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Independent Evaluation Office
of the International Monetary Fund

BACKGROUND PAPER



BP/08/12

Managing Conflicts of Interest and Other Ethics Issues at the IMF

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March 2008

Abstract

This study examines the IMF's structures, policies, and practices at the Executive Board and management levels as they relate to managing conflicts of interest, abuses of power, and other ethics issues. It also reviews the corporate governance policies of comparable organizations, as well as industry best-practice guidelines, to compare and benchmark IMF practices and highlight issues for the Fund to address. It finds that the Fund's governance system—structures, policies, and practices—is not well designed to identify actual and potential conflicts of interest and ethical problems of executive directors or the Managing Director. Thus the Fund should consider how to update its governance processes and procedures, both to ensure proper detection and addressing of ethical concerns, and to instill trust in the process for enforcing ethical conduct.

The views expressed in this Background Paper are those of the author(s) and do not necessarily represent those of the IEO, the IMF or IMF policy. Background Papers report analyses related to the work of the IEO and are published to elicit comments and to further debate.

JEL Classification Numbers:

Keywords: Ethics, executive board, conflicts of interest, governance

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ABBREVIATIONS

EBRD	European Bank for Reconstruction and Development
ED	Executive director
GAO	General administrative order
MD	Managing Director
OCEG	Open Compliance and Ethics Group
OECD	Organization for Economic Cooperation and Development
SOE	State-owned enterprise

EXECUTIVE SUMMARY

A critical element of the Fund's corporate governance is how well its internal systems are designed to promote ethical behavior and manage ethical problems involving those who are responsible for running the organization on a day-to-day basis. Stakeholders must be confident that this group's members do not have personal conflicts, and do not take advantage of their positions, thereby damaging the Fund's credibility and reputation.

This study examines the IMF's structures, policies, and practices at the Executive Board and management levels as they relate to managing conflicts of interest, abuses of power, and other ethics issues.

Main findings

The Fund's governance system—structures, policies, and practices—is not well designed to identify actual and potential conflicts of interest and ethical problems of executive directors or the Managing Director.

- i) The formal governance system promotes collegiality among and autonomy within the executive directors' and Managing Director's offices.
- ii) The formal, high-level process for considering and addressing ethical issues, management concerns, and misconduct among executive directors that is set forth in the Executive Board Code of Conduct lacks specific, written procedures to guide those responsible for investigating potential ethical problems and recommending follow-up actions.
- iii) The establishment of a Board Ethics Committee was a positive step, but one that could have been more effective had the Committee been active and the Code become a central resource for understanding and enforcing expectations for ethical behavior. Indeed, the absence of public ethics scandals seems to be more a consequence of luck than good planning and action.
- iv) Without guaranteed, credible protection from retaliation for staff members who report concerns about misconduct, there is an increased risk that executive directors' or a Managing Director's conflicts of interest and other ethical problems will not be detected.
- v) The absence of a central resource or mechanism for receipt of complaints and concerns (including anonymous complaints) about executive director or Managing Director misconduct further increases the risk that such concerns will go undetected and not be investigated.

- vi) The Executive Board has no authority to discipline an executive director who is found to have committed misconduct, beyond issuing a warning letter to the executive director and disclosing that letter to the relevant governors and/or home country authority.
- vii) The Fund's By-Laws establish the Executive Board's responsibility to consider and address alleged misconduct by the Managing Director, but there are no procedures explaining how to enforce this responsibility. The By-Laws do not specify whether the Managing Director is subject to the very clear Staff Code or the more ambiguous Board Code, or both. Currently this is specified only in the MD's employment contract.
- viii) Consideration should be given to strengthening existing safeguards against conflict of interest with regard to post-Fund employment, including by making them more explicit.

Section II presents the main findings. Section III reviews the corporate governance policies of comparable organizations, as well as industry best-practice guidelines, to compare and benchmark IMF practices and highlight issues for the IMF to address.

I. PURPOSE AND SCOPE OF THE STUDY

1. Stakeholders everywhere have come to demand sounder governance in private, public, and intergovernmental institutions. In the private sector, a broad consensus has emerged in the past two decades about what constitutes good governance, and this consensus is now embodied in a variety of codes and principles. Elements of this consensus are seen as applicable to intergovernmental organizations, and several of them, including the World Trade Organization, the United Nations, the Bank for International Settlements, and the Organization for Economic Cooperation and Development, have recently taken a close look at their own governance (IEO, 2007).
2. One critical element of corporate governance is how well the Fund's internal systems are designed to promote ethical behavior and manage ethical problems involving those who are responsible for running the organization on a day-to-day basis. Stakeholders must be confident that this group's members do not have personal conflicts, and do not take advantage of their positions, thereby damaging the Fund's credibility and reputation.
3. Public and private organizations also face difficulties in addressing conflict of interest and other ethics issues. But because they are subject to external laws and regulations, agency investigators, and the judicial system, as well as oversight by external watchdog organizations and stakeholders, they have strong incentives to address their governance problems. This paper reports on the Fund's current structures, policies, and practices that are designed to identify and manage conflicts of interest and prevent/address the abuse of power by members of the Executive Board² and Management³, including the Codes of Conduct for the Executive Board and staff, the provisions of the Managing Director's contract, the operations of the Board's Ethics Committee, and the Fund's By-Laws and Rules and Regulations. The main findings are presented in Section II below. Section III reviews best-practice guidelines and codes of conduct with relevance for the IMF.

II. FINDINGS

A. The Fund Lacks Clearly Stated Expectations and Guidelines for Ethical Behavior

The Fund's formal governance system promotes collegiality among, and autonomy within, the executive directors' and Managing Director's offices.

² "Executive Board" refers collectively to the executive directors, their alternates, and senior advisors.

³ "Management" refers collectively to the Managing Director and three deputy managing directors.

