

# Thirty-Third Board Meeting

# Ethics and Integrity Initiative: Second Stage Proposals

GF/B33/15 – Revision 2  
Board Decision

**PURPOSE:** This paper presents key deliverables associated with the 'Second Stage' of the Ethics and Integrity Initiative, which are recommended by the AEC for adoption by the Board. These materials are (i) the Code of Ethical Conduct for Governance Officials; and (ii) a Terms of Reference of the Ethics Officer. In addition, a Guidance Document on Ethical Roles and Responsibilities for Global Fund Governance Officials is presented for information here as an indicative draft.

# I. Decision Point

1. Based on the rationale described below, the following decision points are recommended to the Board:

**Decision Point: GF/B33/DP09: Ethics and Integrity: Reporting and Location Arrangements for the Ethics Officer**

- 1. The Board approves a reporting arrangement for the Ethics Officer as follows:**
  - a. The Ethics Officer will report on its activities directly to the Board through the Committee responsible for ethics matters (the “Committee”).**
  - b. The Ethics Officer will provide regular advice and support:**
    - a. To the Executive Director on ethical matters pertaining to the Secretariat’s activities, including issues related to grant recipients, CCMs, third-party providers (e.g., LFAs and suppliers) and staff. Based on the Ethics Officer’s advice, the Executive Director will determine and implement appropriate remedial actions.**
    - b. To the Committee on all other ethical matters not included in paragraph 1(b)(i) above. Based on the Ethics Officer’s advice, the Committee will determine appropriate remedial actions.**
  - c. The Ethics Officer will be located within the Office of the Inspector General for administrative purposes only.**

**Decision Point: GF/B33/DP10: Ethics and Integrity: Second Stage Policy Proposals**

- 1. The Board acknowledges the Audit and Ethics Committee's second stage policy proposals as set forth in document GF/B33/15 – Revision 2.**
- 2. Accordingly, the Board:**
  - a. Approves the Code of Ethical Conduct for Governance Officials contained in Annex A to GF/B33/15 – Revision 2; and**
  - b. Notes that the Code of Ethical Conduct for Governance Officials will be reviewed following appointment of the Ethics Officer. This review will be conducted by the Board Leadership in collaboration with the Committee responsible for ethics matters (the “Committee”). The findings of the review will be presented to the Board for discussion and potential revisions to the Code of Ethical Conduct as applicable.**
- 3. In addition, the Board:**
  - a. Notes the Board's decision to approve the reporting arrangements for the Ethics Officer described in GF/B33/DP09;**
  - b. Endorses, in principle, the Terms of Reference of the Ethics Officer contained in Annex B to GF/B33/15 – Revision 2; and**
  - c. Requests that the Terms of Reference of the Ethics Officer be further developed by the Board Leadership in collaboration with the Committee, with the support of the Office of the Inspector General, through a comprehensive consultation process and submitted to the Board through the Committee for approval by June 2015.**
- 4. Following approval by the Board of the Terms of Reference of the Ethics Officer in June 2015, the recruitment process will be launched.**

## II. Relevant Past Decisions

2. Pursuant to the Governance Plan for Impact as approved at the Thirty-Second Board Meeting,<sup>1</sup> the following summary of relevant past decision points is submitted to contextualize the decision point proposed in Section I above.

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<sup>1</sup> GF/B32/DP05: Approval of the Governance Plan for Impact as set forth in document GF/B32/08 Revision 2.

Relevant past Decision Point	Summary and Impact
<b>GF/B32/DP09: Ethics and Integrity Initiative: First Stage Policy Proposals.<sup>2</sup></b>	At the Thirty-Second Board Meeting, the Board adopted the Ethics and Integrity Framework and the proposal for creation of a dedicated and independent ethics function. Based on those foundational decisions, the Board requested the Audit and Ethics Committee to develop second-level policies and systems for Board adoption. These ‘Second Stage’ deliverables consist of (i) the Governance Official Code of Ethical Conduct for Governance Officials; and (ii) Terms of Reference of the Ethics Officer.

