THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: June 10, 2013

Sanctions Board Decision No. 56
(Sanctions Case No. 177)
MDTF Grant No. TF056894
Indonesia

Decision of the World Bank Group Sanctions Board in Sanctions Case No. 177 declaring the Respondent Consultant, both in its own name and in its capacity doing business as the Respondent Business Centre, and the Respondent Affiliated Firm (collectively, "Respondents"), together with any entity that is an Affiliate[1] directly or indirectly controlled by either the Respondent Consultant or the Respondent Affiliated Firm, ineligible to (i) be awarded a contract for any Bank-financed or Bank-executed project or program governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (hereinafter collectively referred to as "Bank-Financed Projects"),[2] (ii) be a nominated subcontractor, consultant, manufacturer or supplier, or service provider[3] 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 one (1) year, each of the Respondents may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, (a) adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank and (b) with respect to the Respondent Consultant, cooperated with the World Bank Group's Integrity Vice Presidency ("INT") by providing the results of all internal investigations relating to the sanctionable practices in this case. The ineligibility shall extend across the operations of the World Bank Group.[4] This sanction is imposed on Respondents for fraudulent practices as defined in Paragraph 1.22(a)(ii) of the World Bank's Guidelines:

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[1] In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as adopted January 1, 2011 (the "Sanctions Procedures"), the term "Affiliate" means "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank."

[2] As in the Sanctions Procedures, the terms "World Bank" and "Bank" are here used interchangeably to refer to both the International Bank for Reconstruction and Development ("IBRD") and the International Development Association ("IDA"). See Sanctions Procedures at Section 1.01(a), n.1.

[3] In accordance with Section 9.01(c)(i), n.14 of the Sanctions Procedures, a nominated sub-contractor, consultant, manufacturer or supplier, or service provider 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.

[4] In accordance with Section 1.02(a) of the Sanctions Procedures, the term "World Bank Group" means, collectively, IBRD, IDA, the International Finance Corporation ("IFC") and the Multilateral Investment Guarantee Agency ("MIGA"). The term includes the guarantee operations of IBRD and IDA, but does not include the International Centre for the Settlement of Investment Disputes ("ICSID").

Selection and Employment of Consultants by World Bank Borrowers (May 2004) (the "May 2004 Consultant Guidelines"). The period of ineligibility shall begin on the date of issuance of the present decision.

I. INTRODUCTION

1. The Sanctions Board met to review this case in plenary sessions on June 6 and September 19, 2012, at the World Bank's headquarters in Washington, D.C. The Sanctions Board was represented by L. Yves Fortier (Chair), Hassane Cissé, Marielle Cohen-Branche, Patricia Diaz Dennis, and Hoonae Kim.

2. A hearing in two parts was held at Respondents' request, in accordance with Article VI of the Sanctions Procedures. INT participated in the hearing through its representatives attending in person. Respondents were jointly represented by outside counsel as well as by the Director and in-house counsel of one of the Respondents. The Sanctions Board deliberated and reached its decision based on the written record and the evidence and arguments presented at the hearing.

3. In accordance with Section 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board's consideration included the following pleadings as well as other submissions:

i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO")[5] to Respondents on June 7, 2011 (the "Notice"), appending (a) the Statement of Accusations and Evidence (the "SAE") as agreed to between INT and Respondents on April 7, 2011; (b) Respondents' Annex to the SAE, submitted by Respondents to the EO on May 4, 2011 ("Respondents' Annex"); and (c) INT's Annex to the SAE, submitted by INT to the EO on May 19, 2011 ("INT's Annex");

ii. Response submitted by Respondents to the Secretary to the Sanctions Board on September 7, 2011 (the "Response");

iii. Reply in Support of the SAE (with Opposition to Respondents' Request for a Hearing), submitted by INT to the Secretary to the Sanctions Board on October 27, 2011 (the "Reply");

iv. Additional Evidence submitted by INT to the Secretary to the Sanctions Board on June 4, 2012 ("INT's Additional Evidence");

v. Supplement to the SAE, submitted by INT to the Secretary to the Sanctions Board on July 9, 2012 ("INT's Supplement to the SAE");

[5] Effective March 31, 2013, the EO's title changed to "IBRD/IDA Suspension and Debarment Officer" ("SDO"). For consistency with the Sanctions Procedures and the pleadings in this case, this decision refers to the former title.

vi. Submission in Response to the Sanctions Board Admission of INT's Production and Related Determinations, submitted by Respondents to the Secretary to the Sanctions Board on July 9, 2012 ("Respondents' Submission on INT's Additional Evidence"), attaching additional evidence from Respondents ("Respondents' Additional Evidence"); and

vii. Comments to Respondents' Additional Evidence, submitted by INT to the Secretary to the Sanctions Board on August 16, 2012 ("INT's Submission on Respondents' Additional Evidence").

4. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended in the Notice that each Respondent, together with any Affiliate that any Respondent directly or indirectly controls, be declared ineligible to (i) be awarded a contract for any Bank-Financed Projects, (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider 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 Project; provided, however, that after a minimum period of ineligibility of three (3) years, each of the Respondents may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer that it has (a) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned and (b) put in place an effective integrity compliance program acceptable to the Bank and implemented this program in a manner satisfactory to the Bank.

5. Effective June 7, 2011, each Respondent, together with any Affiliate that any Respondent directly or indirectly controls, was temporarily suspended from eligibility to be awarded additional contracts for Bank-Financed Projects or participate in new activities in connection with Bank-Financed Projects pending the outcome of these sanctions proceedings.

II. GENERAL BACKGROUND

6. This case arises in the context of the Indonesia Infrastructure Reconstruction Enabling Project ("IREP" or the "Project"), which sought to provide technical assistance to support the post-earthquake and tsunami emergency rehabilitation and reconstruction strategy in Aceh and North Sumatra, Indonesia. On July 13, 2006, IDA and the Republic of Indonesia (the "Borrower") entered into a Multi-Donor Trust Fund for Aceh and North Sumatra Grant Agreement (the "Agreement") to provide US$42 million to support the Project. The Agreement required all consulting services to be procured in accordance with the provisions of the May 2004 Consultant Guidelines.

7. On August 7, 2006, the Indonesian government agency coordinating the Project's rehabilitation and reconstruction activities (the "Project Implementation Unit" or "PIU") issued a request for proposals (the "RFP") to provide Infrastructure Project Management consulting services under the Project. In response, one of the Respondents (the "Respondent Consultant") submitted a proposal on October 19, 2006 (the "Proposal"). The Respondent Consultant was the successful bidder and, on February 9, 2007, entered into a contract with

the PIU valued at approximately US$18 million (the "Contract" or the "IPM Contract"). To help fulfill its obligations under the Contract, the Respondent Consultant then entered into three sub-consultancy agreements with a local firm (the "Sub-Consultant") to provide professional and technical staff.

