

1 Friday, 4 November 2010

2 (10.09 am)

3 MR PILLAI: Just before my learned friend carries on with
4 cross-examination, I just wanted to let your Honour know
5 that arising from your Honour's request to both parties
6 counsel in relation to the events pertaining to the
7 audio recordings, we have overnight provided
8 a chronology of events plus the relevant documents,
9 namely solicitors' correspondence, interlocutory
10 affidavits and so on and so forth.

11 We would like to tender this. This will form the
12 substratum of any submission that we will make in
13 relation to the discovery issue that your Honour brought
14 up. I don't propose to make any submissions now,
15 because that will shorten precious court time in
16 relation to the trial.

17 COURT: The question is very simple. If this question of
18 the existence and the discovery process has been in
19 a different forum, so I'm assuming that both counsel are
20 comfortable with the outcome of that process, and then
21 you are going to make your submissions --

22 MR PILLAI: Yes.

23 COURT: -- on the basis of those decisions. You are not
24 revisiting those matters at any stage.

25 MR PILLAI: I will confirm that, your Honour.

1 10:11 COURT: You can consider that, and you are at liberty to
2 make applications if necessary, but if you decide that
3 you will abide by what has been done in another forum,
4 that's your decision.

5 MR PILLAI: Yes, your Honour.

6 COURT: Then you can make your submissions on the basis of
7 what you have and on the basis of what's here.

8 MR PILLAI: Yes, your Honour. I stand guided and that's
9 precisely what we are going to do.

10 COURT: All right.

11 DR CHANG TSE WEN (on former affirmation)

12 Cross-examination by MR ANG (continued)

13 MR ANG: May it please the court. Good morning, your
14 Honour.

15 Good morning, Dr Chang.

16 A. Good morning, your Honour, Mr Ang and everybody.

17 Q. Dr Chang, what I am proposing to do from now to the end
18 of my cross-examination, which I hope will not be too
19 far off, is to run through the events of 2008 by
20 referring you to the e-mail documentation, the e-mails,
21 letters, et cetera, primarily from February 2008 onwards
22 till November 2008, to show you what has happened and
23 put some questions to you. These documents can be found
24 at 11AB, 12AB and 13AB.

25 At 11AB first, which is where I left off yesterday,

1 10:12 could you turn to page 4904.

2 Do you recall yesterday, Dr Chang, where we left off
3 was that on 4 February 2008 you had done the DSPP with
4 Deutsche Bank for the UBS shares; correct?

5 A. Correct.

6 Q. On 5 February, which is at page 4904, you see that you
7 are sent a term sheet for the PSSP and DSPP done on
8 1 February 2008, and the PSSP is the decumulator
9 programme which you entered into with Deutsche Bank for
10 Citi shares, also on 1 February 2008. Right?

11 A. Right.

12 Q. Then he goes on to say:

13 "Please find below for the updated record."

14 It attaches the updated records, which is the table
15 at page 4918 and page 4919. Correct? This is the Excel
16 spreadsheet which Karan prepared and sent to you;
17 correct?

18 A. Correct.

19 Q. If you turn to page 4924, you say in the -- the e-mail
20 dated the same day and the title is "To show the number
21 of shares required by PSSPs.

22 "Thanks for the updated DSPP & [PSSP] record.

23 You have been very creative in constructing the XLS
24 file. Could you add information as for how many
25 Citigroup shares will need to be prepared for the [PSSP]

1 10:14 contracts?"

2 Then you give some suggestions. You say:

3 "... (1) for each individual [PSSP] contract, the
4 maximum required number of shares for the remaining
5 period of the contract should appear, (2) the sum number
6 should appear adjacent to the number of accumulated Citi
7 shares, and (3) on the portfolio page, the maximal
8 required sum of shares required by the PSSP contract
9 should be shown adjacent to the portfolio number of
10 shares."

11 You would agree with me that you are asking Karan to
12 add more details to the Excel spreadsheet that she has
13 of your DSPP and PSSP contracts -- for the accumulator
14 and decumulator contracts -- so that you could keep
15 track of these details which you have described. Would
16 that be fair for me to say?

17 A. Yes, but please let me add. By this time, I had been
18 working with Johnny on these accumulator programmes, and
19 for a month now for the decumulator programme, so these
20 are the least things I can do to follow up on my own
21 investment.

22 In research, this is very typical, you know, you key
23 in the numbers in your Excel files. This is just like
24 doing scientific research.

25 COURT: Your question here seems to be nothing more than:

1 10:16 give me a column showing me each time how many Citi
2 shares I have accumulated, and in brackets, how many
3 Citi shares I need to accumulate before I can enter into
4 a decumulator. That is all you're doing; right?

5 A. Correct.

6 MR ANG: Dr Chang, you were trying to keep track of the
7 number of shares you were accumulating and decumulating;
8 right?

9 A. Right. But please let me also add. I was a very poor
10 investor, as you have seen in that period, but I was
11 a responsible person myself.

12 Q. Page 4934, you say.

13 "It was a pretty rough day yesterday. Hopefully, we
14 are just spinning around the bottom of the bank stocks
15 and will come from it gradually in the next months.

16 I do not have orders to place today."

17 Right?

18 A. Right.

19 Q. At page 4936, you e-mail to revise a PSSP order which
20 you placed; right? Is that correct?

21 A. Yeah, the decumulator.

22 Q. Yes, the decumulator. Page 4955. 12 February 2008,
23 Mr Wan e-mails you to tell you that your shortfall is
24 2.5 million; right?

25 A. Yes.

1 10:18 Q. He says that you sell the ACAF bond and the AIG
2 preferred shares:

3 "... both are in positive return. Both will free up
4 USD 550,000. [You] need to sell shares at faster pace
5 because we accumulate shares much faster than we sell."
6 Right?

7 A. Right.

8 Q. He is quite clearly suggesting to you that you should
9 sell your shares; right?

10 A. Right.

11 Q. Page 4962.

12 COURT: Sell the bonds and the AIG?

13 MR ANG: Yes, he's telling you to sell your bonds and your
14 AIG preferred shares. Is it your understanding is that
15 he was also trying to tell you to sell your shares,
16 generally speaking, because you were accumulating shares
17 much faster than you sell? Because you are accumulating
18 Citi shares, UBS shares, SocGen shares.

19 Is it your understanding that he's also trying to
20 tell you to sell shares of those stocks that you are
21 accumulating?

22 A. Yes. I was clear, yes.

23 Q. Page 4962.

24 You can see below that you did sell your AIG
25 preferred shares at the e-mail below on page 4962, and

1 10:19 you can see that you did place an order for decumulator
2 but it was not done. Right?

3 A. Right.

4 Q. Then you e-mail Mr Wan to say.

5 "Please do provide to me with DSPP and [PSSP] quotes
6 as yesterday."

7 Right? Page 4962, the same page.

8 A. Okay.

9 Q. You were asking for quotes; right?

10 A. Yes.

11 Q. Page 4971.

12 COURT: Can you clarify, on page 4962, the request for
13 a decumulator is from Macquarie?

14 A. Your Honour --

15 COURT: Did you already have Macquarie accumulators?

16 A. This is the company that offer these decumulator
17 programme.

18 COURT: This is the counterparty as opposed to the shares.
19 All right.

20 MR ANG: Page 4971. You say that the quotes for the SocGen
21 decumulators are very attractive, and you hope that
22 after you accumulate enough SocGen shares so that you
23 can do a decumulator, you hope that the offer prices
24 will still be this good. Right?

25 A. Right.

1 10:21 Q. Would it be fair for me to say that at that time when
2 you sent this e-mail, the thinking was, "Let's try to
3 accumulate enough SocGen shares and then sell them by
4 way of decumulators"?

5 A. Correct. Please let me add. That was one of the
6 reasons why I bought the accumulators for the same
7 issues, same stocks.

8 Q. You're talking about --

9 A. In Citibank, right.

10 Q. No, but --

11 COURT: This is 14 February. Counsel is taking you through
12 the month of February 2008, and his question is pointed.

13 A. Yes.

14 COURT: Are you thinking of acquiring more accumulators so
15 that you can enter into more decumulators?

16 A. At this time it's still yes, but not in Deutsche Bank --

17 COURT: No, no.

18 A. -- in Citibank.

19 COURT: Do you understand the significance of the question?

20 The question is very simple: previously, Johnny Wan
21 advised you that it is time for you to get rid of some
22 of the shares you have had collected under your existing
23 accumulators, and you could do this by way of
24 decumulators. Okay?

25 A. Yes, okay.

1 10:22 COURT: These e-mails, counsel is asking you the question
2 that in February, they have taken a life of their own;
3 that is, you appear to want to enter decumulators, and
4 in order to do so you are now prepared to enter
5 accumulators. Is that your understanding of what your
6 e-mails are? Take, for example, SocGen.

7 A. Yes.

8 COURT: Page 4971. The way it reads is you don't have
9 enough SocGen shares, and you're now going to enter
10 SocGen accumulators in order to be able to concurrently
11 enter into SocGen decumulators.

12 A. Yeah, I understood -- I understand.

13 COURT: That was the intention then, in February?

14 A. Yes.

15 COURT: Fair enough.

16 MR ANG: Now --

17 A. But please let me read the questions again, so that --

18 COURT: Yes, carry on. Johnny Wan has been asking you and
19 advising you that perhaps you should enter decumulators
20 with respect to shares and Citicorp shares that you have
21 already acquired under your existing accumulators.

22 A. Okay.

23 COURT: This e-mail on page 4971 carries possibly
24 a different connotation, which is that quite apart from
25 that, you are now looking at least at SocGen with

1 10:25 a different strategy, which is: in order to enter into
2 decumulators for SocGen, you are now considering
3 entering into fresh accumulators of SocGen.

4 A. Your Honour, the answer is that I did not have enough
5 SocGen shares to place a decumulator programme. So I
6 was --

7 COURT: Okay. But you already had some.

8 A. I had some, so I was hoping to get enough soon so I can
9 use the --

10 COURT: Fair enough. So it's not a change of strategy, it
11 was collecting more SocGen accumulators in addition to
12 what you had so that you could establish a decumulator?

13 A. Correct.

14 COURT: All right, fine.

15 MR ANG: Now, look at page 4975. Some of these e-mails are
16 quite short. I am just trying to confirm what you are
17 saying.

18 Page 4975, you see at the bottom he tells you that
19 the Citibank PSSP, which is a decumulator, nothing done,
20 which means you put an order but it was not filled;
21 right? The bottom of page 4975. You have to read it in
22 landscape form.

23 A. Okay.

24 Q. Then you write to him and say:

25 "The shares move up another inch. In the meantime,

1 10:26 we are accumulating shares."

2 What you are saying is that you are accumulating
3 shares, but the share prices have risen slightly; is
4 that it?

5 A. Yes. I think my -- my thought was that: too bad that we
6 did not get the decumulator programme, because the price
7 had inched up --

8 Q. I see.

9 A. -- but we will -- we will still be accumulating so we
10 can do that maybe next day, something like that.

11 Q. Page 4988.

12 A. Right.

13 Q. He writes to you and tells you:

14 "UBS shares dropped more than 8% last night caused
15 our margin situation worsen. Current margin is
16 [negative] USD 946,864. I still believe we are almost
17 out of the woods for the first phase of the sub-prime
18 meltdown."

19 He's giving you information about your margin
20 situation, and telling you, in his view, you are almost
21 out of the woods of the first phase of the sub-prime
22 melt down; right?

23 A. Yes, he was optimistic, Johnny.

24 Q. Now 18 February 2008, that's page 4994. You have to
25 pull this out a bit.

1 10:28 I just wanted to make the point that on 18 February
2 2008 he writes to you and he says that you have
3 a shortfall of US\$2.1 to US\$2.3 million; right?

4 A. Right.

5 Q. If you look at page 5003, the subject matter is "Enough
6 UBS and SocGen shares?"

7 Then you ask him:

8 "Is that correct that by the end of February, I
9 should have enough UBS and SocGen shares to do
10 decumulators?"

11 I hope that the deals will be equally or more
12 attractive then."

13 I think that was the point you were making just now,
14 that you were hoping to accumulate enough shares under
15 your existing accumulators to enter into decumulators.
16 That was your strategy at the time of this e-mail;
17 correct?

18 A. Yes, it's our strategy.

19 Q. Page 5011, you see that Mr Wan sends you an e-mail of
20 19 February, which is basically FYI, but it's from
21 Bloomberg, and it says:

22 "The following table shows \$146 billion in asset
23 writedowns and credit losses since the beginning of
24 2007, including reserves set aside for bad loans, at
25 more than 25 of the world's largest banks and securities

1 10:29 firms.

2 The charges stem from the collapse of the US
3 sub-prime mortgage market. The figures, from company
4 statements and filings, incorporate some credit losses
5 or writedowns of other mortgage assets that aren't
6 sub-prime."

7 Then you see that it sets out the details here, and
8 it includes Citigroup -- the second item -- UBS and
9 SocGen. Right?

10 A. Right.

11 Q. He's giving you information that shows that all these
12 companies suffered; they had to write down a lot of
13 their assets, right?

14 A. Right. Your Honour, may I say something?

15 COURT: Sure.

16 A. These numbers did not really mean much to me, because my
17 own background in science, you know, in research, so I
18 would always wait until Johnny explained to me how
19 significant is that. So that's the way I work with
20 Johnny.

21 MR ANG: Did it not at least tell you that these banks are
22 not in good shape based on the writedowns--

23 A. Correct.

24 Q. -- financially?

25 A. Correct, yeah. That in some kind of -- some kind of

1 10:31 trouble, but how significant is that trouble, that I
2 would not have the knowledge to appreciate, to estimate.

3 Q. But you knew that this meant that they were in some kind
4 of financial trouble; correct?

5 A. Right. And that's why the share price had come down
6 very substantially from their highs, and that was the
7 reason why Johnny convinced me that it's a good time to
8 get into the bank shares.

9 Q. Page 5030. Bear in mind that just the last e-mail
10 I showed you, which was the day before, it was
11 information about banks being in financial trouble, you
12 said in this e-mail to Karan and Johnny:

13 "I wish to exercise all my rights on the [SocGen]
14 right issue ... I also wish to oversubscribe 8,000
15 shares."

16 Right?

17 A. Right.

18 Q. So you're taking up shares in SocGen even though you've
19 been informed that the banks are in financial trouble;
20 correct?

21 A. Correct. And please let me add. For shareholders they
22 can get these -- what do they call? -- these options at
23 a large discount, so mathematically it's very -- it's
24 good to take them. And these, I think it's called
25 options, can also be sold any time. But that discount

1 10:33 was pretty substantial for shareholders.

2 Q. Look at page 5062. This is just to show you that Mr Wan
3 continued to send you quotes of decumulators. You will
4 see, at page 5063, there are decumulators for Citi,
5 SocGen and UBS which are the three shares which you are
6 accumulating under your existing accumulators; right?

7 A. Right.

8 Q. Page 5079. 29 February 2008 he writes to you, he says
9 "Margin solution". That's the subject. He says:

10 "Although [SocGen] and Citibank holds pretty well,
11 the margin shortfall situation continue at around USD
12 -3.15M. I believe we need to take action now. There
13 are three possible ways to cope with the current
14 situation as follow."

15 Right?

16 A. Yes.

17 Q. He describes all the ways he suggests; right?

18 A. Right.

19 Q. Then he ends off by saying:

20 "For the time being, I recommend we take option 2."

21 A. Yes.

22 Q. "Pleat let me know your opinion. Although we are losing
23 the battle, not the War."

24 The point I want to make here is, do you recall that
25 in January you had a margin call which was a 7.1 million

1 10:35 margin call? There was a margin call letter; right?

2 A. Right.

3 Q. I think at this stage it may be better for you to also
4 open up Mr Wan's AEIC. There's a table there on all the
5 amounts you deposited during this period.

6 If I can ask your Honour to pick up Mr Wan's
7 affidavit volume 1, page 136.

8 At page 136 is a table which forms part of
9 paragraph 278. This table sets out the margin call
10 letters, the date of the margin call letters and the
11 shortfall amount and what action, if any, you took.

12 You see that in January there was a shortfall of
13 \$7.1 million, and you put in \$5 million; right?

14 A. Right.

15 Q. We went through that yesterday, right, Dr Chang?

16 A. Right. Right.

17 Q. Now we are talking about 29 February, he's telling you
18 that the shortfall situation now is US\$3.15 million;
19 right?

20 A. Right.

21 Q. Page 5094 is what you did, which is actually shown at
22 the table. You asked Citigroup to transfer 3.58 million
23 to Deutsche Bank, and that's happened on 5 March 2008.
24 This e-mail at page 5094 is 4 March 2008; right?

25 A. Right.

1 10:37 Q. At the same time you say, "Please provide me with the
2 best PSSP quotes", which are the decumulator quotes for
3 Citi, SocGen and UBS; correct?

4 A. Correct.

5 Q. You can see that at page 5101, this is just one
6 example -- I'll just show you how often they send you
7 these PSSP quotes. At page 5101 you see they send you
8 one PSSP quote, and you can see that it is for Citi,
9 SocGen and UBS at page 5102.

10 Then, barely an hour after that, they send you an
11 updated quote at pages 5103, 5104.

12 Half an hour later they send you more information;
13 right?

14 So, actually, you cannot complain that Mr Wan and
15 Karan do respond to your request for information. You
16 can't say that they don't; right?

17 A. No, I don't think so. I think they are a good team. We
18 are a good team, together.

19 Q. Page 5107, he e-mails you -- this is 6 March 2008 -- and
20 tells you that the margin situation is currently
21 minus US\$6.4 million "after the fund received", because
22 yesterday it was negative US\$11 million; right?

23 A. Right.

24 Q. Then if you turn to page 5125, which is an e-mail of
25 7 March 2008, he writes to you and he says:

1 10:39 "Dear Dr Chang.

2 You are very important to us and I believe you have
3 tried very hard recently to meet the margin call
4 requirement. We totally understand appreciate your
5 effort. Believe me, we are on the same boat. As you
6 know, last night market movement put us into further
7 trouble and I suggest we either cut loss or work out
8 a plan with the margin department. I must mention this,
9 the 7mil Usd was yesterday's number, today the number
10 will be bigger due to more unrealised loss (mark to
11 market).

12 However, let us focus on the 7mil as mentioned by
13 Cecilia."

14 Cecilia Yan is the lady from credit control?

15 MR PILLAI: No.

16 MR ANG: Sorry, she is not from credit control. I'll check
17 where she's from.

18 He says:

19 "... let us focus on 7mil ... Possible solution as
20 follow."

21 Then it gives you possible solutions, and he says:

22 "I believe under the current market condition, you
23 may consider deposit asset from other firm. As market
24 condition improve, you may transfer back the assets."

25 Right? Do you remember this e-mail, Dr Chang?

1 10:40 A. Yes. Yes.

2 Q. Right. Page --

3 A. Let me -- let me explain. Ms Cecilia Yan was Johnny's
4 superior, Johnny's boss. Probably at this point in
5 time, could we look at a phone conversation I had
6 mentioned a few times, a phone conversation that
7 occurred on 6 March 2008.

8 MR PILLAI: That will be the third supplemental agreed
9 bundle, your Honour which was tendered a few days ago.
10 It contains transcripts of eight further recordings
11 forwarded by the bank.

12 A. Yes. Here there are two conversations --

13 COURT: Which page are you looking at?

14 A. Okay, page 24. Actually, we can go directly to page 28.
15 This is the second of the recordings that's available
16 for us. We had got these phone records only very
17 recently.

18 Okay, here I will just go to the middle of the page,
19 page 28.

20 "Johnny: Correct, basically I did -- I did talk to
21 them in this way, but they have their guidelines, that's
22 why you give me a bit of time, I go and help you fight
23 for it because just now he wrote the letter he had no
24 choice."

25 That should be "she."

1 10:44 "He had to that is to say his job is also -- that is
2 his job description also have this, that's why he must
3 make a call to you like that."

4 The call happened before this phone call.

5 "... that's why I tell you say sorry, because he had
6 no choice, also, just now he also told me to tell you
7 that is give you a call to say sorry, really sorry,
8 really, really sorry, that is to say really um, now he
9 is also continuously talking, that's why I -- just now
10 that I came back from the jury duty, I have been
11 continuously been er, discussing with them again, that
12 is can we have a different idea to go and speak to the
13 margin department, try as far as possible not to -- try
14 as far as possible not to involve your this side lor
15 like this lor."

16 So here refer a phone conversation which just
17 occurred before this, and that conversation I regarded
18 to be a very substantial one. The phone conversation I
19 had with Ms Cecilia Yan and Johnny in a telephone
20 conference, three part -- three persons together.

21 But we haven't been able to get that phone records
22 yet. We pushing very hard for that phone record. We
23 have not been able to get it. That -- a few message in
24 the phone record was that Ms Cecilia Yan said that
25 I must -- I must transfer some fresh funds from other

1 10:46 sources, otherwise she would unwind my -- my contracts.

2 She also said that I had something like 76 million
3 in liability or something. That also was quite surprise
4 to me.

5 She also said other things. She said that if I
6 transfer funds in, I would also help Johnny's "ye ji".
7 "ye ji" in Chinese means "sale performance". And she
8 mentioned that a couple of times. So that was a --

9 COURT: Sale performance?

10 A. Sale.

11 COURT: Sale performance?

12 A. Sale performance, "ye ji".

13 So -- there are other information here, I think it's
14 pertinent in this phone call. Basically, on page 29 --
15 I won't read a lot of the less relevant things. In
16 page 29, in the middle, Johnny said:

17 "They are basically that is I feel that they are
18 a bit -- sometimes they are a bit over -- over react to
19 the situation because last night then I looked at the
20 Bloomberg --

21 Dr Chang: Mm.

22 Johnny: -- isn't it inside they also have a manager
23 that has his own funds ..."

24 So we're talking about, like, fund manager:

25 "... he also said that -- that is he looks at Citi

1 10:47 in two years reaching 40-dollar something. Then he says
2 now basically is a very, very good value. In this kind
3 of circumstances, how is it possible for us to use
4 \$22 to go and buy, it's possible that is not possible
5 mah. The market I believe that is to say must have over
6 react to -- good circumstances it will over react also;
7 bad circumstances it will also over react, that is to
8 say er, I feel that it is in two aspect lor. Now maybe
9 in the bad aspect they are too -- too that is too
10 nervous, everyone seems to feel that orh, I want to get
11 rid of it, that is sell it off immediately."

12 He did not agree to sell off immediately.

13 "I feel that sometimes it's also um, that is too --
14 going a bit too far, not necessary to say see that it's
15 like this -- this ... actually this is a world class
16 franchise, basically it is not possible that it is
17 something that will collapse tomorrow otherwise how
18 could the Middle-east that side invest so much money in
19 it. This is I am -- I am thinking like this myself."

20 So there are two aspects of meanings here. One is
21 that he thought that Citi, he agreed that -- or he
22 referred, just to be more exact, he referred to a fund
23 manager in Bloomberg predicting that Citi will go up to
24 \$40-something.

25 So that's one aspect. The other aspect was that he

1 10:50 said here:

2 "... how could the Middle-east that side invest so
3 much money in it."

