

Date of issuance: April 23, 2018

**Sanctions Board Decision No. 110
(Sanctions Case No. 463)**

**IDA Credit No. 4011 UNI
Nigeria**

Decision of the World Bank Group¹ Sanctions Board imposing (i) a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 463 (the “Respondent Firm”), together with certain Affiliates,² with a minimum period of ineligibility of three (3) years and seven (7) months beginning from the date of this decision; and (ii) a sanction of debarment on the individual respondent in Sanctions Case No. 463 (the managing director of the Respondent Firm, hereinafter referred to as the “Respondent Managing Director”), together with certain Affiliates, for a period of two (2) years and seven (7) months beginning from the date of this decision. These sanctions are imposed on the Respondents for an obstructive practice.

I. INTRODUCTION

1. The Sanctions Board met in panel sessions in March 2018 at the World Bank Group’s headquarters in Washington, D.C. to review this case. The Sanctions Board was composed of Catherine O’Regan (Panel Chair), Alejandro Escobar, and Ellen Gracie Northfleet. Neither the Respondents nor the World Bank Group’s Integrity Vice Presidency (“INT”) requested a hearing in this matter. Nor did the Sanctions Board Chair³ decide, in her discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision on the written record.⁴

¹ In accordance with Section II(y) of the World Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects, issued by the World Bank on June 28, 2016 (the “Sanctions Procedures”), the term “World Bank Group” means, collectively, the International Bank for Reconstruction and Development (“IBRD”), the International Development Association (“IDA”), the International Finance Corporation (“IFC”), and the Multilateral Investment Guarantee Agency (“MIGA”). The term “World Bank Group” includes Bank Guarantee Projects and Bank Carbon Finance Projects, but does not include the International Centre for the Settlement of Investment Disputes (“ICSID”). As in the Sanctions Procedures, the terms “World Bank” and “Bank” are here used interchangeably to refer to both IBRD and IDA. See Sanctions Procedures at Section II(x).

² Section II(a) of the Sanctions Procedures defines “Affiliate” to include “any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank.” The sanctions imposed by this decision apply only to those Affiliates that are directly or indirectly controlled by either the Respondent Firm or the Respondent Managing Director (together, the “Respondents”). See infra Paragraph 44.

³ Sanctions Procedures at Section II(s).

⁴ See Sanctions Procedures at Section III.A, sub-paragraph 6.01.

2. In accordance with Section III.A, sub-paragraph 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board's consideration included the following:

- i. Notice of Sanctions Proceedings issued by the World Bank's Acting Suspension and Debarment Officer (the "Acting SDO") to the Respondents on July 20, 2017 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") with exhibits presented to the Acting SDO by INT (undated);
- ii. Response with exhibits submitted by the Respondents to the Secretary to the Sanctions Board on October 6, 2017 (the "Response"); and
- iii. Reply with exhibit submitted by INT to the Secretary to the Sanctions Board on November 9, 2017 (the "Reply").

3. On July 20, 2017, pursuant to Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the Acting SDO issued the Notice and temporarily suspended the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either of the Respondents, from eligibility⁵ with respect to any Bank-Financed Projects,⁶ pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspensions would apply across the operations of the World Bank Group. In addition, pursuant to Section III.A, sub-paragraphs 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the Acting SDO recommended in the Notice debarment with conditional release for each of the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either of the Respondents. The Acting SDO recommended minimum periods of ineligibility of five (5) years for each of the Respondents, after which periods (a) the Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer (the "ICO") that it has (i) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank; and (b) the Respondent Managing Director may be released from ineligibility only if he has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the ICO that he has (i) taken appropriate remedial measures to address the sanctionable practices for which he has been sanctioned, (ii) completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics, and (iii) adopted and implemented an effective integrity compliance program with respect to any entity that is an Affiliate directly or indirectly controlled by him in a manner satisfactory to the Bank.

⁵ The full scope of ineligibility effected by a temporary suspension is defined in the Sanctions Procedures at Section III.A, sub-paragraphs 4.02(a) and 9.01(c), read together.

⁶ The term "Bank-Financed Projects" encompasses any project or program financed by the Bank and governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. The term "Bank-Financed Projects" includes activities financed through trust funds administered by the Bank to the extent governed by said Guidelines. Sanctions Procedures at Section II(e).

