten
7 percent a month on their money, are they
8 doing anything illegal if they don't have a
9 licence from a regulator? So that would
10 one question.

11 A My answer would be, yes. If what you are
12 saying is that they are taking your money
13 and trading in foreign exchange without a
14 license, then yes, it would be illegal.

15 COMM ROSS: The question then is, why is it of the 59
16 institutions I think on your list, only one
17 has actually had action taken against him?

18 A I would...

19 COMM ROSS: Is that a failure of regulation?

20 A I don't think your conclusion is correct,
21 sir. Respectfully, by virtue of the fact
22 that institutions are on the list I think
23 that's indicative of us taking action. We
24 take action in many ways and I get the
25 sense that what the Commission is concerned

1 about is the extent to which you see some
2 spectacular action, someone in handcuffs
3 going behind some curb wall in jail. And
4 the lack of that, the absence of that
5 doesn't mean that there is no action being
6 taken. Our success as a regulator is
7 measured by the extent to which the UFOs
8 are able to thrive in the
9 jurisdiction, where their assets continue to
10 be placed within the jurisdiction. And in
11 the absence of us being unable to arrest or
12 otherwise detain the promoters of these
13 schemes, we have to protect the public, and
14 what's ironic is not only are we protecting
15 the public for the UFOs, in large part we
16 are protecting the public from themselves
17 which is incredibly difficult because I have
18 to convince someone that despite the fact
19 that an institution is guaranteeing ten
20 percent for infinity, that it doesn't make
21 sense to put your money with that
22 institution. Obviously someone is only
23 watching the bottom line return, they are
24 just going to be concerned about how much
25 they are going to be able to get back from

1 the institution. What the FSC has said
2 repeatedly is that, if you decide to go in
3 that direction it's not simply a matter of
4 looking at the ten percent, you also have to
5 look at the other information that you are
6 entitled to as someone who is with that
7 institution or that entity. You have to look
8 at what they do with your money. You have to
9 look at what they do to create this return.
10 If there was an institution that was allowed
11 year after year to guarantee ten percent I
12 think everyone here would just be looking
13 into amass that initial principal to make
14 the investment and then stop working and
15 live off the investment return, but that's
16 not realistic and that doesn't exist
17 anywhere in world. The fact of the matter
18 is, the investors who are looking for more
19 aggressive products, and rightfully so,
20 that's the nature of investing, you also have
21 to appreciate that with that degree of
22 aggression comes a level of risk and if you
23 are placing assets with an institution
24 that's claiming to do something without being
25 able to confirm

1 that to the satisfaction of you as the
2 investor or especially me as the regulator
3 then that should be avoided because you are
4 really risking a significant loss of capital
5 that is quite unnecessary and avoidable. I
6 think this does suggest that there maybe an
7 appetite for risk in Jamaica, that to a
8 certain extent can be quite damaging. But I
9 think it can also be harmless to benefit our
10 overall market. I think our capital markets
11 right now that are quite the initiative in
12 some of the announcements and pronouncements
13 that are out there and I think that to the
14 extent that our dealers can introduce
15 products that meet price risk accordingly
16 and we must appreciate that with increased
17 risk you have the opportunity for a greater
18 return, but then in a controlled
19 environment I think we can benefit by
20 increased investor patronage, I think that
21 only helps our system. I think there is a
22 way to capitalise so that we benefit as a
23 society as opposed to being faced with
24 potential or significant capital loss.

1 COMM BOGLE: Mr. Barnett, would you say that we might
2 have encouraged the thinking of some of
3 these investors when we guaranteed a hundred
4 percent of their investment plus interest
5 when we had the meltdown, so we had people
6 who were getting 40-45/50% returns on their
7 investment and when the collapse came we
8 gave them a one hundred percent of the their
9 investment plus interest. Couldn't we by so
10 doing have sort of created a situation
11 whereby persons felt well yes, it's a risk
12 but I am being bailed out and maybe why so
13 many of the persons who are having
14 difficulties now feel that government should
15 have come in and bailed them out. What's
 your comment?

17

18 Continued...

19

20

21

22

23

24

25

1 in one instance there is, I think a
2 valid expectation that there is, up the
3 point of the institutional failure there
4 has been some representation that the
5 institution was sound and performing
6 effeciently. I think there is a
7 rationale that makes it sensible for one
8 to conclude that government would
9 perform some sort of bail out,
10 substantially different from one where
11 you are being cautioned against
12 patronizing certain types of
13 institutions that were below the level
14 of due diligence and as a result I don't
15 think one can also validly conclude in
16 that context that it makes sense to
17 expect that there will be some safety
18 net or bail out. I think you accepted
19 the risk and you decided to do so quite
20 willingly.

21 COMM. ROSS: Just one last question. The UFO's...

22 A: By the way -- I am sorry Mr. Ross, just
23 let me add. If there is a mechanism
24 that allows for assets that were
25 otherwise decipated or lost to find its

1 way back to the jurisdiction,
2 notwithstanding the fact that investors
3 decided to patronise these institutions,
4 and irrationally so, the FSC would
5 certainly explore those strategies,
6 those mechanisms to see if there could
7 be some measure in which we can assist.
8 The unfortunate thing, I think we both
9 have to accept the fact that to the
10 extent that the assets are dissipated
11 and irretrievable lost, then those who
12 decided really at their own peril to
13 place their money with them also
14 accepted the risk of that loss.