4 So this was his own thought, but in there, in his
5 AEIC and in the plaintiff's opening statement they said
6 I said. But here it seems that they said themselves.

7 I think there are some less relevant information
8 there.

9 MR ANG: Just on what you said, Dr Chang, you just quoted
10 that portion, Mr Wan gives you his view, and your
11 response is:

12 "Dr Chang: Correct ..."

13 Correct?

14 A. Are you talking still the same document?

15 Q. Yes, page 30, where you were reading from.

16 A. Which page?

17 Q. Where you were reading from, page 30.

18 A. Page 30, okay.

19 Q. He expresses his view in this conversation at that time,
20 and your view is "Correct". So you agree with him;
21 right?

22 A. Correct.

23 Q. Thank you.

24 A. He was -- he was guiding me.

25 Q. Yes. Now, at 11AB 5126, you say:

1 10:51 "I have talked with my account manager at Citibank,
2 regarding boosting up your margin asset in your Deutsche
3 Bank account. We are preparing to transfer all my
4 Citigroup shares (220,000 shares with a value of
5 \$4.65 million) from my Citibank account to my Deutsche
6 Bank account before next Tuesday."

7 Then you say:

8 "Also, please continue to provide to me the best
9 quotes for [decumulators] of Citigroup pump planning to
10 put nearly all my existing Citigroup shares, about
11 600,000 shares counting those from my Citibank's
12 account, for PSSP contracts in the next few days."

13 Two points here: the first point is that you are
14 telling Mr Wan you'll be transferring all your Citigroup
15 shares from your Citibank account to Deutsche Bank
16 account. That's 220,000 shares; right?

17 A. Right.

18 Q. The second thing is that you are telling him you are
19 planning to sell all your Citigroup shares, 600,000 of
20 them, in the next few days through decumulator
21 contracts; correct?

22 A. Correct.

23 Q. Moving on. Page 5131, I think you can see the bottom,
24 you are trying to place a decumulator order, which was
25 offered by Macquarie; right?

1 10:53 A. Right.

2 Q. Then Mr Wan responds to you to say.

3 "I have sent the request to credit but she has
4 refused due to larger than normal shortfall position. I
5 will wait here to discuss with them if there is any
6 hope. Anyway, I have informed Singapore to wait for us
7 until 9:30PM. However the credit people are extremely
8 busy and the chance is low. Will keep you posted."

9 So you're trying to place a decumulator order but
10 the order cannot be placed because you are informed, at
11 least, that because you have a larger than normal
12 shortfall position; right?

13 A. Right.

14 Q. Page 5134 is an e-mail that you sent to Mr Wan,
15 Karan Lo, and you see, below that, Mr Wan sends you the
16 margin department letter. There's a long chain of
17 internal e-mails at Deutsche Bank; right?

18 Your e-mail at page 5134 says:

19 "Dear Johnny, for minimising the risk I will face,
20 if Citigroup shares fluctuate at these low levels (about
21 \$20-21) or even fall to lower levels over the next few
22 quarters, I will prudently place all the shares I have
23 accumulated in [PSSP] contracts. And I will continue to
24 do so, whenever I have accumulated enough to do a [PSSP]
25 contract. This way, I can generate enough cash to buy

1 10:54 all the shares I will accumulate, even assuming that
2 Citigroup shares stay below \$20 for extended period of
3 time."

4 Basically you're just setting out your plan going
5 forward in relation to Citigroup shares that you hold;
6 correct?

7 A. The decumulator programme was the most convincing to me.
8 It was suggested by the structure team of Deutsche
9 Bank --

10 Q. Dr Chang --

11 COURT: We understand that.

12 A. Yeah.

13 MR ANG: Dr Chang, pause there. My question is not "Why did
14 you choose this strategy?"; my question is: you are
15 basically setting out, in the first paragraph of this
16 e-mail to Johnny Wan, that this is the strategy that you
17 intend to take for Citigroup shares, going forward in
18 the next few months.

19 COURT: In the face of Citigroup shares fluctuating to low
20 levels, about \$20, and even lower in the next few
21 quarters.

22 MR ANG: Yes.

23 COURT: In the face of that, what you say here, "To minimise
24 the risk I will face if this happens, I will place the
25 shares I've accumulated in decumulators". That's all

1 10:55 you're saying in the first paragraph.

2 A. Correct. If I -- if I were able to do that, then there
3 would be no margin calls in the future.

4 COURT: Fair enough.

5 A. Yes.

6 MR ANG: Then you go on to say:

7 "Please understand that I want to minimise the risk
8 and safe-guard the safety of my investment more than
9 anybody else. I have under estimated the enormous
10 severity of the credit crisis. Now, in the current
11 undesirable situation I am in, I ask that you and
12 Deutsche Bank help me to carry out this plan."

13 Right?

14 A. Right.

15 Q. Do you agree that you made a judgment, and that judgment
16 was an underestimation of the "enormous severity of the
17 credit crisis"? Right?

18 A. No, definitely -- no. You know, in this team -- in this
19 team, Johnny and I, you know, I would not blame him,
20 I would say my part. I would not blame him here.

21 COURT: No, no. As of yesterday, it has been your evidence
22 that you thought accumulators and decumulators was
23 a safe strategy, "safer than shares", in your own words.

24 A. Right.

25 COURT: Then you explained that it had to do with an

1 10:57 assumption that things would be at a -- in a normal
2 bank. Okay?

3 A. Yes.

4 COURT: Now, come March 2008, you say, "I have
5 underestimated the enormous severity of the credit
6 crisis".

7 A. Yeah, from the -- based from the information Johnny gave
8 to me. Okay, let me explain this because I'm -- I was
9 talking with my team member, okay, Johnny, addressed
10 this letter to him. So my thought was that, well, we
11 have got into this situation together, we have got into
12 this point.

13 You see, in a few e-mails ago he said we are on the
14 same boat, and I was just a -- we are working together
15 as a team. I should not go back to explain how I got
16 convinced, very, very convinced, profoundly convinced
17 that bank shares were the -- was the shares to
18 accumulate through the accumulator programme.

19 Maybe I should also reiterate this point in time
20 just for the court. I said, from 15 March 2007 until
21 the beginning of November 2007, Johnny's repeated
22 persistent recommendation on DSPP finally -- I mean,
23 finally make me profoundly convinced that the DSPP
24 programme was a form of direction for me to make my
25 investment. It's a slow process, because my own

1 10:59 background, you know, I have done --

2 COURT: For a period of six months, from March 2007
3 until November 2007, he basically kept sending you
4 accumulator proposals and explaining to you how they
5 work, and persuading you that this was a good strategy
6 for you to use, a good investment for you.

7 A. Right.

8 COURT: That's been your evidence so far.

9 A. Right, so --

10 COURT: Then you have November, December and January, in
11 which you get into exactly that, and then the market
12 turns radically against you. Then in 20 December, he
13 tells you about decumulators, which begin to enter in
14 January as a means to basically mitigate your loss or to
15 make some gains.

16 A. Right.

17 COURT: Now, counsel is taking you through -- and all this
18 you have done, in the face, as counsel has put to you --
19 he's sent you regularly Deutsche Bank's, literally what
20 they call "market warnings" and "analyst reports" which
21 are bearish on the banks and the markets.

22 Then you say, basically, yes, he's done all of that
23 but the overarching conversation and advice he's been
24 giving you all this time -- in the face of that, he is
25 still very bullish about bank shares, notwithstanding

1 11:01 all these market and analyst reports to the contrary,
2 including the bank's advice to sell. Okay?

3 You now come to March 2008, and counsel says to you,
4 look at your own e-mail out of your own mouth. You say:
5 "I have under estimated the enormous severity of the
6 credit crisis".

7 Then you say:

8 "Now, in the current undesirable situation I am in,
9 I ask you and Deutsche Bank to help me to carry out this
10 plan."

11 So you are still thinking, as of 8 March 2008, that
12 this "current undesirable situation" or the severity of
13 the credit crisis is a passing phenomenon. Is that your
14 understanding?

15 A. Yes, yes. Just two days ago he said the market could go
16 up to \$40.

17 COURT: Okay.

18 A. Okay. But, your Honour, please understand, my own
19 background is in scientific research --

20 COURT: I understand all of that. My question is: you had
21 red lights; even Kai Chen in Citibank tells you that you
22 are over-concentrated. You have red lights flashing,
23 and so far, all I hear you saying is, "Yes, yes, yes,
24 I see the red lights, but I have been sold by Johnny
25 that this is a good strategy, and the Citibank shares

1 11:02 and all the banks' shares will in due course pick up,
2 and it's only a question of managing your margin risk".

3 That seems to be the sum total of your evidence so
4 far. Is that correct?

5 A. Correct.

6 COURT: Is that clearly stated?

7 A. Correct, but please also let me to clarify.

8 COURT: Yes, please.

9 A. I think there are two points to make here. One point is
10 that even though several times -- not very many times --
11 several times he had sent me information about the
12 crises, aspects of the crises, and which I could not
13 digest very much, but in the phone conversations there
14 were probably 10 times more conversations than these
15 bearish messages.

16 In these conversations, which unfortunately we don't
17 have, he was almost all the time very optimistic. So
18 that's one point.

19 The other point I want to make is, in my lifelong
20 research work, I always work in a team. I was the team
21 member, I was the team leader. You know, here, at this
22 point, we are working together very closely. I just
23 expressed that, you know, in this team, we together, we
24 did not make the correct assessment of the market -- we
25 together. When I say "I", I really mean "we" -- "we".

1 11:04 But, you know, that's my spirit. I -- we are
2 working as a team. You will see that he also said that
3 "We are also in the same boat, we are joined, we are in
4 this together, we're going to make this through". These
5 kind of words very often, very often in the conversation
6 and in some of the e-mails.

7 So, when I say "I have underestimated enormous
8 severity of the credit crisis", that means that
9 "I listened to you all the time, I trust you so much,
10 and, you see, we have got into this situation".

11 And this conversation, actually, in the -- on
12 21 November 2008 when my account collapsed to negative
13 value, I still say the same thing. I said, you know,
14 "We -- I trust you, but I did not understand
15 completely", I did not -- you know, that was my spirit.
16 So when I say "I", I actually mean bows of us.

17 COURT: Okay.

18 MR ANG: Can you look at page 5168.

19 Your Honour, I'll take all this up in submissions
20 because I'm really trying to finish the
21 cross-examination.

22 Page 5168. This is an e-mail from you on 10 March.
23 You say:

24 "Ms Cecilia Yan said to me in our phone call of
25 March 7 that I had \$70-80M contracts. In order to

1 11:06 assess my risk exposure, safeguard the safety of my
2 investment and have better grasp of my transaction plans
3 I would ask the bank's assistance to monitor and
4 quantify the risk exposure of my investment in
5 a constant fashion. I think this risk monitoring
6 assistance should have been provided to me by the bank
7 all along."

8 Then you go on to say in the next paragraph:

9 "Karan is very good at designing the DSPP and PSSP
10 record Excel file ..."

11 Then you ask her to add more columns, "beginning
12 maximum exposure", "days remaining" and "remaining
13 maximum exposure" to each contract, "At the bottom of
14 the columns you sum the remaining exposure."

15 You have entered the numbers, you say, for two
16 contracts in the Excel file.

17 Pausing there, you are telling Karan to please make
18 these modifications to the spreadsheet from now going
19 onwards; correct?

20 A. Correct.

21 Q. Then you say in your last paragraph:

22 "I estimated that I had an original maximum exposure
23 of about \$75 [million], and now have about
24 [\$56 million]."

25 You have been monitoring your maximum exposure; is

1 11:07 that right?

2 A. No, until -- I think until 8 March, that I became very
3 concerned. Before that date I did not know my exposure,
4 so there was a conversation, I demanded Johnny to put
5 these numbers in so that I can monitor them. So
6 that's --

7 COURT: Counsel, you have not highlighted the last sentence
8 of the first paragraph.

9 MR ANG: Well, your Honour, that's for them to bring up.
10 I've read the whole letter, to be fair to him --

11 COURT: To be fair to him, the upshot of this letter seems
12 to be that the bank's Cecilia Yan calls him to say he
13 has contracts of US\$70 to 80 million.

14 MR ANG: Yes.

15 COURT: Then he says:

16 "In order for me to assess my risk exposure and
17 safeguard the safety of my investment, and better grasp
18 in my ... plans, I would ask your bank's assistance to
19 monitor and quantify the risk exposure of my investment
20 in a constant fashion. I think that this
21 risk-monitoring assistance should have been provided to
22 me but your bank all along."

23 Then he goes into Excel. You asked him whether he's
24 been monitoring it. What he is really saying right now
25 is that he has not had the means to monitor it, and the

1 11:08 70 million that she says does not comport with his
2 understanding that he thought he had about 475 million,
3 and now about \$56 million.

4 We are trying to probe his understanding at the
5 time.

6 MR ANG: Sir, for the purposes of the bank's case, it is not
7 our case that it's our job to help him monitor the risk.

8 COURT: Fair enough.

9 A. Your Honour --

10 MR ANG: If he -- can you just pause there.

11 A. Yes.

12 MR ANG: If he seeks the bank's assistance, the bank will
13 assist him.

14 COURT: I understand, but my point is, as you are pointing
15 out to him and selecting portions of an e-mail, since
16 it's fresh on his mind I want to clarify from him his
17 understanding of what exactly he said.

18 MR ANG: I think he has clarified it, sir.

19 Page --

20 A. Your Honour --

21 COURT: Yes.

22 A. -- may I just have the facts spelt more precisely.

23 Before 6 March 2008, the Excel file did not have any
24 information about exposure, so after the phone
25 conversation was -- Ms Cecilia Yan and Johnny on that

1 11:09 day, then I thought they must help me to have a -- at
2 least some simple means to follow my exposure. So the
3 Excel file on 10 March then had that exposure.

4 COURT: From your evidence so far, it would appear that as
5 you are working with Johnny you become more and more
6 knowledgeable and informed. Each time the Excel
7 information you request, in the light of your learning
8 curve, improves and then you ask for more and more
9 information.

10 A. Right.

11 COURT: That seems to be the picture that I'm getting.

12 A. Yeah. Yeah, I have a PhD, I'm a scientist, so these are
13 very simple things, it's very simple to do. But the
14 fact was that despite Mr Ang say that they did not have
15 the responsibility to provide --

16 COURT: That's their position. They are entitled to hold
17 it.

18 MR ANG: I am not here to enter into an argument with you,
19 Dr Chang.

20 COURT: That's a matter of law, and that is the bank's
21 position.

22 A. Yeah, yes. Your Honour, but in my mind I thought they
23 had helped me to the full degree, so they had provided
24 me whatever I need to do, to have. They gave me --
25 Johnny gave me the information about banks, about the

1 11:11 economy, or anything I need for my account, he was
2 giving to me. That was in my mind.

3 MR ANG: Dr Chang, the spreadsheet that we've been talking
4 about basically sets out the details of your DSPP
5 contracts; right? The ones that have been given to you
6 from December onwards.

7 A. Yeah.

8 Q. Correct? Is it?

9 A. Yes. Could you ...

10 Q. The spreadsheet you've been talking about --

11 A. Right.

12 Q. -- it just sets out the details of your accumulator
13 contracts; correct?

14 A. And by this time they should also be --

15 Q. No, no. From December 2007 onwards when it started, it
16 had already provided you with details of your
17 accumulator contracts, in the sense that it provided you
18 how many shares you are supposed to buy --

19 MR PILLAI: Your Honour, my learned friend has to be careful
20 about the time. The Excel spreadsheet started
21 in November. For him to say December, again this
22 witness, not knowing the background, would be giving an
23 answer which later on is not very useful.

24 MR ANG: From the start, whenever it is. Whether it's
25 November or December, I cannot precisely remember the

1 11:12 exact date --

2 COURT: That can be easily established.

3 When did you start getting the Excel spreadsheets?

4 A. I believe it's in the end of November.

5 COURT: The end of November 2007?

6 A. Yeah.

7 COURT: Carry on.

8 MR ANG: Would you agree that from the start, the Excel
9 spreadsheet would provide you with, for example, you've
10 entered into this particular DSPP contract, the number
11 of shares you have to buy per day, how much for how many
12 days?

13 A. Yes, to the best of my recollection, yes.

14 Q. Thank you --

15 COURT: Let's clarify this again so that we don't revisit
16 this.

17 The Excel spreadsheet that you requested and started
18 getting from the end of November 2007 is literally
19 a regular snapshot of all the accumulators and the
20 decumulators you have entered which have not been
21 knocked out. As frequently as they are issued to you,
22 they give you a snapshot of the information in the Excel
23 sheet with respect to each accumulator and decumulator
24 you have?

25 A. Correct.

1 11:13 COURT: At that time; is that correct?

2 A. Yes, and that's the primary tool, I follow my
3 programmes.

4 MR ANG: Would it be correct for me to say that it's
5 a matter of simple mathematics to calculate how much is
6 payable for each contract? You take the number of
7 shares per day, you multiply by the strike price,
8 multiply by the number of days; correct?

9 A. Correct. It seem to be very simple mathematics, but I
10 had not done detailed --

11 Q. I understand.

12 A. I had not done that.

13 Q. Page 5195. Johnny Wan says in his e-mail to you:

14 "I remember [SocGen's] new shares will be available
15 on 13 March. If I were the shareholder I probably will
16 sell them with the current market condition. I believe
17 we need to consider the fact that there are tons of new
18 shares available.

19 The price will probably drop."

20 Right?

21 A. Right.

22 Q. "From my own experience, I have seen those share
23 eventually drop to the discount offer price if the
24 market continue to decline."

25 Would you agree with me, very clearly he's saying --

1 11:15 at least for SocGen -- that he would sell them; right?

2 A. Yes.

3 Q. Look at page 5196. This is your response to the e-mail.

4 "Dear Johnny and Karan:

5 The market is extremely volatile and bank shares
6 have dropped to extremely low levels (eg. 9-year low for
7 Citigroup). I hate to sell my shares at this time.

8 I would like to pursue selling my shares through
9 PSCP" -- which is actually "PSSP", which I should be
10 calling "decumulator" -- "If we prudently execute this
11 strategy, we can resolve the current situation safely,
12 even Citigroup stays below \$20 for extended period of
13 time."

14 Would you agree with me that you are expressing your
15 view very clearly here, in the light of a suggestion by
16 Mr Wan that "You should sell your SocGen shares" because
17 in his view, "There are tonnes of new shares available
18 and the price will drop", you're saying the market is
19 extremely volatile, the bank shares are low levels -- in
20 terms of prices -- and you don't want to sell them
21 except through PSSPs; correct?

22 A. Correct. This -- this selling plan, it's always been
23 discussed, you know, that was going back and forth and
24 back and forth and the market also went up and down and
25 up and down. You know, several times after this the

1 11:16 market looked great, just like Johnny had said, you
2 know, they will come back, they will come back. They
3 actually did come back several times.

4 And this is that low point of the market --

5 Q. Okay, I think --

6 A. -- very bad time. I think -- I thought this was the
7 worst time before the credit crisis, I mean -- I mean
8 the Lehman Brothers collapse. Probably just -- I would
9 feel that it was the worst time.

10 Q. Yes. The Lehman Brothers collapse was in
11 September 2008; right?

12 A. Yeah. Then this still several months before that.

13 Q. This is just before Bear Stearns collapsed; right?

14 A. Before what?

15 Q. Never mind.

16 A. Before?

17 Q. Page 5264.

18 A. I don't know.

19 Q. "In response to the margin call of March 7, you should
20 receive today 220,000 shares of Citigroup to enter into
21 my Deutsche Bank account.

22 I am working to infuse \$3 [million] cash to boost my
23 position the next few days."

24 You're telling Johnny what's coming in terms of cash
25 as well as shares; correct?

1 11:17 A. You said 5624?

2 Q. Page 5264.

3 A. 5264. Yes.

4 Q. My simple point is that you're just telling them what,
5 in terms of collateral, is coming into DB; right?

6 A. Yes.

7 Q. Page 5270 --

8 COURT: Before you move on, counsel, can I get some
9 clarification from the witness.

10 Go back to page 5198. At page 5197, Johnny has told
11 you, on 10 March, his view on SocGen shares. "This is
12 a new issue, there are tonnes of shares, if I were
13 a shareholder I would probably sell them". Do you
14 remember that e-mail?

15 A. Yeah.

16 Q. This is an e-mail in response to your earlier e-mail to
17 him in which you set out your strategy, which is:

18 "To minimise the risk I will face, if Citigroup
19 shares fluctuate at these low levels, (about \$20-21) or
20 even fall to lower levels over the next few quarters,
21 I will prudently place all the shares I have accumulated
22 in decumulators."

23 A. Yes.

24 COURT: "... I will continue to do so, whenever I have
25 accumulated enough to do a decumulator. This way, I can

1 11:19 generate enough cash to buy all the shares I will
2 accumulate even if Citigroup shares stay below \$20 for
3 an extended period of time."

4 Is that correct?

5 A. Correct.

6 COURT: It seems what you are saying is, by entering into
7 decumulators, you hope to raise cash and reduce your
8 margin, and still be able to hold your shares acquired
9 under the accumulators.

10 A. Yes.

11 COURT: That's your strategy at that time.

12 A. Yes, because it's very simple mathematics. My cost of
13 obtaining the Citigroup shares was about 25, on the
14 average, so -- and many of these decumulators have
15 a premium of 20 to 30 -- 25 to 30, often. So 20 times
16 25, that would be \$5. So it would be my cost.

17 So it's very simple mathematics --

18 COURT: Okay.

19 A. -- and that's why I adopted only two weeks after they
20 introduced the programme.

21 COURT: Carry on.

22 MR ANG: If you turn to page 5264, the very short point was
23 that you basically were trying to tell the bank what was
24 coming in, in terms of collateral. I think you agreed
25 with me. Right?

1 11:21 A. Yes.

2 Q. Page 5270 is an e-mail from Karan to you telling you
3 that some DSPP contracts have been unwound for SocGen as
4 well as for UBS; right? And also the unwinding prices;
5 right?

6 A. Right.

7 Q. At page 5271, you complain; you say that they look to be
8 extremely severe penalties, and then you ask for the
9 calculations; right?

10 A. Right.

11 Q. Then you complain about Deutsche Bank, you say:

12 "You don't provide a customer risk monitoring
13 mechanism ...

14 ... you have a very radical chaotic credit control
15 staff. I got the margin call letter last Friday", and
16 "You wanted me to top up on Monday", et cetera; right?

17 A. Right.

18 Q. At page 5289, you are told by Mr Wan that your shortfall
19 is negative 2.165 million; right?

20 A. Right.

21 Q. At page 5292, you tell him, in response to his e-mail at
22 page 5293, where he says:

23 "Bear Stearns's case made the volatility index at
24 recent peak and I wish the Tues Fed meeting on rate cut
25 can at least stabilise the market.

1 11:22 However, the sentiment is really bad, and people are
2 guessing who will be next? Lehman is also a small
3 player."

4 Then he says:

5 "Let's be prepared, my estimated shortfall will
6 increase by at least 2.5M.