II. GENERAL BACKGROUND

4. This case arises in the context of the Economic Reform and Governance Project (the “Project”) in the Federal Republic of Nigeria (the “Borrower”), which sought to “improve the federal government’s economic and financial management system,” and “launch the process of building an efficient and effective federal civil service.” On January 24, 2005, the Bank entered into an initial financing agreement with the Borrower to provide an amount equivalent to Special Drawing Rights (“SDR”) 93.4 million (approximately US\$140 million) to support the Project (the “Financing Agreement”). The Financing Agreement was amended on July 19, 2007, February 11, 2011, and August 16, 2012, to, *inter alia*, reallocate credit proceeds. The Project became effective on April 25, 2005, and closed on June 30, 2013.

5. On April 22, 2011, the Project Implementation Unit (the “PIU”) issued a request for proposals for consulting services for the Conduct of Tracer Study on Staff Severance and Social Assistance Program (the “Tracer Study Contract”). On July 11, 2011, the Respondent Firm submitted its technical and financial proposals for the Tracer Study Contract. On February 24, 2012, the Respondent Firm and the PIU signed the Tracer Study Contract, valued at Nigerian Naira (“NGN”) 14,799,818 (approximately US\$93,152). Subsequently, the Respondent Firm was awarded two other contracts under the Project (together with the Tracer Study Contract, the “Contracts”).

6. INT alleges that the Respondents made an improper payment to a public official to influence him in the Respondent Firm’s favor during the implementation of the Tracer Study Contract. INT further alleges that the Respondents acted to deliberately conceal this payment during INT’s audit of the Contracts, with the intent to obstruct the investigation.

III. APPLICABLE STANDARDS OF REVIEW

7. *Standard of proof:* Pursuant to Section III.A, sub-paragraph 8.02(b)(i) of the Sanctions Procedures, the Sanctions Board determines whether the evidence presented by INT, as contested by a respondent, supports the conclusion that it is “more likely than not” that the respondent engaged in a sanctionable practice. Section III.A, sub-paragraph 8.02(b)(i) defines “more likely than not” to mean that, upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding that the respondent engaged in a sanctionable practice.

8. *Burden of proof:* Under Section III.A, sub-paragraph 8.02(b)(ii) of the Sanctions Procedures, INT bears the initial burden of proof to present evidence sufficient to establish that it is more likely than not that a respondent engaged in a sanctionable practice. Upon such a showing by INT, the burden of proof shifts to the respondent to demonstrate that it is more likely than not that its conduct did not amount to a sanctionable practice.

9. *Evidence:* As set forth in Section III.A, sub-paragraph 7.01 of the Sanctions Procedures, formal rules of evidence do not apply; and the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

10. *Applicable definition of corrupt and obstructive practices:* The Financing Agreement provided that the World Bank’s Guidelines: Selection and Employment of Consultants by World

Bank Borrowers (May 2004) (the “May 2004 Consultant Guidelines”) shall govern the procurement of consultants’ services under the Project. However, the Tracer Study Contract contained a definition of “corrupt practice” identical to the common definition in the World Bank’s Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 1, 2006) (the “October 2006 Consultant Guidelines”) and the World Bank’s Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 1, 2006, and May 1, 2010) (the “May 2010 Consultant Guidelines”).⁷ In accordance with the Bank’s legal framework applicable to sanctions, as well as considerations of equity, the Sanctions Board determines that the applicable definition in this case is the definition agreed between the PIU and the Respondent Firm as governing the Tracer Study Contract.⁸ Therefore, the alleged corrupt and obstructive practices in this case have the meaning set forth in the October 2006 Consultant Guidelines and the May 2010 Consultant Guidelines. Paragraph 1.22(a)(i) of the October 2006 Consultant Guidelines and Paragraph 1.22(a)(i) of the May 2010 Consultant Guidelines define the term “corrupt practice” as “the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.” A footnote to this definition in both sets of Guidelines explains that the term “another party” includes public officials acting in relation to the selection process or contract execution, who may be World Bank staff and “employees of other organizations taking or reviewing selection decisions.”⁹ Paragraph 1.22(a)(v)(aa) of the October 2006 Consultant Guidelines and Paragraph 1.22(a)(v)(aa) of the May 2010 Consultant Guidelines define “obstructive practice” to include “deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation.”