15 MR. ROSS: In the FSC's response to the question of
16 UFO's, it says that Ponzi and pyramid
17 schemes are likely fraudulent and if so,
18 should be punished to the fullest extent
19 of the law, but you also point out that
20 that has never been done. Could you
21 explain for us why there is this
22 philosophical feeling but the action
23 hasn't followed through?

24 A:: I am actually unable to explain that
25 because it's completely irrational. I

1 think if you can cite a threat to
2 investors and to the integrity of their
3 financial system that there should also
4 be legislative enhancements to minimize
5 the risk of there being a proliferation
6 or podium, wide scale occasions of these
7 schemes going forward. I think one of the
8 things we are working on internally is
9 legislation that would address that, but
10 as we know, given the exigency at the
11 time, as in we want this
12 legislation today and the legislative
13 process can -I think more importantly we
14 need to have an effective justice system
15 that is able to respond to any court
16 matter involving these schemes, I think
17 the prosecution has to be swift to the
18 extent that we are able to take the type
19 of spectacular action that we would all
20 like to see happen, in the short run I
21 think we intend to get there but from a
22 legislative perspective we just don't
23 have the tools to that yet. We have the
24 cease and desist order at our disposal,
25 we have the ability to advise the

1 public, warn the public. Beyond that we
2 have moral suasion and I think we spoke
3 about how I feel about moral suasion.

4 CHAIRMAN: Thank you.

5 MR. BRAHAM: That takes me to the point I was going
6 to raise in relation to ammendments to
7 the legislation. What sort of general
8 additional powers you think the FSC
9 would need to be able to effectively
10 deal with these UFO's?

11 A:: Rest case I would want a clear and
12 unambiguous legislation that would give
13 the FSC authority to take action against
14 UFO's should we detect that their
15 conduct amounted to that of a Ponzi
16 scheme. I
17 think at the time, and again this
18 predates my time in the jurisdiction, but
19 at the time that these schemes were quite
20 popular when that information came to the
21 FSC rather than there being judicial
22 support, there seems to have been a
23 debate about the extent to which the FSC
24 acted appropriately in the issuance of the
cease and desist order, and to me that

1 the same as 'Fiddling while Rome
2 burns', because you give the impression
3 that there is some validity to the scheme
4 and the scheme continues to attract
5 additional investors for the sole purpose
6 of paying out subsequent investors, not
7 for generating a profit, and if you have
8 a regulator that is sounding the alarm
9 and then rather than there being a sort
10 of unanimous action taken to not only
11 send a message, but to stem the extent to
12 which these schemes are being patronized,
13 then you wind up at the stage where what
14 should have been caught and cauterized
15 continues to proliferate; so that is one.
16 I think from a legislative
17 perspective you also not only
18 need legislation that identifies
19 or give the FSC the ability to
20 take some action, but beyond the
21 FSC I think there needs to be
22 certain important requirements
23 where if financial institutions
24 in our market are harbouring

1 assets for these institutions
2 that we have the ability to
3 either intervene and secure those
4 assets or to direct those
5 institutions as to what they
6 should do with the assets, there
7 are no regulations as strong as
8 it could be in that regard.
9 Outside of the regulation of our
10 market players I think there
11 needs to be greater regulation on
12 the side of the Bank of Jamaica
13 as well. Similar to what we would
14 look to, I think they would also
15 need to see to determine whether
16 or not there is some action that
17 they could take. I think as we
18 have the duality in regulating
19 our industry, we need the duality
20 in the regulation, to the extent
21 that the FSC has the power to
22 take some action, I suggest that
23 the Bank of Jamaica would also be
24 equally empowered.

1 And finally, I would just
2 encourage a better judicial
3 resolve to deal with these
4 issues and we have, as I say, a
5 Court decision that's been
6 pending for many many months and
7 quite frankly, I am not quite
8 sure what the issue is.

9 CHAIRMAN: It hasn't matured yet.

10 A: Well, I hope that is not the case, but
11 the fact of the matter is that the
12 extent to which a lag in there being any
13 judicial action allows the scheme to
14 continue to operate, I think that only
15 attributes to greater inefficiency in
16 the jurisdiction.

17 CHAIRMAN: As I understand it the Ponzi scheme is
18 not say per se illegal.

19 A: We don't have a law that.

20 CHAIRMAN: There is no law that says that Ponzi
21 scheme is illegal, correct. What we do
22 or can do is to say that anybody -- can
23 I call it 'Ponzior' - he must register,
24 he must get a licence. If he is going
25 to take money from the public he must

1 get a licence in that way that you
2 regulated, I don't know what to say, the
3 word to use.

4 A: It goes beyond that. By the way, Ponzi
5 is an actual person, he was the
6 gentleman...

7 CHAIRMAN: He was the original person who conceived
8 of this scheme.

9 A:: Right. So those who emulate Mr. Ponzi,
10 we would - the dynamic that I mentioned
11 before where given the nature of the
12 agreement between the scheme and the
13 individual there maybe the need to
14 register at the FSC; if it's similar to
15 some of the agreements that we have seen
16 before then there would be a need to
17 register at the FSC and that is because
18 that agreement is an investment contract
19 which falls under the jurisdiction of
20 the FSC. If what the entity, the scheme
21 is doing then goes on to foreign exchange
22 trading then there is also registration
23 that's required at the Bank of Jamaica.
24 So from the perspective of regulation,
regulation is there today to

1 deal with these schemes, the issue and
2 the only issue is the fact that the
3 schemes knew that what they were doing
4 was in fact not regulated by the FSC and
5 the Bank of Jamaica so they decided that
6 they were going to dodge regulation and
7 by doing that you now, had a wonderful
8 slight of land in that they then created
9 the argument that this was some sort of
10 persecution of them by the traditional
11 financial sector and that this is some
12 stiffling of their creativity which
13 obviously is nonsense. Our efforts in
14 all of this were to protect the public
15 and to avoid the loss of capital which
16 unfortunately ultimately happened.