7 Next week is a short week and let us work closely
8 together and sailing through the storm safely."

9 Your response at page 5292 --

10 A. Excuse me.

11 Q. Yes?

12 A. Are we -- we are not looking this one (indicating)?

13 Q. We are, page 5292.

14 A. There is no page here.

15 Q. Pages 5292 and 5293.

16 COURT: Counsel, while he's searching for this, to place
17 this in context, the bank has already begun to unwind
18 his positions because of margin shortfalls; is that
19 correct?

20 MR ANG: Sorry, your Honour?

21 COURT: To place this into context, the recent pages you
22 were referring to relate to unwinding of positions.
23 These are actions by the bank to unwind the positions
24 that he has because of margin shortfalls?

25 MR ANG: I will ask him. It's better to have the answer

1 11:24 that comes from him.

2 Dr Chang, the unwinding --

3 COURT: Look at page 5270.

4 MR ANG: Yes, the unwinding of these contracts --

5 COURT: Are not as per his instructions.

6 MR ANG: -- were done at your instructions, meaning that you
7 decided to cut some of those contracts; correct?

8 COURT: Look at page 5270.

9 A. Yes.

10 COURT: Karan Lo of Deutsche Bank advises you:

11 "Please be advised we have unwind the following
12 [accumulators] for you", UBS, SocGen?

13 A. Yes.

14 COURT: Is this in accordance with your instructions or did
15 the bank do it unilaterally?

16 A. Your Honour, Johnny and I had a discussion about which
17 one of the many to unwind --

18 COURT: It's a very simple question here.

19 A. Yes.

20 COURT: They are unwound because you instructed them and
21 they are just telling you that they did it, or did they
22 do it without telling you?

23 A. They did tell me which one, and we decide which one and
24 then --

25 COURT: So you decided to unwind?

1 11:25 A. Yeah, Johnny and I look at the different --

2 COURT: That's fine. What I'm asking you is very simple.

3 When you say we have unwound, you already discussed it

4 and you agreed to the unwinding, then they are reporting

5 to you that they have done it?

6 A. Right.

7 COURT: Fine. Carry on.

8 A. Even though I did not have the number, the cost --

9 COURT: That's fine. It's as per your instructions or

10 agreement. That's fine.

11 MR ANG: Page 5293, that's what I was referring to just now

12 when I was talking you didn't have the page. Look at

13 page 5293. Mr Wan is sending you an e-mail on 14 March,

14 Friday, and he's saying:

15 "Bear Stearns's case made the volatility index at

16 recent peak and I wish the Tuesday Fed meeting on rate

17 cut can at least stabilise the market.

18 However, the sentiment is really bad, and people are

19 guessing who will be next?

20 Let's be prepared, my estimated shortfall will

21 increase by at least 2.5M.

22 Next week is a short week and let us work closely

23 together and sailing through the storm safely."

24 A. See, here again, we are talking --

25 Q. I've not asked the question, Dr Chang.

1 11:26 COURT: Listen to the question first.

2 A. Sorry.

3 MR ANG: The question I have for you is at page 5292, and
4 you say that you were "reckless" and you "did not assess
5 the risk exposure". Right?

6 A. Yes. That's what I said.

7 Q. Then you go on to say to Mr Wan in this e-mail:

8 "... you did not help me either, and now I have to
9 endure the pain."

10 Right?

11 A. Right.

12 Q. So you accept that you had been reckless?

13 A. Well, obvious, these results are, you know, coming to
14 this day of the -- of my account, was because I trusted
15 Mr Wan fully. He set the direction, he -- he got me
16 buying these DSPP products, he convinced me bank shares
17 is the share to buy. He rarely talk about
18 concentration, but even to this day, or even much later
19 date, I was speaking like a team member.

20 In the e-mail he wrote to me, he also expressed that
21 we are working together. See, he said:

22 "Next week is a short week and let us work closely
23 together and sailing through the storm safely."

24 Well, very few times I had a thought of blaming him.
25 In the entire relationship, even to the very end, I was

1 11:28 not in a position to blame him. You know, the e-mail
2 I wrote just a few days ago to express some -- some
3 frustration, is because it was a very difficult time,
4 and I think that was the first time I experienced
5 unwinding, so that's --

6 COURT: But in this e-mail you said "If your company forces
7 me to undo contracts", that's why I asked you the
8 question, did you unwind with your consent or did they
9 unilaterally unwind positions? As of now, your evidence
10 is, they unwound under your instructions.

11 A. I had no choice.

12 COURT: That's different. But the point is, they didn't do
13 it as a closing out --

14 A. Johnny and I discussed the situation together, and chose
15 which ones to unwind, to release the best -- to release
16 the best margin requirement.

17 MR ANG: Dr Chang, I'll come back to your answer just now.

18 You have suffered margin calls, you've been asked to
19 put in, first, 7.1 million, and then after that
20 8.3 million in March. If it really was true that you
21 believed that Mr Wan and Deutsche Bank had
22 a responsibility and a duty to give you advice which you
23 could rely on, and which you could look to for
24 responsibility if the advice turns out to be bad, you
25 wouldn't be saying this in your e-mail.

1 11:30 You've suffered losses, you would be saying to
2 Mr Wan and Deutsche Bank, "Look, look at this mess
3 you've gotten me into. I relied on you, your advice was
4 wrong. I expect compensation".

5 A. Shall I answer?

6 Q. Yes. I'm saying that that would have been what you
7 would have said if it was indeed true that that was your
8 belief. Correct?

9 A. The answer is no, I was not that kind of person. I was
10 not that kind of person to blame my partners -- at that
11 time I trust him fully. I thought he did the best thing
12 for me, to lead me to do these investments, and that
13 thought did not wait until my entire account was
14 collapsed.

15 Q. At page 5292, you go on to ask for the estimated
16 unwinding costs for a couple of other DSPPs; right?

17 A. Right.

18 Q. At page 5300, he provides you with the figures. Right?

19 A. Yes.

20 Q. Then at page 5323, you see his e-mail where he says:

21 "Asian shares dropped around 4-5 percentage. I have
22 a very bad feeling about this. European are following
23 and so is the DOW future. ...

24 Let me know if you want to reduce some European
25 shares. I think Fed should do something tonight."

1 11:32 Right? Correct? Page 5323.

2 A. I got it, yes.

3 Q. The question is that he's telling you, "The situation
4 looks grim", he's suggesting that you sell some of your
5 European shares; correct?

6 A. Correct.

7 MR ANG: Sir, I'm moving on to volume 12AB. Would this be
8 a convenient time to take a break for the transcribers.

9 (11.32 am)

10 (A short adjournment)

11 (11.50 am)

12 MR ANG: May it please the court.

13 Dr Chang, could you turn to volume 12AB.

14 A. Yes.

15 Q. Page 5327. This e-mail of 18 March 2008, you say:

16 "Please let me know the loss for undoing this
17 contract."

18 You are discussing the unwinding cost for unwinding
19 one of the DSPP contracts; correct?

20 A. Yes.

21 Q. Then you say:

22 "GS and LEH are better than expected by the
23 analysts."

24 By "GS and LEH", are you talking about Goldman Sachs
25 and Lehmans?

1 11:51 A. I think so, yeah.

2 Q. Then you say:

3 "I would suggest that we keep the 70 share/day UBS
4 contract undoing order ..."

5 You're discussing with Mr Wan, through this e-mail,
6 that you should try to keep one of the orders placed for
7 unwinding the contracts; correct?

8 A. Yes.

9 Q. At page 5329, he tells you, "Your 300 shares unwind
10 cost" and the total cost is how much.

11 You can see, at page 5329, he says:

12 "I will remember those loss and I know we can get it
13 back later."

14 He's telling you about your unwind costs for one of
15 your UBS DSPP contracts?

16 A. Yes, and --

17 Q. Yes, I know --

18 A. You see, this message is also --

19 Q. Yes, yes --

20 A. It's -- I appreciate it very much, he said:

21 "I will remember those loss and I know we can get it
22 back later."

23 Q. Page 5330 is your e-mail on 19 March 2008. It says:

24 "Better grasp of market trends."

25 That's the subject matter. Then you say:

1 11:53 "Dear Johnny.

2 I think that you and I have been too reactive (or
3 'trigger-happy') in the past. We should pay more
4 attention to overall market trends in the future.

5 In retrospect, we bought shares and used up all our
6 bullets when the market had still a long way to go down
7 we kept on saying that the bottom had been reached,
8 while there were still some way to go.

9 With the Fed's multiple major moves, the reports
10 from [Goldman Sachs] and [Lehman] and various other
11 signs have indicated the write-downs due to the
12 sub-prime mortgage problems are mostly done [bearing in
13 mind this is March 2008] and therefore the down-side
14 risks for our shares are much smaller.

15 In the current situation, we should not sell our
16 shares and unwind any more contracts."

17 Quite clearly, Dr Chang, you're expressing the view
18 that you think that the share prices for bank shares
19 have bottomed out; right? That's what you are thinking
20 is and that's the message you are sending. Right?

21 A. Not exactly. I did not --

22 Q. Amongst other things.

23 A. I did not say it has been bottomed out.

24 Q. Okay. Let me break it down.

25 A. Yeah.

1 11:54 Q. In the first paragraph you say that Johnny and you have
2 been "too reactive", meaning that you timed the market
3 wrongly. Correct?

4 A. "We" together. I said he and I, "we" together, yeah.

5 Q. You together have timed the market wrongly; isn't that
6 correct?

7 A. I didn't know much about timing. I was learning, but at
8 this point in time, it seems that --

9 Q. Let me --

10 A. -- every time the market went up we didn't sell enough,
11 and when the market went down, like this time, this was
12 a very difficult period for me for this account, and
13 then we had to sell.

14 So I used this word -- I did not know what other
15 word would be better. It seems that we -- we acted only
16 at that last moment, when the market was the worst, then
17 we wanted -- we had to sell. And when the market was
18 better, and we didn't sell. So that's what I say.

19 Q. All this is with the benefit of hindsight; correct,
20 Dr Chang?

21 A. Correct, yeah. Correct.

22 COURT: To be fair to the witness, you should refer him to
23 page 5331A. Do you have it now?

24 MR ANG: Yes.

25 A. Yes, thank you.

1 11:57 COURT: There, you have Johnny Wan's reply to your e-mail.

2 MR ANG: Before we get to Johnny Wan's reply, just look at
3 your e-mail first, the one at 7 o'clock, 19 March. The
4 first two paragraphs you are saying that you and Mr Wan,
5 together, timed the market wrongly --

6 MR PILLAI: He didn't say that, your Honour. The word
7 "timed" is not there.

8 MR ANG: I'm not saying the first two paragraphs used these
9 words.

10 I'm saying, the first two paragraphs were sending
11 the message to Mr Wan that you believed that you and
12 him, together, timed the market wrongly in the sense
13 that you bought the shares when the market had not
14 reached the bottom, it still had some way to go. That's
15 what you meant; correct?

16 A. Partially correct. At this point in time in my
17 investment life, I would say I myself did not have --

18 Q. No, which point?

19 COURT: Dr Chang, he is taking you painstakingly through
20 each and every of your e-mails concurrent in the
21 relevant period. He's putting to you, really: this is
22 what you said, then.

23 A. Right.

24 COURT: What your understanding now is, is by the way. So
25 the question very simply is: this is what you said, and

1 11:58 reading it, he says this is what it means.

2 If you disagree with what it means in the context,
3 or because you had other phone conversations, or prior
4 or subsequent e-mails, you can clarify to say this is
5 what it meant in that context, but the starting point,
6 he's taking you through what exactly you have said there
7 in your own words.

8 So you either say, "It doesn't mean what it says,
9 because", or "You're taking it out of context, because".
10 That's fine.

11 A. Your Honour, what I meant to say is that at this point
12 when I said -- I should say at that point -- at that
13 point in time, 19 March 2008, I would not have the
14 ability or knowledge to time the market.

15 COURT: Nobody would.

16 A. Nobody -- probably nobody would, yeah. So it's probably
17 not -- it's not a requirement or an expectation, really,
18 but I just say --

19 COURT: If you took the word "timing" out of your question,
20 you might get a better answer.

21 MR ANG: Dr Chang, I understand what you're saying. That's
22 not what I am suggesting that you did, nor what you
23 meant by this e-mail.

24 What you meant by the first two paragraphs of this
25 e-mail is that you and Mr Wan, together, went into the

1 12:00 market to buy the shares in the bank stocks while it
2 still had some way to go down. That was a mistake.

3 COURT: With hindsight.

4 MR ANG: I'm coming to that, sir.

5 COURT: Even then, with hindsight, at that time.

6 MR ANG: Yes.

7 So that was a mistake; correct?

8 Let me repeat the question. In the first two
9 paragraphs, what you are trying to say, or what you
10 mean, is that you and Mr Wan bought these bank shares in
11 the market at the wrong time because it had still some
12 way to go down; correct?

13 A. Not entirely correct. By the first sentence, I only
14 talk about the selling. You know, at that time I was
15 not really in a position --

16 COURT: No, please focus on the e-mail itself. The second
17 paragraph is very clear, it says "In retrospect". So on
18 19 March 2008, you're looking backwards as to what
19 you've done. That's what you mean by "retrospect".
20 Then, you say:

21 "... we bought shares ... when the market had still
22 a long way to go down."

23 So presumably, on 19 March, whatever you had bought,
24 the market went further down for those shares.

25 MR PILLAI: Your Honour, I think the witness was referring

1 12:01 to my learned friend's question on paragraph 1, and the
2 question is whether that refers to a sale or purchase.

3 A. Could I explain?

4 COURT: He's not referring to any particular transaction.
5 Are you?

6 MR PILLAI: No, paragraph 1 of the e-mail, your Honour. So
7 the question is --

8 COURT: "You and I have been too reactive"?

9 MR PILLAI: That's right, so what context is it --

10 COURT: Well, you put your question.

11 MR ANG: Just concentrate for the time being on paragraph 2.
12 I'll come to paragraph 1 later, but now we are on this
13 particular point, the court has asked this question, and
14 I'll try to rephrase the question which I've not put
15 clearly.

16 Just look at paragraph 2 first. Are you not saying,
17 or do you not mean, at paragraph 2, that you and Mr Wan
18 had gone into the market to buy these bank shares at the
19 wrong time because it still had a long way to go down?
20 From the perspective of 19 March 2008.

21 COURT: His actual -- they bought at the level, and the
22 market went down below that.

23 MR ANG: Yes.

24 COURT: Because the key word is "retrospect".

25 MR ANG: Yes.

1 12:03 So, looking back, you and Mr Wan bought the shares
2 at the wrong time because the market still had a long
3 way to go down; correct?

4 A. Partially right, because when I say this, the second
5 paragraph, I had a thought in my mind that it is
6 a recognised fact, we already did -- you know, already
7 done it. So in the first sentence I only say the
8 selling, about the selling --

9 Q. Look at the second paragraph.

10 A. Yeah.

11 COURT: Counsel, I think one reason why he may have
12 a problem is, it's only a wrong time to have bought
13 shares if the market went down further, if it was your
14 objective to buy at the bottom.

15 MR ANG: Let me rephrase that.

16 Dr Chang, your objective was to buy these bank
17 shares when it was at the bottom; correct?

18 A. No. No. I was convinced that in the November -- at the
19 end of October and the beginning of November 2007, it
20 was time to buy the shares --

21 Q. No, I'm not asking --

22 A. -- by DSPP.

23 Q. Dr Chang, I'm not asking why you thought it was a good
24 time to buy. I'm asking you, your intention. Do you
25 remember that we went through all the e-mails with

1 12:04 Kai Chen, yesterday, with Citibank? Your intention was
2 to go into the market to buy the bank shares when you
3 perceived that they were at a low or near the bottom;
4 would you agree?

5 A. I was led to believe --

6 Q. You can answer the question first, then after that you
7 can say who told you and so on. Would you agree?

8 A. Partially agree, because during the period when
9 I entered the DSPP programmes, it was a pretty long
10 period, the market was up and down, even in that
11 timeframe, so I was led to believe that was a good
12 period to buy bank shares.

13 Q. Because generally, they were depressed --

14 A. Yes.

15 Q. -- in terms of price; correct?

16 A. Correct, but not necessarily at the bottom. I would not
17 know that --

18 Q. Fine. I think we get to the nub of the complaint.

19 I'm not saying that your intention was to buy when
20 it was at an all-time low, but when you felt that the
21 bank share prices were depressed, you wanted to buy
22 these bank shares. That was your intention; correct?

23 A. I was profoundly convinced by Mr Wan --

24 Q. Dr Chang --

25 COURT: You're not answering his question. Let's look at

1 12:06 the e-mail. It's a very simple e-mail. You're looking
2 backwards on 19 March 2008 and you say:

3 "I think that you and I have been too reactive", in
4 other words, "(... 'trigger-happy') in the past."

5 So you are looking backwards, then. Okay?

6 So, what do you mean by "trigger-happy" or "too
7 reactive"? Then you say in the next sentence:

8 "We should pay more attention to the overall market
9 trends in the future."

10 Then, you zero in and say:

11 "In respect to, we bought shares ... when the market
12 had still a long way to go down."

13 Basically you are looking backwards as to when you
14 bought, and then, looking backwards you saw that the
15 market still went further down than the prices at which
16 you purchased.

17 "We kept on saying that the bottom had been reached,
18 while there were still some way to go."

19 Now, link those two paragraphs together and answer
20 his question.

21 A. Yes. Your Honour --

22 COURT: Then you can explain.

23 A. Your Honour, here I was stating the fact that had
24 already -- that had already been -- already happened.

25 We purchased the accumulator programmes over a period of

1 12:07 time. That was already done sometime ago. That was
2 a fact that we had to accept. So in the paragraph,
3 I said with that fact that had already occurred several
4 months ago --

5 COURT: You drew a lesson, and then you conclude with
6 a future action. That's where he's headed.

7 Do you understand? It's a very short e-mail with
8 four paragraphs. You drew a conclusion upfront, you
9 elaborated on what over-reactive has been, and then you
10 say what's coming is the Fed's moves about Goldman Sachs
11 and Lehman, and sub-prime write-downs, and then you end
12 up with your action plan.

13 MR ANG: Correct?

14 A. Your Honour --

15 COURT: Do you understand the sequence of what you say? You
16 can explain, but counsel is taking you through it for
17 a reason, to try to understand what you're trying to
18 say, and he's going to draw a conclusion and put it to
19 you that this e-mail reflects your conclusion and your
20 actions thereafter.

21 A. Your Honour, when I wrote this e-mail, my mind was that
22 I already accept the fact that we bought the bank shares
23 several months ago in a period of time, and that was
24 probably not the best time, okay. So --

25 COURT: Only having seen that the market went down. If the

1 12:09 market went up thereafter, it would have been
2 the perfect time.

3 A. Respectively, that's my point.

4 COURT: Yes.

5 A. But my first sentence -- in my first sentence I did not
6 complain. That part.

7 COURT: It's not a question of complaining. You are looking
8 backwards, you are drawing a conclusion, you're drawing
9 a conclusion as to what you did and what you did not do,
10 and then you're projecting what you are going to do
11 ahead. Your last paragraph gives you the decision as to
12 how you came to that conclusion. That's what he is
13 taking you through.

14 A. Yes, your Honour. I think grossly speaking, that fact
15 should be part of my thought.

16 COURT: Fair enough. You can explain what was the context,
17 you can explain what were the e-mails before or after,
18 you can explain what the conversation was, that's fine,
19 but his position is, very simply: taking you through
20 your own words at that time, is this what you say?

21 MR ANG: Dr Chang, you see, this e-mail of 19 March, which
22 we're looking at page 5330, it looks to the past and it
23 also looks to the future. Do you agree?

24 A. Yes.

25 Q. The part of it which deals with looking to the past, it

1 12:10 shows that your intention in the past -- right? --

2 A. Right.

3 Q. -- was to try to buy the bank shares when the market was
4 depressed for these bank shares; correct?

5 A. Correct.

6 Q. Looking back at this stage, 19 March 2008, with the
7 benefit of hindsight, you realised that actually the
8 time when you went in to buy the bank shares was not the
9 right time, because the bank share prices went even
10 lower; correct?

11 A. Correct. Yeah.

12 Q. So you're saying to Johnny, what you mean is that we
13 should learn from this; correct?

14 COURT: Counsel, I can see why he has a difficulty, because
15 it was his evidence yesterday, repeatedly, that this is
16 a good time to go and buy bank shares because of the big
17 discounts as well.

18 MR ANG: Yes --

19 COURT: So he's struggling with trying to figure out, in
20 that context.

21 MR ANG: Let me just point this out to you. You say in the
22 first paragraph:

23 "We should pay more attention to overall market
24 trends in the future."

25 What you're telling Mr Wan is that you and him

1 12:12 should pay more attention to how you think the market
2 will move based on market trends; correct?

3 A. Yes, I was thinking that he could help me in this
4 regard. Again, when I say "reactively", I think in my
5 mind I was talking about the single events, like
6 selling -- selling a -- some shares of Citigroup, or
7 doing the unwinding.

8 Q. So when you're saying --

9 A. I'm talking about the single events, not the direction.

10 Q. Yes.

11 A. The direction of moving into DSPP to buy bank shares,
12 that was a direction, that was a direction that took
13 a lot of thoughts.

14 COURT: Let me give you the context. Turn to page 5331B,
15 because your e-mail indeed itself is a response to an
16 earlier e-mail from Johnny --

17 A. Yes.

18 COURT: -- where Johnny tells you, "I need to confirm, to
19 change the unwinding closer to the market price".

20 A. Yes.

21 COURT: That e-mail was sent to you at 9.08 am, was it?
22 Presumably Hong Kong time, on 18 March. You replied at
23 7.00 am on 19 March, and Johnny replies to you on
24 19 March at 7.45 am. So these are the three e-mails
25 that provide the context.

1 12:14 A. Yes, and -- your Honour, so you can see the first one,
2 which is listed here, the last on page 5331B. So I was
3 talking about a single event. What I was talking
4 about --

5 COURT: Unwinding closer to the market.

6 A. Yes. When I talk about this trigger, I mean it's
7 a single action.

8 MR ANG: Let me ask you about that. Your point here is that
9 he's telling you, "Look, I need to confirm the unwinding
10 price for the SocGen DSPP"; right?

11 A. Right.

12 Q. Your response, about being too reactive or
13 trigger-happy, is that there have been single incidents
14 in the past, or separate incidents in the past, where
15 you have either sold the shares or unwound the
16 contracts, and then later found out that actually, if
17 you had waited, you didn't have to do that. Is that
18 right?

19 A. Right. For example, when the beginning -- please let me
20 elaborate. Yeah.

21 If we remember, you know, just a few e-mails ago, in
22 the beginning of March 2008, we are still in the same
23 month, right?

24 COURT: Yes.

25 A. The same month, just two weeks ago, suddenly he

1 12:15 suggested that I sold all my Citigroup shares or all my
2 UBS shares to make up the -- to make up the -- what do
3 you call that? --

4 COURT: Collateral? The margin call? The margin shortfall?

5 A. Yeah, to make the difference, the margin amount. And
6 that was the lowest point of the market, and so -- you
7 know, I was thinking about that too. We should not --
8 we should not make such a drastic movement at the last
9 moment.