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT’s Principal Contentions in the SAE

1. Allegation of corrupt practice

11. INT alleges that the Respondent Firm, acting through the Respondent Managing Director, made a payment of NGN200,000 (the equivalent of approximately US\$1,270), to the deputy director of the Project (the “Deputy Director”) during the execution of the Tracer Study Contract. According to INT, the Respondents have not provided any credible explanation as to the purpose of this payment. INT asserts that the only “logical conclusion” is that the purpose of the payment to the Deputy Director, who had clear authority over the execution of the Tracer Study Contract, was to influence the execution of that contract.

⁷ The definition of “corrupt practice” in the Tracer Study Contract omitted the footnote defining the term “another party.”

⁸ See Sanctions Board Decision No. 100 (2017) at para. 12.

⁹ October 2006 Consultant Guidelines at para. 1.22(a)(i), n.17; May 2010 Consultant Guidelines at para. 1.22(a)(i), n.17.

2. Allegation of obstructive practice

12. INT alleges that, in response to its request for documents during its audit of the Contracts, the Respondent Managing Director provided INT with a set of the Respondent Firm's bank statements, but intentionally omitted the NGN200,000 transaction. According to INT, the Respondents omitted the "incriminating transaction" in order to conceal the corrupt payment to the Deputy Director.

3. Sanctioning factors

13. INT submits as aggravating factors (i) the involvement of the Respondent Firm's managing director and chief executive officer in the corrupt and obstructive practices, and (ii) the Respondents' engagement in more than one sanctionable practice. Regarding mitigation, INT contends that the Respondents provided some cooperation to INT during the investigation, but that "mitigation is cancelled out" by the Respondents' obstruction.

B. The Respondents' Principal Contentions in the Response

1. Contentions regarding INT's allegation of corrupt practice

14. The Respondents argue that INT has not established corrupt intent. The Respondents argue that, contrary to INT's assertion, the Deputy Director had "very little or no" influence over relevant "subject matters incidental" to the Tracer Study Contract, and that the Respondents had no need to corruptly influence the execution of that contract. According to the Respondents, the Deputy Director also served as the coordinator and member of an inter-ministerial steering committee (the "Steering Committee"), which was set up to work with the Respondent Firm on the Tracer Study Contract enumeration exercise. The Respondents assert that they paid NGN200,000 to the Deputy Director in his capacity with the Steering Committee for onward payment to field enumerators.

2. Contentions regarding INT's allegation of obstructive practice

15. The Respondents argue that they forwarded to INT the bank statements that they had received from the Respondent Firm's commercial bank (the "Commercial Bank"). According to the Respondents, there is no evidence that they instructed the Commercial Bank to provide "an abridged bank statement" omitting the transaction in question. The Respondents state that the Commercial Bank "heaped the blame" on the Respondents to "cover up and excuse its own negligence" in providing the Respondents with incomplete records.

3. Sanctioning factors

16. The Respondents do not specifically address sanctioning factors.

C. INT's Principal Contentions in the Reply**1. Contentions in support of its allegation of corrupt practice**

17. INT contends that the record does not support the Respondents' claims that the Deputy Director had "very little or no influence" over matters relating to the Tracer Study Contract, or that the Respondents paid NGN200,000 to the Deputy Director for onward payment to field enumerators.

2. Contentions in support of its allegation of obstructive practice

18. INT asserts that, in response to its inquiry, the Commercial Bank stated in writing that it provided the bank statements omitting the transaction period in question based on the Respondent Firm's request. INT submits that the Respondents' attempt to blame the Commercial Bank for the omission is not credible.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

19. The Sanctions Board will first consider whether it is more likely than not that the alleged sanctionable practices occurred, and if so, whether either of the Respondents may be held liable for the misconduct. The Sanctions Board will then determine what sanctions, if any, should be imposed on either of the Respondents.

A. Evidence of Corrupt Practice

20. In accordance with the definition of corrupt practice under the October 2006 and May 2010 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondents (i) offered, gave, received, or solicited, directly or indirectly, anything of value (ii) to influence improperly the actions of another party.

1. Offering or giving, directly or indirectly, anything of value

21. INT alleges that the Respondent Firm, through the Respondent Managing Director, made a payment of NGN200,000 to the Deputy Director during the execution of the Tracer Study Contract. The Respondents concede that the Respondent Managing Director made the payment identified by INT.