17 COMM. ROSS:

How would you classify some of the
18 institutions that simply offered these
19 fantastic returns, selling phone cards
20 and buying real estate, where would they
21 fall in the whole scheme of things?

22 A: I don't know I think our perspective has
23 always been that regardless of what you
24 were doing it goes to your benefit to
25 allow the regulators to take a closer

1 look at what you are doing and if it is
2 something that we wouldn't regulate then
3 so be it, but to close your books and to
4 say that we are not going to allow you
5 that degree of access to determine
6 whether or not what we are doing is
7 illegal, is from my perspective, one
8 huge red flag and I think one that the
9 public, not just in Jamaica, in many
10 jurisdictions, is not sensitive to,
11 those who are intent on doing good in
12 the jurisdiction and better for the
13 investor welcome the interaction with
14 the regulation to make sure that it does
15 not run afoul of the regulation.

16 Q:: Isn't that something that is addressed
17 in our legislation? I can't imagine
18 someone just getting up in the States
19 and offering 10 percent a month.

20 A: The determination as to whether or not a
21 scheme is considered a Ponzi scheme,
22 does it go to return or core is...

23 Q: In other words, you would require some
24 sort of licensing to be able to offer a
25 financial service to the public, as it

1 was in those developed jurisdictions.

2 A: And we do now.

3 Q: Well, we had people who were doing that
4 unlicensed and the scheme folded
5 eventually not just because of
6 regulatory action.

7 A: What I am saying is that, if you have a
8 scheme where you claim to derive some
9 income that you subsequently pay out
10 whether or not it's phone card or
11 selling neck ties, whatever, at the end
12 of the day if you are accepting money
13 from individuals to facilitate that
14 enterprise, that contract is an
15 investment contract; irrespective of
16 what your investment activity is, that
17 contract is an investment contract and
18 subject to review by the FSC.
19 Thereafter, if it's a case where you're
20 selling phone cards and guaranteeing a
21 return based on the selling of those
22 phone cards, that dynamic would not
23 require registration by the Bank of
24 Jamaica because it's not something that
25 falls within the agreement of the BOJ.

1 So in the first instance once you have
2 the existence of an investment contract
3 you fall under the jurisdiction of the
4 FSC and that's how things exist today.
5 With respect to foreign exchange trading
6 or you name, whatever exotic products you
7 want to use to justify the nature of your
8 return, that's a secondary concern. The
9 primary concern is: are you offering an
10 investment contract, and if so, are you
11 properly registered? The reasons why
12 there wasn't any mass submission to the
13 FSC, I would submit, is the fact that in
14 that registration process the FSC would
15 have to take a very close look at what the
16 operations of the scheme was and the FSC
17 would be able to conclude at that the time
18 it was a Ponzi or at the instance that
19 the activities was questionable, not
20 justifying registration. So its not a
21 case where from my perspective the
22 analysis is that difficult. These
23 individuals who perpetrated these schemes
24 were sensitive to the fact that their
25 inappropriate

1 activity would have been detected by the
2 FSC had they sought registration under
3 the Securities Act.

4 Q: If I am correct in understanding you,
5 the FSC needs some legislative changes
6 to allow it to act in a regulated manner
7 in these cases?

8 A: In the absence of there being any
9 application for registration, meaning in
10 a case where we were unable to establish
11 jurisdiction over the entity, we need
12 legislation that allows us to act
13 notwithstanding that fact and I think
14 that that's what you find in the United
15 States and other jurisdictions; that
16 unfortunately doesn't currently exist in
17 Jamaica and I think that's one of the
18 primary drivers of the extent to which
19 these schemes are able to operate longer
20 than they should.
21 COMM. BOGLE: I have two additional questions. Are
22 there any differences between a Ponzi
23 scheme and a pyramid scheme?

24 A: Yes, there are.

25 COMM. BOGLE: I don't know if the Commissioners want

1 to know too.

2 CHAIRMAN: I would be very interested in hearing
3 the difference.

4 A: A pyramid scheme is less offensive than
5 a Ponzi scheme. A Ponzi scheme outright
6 is illegal because your sole purpose of
7 accepting assets is to pay out
8 subsequent subscribers to the scheme

9 CHAIRMAN: That's Ponzi?

10 A: Right. You're taking money from your
11 left hand and moving to your right, the
12 money comes in and you pay it out, there
13 is nothing new to it. A pyramid scheme
14 is a little different. Typically it's a
15 membership organization where based on
16 your ability to attract additional
17 members, you receive some sort of a
18 fee, there is some fee to it and there
19 is some compensation, so there is a
20 nuance there that makes it different but
21 from my perspective I say it's less
22 offensive than inoffensive.