8. INT alleges, and Respondents do not dispute, that Respondents failed to make required disclosures in the Proposal about certain fees paid to the Sub-Consultant; and that Respondents submitted false reimbursement claims to the PIU under the Contract. The three entities named as Respondents are (i) the Respondent Consultant, a company registered in Australia; (ii) a company registered in Indonesia (the "Respondent Affiliated Firm"), which is wholly owned by the same parent company that wholly owns the Respondent Consultant; and (iii) a business unit operating in Indonesia (the "Respondent Business Centre"), which is not a separate legal entity but rather the local representative office through which the Respondent Consultant has conducted its operations in Indonesia, and which also houses the Respondent Affiliated Firm. A manager employed by the Respondent Consultant since 2002 (the "Manager") simultaneously served as head of the Respondent Affiliated Firm and the Respondent Business Centre from 2004 until mid-2008, and acted as the Respondent Consultant's Project Director for IREP until early 2009.

III. APPLICABLE STANDARDS OF REVIEW

9. Pursuant to Section 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 such respondent engaged in a sanctionable practice. Section 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. As set forth in Section 7.01 of the Sanctions Procedures, the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered; formal rules of evidence do not apply.

10. Under Section 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.

11. The alleged sanctionable practice in this case – fraud – has the meaning set forth in the May 2004 Consultant Guidelines, which governed the Project's procurement of consulting services under the Agreement. Paragraph 1.22(a)(ii) of these Guidelines defines the term "fraudulent practice" as "a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract." This definition does not include an explicit mens rea requirement such as the "knowing or reckless" standard adopted by the Bank from

October 2006 onward.[6] However, the legislative history of the Bank's various definitions of "fraudulent practice" reflects that the October 2006 incorporation of the "knowing or reckless" standard was intended only to make explicit the pre-existing standard for mens rea, not to articulate a new limitation.[7] Accordingly, the Sanctions Board has held that the "knowing or reckless" standard may be implied under the pre-October 2006 definitions.[8]

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. Principal Contentions in the SAE

12. INT asserts, and Respondents have agreed not to contest, that there is sufficient evidence in the SAE to support a finding that Respondents' conduct constituted fraudulent practices under the May 2004 Consultant Guidelines. Specifically, the SAE states that:

i. Respondents fraudulently failed to disclose in the Proposal or under the Contract their agreement to pay, and their payment of, a "marketing fee" of approximately US$43,000 to the Sub-Consultant (the "Marketing Fee").

ii. From March 2007 until at least June 2008, Respondents fraudulently submitted housing reimbursement requests for approximately US$210,000 that exceeded actual expenses and were accompanied by false supporting documentation.

iii. In November 2007, Respondents used false supporting documentation that misstated the number, model year, and leasing rates of vehicles that it had leased in order to request reimbursement for US$150,000 in vehicle and transportation expenses supposedly incurred during the previous nine months.

iv. From October 2007 until at least January 2008, Respondents leased vehicles from a rental firm that was related to the Sub-Consultant and thus ineligible to receive payments under the Contract (the "Rental Firm"). To avoid rejection of their claims for reimbursement of these ineligible expenses, Respondents entered into a purported agreement with another rental firm (the "Invoicing Firm") and submitted false supporting documentation fabricated under the name and company letterhead of the Invoicing Firm.

13. The uncontested SAE identifies Respondents' repetition of fraud, as well as their representative's interference with, and obstruction of, INT's investigation, as aggravating facts. The SAE identifies various forms of cooperation as well as corrective and remedial actions, particularly by the Respondent Consultant, as mitigating facts.

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[6] See, e.g., Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, rev. October 2006) (the "October 2006 Consultant Guidelines") at para. 1.22(a)(ii) (defining "fraudulent practices" as "any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation") (emphasis added).

[7] Sanctions Board Decision No. 41 (2010) at para. 75.

[8] Id.

B. Respondents' Principal Contentions in their Annex to the SAE and the Response

14. Respondents assert that while they do not intend to modify, negate, contradict, or abandon the facts set out in the uncontested SAE, their Annex to the SAE and the Response provide additional information relevant to the determination of an appropriate sanction. Respondents seek lesser or no sanctions rather than those recommended by the EO on the following principal grounds:

i. Respondents erred in interpreting the disclosure and reimbursement requirements under the Proposal and Contract and deserve mitigating credit for their voluntary corrective actions and cooperation. Accordingly, none of the Respondents should receive any sanction beyond the period of voluntary restraint and temporary suspension already served.

ii. The Respondent Consultant should not be subjected to strict liability and debarred for an isolated lack of oversight over personnel who violated corporate policies and subverted corporate controls. Such lack of oversight does not qualify as fraudulent conduct under the Sanctions Procedures. In addition, the Respondent Consultant should be credited with a range of mitigating factors – in addition to those asserted by all three Respondents – including its internal investigations, cooperation with INT and the Asian Development Bank, enhanced compliance program, and other corrective measures. Other relevant considerations include the Respondent Consultant's limited experience in Indonesia; its financial losses resulting from this matter; and the need for proportionality with sanctions for other, more culpable parties.

iii. While limited aggravation may be applied to the Respondent Affiliated Firm and the Respondent Business Centre, any debarment of these entities should be limited to one year and take into account the Respondent Consultant's decision to shut them down due in part to its period of voluntary restraint. According to Respondents, the expected closure of these two entities need not prevent their debarment, but it would make the EO's recommended conditions for their release impracticable.