### III. Consequential Actions following the Proposed Board Decision

3. The Board Leadership in collaboration with the Audit and Ethics Committee and the support of the OIG will undertake a comprehensive consultation process and further develop the Ethics Officer Terms of Reference for presentation to the Board for approval in June 2015.
4. Following proposed adoption of the Terms of Reference of the Ethics Officer, the Audit and Ethics Committee (AEC) will engage with the Finance and Operational Performance Committee (FOPC) to determine the budgetary implications of establishment of this function.
5. The Board will receive an update at its Thirty-Fourth Meeting regarding (i) the progress achieved in appointing the Ethics Officer; and (ii) the implementation of the proposed Code of Ethical Conduct for Governance Officials.

### IV. Executive Summary

6. The strength of the Global Fund is contained in its values, of which ethics and integrity are integral. As a reflection of this point, the Board Chair and Vice-Chair have committed to the development of the “full and comprehensive integration of ethical principles in the functioning of the Global Fund including the Board.”<sup>3</sup> At the Thirty-Second Board Meeting, the Board took important steps towards this goal, with the adoption of the Ethics and Integrity Framework and establishment of a dedicated ethics function.
7. Following these Board decisions, an extensive consultative process was undertaken with Board constituencies regarding important ‘Second Stage’ deliverables: the Code of Ethical Conduct for Governance Officials (the “Governance Official Code”) and the Terms of Reference of the Ethics Officer (the “Ethics Officer TOR”). Based on constituency consultations, the Governance Official Code has been significantly revised from the indicative draft presented at the Thirty-Second Board Meeting, in a way that is adapted to the dual representative responsibilities of governance officials. Through constituency input, the definition of conflict was tailored further, with a focus on personal or financial interests. In addition, the revised Governance Official Code reflects the fact that within the Global Fund’s stakeholder model, the presence of a conflict often turns on the surrounding context.

<sup>2</sup> <http://www.theglobalfund.org/Knowledge/Decisions/GF/B32/DP09/>

<sup>3</sup> Communication by Board Chair and Vice-Chair to Board Members, 1 August 2013.

8. At the overall level, rather than being prescriptive, the Governance Official Code emphasizes the general obligations that flow from the core ethical values of integrity, duty of care, accountability, dignity and respect.

9. The Ethics Officer TOR reflect an overarching goal of fully embedding ethics and integrity into operations, including compliance monitoring and consequence management. Consequently, the Ethics Officer's remit encompasses both the Global Fund and the activities it finances, which include the activities of grant implementers, CCMs and third-party providers (e.g., LFAs, suppliers). The Ethics Officer's reporting arrangement was developed with reference to this broad mandate, which includes activities at both the governance and operational levels. This model, which received a large majority support from all consulted constituencies, involves reporting to the Board through the AEC, as today. Based on consultations with constituencies at the Board Meeting, it is now proposed that the Ethics Officer will depend administratively on Office of the Inspector General. At the same time, the Ethics Officer TOR stipulate that the Ethics Officer provides advice and support to the Executive Director on ethics matters pertaining to Secretariat activities. To ensure this structuration does not interfere with the Executive Director's authority over all Secretariat activities, the Ethics Officer TOR also make clear that the Executive Director has the responsibility for determining and implementing remedial actions for ethics issues pertaining to operations.

10. Following proposed Board adoption of these Second Stage proposals, the Ethics and Integrity Initiative will move to its third stage, involving development of mechanisms to strengthen the integration of ethics and integrity within Global Fund operations, particularly at the grant level.

## V. Background

11. Ethical conduct is a hallmark of the Global Fund, and it applies to all those involved in the operation and governance of the organization. As a reflection of the importance of ethics to the institution, the Board adopted at its Thirty-Second Board Meeting the Ethics and Integrity Framework and the proposal for creation of a dedicated and independent ethics function. Based on those foundational decisions, the Board also requested the Audit and Ethics Committee (AEC) to develop second-level policies and systems for Board adoption. These 'Second Stage' deliverables consist of (i) the Governance Official Code; and (ii) the Ethics Officer TOR.