4. Though the ultimate authority at the Fund is the Board of Governors⁴, consisting of one governor for each of the 185 member countries, it is the 24-member Executive Board that is expected to “conduct...the business of the Fund, and for this purpose shall exercise all the powers delegated to it by the Board of Governors.”⁵ However, the executive directors that constitute the Board are not expected to act solely in the interests of the Fund. This structure has led to an expectation and reality that the executive director’s duty of loyalty is divided between his/her constituency and the Fund.⁶ The history and justification for this divided loyalty are described in an article by former Fund General Counsel, Francois Gianviti (1999). I found no document that requires executive directors to direct their loyalty solely to the IMF.

5. The Executive Board selects the Managing Director, who serves as the Executive Board’s chair.⁷ He also is “chief of the operating staff of the Fund and shall conduct, under the direction of the Executive Board, the ordinary business of the Fund. Subject to the general control of the Executive Board, he shall be responsible for the organization, appointment, and dismissal of the staff of the Fund.”⁸

6. Neither the executive directors nor the Managing Director receive training or are educated regarding expectations the Fund has for them to behave ethically, enforce proper standards of ethical behavior in their offices, and address ethical dilemmas and concerns among their staff. The executive directors receive the Board Code at orientation, but little more information regarding ethical standards. Anecdotal evidence suggests that while the executive directors and Managing Director may, as senior officials who may have held important government positions in their home countries, understand the concept of ethical behavior, they may not understand what this means in terms of their duties to the Fund and the Fund’s expectations of them regarding ethical leadership and management of ethical misconduct issues within their own offices. This is important because of the diversity of cultures and legal systems in their countries of origin.

The formal, high-level process for considering and addressing ethical issues, management concerns, and misconduct among executive directors set forth in the Executive Board Code of Conduct lacks the specific, written procedures to guide those responsible for investigating potential ethical problems and recommending follow-up actions.

⁴ Articles of Agreement XII Sec. 2. Articles of Agreement are hereinafter referred to as “Article [number inserted].”

⁵ Article XII Sec. 2(j).

⁶ Individuals interviewed for this paper referenced the executive director’s “divided loyalties.”

⁷ The Managing Director is non-voting, except in tie-breakers. Article XII Sec. 4(a).

⁸ Article XII Sec. 4(b).

7. Like other international financial institutions and some corporations, the Fund maintains separate codes of conduct and policies for the Executive Board and the staff.⁹ There is nothing inherently wrong with this; in fact, separate codes may be helpful, in that they will reflect the different roles and expectations of the Executive Board, management, and staff. However, if the codes differ in ways that seem unfair to one group, employees may come to resent their more stringent rules. Also, when certain people (the Managing Director, in the IMF case) are not mentioned in either, staff can be confused about what rules apply to them.

8. The IMF Board's decision to establish a separate Code of Conduct for Members of the Executive Board ("Board Code") without being legally required to do so, demonstrates the Board's good faith and interest in ensuring ethical behavior.

9. The Board Code is the single source of information regarding the Fund's expectations for executive directors' behavior. For this reason, it is important that the Board Code set forth clear expectations. Yet, the Board Code's language reads, for the most part, as a set of recommendations, rather than rules. For example, the Board Code states that executive directors "*should* observe the highest standards of ethical conduct," and "*should* ensure they observe local laws,"¹⁰ rather than that they are *required to* or *shall* observe the highest standards of conduct and local laws.¹¹

10. Given the thought and planning that went into creating a Board Code, and the repeated use of non-binding language, one might conclude that the absence of mandates was deliberate. As one interviewee stated, the Board Code relies on the possibility of censure and the embarrassment factor, rather than on clear, strict rules to enforce good behavior among executive directors.

11. By contrast, the IMF Staff Code is detailed. A plethora of policies and procedures complement it, and communications are posted and delivered to staff about the rules.¹² The Ethics Office maintains written procedures to guide its investigations of alleged staff

⁹ See, for example, the Board and Staff Codes of Conduct for the World Bank, Inter-American Development Bank, and European Bank for Reconstruction and Development.

¹⁰ Code of Conduct for Members of the Executive Board, p. 4. These are just examples; throughout the Code the references are to what executive directors "should" do.

¹¹ For example, compare this language to the AIG Director, Senior Officer, and Senior Financial Officer Code of Business Conduct and Ethics statement on Honest and Candid Conduct: "Each director, executive officer, and senior financial officer owes a duty to AIG to act with integrity. Integrity *requires* among other things, being honest and candid." Other codes I reviewed also have similarly strong language.

¹² These include the so-called 'N-Rules', general administrative orders, and other policies; as well as the Ethics Office Investigation Procedures, the procedures governing Grievance Committee hearings, and procedures for the Administrative Tribunal. This list is not exhaustive but provided as an example.

misconduct. And there are multiple processes for review of personnel decisions (e.g., informal Human Resources Department review, Grievance Committee, Administrative Tribunal).

12. If the culture of the Fund were such that both the letter and spirit of the Fund's own rules prevailed, this discussion about wording might be insignificant. However, interviewees have suggested that the culture of the Fund is to overemphasize the letter but not the spirit of these rules. If this is true, then there is a risk that would-be violators will consider the language to be more permissive than was intended (e.g., that "should" means "should but need not"). Of course, if the language is intended to be more permissive than directive, and the Board Code really is designed to be inspirational, then there is a heightened risk that would-be violators will feel free to not take the Board Code seriously and instead do as they please.

The establishment of a Board Ethics Committee was a positive step, but one that could have been more effective had the Committee been active and the Code become a central resource for understanding and enforcing expectations for ethical behavior. Indeed, the absence of public ethics scandals seems to be more a consequence of luck than good planning and action.