C. INT's Principal Contentions in its Annex to the SAE and the Reply

15. INT asserts that all of the Respondents should be debarred for at least three years, taking into account the following considerations:

i. The Respondent Consultant should receive equal if not greater sanctions as compared to the other two Respondents, which the Respondent Consultant "wholly controls." The Respondent Consultant – which signed the Proposal and Contract, and received profits and benefits thereunder – was "the real party in interest" and thus liable for the acts of the Manager, its most senior staff member in the country, acting in the course of duty and without appropriate monitoring or controls. In contrast, the Respondent Business Centre is named

as the Respondent Consultant's local operating unit or business unit and the Respondent Affiliated Firm is named for its "participation and involvement" in the Respondent Business Centre – "*i.e.*, its work as part of an integrated unit of [the Respondent Consultant]."

ii. In determining appropriate sanctions for Respondents, fairness and proportionality support taking into account the Sub-Consultant's negotiated three-year debarment "for essentially the same misconduct," but with the Sub-Consultant's full and affirmative acceptance of guilt and responsibility, and formal commitment to compliance and cooperation conditions under the settlement with INT.

iii. All the Respondents deserve aggravating treatment for the repetition and interference and obstruction acknowledged in the uncontested SAE; while their arguments for mitigation lack merit or should be granted limited weight. Beyond their limited no-contest position, for example, Respondents have not shown any acceptance of responsibility, admission of guilt, or meaningful cooperation with INT that would warrant full mitigation. Nor have Respondents substantiated their claimed internal reforms. Other factors such as the claimed absence of past misconduct, disclosures to another organization, or costs of internal investigation are not valid mitigating factors. Respondents' claims of mistake and lack of experience are contradicted by the record, including their own past statements.

D. INT's Additional Evidence and INT's Supplement to the SAE

16. Following a request submitted by Respondents for additional exculpatory evidence and other materials, INT's Additional Evidence included materials later characterized in INT's Supplement to the SAE as potentially exculpatory or mitigating in appearance, but in fact inculpatory or aggravating when reviewed in context. INT describes the remainder of the materials included in INT's Additional Evidence as exhibits that it had originally assembled in 2010, in preparation for filing an SAE in the normal course of sanctions proceedings. INT states that it subsequently omitted such exhibits from the uncontested SAE with the understanding that the parties had stipulated to facts sufficient to support a finding of fraudulent practices in lieu of separate proof or full submissions.

E. Presentations at the June 2012 Hearing and Related Determinations

17. At the hearing of June 6, 2012, Respondents moved to dismiss the Notice of Sanctions Proceedings with prejudice, arguing that INT had withheld relevant evidence up until the eve of the hearing, thus prejudicing Respondents. Alternatively, Respondents argued that INT should be estopped from asserting aggravating factors or contesting mitigating factors. INT explained that it had initially relied on the parties' agreement that they would not contest the facts stipulated in the SAE, which would stand in lieu of additional submissions of evidence. All parties then proposed that INT's Additional Evidence be excluded from the record.

18. As communicated to the parties at the June 2012 hearing, and explained in more detail below, the Sanctions Board (i) denied Respondents' motion to dismiss the Notice; (ii) denied Respondents' request that INT be estopped from contesting Respondents' arguments for mitigation and from putting forth any arguments as to aggravating factors; (iii) denied the parties' proposal that INT's Additional Evidence be excluded from the record; (iv) granted Respondents' prior Request for Access to Documents to the extent the additional evidence presented by INT may include evidence that would reasonably be considered as exculpatory or mitigating; (v) authorized the parties to file written submissions concerning INT's Additional Evidence; (vi) denied Respondents' request for materials related to sanctions proceedings involving other respondents in relation to the Project; and (vii) adjourned the hearing to September 19, 2012, for the parties' oral presentations concerning the merits of the accusations. (Respondents did not accept the earlier date of June 28, 2012, which the Sanctions Board had proposed in view of Respondents' claims of prejudice from delays).

F. Respondents' Submission on INT's Additional Evidence, Attaching Respondents' Additional Evidence

19. In their Submission on INT's Additional Evidence, Respondents renewed their motions to dismiss the case with prejudice – or alternatively to estop INT from asserting aggravation or contesting mitigation – due to INT's purported withholding of potentially mitigating evidence in violation of fundamental fairness, due process, and INT's obligations under the Sanctions Procedures. According to Respondents, INT's Additional Evidence is belated, incomplete, and mostly duplicative or non-probative; is tantamount to a new SAE requiring the EO's initial review under Section 3.01 of the Sanctions Procedures; and, to the extent that it is relevant at all, shows Respondents' extensive cooperation with INT, as the material consists largely of documents and interviews that Respondents provided to INT.

20. Respondents proffered their own Additional Evidence to show that they cooperated with INT's investigation and that INT had failed to produce potentially mitigating evidence concerning certain discussions between INT and Respondents' employees.

G. INT's Submission on Respondents' Additional Evidence

21. In its Submission on Respondents' Additional Evidence, INT asserts that Respondents' Additional Evidence does not support more mitigating credit than is already supported by the evidence previously introduced into the record and the facts as stipulated in the SAE. INT also reiterates its assertion that Respondents are not entitled to full mitigation, let alone exculpation. Finally, INT presented three records of interviews it conducted with individuals whose testimony Respondents suggested would be relevant. INT characterizes these records as unnecessary, duplicative, and not reasonably exculpatory or mitigating.

H. Presentations at the September 2012 Hearing

22. At the merits hearing on September 19, 2012, INT emphasized that Respondents had already agreed not to contest that they engaged in fraudulent practices and interfered with INT's investigation. INT asserted that the main respondent is the Respondent Consultant, which submitted the Proposal and executed the Contract in its own name; engaged in the

misconduct through its Manager's knowing actions, taken within the scope of his employment and in the interest of his employer; and had no adequate corporate controls in place to prevent or detect such misconduct. With respect to sanctioning factors, INT asserted that Respondents should not receive full credit for cooperation, as they denied INT access to information regarding the Marketing Fee and attached unacceptable conditions to the disclosure of their internal investigative results. INT also argued against any mitigating credit for the restitution that Respondents claim to have made, which INT argued was contractually mandated.

23. In turn, Respondents asserted that they stood by the stipulations of the uncontested SAE and did not contest liability for the alleged misconduct. Respondents argued, however, that they had relevant corporate controls in place at the time of the misconduct, and took adequate remedial action afterward. Respondents asserted that they had already suffered more than sufficient consequences for the Manager's misconduct, which led to Respondents' voluntary restraint and temporary suspension from Bank-Financed Projects, substantial revenue losses, cessation of Indonesian operations, and termination of hundreds of employees.

24. Respondents also expressed frustration with the continuation of sanctions proceedings four years after INT's investigation started and despite their efforts to facilitate closure by agreeing to the uncontested SAE. INT denied any inordinate delay on its part, asserting that after it had investigated for one year, and was slowed down in this process by Respondents' refusal to disclose information concerning the Marketing Fee, discussions between the parties then lasted approximately one more year before the SAE and Notice were ultimately issued.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

25. The Sanctions Board first addresses various procedural matters raised in the course of these sanctions proceedings. The Sanctions Board then considers whether the record shows it is more likely than not that any of the Respondents engaged in fraudulent practices as defined under the May 2004 Consultant Guidelines. Finally, the Sanctions Board considers what sanctions, if any, should be imposed on each of the Respondents.