23 CHAIRMAN: I see.

24 COMM. ROSS: Does the pyramid scheme involve fraud?

25 A: It's interesting because there are a

1 couple of cases in the United States
2 that deal with that very issue and
3 historically it's been held that it's a
4 matter of disclosure of the payment
5 mechanism. So in other words, if on
6 inception of the relationship you are
7 aware that your sole mechanism for being
8 paid is dependent on the extent to which
9 you can attract subsequent investors or
10 members and that there is an asset split,
11 let's say or some commission split, if
12 you are willingly aware of that risk and
13 you decide to move forward then there are
14 cases that are not considered fraudulent
15 activity because there is no victim here,
16 everything above board and everything is
17 closed. If there is any miscommunication
18 in the manner of the operations so that
19 people who subscribe to this scheme
20 aren't aware of the fact that there are
21 some other actions that they would have
22 to take in order to justify the payment
23 then it would be fraud so it really
24 depends on the dynamics of the scheme.

1 Either way, I think there are many
2 instances of pyramid schemes operating
3 in a manner that were so offensive that
4 they were essentially Ponzis in their
5 middle and pyramids at the end and most
6 time negligible; but I think either
7 way, that business now is bad; it drives
8 the risk of fraud and the potential for
9 assets to be sold.

10 Q: Did you or all the Financial Services
11 Commissions submit a memorandum to the
12 Commission entitled Financial Services
13 Commission Compendium to commence and
14 enquire into the collapse of Financial
15 Institutions in Jamaica in the 1990's?

16 A: Yes, sir, we did.

17 Q: And you approve and affirm the contents
18 of that document?

19 A: Yes, we do.

20 MR. BRAHAM: Subject to you sir, those would be my
21 questions.

22 CHAIRMAN: Thank you, Mr. Braham.

23 MRS. PHILLIPS: I have no questions for this witness,
24 Mr. Chairman.

25 CHAIRMAN: There is no other attorney here.

1 MR. BRAHAM: Mr. Codlin's junior, sir.

2 CHAIRMAN: What is your name?

3 A: Miss Melissa Cunningham.

4 CHAIRMAN: You have any questions?

5 A: No, sir.

6 CHAIRMAN: Thank you. Our counsel will...

7 MR. HENRIQUES: Mr. Barnett, I just would like to follow
8 up on the question of these unregulated
9 financial organizations.

10 A: Yes, sir.

11 Q: Now, you said that if they have to
12 register the FSC, they would come under
13 the Securities Act?

14 A: That's correct.

15 Q: So they would have to register as what,
16 a securities dealer?

17 A: They are registering based on the
18 existence of the investment contract and
19 that registration requirement falls under
20 Securities that I am referring to. I just
21 want to know, dealer in securities?

22 Q: Yes, because that investment contract is
23 a security.

24 A: All right. Let me go back and then ask
25

1 you this. You know that it needs a
2 licence under the Financial Institutions
3 Act to take deposits from the public?

4 A: Correct.

5 Q: And you are also aware, I take it, that
6 when the deposit is made to a bank it
7 creates the distinctive relationship of
8 a debtor and creditor?

9 A: Correct.

10 Q: The bank being the debtor and the
11 depositor being the creditor?

12 A: Correct.

13 Q: Now do you see a difference if an
14 institution takes loans from the public
15 offering a special rate of interest just
16 like the deposits, aren't they the same
17 thing?

18 A: Aren't what the same thing?

19 Q: Taking loans from the public, instead of
20 calling it deposit you call it a loan, if
21 you go and say we will take loans and
22 pay you 10 percent per month, isn't that
23 the same as taking deposits from the
24 public?

25 A: No, not in my assessment.

1 Q: What's the difference?

2 A: The nature of the relationship is
3 different. If you are a banking
4 institution then what you do as banking
5 institution is different from an
6 institution that's accepting a loan but
7 the interpretation that you place on
8 deposits being a liability doesn't
9 equate in terms of what the institutions
10 are accepting, those assets for loan.

11 Q: No, you agree with me that when you
12 place a deposit its with a bank it
13 creates a relationship of debtor and
14 creditor? Doesn't it?

15 A: There is no question that placing a
16 deposit with a bank places the bank in
17 the position of a debtor but at the end
18 of the day, that fundamental
19 relationship is different from one being
20 accepting a loan and having some
21 contractual obligation to the lender
22 which is two different fundamental
23 relationships.

24 Q: When the bank takes the money from the
25 depositor, it's a contractual

1 relationship that the bank will repay
2 the money at a specific time at a
3 particular rate of interest?

4 A: Correct.

5 Q: And therefore the depositor is a
6 creditor. What I am really getting at
7 Mr. Barnett, is this, that you are
8 taking the loan from the public, this is
9 not a private thing. You are willing to
10 take loans, if anybody then turns up
11 with money and instead of putting in a
12 certain deposit you say this is a loan
13 at 10 percent per month, isn't it the
14 same thing?

15 A: No, it's not.

16 Q: Why?

17 A: Because there is no lending relationship
18 out there where you can take this loan
19 and then in the intervening time period
20 go and access some portion of the loan
21 as you would when there is a deposit
22 account. All that happens in a banking
23 relationship is a bank -- yes, it is a
24 liability on the records of the bank
25 that relates to the deposit account but

1 the bank is not a borrower per se, it's
2 a custodian of the assets, and it's able
3 to do certain things during the period
4 of that custodianship, so it's
5 quite different.