13. The Executive Board established an Ethics Committee in 1998 to consider executive directors' ethical issues and provide, upon request, guidance to the executive directors. The Ethics Committee consists of five executive directors (and four alternates) selected by the Board at the general election of executive directors.¹³ The Fund's General Counsel is the permanent Secretary of the Committee.

14. Having a Board Code (formally adopted in 2000) and an Ethics Committee are steps in the right direction. The Executive Board should be commended for not waiting until it faced a public scandal to have decided that a Code of Conduct is necessary. And yet, to be effective, any tool must be used. The reality is that the Board Code is not often consulted and the Ethics Committee has never met to consider any issues other than its own procedures.

15. Why, after nine years, has the Board Code not become an important reference for executive directors? Why has the Ethics Committee not met? Is it really possible that no executive director has faced a potential conflict of interest requiring Ethics Committee consultation? Have there been *no* allegations against an executive director or Managing Director that were worthy of investigation? The answers to these questions are largely unknown. This suggests a need for a formal resource for consultation and investigation regarding ethics issues.

¹³ Code of Conduct for Members of the Executive Board.

16. A review of the annual numbers of staff requests for advice and allegations by the Ethics Officer¹⁴ further suggests that it is unlikely that *no* issues have arisen among the executive directors or management that warrant consideration by the Ethics Committee or Executive Board. The Ethics Officer states in her annual report for 2005–06 that organizations can expect to receive about three contacts (requests for advice or allegations) per 100 employees per year. The report notes, however, that the Fund’s experience exceeded this ratio in 2006, with 5.43 contacts per 100 employees. The number was more consistent with the Ethics Officer’s prediction in previous years.

17. Ethics Committee members who are responsible for conducting investigations do not receive training on how to conduct an effective investigation of alleged misconduct, for example covering:

- The standards that govern when the Ethics Committee is obligated to investigate an allegation of misconduct; for example, when the allegation arises from an anonymous complaint, is vague, or relates to conduct that is not specifically prohibited by criminal law or internal policy, or to conduct that relates to an executive director’s personal affairs.
- Expectations regarding creation and maintenance of records related to inquiries and investigations.
- The process for ensuring that complainants are not retaliated against for making good faith/reasonable complaints of misconduct against an executive director.

18. The recently retired Dean of the Executive Board (the longest serving member of the Executive Board) was a well-known, respected resource for consultation on ethics and conduct issues. In practice, he may have been the closest thing to an Ethics Officer for the Executive Board, and in fact sat on the Ethics Committee.¹⁵ However, he was not an Ethics Officer, and himself pointed out the limits of his informal investigative role. Interviews for this paper indicated that he was widely seen to be the only person with sufficient authority to inquire into ethical problems of the Fund’s Executive Board or Managing Director, and that his personal integrity was what lay behind this authority. Others corroborated that he was the individual whom most would have approached with concerns about an executive director or the Managing Director.

¹⁴ See the Ethics Office Annual Reports for 2005–06, which detail several investigations annually of potential ethics violations. According to this report, the Ethics Office has received an average of 47 allegations per year and 61 requests for advice since 2001. See pp. 11–14.

¹⁵ The Executive Board had the same Dean from the time of the creation of the Ethics Committee in 1998 until the end of 2007, the period covered by this evaluation. A new Dean was named beginning in 2008.

19. Further, neither the Ethics Committee nor the Dean's office has financial resources allocated to it to pay an outside party to conduct an investigation. In 2005, the Ethics Committee announced its intention to hire a law firm on retainer to conduct investigations as necessary.¹⁶ However, this plan was never executed because the Chairman of the Ethics Committee left the Executive Board, and no one pursued the issue afterward. Therefore, it is unlikely that an effective investigation of alleged misconduct by an executive director or by the Managing Director could be initiated as quickly as it would need to be.

20. Thus, under the current structure, how ethics issues at the Managing Director and executive director levels are handled depends solely on the interests and personal integrity of those who are designated as contact points for ethics issues. This absence of formal structure may work well, so long as there are Ethics Committee members and a Dean who are interested in ethics issues and the Fund's well-being generally, and are willing to take time for confidential inquiries and difficult conversations.

21. An organization that allows unethical conduct by its executives will inevitably see similar behavior among its lower-level employees. At the Fund, the Board's decisions to establish a Board Code and an Ethics Committee are a sign of change in the tone at the top. However, at least one ethics expert at the Fund believes that despite these actions, there have been no clear statements of values and ethical expectations from the Executive Board. Vague statements in the Board Code reinforce this perception that there is little top-level concern about ethics.

B. The Fund Lacks Clear and Protected Arrangements for Reporting Possible Misconduct

The system may discourage reports of wrongdoing and increase the risk (and perceived risk) of retaliation by executive directors and the Managing Director against those who report misconduct. Without guaranteed, credible protection from retaliation for staff members who report concerns about misconduct, there is an increased risk that conflicts of interest and other ethical problems of an executive director or Managing Director will go undetected.

22. Neither the Board Code nor the Staff Code of Conduct contains a clear statement of whistleblower protection and anti-retaliation for complaints against the executive directors or Managing Director.¹⁷ The Board Code makes no reference to whistleblower and anti-retaliation issues. The Staff Code references these issues but only in relation to other staff

¹⁶ See IMF Board Paper, "Selection of External Consultant Firm to Assist the Ethics Committee of the Board," approved by Chairman of the Ethics Committee, dated February 24, 2005.