22. Consistent with the Respondents' concession, the record reflects that the Respondent Managing Director made a payment to the Deputy Director on behalf of the Respondent Firm. For instance, a check deposit slip shows that, on May 8, 2012, the Respondent Managing Director submitted a deposit of NGN200,000 to a bank account held by the Deputy Director. In addition, account statements independently obtained by INT from the Commercial Bank reveal that, on May 9, 2012, the Respondent Firm's account was debited in the same amount. Finally, the Respondent Managing Director stated during his interview with INT that he made the payment to the Deputy Director's personal bank account.

23. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondent Managing Director gave a thing of value to the Deputy Director. Because “offering” and “giving” are set out as alternative elements of corrupt practice under the applicable definition, the Sanctions Board declines to address INT’s separate allegation of an offer.¹⁰

2. To influence improperly the actions of another party

24. The second element of corrupt practice requires a showing that a respondent, in offering or giving a thing of value to another party under the first element, acted with a purpose to influence improperly the actions of another party.¹¹ The focus of this second element is thus on a respondent’s purpose and intended target of influence.¹² INT submits that the Respondent Managing Director made the payment to the Deputy Director in order to influence the execution of the Tracer Study Contract. As noted above, the Respondents argue that the Deputy Director had limited authority and impact on matters relevant to the Tracer Study Contract, and that there was no need to influence improperly the execution of that contract. The Respondents further argue that they paid the Deputy Director in his official capacity with the Steering Committee for onward payment to field enumerators working on the Tracer Study Contract.

25. On a consideration of the evidence tendered by INT alone, the Sanctions Board concludes that INT met its initial burden to establish that it is more likely than not that the Respondent Managing Director made the payment to the Deputy Director with the intent to influence the Deputy Director’s actions in relation to the Tracer Study Contract. The record reveals that the Deputy Director was a public official in a position of authority with respect to the Project, and that the Respondent Managing Director appreciated that the Deputy Director had influence over the Respondent Firm’s interests in relation to the Tracer Study Contract. As the record shows, the Deputy Director was responsible for reviewing the Respondent Firm’s work under the Tracer Study Contract and recommending approval of payments from the PIU to the Respondent Firm, based on reports and invoices submitted by the Respondent Managing Director. This evidence that the Deputy Director was in a position to affect the Respondent Firm’s business interests, and that the Respondent Managing Director was aware of that, would support a finding of corrupt intent.¹³ In addition, as discussed in Paragraphs 28-31 below, the record indicates that the Respondent Managing Director withheld evidence of the transaction in question from INT investigators, which might further suggest that he had knowledge of some impropriety and had acted with corrupt intent.¹⁴ Because INT has met its evidentiary burden, the burden of proof shifts to the Respondents to demonstrate that it is not more likely than not that the Respondent Managing Director acted

¹⁰ See Sanctions Board Decision No. 93 (2017) at para. 43.

¹¹ Sanctions Board Decision No. 60 (2013) at para. 75.

¹² Id.

¹³ See, e.g., Sanctions Board Decision No. 78 (2015) at para. 56 (finding that a respondent entity acted with intent to influence a public official’s actions in the procurement process where the record revealed, inter alia, that employees of the respondent entity were aware that the public official was in a position of authority over the project and that the public official held influence with respect to the tender processes for the contracts at issue).

¹⁴ See, e.g., id. at para. 68.

with the intent to influence improperly the Deputy Director's actions in relation to the Tracer Study Contract.