6 Q: No, we just agreed, Mr. Barnett, that it
7 was a debtor/creditor relationship, the
8 bank being the debtor and the depositor
9 being creditor, let us stick with that.
10 It's a contractual loan agreement which
11 results in a loan by the depositor to
12 the bank and the bank being the
13 creditor.

14 A: I am not disagreeing with that point,
15 what I am saying is that the
16 relationship is different.

17 Q: What I am trying to say...

18 A: On a one to one comparison.

19 Q: I can't understand the difference
20 because if somebody says, I will take
21 loans from the public; remember now,
22 taking it from the public on the same
23 terms and instead of calling it deposit
24 call it a loan it still is a contract
25 relationship between debtor and

1 creditor, isn't that so?

2 A: Okay. *For purposes of* your apology you
3 are the borrower, I am the depositor so
4 I am the lender.

5 Q: Yes.

6 A: You are going to tell me to lend you a
7 \$100 then at any time I can come back
8 and take 90 out of that loan; it's a
9 fundamentally different relationship,
10 it's not a one to one comparison, that's
11 the nature of a bank account as opposed
12 to there being a loan accepted between a
13 lender and a borrower.

14

15 Continued...

16

17

18

19

20

21

22

23

24

25

1 DEBTOR: No, the bank is still creating a debtor
2 credit. Let's move on, because what I
3 am trying to say to you is that there is
4 a semantic difference between what some
5 a these unregulated financial
6 institutions use by using the word loans
7 and not deposit?

8 A: Yes, there is a semantic difference.

9 Q: Now I want move on to something more.

10 A: I just want to make a point because you
11 do raise a valid point which is that the
12 optics of the relationship is one of the
13 mechanisms that the UFO's use to
14 disguise their nefarious conduct because
15 if you are viewed as an investor or
16 lender or member that adds a veneer of
17 validity to what they are doing that
18 otherwise wouldn't be there.

19 Q: You are making the same point I am
20 making. It's matter of semantics that
21 they are using to disguise it.

22 Let me move on to something else. In a
23 Ponzi scheme, isn't it a question that
24 when they take money from the so called
25 investor and promises him a return but

1 does not use the funds to generate any
2 income to pay the interest but expect to
3 pay it from further depositors, isn't
4 that a fraud?

5 A: I would say so, yes.

6 Q: So therefore these Ponzi schemes, these
7 persons that operate them could be
8 prosecuted for fraud?

9 A: Theoretically, yes, they could.

10 Q: Because the question you raised in your
11 paper you mentioned that because of
12 initial process and things like that why
13 nothing is happening?

14 A: Because what we have to do is we have to
15 be comprehensive in how we address these
16 schemes. The formal approach is one,
17 obviously you have to get to the
18 determination that there is a fraud,
19 right? But that aside, you also have
20 one more closely related to what we do
21 at the FSC things related to the
22 investment contract and that analysis I
23 think is one that adds a second method
24 by which we can also determine whether
25 the nature of the conduct of these

1 schemes is illegal.

2 Q: Why I think an investigation, once it
3 comes out that the operators are not
4 using the money to put in any investment
5 to make a return so as to be able to pay
6 interest but relying on other investors
7 that clearly is obtaining money by
8 fraud, because you are not using the
9 money to generate any income to pay the
10 interest?

11 A: Correct. The issue boils down to the
12 capacity of the FSC to investigate the
13 conduct of the institution from the
14 perspective of determining fraud. You
15 are now surpassing what we are able to
16 look at and what conclusion we will be
17 able to arrive at.

18 Q: They certainly do. If you look down the
19 road and see that they haven't used the
20 money for any investment whatsoever,
21 then you come to the conclusion that's
22 it's a fraudulent scheme.

23 A: To undertake that investigation, I am
24 suggesting that you are exceeding the
25 capability of the FSC. What we can look

1 at is to see whether or not there has
2 been any investment contract, whether or
3 not there has been a violation of the
4 Securities Act but for investigation
5 purposes of determining fraud you are
6 now speaking to conduct that's more
7 within the remit of the FID or the DPP.

8 Q: So they will investigate to see whether
9 or not investments are being made?

10 A: Correct. So when we cite to them that
11 there is an entity that we suspect is
12 involved in some fraudulent conduct
13 which we are not able to confirm and
14 refer the matter to them for further
15 review.

16 Q: And hope that there will be appropriate
17 report and appropriate action taken.

18 A: And if not upon moral suasion.

19 Q: Thank you.

20 CHAIRMAN: I take it no one else wishes to?

21 DEBTOR: Thank you, very much.

22 CHAIRMAN: Could you give your name, please.

23 DEBTOR: Okay. My name is DEBTOR of
24 DEBTORCOMPANY. I will
25 speak very slow as you see I have a

1 Haitian accent so be patient. For the
2 benefit of everybody we must speak
3 English?

4 CHAIRMAN: Yes, you can speak Jamaican creole.

5 DEBTOR: My question is okay, since you have the
6 opportunity of looking at the insurance
7 companies in the 90s, do you know the
8 size of the portfolio that was under the
9 the insurance companies in the 90s? Can
10 you quantify how much money they had
11 under control?

12 MR. BARNETT: The size of the insurance? I am not
13 sure if we provided those in the
14 materials. I have to take another look
15 at that.