¹⁷ See Ethics Guidelines for Conducting Inquiries Related to Allegations of Misconduct.

members and only in a “question and answer” format. Indeed, whistleblower protection is a known concern at the Fund, but it has not been actively addressed yet.¹⁸

23. And yet, reports from interviews with the Ethics Officer and Ombudsman have consistently voiced concerns raised by staff and outsiders (such as vendors) regarding actual and perceived retaliatory conduct.¹⁹

24. In particular staff who work in executive directors’ offices face a special risk of retaliation by an executive director, with unclear recourse. The By-Laws state that “Secretarial and staff services, office space, and other services incidental to the performance of the duties of the executive directors and alternates shall be provided by the Fund.”²⁰ The Board Code states that “executive directors should apply, to the extent possible, the provisions of the Fund Staff Code of Conduct to assistants in their own offices.”²¹ However, most people interviewed on this issue believe that there is very little that the staff in executive directors’ offices can do if they face unfair treatment or retaliation by an executive director. They could move to a position within Fund staff, although it is not certain that this is guaranteed. In any case, an executive director would face no serious threat to his or her position in the face of a complaint from an office staff member.

25. A staff member can file a grievance with the Grievance Committee regarding a decision taken by the Managing Director.²² However, multiple layers of administrative review are required for these and any other staff concerns, which could serve to chill staff members’ efforts to seek redress of grievances, especially those grievances involving the Office of the Managing Director.

26. Even executive directors may not feel empowered to report misconduct by a Managing Director for fear of retaliation by the Managing Director. To retaliate against an executive director who complained about his conduct, a Managing Director could, for example, delay an initiative that is important to an executive director’s constituency, or complain to an executive director’s home country that the director was being uncooperative.

¹⁸ Whistleblower protection issues are a concern at the World Bank as well; see Vaughn (2005). In December 2007, the Fund’s new Managing Director announced his intention to put in place whistleblower protection but details have yet to be provided.

¹⁹ See, for example, the Ethics Officer’s Report to Fund Staff for 2004; Ethics Office Annual Reports for 2004–2005 and 2005–2006.

²⁰ By-Laws, Section 14(j).

²¹ Board Code, p. 3. Note that the words “should” and “to the extent possible” make what otherwise could be a strong statement much less so.

²² See GAO No. 31 Rev. 3, Sec. 6.06.

27. A survey of Board members indicated that a significant minority of respondents feared retaliation. Because the issue is structural, the Fund has avoided any serious analysis of whether the risks should be addressed. However, there may be ways to lessen people's fears about reporting concerns without changing the Fund's organizational structure.

28. Neither the policies nor the structure of the Fund encourages any person to report misconduct by an executive director or Managing Director to any authority. Nothing in the Staff Code of Conduct explains how to report a concern about an executive director or Managing Director. Indeed, no direct contact information at all is provided in the Staff Code for those who need to report misconduct about an executive director or the Managing Director.

29. In contrast, most corporate Codes of Conduct (see Section III, below) either strongly encourages or requires employees to report serious misconduct (e.g. violations of the Code of Conduct or financial improprieties) of which they are aware.²³ All provide multiple avenues for reporting, complete with contact information. Often, a management-level employee's failure to report known misconduct is itself grounds for discipline.

The absence of a central resource or mechanism for receipt of complaints and concerns (including anonymous complaints) about executive director or Managing Director misconduct further increases the risk that such concerns will go undetected.

30. A person who decides to report a complaint about an executive director or Managing Director has several people to whom he may make a report.

- If he is a staff member, he may talk to his Human Resources business representative, the ethics officer, or the ombudsman.
- Regardless of his status, he may report his concern to any executive director since an executive director has the authority to raise an issue regarding another executive director or the Managing Director. However, none of these people would be required to escalate such a report.
- For executive director-related concerns, he may also go to the Ethics Committee (or any Ethics Committee member). Given the formal divide between the Executive Board and the staff, it is unlikely that he will openly report his concerns to an executive director.

²³ Again, see AIG's Director and Senior Officer Code, p. 5, which states that "Any director, executive officer, or senior financial officer who becomes aware of any existing or potential violation of this Code shall promptly notify AIG's General Counsel...AIG will not tolerate retaliation for reports of violations of this Code made in good faith."

31. Although there are multiple avenues for reporting, there is no definitive authority to which reports about any misconduct can be made. And yet, this is exactly what a person who has a complaint to make needs: an easy-to-locate, confidential resource or person with whom to share his concern. If he has to figure out how to navigate the system to find someone who can take his report, he may just stop trying. This greatly increases the risk that high-level misconduct could go undetected.

32. In addition, neither the rules nor the structure of the Fund allow or encourage anonymous reports of misconduct. In fact, the Ethics Office Annual Report for 2005–2006 states that the Fund does not accept anonymous complaints (p. 27). Thus, an employee who wants to report misconduct (whether by another staff member, the Managing Director, or an executive director) but fears retaliation has limited options: essentially, he or she can consult the ombudsman or ethics officer for guidance. While the Fund has concerns that anonymous reports will encourage unfounded allegations and slander against senior officials, the lack of a ‘hotline’ or some other anonymous reporting mechanism may cause some actual misconduct to go unreported.

33. Thus, IMF employees may feel they have no way to report misconduct in a manner that provides them with credible protection from retaliation. This possibility is compounded at the Fund, since the executive directors and the Managing Director are not subject to civil actions for damages. In corporations, misconduct can be reported to outside enforcement agencies for investigation and possible civil or criminal charges.

C. The Fund Lacks Clear Disciplinary Arrangements

The Executive Board has no authority to discipline an executive director who is found to have committed misconduct, beyond issuing a warning letter to the executive director, and disclosing that letter to the relevant governors and/or home country authorities.

34. The Fund can exercise no “ultimate” enforcement authority over executive directors for violations of ethics principles. Although the Board of Governors is supposed to oversee generally the conduct of the Executive Board members, there seems to be no active, on-site governing body to enforce ethical conduct among executive directors. For appointed executive directors, oversight is carried out by the Board of Governors and home country officials. For an executive director who is elected, oversight of his behavior has little force, since that executive director may not be removed from office before his or her term expires.²⁴

35. The Fund’s policies do not require an executive director to resign or be subject to corrective action upon a finding (by the Ethics Committee or the Executive Board or the

²⁴ Article XII, Section 3, which is probably the best place for such language, contains no language regarding removal of an executive director.