10 So that was in my mind, and now this unwinding also
11 is like that, it's at a very bad time of the market.
12 And the unwinding cost is enormous, you can see that two
13 of them cost \$2 million just to unwind.

14 MR ANG: So you're telling him, in the first paragraph, that
15 going forward you and him should pay more attention to
16 market trends; right?

17 A. Right.

18 Q. Then at paragraph 3, you say:

19 "With the Fed's multiple major moves ..."

20 You are referring to the Federal Reserve, is that
21 right?

22 A. Yes, yeah.

23 Q. And that "the reports from [Goldman Sachs] and [Lehman]
24 and various other signs have indicated write-downs due
25 to sub-prime mortgage problems are mostly done ..."

1 12:17 A. Right.

2 Q. That's your opinion; right?

3 A. Well, we have probably seven or eight conversations in
4 one day during this period --

5 Q. Dr Chang --

6 A. -- so I would say that it's a -- it's part of the
7 conversation we had --

8 Q. Dr Chang, I'm just asking you: is that your opinion?
9 You can say "Yes, it's my opinion, but I got it from",
10 whatever. Do you know what I mean? So that is your
11 opinion, correct? That various other signs and the
12 reports from Goldman Sachs and Lehmans, and with Fed's
13 multiple major moves, your opinion is that the
14 write-downs due to the sub-prime problems are mostly
15 done; right?

16 A. No. It's our opinion. It's the conclusion of our
17 discussion.

18 Q. I can live with that.

19 "... therefore the downside risks for our shares are
20 much smaller."

21 Right?

22 A. Right.

23 Q. You're saying that from your perspective, things are
24 looking up; right?

25 A. I probably was comforting myself, from the discussion

1 12:18 of -- I had with Johnny. As I said, during these days,
2 which is the most depressed days of the account so far,
3 you know, from the beginning to this time, is already
4 about five months, this was a very difficult time, and
5 the loss, just in a few night, just unwinding two
6 contract cost \$2 million, was kind of shocking.

7 So we had many conversations in a day, sometimes in
8 the night without Prof Lim knowing it, that I was making
9 phone calls to Mr Wan, and Mr Wan was -- I thought he
10 was also comforting me during this period.

11 So we had a lot of conversations every day.

12 Q. Dr Chang, my question is not about that. My question
13 is: your perspective, as expressed in this e-mail, is
14 that things are looking up, meaning that the share
15 prices are likely to rise; right?

16 COURT: He doesn't say that.

17 MR ANG: Things are looking up, share prices are not likely
18 to fall --

19 COURT: He doesn't use the words "things are looking up", he
20 just said "the down-side risks are much smaller".

21 MR ANG: Can you tell us what you mean by that, Dr Chang?

22 Isn't what you mean, when you say "the downside risks
23 for our shares are much smaller", that it's unlikely the
24 share prices will drop very much lower?

25 COURT: No. In context he is talking about write-downs of

1 12:19 either Goldman Sachs and Lehman Brothers, and other
2 signs.

3 "... the write-downs due to sub-prime mortgage
4 problems are mostly done and therefore the down-side
5 risks for our shares are much smaller", going forward.

6 A. Yes.

7 MR ANG: What do you mean by "downside risks are much
8 smaller"? Tell us. I tried to give an answer, but you
9 tell us, please.

10 A. Yes, Mr Ang. Again, I would say these thoughts were
11 derived from the many conversations I had with Johnny
12 during these few days. I understood that the market may
13 still be unstable, but if it went down further, it would
14 be small, it would be much small -- if the market went
15 down further. It would be not like the precipitous drop
16 in the previous few days. It probably would be much
17 less. So that was my understanding.

18 Q. Based on your understanding, you took the view, "Because
19 of that, we should not sell our shares and unwind any
20 more contracts"; right?

21 A. We should -- okay.

22 Q. You should answer the question first.

23 A. Partially right. Partially right. What I was saying,
24 that -- again, from our own discussion, is that we just
25 need to sell enough to cover the margin; we should not

1 12:21 sell more. That's what I meant.

2 Q. No, you say "We should not sell our shares". You don't
3 say, "We should not sell all our shares and unwind only
4 some of -- all of our contracts". You say "We should
5 not sell our shares and unwind any more contracts".
6 Right?

7 A. So -- so no, not right. So what I was saying is that --

8 Q. No, this is not what you said?

9 A. Right, we should thought unwind any more contract at
10 this time --

11 Q. Yes, of course --

12 A. -- not in the future. That was at that night.

13 Q. Of course, Dr Chang. I'm talking about at that time,
14 19 March 2008; your thinking then was that you did not
15 want to sell your shares and unwind any more contracts;
16 right?

17 A. Right. In order to meet the current margin call, we
18 just have to done enough to cover it, because it is the
19 low point of the market, and we should not sell more
20 shares or unwind more contract at this very low point of
21 the market.

22 Q. Page 5336.

23 COURT: Before you jump to that, do you want to -- because
24 otherwise we'll be coming back again and wasting a lot
25 of time trying to refresh his memory.

1 12:22 MR ANG: Instead of it being done in re-examination.

2 COURT: Yes. Since you are there, why don't we look at page
3 5331A.

4 MR ANG: Yes.

5 Look at 12AB 5331A, Dr Chang, read it to yourself,
6 not out loud --

7 COURT: If there is anything you want to point out, you can
8 point it out, rather than him cross-examining you and
9 inviting you to. I'm just doing this for efficiency,
10 otherwise we will spend a lot of time.

11 MR ANG: I just put it to you, Dr Chang, that basically
12 Mr Wan agrees with you? Right?

13 A. Right.

14 COURT: Let me save you the problem. I will draw your
15 attention to page 5331A, and in particular Johnny's
16 reply to your e-mail. Is there anything you want to
17 highlight from that e-mail? This is purely for the
18 purposes of expediting time.

19 A. You're asking me, your Honour?

20 COURT: I'm drawing your attention to Johnny's e-mail reply
21 to you.

22 A. Yes.

23 COURT: He says, "I couldn't agree more."

24 A. Right.

25 COURT: The second point he makes is:

1 12:24 "... US housing slump is ... reflected in the market
2 and our portfolio downsize" -- that's actually
3 "downside" -- "risk is mostly realised."

4 A. Yes.

5 COURT: He thinks the US market is in recession, and he
6 thinks a new trend is developing. Okay?

7 A. Yes.

8 COURT: Is there anything you want to say with respect to
9 that e-mail in reply? Your counsel will later draw your
10 attention to it if he needs to. I'm just trying to save
11 time, instead of coming back and refreshing your mind
12 again after a few days.

13 A. You know, he said he agreed -- he said "I couldn't agree
14 more", so he agreed with what I said in the letter,
15 and -- so we -- you know, we are together, having the
16 same thoughts.

17 COURT: So he agrees that you will pay close attention to
18 the market trends?

19 A. Yes, he said.

20 "I will pay close attention to the new era and
21 better grasp the market trends in the coming days."

22 He may be overly optimistic --

23 COURT: That's fine. Very well.

24 A. -- not yet.

25 MR ANG: Page 5336. You write this e-mail, and you tell

1 12:25 Mr Wan:

2 "It seems that the bank stocks are becoming
3 stabilised. This is the first time in a long time that
4 bank shares moved less than the overall market.

5 Do you people read this way?"

6 Right?

7 A. Right.

8 Q. You expressed a view and you asked him whether or not
9 he's of the same view; correct?

10 A. Correct.

11 Q. At page 5338 --

12 COURT: Do you have page 5337A, Johnny Wan's reply?

13 MR ANG: Yes, I have it.

14 COURT: Fine.

15 MR ANG: Mr Wan replies to you and says:

16 "House view is cautiously bearish."

17 Right?

18 A. Right.

19 Q. And that "the pressure is slightly switched" to energy
20 and commodities markets; correct?

21 A. Correct.

22 Q. Page 5338, Mr Wan forwards you an e-mail and the e-mail
23 is "Short and ultrashort ETFs". He says:

24 "Our house recommend this to safeguard your
25 investment especially the financial sector."

1 12:26 Right?

2 A. Right.

3 Q. He is recommending you a product that you might want to
4 consider; right?

5 A. Right.

6 Q. You didn't take this up; right?

7 A. Right.

8 Q. Page 5358.

9 COURT: Did he explain to you what ETFs are?

10 A. Some extent, yeah. Not to the extent I could
11 understand --

12 COURT: But you decided not to proceed with ETFs. This is a
13 house recommendation to safeguard your investment in the
14 financial sector. So they give you a series of ETFs,
15 short proshares, and you did not proceed or you didn't
16 take his advice.

17 A. No, I didn't proceed.

18 COURT: But you knew what they were, or he did advise you?

19 Did he just give it to you cold or did he tell you,
20 "Look, this is how it works and this is how it might
21 help you"?

22 A. He did explain to me in the phone.

23 COURT: In the phone, right.

24 A. But I couldn't understand.

25 COURT: All right.

1 12:27 MR ANG: Page 5358, you ask him to provide, amongst other
2 things, you ask Karan to "provide ... the best PSSP
3 quotes for Citi", and you say:

4 "I am planning to begin doing contracts."

5 Right?

6 A. Yes.

7 Q. After your e-mail which says that you didn't want to
8 sell shares, you make the decision that, "Look, at this
9 point I'm going to start selling using decumulator
10 contracts"; right? Page 5358.

11 A. Mr Ang, you mean after I didn't want to sell through the
12 ultra -- ultra shares --

13 Q. No. We went through the four-paragraph e-mail just now.
14 Do you remember you said, in that e-mail, that you
15 didn't want to sell your shares; right?

16 A. You mean about a week ago?

17 Q. Yes --

18 A. Yes.

19 Q. -- at page 5330 you said you didn't want to sell your
20 shares; then on 26 March you asked for quotes for
21 decumulator contracts for Citigroup shares. My point is
22 simply that you decide, "From now onwards I'm planning
23 to sell your Citigroup shares using decumulators". Is
24 that correct?

25 A. By that time, correct, by that time the market had gone

1 12:29 up quite a bit. Only in one week.

2 Q. No, it's okay. I'm not asking you about the market and
3 why you decided. I'm just saying that you decided to
4 sell.

5 A. Again --

6 Q. Right?

7 A. -- we always make our decision together --

8 Q. No, could you answer the question first?

9 A. Yes.

10 Q. Did you agree?

11 A. Yes. Okay, Mr Ang, we always worked together. When you
12 say "you", your Honour, that means both of us.

13 Q. No, Dr Chang, the bank's case is different from your
14 case, so I'm saying this is your decision, you can say
15 "Yes, it's my decision but also contributed to the
16 decision", or "We made the decision jointly", or
17 whatever. Okay?

18 A. Okay.

19 Q. Page 5367, there's an e-mail from Mr Wan and he says
20 "Something to consider". Just cast your eye over this
21 e-mail. He's basically suggesting that since you have
22 over 700,000 Citi shares, you can sell a call option,
23 and he explains it; right?

24 A. Yes.

25 Q. But you didn't take this up; right?

1 12:30 A. No. And the reason was that I couldn't understand. I
2 had never done one call option in my life.

3 Q. Okay. Page 5368, you ask for quotes for Citigroup
4 decumulator contracts, and you say you will consider
5 selling Citi shares at a fast pace to generate cash;
6 right?

7 A. Right.

8 Q. You can see, at page 5369, an order that you placed for
9 a decumulator is not done; right?

10 A. Right.

11 Q. Then you see, at page 5372, you want to place a
12 decumulator contract offer by Merrill Lynch for
13 Citigroup shares; right?

14 A. Right.

15 Q. You can see, at page 5375, it is not done. Right?

16 A. Right.

17 Your Honour, at this point can we look at one phone
18 conversation? We have so few, I thought maybe it's
19 good.

20 COURT: Sure.

21 A. So that we don't -- and this one is just on this date,
22 27 March 2008.

23 MR PILLAI: I believe the witness is referring to the bundle
24 of transcripts, your Honour.

25 COURT: Volume 1?

1 12:32 A. Volume 1, the last one.

2 MR PILLAI: Tab 25, your Honour.

3 A. Tab 25, yes. It's a long conversation. I will not go
4 through --

5 COURT: What's the point you're trying to make?

6 A. Let's go through just -- to page 300. To the last part
7 of the page. In these phone conversations, you could
8 see that I was the listener. Of course sometimes
9 I asked questions. Basically I was a listener, I was
10 learning from Johnny. And on this page 300, the second
11 half -- I mean the lower portion, Johnny said:

12 "I am -- I have a feeling that if these two to three
13 weeks, if we see that Citibank that means in a situation
14 when there are bad news yet it still goes up, still goes
15 up, then it represents -- actually honestly speaking,
16 there are people who already knew the result, it's not
17 that no one knows, these accounting things, everybody
18 knows, it's just that there are some inner circle people
19 who already knew about it, they cannot say it out, but I
20 believe there are people who are well informed would at
21 different places be doing it, so later on I will -- that
22 means we will refer to the situation these few days, the
23 coming one to two weeks -- don't say one to two weeks,
24 the coming three to five -- five working days, then we
25 would know roughly. If you see that Citibank is always

1 12:34 stable, it may not go up a lot, if it goes up a few ten
2 cents, a few ten cents, a few ten cents, then the
3 situation will exactly be like the situation of
4 Hong Kong & Shanghai bank last time ..."

5 So I would not read the remaining, because it says
6 Hong Kong -- HSBC went up, like, from 100 to 120 in
7 a very short time. So that's what he said later.

8 Please also turn to page 6776. So Johnny,
9 obviously, had a very optimistic view. Please come to
10 also the bottom of that page. Johnny said:

11 "Correct, it has changed to an Indian ..."

12 He meant Pandit.

13 "... I -- I -- honestly speaking, it won't be too
14 bad lah. This is what I say, it's true, it won't be too
15 bad. If you say in the short term it will move
16 suddenly, it is not possible, but in the long term, when
17 we are looking back, this period now is actually also --
18 honestly speaking these -- these 10 years it is also
19 a hard to come by quite a low entry point, you say 20
20 something dollar of Citibank, now still have people
21 saying, orh, I want to wait for \$18/\$17 to come and buy.
22 I say it is a bit more difficult for you because unless
23 it is really very bad, when it is really very bad, and
24 even have -- have this kind of pricing, you may not dare
25 to buy it. This is what I say. Correct ..."

1 12:37 And he went on to say that, you know, that this is
2 extraordinary time to buy these shares.

3 COURT: What has this to do with your e-mails of 27 March?

4 A. So -- but at the end we did enter the --

5 COURT: These conversations were also in the same day,
6 27 March?

7 A. Same day, yeah.

8 COURT: All right.

9 A. So I share the optimistic view with Johnny, but I still
10 prudently pursue the selling of the Citi shares through
11 the decumulator programmes.

12 COURT: Okay.

13 MR ANG: First of all you refer us to conversations where
14 Mr Wan says these things about Citigroup, his views as
15 to Citigroup share prices, et cetera, and then you say
16 that despite that, you made your own decision to sell or
17 place orders for Citigroup decumulators on that same
18 day; correct?

19 A. Yes, because that's our decision. It's a long
20 conversation, and that's our decision, yeah.

21 Q. So what are you saying, Dr Chang, by referring to all
22 these conversations? Are you saying that Johnny and the
23 bank was wrong in not predicting that Citi would
24 eventually fall to below \$4? Is that what you're
25 saying, that they were wrong in doing that?

1 12:38 A. No. I did not say -- I would not say that.

2 Q. Yes.

3 MR ANG: Your Honour, would this be an appropriate time?

4 COURT: Yes.

5 (12.36 pm)

6 (The luncheon adjournment)

7 (2.41 pm)

8 MR ANG: May it please the court. Good afternoon, your
9 Honour. As indicated earlier and with your Honour's
10 leave, may I interpose Mr Adrian Bell.

11 MR ADRIAN JOHN BELL (sworn)

12 Examination-in-chief by MR ANG

13 MR ANG: Good afternoon.

14 A. Good afternoon.

15 Q. Your name is Adrian John Bell?

16 A. That's correct, yes.

17 Q. You are a practising barrister and Senior Counsel in
18 Hong Kong?

19 A. That's right.

20 Q. In front of you, you will see an affidavit which bears
21 your name. Do you see it?

22 A. Yes, I've got that.

23 Q. Could you turn to page 2. That is your signature there?

24 A. That is, yes, the upper one.

25 Q. Can you confirm that this is your affidavit of

1 14:42 evidence-in-chief in these proceedings?

2 A. I can, yes.

3 Q. Can you confirm that your opinion is set out in AJB-2?

4 A. Yes, I do confirm that.

5 Q. Can you take a look at this document which I'm going to
6 show you. (Handed.)

7 Your Honour, these are the instructions. I had
8 extended a copy to my learned friends last week.

9 MR PILLAI: I confirm that, your Honour.

10 MR ANG: Mr Bell, could you just confirm, taking a quick
11 look at this document, that these are the set of
12 instructions that were sent to you for the purposes of
13 reproducing your expert opinion?

14 A. Yes, it appears to be. It's a letter of 24 August,
15 which I know is the letter that I was sent, and without
16 checking through every word it does appear to be the
17 instructions I received.

18 MR ANG: Your Honour, what is missing are the appendices,
19 but the appendices are the terms and documents which are
20 attached, so I have not included the appendices in this
21 set of instructions.

22 With your Honour's leave, could this be marked
23 as P7.

24 May this affidavit be entered into evidence, your
25 Honour. Obligated.

1 14:43 Cross-examination by MR PILLAI

2 MR PILLAI: With your Honour's leave.

3 Good afternoon, Mr Bell.

4 A. Good afternoon.

5 Q. Could you please turn to page 2 of your affidavit.

6 A. Yes.

7 Q. Paragraph 3.

8 A. Yes.

9 Q. You mention:

10 "I have been requested by the Plaintiff ... and the
11 2nd Defendant (by counterclaim) ... to provide my
12 opinion on certain Hong Kong law issues arising in
13 connection with this action."

14 Your opinion is exhibited in this affidavit?

15 A. That's correct.

16 Q. My learned friend referred you to P7, a letter dated
17 24 August 2010.

18 A. Yes.

19 Q. This is the briefing note through which a request has
20 been made, and then you produced this report which is
21 enclosed in this affidavit; would that be correct?

22 A. That's correct, yes.

23 Q. Let me show you a document. (Handed.)

24 For the court's benefit, let me just set the context
25 so that the court can follow. The briefing note P7 is

1 14:45 dated 24 August 2010.

2 A. Yes.

3 Q. This e-mail is an e-mail from Mr Ramesh Kumar of Allen &
4 Gledhill, my learned friend's junior, dated 21 July 2010
5 to you, and the title is this:

6 "Hong Kong law expert report - estimate on costs
7 thrown away."

8 Basically, again for the benefit of the court, there
9 was an application on the part of Dr Chang to amend
10 certain parts of the pleadings. And arising from the
11 amendments, there are certain aspects of Hong Kong law
12 matters that were removed. It appears from this letter,
13 which is dated 21 July 2010, that Mr Kumar wrote to you
14 by way of this e-mail, asking you to estimate how much
15 time has been wasted.

16 Then you have a reply from your goodself dated
17 21 July 2010, in which you estimated that about six to
18 seven hours have been wasted, effectively.

19 A. Yes.

20 Q. Really, again I think no fault to you, you'd been
21 instructed earlier than 24 August.

22 A. That's correct, yes.

23 Q. Again, for the benefit of yourself and the court, the
24 court had requested my learned friend to produce the
25 briefing note. I just want to know whether the briefing

1 14:46 note produced is either, in form or in substance -- do
2 you have any other briefing note or instructions prior
3 to 24 August 2010? It must be, since you have been
4 approached by Mr Kumar as early as in July 2010.

5 A. There was a communication earlier based on the then
6 pleadings --

7 Q. Yes.

8 A. -- and I started to work on the basis of the pleadings
9 as they then stood. But then effectively that original
10 briefing note, if that's the correct description of it,
11 was what became obsolete, as it were.

12 Q. Right.

13 A. This is the one upon which I prepared this particular
14 report.

15 Q. Thank you, Mr Bell.

16 If it's not too much trouble to my learned friend,
17 may I have the original briefing note while
18 I cross-examine Mr Bell on the other matters.

19 With your Honour's leave, may I perhaps mark this --

20 COURT: Have you offered him the same?

21 MR PILLAI: I beg your pardon, your Honour?

22 COURT: Have you offered counsel on the other side the
23 same --

24 MR PILLAI: Yes, your Honour, we have given all the briefing
25 notes, as your Honour may --

1 14:47 COURT: In the nature of this process it may well be that
2 there are preliminary discussions and instructions, and
3 ultimately, in finalising the two, an agreed briefing
4 note.

5 MR PILLAI: Yes.

6 COURT: You are requesting, apart from the finalised
7 briefing note, something different. The progression of
8 the instructions.

9 MR PILLAI: I hear your Honour. I understand your Honour's
10 question.

11 I'll just take it up from what Mr Bell has
12 mentioned, the original briefing note. Just that
13 document would suffice, your Honour.

14 COURT: Okay.

15 MR PILLAI: With your Honour's leave, may the e-mail, both
16 e-mails in this particular document be marked, I believe
17 it's D1, your Honour. Grateful, your Honour.

18 Let me just proceed, Mr Bell. Could you please take
19 up your affidavit again and turn to page 7.

20 A. This is "7" at the top right-hand corner, is it?

21 Q. That's so, yes.

22 A. Yes.

23 Q. You have listed about 10 cases which you have recently
24 dealt with?

25 A. Yes.

1 14:48 Q. Let me just ask you this question and please confirm
2 whether it's right or wrong. In respect of cases in
3 (ii), (iii), (iv), (v), (vii), (viii), (ix) and (x). If
4 I am going too fast, please let me know. Those are
5 criminals cases?

6 A. (ii) was a criminal case, (iii) was a criminal case --

7 Q. Yes.

8 A. -- of a regulatory nature.

9 Q. Yes.

10 A. (iv) was a criminal case. (v) was the next one, was it?

11 Q. That's correct, yes.

12 A. That's a criminal case.

13 Q. (vii)?

14 A. No, (vii) was not a criminal case. (vii) essentially
15 was -- there was more than one case involving Mr Koon
16 Wing Yee at the time, at various times. Some of them
17 were, I think at least one of them anyway, was
18 a judicial review case.

19 Q. I see.

20 A. And I don't really having been in a criminal case with
21 Mr Koon Wing Yee until --

22 Q. I'm just referring to the appeal that you have referred
23 to in (vi). Is that appeal an appeal from a criminal
24 matter or an appeal on a civil matter?

25 A. No, it was certainly not an appeal from a criminal

1 14:50 matter. I think it was probably an appeal from
2 a judicial review.

3 Q. Please move to (viii).

4 A. (viii) was a criminal case.

5 Q. Thank you. (ix)?

6 A. (ix) was a criminal case.

7 Q. Finally, (x)?

8 A. (x) was a criminal case that is ongoing.

9 Q. In respect of that case in (ii), SFC v Tsoi Bun, again
10 I just want to get a sense as to your involvement. Are
11 you aware that Mr Anderson Chow SC was in fact
12 instructed to argue the civil case in this matter?