12. This paper presents the AEC's recommendation of these key second-level policies and systems. The consultative process leading to development of the Governance Official Code and Ethics Officer TOR is also described, along with the major elements of each.

13. The Governance Official Code and Ethics Officer TOR are enclosed for Board review and proposed adoption as detailed in the two decision points presented above. In addition, enclosed for Board information (rather than adoption) is a draft Guidance Document on Ethical Roles and Responsibilities for Global Fund Governance Officials, which is at this stage a work in progress. This indicative draft document, which was developed under the oversight of the Ethics Steering Committee, consisting of Secretariat/OIG senior management and the AEC's independent ethics expert, and chaired by the AEC Vice-Chair. This Guidance Document will ultimately be refined by the Ethics Officer, with input particularly from Board members, as a training reference for use alongside the Governance Official Code.

## VI. Process undertaken for Development of the Governance Official Code and Ethics Officer TOR

14. In order to advance development of the Governance Official Code, an indicative draft was presented for discussion at the Board's November 2014 Retreat. The Governance Official Code discussed at the Board Retreat was prepared by the Ethics Steering Committee and reviewed by the AEC at its Tenth Meeting in October 2014. While the Board expressed support for the principles laid out in that document, following discussion and reflection, it was agreed that further consultation was needed regarding (i) the nature and extent of Board Member obligations towards the Global Fund, and how to balance those with constituency obligations; and (ii) the concept of conflict of interest within the Global Fund's stakeholder-based governance model.

15. To address these issues, an extensive consultation process with Board constituencies was undertaken. All Board constituencies were invited to participate in interviews to both explore the ethical obligations and expectations of Board Members, and to obtain input regarding the operational and reporting modalities of the dedicated ethics function. In addition to these interviews, which were conducted with fourteen constituencies, formal consultation was sought with the Board Leadership, the Inspector General and the Executive Director.

16. Based on these consultations, a revised Governance Official Code and Ethics Officer TOR were developed by an independent expert consultant, who previously served as Ethics Advisor at UNESCO. This work was overseen by the Ethics Steering Committee. In addition, the materials received review and comment from the Board Leadership, and their development was informed through a benchmarking analysis of the practices of peer institutions in this area. These materials were subsequently presented to the AEC for review at its Eleventh Meeting and, following deliberation, the AEC unanimously agreed to propose the materials to the Board for adoption.

## VII. The Second Stage Deliverables

### 01 The Governance Official Code

17. While the Global Fund has established Codes of Conduct for staff, grant recipients and suppliers, it has not established a similar code for Board/Committee members. As such, there is not presently a policy describing the standards of behavior expected of governance officials, or one describing procedures for addressing ethical misconduct. This gap is particularly noticeable owing to the fact that governance officials have a heightened responsibility to exhibit ethical behavior, given the example they set for the organization.

18. Within the Global Fund's unique governance model, Board and Committee Members hold responsibilities both towards their respective constituencies and the Global Fund itself. As such, a major emphasis of the Board constituency consultations was in developing a Governance Official Code that is adapted to the dual representative role of governance officials. Based on Board consultations, the need for such a tailored approach is particularly required in defining (i) the obligation to act in the Global Fund's best interest; and, on a related note, (ii) conflict of interest.

19. The Global Fund's core governance documents make clear that governance officials are obligated to act in the organization's best interests. For example, the Bylaws state that "subject to their respective representative roles, Board Members shall act in good faith in the best interests of the Global Fund in furtherance of its purpose."<sup>4</sup> During the consultation process, constituency representatives

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<sup>4</sup> Bylaws, Section 7.2, paragraph 3.

acknowledged this general obligation. However, it was noted that further guidance was needed regarding the nature of the obligation, and how it can co-exist with constituency responsibilities. Through these discussions, constituencies generally understood their obligations in this regard as acting in a way that is aligned with and serves the Global Fund's overall mission, objectives, priorities and values. It was noted by several constituencies that in order to achieve this goal, a balancing is required. That is, in order to act in the Global Fund's best interest, it is necessary to demonstrate flexibility with respect to constituency positions and openness to the views of others. These principles are therefore reflected within the Governance Official Code.