Board of Governors) of misconduct.²⁵ In fact, because neither the Board of Governors nor the Executive Board has ever held a meeting to consider sanctions against an executive director for misconduct, it is difficult to know whether issuing a warning letter would be a strong enough form of discipline to constitute successful corrective action against an executive director.

The Fund's By-Laws establish the Executive Board's responsibility to consider and address alleged misconduct by the Managing Director, but there are no procedures explaining how to enforce this responsibility.

36. The Executive Board alone has the authority (with a majority vote) to remove a Managing Director who has engaged in misconduct.²⁶ But no committee is designated to collect and consider claims or concerns expressed against the Managing Director. Any issue related to the Managing Director's conduct must be raised before the entire Board.

37. How such a complaint or concern would be brought forth and investigated by the 24-member Board is unclear. Unlike at the World Bank, the Fund has no formal procedures for investigating an allegation of misconduct by the Managing Director.²⁷ The Executive Board Ethics Committee—which is logically the group that would handle such complaints and make recommendations—has no responsibility for this task.

38. The ethical standards against which the Managing Director must be measured are unclear to those who would need to enforce them. The Managing Director is subject either to the Staff Code or to both the Staff Code and the Board Code, but neither Code actually states that it applies to the Managing Director. The current Managing Director's contract²⁸ only states that:

[Y]ou shall observe the standards of conduct applicable to staff members of the International Monetary Fund. In that regard, you shall avoid any conflict of interest, or the appearance of such a conflict ... If you need clarification regarding the meaning of the above requirements or their application in a particular circumstance, you should consult with the Executive Board.

While this seems to imply that the Managing Director is subject to the staff code of conduct, the mechanism for its application is not clear.

²⁵ Article XXVI seems to be the best place for such language, but no such language exists.

²⁶ Articles of Agreement XII, Sec. 4(a) and Sec. 5(c).

²⁷ See World Bank: Second Report of the Ad Hoc Group, May 14, 2007 regarding the Paul Wolfowitz investigation. The report references the World Bank's procedures for such investigations.

²⁸ Terms of Appointment of Dominique Strauss-Kahn as Managing Director of the International Monetary Fund, November 2, 2007, p. 1.

39. Consider, in contrast, the World Bank President's 2007 contract, which clearly states that "You will adhere to the standards set forth in the Code of Conduct for Board officials (the Code). You will also observe the standards of ethical conduct applicable to staff members of the Bank, where these reflect a stricter standard."²⁹

D. There Are Deficiencies in the Policy on Post-Fund Employment

40. Senior public servants who leave public service are frequently subject to "cooling off" periods designed to ensure, among other things, that confidential or market-sensitive information to which they may have had access is not compromised. Some government agencies also restrict contacts between the departing official and their agencies for a prescribed period following departure, to avoid the official's use of personal contacts to obtain confidential information or to "lobby" the agency. In many private corporations, particularly in the financial sector, the employment contracts of senior officials restrict the type of activities in which the official may engage for the period just after separating from the company. In the IMF, the most senior officials, and the Managing Director in particular, have access to highly market-sensitive information. As with senior public servants, a "cooling off" period would seem necessary for senior Fund officials, not the least to protect the institution from possible reputational damage.

Restrictions on the Managing Director

41. According to the provisions of his employment contract, the Managing Director is required to "observe the standards of conduct applicable to staff members"³⁰ and "shall avoid any conflict of interest, or the appearance of such a conflict."³¹ For the Managing Director as for IMF staff, there are no specific restrictions on post-Fund employment, though the MD's terms of appointment stipulate that he may not, without the Executive Board's approval, apply for or accept any public or private employment or position.³² The MD is also required,

²⁹ Terms of Appointment of Robert B. Zoellick as President of the International Bank for Reconstruction and Development, June 29, 2007, p. 2.

³⁰ In May 2006, the IMF adopted a new policy for staff on post-Fund employment to limit the scope for conflicts of interest arising from negotiations for employment outside the Fund (see "Conflicts of Interest—Post-Fund Employment", IMF Staff Bulletin No. 06/4, May 10, 2006). This policy augments the IMF Code of Conduct for Staff, which stipulates that "...staff members who separate from the IMF should not use or disclose confidential information known to them by reason of their service with the IMF and should not contact former colleagues to obtain confidential information".

³¹ The current Managing Director's contract is available at www.imf.org/external/np/sec/pr/2007/pr07245.htm

³² This is more stringent than for Fund staff, who are not required to notify the Fund when they enter into negotiations with prospective employers regarding potential employment. However, staff are *encouraged*, in cases where such prospective employment would create a conflict of interest (real or apparent), to consult the

(continued...)

if he wishes to resign, to “give the Fund reasonable advance notice of his decision.” If the Managing Director decides to seek political office, his immediate offer of resignation is required.

42. For the Managing Director, the restrictions on applying for or accepting any public or private employment, combined with the requirement of advance notice of resignation, have been interpreted by the Fund’s Legal Department as providing “the possibility” that the Board could “impose a type of cooling-off period prior to his separation, during which actual or perceived conflicts of interest could be addressed.”³³ The rule for Fund staff, including all deputy managing directors, is that if the Director of the Human Resources Department (HRD) determines that a real or apparent conflict of interest is present, a recommendation for recusal from assignments, reassignment, or limits on access to documents may be made. The Director of HRD may also decide to extend the minimum 30-day notice period for resignation to up to 90 days. This has been interpreted as a *de facto* cooling off period during which the staff member’s access to sensitive materials can be restricted.