13 Are you aware that Mr Anderson Chow SC was in fact
14 instructed by the SFC in respect of this same case?

15 A. It would not have been the case --

16 Q. On the civil side?

17 A. Yes, if it's -- I'm not sure that I was aware of that,
18 but --

19 Q. No problem. If you're not aware, it's okay.

20 How about in relation to (iii)? Are you aware that
21 in respect of the case involving Mr Liu, that is part of
22 the wider matter involving a company called Warderly
23 International Holdings Ltd?

24 A. Yes, I am aware of that.

25 Q. Would you be aware whether Mr Anderson Chow SC was the

1 14:52 SFC's counsel in those proceedings on the civil side of
2 matters?

3 A. I wouldn't dispute it. I can't -- I can't confirm it,
4 but he may have been.

5 Q. Please turn to page 35 of your affidavit.

6 COURT: Counsel, are you going to drill down into his --

7 MR PILLAI: That's correct.

8 COURT: Before you do so, can I get some clarification
9 setting the scene.

10 On page 15 of your expert opinion, you refer to the
11 documents that you have seen. You label them "account
12 opening documents", and there are five of them there.

13 You've also seen the master subscription agreement,
14 online application, and then margin documents. These
15 are all the banking documents you've seen.

16 Just for clarification, the relevant accumulator
17 transaction documents and confirmations have not been
18 put before you?

19 A. As I recall, I put down here all the documents that I
20 had seen, so if I'd not mentioned them here, either it's
21 an inadvertent omission or else I actually haven't seen
22 them.

23 COURT: Let me clarify. So far there are two sets of
24 documents that are before me, the ones that you have
25 described, and then there are what are called the DSPP

1 14:54 confirmations and terms and conditions. The accumulator
2 terms and conditions. I just want to clarify upfront:
3 have you had sight of the DSPP or accumulator terms and
4 conditions and confirmations?

5 A. Well, I thought I had, but --

6 COURT: You don't refer to it --

7 A. -- I'm surprised to see that --

8 COURT: It's not referred to here?

9 A. There is another part, I think, of the report where I do
10 set out the documents that I've --

11 COURT: In the body of your advice you do refer to DSPP
12 contracts, et cetera.

13 MR ANG: Page 27.

14 A. I'm grateful. Yes, I'm sorry, this is the part of the
15 document where I set out the documents that I have seen.

16 COURT: All right.

17 A. Yes, item (x) on page 28 is the confirmations, and
18 item (ix) is the terms, the standard term sheet.

19 COURT: The second threshold question is because your advice
20 will relate as to how Hong Kong law and the Code kicks
21 in, if at all, it would be very helpful to me -- you
22 realise that what you call, on page 15, the account
23 opening documents, that they are all governed by
24 Singapore law?

25 A. As I understand it, yes.

1 14:55 COURT: Then the DSPP terms and conditions, et cetera, are
2 governed by English law?

3 A. So I believe, yes.

4 COURT: But the relationship manager Johnny Wan and all the
5 communications between Dr Chang and him are in
6 Hong Kong?

7 A. Yes, I understand that is so.

8 COURT: One of the questions I am trying to figure out would
9 be the interplay of Hong Kong law in this context, and
10 so far, what has been placed in evidence has been that
11 Deutsche Bank, being a Hong Kong licensed financial
12 institution, and Johnny Wan similarly being in
13 Hong Kong, the gist of your evidence will go towards
14 whether the conduct in your brief, what are the
15 regulatory implications, if any, with respect to
16 Hong Kong law and the Code of Conduct in particular --

17 A. Yes, I understand.

18 COURT: -- to the extent that that will be relevant as to
19 the standard of care they would have had to accomplish,
20 achieve.

21 A. Yes.

22 COURT: All right?

23 A. Thank you.

24 MR PILLAI: Grateful, your Honour. If I could proceed.

25 Mr Bell, could you please have a look at

1 14:57 paragraph 3.1.4 of your affidavit at page 35. I would
2 also ask you to refer to Mr Anderson Chow's affidavit so
3 that we can get a position on this matter. I believe
4 that should be in the witness box as well.

5 Please turn to page 16. Please read paragraph 3.1.4
6 of your report, and paragraphs 32 to 38 of --

7 A. Paragraphs 32 to 38 of Mr Chow's report?

8 Q. Yes, before I ask you a few questions on it.

9 A. Yes.

10 Q. Two further paragraphs in your own affidavit,
11 paragraphs 3.3.8 and 3.4.6 appearing at pages 41 --

12 A. Yes.

13 Q. -- and page 45, which spills over to page 46 as well.

14 A. Yes.

15 Q. I just want to set the context before I ask the
16 questions.

17 Do you accept, Mr Bell, that the breach of a code,
18 although it may not have legislative effect, is not
19 without consequences?

20 A. I'm a little uncomfortable with the word "breach" for
21 various reasons, which I can go into, because it seems
22 to me that the nature of this code is not in the sort of
23 black and white terms that rules or statutory law is
24 concerned with. It's a guidance, in a way it's a form
25 of advice, I think, more properly looked at --

1 15:00 Q. Right.

2 A. -- and I'm a little uncomfortable for that reason with
3 the word "breach".

4 Q. Perhaps I can clarify what I mean by "breach".

5 I understand that you classify this Code as a form of a
6 guidance. What I meant by the word "breach" would be,
7 really, in non-conformity with the guidance. That's
8 what I mean by the word "breach".

9 COURT: May I interject here.

10 MR PILLAI: Yes.

11 COURT: In Hong Kong you also have a take-over code.

12 A. Yes, that's correct, your Honour.

13 COURT: Which is similar to what we have. In our
14 legislation in Singapore, although it's a code and it's
15 non-statutory, there's language in our statute that
16 while it's not law, any breach of the take-over code may
17 be used in evidence in civil or criminal proceedings.

18 A. Yes, I understand.

19 COURT: Would you have something similar to that kind of
20 provision in your statute with respect to the take-over
21 code?

22 A. Certainly -- whether it appears in the language of the
23 statute I can't recall, but certainly in situations
24 where people are discussing the take-over code they do
25 sometimes use the word "breach". Whether that's a form

1 15:01 of shorthand is, perhaps, open to debate.

2 COURT: The same question will arise in Singapore. We
3 similarly have codes of conduct, and the question as to
4 what is the significance of not having met the --
5 A. The standards.

6 COURT: The standards in the Code of Conduct would similarly
7 fall to be determined by reference to what does the
8 statute say, if anything, about the Code.

9 So my question really is: in Hong Kong, the reason
10 why counsel appears to be using the word "breach" is
11 because it may well be that he may have in mind the
12 take-over code in Singapore where we have a statutory
13 provision which says it's not a breach of law but any
14 breaches may be taken into account in any civil or
15 criminal proceedings.

16 A. I think I understand what the question is aimed at, your
17 Honour. Whether one uses the word "breach" or whether
18 one uses a term which I would prefer, such as
19 "non-conformity" or something of that sort, there are
20 potential consequences, yes.

21 MR PILLAI: May I proceed, your Honour?

22 COURT: Yes.

23 MR PILLAI: Mr Anderson Chow mentions three potential
24 consequences in the paragraphs you've just read. The
25 first consequence he stated is disciplinary action by

1 15:03 the Securities and Futures Commission. Do you agree
2 with that?

3 A. Yes, sometimes the Code is referred to, or paragraphs of
4 the Code are referred to in disciplinary cases.

5 Q. The next consequence, and again following what his
6 Honour mentioned just a few minutes ago, the Code is
7 admissible as evidence in the court for any relevant
8 question arising from proceedings, and that's echoed in
9 paragraph 33 of Mr Chow's affidavit.

10 A. Yes, but not only proceedings -- it's only proceedings
11 under the Securities and Futures Ordinance.

12 Q. Yes.

13 A. It is then -- it is not something which necessarily
14 comes into play. It rather depends on the view of the
15 court as to whether it's relevant, and it is simply
16 which is taken into account.

17 I think neither in disciplinary proceedings nor in
18 this context, is it something that's determinative.

19 It's just something which is thrown into the balance.

20 COURT: He refers to a section. Mr Chow refers to
21 section 1.5(a) of the Code.

22 MR PILLAI: Yes.

23 COURT: It says failure to comply with the provision of the
24 Code that applies to it --

25 MR PILLAI: Yes.

1 15:04 COURT: -- does not give rise to judicial or other
2 proceedings, but in proceedings under the SFO before any
3 court the Code shall be admissible to the extent it
4 appears to be relevant to the court to any question
5 arising in proceedings.

6 MR PILLAI: That is so, your Honour, and I believe Mr Bell
7 is agreeing with the proposition in paragraph 33.

8 Is that correct, Mr Bell?

9 A. Well, what I agree with is what the terms of the statute
10 itself say, which is -- if I could just refer to that,
11 which is attached to the back of my report at page 63.
12 It's 399(6) --

13 COURT: Yes, this is the quote.

14 A. -- where it says that a failure to comply with the Code
15 does not itself render anyone liable to judicial or
16 other proceedings, "but in any proceedings under this
17 Ordinance before any court the code or guideline shall
18 be admissible in evidence, and if any provision set out
19 in the code or guideline appears to the court to be
20 relevant to any question arising in the proceedings it
21 shall be taken into account ..."

22 I think that sets out clearly what the position is.

23 Q. Yes. It does appear that the language is exactly the
24 same as in paragraph 33 of Mr Chow's affidavit.

25 COURT: Where he cites the Code itself, he has the

1 15:06 Ordinance.

2 A. Yes.

3 COURT: Is it your expert opinion that, strictly speaking,
4 the Code may be only relevant under Hong Kong law with
5 respect to proceedings under the SFO?

6 A. That is correct, your Honour. Yes.

7 COURT: Okay.

8 MR PILLAI: Now I come to the third point, which is referred
9 to in paragraph 34 of Mr Chow's affidavit, and if you
10 also please cast your eye on paragraph 3.4.6 of your
11 report, which is at pages 45 to 46.

12 A. Yes.

13 Q. My next question is this: the Code does provide
14 a reference point in determining the contents of the
15 duty of care that a financial advisor owes the client,
16 assuming that the financial advisor can prove such
17 a duty arising in the first place.

18 A. Well, this I don't think I do agree with, because
19 I think in this instance Mr Chow has not considered the
20 fact that these cases predate the coming into operation
21 of section 399.

22 Q. Could I perhaps take it up in stages.

23 A. Yes.

24 Q. Perhaps you can refer to your own affidavit --

25 A. Yes.

1 15:08 Q. -- where, at page 46 you mention that the code might be
2 relevant to the scope of any duty arising from a proven
3 proximate relationship. Do you see that?

4 A. Which paragraph?

5 Q. Right at the top, page 46, before the header "The 5th
6 Question".

7 A. Oh, yes.

8 Q. Do you see that?

9 A. Yes.

10 Q. Mr Bell?

11 A. Yes, I do.

12 Q. Let's put it in context again. Your opinion, and really
13 your opinion as expressed this year after section 199 of
14 the SFO has been enacted, is that the Code of Conduct
15 might be relevant to the scope of any duty of care
16 arising from a proven proximate relationship. That's
17 your position?

18 A. Well, that is subject to what I say elsewhere in the
19 reports --

20 Q. Yes.

21 A. -- concerning the question of whether it is admissible
22 at all in proceedings outside the Securities and Futures
23 Ordinance.

24 Q. Right.

25 A. If it is inadmissible outside proceedings under that

1 15:09 Ordinance, then it -- it could not be relevant because
2 it wouldn't even be inadmissible.

3 Q. Can I just understand this, because this is an answer to
4 question number 4, and let me just refer you to question
5 number 4 which is cited at page 26 of your affidavit.

6 A. Yes.

7 Q. The question is whether DB's obligations, if any, under
8 the Hong Kong Code of Conduct would be relevant to
9 a Hong Kong court as regards whether DB was in
10 a proximate relationship with Dr Chang. That's the
11 question.

12 A. Yes.

13 Q. Let me just finish that.

14 "... so as to owe him a duty of care as alleged by
15 Dr Chang."

16 Your answer at paragraph 3.4.6 in relation to
17 question 4 is:

18 "... 'no', although the Hong Kong Code of Conduct
19 may be relevant to the scope of any duty arising from
20 a proven proximate relationship."

21 That's your answer to question number 4?

22 A. Yes.

23 Q. Would you accept that, Mr Bell?

24 A. I accept that's my answer, but the word "might", of
25 course, imports the uncertainty -- well, if there is any

1 15:10 uncertainty -- about the application of the Securities
2 and Futures Ordinance to -- or the Code, I should say,
3 to proceedings outside the SFO.

4 Q. Mr Bell, let me test that. Are you suggesting that in
5 respect of proceedings under the Securities and Futures
6 Ordinance, you have issues pertaining to tortious duty
7 of care and proximate relationship?

8 A. I'm sorry, could you repeat that again.

9 Q. Certainly. Are you suggesting that in respect of
10 proceedings under the Securities and Futures Ordinance,
11 you have issues pertaining to tortious duty of care and
12 proximate relationship? -- and to give you the
13 context -- which is really what question 4 is aimed at.

14 A. Well, I don't, on the face of it, see that.

15 Q. Thank you. So really, if this was a controversy, my
16 learned friend would have taken it up with Mr Chow, but
17 really as far as the Code of Conduct is concerned, your
18 own paragraph 3.4.6 suggests that the Code of Conduct
19 might be relevant to the scope of any duty of care
20 arising from a proven proximate relationship?

21 MR ANG: Before the witness answers, your Honour, I don't
22 think it should be suggested to the witness that we have
23 conceded that point.

24 COURT: Okay.

25 MR PILLAI: May I carry on, your Honour.

1 15:12 MR ANG: Your Honour, it has been suggested to the witness
2 that --

3 COURT: You can rephrase your question.

4 MR PILLAI: Yes, your Honour.

5 Let me just rephrase it, Mr Bell --

6 A. I think --

7 Q. Let me just rephrase. The first point you made was that
8 in relation to SFO proceedings -- and let's go step by
9 step -- the issue of tortious duty of care and proximate
10 relationship doesn't arise because you are dealing with
11 proceedings under the SFO. In that context, and given
12 question 4, which squarely deals with tortious duty of
13 care, really, for all intents and purposes, your answer
14 suggests that it might be applicable to determine the
15 scope of any duty arising from a proven proximate
16 relationship. Would you agree?

17 A. Yes, but I think in order to see the full opinion, you
18 ought to go back to paragraph 3.4.5, starting at the
19 beginning of the sentence, the bottom line -- this is
20 page 44.

21 "If, however, the existence of a proximate
22 relationship can be established, then (subject to the
23 proper construction of SFO section 399(6)) a Hong Kong
24 court might well then look to some or all of the
25 following provisions ..."

1 15:14 So when I say in the later paragraph "it might be
2 relevant", that is only if section 399(6) were to be
3 construed in the way other than I suggest it should be
4 construed.

5 COURT: What you seem to be saying is that your view, and it
6 is not settled, is that section 399(6) --

7 A. My view is -- although there is no, so far as I'm aware,
8 authority one way or the other on this in Hong Kong --
9 my view on this is that section 399(6) applies only to
10 admission of the Code in evidence in proceedings under
11 the Securities and Futures Ordinance, and would not
12 apply in negligence proceedings.

13 MR PILLAI: Let me take it up, Mr Bell, by reference to the
14 Susan Field case.

15 A. Yes.

16 Q. That would be at paragraph 174, at page 387 of Mr Chow's
17 affidavit. At the last line -- this is a decision of
18 Deputy High Court Judge Barber SC:

19 "However, insofar as the complaints reflect
20 standards to be expected of a reasonably competent
21 investment advisor, it seems to be permissible to have
22 regard to them, and for Ms Field to frame her claims by
23 reference to them, so far as appropriate."

24 Do you see that reference?

25 A. Yes, I see that.

1 15:17 Q. The context of this holding is that the complainant here
2 has made allegations against a financial advisor and has
3 alleged that amongst others, there were breaches --
4 maybe I will not use the word breaches -- there was
5 non-conformity with provisions in the Code.

6 A. Yes.

7 Q. The argument made was that the Code is of general
8 application to all investment advisors in Hong Kong,
9 and, therefore, it can provide scope to a duty, if the
10 duty is proved in the first place.

11 The judge then held that it was permissible to have
12 regard to them, and to frame her claims by reference to
13 them so far as is appropriate. Right?

14 A. Yes, I see that.

15 Q. You say that this holding is no longer good law by
16 virtue of section 399(6) of the SFO; is that your
17 opinion?

18 A. That's my view, yes.

19 Q. Could you please provide some guidance to the court
20 because, as you pointed out, there's no authority for
21 your proposition.

22 COURT: Can I try to formulate the questions that are going
23 through my mind.

24 MR PILLAI: As your Honour pleases.

25 COURT: There are two questions.

1 15:18 One really is your construction of section 399(6) of
2 the Hong Kong SFO with respect to the introduction and
3 reliance on the Code. Is it clear, in the absence of
4 any other decision in Hong Kong, or is it your view that
5 that provision only confines the relevance of the Code
6 to proceedings, judicial or otherwise, commenced under
7 the Code, under the SFO?

8 A. Yes.

9 COURT: That's the first question. That presumably would
10 turn on the question of a construction of
11 section 399(6).

12 A. Yes, that's correct, your Honour.

13 COURT: Secondly, with an eye to the entire Ordinance, SFO
14 Ordinance itself --

15 A. Yes.

16 COURT: -- there is a second level -- whatever the answer is
17 in your view on the first question -- there is a second
18 question. If this matter occurred, this action was
19 commenced in Hong Kong, this particular action was
20 commenced in Hong Kong today --

21 A. Yes.

22 COURT: -- assuming a Hong Kong court decided there was
23 a tortious standard of care -- sorry, a duty of care --
24 would a Hong Kong court have regard to the Code and to
25 the standards set in the Code as being relevant to

1 15:20 determining whether that standard of care was met, quite
2 apart from these proceedings being under or arising out
3 of the SFO?

4 A. Well, I don't think -- I don't think they could, your
5 Honour, because if the correct view is that the Code is
6 not admissible in evidence, I can't see --

7 COURT: That's a negative proposition. Is there anything in
8 section 399(6) that says it's not?

9 A. Let's go back and have a look at section 399(6). It
10 doesn't say specifically in terms "This is admissible".
11 No, I accept that. But it seems to me to be the
12 beginning of the words "shall be admissible" -- if can I
13 just quote precisely. "... in any proceedings under
14 this ordinance."

15 COURT: The function of these kinds of provisions -- similar
16 provisions exist in Singapore with respect to takeover
17 codes and other codes -- is to make it quite clear that
18 this is not law in the sense that a breach would
19 automatically expose you to criminal or civil sanctions.
20 So the preamble to the provision is, "Listen, if you
21 fail to comply, by itself you're not liable to any
22 judicial or other proceedings".

23 The starting point is to say, listen, this is not
24 law, a breach of which will expose you to criminal or
25 civil proceedings, nevertheless, in respect of

1 15:22 provisions under the SFO or proceedings under the SFO,
2 the Code and the compliance or non-compliance would be
3 relevant. So it's a very strictly confined area of
4 operation.

5 A. Precisely. I think the underlying justification for the
6 construction I put on it is that the Code of Conduct
7 could only be admissible within the context of the same
8 subject matter, namely the SFO.

9 COURT: That's exactly what it says within the context of
10 saying failure to comply is not a breach, criminal or
11 civil.

12 A. Yes.

13 COURT: I pose the question slightly differently: assuming
14 you are right on your construction of the provision, if
15 this matter arose in Hong Kong and Dr Chang sued
16 Deutsche Bank in Hong Kong, are you saying that
17 section 399(6) renders the Code and the standards there
18 totally inadmissible in establishing whatever cause of
19 action, which is beyond the SFO? Are you going as far
20 as that?

21 A. I think I would go as far as that, your Honour.

22 COURT: On what basis?

23 A. Because there are well-developed principles of
24 negligence concerning duty of care and the breach of
25 duty of care, and I don't think it would be necessary to

1 15:23 look to the Code to --

2 COURT: One might not look necessarily to the Code as
3 establishing, prescribing the standard. One may look to
4 the Code to say to what extent does it set an industry
5 standard, to what extent has the parties failed to meet
6 that, and to what extent does it help establishing a
7 statutory -- quite apart from the SFO.

8 A. Well, if my view is that it's inadmissible, then they
9 would not.

10 COURT: So it closes up both: whether or not under the SFO,
11 any legal proceedings, the Code is not relevant at all,
12 and may not even be admitted into evidence for whatever
13 purpose. Isn't that a sweeping conclusion?

14 A. It's a -- well, I don't know if it's a sweeping
15 conclusion, but it's -- it's a conclusion which is -- I
16 would say is justified by the terms of the section.

17 This is not the only part of the Ordinance in which
18 this form of words appears; there's at least one other
19 section which refers to the Code being admissible under
20 this Ordinance, which seems to me to be of some
21 significance, since that is a form of words which is
22 used elsewhere in the Ordinance.

23 COURT: Let me take you through another question.

24 The function, as you call it -- you call it
25 a guidance or you call it a code -- the regulator is

1 15:25 trying to give the industry some sense of what is good
2 business practice.

3 A. Yes.

4 COURT: As its rules.

5 A. Certainly, yes.

6 COURT: So it's good business practice, and these are the
7 standards.

8 In a proceeding which has nothing to do with the
9 SFO, if the question is relevant in the context of the
10 cause of action, even in Hong Kong, and somebody says
11 this is a standard of care of this industry, and I refer
12 you to that code as setting what was the good business
13 practice at the time, and I point out to you that they
14 have failed to meet this, at its very lowest, would it
15 not be relevant? If you say a court could not in
16 Hong Kong refer to that.

17 MR PILLAI: Your Honour's judicial instincts come in the
18 way.

19 A. Well, I suppose in certain circumstances it might be
20 relevant, but whether it's --

21 COURT: It may not completely determine the question, but to
22 say that it's not admissible, isn't that overreaching?

23 A. Well, on my view of the correct construction of the --
24 of that particular provision --

25 COURT: It doesn't say it shall not be used in any other

1 15:26 proceedings, whether or not it's under the Code. That
2 would be ex abundanti cautela.

3 A. It doesn't say so in terms, but it's the implication
4 that I draw from it saying that this is admissible under
5 this Ordinance, or may be admissible under this
6 Ordinance.

7 COURT: Okay.

8 MR PILLAI: I think that your Honour has queried this to
9 a sufficient level.

10 I will just suggest to you, Mr Bell, and with the
11 greatest of respect, that your explanation doesn't make
12 sense because section 399(6) limits itself to
13 proceedings under the Ordinance.

14 A. Yes.

15 Q. You can agree or disagree.

16 A. It doesn't make sense, because section 399(6) --

17 Q. -- yes, limits the issue of admissibility to any
18 proceedings under the Ordinance. So it just dealings
19 with proceedings under the Ordinance and not proceedings
20 involving negligence in the common law courts. You can
21 either agree or disagree.