A. Procedural Determinations

1. INT's objection to Respondents' request for a hearing

26. In their Response, Respondents requested a hearing under Section 6.01 of the Sanctions Procedures. In its Reply, INT asserted that no hearing was necessary because Respondents contest only the choice of sanction, not liability; and that a hearing may be requested only if it relates to the accusations against a respondent.

27. Section 6.01 of the Sanctions Procedures provides that "[t]he Respondent or INT may request that the Sanctions Board hold a hearing on the accusations against the Respondent." When such request is made in a respondent's Response or INT's Reply, Section 6.01 then requires that "[t]he Secretary, after consulting with the Sanctions Board Chair, shall provide the Respondent and the Integrity Vice President reasonable notice of the date, time and location of any hearing." Section 6.01 does not state that, where a party has requested a hearing, the Sanctions Board may deny such hearing at its discretion or upon another party's

objections.[9] Nor does the Sanctions Board interpret Section 6.01 to require that respondents must specifically deny liability, as well as contest the EO's recommended sanctions, in order to justify a hearing. The oral presentations and exchanges at a hearing may clarify points of fact or law relevant to the determination of sanctions as well as liability. Moreover, a respondent's cooperation in admitting, or at least not contesting, liability should be encouraged. Denying respondents the opportunity to present mitigating arguments at a hearing, simply because they have not also contested liability, would discourage cooperation. Considering the above factors, the Sanctions Board proceeded with a hearing (ultimately conducted in two parts, addressing procedural issues on June 6, 2012, and addressing the merits on September 19, 2012), with appropriate advance notice to all parties.

2. Respondents' request for additional materials

28. By request of July 26, 2011, as amended and supplemented on August 5, 2011, Respondents requested the following materials: (i) "all documents and information relating to sanctions procedures against" the Sub-Consultant or Manager, including but not limited to any settlement agreements between the Bank and the Sub-Consultant or Manager; (ii) in the event that there are "pending sanctions proceedings against other individuals or entities in connection with IREP not currently known to Respondents," the identities of such respondents and any materials relating to such proceedings; and (iii) "any additional exculpatory evidence" relating to any of the Respondents. INT objected to Respondents' requests for additional materials as contrary to the letter of the Sanctions Procedures and their underlying policy considerations, including the confidentiality of settlements; and as unnecessary in light of Respondents' no-contest position and pre-existing knowledge in the case at hand.

29. Section 7.03 ("No Discovery") of the Sanctions Procedures states, "Except as expressly provided for in these Procedures, the Respondent shall have no right to review or obtain any information or documents in the Bank's possession." Section 3.02 of the Sanctions Procedures expressly requires that "INT shall present all relevant evidence in INT's possession that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability." In addition, Section 5.04(b) of the Sanctions Procedures provides that "[t]he Secretary may, at any time, upon approval of the Sanctions Board, make materials relating to sanctions proceedings against a particular Respondent available to other Respondents in sanctions proceedings involving related accusations, facts, or matters."

30. With regard to Respondents' request for materials relating to "sanctions procedures against" the Sub-Consultant and Manager, the Sanctions Board addressed, as a question of first impression, whether settlements between the Bank and such parties would constitute "sanctions proceedings" within the meaning of Section 5.04(b). INT confirmed that the Bank had executed settlement agreements with the Sub-Consultant and Manager prior to INT's submission of any Statement of Accusations and Evidence against either party, which Section 3.01(b) of the Sanctions Procedures requires as a necessary step "[i]n order to initiate sanctions proceedings"; and prior to the EO's issuance of any Notice of Sanctions Proceedings against either party under Article IV ("Commencement of Proceedings"). The

[9] See Sanctions Board Decision No. 50 (2012) at para. 22.

Sanctions Board considered that, although the Sanctions Procedures do not define the terms "settlement" or "sanctions proceedings," they repeatedly refer to settlements as distinct from sanctions proceedings. Article XI ("Settlements"), in particular, refers to a stay of sanctions proceedings for the purpose of conducting settlement negotiations (Section 11.01(a)); the submission of proposed settlement agreements "prior to or during sanctions proceedings" (Section 11.02(a)); and the possibility of a settlement agreement becoming effective "prior to the commencement of sanctions proceedings" (Section 11.03(d)). Accordingly, the Bank's settlement agreements with the Sub-Consultant and the Manager were executed separately from and prior to any sanctions proceedings, and documentation of such settlements would not constitute "materials relating to sanctions proceedings" as may be made available to other respondents under Section 5.04(b).

31. With regard to the second category of materials Respondents requested, INT confirmed that it had no pending sanctions proceedings against other individuals or entities in connection with IREP, and therefore no information or materials to disclose in such regard.

32. With regard to the third category of materials Respondents requested, the Sanctions Board determined that any additional evidence in INT's possession that could reasonably be considered as exculpatory or mitigating should be admitted into the record. Notwithstanding the parties' use of an uncontested SAE, and the parties' disagreements over the actual extent of Respondents' previous access to all relevant evidence, INT's disclosure of exculpatory or mitigating evidence under Section 3.02 is required as a matter of fundamental fairness and is essential to the Sanctions Board's ability to identify and weigh all relevant factors in reaching its sanctions decisions. The Sanctions Board therefore asked INT to produce all such evidence that had not previously been included in the SAE (subsequently admitted into the record as INT's Additional Evidence), and granted Respondents the opportunity to review and comment upon such additional evidence (Respondents' Submission on INT's Additional Evidence).

3. Respondents' motion to dismiss the case or to estop INT due to INT's alleged failure to disclose in a timely fashion exculpatory or mitigating evidence

33. In their Submission on INT's Additional Evidence, Respondents maintained that the case should be dismissed summarily because, according to Respondents, INT had violated Section 3.02 of the Sanctions Procedures by inappropriately submitting irrelevant and duplicative materials as INT's Additional Evidence; and because INT continued to withhold other potentially exculpatory or mitigating evidence thereafter in the form of certain transcripts and other records of interviews.

34. As the parties were previously informed, the Sanctions Board found that Respondents failed to establish grounds that would warrant an exceptional remedy such as summary dismissal. The Sanctions Board afforded Respondents adequate opportunity to review and respond to all additional evidence presented by INT, adjourning for this purpose the initial June 2012 hearing, at Respondents' request, to a later hearing on the merits in September 2012. Respondents were thus able to submit detailed comments in writing on INT's Additional Evidence on July 9, 2012, and make additional comments at the September 2012 hearing.