16 Q: My next question is, okay, having
17 seen...

18 CHAIRMAN: Sorry, DEBTOR, have you got a
19 figure?

20 DEBTOR: No, that's what I would like to know.
21 But would you consider it a very very
22 large amount of money?

23 A: A large amount of money?

24 Q: Yes.

25 A: The answer is yes, there is no question.

1 CHAIRMAN: One moment please. Page five of your --
2 can that help you?

3 A: You are referring to the table on page
4 five?

5 CHAIRMAN: Yes, the table on page five, that's
6 helpful?

7 A: It goes back to 2001 which is really the
8 period from the inception of the FSC
9 forward but the gentleman's question.

10 CHAIRMAN: Yes. He hasn't got that information.

11 DEBTOR: But you will characterize it as a large
12 amount of money?

13 A: No question, yes it was a large amount
14 of money.

15 Q: What would you say the percentage of the
16 economy that was under the control of
17 the insurance company then?

18 A: Again, I wouldn't be able to give you a
19 quantification.

20 Q: My next question is, okay, if you
21 accept that there was a large amount of
22 money, earlier as you stated those
23 insurance companies were not, or they
24 were not under any form of control by
any regulatory agency.

1 the problems of the banks were put in -
2 well the insurance companies were
3 putting the banks under a lot of
4 pressure. We as borrower how to assess
5 opposition of situation then?

6 A: To the extent that the insurance
7 companies didn't have good governance,
8 didn't have effective risk management
9 policies, failed to properly reserve
10 assets to deal with the liabilities that
11 they had which are the deposit accounts
12 that you were referring to, then yes it
13 would have been an exposure to the
14 lending to the policyholders.

15 Q: No, no, my question is, okay. As you
16 mentioned earlier there was a sort of
17 incestuous relationship that existed
18 between the insurance companies and the
19 banks. The insurance companies were
20 losing a lot of monies so that they were
21 using the banks which they own to try to
22 pay these investments where they were
23 losing money. I can be more specific. The
24 case of National Commercial Bank who was
25 owned actually by Mutual Life.

Mutual Life invested money in tourism,
real estate and farms and they were
losing money, as you stated earlier. So
4 what happen, okay, and they were selling
5 all kinds of deposit taing policy. At
6 the end of the day they end up losing a
7 lot of money. So what happened as you
8 stated earlier they were using the banks
9 to try to more or less shove those
10 businesses off. We as borrowers who
11 borrow money from the bank were not
12 aware of that and at the end of the day
13 what happened to us, we find ourselves
14 in a situation with the bank that was
15 insolvent and the banks were using us,
16 taking increased interest from us which
17 the Minister of Finance has stated
18 himself, to try to cover some of the
19 loss. Having seen the situation - you
20 were not there, I accept you were not
21 at the control, you were not involved
22 then - what is your opinion in this
23 particular situation, what would you
24 say?
25 A: Okay, I think I understand what you are

1 asking. Now, let me restate your
2 question to make sure we are on the same
3 page. You are saying that given the
4 conduct of the banks relative to their
5 insurance affiliates there was no notice
6 to the depositors of the activity that
7 potentially posed a threat to the
8 solvency of the bank and you are saying
9 based on that, number one given a lack
10 of notice and, number two, given the
11 nature of their conduct, what's the
12 level of liability to the account
13 holders of the banks; that's essentially
14 what you are asking?

15 Q: The borrowers.

16 CHAIRMAN: You see what is happening the banks, if
17 I understand him because of the bank
18 situation having to borrow they were
19 putting pressure, stress...

20 A: Okay. I misunderstood, I am sorry. You
21 mean borrowers from the bank, the
22 consumers who borrow? Okay. From that
23 perspective if there is a bank that's
24 involved in some aggressive line of
25 business that would serve to compromise

1 the liquidity of the bank. Again I am
2 speaking from an academic perspective. I
3 am not sure what the borrower who is not
4 aware of the business practices of the
5 bank would be able to do. You, if you
6 had a loan would be patronizing that
7 bank believing that the bank was sound
8 and in a good financial position and not
9 at risk of any default based on
10 liabilities or liquidity issues of a
11 sister corporation, so from that
12 perspective there was a lack of
13 transparency. Would that happen today
14 given the nature of regulation at the
15 Bank of Jamaica? I would suggest not.
16 Q: No, but you see, I can understand it
17 not happening today. But my question is
18 how would a situation like that - we as
19 borrowers we have lost a lot of money,
20 we have suffered a lot and are still
21 suffering from what has happened in the
22 90s, okay. Would you think it would be
23 appropriate to do an analysis to show
24 exactly what was going on then with
25 figures and also within the banks, the

1 insurance company and the borrower, so we
2 can have a clearer picture because we as
3 borrowers find ourselves in this
4 situation, is only now we begin to
5 understand what's been going on between
6 the insurance company, between the
government, between the banks.

8 kept completely in the dark. The only
9 thing that we know that they come for
10 our business, we were sold to FINSAC, we
11 were sold to JRF, that's all. We were
12 not aware of these different difficult
13 problems that existed between the
14 insurance companies and the bank. So we
15 become victim of those bad practices, or
16 I would say corrupt practices that
17 existed then, so what I would like to
18 see if the FSC, if you can go back and
19 do an analysis for the benefit of the
20 Jamaican public?

21 A: Well, the activity of the banks wouldn't
22 fall under the FSC, it would fall under
23 the Bank of Jamaica.

24 CHAIRMAN: The answer is no.

25 A: The jurisdiction with that lies under

1 the Bank of Jamaica.