22 A. Well, I disagree.

23 Q. Thank you. Can I just clarify, Mr Bell, in Hong Kong,
24 when it comes to actions based on the tort of
25 negligence, these are common law actions, wouldn't they

1 15:27 be?

2 A. Yes.

3 Q. Again, just to clarify, the concept of the tort of
4 negligence in Hong Kong law is really the same as the
5 concept of the law of negligence as it exists in
6 England?

7 A. Certainly in the Hedley v Byrne context, yes, which is,
8 I think, the context we're in.

9 Q. Really, when we are talking about a duty of care
10 arising, you, under Hong Kong law, you would be
11 concentrating whether or not there's a proximate
12 relationship that exists between the claimant and the
13 tortfeasor?

14 A. Yes.

15 Q. And, in that context of the relationship between the
16 tortfeasor and the claimant, wouldn't it not be relevant
17 that the tortfeasor has to abide by certain standards
18 that is of general application within the industry that
19 he is a part of?

20 A. Within the industry?

21 Q. Yes. Can you answer the question?

22 A. Yes, I'm thinking.

23 Q. Sorry. Please.

24 A. It might be one relevant factor, yes, among others,
25 certainly.

1 15:29 Q. Thank you. I would suggest to you that the Code of
2 Conduct, by your answer, would therefore be relevant in
3 considering whether or not there is this proximate
4 relationship by reference to the fact that the Code of
5 Conduct sets the standard in the financial advice
6 industry.

7 A. Well, I'm not sure that it could shed any light on the
8 proximate relationship itself or whether the
9 relationship is proximate.

10 Q. Again, Mr Bell, I am sorry if I have phrased my question
11 a bit ambiguously. I was referring to the fact that
12 there could be standards that are applicable in the
13 industry which players in the industry would have to
14 abide by. That's what I meant, to which you said,
15 generally, the answer is yes.

16 Then -- this is where I make reference to the
17 code -- I'm suggesting to you that the Code can have
18 similar application, since we all know the Code applies
19 to financial advisors in the Hong Kong financial
20 services industry.

21 COURT: I would change the word "application". It's quite
22 clear it has no application per se.

23 MR PILLAI: Yes, your Honour.

24 COURT: The relevance.

25 MR PILLAI: "Standards", yes. I'm guided, your Honour.

1 15:30 The Code sets the standards in relation to the
2 financial advisors in the financial service industry of
3 Hong Kong. Would you accept that?

4 A. The Code, to me --

5 Q. I would be grateful if you just answered the question
6 and then, please proceed to clarify.

7 A. Well, I was answering the question, I think.

8 COURT: Please proceed.

9 MR PILLAI: Okay, then.

10 A. The Code, to me, is something slightly different from
11 setting standards.

12 The Code, to me, is something which is a framework,
13 firstly for the SFC to have a reference point itself for
14 deciding whether or not somebody is or remains a fit and
15 proper person; secondly, in some contexts, for example
16 in the disciplinary context, it is used as a reference
17 point to judge the actions or performance of licensed
18 and registered persons.

19 Q. Thank you.

20 A. In the regulatory context, I can see that it sets
21 certain standards --

22 COURT: Just let me clarify. The SFO, presumably, imposes
23 statutory criminal and civil liability, and regulatory
24 liability, and so there's a whole range of potential
25 judicial or regulatory actions that could arise out of

1 15:33 the SFO.

2 A. Indeed, your Honour, yes.

3 COURT: The function of section 399(6) is to say, if there's
4 a Code that's been issued by the Commission, a failure
5 to comply with the Code to meet its standards will not,
6 in and of itself, expose to you criminal or civil
7 liability, but it may be used with respect to any
8 relevant criminal, civil or regulatory actions under the
9 SFO, and to that extent is relevant, and may be used as
10 evidence of whatever is the hook; of criminal, civil or
11 regulatory action, including disciplinary action.

12 A. Yes, I think particularly disciplinary action.

13 COURT: Yes, but it's not confined to disciplinary action.

14 A. No, except that the requirements under the criminal
15 provisions are somewhat different. I mean, I've
16 never --

17 COURT: The standard of proof may be different.

18 A. The standard of proof, but also the requirements,
19 that -- the standards that have to be complied with are
20 different under the criminal provisions and the Market
21 Misconduct Tribunal provisions, which are the same as
22 the criminal provisions. It's an entirely distinct set
23 of provisions.

24 COURT: The subject matter of this particular Code, you say,
25 is more appropriately relevant to disciplinary

1 15:34 proceedings -- that's what you're saying?

2 A. Yes.

3 COURT: But it's not necessarily confined to disciplinary
4 proceedings. That's my question. It would all depend
5 on the nature of the criminal, civil action, and then
6 the relevance of the Code and the Standards, presumably?

7 By its nature you can say, yes, by virtue of the
8 standard of conduct that you've prescribed in a code
9 conduct -- of best practice, it is more directly
10 relevant, ordinarily, to disciplinary proceedings, for
11 purposes of fit and proper persons to be licensed.

12 A. Yes.

13 COURT: That's what you are saying?

14 A. That's what I am saying.

15 COURT: That does not exclude, in an appropriate case under
16 the civil or criminal regime, under the Act, SFO itself,
17 that it might well be an appropriate case, relevant to
18 whether or not those provisions have been breached.

19 A. I think -- well, relevant -- I think the position, as I
20 see it, is this: you have to establish whether it's
21 criminal or civil without reference to the Code.

22 COURT: That's correct.

23 A. Whether there has been --

24 COURT: That's correct.

25 A. Yes.

1 15:35 COURT: And to the extent that the prerequisites of the
2 criminal or civil sanctions under the SFO render the
3 Code of Conduct relevant in any particular aspect,
4 surely the Code and the standards are well within the
5 SFO itself, section 399(6), they may be used as
6 evidence. But you still have to meet the requirements
7 of the civil or statutory prescription --

8 A. Well, as I've said in my report, subject to the question
9 of the appropriate construction of section 399(6), then
10 they might be employed to determine the scope of any
11 duty that has been proved independently of the existence
12 of the Code. Of the terms of the Code, yes.

13 COURT: Yes, we are on common ground there, we understand
14 that. Basically, the proposition of 399(6) really is
15 that yes, in the nature of its content, presumably it is
16 most ordinarily relevant to the Commission, that if you
17 have not met these standards, it does impact on a fit
18 and proper licensing regime.

19 A. Yes.

20 COURT: But it's not exclusively confined to that dimension
21 by its own terms, by the terms of 399(6). The content
22 of the Code may well be more relevant ordinarily to
23 disciplinary action, or licensing requirements --

24 A. Yes. In terms of determining the scope or the contents
25 of a duty that's proven to exist, then yes, subject to

1 15:37 the proper interpretation.

2 COURT: This must exist independently of the Code in the
3 SFO?

4 A. I'm sorry?

5 COURT: That must --

6 A. Yes, sorry, exist independently of the Code, yes.

7 COURT: Must exist in the SFO independently of the Code.

8 A. Yes.

9 COURT: Yes, all right.

10 Carry on.

11 MR PILLAI: Thank you, your Honour.

12 Just so that we are clear on the applicability of
13 the Code, you mentioned that the Code is certainly
14 considered, in considering whether or not a person
15 satisfies the fit and proper criteria.

16 A. Yes.

17 Q. Again, just to clarify, this fit and proper criteria is
18 applicable to all the financial advisors in the
19 financial services industry in Hong Kong?

20 A. Yes, to all licence and registered persons, yes.

21 COURT: While you are there, can I ask a further
22 clarification.

23 In Singapore, some of these rules, some of these
24 standards, either in the regulations or in the Code, may
25 be excluded from operation from certain classes of

1 15:38 investors, for instance, sophisticated investors -- in
2 some --

3 A. Yes.

4 COURT: There are some that are carved out and say, okay,
5 for the retail market this is what you have to do, but
6 for sophisticated investors as defined, these consumer
7 protection provisions don't necessarily extend. And the
8 Code is not such a code in terms of its content in which
9 such a distinction is made in Hong Kong. It's generic;
10 if you are a licensed person, this is the standard, this
11 is the Code, what the Code requires you to do.

12 A. Yes, there are exceptions for what are termed
13 professional investors in Hong Kong, which I assume are
14 along similar sorts of lines as the sophisticated
15 investors in Singapore.

16 MR PILLAI: Perhaps I'll take up that point, your Honour.

17 COURT: Okay.

18 MR PILLAI: Mr Bell, could you please refer Mr Chow's
19 affidavit at paragraph 59, page 30.

20 A. Yes. Paragraph 59, yes.

21 Q. Could you please read paragraphs 59 and 60, and then
22 I'll ask you a few questions in respect of his Honour's
23 queries.

24 A. Yes.

25 Q. As far as the Code is concerned, there is a kind of

1 15:40 qualitative test -- if I could use that phrase -- to
2 determine whether a client can be a professional
3 investor, as can be seen from clause 15.1 of the Code,
4 and that's referred to in paragraph 59 of Mr Chow's
5 affidavit; would that be correct?

6 A. Yes.

7 Q. The qualitative criteria is that the client has to have
8 sufficient knowledge and expertise in relevant products
9 in market; right?

10 A. If that is a quotation from 15.5, which I assume it
11 is --

12 COURT: 15.3.

13 MR PILLAI: Sorry, your Honour?

14 COURT: 15.3, I think.

15 MR PILLAI: 15.5, your Honour. I think the quote is from
16 the paragraph 15.5. I will check.

17 COURT: I'm looking at Anderson Chow's affidavit, page 30.
18 He is citing 15.3.

19 MR PILLAI: Yes, I beg your Honour's point. I was actually
20 at paragraph 59, yes.

21 COURT: At paragraph 60 he quotes, and the quotation comes
22 from 15.3 of the Code.

23 MR PILLAI: Absolutely, your Honour.

24 Mr Bell, let's take it that it's quoted correctly
25 from the Code, and the quotes appear at pages 30 and 31

1 15:42 of Mr Chow's affidavit. Do you have that, Mr Bell?

2 A. Yes, I'm looking at pages 30 and 31. I was also looking
3 at paragraph 15.5 of the Code itself.

4 COURT: Yes.

5 MR PILLAI: Let me know once you've found the page. Have
6 you found it?

7 A. I haven't so far come across that quotation in 15.5.

8 Q. Please look at page 100 of your affidavit.

9 COURT: Page 100 of your own affidavit.

10 MR PILLAI: Of your own affidavit, somewhere in the middle,
11 15.3. Do you see that?

12 A. Yes.

13 Q. Please read that clause, and I think it's word for word
14 the same as what appears in Mr Chow's affidavit. You
15 can verify it yourself.

16 A. I'm sure it is, yes.

17 Q. Thank you. The point is, and I'll go back to my earlier
18 question, in Hong Kong there is a qualitative test in
19 that only if a client has sufficient knowledge and
20 expertise in relevant products and markets would he be
21 treated as a professional investor. Would that be
22 correct?

23 A. Well, I'm still looking for these words "sufficient
24 knowledge and expertise in relevant markets and
25 products". Whereabouts do you say that is?

1 15:43 Q. If you could please look at three lines from the top of
2 clause 15.3 that appears in Mr Chow's affidavit, at page
3 30.

4 A. Oh, yes. I jumped over that. Well, he's added the word
5 "knowledge" but yes, it's a fair reflection of what it
6 says. It's not actually an exact quotation, but what
7 the clause actually says is the person is knowledgeable
8 and has sufficient expertise.

9 Q. Yes. Yes.

10 COURT: That is correct?

11 MR PILLAI: Yes.

12 A. Yes.

13 Q. Before I go to paragraph 15.4 as to what would be the
14 indices of knowledge, you have to look at the type of
15 products, the frequency of trades, the dealing
16 experience and awareness of the risk. That's really
17 taken from paragraph 15.3; correct?

18 COURT: That's only in assessing his investment experience.

19 MR PILLAI: That's correct, your Honour.

20 COURT: But in putting him in the category of professional
21 investor, there's another standard that is imposed by
22 15.4.

23 MR PILLAI: Yes, I was about to go to 15.4.

24 Even before that, at paragraph 15.1, at page 100 of
25 your affidavit, the second line:

1 15:45 "Where a client of a licenced or registered person
2 is a Professional Investor referred to in paragraph
3 15.2A or paragraph 15.2B (who has sufficient knowledge
4 [or] expertise in relevant products in markets), the
5 licensed or registered person would not be required to
6 fulfill the requirements set out in paragraph 15.5 while
7 serving such clients in respect of relevant products ...
8 or markets of which they are treated as Professional
9 Investors."

10 Do you see that?

11 A. Yes.

12 Q. Now we've found out where the words "has sufficient
13 knowledge and expertise in relevant products markets"
14 come from.

15 A. Oh, yes. Yes.

16 Q. I'll go directly to 15.4, as his Honour pointed out.

17 Here you have read 15.4, would I be right to say,
18 Mr Bell, that before a person is treated as
19 a professional investor, there's a procedure.

20 The financial advisor would have to provide
21 a written explanation to the person, explain the risks
22 and consequences of being treated as a professional
23 investor, obtain a written and signed declaration from
24 the person that the consequences of consenting to be
25 treated as a professional investor, and the right to

1 15:46 withdraw from being treated as such has been explained
2 to him, and he wishes to be treated as a professional
3 investor.

4 Finally, the licensed person must have in place
5 procedures to carry out a confirmation exercise
6 annually, to ensure that the clients continue to fall
7 within the definition of "professional investor" as set
8 out in clause 15.2B, and have continued to elect to be
9 treated as such.

10 These are the conditions?

11 A. Yes, this is what 15.4 says, a registered person should
12 do prior to treating someone as a professional investor.

13 Q. Thank you. Your Honour, I'm moving to another area.

14 COURT: Is it in question in these proceedings that Dr Chang
15 is a professional investor?

16 MR PILLAI: Well, I can certainly confirm that this
17 procedure, in terms of getting his written explanation
18 and procuring a signature --

19 COURT: It may cut to the chase if --

20 MR ANG: I also can confirm, your Honour, that when you sue
21 for negligence, you must plead the breaches of the duty
22 in your pleadings, and none of this is pleaded. So I'm
23 happy to let my learned friend go on because I will be
24 taking the point up in my submissions.

25 COURT: Okay.

1 15:47 MR PILLAI: I'm not sure whether my learned friend had
2 answered your Honour's question, which is whether or not
3 in this case Dr Chang had actually signed this
4 requirement as set out in paragraph 15.4. To the best
5 of my knowledge, your Honour, the answer is no.

6 COURT: There's nothing in evidence before me right now that
7 suggests that it's in evidence that --

8 MR ANG: Yes, to answer your Honour's point, there's nothing
9 in evidence before your Honour --

10 COURT: Yes.

11 MR PILLAI: I'm grateful for my learned friend for
12 confirming at last.

13 I am moving on to a separate area, your Honour.

14 Mr Bell, could you please go back to your affidavit
15 and please turn to paragraph 3.7.7 that appears at
16 page 50 of your affidavit.

17 A. Yes.

18 Q. Just to set the context again, Mr Bell, this paragraph
19 deals with whether or not the Code has any impact on the
20 disputed terms, and at paragraph 3.7.7 you have stated
21 that assuming Hong Kong law applies the claimant may
22 argue that the contract was, in light of the Code,
23 unconscionable under the Unconscionable Contracts
24 Ordinance, and thus unenforceable in whole or in part.
25 That's your opinion?

1 15:49 A. Yes. But I make it expressly subject to the
2 qualification that I don't say anything about the merits
3 of any such argument.

4 Q. Yes, thank you. But at the very least, Mr Bell, if I
5 understand your paragraph correctly, this is a viable
6 argument to be made, subject to the issue of merits
7 which is, of course, a matter for the courts. Would
8 that be a correct understanding of your paragraph?

9 A. Well, of course if the case were instituted under the
10 Unconscionable Contracts Ordinance, it would then become
11 a matter for the courts but in the initial case, of
12 course, it would be a matter for his own advisors in
13 Hong Kong whether the case had any merit or not,
14 sufficient merit to make it worth taking to court.

15 Q. I think I understand you, Mr Bell. Let me pursue this.

16 At least in relation to any proceedings in Hong Kong
17 where a claimant wants to say that the disputed terms,
18 as defined by you, are not enforceable by reason of the
19 Unconscionable Contracts Ordinance, the Code would be
20 relevant evidence?

21 A. Yes; again, subject to the section 399(6) point.

22 Q. The difficulty, Mr Bell, is that when I read
23 paragraph 3.7.7, the conditions pertaining to
24 section 3 --

25 COURT: The question that is asked to you, which is the

1 15:51 seventh question, is: please also consider whether the
2 Hong Kong Code of Conduct has any bearing on the
3 validity of the disputed terms in the agreements and
4 Deutsche Bank's right to rely on the same.

5 The "disputed terms", presumably, refer to the
6 disclaimers in the account opening forms and the like.

7 MR PILLAI: Yes, your Honour. Mr Bell defines it as
8 "disputed terms", your Honour.

9 COURT: Then, on 3.7.8.

10 MR PILLAI: Yes, your Honour.

11 COURT: Your opinion on question 7 is set out where?

12 A. I think the opinion on question 7 is set out in 3.7.4
13 probably on page 49.

14 COURT: Yes, but if that question is raised, then you say,
15 potentially, the Unconscionable Contracts Ordinance is
16 open to argument.

17 A. Well, I don't think I even go that far. It's not
18 something I've explored at all. It may be that if one
19 looked at it closely, it's not open to argument. But in
20 answer --

21 COURT: The Unconscionable Contracts Ordinance presumably is
22 the Unfair Contract Terms Act in the UK?

23 A. Yes, somewhere along those lines, your Honour, yes.

24 MR PILLAI: Taking up from where his Honour left off, since
25 it's the equivalent or roughly at least the equivalent

1 15:53 of the Unfair Contracts Terms Act of the UK, would you
2 accept that usually, these kinds of ordinances would
3 apply when the claimant deals as a consumer?

4 A. I have -- I have to confess that this is not a part of
5 the law that I'm familiar with. I mean, I'm aware of
6 the Ordinance, I'm aware of the general --

7 COURT: It may well be that in Hong Kong the law is similar
8 to Singapore and the EU Directive does not extend --

9 MR PILLAI: It appears so --

10 COURT: -- so without clarifying, I think it's unfair to put
11 it unless you want the witness to put in a supplementary
12 opinion or some sort.

13 MR PILLAI: No, your Honour. I will not go as far as that,
14 It's just following up from a question that your Honour
15 has raised. I just -- perhaps this would be a fair
16 question, and I hope Mr Bell can answer this question.

17 The Unconscionable Contracts Ordinance applies to
18 persons who deal as a consumer; would that be correct?

19 A. I think that's probably right, but I cannot --

20 COURT: But do financial services and products come within
21 the ambit of the Unconscionable Contracts Ordinance?

22 A. Again, your Honour, it's not an ordinance with which I
23 have any great familiarity. I've not come across the
24 Ordinance in that context myself. I can't say
25 definitely that it doesn't, but I'd need to look at the

1 15:54 Ordinance again to --

2 COURT: I see.

3 MR PILLAI: Mr Bell, if you look at paragraph 3.7.7, you do
4 make reference to Dr Chang, and we know about the
5 disputed terms.

6 A. Yes.

7 Q. So it's in the context, as his Honour put it, of
8 financial services. So at least on the face of it, it
9 appears to me that you suggest the Unconscionable
10 Contracts Ordinance has application to the provision of
11 financial services.

12 A. Well, might have, I would say.

13 Q. Pardon?

14 A. Might have, but again, I can only stress it's not
15 something that I'm familiar with. It might have been --
16 perhaps if I hadn't mentioned the Unconscionable
17 Contracts Ordinance at all, since it's not really within
18 my area of speciality.

19 Q. Would the Misrepresentation Ordinance of Hong Kong be
20 something within your area of expertise?

21 A. I've certainly come across it, and -- again, it's not
22 something directly related to securities, but obviously
23 there is some sort of interface at times.

24 Q. Please correct me if I am wrong: that would be the
25 equivalent of the United Kingdom's Misrepresentation

1 15:55 Act?

2 COURT: 1967 or as amended?

3 MR PILLAI: Your Honour has stumped me. I believe it's the
4 1967 Act.

5 A. It's certainly based on the 1967 Act. Again, whether
6 it's identical or not --

7 COURT: For this witness, I think it may not be fair to
8 pursue these areas because he has merely made a passing
9 reference to the Act. But if you want, at some stage,
10 for the purposes of these proceedings, for these
11 questions to be clarified by both expert witnesses on
12 Hong Kong law, you may well supplement. Purely on the
13 question: what is Hong Kong's Unconscionable Contracts
14 Ordinance in terms of its scope, and whether it is
15 similar to the Singapore regime or the UK regime in 1967
16 or today?

17 MR PILLAI: Very well, your Honour.

18 COURT: You can do that later.

19 MR PILLAI: I stand guided, your Honour.

20 Maybe I'll take your Honour's cue. I'll just move
21 on. I have just one or two questions left.

22 Could you please assist us. Could you please tell
23 us what would be the ambit of the licence issued for
24 Type 1 regulated activities by the Hong Kong SFC?

25 A. Well, Type 1 relates to securities.

1 15:57 Q. So a person with Type 1 licence, if I could use the word
2 "licence", what is he authorised to do under the
3 Hong Kong SFO?

4 A. He is authorised to act as intermediary in securities
5 transactions. There's a separate part, I think it's
6 Type 3, which deals with advising on securities.

7 Q. Yes.

8 A. So it is acting, essentially acting as an intermediary
9 in securities.

10 Q. I have it in my notes as Type 4 being advising in
11 securities.

12 A. It may be, yes. It's either Type 3 or Type 4.

13 Q. Type 3 or Type 4, you're not sure. It's a separate
14 licence which deals with advising on securities.

15 A. That's correct, yes.

16 COURT: Where does the witness refer to these licences in
17 his opinion?

18 MR PILLAI: The witness has not referred to this issue, your
19 Honour, but again, your Honour, as cross-examiner I can
20 put --

21 COURT: Yes, I understand that, but I am trying to
22 understand, you are reading the nature of licences for
23 what context? Are you going to go to the entire regime,
24 or not?

25 MR PILLAI: Your Honour, I just wanted to clarify the ambit

1 15:58 of a licence issued under the Type 1.

2 COURT: Which is not referred to in his opinion.

3 MR PILLAI: That's right, your Honour. If your Honour could
4 bear with me. It may be relevant later on in the
5 proceedings.

6 A. I think the precise description is dealing in
7 securities, in fact, in Type 1.

8 Q. I'm just pursuing that point. Clarification as to the
9 ambit of a Type 1 --

10 COURT: He has not given evidence, so what are you
11 clarifying on this issue?

12 MR PILLAI: I am just clarifying, if it pleases your Honour,
13 just to clarify our understanding as to what is the
14 ambit of services a Type 1 --

15 COURT: That you should put through your expert, presumably.

16 MR PILLAI: Your Honour, it depends. If it's a settled
17 position between parties, then really we don't have to
18 go there, and as far as this issue is concerned, your
19 Honour can take it that it's a settled position between
20 parties on the issue of ambit. I just wanted to clarify
21 what would be the precise scope of a person who is
22 licensed as a registered individual for Type 1
23 regulatory activities.