20. Constituencies also emphasized the need for a tailored approach in defining conflicts of interest. Because of the Global Fund's stakeholder structure, the majority of representatives suggested that Board Members have an 'interest' in all Board matters. The issue therefore was in drawing an appropriate line, and in this regard many constituencies stated that the definition of conflict should not be unduly broad. When asked to suggest a line, most representatives referred to situations involving a personal or financial interest in a governance matter.

21. Based on constituency input, the definition of conflict contained in the Governance Official Code was tailored further, with a focus on personal or financial interests. In addition, the revised Governance Official Code reflects the fact that within the Global Fund's stakeholder model, the presence of a conflict often turns on the surrounding context. Consequently, the guidance contained in the Governance Official Code highlights that governance officials should demonstrate transparency regarding their interests by disclosing them to the Ethics Officer.

22. At the overall level, rather than being prescriptive, the Governance Official Code emphasizes the general obligations that flow from the core ethical values of integrity, duty of care, accountability, and dignity and respect.

## 02 Terms of Reference of the Ethics Officer

23. The Ethics Officer TOR presented by the AEC for Board adoption reflect an overarching goal of fully embedding ethics and integrity into operations, including compliance monitoring and consequence management. Consequently, the Ethics Officer's mandate is not limited to 'internal' activities. Instead, the remit encompasses both the Global Fund and the activities it finances, which includes the activities of grant implementers, CCMs and third-party providers (e.g., LFAs, suppliers). In this way, the Global Fund's ethics function represents an innovation in the field.

24. Another innovative aspect of the ethics function is in its inclusion of activities at the governance level. That is, by contrast to other peer institutions, a core responsibility of the Global Fund Ethics Officer is in advising on ethics matters pertaining to Board/Committee Members. This mandate, which is particularly important given the complex conflict of interest issues that arise at the governance level, has implications in determining the appropriate reporting line. That is, the positioning should grant the Ethics Officer the appropriate authority to provide advice at the Board level; at the same time, it should reflect the integration of the Ethics Officer into operations.

25. The reporting arrangement reflects the model presented during the Board constituency consultations, which received a large majority support from all consulted constituencies. The model involves reporting to the Board through the AEC, as today. Following consultation with constituencies at the Board Meeting, it is now proposed that the Ethics Officer will depend administratively on the Office of the Inspector General. At the same time, the Ethics Officer TOR stipulate that the Ethics Officer provides advice and support to the Executive Director on ethics matters pertaining to Secretariat activities. To ensure this structuration does not interfere with the Executive Director's authority over all Secretariat activities, the Ethics Officer TOR also make clear that the Executive Director has the

responsibility for determining and implementing remedial actions for ethics issues pertaining to operations.

## VIII. Recommendation

26. A strong ethics and integrity program engenders stakeholder trust in the Global Fund, and moreover safeguards resources dedicated to health through the creation of an integrated compliance and anti-corruption program, supported by communication, monitoring and oversight. The Code and Ethics Officer TOR represent major pillars of such a program. Through proposed adoption of the Code, the Global Fund will establish the ethical obligations of its governance officials, and highlight their elevated ethical responsibilities as stewards of the organization. By adopting the Ethics Officer TOR, anticipated in June 2015, the Global Fund will establish a mechanism for both embedding ethics into all levels of the Global Fund and bolstering the Global Fund's compliance with the values it espouses.

27. The success of the Ethics & Integrity Initiative turns on its successful implementation, involving collaboration across all stakeholders. Following proposed adoption of these 'Second Stage' proposals, the Initiative will move to its third stage, involving development of mechanisms to strengthen the integration of ethics and integrity within Global Fund operations, particularly at the grant level.