43. It is unlikely that the Managing Director’s access to sensitive information could be shielded to the same extent as for staff. In this regard, the *de facto* standard of protection against a conflict of interest on the part of the MD could be seen as less stringent than that for IMF staff. This carries a potentially significant reputational risk for the Fund. Consideration should therefore be given to strengthening existing provisions, including by making them more explicit, and perhaps by including a provision committing the Managing Director not to be employed by a financial institution for a given period after leaving the IMF. While it may provide difficult to make such a commitment legally binding, there would likely be a significant reputational cost to any departing Managing Director who reneged on his commitment.

Restrictions on members of the Executive Board

44. Members of the Executive Board (EDs, alternates, and senior advisors) are subject to their own Code of Conduct. The dictates of that code with respect to post-Fund employment are, as with other aspects discussed elsewhere in this paper, less strict than for staff. The Code indicates that members of the Executive Board should not allow negotiations on or acceptance of an offer of post-Fund employment:

...to affect the performance of their duties. Where involvement in a Fund matter could be, or could be perceived as, benefiting the prospective employer, regardless of

Ethics Officer at an early stage. Staff are only required to notify the Director of the Human Resources Department (HRD) when they receive a formal offer of employment from any public or private institution whose financial interest may be affected by the work of the Fund.

³³ Memorandum from Legal Department to IEO, February 19, 2008.

whether there is detriment to the Fund or their constituents, executive directors should recuse themselves. Executive directors who leave the Fund should not use or disclose confidential information known to them by reason of their service with the Fund, and should not contact executive directors or other Fund officials (other than through official channels) to obtain confidential information...³⁴

45. There are no provisions requiring notice of negotiation for, or acceptance of, post-Fund employment. The exception is with respect to employment on the regular staff of the Fund. Fund management has adopted a policy that, unless previously employed on the staff, “executive directors will not be appointed to the staff or any other type of Fund employment (except as Deputy Managing Director) for a period of at least one year (six months in the case of Alternates) following their departure from the Board, and such cases are expected to be few.” There are no similar time restrictions on senior advisors, even though they are considered to be members of the Executive Board.

46. Executive directors and their staff generally have narrower access to highly market-sensitive information than does the Managing Director. Moreover, many of them return to their governments or central banks after their time on the Board, rather than moving to the private sector. Nevertheless, consideration should be given to requiring an explicit commitment to restrictions on post-Fund employment for a set period after leaving the Board.

III. GUIDELINES AND CODES OF CONDUCT WITH RELEVANCE FOR THE IMF

A. Guidelines and Principles

47. ***OECD Principles of Corporate Governance Chapter VI—The Responsibilities of the Board.*** The Organization for Economic Co-operation and Development (OECD) guidelines (OECD, 2004) set forth principles for corporate board governance internationally. These are intended to be a tool for the World Bank and the Fund to use in voluntary assessments of companies³⁵, and are recognized as a key source of guidance worldwide for corporations seeking to improve their governance practices.

³⁴ Code of Conduct for the Members of the Executive Board of the International Monetary Fund,” adopted July 14, 2000, revised December 12, 2003.

³⁵ See the Methodology for Assessing the Implementation of the OECD Principles of Corporate Governance, (OECD, 2006). The Methodology states (Paragraph 2) that:

The OECD Principles (Principles) are one of the Twelve Key Standards for Sound Financial Systems adopted by the Financial Stability Forum (FSF). Most standard setters have developed an associated methodology that, together with the standards, forms the basis for the voluntary assessments undertaken by the IMF/World Bank either in the form of a Review of Observance of Standards and Codes (ROSC) or as part of the Financial Sector Assessment Program (FSAP). One exception to this development has been the OECD Steering Group on Corporate Governance, which never developed an

(continued...)

48. The OECD's overarching principle for Board governance, outlined in Chapter VI, is stated as follows:

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders. The outcome advocated is that companies are professionally managed but subject to effective oversight by the board so as to prevent self-dealing and to ensure that the interests of shareholders are taken into account by the management. In other words, the board's role is to contain the agency problem associated with professionally managed, public companies.

49. The question for the Fund is whether the Executive Board is able to contain its own "dual agency" problem associated with being a professionally managed, international financial institution. Currently, Executive Board members are less accountable for their own behavior than they should be, at least as a formal matter.

50. A secondary principle is Principle VI.A, which states that:

Board members should act on a fully informed basis, in good faith, with due diligence and care and in the best interests of the company and its shareholders. The outcome sought by the principle is a board which is informed and objective in its oversight of professional management. It is arguably the most important individual principle of the Principles. Indeed, if it were fully implemented and enforced in a jurisdiction there would be little need for other individual principles. In many ways, a number of the other principles are intended to ensure that the principle is implemented as effectively as possible.

51. This standard covers the central two duties of a Board in the usual sense: to exercise a duty of care and a duty of loyalty to the company and its shareholders. As stated above, the Fund's executive directors have dual loyalties between the Fund and their constituencies. However true, at no time should an executive director act in a way that places his or her *self-interest* before his or her duty to his country or electorate or duty to the Fund. When an executive director engages in misconduct, self-interest versus Fund interest is the conflict at issue. It should be clear that, dual loyalties notwithstanding, an executive director always has a duty to avoid conduct that would inure to the detriment of the Fund. Such clarity can be present in a policy, but without a dedicated enforcement mechanism it is without strength. The Fund must consider whether its executive directors can avoid self-dealing even in the face of having divided loyalties, and how to self-manage these problems. Another question is

assessment methodology for the Principles, with the World Bank developing its own procedures for assessment purposes. At its October 2004 meeting, the Steering Group decided that the analytical framework, which would underpin its dialogue on implementation of the Principles (henceforth termed Methodology), should be developed so that it could also serve as the methodology for the ROSCs that use the Principles as the reference standard.

how the Executive Board truly can be empowered to provide effective, consistent oversight of the Managing Director.