26. The Respondents have sufficiently rebutted INT's allegations. The Sanctions Board finds the Respondents' alternative explanation for the payment to be plausible – that is, the Respondent Managing Director paid the Deputy Director for onward payment to field enumerators. In support of their explanation, the Respondents submitted the sworn affidavit of an individual who was a field enumerator during the relevant period (the "Field Enumerator"). In his affidavit, the Field Enumerator stated that he coordinated the team of field enumerators working under the Tracer Study Contract; and that "sometime in May 2012," he "collected the sum of [NGN]200,000 for the payment of stipends due to my colleagues and I." The Field Enumerator further stated that he received this sum "in cash, directly from [the Deputy Director]"; and that "I neither issued a receipt to [the Deputy Director], nor did I sign any document prior to the collection of the funds from him, as the entire arrangement was ad hoc." The Field Enumerator specifically listed the names of the four other enumerators on his team, and stated that each of them received NGN40,000 for their work. The Sanctions Board finds no direct evidence in the record to disprove the Field Enumerator's account of events as set out in his affidavit. Indeed, consistent with the Field Enumerator's affidavit, the record shows that the Tracer Study Contract was implemented through the use of local enumerators who "were engaged to execute the fieldwork activities," including administering questionnaires. Contemporaneous written notes corroborate that the Field Enumerator acted as a field enumerator under the Tracer Study Contract. In addition, the record reflects that members of the government, including the Deputy Director, were involved to an extent in the execution of the Tracer Study Contract. As a main component of this contract was to trace and question thousands of severed civil servants, it is not surprising that there was collaboration between the Respondents and public officials in the field. The record shows that, in addition to his role with the Project as discussed in Paragraph 25 above, the Deputy Director was also a member of the Steering Committee – which was specifically tasked with, *inter alia*, providing guidance on a regular basis on the Tracer Study Contract and information on severed civil servants. Thus, it is plausible that the payment to the Deputy Director was in his capacity as a member of the Steering Committee, for onward payment to field enumerators. Finally, as to INT's assertion that the Respondent Firm failed to account for this transaction as a project expense, the Sanctions Board takes note of the Respondents' argument that the check itself and the deposit slip constitute auditable documentary instruments.

27. The Sanctions Board notes its misgivings with regard to the payment in question. It is particularly concerning that the deposit was made to the Deputy Director's personal bank account, that the Respondents failed to keep receipts and other primary records of the payments to the individual field enumerators, and that the Respondents were unable to provide a full explanation for this unsatisfactory practice. The Sanctions Board nevertheless finds that, on balance, the totality of the record supports a finding that it is more likely than not that the Respondent Managing Director did not act with corrupt intent.

B. Evidence of Obstruction

28. In accordance with the definition of obstructive practice under the October 2006 and May 2010 Consultant Guidelines, INT bears the initial burden to show that it is more likely than

not that the Respondents deliberately acted to destroy, falsify, alter, or conceal evidence material to a Bank investigation, or made false statements to investigators in order to materially impede the investigation. INT argues that, in the context of an audit of the Contracts, the Respondent Managing Director provided INT with an incomplete set of the Respondent Firm's bank statements – as compared to a version of the statements independently obtained by INT. According to INT, the Respondent Managing Director intentionally excluded the NGN200,000 transaction from the set he provided in an effort to conceal the alleged corrupt payment to the Deputy Director. The Respondents contest this allegation.

29. The totality of the evidence supports a finding that it is more likely than not that the Respondent Managing Director requested the Commercial Bank to prepare bank account statements for a limited set of dates in order to obstruct INT's investigation. Documentary evidence reveals that, on April 17, 2015, INT sent the Respondents an audit and inspection letter related to the Tracer Study Contract and other contracts, including a specific request for financial records from the Commercial Bank for the period between January 2009 and March 2015. In response, on April 29, 2015, an employee of the Respondent Firm provided a series of bank account statements that clearly indicated on the face of the statements the period covered by each statement.¹⁵ The set of documents provided by the employee left certain gaps in the period requested by INT, notably omitting transactions from May 8 and May 9, 2012 – including the payment to the Deputy Director. During his interview with INT, the Respondent Managing Director stated that he had personally requested the records from the Commercial Bank and that he could not explain why certain dates had been excluded. Contemporaneous email correspondence shows that the Respondent Managing Director subsequently referred INT to the employee of the Commercial Bank who had prepared the account statements in question (the "Commercial Bank Employee") for further information. The Commercial Bank Employee then provided INT with a detailed, written description of the scope of the records requested for the Respondent Firm, noting that the statement "sent to [the Respondent Firm] was according to request for a specified period" and that the date of the payment at issue "does not fall within the customer's request." The Commercial Bank Employee also indicated that the Respondent Managing Director was responsible for managing the Respondent Firm's accounts and authorizing disclosure of any related information.