2 DEBTOR: Okay, thank you. My next question, okay.

3 If you are looking at what happened with

4 those insurance companies and the banks

5 would you qualify them also as UFOs.

6 A: No, I wouldn't.

7 Q: Let me say this, okay, the kind of

8 interest rates?

9 CHAIRMAN: Sorry, DEBTOR, I am not trying to

10 shut you up, but you have to appreciate

11 that Mr. Barnett is speaking personally,

12 put it that way, from 2001 when the FSC

13 took over control of the insurance

14 companies. They don't regulate banks,

15 so he can't speak to that. Anything he

16 gives us would be an opinion, but is

17 there any question that affects you that

18 he can answer.

19 DEBTOR: No, thank you, very much?

20 CHAIRMAN: Thank you. Is there anybody else who

21 wishes to question Mr. Barnett?

22 MRS. PHILLIPS: Mr. Chairman, could I ask one question?

23 CHAIRMAN: Oh, very well.

24 MRS. PHILLIPS: Mr. Barnett, the proliferation of UFOs in

25 Jamaica, is that a phenomenon of the

1 21st Century you would say?

2 A: Specific to Jamaica?

3 MRS. PHILLIPS: Yes, to Jamaica?

4 A: Yes.

5 Q: Okay, thank you.

6 DEBTOR: Can I just stand right here?

7 CHAIRMAN: If you go to the microphone everybody

8 can hear. Please give your name,

9 please, thank you?

10 DEBTOR: I am DEBTOR and I am from DEBTORCOMPANY.

11 My question is, as a borrower from a bank

12 I was given a letter to take to their

13 attorney to disburse the loan...

14 Sorry.

15 To disburse...

16 CHAIRMAN: One moment, please.

17 DEBTOR: It seems as if there is a difference and

18 CHAIRMAN: I'll ask you to guide the questions as if

19 MRS. PHILLIPS: you agree that there is a difference

20 between asking a question and using the

21 preambles to a question as an opportunity

22 to give evidence especially when the

23 person is not under oath or

24

25

1 subject to cross-examination and it is
2 creating a difficulty because people are
3 taking the questions or the preambles to
4 the questions as fact and it is being so
5 reported as fact, and if it is a
6 question that is being asked then I am
7 sure that the Commissioner has indicated
8 that it is a question but the preambles
9 to the questions, and this is one
10 example, she seems to be giving
11 evidence.

12 DEBTOR: This is my question. Can a bank write a
13 cheque to a customer?

14 CHAIRMAN: DEBTOR?

15 DEBTOR: Yes, sir.

16 CHAIRMAN: This gentleman is speaking about the
17 regulations really of the insurance
18 companies. He's not really concerned
19 with banks, so what he said about banks
20 is not...

21 DEBTOR: My question is so simple, sir.

22 CHAIRMAN: It is not the simplicity, you know, it
23 is whether he is the right person to
24 ask?

25 DEBTOR: I think he is.

1 CHAIRMAN: And I heard it begin with bank. Anyway
2 let's hear your question, I suppose so
3 we can judge it.

4 DEBTOR: The cheque was written to the other
5 institution and not to my name.

6 CHAIRMAN: No, no, he can't answer that. That has
7 to be addressed elsewhere. Not this
8 gentleman, he can't help you in with
9 that.

10 DEBTOR: Okay, thank you.

11 CHAIRMAN: Thank you, very much. I suppose you
12 will find somebody.
13 We are trying to get some failed bank
14 people to come and we hope they do and
15 you can put that question to them,
16 DEBTOR.
17 Yes, please give your name, Mr. Cox.

18 MR. COX: My name is Joseph Cox and I am a
19 consultant. I would just love some
20 clarity from Mr. Barnett on some of the
21 issues particularly where it focus on
22 the UFOs, Unregistered Financial
23 Organizations. First of all, Mr.
24 Barnett, just for my knowledge, when did
25 these schemes start in Jamaica?

1 A: Well, it's difficult to pinpoint
2 exactly.

3 Q: Roughly?

4 A: I would say that the schemes really
5 reached a level of popularity over the
6 course of 2005 into 2006.

7 But then even though they reached that
8 level of popularity it wasn't a case
9 that the FSC would not have been aware
10 to their existence prior to 2006?

11 A: Well I wasn't here in 2005 or 2006, so I
12 can't speak to the level of awareness of
13 the FSC. What I can say is that there
14 would have been a level of awareness at
15 the FSC. Would the FSC have appreciated
16 the magnitude of the scheme at that
17 time, I don't know.

18 Q: So what is it in the -- and as I say I
19 am no lawyer, I just want to understand.
20 What is it specifically in the law, what
21 are these legislative deficiencies that
22 we keep hearing about that would have
23 prohibited, and these are my words, a
24 more aggressive intervention stance by
-- the FSC?