24 COURT: "Individual" meaning Johnny Wan?

25 MR PILLAI: Yes, your Honour.

1 15:59 COURT: Because, as you must know, the bank may have
2 multiple types of licences, and so does Mr Johnny Wan.
3 He might well have multiple licences --

4 MR PILLAI: No, your Honour. It's a fact that he only has
5 one licence.

6 COURT: So it's common ground that Johnny Wan, an employee
7 of the bank, had a Type 1 licence?

8 MR PILLAI: That's a settled position between parties.

9 COURT: What do you want to put to this witness?

10 MR PILLAI: I'm not putting anything to the witness. I just
11 wanted to clarify, your Honour, and I apologise if I'm
12 being ambiguous.

13 What is the scope of duties or what is the scope of
14 services rendered pursuant to --

15 COURT: What is he licensed to do?

16 MR PILLAI: That's precisely it, your Honour, and I think
17 the witness has given a reply too.

18 COURT: If you're saying to him: look, Johnny Wan has only
19 a Type 1 licence under the SFO, what is he licensed to
20 do under that Type 1 licence as a representative?
21 That's your question?

22 MR PILLAI: That is precisely it, your Honour. That's
23 precisely it.

24 COURT: Is it something you would like to --

25 A. Well, the description of a Type 1 licence is dealing in

1 16:00 securities.

2 COURT: Broker-dealer?

3 A. I'm sorry, your Honour?

4 COURT: Broker-dealer?

5 A. Yes. I think that includes probably matters that are
6 ancillary to dealing.

7 COURT: Meaning?

8 A. Well, anything ancillary which is necessary for the
9 purposes of dealing in securities --

10 COURT: Recommendations and advice?

11 A. Well, I suppose one has to bear in mind that advising on
12 securities requires a separate licence. But there's
13 probably a definition buried away in schedule 1 of the
14 Ordinance, that dealing in securities actually entails
15 or comprises.

16 MR PILLAI: Thank you.

17 I am happy with Mr Bell's explanation, your Honour.

18 I have no further questions.

19 MR ANG: I have no re-examination, your Honour. May the
20 witness be released.

21 COURT: While I have the advantage of you being on the
22 stand, let me see whether I can formulate some
23 questions.

24 MR ANG: Sorry, your Honour.

25 Questions by THE COURT

1 16:02 COURT: Your opinion, in terms of section 399(6) and the
2 Code, strictly speaking I hear you.

3 Where I'm still open is whether, by its terms it
4 necessarily excludes the use, the reference or relevance
5 of the Code in Hong Kong -- because this is a question
6 of Hong Kong law, not Singapore law -- in any other
7 proceedings beyond the SFO.

8 That question, in your expert view, section 399(6),
9 has the effect of confining the relevance of the Code
10 only primarily to regulatory proceedings under the SFO,
11 possibly to proceedings under the civil provisions of
12 the Code, of the Ordinance, and nothing else.

13 A. That's correct, your Honour.

14 COURT: And in Hong Kong, in any other proceedings beyond
15 the SFO that might be commenced in a Hong Kong court
16 under a cause of action beyond the SFO, it's your view
17 that the Code is not relevant or indeed admissible in
18 such court proceedings in Hong Kong?

19 A. Your Honour, yes.

20 COURT: That's your view?

21 A. That's my view.

22 COURT: Regardless of the fact that the cause of action --
23 it may not determine the legal requirements of what
24 constitutes a crime or a civil cause of action -- you're
25 saying even if it could be relevant, not that it

1 16:04 determines the issue, you're saying you are precluded by
2 virtue of section 399(6) from even looking at it?

3 A. That's correct, your Honour.

4 COURT: As a court, in Hong Kong?

5 A. Yes. Yes.

6 COURT: Thank you.

7 MR ANG: May the witness be released, sir.

8 COURT: Yes. Thank you.

9 (The witness stood down)

10 MR ANG: Your Honour, may we have a short five-minute break
11 and then can I carry on with my cross-examination.

12 COURT: Sure.

13 (4.04 pm)

14 (A short adjournment)

15 (4.16 pm)

16 DR CHANG TSE WEN (on former affirmation)

17 Cross-examination by MR ANG (continued)

18 MR ANG: May it please the court.

19 Dr Chang, can you look at 12AB 5375, the last
20 document we were looking at before we broke for lunch.

21 As I said to you this morning, I'm just going to
22 take you through some events that took place in 2008 to
23 see the general trend of things.

24 Page 5375, you see that you tried to do
25 a decumulator for Citigroup but it was not done;

1 16:16 correct? Correct?

2 A. Right.

3 Q. You can see at pages 5376, 5377, just flip through to
4 5379, you were sent numerous quotes for the decumulator
5 contracts; right?

6 A. Right.

7 Q. Page 5392, you were told that you have 3.8 million
8 surplus in margin requirement; right? So you write to
9 Karan and Johnny to let them know, "Thank you for
10 letting me know you have a surplus"; right?

11 A. Right.

12 Q. You also thank them for updating your settlement
13 records, and you tell them you are "planning to sell
14 some positions through [decumulators] when the financial
15 stocks have a clearer direction after several major
16 banks report their first quarter earnings in the next
17 two weeks"; right?

18 A. Right.

19 Q. Page 5440. You sent this e-mail querying whether or not
20 some item in the Excel spreadsheet that was sent to you
21 was in error; right?

22 A. Right.

23 Q. Page 5447, since January 2008, you say you have
24 transferred from Citibank 9.5 million and Citigroup
25 220,000 to boost the margin requirements. You say those

1 16:18 funds were set aside for paying taxes. Then you say
2 350,000 was transferred from your Deutsche Bank account
3 to Carmay Lim's Deutsche Bank account.

4 You say:

5 "If the market conditions continues to improve over
6 the next few months, I will take out ... those funds ...
7 in several batches."

8 You also say you would like to see "how the initial
9 funds that I placed in my Deutsche Bank account in
10 2007 August grow."

11 What you meant by the last sentence is you wanted to
12 know how your funds that you placed since August 2007,
13 have grown; correct?

14 A. Right.

15 Q. Look at page 5448. Johnny Wan tells that you your
16 account value declined minus 16.2 per cent, or negative
17 US\$4.23 million since 30 September 2007; correct?

18 A. Right.

19 Q. Page 5450, you say:

20 "Thank you for the summary, which is very useful.
21 As of today, I have an unrealised losses \$4.23 M."

22 So you knew then, after you received the summary
23 from Mr Wan, that you had an unrealised loss of
24 US\$4.23 million; correct?

25 A. Correct.

1 16:20 Q. Then you say:

2 "I hope that we can recover all this loss and make
3 some profits by the end of this year. I imagine that we
4 start to sell the Citi shares in PSSP [decumulator] in
5 the third quarter, or earlier if and when the share
6 price reaches above \$30. I hope that this [is] not
7 dreaming."

8 Right?

9 A. Right.

10 Q. So you're telling Mr Wan that if the prices of Citi
11 rise, you would like to start selling Citi shares using
12 decumulator contracts; is that right?

13 A. Right. May I -- may I add?

14 So this was a very good time. I remember the price
15 of Citi was about 28 or 29, much above the cost of the
16 Citigroup shares.

17 Q. So as of 29 April 2008, the Citi shares were \$28 or \$29,
18 but you're telling Johnny that if it hits above \$30, you
19 would like to start selling Citi shares using
20 decumulators; is that what you're saying?

21 A. Yes. Again, this is not my own decision. We always
22 have discussion --

23 Q. Am I correct to say that it is your decision, but
24 according to you, you reached it after discussing it
25 with Mr Wan?

1 16:21 A. Correct.

2 Q. Then you say:

3 "I imagine that the shares of Citigroup, UBS and
4 SocGen may retreat during the next few weeks."

5 Right? So you are expressing a view that in the
6 short term, that means in the next few weeks, Citi, UBS
7 and SocGen share prices will go down; correct?

8 A. Correct. Again, I share this view together with Johnny.
9 Should I always say that? Okay.

10 Q. I'm not going to say in my submissions, if you don't say
11 that, that you are admitting that you --

12 A. Thank you.

13 Q. My point is that it is your decision --

14 A. Correct.

15 Q. -- but your point is that you reached the decision
16 jointly with Mr Wan or after discussing it with Mr Wan;
17 is that right?

18 A. Right. Thank you.

19 Q. At page 5477 -- please forgive me, because I'm trying to
20 finish your cross-examination, if I move a bit fast --
21 there is a product which he recommends you. He calls it
22 a hedge product that is guaranteed by Citibank. He sets
23 it out at page 5477. And then there is an attachment.

24 A. Yes.

25 Q. I think the whole term sheet is not here. I'm not sure

1 16:23 why only the disclaimer page is there, but do you recall
2 that this product was suggested to you?

3 A. Yes.

4 Q. In the end you didn't take it up; right?

5 A. No.

6 Q. Page 5553, we are already near the end of May 2008, and
7 Mr Wan sends you some quotations for the decumulators;
8 correct?

9 A. Correct.

10 Q. If you look at page 5562, you can see one of your orders
11 for decumulators is not done; right?

12 A. Right.

13 Q. Would you agree with me, as a general comment, that in
14 2008 you tried to place many decumulator orders for
15 Citigroup, but often they were not done because the
16 share prices did not match your order? Would you agree
17 with me?

18 A. Yes, I agree. Yes.

19 Q. Page 5563, you see that Mr Wan sends you a summary of
20 recommendation from various firms for your reference.
21 To see what he actually sends you, look at pages 5564,
22 5565. You can see "Firm Name", "Analyst",
23 "Recommendation". I'm not sure which counter this is.
24 Can you help us, Dr Chang?

25 COURT: These are the proprietary recommendations.

1 16:25 A. Mr Ang, could you explain to me your question, please.

2 MR ANG: No, my question is --

3 COURT: Page 5565, right?

4 MR ANG: Page 5563, he says:

5 "Attached is a summary of recommendations from
6 various firms for your reference."

7 If you look at page 5563, it says "CITIBANK
8 Recommendation", "[SocGen] Recommendation", "UBS
9 Recommendations". Then if you look at pages 5564, 5565
10 and 5566, these must be the recommendations by various
11 analysts as to what is their view of Citigroup, SocGen
12 and UBS. Would that be correct?

13 A. Correct.

14 Q. Would it be correct to say that you found these summary
15 of recommendations helpful?

16 A. No, not exactly. If you could just see the case with
17 Citi or with UBS --

18 Q. Yes, which one is that? Which page?

19 A. No, I was saying that --

20 COURT: Let's set the context. At page 5563, the 29 May
21 2008, Johnny sends you a recommendation of three
22 firms --

23 MR ANG: No, for three counters, sir.

24 COURT: Three firms, Citibank, SocGen, UBS. These are
25 firms.

1 16:27 MR ANG: Sorry, your Honour.

2 COURT: If you look on the assumption that page 5564 is
3 a Citibank firm recommendation, it explains why they
4 don't cover themselves.

5 Page 5565 would presumably be the SocGen analyst
6 recommendations. Page 5566 would be the UBS firm
7 recommendations. Is that correct, Dr Chang?

8 A. Correct.

9 MR ANG: If you look at page 5567, it says:

10 "Thank you for the information, which is a good
11 reference, because so many analysts are involved in the
12 rating."

13 Right?

14 A. Right.

15 Q. "The data suggest that Citi, [SocGen] and UBS are
16 presently all at the bottom of the recommended ranges."

17 Right? So you must have made some analysis of those
18 pages that we went through just now and came to this
19 view; correct?

20 A. Correct. May I add?

21 COURT: Yes.

22 A. In those three pages, the target prices were given, so
23 if just you look at Citi, they were a range, so the
24 price of Citigroup at that time was at the lower end of
25 their recommended -- I mean, their target range. That

1 16:29 was what I understood.

2 COURT: No. Just take a look at the first one, UBS, if it
3 is your target price of 23 within a period of 12 months.
4 The second that is relevant to you is your Deutsche Bank
5 which says "Sell", not "neutral", gives you a target
6 price of \$21 over a period of 12 months.

7 A. Is that \$62? I might have read wrongly. I thought he
8 said it's \$62.

9 COURT: What are you looking at?

10 A. Page 5565.

11 COURT: Which page?

12 A. Page 5565, and Citigroup is listed as item 27, and then
13 look across, the target price was 62.

14 COURT: Why would he tell you, sell, recommendation to sell?

15 A. I could not understand. If it's at \$25 at that time and
16 the target price --

17 COURT: It doesn't make sense, does it?

18 A. It does not make sense.

19 COURT: And there's no timeframe. Under item 29, UBS there
20 is 94. So, obviously, they are using a different
21 measure to target price, no? Assuming that "Target PX"
22 means price?

23 A. I thought that the target price is for period -- for
24 some of the bank, they are listed for 12 month or
25 9 months.

1 16:30 COURT: Yes.

2 A. But for some of the banks the target range, I mean the
3 period for the target range was not --

4 COURT: All we're looking for in these three pages are the
5 analyst recommendations from each of these financial
6 institutions that were given to you, and counsel asked
7 you whether you relied on this, in coming to your
8 conclusion on page 5567, that Citi, SocGen and UBS are
9 presently at the bottom.

10 The question is: if you look back at these three
11 pages, you said that data suggests that Citi, SocGen and
12 UBS are presently all at the bottom of the recommended
13 range --

14 A. Right.

15 COURT: -- and you refer to the information which are these
16 three pages that Johnny sent you.

17 A. Right.

18 COURT: So, counsel is asking you --

19 MR ANG: My question is that you were able to make sense of
20 this information sent to you and come to this view --

21 COURT: Not right now.

22 MR ANG: Well, I'll be submitting on that.

23 A. Well, it's just like in our experimental research, this
24 was very simple --

25 COURT: This is not experimental. This is not science.

1 16:32 Sometimes it's voodoo science.

2 A. Thank you. I was not so smart to know that.

3 MR ANG: Just look at page 5567. Are you able to correlate
4 now -- now -- what you have said there with the data
5 that we just went through, that was sent to you, then?

6 A. Mr Ang, what do you mean, "now"?

7 Q. Now, sitting in court --

8 A. Today or that time?

9 Q. Now, sitting in court, can you explain to us how you
10 came to the view that data suggests that "Citi, SocGen,
11 UBS presently all at the bottom of the recommended
12 ranges"?

13 You say that the data suggests that conclusion, so
14 my question is, can you explain to the court how you
15 arrived at that conclusion?

16 COURT: Let's go through the three pages and identify the
17 three counters you are looking at. You are looking at
18 UBS, Deutsche Bank and Citibank; right?

19 A. Right.

20 COURT: SocGen.

21 MR PILLAI: SocGen, your Honour.

22 COURT: Right?

23 A. Right.

24 COURT: The first page, page 5564, there is UBS, Deutsche
25 Bank, nothing else there of interest to you; right?

1 16:33 A. Correct.

2 COURT: It says UBS, neutral, target PX 23 within a 12-month
3 period.

4 A. Yes.

5 COURT: Deutsche Bank, it says sell, target PX 21 within
6 a 12-month period.

7 When you say price range, there's no range that's
8 mentioned here, so you obviously have knowledge of the
9 market price on 29 May 2008, and you say, from where
10 they are to what these target prices are, presumably you
11 think, what? What was your conclusion?

12 A. But then -- when I say range, then we have to look the
13 three.

14 COURT: Let's go to the second page. Page 5565. You have
15 Deutsche Bank, recommendation is "buy", and it says 88
16 PX, 12-month period.

17 MR PILLAI: Sorry to interrupt, but, really in respect of
18 the e-mail there are only three counters mentioned, Citi
19 SocGen and UBS. That's at page 5567. Deutsche Bank
20 doesn't feature in this.

21 COURT: Yes, I understand that.

22 MR PILLAI: All right.

23 A. Your Honour, maybe I understood differently. Could we
24 just look at UBS, the first page, page 5564.

25 COURT: Yes.

1 16:35 A. So these many analysts making recommendations, right --

2 COURT: They are neutral.

3 A. For UBS the target price is 23.

4 COURT: Yes, but his recommendation is "neutral".

5 A. Okay.

6 COURT: He's not saying "buy", he's saying "neutral", all
7 right? Then it's "target PX", so you assume "target PX"
8 means price.

9 A. Correct.

10 COURT: What was the UBS price in May 2008? Much lower than
11 that?

12 A. Probably about that range.

13 COURT: Much, much lower than that, presumably, because you
14 say the target --

15 A. Your Honour, I think we have to look at these three all
16 together --

17 COURT: I understand. That's why I am taking you through it
18 page by page.

19 A. So we have to look the second page --

20 COURT: Go to the second page, yes.

21 A. So UBS at 29, then by this analyst, he says "buy" and
22 the target price is 94. 23 --

23 COURT: Let me ask you a question. What was the target
24 price of UBS in May 2008?

25 A. You mean the current price?

1 16:36 COURT: Yes, at that time.

2 A. I would say probably around 25 or 30.

3 COURT: So this guy is --

4 A. Very bullish.

5 COURT: Very bullish. He's actually targeting a price of
6 five times the market, according to you.

7 A. That's their -- that's their number.

8 COURT: Yes. Given where you were in May 2008, these
9 numbers on page 5565 bear very little correlation with
10 the numbers on page 5564, the target. Or do they?

11 A. Correct, very little correlation. You know, their
12 estimations is very different.

13 COURT: So you are very clear that "target PX" means "target
14 price", and this is common to all three?

15 A. Yeah, common to all three, it's the target price in 9
16 month or 12 month.

17 MR ANG: Can I suggest, your Honour, a different reading of
18 these three pages.

19 COURT: Yes.

20 MR ANG: For example, if your Honour looks at page 5564, I
21 would suggest -- and I may stand corrected -- that
22 actually, these are all the analysts from these
23 different firms.

24 For example, if your Honour looks at number 8, The
25 Buckingham Research Group, James F Mitchell of The

1 16:37 Buckingham Research Group has this suggestion. These
2 are all people suggesting, giving a view on a particular
3 counter, and that counter is Citigroup, Citibank --

4 COURT: Okay. You have a different construction of these
5 three pages. Let me try to understand what the witness
6 himself understood -- then or now -- and then we may
7 well correct him.

8 We are on page 5565. You referred to Citigroup. It
9 says sell at 62, and UBS, buy at 94. Is that correct?

10 A. Your Honour, I think Mr Ang is correct. I was wrong.
11 He's correct.

12 COURT: Okay.

13 A. That these were -- these were analysts from these
14 different firms, and they were projecting Citibank.

15 COURT: Page 5564 is about Citibank, page 5565 is about
16 SocGen, and page 5566 is about UBS?

17 A. Correct.

18 COURT: By reason of the multiples of PX. He's correct
19 because on one page you're talking about multiples of 20
20 and 30, the next page you are talking about a target
21 price of 90 and 100.

22 So if it's about SocGen, then it depends on where
23 SocGen is listed, and the price is either Euros or --
24 right?

25 MR ANG: Yes.

1 16:39 COURT: That's what it sounds like.

2 Are we now clear?

3 A. Yeah.

4 COURT: So page 5564 is Citibank quotes. The next one is
5 SocGen quotes.

6 A. Right.

7 COURT: The third one is UBS quotes.

8 A. Correct.

9 COURT: What do you understand? Based on this, you say
10 what?

11 A. So --

12 COURT: At the time you were looking at Citibank
13 in May 2008, the market price was what? Because they
14 don't give you a range, they give you a target.

15 A. Okay, your Honour, so from page 1, page 5564, the range
16 would be from 19 to 31, right.

17 COURT: All right, fair enough. I get you. Within the
18 range of what you got there. Fair enough.

19 A. Okay.

20 COURT: So 19 to 35.

21 A. Right. And the price of Citigroup at that time probably
22 was around 20 to 25. I cannot remember now.

23 COURT: All right. Carry on. Page 5565, SocGen?

24 A. Page 5565, so the range is from -- 70 is the low --

25 COURT: 62.

1 16:40 A. No, 61. 61.

2 COURT: Yes.

3 A. Yes. And to 175.

4 COURT: Yes.

5 A. Most of them are in the --

6 COURT: You now know that this is not science? You now know
7 it's not science.

8 A. I was not smart to know it's not science.

9 MR ANG: Your Honour must see the date of the guy who did
10 175. The date is 29 June 2007.

11 COURT: Yes, that's pretty ancient. All right.

12 UBS?

13 A. UBS, the range is from -- the lowest is 21, I can see
14 the highest --

15 COURT: 49?

16 A. -- 81.

17 COURT: Again, the date is October 2007. Fair enough. Yes.
18 This is an outlier. Okay.

19 A. And I believe UBS at that time was probably around 30 or
20 so.

21 COURT: Okay.

22 MR ANG: Dr Chang, you would agree with me, just looking at
23 these three pages, you will see that even for just one
24 counter, if you look at UBS on page 5566, there are very
25 different views expressed by people over time; some say

1 16:42 "hold", some say "buy", some say "sell"; right? Would
2 you agree?

3 A. Yes, agree.

4 Q. It may be self-evident, but could you just confirm with
5 us that your understanding then as well was it's very
6 difficult to say how a share counter will move, it may
7 go up, it may go down; do you agree?

8 A. I agree.

9 Q. It's a question of assessment and judgment; right?

10 A. Yes.

11 COURT: And risk.

12 MR ANG: Yes.

13 A. Mr Ang, may I say, so for a very inexperienced investor
14 with very little knowledge about the economy, of the
15 finances, it's really difficult --

16 Q. But would you agree that even for sophisticated
17 investors and sophisticated analysts, they also have
18 difficulties? Some say "buy", some say "sell", some say
19 "hold", do you agree? Based on the recommendations.

20 A. Correct, but there will -- but they will be better than
21 me. Much better than me.

22 Q. I will leave it at that. Page 5581. Take a look at
23 that. Basically you're just telling them to carry on
24 getting quotes for you for Citi decumulators; correct?

25 A. Correct.

1 16:43 Q. Page 5602, they send you decumulator quotes for Citi and
2 SocGen?

3 A. Correct.

4 Q. We're into June 2008. If you look at 5 June 2008,
5 another one, page 5629, Citibank decumulator quotes;
6 correct?

7 A. Right.

8 Q. Can you confirm with me that these kinds of quotes come
9 to you regularly because you do ask Johnny and Karan to
10 give you regular quotes for decumulators for the
11 counters that you hold? Would that be correct?

12 A. Correct.

13 Q. Come to page 5636, 10 June, and you're told that you are
14 now in shortfall territory, minus US\$2 million. Do you
15 see that? Page 5636.

16 A. Correct. I'm coming back to bad times again.

17 Q. Page 5654, you see that Johnny e-mails you information
18 about a hedge product; right? SKF Ultra Short Financial
19 Index, ETF.

20 A. Yes.

21 Q. He says:

22 "This is a good hedge especially when holding all
23 financial shares."

24 Then he says:

25 "Of course, this share SKF is only a tool and we

1 16:45 have to use it wisely."