30. The Respondents have not satisfactorily rebutted the evidence that the omission was deliberate. According to the Respondents, the Respondent Firm received the incomplete records from the Commercial Bank, and the Commercial Bank subsequently "heaped the blame" on the Respondents to "cover up and excuse its own negligence." The Sanctions Board is not persuaded by this argument, particularly in light of the Commercial Bank Employee's written statement discussed above. The Respondents have not provided a credible explanation as to why the Commercial Bank would have failed to provide statements for the entirety of the requested range, or blame the Respondents for any mistake it might have made. By contrast, it is plausible that the Respondent Managing Director deliberately sought to withhold from INT evidence of the payment,

¹⁵ Specifically, the Respondent Firm's employee provided bank account statements covering the following periods: (i) January 1, 2009, through December 31, 2009; (ii) January 1, 2010, through August 10, 2010; (iii) August 17, 2010, through December 31, 2010; (iv) January 1, 2011, through December 31, 2011; (v) January 1, 2012, through May 7, 2012; (vi) May 10, 2012, through December 31, 2012; (vii) January 1, 2013, through December 31, 2013; and (viii) January 1, 2014, through April 23, 2015.

given that the payment to the Deputy Director's personal bank account was made without adequate accounting documentation – and may therefore have been expected to risk scrutiny by INT for potential impropriety.

31. In light of the above, the Sanctions Board finds that it is more likely than not that the Respondent Managing Director deliberately acted to materially impede a Bank investigation so as to constitute an obstructive practice.

C. Liability of the Respondent Firm for the Acts of Its Employees

32. INT asserts that the Respondent Managing Director acted on behalf of the Respondent Firm and that his misconduct can be imputed to the Respondent Firm. The Respondents do not specifically address INT's assertions on this point.

33. In past cases, the Sanctions Board has concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.¹⁶ In the present case, the record supports a finding that the Respondent Managing Director engaged in obstruction in accordance with the scope of his duties and with the purpose of serving the interests of the Respondent Firm. For instance, the record indicates that the Respondent Managing Director was responsible for representing the Respondent Firm in the audit of the Contracts, and that he personally requested the Commercial Bank to prepare the incomplete statements that were provided to INT in this context. There is no indication in the record that the Respondent Managing Director acted for any purpose other than serving the Respondent Firm. Moreover, the Respondent Firm does not present, and the record does not provide any basis for, a rogue employee defense. Thus, the Sanctions Board finds the Respondent Firm liable for the obstructive practice carried out by the Respondent Managing Director.

D. Sanctioning Analysis

1. General framework for determination of sanctions

34. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section III.A, sub-paragraph 8.01(b) of the Sanctions Procedures requires the Sanctions Board to select and impose one or more appropriate sanctions from the range of possible sanctions identified in Section III.A, sub-paragraph 9.01. The range of sanctions set out in Section III.A, sub-paragraph 9.01 includes: (i) reprimand, (ii) conditional non-debarment, (iii) debarment, (iv) debarment with conditional release, and (v) restitution or remedy. As stated in Section III.A, sub-paragraph 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the Acting SDO's recommendations.

¹⁶ See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 51-52, 55; Sanctions Board Decision No. 61 (2013) at para. 30.

35. As reflected in Sanctions Board precedent, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors to determine an appropriate sanction.¹⁷ The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented in each case.¹⁸

36. The Sanctions Board is required to consider the types of factors set forth in Section III.A, sub-paragraph 9.02 of the Sanctions Procedures, which provides a non-exhaustive list of considerations. In addition, the Sanctions Board refers to the factors and principles set out in the World Bank Sanctioning Guidelines (the “Sanctioning Guidelines”). While the Sanctioning Guidelines themselves state that they are not intended to be prescriptive in nature, they provide guidance as to the types of considerations potentially relevant to a sanctions determination. The Sanctioning Guidelines further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after a minimum period of three years.

37. Where the Sanctions Board imposes a sanction on a respondent, it may also, pursuant to Section III.A, sub-paragraph 9.04(b) of the Sanctions Procedures, impose appropriate sanctions on any Affiliate of the respondent.

2. Factors considered in the present case

a. Severity of the misconduct

38. Section III.A, sub-paragraph 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies a repeated pattern of conduct and management’s role in the misconduct as examples of severity.

39. *Repeated pattern of conduct:* INT submits that aggravation is warranted for the Respondents’ repeated pattern of conduct. As the Sanctions Board found sufficient evidence of only one count of obstruction as discussed in Paragraphs 28-31 above, it declines to apply aggravation under this factor.

40. *Management’s role in misconduct:* Section IV.A.4 of the Sanctioning Guidelines states that this factor may apply “[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct.” The Sanctions Board has previously applied aggravation on this basis where high-level members of a respondent entity’s management personally participated in the misconduct.¹⁹ Here, the record indicates that the Respondent Firm’s most senior official – the Respondent Managing Director – was involved in the misconduct. Accordingly, the Sanctions Board finds aggravation warranted for the Respondent Firm.