35. In addition, the Sanctions Board notes that Respondents did not pursue the issue of purportedly missing evidence in the timeliest or most consistent fashion. In support of their request for dismissal, Respondents cited to and presented electronic correspondence that had been in their possession since 2008. The submission of those materials as Respondents' Additional Evidence in July 2012, which the Sanctions Board Chair accepted at his discretion, necessitated the subsequent filing of INT's Submission on Respondents' Additional Evidence on August 16, 2012. Moreover, Respondents adopted inconsistent positions through the proceedings, alternatively seeking to obtain certain additional evidence, then seeking exclusion of the same evidence from the record.

36. As an alternative to dismissal, Respondents asked that INT be estopped from presenting aggravating factors or contesting Respondents' mitigating factors. The Sanctions Board denied this request as well, in view of the lack of prejudice suffered by Respondents and the importance of considering all relevant sanctioning factors.

37. In sum, the Sanctions Board finds the piecemeal presentations of evidence on both sides regrettable, but ultimately not so prejudicial as to warrant dismissal or estoppel.

4. The parties' proposal to exclude relevant evidence and limit the scope of the Sanctions Board's review on the basis of the uncontested SAE

38. INT asserted consistently throughout the sanctions proceedings that as the parties had agreed to submit an uncontested SAE in lieu of other proof or submissions, INT was not obligated to present additional evidence under Section 3.02 or any other provision of the Sanctions Procedures. Although Respondents had asserted previously that INT was obligated to provide the additional evidence that Respondents requested, the parties jointly requested at the June 2012 hearing that the Sanctions Board should exclude INT's Additional Evidence from the record. INT also asserted, and Respondents ultimately concurred, that as the uncontested SAE stipulated to the underlying facts and Respondents' liability, the scope of the Sanctions Board's review should be limited to determining appropriate sanctions for each of the Respondents.

39. As previously communicated to the parties, the Sanctions Board found no reason to exclude INT's Additional Evidence or other evidence pertaining to Respondents' culpability. In reaching this determination, the Sanctions Board recognized that it needs to consider a full record, including all relevant evidence available in the case – whether inculpatory or exculpatory, aggravating or mitigating – to carry out its responsibilities. Section 8.01 of the Sanctions Procedures requires that, in each sanctions case, "the Sanctions Board shall issue a decision setting forth a recitation of the relevant facts, its determination as to the culpability of the Respondent, any sanction to be imposed on the Respondent and its Affiliates and the reasons therefor." The Sanctions Board thus takes into consideration all evidence in the record – including the parties' stipulations in the uncontested SAE, as well as all other relevant evidence presented by the parties – to assess the underlying evidence of misconduct that would demonstrate Respondents' relative degrees of culpability, and the full range of potentially aggravating or mitigating factors relevant to the choice of sanctions.

5. Respondents' request to exclude INT's Additional Evidence as tantamount to a new SAE requiring prior EO review

40. In their Submission on INT's Additional Evidence, Respondents argue that the Sanctions Board's decision to admit INT's Additional Evidence into the record violates the Sanctions Procedures insofar as INT's submission was tantamount to a new SAE that had not been reviewed by the EO and was thus admitted in violation of Section 3.01(b) of the Sanctions Procedures.

41. INT has not sought to initiate new sanctions proceedings or advance new counts of sanctionable practices through its Additional Evidence. As Respondents themselves had repeatedly requested, INT's Additional Evidence presents materials potentially relevant to the Sanctions Board's determination of appropriate sanctions for the fraudulent practices alleged in the existing uncontested SAE – which the record shows INT duly submitted to the EO for review in accordance with Section 3.01(b).

6. Respondents' request to strike INT's Submission on Respondents' Additional Evidence

42. As noted above, following Respondents' unsolicited submission of additional evidence on July 9, 2012, the Sanctions Board Chair accepted such material, at the Chair's discretion, on condition that INT be provided an opportunity to comment on Respondents' Additional Evidence. Upon receipt of INT's Submission on Respondents' Additional Evidence, Respondents asked the Sanctions Board Chair on September 7, 2012, to strike such filing as non-responsive and improper. Respondents asserted that INT had not limited itself to commenting on Respondents' Additional Evidence as instructed, but also sought to rebut the arguments in Respondents' Submission on INT's Additional Evidence. On September 12, 2012, INT objected to the request to strike, asserting that it had properly responded to arguments made in reliance upon or in relation to Respondents' Additional Evidence.

43. As the parties were previously informed, the Sanctions Board Chair denied Respondents' request to strike with prejudice. Most of INT's submission addresses Respondents' Additional Evidence. While the submission does expand on INT's earlier rebuttals to Respondents' arguments on various procedural and substantive issues, it does not raise any new issues. Finding that the overall content of INT's submission was therefore responsive and not prejudicial to Respondents, the Sanctions Board Chair accepted such submission as a matter of discretion, thus exercising a degree of flexibility comparable to that previously applied in accepting Respondents' Additional Evidence. As noted earlier, formal rules of evidence do not apply in the Bank's sanctions proceedings. Motions and countermotions often lead to a highly technical and overly legalistic proceeding which runs counter to informality. The Sanctions Board does not wish to become a forum where respondents may be disadvantaged if they are not represented by legal counsel.

B. Evidence of Fraudulent Practices

44. In accordance with the definition of fraudulent practices under the May 2004 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that Respondents (i) made a misrepresentation of facts (ii) that was knowing or reckless (iii) in order to influence the procurement process or the execution of the contract.

45. The stipulations in the uncontested SAE, as reaffirmed by Respondents at the September 2012 hearing and as corroborated by witness statements and other evidence in the record, suffice to establish Respondents' liability for fraudulent practices. Respondents do not contest, for the purpose of these sanctions proceedings, that they engaged in fraudulent practices as defined in the May 2004 Consultant Guidelines. More specifically, Respondents do not contest that they (i) failed to disclose the Respondent Consultant's agreement to pay the Marketing Fee to the Sub-Consultant in the Proposal for the Contract or the payment of such fee during Contract implementation; (ii) submitted invoices to the PIU from March 2007 until at least June 2008 for reimbursement of housing costs not actually incurred; (iii) used false supporting documentation to request reimbursement for vehicle and transportation expenses in November 2007; and (iv) submitted invoices to the PIU from October 2007 until at least January 2008 for reimbursement of ineligible vehicle rental expenses incurred with the Rental Firm, but falsely invoiced through the Invoicing Firm.