52. A third principle is Principle VI.C, which states that:

The board should apply high ethical standards. It should take into account the interests of stakeholders. The principle makes it clear that the board is responsible for establishing the “tone at the top” not only by its own actions, but also in appointing and overseeing key executives and consequently management in general. An overall framework for ethical conduct goes beyond compliance with the law, which should always be a fundamental requirement.

53. This principle reinforces the ideal that the Executive Board should actively promote a culture that goes beyond the letter of the rules to capture the spirit of those rules.

54. *The OECD’s Guidelines for Multinational Enterprises*, while more general, may also be a helpful reference. These guidelines (OECD, 2000) support the concepts of good governance through the establishment and promotion of clear policies and practices. Some principles include:

- Tone from the top: “Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.”
- Education and awareness: “Promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.”
- Whistleblower protection: “Refrain from discriminatory or disciplinary action against employees who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise’s policies.”³⁶

55. *OECD Guidelines on Corporate Governance of State-Owned Enterprises*—The OECD also has issued guidelines for internal governance of state-owned enterprises (SOEs) (OECD, 2005). Similarly to the Principles of Governance (above), these guidelines recommend that SOEs develop and implement codes of conduct and compliance programs aligned with the OECD’s Guidelines for Multinational Enterprises. Regarding the relationship of the organization and its senior officials to stakeholders, the Guidelines for SOEs state:

³⁶ See <<http://www.oecd.org/dataoecd/56/36/1922428.pdf>> p. 19.

The code of ethics should include guidance on procurement processes, as well as *develop specific mechanisms protecting and encouraging stakeholders, and particularly employees, to report on illegal or unethical conduct by corporate officers*. In this regard, the ownership entities should ensure that SOEs under their responsibility effectively put in place safe harbours for complaints for employees, either personally or through their representative bodies, or for others outside the company. SOE boards could grant employees or their representatives a confidential direct access to someone independent on the board, or to an ombudsman within the company. The codes of ethics should also comprise disciplinary measures, should the allegations be found to be without merit and not made in good faith, frivolous, or vexatious in nature. [*emphasis added*] (OECD, 2005: p. 39)

56. Thus, even for SOEs, the OECD recommends a strong compliance program and reporting mechanism for employees to report concerns about senior officials.

57. ***Open Compliance and Ethics Group Governance Model***. OCEG is one of few nonprofit organizations offering comprehensive guidance, standards, benchmarks, and tools for integrating governance, risk, and compliance processes. It seeks to help organizations drive performance by enhancing corporate culture and integrating governance, risk management, and compliance processes. Its founders include numerous ethics and compliance experts, as well as major corporations.³⁷

58. ***OCEG’s Foundation “Red Book”***³⁸ provides a comprehensive set of guidelines for organizations to use in their efforts to build and promote a culture of ethical behavior. The guidelines combine the key elements of the most important governance guidelines³⁹ to recommend, among other things, specific written processes for:

- developing a Code of Conduct;⁴⁰
- communicating expectations regarding ethical behavior;⁴¹

³⁷ See OCEG’s website at <<http://www.oceg.org/view/LeadershipCouncil>> for a list of founding members and Leadership Council participants, including Global Compliance (Brightline Compliance’s parent company as of June 2007), Deloitte, Dell, Ernst & Young, PricewaterhouseCoopers, Unilever, and Wal-Mart.

³⁸ The Red Book can be found at <<http://www.oceg.org/view/Foundation>>

³⁹ Sources include: US Federal Sentencing Guidelines for Organizations, DOJ Holder/Thompson Memo, Sarbanes-Oxley, SEC 21(a) enforcement decisions, Caremark decision, COSO Internal Control, COSO ERM/AS NZS 4360, ISO 9000 series/6s quality frameworks, various U.S. regulatory frameworks and guidance (e.g. HHS), and various CSR frameworks and guidance (AA1000, SA8000, etc.).

⁴⁰ Red Book at PR2, “Develop Code of Conduct.”

- assessing risk related to ethical misconduct;⁴²
- training employees and senior leadership on code requirements and expectations;⁴³
- receiving, investigating, escalating, and managing complaints of misconduct;⁴⁴ and
- protecting the anonymity and confidentiality of those reporting misconduct.⁴⁵

B. Codes of Conduct

59. My review of several codes of conduct and literature on the common elements of codes of conduct supports my assertion that it is a best practice for codes to contain clear, strong language regarding the critical requirements for ethical behavior.

60. In 2005, the *Harvard Business Review* published an article (Paine and others, 2005) that surveyed best-practice guidelines and the Codes of Conduct of respected corporations to glean the common principles. The article sets forth a “Global Business Standards Codex” that “is intended not as a model code that companies should adopt as is, but as a benchmark for those wishing to create their own world-class code. It represents [Harvard Business School’s] attempt to gain a comprehensive, but simplified, picture of the conduct expected of today’s corporations.” In addition to provisions on individuals’ duty of loyalty, prevention of harassment and discrimination, and responsiveness to employees, “provisions forbidding retaliation against employees who report misconduct are also widespread in codes of conduct” (Paine and others, 2005: 5).

61. ***Independent Review of Corporate Codes of Conduct.*** I reviewed Codes of Conduct for 13 multi-national, highly respected corporations from various sectors (see list in Annex).⁴⁶

⁴¹ Red Book at C1.1, “Define Principles and Values,” including defining the organization’s values and communicating those values internally and externally.

⁴² Red Book at P05.1, “Define Risk Assessment Methodology.”

⁴³ Red Book at PR3.1.S01, “Train governing authority, high-level personnel, substantial authority personnel, organization employees, and as appropriate, organization agents, on the compliance and ethics program as well as on individual roles and responsibilities.”

⁴⁴ Red Book at R1.1.101, “Define issue management methodology including these key steps: intake, categorization of an issue or question, confirmation/validation of an issue, analysis of an issue, investigation of an issue, escalation of an issue, resolution of issue/question, recommended remediation/discipline of individuals.