¹⁷ See Sanctions Board Decision No. 40 (2010) at para. 28.

¹⁸ Sanctions Board Decision No. 44 (2011) at para. 56.

¹⁹ See, e.g., Sanctions Board Decision No. 102 (2017) at para 69.

b. Cooperation

41. *Assistance and/or ongoing cooperation with investigation:* Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent “cooperated in the investigation or resolution of the case.” Section V.C.1 of the Sanctioning Guidelines states that cooperation may take the form of assistance to INT’s investigation or ongoing cooperation, with consideration of “INT’s representation that the respondent has provided substantial assistance in an investigation,” as well as “the truthfulness, completeness, [and] reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance.” The Sanctions Board has previously granted mitigation where, for example, a respondent’s managers met with INT on several occasions and provided relevant information,²⁰ or corresponded with INT and made relevant personnel available for interviews.²¹ The Sanctions Board has declined any mitigation where an interviewee corresponded with INT but did not substantially assist INT’s investigation;²² or where interviewees refused to be recorded and/or look at evidence during the interview, and the record did not otherwise demonstrate the respondent’s cooperation with INT.²³ INT contends that the Respondents provided some cooperation to INT during the investigation, but that “mitigation is cancelled out” by the Respondents’ obstruction. INT further asserts that the Respondents have continued to deny any wrong-doing “even in the face of the evidence” of sanctionable practices.

42. Here, the record contains transcripts of INT’s interviews with the Respondent Managing Director and other employees of the Respondent Firm, internal documents produced by the Respondent Firm, and the Respondents’ responses to INT’s show-cause letters. However, considering that the Respondents omitted material evidence from INT that was critical to its investigation, and then provided an explanation for the missing evidence that was not credible after INT independently obtained the evidence, the Sanctions Board finds that the Respondents did not substantially assist INT’s investigation. Accordingly, the Sanctions Board declines to accord mitigation under this factor.

c. Period of temporary suspension

43. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondents’ temporary suspension since the Acting SDO’s issuance of the Notice on July 20, 2017.

²⁰ Sanctions Board Decision No. 53 (2012) at para. 58.

²¹ See Sanctions Board Decision No. 56 (2013) at para. 73; Sanctions Board Decision No. 79 (2015) at para. 48.

²² Sanctions Board Decision No. 61 (2013) at para. 44.

²³ Sanctions Board Decision No. 71 (2014) at para. 97.

E. Determination of Appropriate Sanctions

44. Considering the full record and all the factors discussed above, the Sanctions Board determines that:

- i. the Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;²⁴ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider²⁵ of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects; provided, however, that after a minimum period of ineligibility of three (3) years and seven (7) months beginning from the date of this decision, the Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group, including by providing adequate anti-corruption training to its staff and, in particular, the Respondent Managing Director – to the extent that he remains in the employ of the Respondent Firm or any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm. This sanction is imposed on the Respondent Firm for an obstructive practice as defined in Paragraph 1.22(a)(v)(aa) of the October 2006 Consultant Guidelines and Paragraph 1.22(a)(v)(aa) of the May 2010 Consultant Guidelines; and
- ii. the Respondent Managing Director, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Managing Director, shall be, and hereby declares that he is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;²⁶ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider²⁷ of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise

²⁴ A respondent's ineligibility to be awarded a contract includes, without limitation (i) applying for prequalification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, consultant, manufacturer or supplier, or service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(i), n.14.

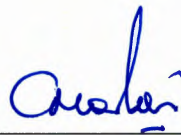
²⁵ A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its prequalification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(ii), n.15.

²⁶ See *supra*, n.24.

²⁷ See *supra*, n.25.

participate further in the preparation or implementation of any Bank-Financed Projects for a period of two (2) years and seven (7) months beginning from the date of this decision. This sanction is imposed on the Respondent Managing Director for an obstructive practice as defined in Paragraph 1.22(a)(v)(aa) of the October 2006 Consultant Guidelines and Paragraph 1.22(a)(v)(aa) of the May 2010 Consultant Guidelines.

45. The Respondents' ineligibility shall extend across the operations of the World Bank Group.



Catherine O'Regan (Panel Chair)

On behalf of the
World Bank Group Sanctions Board

Catherine O'Regan
Alejandro Escobar
Ellen Gracie Northfleet