46. Notwithstanding the aforementioned stipulations in the uncontested SAE, Respondents argued during the subsequent proceedings that the non-disclosure of the Marketing Fee agreement was due to a misunderstanding of the scope of the disclosure obligation. The RFP required bidders to disclose "information on commissions and gratuities . . . paid or to be paid to agents relating to this proposal and during the execution of the assignment." The Contract in turn required the disclosure of "any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the selection process or the execution of the contract." Respondents' failure to disclose what they described themselves as a "marketing fee" – without any prior inquiry as to the scope of the disclosure requirement – appears to be at least reckless in light of Respondents' previous experience with bidding processes, and given that the importance and the broad scope of the disclosure requirement were apparent from its repetition at various stages of the selection process and the language used. Nor does the record support a finding that the other uncontested practices relating to reimbursements may be excused on the basis of mistake. For example, the record reveals that the Contract's General Conditions defined the scope of reimbursable expenses as "expenses actually and reasonably incurred," and stated that reimbursement claims shall be accompanied by appropriate supporting materials. In light of this unambiguous language, and even though the Contract included other references to "per diem allowances," it is more likely than not that Respondents acted at least recklessly in submitting claims for expenses over and above actual costs. Finally, with respect to leasing arrangements with the Invoicing Firm, the record reveals that Respondents acted knowingly in creating false invoices designed to obtain reimbursement for ineligible expenses incurred with the Rental Firm.

47. The record also supports a finding that the various misrepresentations and omissions at issue related to documents that were either required by the tender or material to the Respondents Consultant's remuneration under the Contract. Accordingly, it is more likely than not that such misrepresentations and omissions were made in order to influence the selection process and execution of the Contract, including by receiving unjustified payments.

48. Considering the parties' detailed stipulations in the uncontested SAE, as well as other supporting evidence in the record including contemporaneous documentary evidence, results of a forensic accounting analysis, and statements from various individuals who admittedly participated in the fraudulent practices, the Sanctions Board finds that the record supports a finding of fraudulent practices.

49. Respondents do not contest that they had authorized the Manager, who played a central role in the misconduct, to act as the Respondent Consultant's Project Director for purposes of the Contract. While Respondents argue that the Manager deceived the Respondent Consultant's senior management by failing to voluntarily disclose the fraudulent practices, the Sanctions Board finds sufficient evidence to show that the Manager acted on the Respondent Consultant's behalf and within the course and scope of his duties, without adequate controls or supervision to prevent repeated misconduct. Furthermore, the Manager acted in his capacity as head of the Respondent Business Centre and Respondents admitted that the Respondent Affiliated Firm played a central role in the misconduct at issue. As a result, the Sanctions Board finds that each of the Respondents may be held liable for the misrepresentations.

C. Determination of Appropriate Sanctions

1. General framework for determination of sanctions

50. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section 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 9.01. The possible sanctions set out in Section 9.01 are: (i) reprimand, (ii) conditional non-debarment, (iii) debarment, (iv) debarment with conditional release, and (v) restitution or remedy. As stated in Section 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the EO's recommendations.

51. As reflected in Sanctions Board precedents, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors to determine an appropriate sanction.[10] The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented.[11]

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[10] See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

[11] Sanctions Board Decision No. 44 (2011) at para. 56.

52. The Sanctions Board is required to consider the types of factors set forth in Section 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 they are not intended to be prescriptive in nature, they provide a point of reference to help illustrate the types of considerations potentially relevant to a sanctions determination. They further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after three years.

53. Should the Sanctions Board impose a sanction on a respondent, it may also, pursuant to Section 9.04 of the Sanctions Procedures, impose appropriate sanctions on any Affiliate of such respondent.

2. Factors applicable in the present case

54. Section 9.02 of the Sanctions Procedures identifies a number of potentially relevant factors, which the Sanctions Board addresses in turn below.

a. Severity of the misconduct

55. *Repeated pattern of conduct*: Section IV.A.1 of the Sanctioning Guidelines refers to a repeated pattern of conduct as potential grounds for aggravation. The Sanctions Board agrees with INT that aggravation should apply on this ground for Respondents' repeated engagement in different types of fraud. The uncontested SAE stipulates as an aggravating factor that Respondents engaged in "repeated instances of fraudulent practices." The record reveals that the misconduct included several distinct types of fraud, on different subject matters, extending over the course of nearly two years. Respondents' failures to disclose the Marketing Fee under the Proposal and Contract, for example, were a distinct type of fraud separate from their submission of false invoices for housing and transportation expenses. The latter practice of false invoicing extended from March 2007 until at least June 2008, and included both over-billing and, in the case of ineligible car rental costs from the Rental Firm, the creation of sham leasing documents in the name of the Invoicing Firm. The record therefore does not support Respondents' suggestion that the misconduct was limited to a brief initial period of several months. On these facts, the Sanctions Board finds Respondents' varied and repeated misconduct to merit aggravation.[12] With this finding, the Sanctions Board also rejects Respondents' assertion that the misconduct was limited to an "isolated incident of lack of oversight," which Section II.D of the Sanctioning Guidelines suggests may warrant only a letter of reprimand.

56. *Management's role in misconduct*: Section IV.A.4 of the Sanctioning Guidelines suggests that aggravation should apply "[i]f an individual within high-level personnel of the

[12] See Sanctions Board Decision No. 48 (2012) at para. 39 (finding the respondent's submission of several types of fraudulent documents in one course of conduct, within a short period of time, sufficiently repetitive to merit aggravating treatment, though it did not constitute separate counts of fraud).

organization participated in, condoned, or was willfully ignorant of the misconduct." Respondents argue that the Manager did not belong to Respondent Consultant's senior management, which became aware of the misconduct only when alerted by the Bank's investigation. While the Manager may not have been part of the Respondent Consultant's most senior management, the record reveals that he had extensive and indeed paramount authority to act for all the Respondents in Indonesia. He was the Respondent Consultant's duly authorized Project Director for IREP; headed all Indonesian operations for Respondents, including the Respondent Affiliated Firm and the Respondent Business Centre; and reported directly to the Respondent Consultant's executive management team. Among other evidence, the uncontested SAE describes the Manager as "an important, relatively senior manager" and as the Respondent Consultant's "most senior staff member in Indonesia." In this context, the Sanctions Board finds that the Manager's direct participation in the misconduct at issue qualifies as high-level involvement deserving aggravating treatment for each Respondent.

b. Interference in the Bank's investigation

57. Section 9.02(c) of the Sanctions Procedures requires the Sanctions Board to consider any interference by the sanctioned party in the Bank's investigation. Section IV.C.1 of the Sanctioning Guidelines provides examples of such interference, including "[d]eliberately destroying, falsifying, altering, or concealing evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation . . . or acts intended to materially impede the exercise of the Bank's contractual rights of audit or access to information." INT alleges that Respondents tried to interfere in its investigation by attempts to destroy potentially inculpatory evidence, create false exculpatory evidence, and interfere with the Bank's exercise of audit rights under the Contract.