1 Securities Act or any other mechanism
2 that brings the schemes under the
3 jurisdiction of the FSC, there is no
4 further action that the FSC is able to
5 take. If you were here earlier you heard
6 the exchange between Mr. Henriques and I
7 relative to fraud and there is an
8 argument to be made that you can simply
9 say that these schemes were the
10 purveyors of some fraudulent activity.
11 That doesn't fall under the jurisdiction
12 of the FSC. The FSC at that point is able
13 to refer the matter to the authorities who
14 will investigate it from the perspective
15 of whether or not they were committing
16 fraud. But at the end of the day the FSC's
17 core function is to regulate the conduct
18 of entities within securities, insurance
19 and pensions sectors and if there is any
20 suggestion that an institution has to be
21 regulated in that regard the FSC has
22 jurisdiction. A simple fraudulent sort of
23 an argument then falls outside of the FSC
24 and I am saying that regulation could be
25 enhanced

1 so that even in the absence of there
2 being this registration by the scheme,
3 the Ponzi scheme, that legislation be it
4 administered by the FSC or otherwise
5 that can identify the scheme as
6 something that's illegal and then can
7 prescribe what measures can be taken
8 would it enhance the system. Why --
9 because from the determination is made
10 that the scheme is a Ponzi and that it
11 is not really conducting any investment
12 activity the authorities would be able
13 to intervene and appropriately bring
14 this scheme to justice.

15 Q: Last thing, Mr. Chairman.
16 Just to tie it up to the 90s. In terms
17 of what happened to a lot of our
18 investment banks in the 90s, what we had
19 obviously had people calling deposits by
20 every other variation a lot of semantics
21 being played here and this seems to be
22 the same scenario we playing out in
23 terms of some of the UFOs as we have
24 characterized them and I am wondering
25 what exactly is it that we didn't learn

1 any lessons from what obtained in the, I
2 would say 90 to 95 period, that
3 basically we are seeing a replication of
4 a similar type of dancing around
5 legislation where some people might
6 actually characterize it as regulatory
7 arbitrage in a sense.

8 A: I see your point but regulatory
9 arbitrage doesn't occur among
10 institutions that aren't regulated. So
11 what has happened I can't stress it
12 enough is the public has to be
13 sufficiently aware of the dangers of
14 placing your assets in institutions that
15 are miraculously able to generate a
16 return but in actuality you don't know
17 what they do with your money once you
18 make that investment. in fact that was
19 a point of weakness and that's what I
20 think if we can rectify we will avoid
21 significant reoccurrence of the schemes
22 going forward.

23 Q: Thank you.
24 CHAIRMAN: Yes, your name is?

25 MISS PHILLPOTTS: My name, Claireon Phillpotts.

1 CHAIRMAN: And your status?

2 MISS PHILLPOTTS: Jamaican.

3 CHAIRMAN: That's very interesting tidbit. How
4 were you affected by this enquiry or the
5 effect of the collapse?

6 MISS PHILLPOTTS: My dollar keeps losing purchasing power.

7 CHAIRMAN: You were a borrower, victim of, were
8 you FINSAC'd, were you RDF'd or what
9 were you?

10 MISS PHILLPOTTS: I was just saddened by what I saw on TV?

11 CHAIRMAN: No, this is not a general place
12 everybody comes to and ask questions.
13 You have to be affected in some way so
14 that you can get some help.

15 MISS PHILLPOTTS: But given the fact that there are not
16 many people behind me to ask questions,
17 I am not allowed?

18 CHAIRMAN: No, not because there is nobody behind
19 you but because you haven't shown that
20 you are understanding.

21

22 Continued...

23

24

25

1 CHAIRMAN: You cross examined before, not Mr.
2 Barnett, go ahead, but somebody else, we
3 know who you are, go ahead.

4 DEBTOR: I just wanted to get, JRF, as an
5 institution, Jamaica Redevelopment
6 Foundation, they are not a bank, they
7 have been granted waiver to operate
8 similar to a bank, I mean they don't
9 take deposit.

10 CHAIRMAN: What's the question you want to ask.

11 Q The question I want to ask, would the
12 regulation of JRF falls under the FSC?
13 I mean as a regulatory body, would they
14 provide any kind of regulatory function?

15 CHAIRMAN: It's not an investment company, they are
16 not collecting money from investors or
17 anything like that, they are collecting
18 debts, it's a different thing.

19 Q They were charging interest.

20 CHAIRMAN: You see, what is the question you want
21 to ask, he is a regulator. First of all
22 he doesn't regulate JRF.

23 Q I know they don't regulate, but
24 shouldn't JRF falls under some sort of
25 regulation?

1 CHAIRMAN: Well, ask him if you want to.

2 Q The question is, I mean shouldn't JRF be

3 under some regulation by your body?

4 CHAIRMAN: First of all, does he know JRF?

5 Q Jamaica Redevelopment Foundation which

6 holds...

7 CHAIRMAN: Does he know about them, you have to ask

8 him.

9 Q The debts were assigned?

10 CHAIRMAN: Ask him if he knows, don't give

11 evidence.

12 Q Do you know the company JRF, sir?

13 A NO, I don't know and I don't know

14 what....

15 CHAIRMAN: He doesn't know; yes, he doesn't know.

16 You see, not everybody who comes up here

17 ask a question, he hasn't said anything

18 that affect you, has he?

19 Q But because he is a regulatory arm.

20 CHAIRMAN: We can tell you that he doesn't regulate

21 JRF, if that is what you want to know,

22 the answer is no, he doesn't. Well that

23 seems to complete it. Mr. Barnett, thank

24 you for coming. I must put you on notice

25 that it may well be that you may be

1 required to return to the Commission
2 just in case we need further
3 explanation, I hope you will be able to
4 come when we invite you. Thank you. This
5 Commission now adjourned until tomorrow
6 morning at 9:30. Thank you very much.
7 Adjournment

9

-

1

0

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25