2 In the end you didn't proceed with this product;
3 correct?

4 A. Correct, and -- when I heard a word like "ultra short",
5 it scares me. It scares me.

6 Q. Page 5700, you're told on 7 July that your shortfall is
7 negative 2.2 million; right?

8 A. Yes.

9 Q. Page 5701, Mr Wan e-mails you to say:

10 "Our credit says it is okay to wait until next
11 Tuesday ..."

12 Do you recall that this must have been in the
13 context of "Let's wait till next Tuesday, you don't have
14 to remit funds or in addition collateral"; right?

15 A. Right.

16 Q. Then he says.

17 "... we need to sell some positions to reduce
18 overall risk. I suggest to sell Citibank when market
19 bounce back a bit."

20 Right?

21 A. Right.

22 Q. If you look at page 5726, the 15 July 2008 e-mail, he
23 says:

24 "After my calculation, if we assume all price
25 remains constant and fully utilise all available loans,

1 16:46 then in order to maintain your current shares, we need
2 6.259M USD in the account. That means you are borrowing
3 18.8M from us. 3.5-3.7% interest per year. I don't
4 think we can hold this for long because interest is
5 around US\$55,000 per month.

6 Please call me to discuss if you have any
7 questions."

8 Right?

9 A. Yes.

10 Q. You would agree with me that you started taking a loan
11 from the bank, you drew down on your credit line;
12 correct?

13 A. Correct.

14 Q. Just for confirmation, in the bundle of banking
15 agreements tab 9, I -- just want to take you quickly
16 through it -- there is a loan facility letter.

17 Tab 10 is a letter issued to you which allows you to
18 trade on margin, and setting out the margin, the
19 aggregate exposure limit at US\$10 million, 5.1. Do you
20 see that? Tab 10. 5.1.

21 A. Mr Ang, this -- what do you refer to, 5.1?

22 Q. Paragraph 5.1.

23 A. Okay.

24 Q. Do you see:

25 "The aggregate Exposure under all Transactions other

1 16:49 than FX Transactions and Currency Option Transactions
2 shall not exceed US\$10,000,000 at any one time"?

3 This letter is dated 28 November 2007.

4 A. I see it.

5 Q. Tab 11 is a similar letter, but it increases the
6 exposure limit to US\$25 million. You can see that at
7 paragraph 5.1. Do you see that?

8 A. Yes.

9 Q. The last tab, tab 12, it increases the exposure limit to
10 US\$35 million?

11 A. Correct.

12 Q. These letters, you received them; right?

13 A. I had received them long time ago, yes.

14 COURT: You received them at different dates.

15 MR ANG: Yes.

16 You received them at different dates --

17 COURT: The first one was 28 November for \$10 million. The
18 second one was 12 December for 25 million, and the third
19 one was 10 March increasing it to 35 million.

20 A. Yes, your Honour. Thank you.

21 MR ANG: If you go back to 12AB 5728, you're in discussions
22 with Johnny and he sends you this quote regarding the
23 unwinding cost if you close out three of your
24 accumulators; correct?

25 A. Four.

1 16:51 Q. Sorry, four. Is that correct?

2 A. Correct.

3 Q. If you turn to page 5731, you also ask for the costs of
4 unwinding three more accumulators; correct?

5 A. Correct.

6 Q. These are all Citigroup accumulators; right?

7 A. Right.

8 Q. Then at page 5759, you e-mail Mr Wan on 21 July 2007,
9 and you say:

10 "We need to devise the best strategy to get enough
11 cash for purchasing shares from the accumulator
12 contracts for the next few months."

13 You're referring to the fact that you have existing
14 accumulator contracts and you need to raise cash to pay
15 for them; right?

16 A. Right.

17 Q. That's because otherwise you'll be taking a loan from
18 the bank and you have to pay interest on that; right?

19 A. Right.

20 Q. You tell Mr Wan that PSSP, which is a decumulator,
21 should be part of the strategy. So you want him to come
22 up with a strategy which involves decumulators.

23 A. Correct.

24 Q. At page 5761 --

25 A. Yes.

1 16:52 Q. -- he comes with some suggestions.

2 A. Right.

3 Q. He comes up with some suggestions as to what you can do.

4 I don't intend to take you through the details, but the
5 point is that he does come up with some suggestions.

6 For example, he says:

7 "After careful study and I have summarised as
8 follow:"

9 He says:

10 "The most effective way to protect our position
11 against downturn is to buy put option and ..."

12 Also, he says:

13 "Another way is buying ultra short but it is subject
14 to new Short Sell Rules ..."?

15 MR PILLAI: Your Honour, just to give context, I think my
16 learned friend should finish the paragraph in respect of
17 put option.

18 MR ANG: "The most effective way ... is to buy put option
19 and cost around 1.5 USD per shares for a month only to
20 protect for one million CITIBANK shares guaranteed to us
21 to sell the share to some one else at USD 20. This is
22 very costly in the long run and especially we are short
23 of cash."

24 He suggests another way, which is the ultra short,
25 but he says it's subject to the new short sell rules and

1 16:53 not the way. Then he talks about decumulators; right?

2 A. Right.

3 Q. These are all various kinds of suggestions as to what
4 you can do; correct?

5 A. Correct.

6 COURT: Before you move on, you also notice that you have,
7 on page 5750, he sends you a Deutsche Bank -- another
8 analysis of Citibank prospects.

9 MR ANG: Which page is that?

10 COURT: Page 5750. I'm just pointing it out to the witness
11 to save terms.

12 MR ANG: Yes.

13 COURT: Johnny also sends you the bank's --

14 MR ANG: Yes. Page 5750, he sends you a Deutsche Bank
15 company research, Global Markets Research report on
16 Citigroup, and you can see it's at page 5750 to
17 page 5758; correct?

18 A. But this is the first time I notice that they have
19 changed the rating to "Hold" now.

20 Q. You mean you didn't notice it at that time when you
21 received it?

22 A. No.

23 Q. This is the first time --

24 COURT: You didn't notice it then when they sent it to you?

25 A. Yeah.

1 16:55 COURT: Only now do you notice this?

2 A. Right. Right.

3 COURT: Okay.

4 MR ANG: Okay --

5 A. If you -- Mr Ang?

6 MR ANG: Yes.

7 A. Your Honour, if I had listened to it, it probably would
8 not be a good idea; right? If I had listened to him and
9 hold my shares, it would not be a good idea; right?

10 You know, I knew probably much less about finance
11 than your Honour, should I --

12 COURT: No, I don't profess to be an expert. I'm only
13 a lawyer.

14 A. Okay.

15 MR ANG: Dr Chang, don't look at me, I'm worse; I'm just
16 a litigation lawyer. Page 5774.

17 COURT: Do you follow? At page 5750, in the meantime he has
18 sent you, on 18 July 2008, Deutsche Bank's own view on
19 Citicorp, and it's upgraded stock from "Sell" to "Hold",
20 "Better core results in 2Q 2008". And it's now "Hold".

21 I just wanted to draw that to your attention since
22 we are there, and if you have any comments, you can
23 raise it. That's in the interests of saving time,
24 otherwise your counsel will come back and take you
25 through the same thing later, and we have to refresh

1 16:56 your memory again.

2 So if you have any comments that come to mind right
3 now, you are free to do so. Your counsel is also free
4 to refer to it if he wishes to refer to it in due
5 course.

6 A. Your Honour, I have no comments.

7 COURT: That's fine.

8 A. And this was about two months before the Lehman
9 Brothers' collapse.

10 COURT: Yes.

11 MR ANG: Yes. But, Dr Chang, you agreed with me this
12 morning, you are not saying that Deutsche Bank could
13 have predicted that Lehman Brothers would collapse
14 in September 2008; right?

15 A. No.

16 Q. If you look at page 5774, you sent an e-mail to Johnny
17 and Karan on 29 July. You say:

18 "The market is treacherous. The possibility that it
19 will stay in a bear market territory for many months is
20 high. We should have done some unloading at \$21-22."

21 Right?

22 A. Right.

23 Q. Then you ask for how much it is to unwind three of the
24 DSPP contracts. Correct --

25 A. Yes.

1 16:57 Q. -- "with about 2.4 million purchase remaining", meaning
2 that after unwinding you would have \$2.4 million
3 available to purchase shares; is that right?

4 A. Should be. Should be, yes.

5 Q. So your view as of end of July was that for several
6 months, for many months, the possibility that you will
7 be in bear market is high; correct?

8 A. Correct.

9 Q. You see that page 5775, as requested by you, Mr Wan
10 prepares this table. He says:

11 "Please see the three yellow highlight that match
12 your 2.4M Purchase Remaining and I will get the unwind
13 price for you as soon as possible."

14 Right?

15 A. Yes.

16 Q. Page 5782, he sends you some stocks for your reference,
17 and I believe these are all Hong Kong listed stocks;
18 right?

19 A. Right.

20 Q. You see the second paragraph:

21 "See the low beta Hong Kong Blue Chips ... On the
22 other hand Citibank is extremely high beta shares say
23 Dow Jones down 10%, then Citi will down 17.6%. Let's
24 unwind or sell some positions then we switching out
25 CITIBANK in order to reduce the risk and hopefully make

1 16:59 some money in the near future."

2 Correct?

3 A. Right.

4 Q. Page 5801, he suggests another product to you called
5 a 12-month rescue certificate, which he says is products
6 for investors who are long on Citibank. Right?

7 A. Right.

8 Q. You can see the subject is "Rescue Plan", but you didn't
9 take up this product; correct?

10 A. Right. Let me read it. What did you say, for long --

11 Q. I'm just reading from his first sentence of his e-mail.
12 He says:

13 "We have a new product comes out for investors who
14 are long CITIBANK."

15 A. Yes, I see it. It is a good idea, with the hindsight.
16 It should not be right -- long on Citibank.

17 Q. My point was that you did not take up this suggestion;
18 right?

19 A. No, but with my knowledge now -- "long" means that the
20 share to go up, right, so this would not be a good idea.

21 COURT: Are you done with this volume?

22 MR ANG: Yes, sir.

23 COURT: You are moving to?

24 MR ANG: I am moving to the final volume.

25 If you look at 13AB, as of page 5864 Mr Wan was

1 17:01 still sending you e-mails at 8 August 2008 suggesting
2 you to sell SocGen through decumulators, either normal
3 or geared, and then he gives you quotes.

4 A. Yes.

5 Q. Citi as well, right, you see below?

6 A. Yes.

7 Q. Citi decumulators as well.

8 A. Right.

9 Q. Look at page 5926. As the world is, by 4 September 2008
10 he is telling you you have a surplus in your account of
11 US\$6 million. The markets must have turned in your
12 favour; correct?

13 A. Yeah, another time.

14 Q. He says:

15 "The situation is under control."

16 COURT: Surplus means a combination of your cash position
17 and the mark-to-market of your portfolio?

18 A. Right. And this is 11 days before Lehman Brothers
19 collapse.

20 COURT: Eleven days before Lehman Brothers collapsed?

21 A. Before, yes, because Lehmans collapsed on 15 September.
22 So the situation is under control.

23 MR ANG: If you turn to page 5971, what are these quotes?
24 Can you tell us? Are these accumulators or
25 decumulators, Dr Chang?

1 17:03 COURT: "Current Surplus."

2 MR ANG: He tells you about the current surplus, that's
3 fine, 5.6 million. But the quotes, are you able to help
4 us? Are they accumulator quotes or decumulator quotes?

5 They are not quotes. Sorry, I stand corrected by my
6 learned friend.

7 Page 6027, this is an important e-mail. Can you
8 look at it, please. Mr Wan suggests to you something
9 called "stop loss order". He says:

10 "US shares can place stop limit order and I believe
11 you have heard it but I would like to mention one more
12 time.

13 We can place order to sell if CITIBANK ever touch
14 a specific price.

15 Example: STOP LIMIT at 19.

16 If we place stop limit at 19 means if CITIBANK drops
17 to 19, then your sell order will be triggered to sell at
18 market. The selling price can be higher or lower
19 depends on market price. The advantage of this order is
20 in case the price drop to our specific target, we will
21 sell some shares for sure."

22 Right?

23 A. Right.

24 Q. So he suggests that you do this stop loss order at
25 US\$19; correct?

1 17:05 A. Correct.

2 Q. And at that time Citi must have been trading above
3 US\$19; right?

4 A. Right.

5 Q. So you know what that means? If you fell to 19,
6 automatically you sell?

7 A. Right.

8 Q. But you didn't take up this suggestion; correct?

9 A. Correct. And a week after that the price went up to
10 \$23. This, after Lehman Brothers collapse, it went up.

11 Q. These are the vagaries of the market.

12 Page 6029. You do try to place sell orders for Citi
13 shares. You see quite a number of them you placed in
14 the 24 September 2008 e-mail. You see that all your
15 sell orders at 21.05, 21.75, 21.25, 21.45, et cetera,
16 all are not done; correct?

17 A. Right.

18 Q. Then you see page 6031, again all your sell orders for
19 Citi are not done, and the prices are lower than the
20 last time -- 20.45, 20.75, 21.10; right?

21 A. Right.

22 Q. So you're told, at page 6032, that your surplus is still
23 US\$5.4 million; right? Positive?

24 A. Right.

25 Q. Page 6032, do you see that?

1 17:07 A. Page 6032. Yes, Mr Ang, we should have got out that
2 time all together, then I would have about 25 million.
3 This is after Lehman Brothers collapse.

4 Q. Page 6037, you manage to fill some orders but not
5 others?

6 A. Right.

7 Q. These are limit orders, meaning that if it hits that
8 price, you will sell 25,000 at a certain price; right?

9 A. Right.

10 COURT: Are they stop-loss orders?

11 MR ANG: No. Sorry, your Honour. I started using the word
12 "stop", then I realised. They are limit orders.

13 COURT: Meaning what?

14 MR ANG: Your Honour, sorry, I changed my terminology. I'm
15 getting confused because I've used that term "limit
16 orders" in terms of --

17 COURT: You've been on your feet a long time.

18 MR ANG: Yes.

19 Let me break it down into simple language. These
20 are orders that you sell certain quantities of shares if
21 it hits that price; correct?

22 A. Correct.

23 Q. That's all I needed.

24 A. And these were straight selling in the market, not
25 through DSPP. I mean not through the decumulators.

1 17:08 COURT: You were just selling the mother shares?

2 A. Yes.

3 MR ANG: Pages 6046 and 6047 together, you see you were
4 trying to sell Citigroup shares at prices in between \$26
5 to \$28; correct?

6 A. Yes. And this was amazing, this was very amazing, that
7 the price went up to \$26 or \$27 after Lehman Brothers
8 collapse.

9 COURT: After?

10 A. After.

11 COURT: After the collapse. Lehman Brothers collapsed what
12 date?

13 MR PILLAI: 15 September 2008.

14 A. And for the -- your Honour, for, like, many bonds and
15 these things, I understood that their value evaporate to
16 zero, but these shares still remain very high for at
17 least a month. So that's the time, you know, my advisor
18 should've appreciated the danger to be coming. There's
19 about one month time to unload or to do something.

20 MR ANG: At page 6046 you try to unload 150,000 Citigroup
21 shares at various prices, between \$26 and \$28; correct?

22 A. Mr Ang, which page are you talking?

23 Q. Page 6046. Do you remember that you were looking at it
24 just now and you were saying that it's an amazing time
25 because the price went up.

1 17:10 A. Yes.

2 Q. Right?

3 A. Yes.

4 Q. Then you see, at page 6047, that all the Citibank sell
5 orders, nothing done; right?

6 A. Right.

7 Q. Then at page 6089, he tells you you have an account
8 shortfall of US\$103,000; right?

9 A. Right. The bad time was coming.

10 Q. Turn to page 6149. It gives you the unwind price for
11 one of your Citigroup accumulators; right?

12 A. Right.

13 Q. Then page 6150, as you can see, four accumulators were
14 unwound?

15 A. Correct.

16 Q. Page 6151, more unwinding prices; right?

17 A. Right.

18 Q. Page 6174, November 2008, and you're trying to sell
19 200,000 shares of Citi at various limit prices of
20 between US\$14 to US\$16; correct?

21 A. Which page, Mr Ang?

22 Q. Page 6174.

23 A. Here I see I placed the order to sell 40,000 shares in
24 five orders, right? There are five for 40,000.

25 Q. A total of 200,000.

1 17:12 A. Yeah, very aggressively.

2 Q. Page 6187, you are trying to sell 300,000 Citi shares at
3 various prices?

4 A. Mr Ang?

5 Q. Yes.

6 A. To follow up that massive order to sell of 40,000 five
7 times, four of them got sold.

8 Q. Yes, I know that some got sold. These are all in the
9 documents. I just wanted to --

10 COURT: You are liquidating in a declining market?

11 A. Right.

12 MR ANG: Page 6203, this was an attempt to sell 300,000
13 shares, 300,000 Citi shares at prices between \$12 and
14 \$14; right?

15 A. Right.

16 Q. But nothing done, right, if you look at page 6204?

17 A. Right.

18 Q. Page 6205, more sell orders at lower prices.

19 Page 6215, the sell prices get lower, some are done.
20 I'm not suggesting that none are done.

21 A. Right.

22 Q. Page 6231, and then page 6240 there's a margin call
23 letter.

24 COURT: Page 6230.

25 A. Your Honour, you could see the sell become stepped up

1 17:14 and very aggressive.

2 COURT: Yes, but page 6230, there's also a margin call.

3 MR ANG: Yes, page 6230 there's one. I'm sorry, your

4 Honour.

5 And then if you look at page 6241, there's another
6 one.

7 COURT: The shortfall is about 260K?

8 MR ANG: But the page 6241 one, the shortfall is US\$1.367.

9 Right?

10 COURT: That's correct.

11 A. Yes.

12 COURT: One week later or six days later.

13 MR ANG: And then all your positions are unwound at around
14 22, 23 November 2008; correct?

15 A. Correct.

16 COURT: Where is that? Are you referring to anything here?

17 MR ANG: No, sir, nothing in particular.

18 But the positions were unwound; correct?

19 COURT: Because the next letter is page 6245, a letter of
20 demand.

21 MR ANG: Yes, page 6245 there is a letter of demand.

22 COURT: Presumably within that week the positions were
23 unwound.

24 MR ANG: Yes, the positions were unwound.

25 COURT: Which is his consent or by the bank in liquidating

1 17:15 his exposure?

2 MR ANG: I think he has confirmed, earlier when I
3 cross-examined him, in an earlier affidavit, where he
4 says that was with his consent, but he said under the
5 forceful --

6 COURT: "I was forced to ..."

7 MR ANG: No, he said, "Under the forceful advice" -- that
8 one.

9 COURT: The bank is not exercising its contractual rights
10 under its banking documents to liquidate his position
11 without his consent. That's what I am trying to
12 establish.

13 MR ANG: Yes.

14 COURT: Whether he was forced or not, he was aware and he
15 consented to, even though grudgingly. Is that the
16 position?

17 MR ANG: Yes.

18 COURT: All right.

19 MR ANG: Just now I showed you the letter of demand at page
20 6247. Pages 6249 and 6250 are basically your complaint
21 letter; is that right?

22 A. Right.

23 Q. Then you say, in the complaint letter at page 6249, in
24 the first paragraph, that Mr Wan should never have
25 introduced DSPPs to you; correct?

1 17:16 A. Correct.

2 Q. You notice, Dr Chang, that you never say anything in
3 your letter that Mr Wan suggested to you to use DSPPs to
4 acquire bank shares; right?

5 A. No, I did -- I don't think buying bank shares was the
6 problem. The problem was --

7 COURT: No, the point is that in your letter, written on
8 27 November, counsel is just pointing out to you that
9 you do not refer to DSPPs to buy bank shares. That
10 factually is correct, is it not?

11 In the letter, on page 6249, at that time when you
12 wrote this letter, that letter made no reference to DSPP
13 to buy bank shares. It refers to DSPPs?

14 A. Right. At -- you know, in my mind.

15 COURT: The answer is "yes" or "no", and then let him put
16 his question. Is the answer "yes" or "no"?

17 A. No, I didn't say it. You know, as I scanned very
18 quickly, I didn't say that. Correct.

19 But could I say something, Mr Ang, your Honour?

20 COURT: Yes, please.

21 A. This was a time when I was terribly shaken, terribly
22 shaken.

23 COURT: I understand.

24 He has not put his question to you right now.

25 You're not a lawyer, but he's just pointed out to you

1 17:18 that in your letter you make no mention of acquiring
2 bank shares. That is factually correct.

3 Why don't you listen to his next question and then
4 you can explain.

5 MR ANG: I have just one more question. Do you agree with
6 me that basically what you want from the bank, at page
7 6250, you want the bank to compensate you US\$18 million;
8 correct? Do you see that at page 6250?

9 A. Right.

10 Q. Which you say is about 30 per cent of your loss?

11 A. Right. The \$18 million that came up to my mind was that
12 at that time I was, as I said earlier, I was very --
13 very much shaken and I became panicky and frightened
14 because of the prospect of not paying the
15 US\$18 million taxes was, you know, was so -- made me so
16 frightened. So that's how the \$18 million came about.

17 Q. I just want to show you just a few short points from the
18 volume 2 of the transcripts in relation to conversations
19 that took place from July 2008 to September/October
20 2008, of which we have gone through the e-mails, and
21 then I'll be done.

22 Your Honour, could I just press on until 5.30?

23 Obligated, your Honour.

24 If you look at tab 2 of the phone conversations, the
25 bundle at tab 29.

1 17:21 A. Sorry, which page?

2 Q. Start at tab 29 first, which is a phone conversation of
3 31 July 2008. I just wanted to show you some short
4 portions of it.

5 A. Yes.

6 Q. You see at page 340 of tab 29 -- I think you are talking
7 about the context of Citigroup share prices.

8 "Johnny: Correct, when we had no alternative
9 because previously when it reached 26/27 what I meant
10 cut means to er, some people they cut off the contract
11 also, some people will sell off the shares ..."

12 Et cetera; right? He says:

13 "So for you, Director Chang, at that time when you
14 made the decision to invest at that moment although it
15 was a bit too early, but your price compared to other
16 people actually is not that bad, even if it's Abu
17 Dhabi's" --

18 (Pause due to technical issues)

19 MR ANG: Would this be an appropriate time, sir? I just
20 wanted to say that the first witness we'll be calling on
21 Monday is Mr Craig Orr, so I will be asking for your
22 Honour's leave to interpose him on Monday morning.

23 COURT: Yes, we anticipated that, by which time you will
24 already have the Springwell judgment, or at least read
25 it.

1 17:23 MR PILLAI: Yes.

2 MR ANG: Thereafter I may finish up one or two questions, or
3 a few questions.

4 COURT: That's fine, but he has re-examination and I have
5 a lot of questions too.

6 (5.21 pm)

7 (The hearing adjourned to Monday, 8 November 2010
8 at 10.00 am)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

P A G E

DR CHANG TSE WEN (on former2
affirmation)

Cross-examination by MR ANG (continued)2

MR ADRIAN JOHN BELL (sworn)82

Examination-in-chief by MR ANG82

Cross-examination by MR PILLAI84

Questions by THE COURT133

DR CHANG TSE WEN (on former135
affirmation)

Cross-examination by MR ANG (continued)135