58. Firstly, INT asserts that the Manager instructed the Respondent Consultant's sub-consultants on IREP to destroy evidence of improper gifts and expenditures involving government officials. INT relies upon an email between employees of one of those sub-consultants, stating that when the Manager hosted a meeting to advise the sub-consultants on how to receive a delegation from INT, he told the sub-consultants that "if in our financial account there are some item[s] of expenditure to entertain . . . [PIU] officers/government officers[, they] should be deleted from the written account, because this is against [B]ank practices." Respondents discount this email evidence as unreliable hearsay and internally contradictory. They assert that the email must be considered in its entirety, including the portion stating that the Manager encouraged the sub-consultants to provide reasonable answers to INT "without any intention to hid[e] some fact." Finally, Respondents argue that if the Sanctions Board finds any interference in this respect, it should be attributed only to the two entities controlled by the Manager – i.e., the Respondent Affiliated Firm and the Respondent Business Centre – and not to the Respondent Consultant, whose senior management was unaware of the interference.

59. Section 7.01 of the Sanctions Procedures provides that "[a]ny kind of evidence may form the basis of arguments presented in a sanctions proceeding and conclusions reached by . . . the Sanctions Board." For example, "[h]earsay evidence . . . shall be given the weight deemed appropriate by the . . . Sanctions Board." In assessing the weight and import of the email at issue, the Sanctions Board considers the document in its entirety. The Sanctions

Board also considers this evidence in the context of the uncontested SAE, wherein all parties stipulate as an "aggravating fact" that "a representative of Respondents in Indonesia [i.e., the Manager] interfered with and obstructed INT's investigation" by giving the deletion instructions described in the email. On this record, the Sanctions Board finds aggravation appropriate for all Respondents as the Manager, acting as their representative, sought deliberately to destroy any evidence material to INT's investigation into IREP.

60. Secondly, INT asserts that the Manager and the Sub-Consultant exchanged correspondence during the investigation for the sole purpose of creating a false exculpatory record. The record reveals that after INT's inquiries, the Manager and the Sub-Consultant exchanged correspondence in which they agreed that a prior letter's reference to January 2007 discussions concerning the Marketing Fee must have been a typographical error, as the discussion determining the final amount of that fee actually occurred a year later, and most likely in January 2008, after the Contract had been signed. INT asserts that this correspondence seeks to conceal the real circumstances surrounding the fee agreement. The uncontested SAE stipulates that there is evidence showing that, prior to the submission of the Proposal and award of the Contract, Respondents had agreed to pay the Sub-Consultant a "marketing fee"; and the record includes correspondence between the Respondent Consultant and the Sub-Consultant indicating that they had agreed in principle on such fee before the Contract was signed. However, the Sanctions Board does not find that the record reveals that it is more likely than not that the correspondence in question deliberately misrepresented when the final amount of the Marketing Fee was specifically agreed, or conclusively qualifies as interference deserving aggravation.

61. Thirdly, INT asserts that the Respondent Consultant impeded the Bank's exercise of audit rights by denying INT access to relevant information concerning the Marketing Fee. The Respondent Consultant argued that the Bank's audit rights under the Contract did not encompass information pre-dating the Contract's signature, and thus objected to INT's inquiries into earlier events pertaining to the Marketing Fee. Respondents also asserted that the Contract's confidentiality provisions would require the Borrower's authorization to disclose the information that INT requested, and such authorization was not provided.

62. Considering the wording of the Contract, the Sanctions Board agrees with INT that Respondents failed to justify in a credible way the Respondent Consultant's restrictions on the Bank's audit rights. First, the audit clause specifically required the Respondent Consultant to permit the Bank to inspect all "accounts and records in respect of the Services hereunder." Material concerning the Marketing Fee paid or to be paid in relation to the Services would logically qualify as records "in respect of the Services" and thus fall within the scope of the audit clause, regardless of whether such material preceded or followed the Contract's date of signature. Second, the confidentiality clause, which serves a distinct purpose to protect the Borrower's confidential information, should not be interpreted to limit application of the Bank's audit rights as Respondents assert. Respondents thus fail in their argument that information regarding the Marketing Fee agreed to between Respondents and the Sub-Consultant would constitute "confidential information acquired in the course of the Services," disclosable to the Bank only upon the Borrower's prior written consent.

c. Voluntary corrective action

63. Section 9.02(e) of the Sanctions Procedures requires consideration of mitigation "where the sanctioned party . . . took voluntary corrective action." Section V.B of the Sanctioning Guidelines suggests various types of voluntary corrective action that may warrant mitigation, but only where the voluntary corrective action apparently "reflects genuine remorse and intention to reform," rather than "a calculated step to reduce the severity of the sentence." The respondent bears the burden of presenting evidence to show voluntary corrective actions.[13]

64. *Cessation of misconduct*: Respondents seek mitigating credit under Section V.B.1 of the Sanctioning Guidelines, which suggests that a respondent's cessation of misconduct may warrant mitigation. The record, including the uncontested SAE, supports a finding that Respondents' management took corrective measures soon after INT alerted them to the apparent misconduct, and before it became apparent that INT would seek to initiate sanctions proceedings. Such efforts included terminating the car rental agreement with the Rental Firm, and changing their car rental and housing invoicing practices from lump sum rates to "at-cost" pricing. The record does not suggest that misconduct continued after Respondents had implemented such measures. The Sanctions Board thus finds that Respondents' timely cessation of misconduct deserves mitigating credit.

65. *Internal action against responsible individual*: Section V.B.2 of the Sanctioning Guidelines suggests that mitigation may be appropriate where "[m]anagement takes all appropriate measures to address the misconduct engaged in on its behalf, including taking appropriate disciplinary and/or remedial steps with respect to the relevant employee, agent, or representative." The uncontested SAE suggests that mitigation may be allowed for the Manager's removal from management positions in mid-2008 and his departure from the company in early 2009, as well as for Respondent's actions to sever ties with the Sub-Consultant in early 2009. INT asserts that it is impossible to evaluate the impetus for and significance of the Respondent Consultant's claimed separation from the Manager and Sub-Consultant where the record does not show Respondents' internal investigative findings. INT also argues against giving the Respondent Consultant full credit for internal actions, as there is no indication that it disciplined other employees involved in the misconduct.