⁴⁵ Red Book at R1.1.109, “Define a policy and procedure for protecting the anonymity of reporters during processing and resolution.”

⁴⁶ The 13 organizations are a representative sample of companies listed on Business Week’s Global 1000 (2003) Top 10, or Financial Times World’s Most Respected Companies 2004 list (international companies only). Several of these codes of conduct were reviewed by Paine and others (2005) as well.

Most of these corporations have a single set of ethics rules applicable to all directors, officers, executives, and employees, with perhaps an additional, supplemental code of conduct for senior financial officers to satisfy the Sarbanes Oxley Act and New York Stock Exchange requirements.⁴⁷ In all cases, however, the codes for senior executives were equally or more strict in their behavioral requirements, emphasizing prohibitions on actual and perceived conflicts of interest and abuses of power. They all include strong statements encouraging reports of wrongdoing and prohibiting retaliation for reporting misconduct or participating in investigations of misconduct. Whistleblower protection is either explicitly stated or implied through the statements against retaliation and encouraging reports of misconduct. At these corporations, a failure to raise real or potential conflicts of interest is grounds for discipline up to and including removal from office.⁴⁸

62. The *World Bank's revised Code of Conduct for Board Officials*⁴⁹ is stronger than the Fund's Board Code in some key respects. First, the Code explicitly states that the President of the World Bank/IFC is subject to the Board's official Code. Second, the World Bank Code's section on Conduct within the Institution and Other Places uses the term "shall" (denoting an obligation) instead of "should" in stating the requirement for proper treatment of staff members. The World Bank Code now includes procedures for the Ethics Committee's activities, whereas the Fund's Board Code attempts to include procedures but only at a very high level.

63. Another multilateral financial institution—the *European Bank for Reconstruction and Development (EBRD)*—has a *Code of Conduct for its Board of Directors* that contains much stronger language regarding expectations of the Board. Procedures for handling reports of misconduct are outlined. There is a chief compliance officer and an inquiry officer who

⁴⁷ Nine of the corporations had one code that applied (or appeared to apply, as there was only one code listed on the website) to all directors, officers, executives and employees combined—BP, Citigroup, ExxonMobil, Intel, Nestle S.A., Pfizer, PricewaterhouseCoopers, Shell, and Toyota. Three had codes that applied to everyone, with a supplemental code that applied to executive or senior financial officers: Johnson & Johnson, Microsoft, and Wal-Mart. Only one—AIG—did not. AIG's employee code of conduct states that it applies to all officers, and there is an additional code for directors, executive officers, and senior financial officers.

⁴⁸ Although the Children's Place code of conduct was not part of this review, a good example of the consequences for failure to disclose perceived conflicts can be found in the recent forced resignation of Children's Place CEO Ezra Dabah for violations of securities rules. According to two September 26, 2007 press releases posted on the company's website, and numerous media reports, Dabah resigned September 24th from the children's clothing retailer after an internal investigation found that Dabah twice pledged Children's Place shares during a "blackout period" without board approval and did not properly report an immaterial increase in his wife's ownership of company stock to the company. In an additional investigation, the company found irregularities in expense reimbursement practices on the part of the Chief Creative Officer. The Board imposed significant sanctions on the individual involved, including requiring refunds of amounts erroneously charged to the company, a change in position so that the individual will no longer be an officer of the Company, and reimbursement of the Company's out-of-pocket costs incurred in connection with its investigation of the matter.

⁴⁹ World Bank Code of Conduct for Board Officials, November 1, 2007 (revised).

are designated to receive and investigate complaints. The Code includes a statement regarding protection of whistleblowers. EBRD's Staff Code of Conduct explicitly includes the President of the Bank.⁵⁰ I have not researched whether the EBRD's Code has been effectively implemented, but the stronger language in this Code and in the World Bank's Board official Code suggests that it is possible for this type of institution to set strong expectations for ethical behavior.

⁵⁰ European Bank for Reconstruction and Development Code of Conduct for Officials of the Board of Directors of the EBRD, May 2006.

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ANNEX I. SOURCES**Internal documents**

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3. Articles of Agreement
4. By-Laws
5. Code of Conduct for Members of the Executive Board
6. Code of Conduct (Staff)
7. Ethics Office Annual Report for 2005–2006
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9. Ethics Guidelines for Conducting Inquiries Related to Allegations of Misconduct
10. Rules and Regulations of the International Monetary Fund—N-Staff Regulations
11. General Administrative Orders 31, 33
12. Guide to the Fund’s Grievance Procedures
13. Terms of Appointment of Dominique Strauss-Kahn as Managing Director of the International Monetary Fund, November 2, 2007
14. Policy on Harassment (Staff)
15. Policy on Discrimination (Staff)
16. Staff Bulletin: Annual Financial Certification and Disclosure Process

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2. BP Code of Conduct, 2005

3. Citigroup Code of Conduct, May 2006
4. Board and Staff Codes of Conduct for the World Bank, Inter-American Development Bank, and European Bank for Reconstruction and Development
5. Exxon Mobil Corporation Code of Ethics and Business Conduct
6. Intel Code of Conduct, May 2, 2007
7. Johnson & Johnson Governance Documents, including the Code of Business Conduct and Ethics for Members of the Board of Directors and Executive Officers and Policy on Business Conduct
8. Microsoft Standards of Business Conduct and Finance Code of Professional Conduct
9. Nestlé Corporate Business Principles, September 2004
10. Pfizer: Summary of Pfizer Policies on Business Conduct
11. PricewaterhouseCoopers Code of Conduct
12. Shell Code of Conduct, 2006
13. Toyota Motor Corporation Code of Conduct, March 2006
14. Wal-Mart Governance Documents, including the Statement of Ethics (2005) and Senior Financial Officer Code of Ethics (2003)