66. The record does not support mitigation for the Respondent Consultant's purported actions against the Manager and the Sub-Consultant. With regard to the Sub-Consultant, the uncontested SAE asserts that "ongoing contractual obligations" prevented the Respondent Consultant from terminating earlier their business relationship; the Respondent Consultant nonetheless sought to end the contractual relationship; and the Respondent Business Centre has given "strict scrutiny" to the Sub-Consultant's activities in the meantime. However, nothing in these stipulations or elsewhere in the record shows the scope or impact of the asserted actions (e.g., the type of interim controls or "scrutiny" applied to the Sub-Consultant) so as to demonstrate their adequacy.

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[13] Sanctions Board Decision No. 45 (2011) at para. 72.

67. With respect to internal actions against the Manager, the Sanctions Board has previously declined to consider a respondent's action against an individual responsible for misconduct as a mitigating factor where the respondent failed to specify and provide evidence of the measures it took, or demonstrate that it took those measures in response to the sanctionable practices at issue.[14] Respondents must provide proof of a demonstrable nexus between disciplinary action and the conduct at issue in the sanctions proceedings. The record reflects that the Respondent Consultant removed the Manager from his position as manager of the Respondent Business Centre in mid-2008, but retained him in his critical position as IREP Project Director until January 2009, at which time he left the company. Respondents do not explain the substantial delay in the Manager's replacement as IREP Project Director, or show the link between his changes in status and the misconduct at issue. Nor do Respondents demonstrate that they took "all appropriate measures" to address the misconduct with respect to the other personnel whose involvement is reflected in the record. In such circumstances, limited action against only one of the concerned individuals does not warrant mitigation.[15]

68. *Effective compliance program*: Section V.B.3 of the Sanctioning Guidelines provides that mitigation may be appropriate for the establishment or improvement and implementation of a corporate compliance program. The Respondent Consultant seeks mitigating credit for its adoption of an upgraded compliance program, the "Integrity Management Policy." The record contains a copy of the Respondent Consultant's 2010 Code of Conduct, as well as the uncontested SAE's agreed "mitigating facts" regarding the Respondent Consultant's development of new guidelines, financial controls, and oversight mechanisms. INT argues that such efforts do not reflect genuine remorse or intent to reform as required under the Sanctioning Guidelines, however, and that the adequacy of the claimed enhancements cannot be verified because Respondents have not disclosed what control failures their internal investigations uncovered.

69. The Sanctions Board considers the Respondent Consultant's asserted compliance enhancements with reference to the World Bank Group's Integrity Compliance Guidelines[16] (the "Integrity Guidelines"), which provide a resource to assist respondents, other firms, and the Bank in identifying various areas of good governance, anti-fraud, and anti-corruption practices. Based on the record before the Sanctions Board, and without prejudice to any future assessment the World Bank's Integrity Compliance Officer may conduct to more fully evaluate the adequacy of Respondents' integrity compliance measures, the Sanctions Board finds that the Respondent Consultant's Integrity Management Policy and other measures address, at least in part, some of the elements suggested in the Integrity Guidelines. The record reveals some evidence, for example, of an express prohibition of misconduct; senior management support for the compliance program; application of compliance requirements to all personnel, including contractors and sub-consultants; and policies regarding reporting, investigative, and disciplinary procedures in case of misconduct. The Respondent

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[14] See Sanctions Board Decision No. 44 (2011) at para. 72.

[15] See Sanctions Board Decision No. 55 (2013) at para. 77.

[16] See generally Summary of World Bank Group Integrity Compliance Guidelines, available at: http://siteresources.worldbank.org/INTDOII/Resources/IntegrityComplianceGuidelines_2_1_11web.pdf.

Consultant's asserted compliance improvements therefore merit some mitigating credit, limited by the lack of more evidence to show fully satisfactory policies and implementation.

70. *Restitution or financial remedy*: Section V.B.4 of the Sanctioning Guidelines suggests that mitigation may be appropriate "[w]hen the respondent voluntarily addresses any inadequacies in contract implementation or returns funds obtained through the misconduct." Respondents seek mitigation on this ground for their decision to forgo reimbursement of certain expenses incurred for the period from November 2007 until June 2008. As INT argues, however, the record reveals that such remedy was not voluntary on Respondents' part. Rather, as the Bank informed the Borrower in September 2009 after discovering the misconduct, the Bank asserted its contractual rights in declaring the fraudulent claims ineligible expenditures, requiring recovery of past improper payments, and denying any further housing or vehicle claims related to the period up to January 2009.

d. Cooperation

71. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case."

72. *Assistance and/or ongoing cooperation*: Section V.C.1 of the Sanctioning Guidelines suggests that cooperation may take the form of assistance with INT's investigation or ongoing cooperation, with consideration of "INT's representation that the respondent has provided substantial assistance" as well as "the truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of [such] assistance." The Respondent Consultant asserts that it cooperated with INT by providing substantial documentation; making multiple employees available for interviews, including from senior management levels; and offering to disclose additional information outside the scope of the Bank's audit rights, subject to the Borrower's consent. INT argues that the Respondent Consultant's cooperation does not merit full mitigating credit because Respondents made no disclosures about the misconduct beyond their no-contest position in the SAE; the Respondent Consultant briefly discussed, but abandoned, the possibility of proffering more information; and Respondents frustrated INT's attempts to review documents related to the Marketing Fee with a "restrictive interpretation" of the Contract's audit clause.

73. While the evidence of the parties' attempts to engage in proffer discussions or other potential information-sharing is not clear, the record reveals that the Respondent Consultant corresponded with INT and made relevant personnel available for interview, including the Manager and others involved in preparing the fraudulent documentation. On the other hand, as discussed earlier, the record also reveals that the Respondent Consultant resisted INT's requests for information concerning Marketing Fee discussions on unconvincing grounds. The Respondent Consultant's cooperation with INT's investigation thus merits limited mitigation.

74. *Internal investigation*: Section V.C.2 of the Sanctioning Guidelines refers to cooperation where a respondent has "conducted its own, effective internal investigation of the misconduct and relevant facts relating to the misconduct for which it is to be sanctioned and shared results with INT." The Respondent Consultant seeks mitigating credit for conducting two internal investigations – one by internal staff upon learning of INT's initial concerns

regarding the Project, and the other by outside counsel after Respondents became aware of INT's continuing concerns – and for sharing its findings with the Asian Development Bank ("ADB"). INT asserts that the Respondent Consultant refused to share its findings with INT without unreasonable conditions; and that any disclosure to the ADB is "exogenous" to these proceedings.

75. Although the parties declined to reveal what conditions the Respondent Consultant placed on a disclosure to INT, it is clear that the Respondent Consultant did not share the results of its internal investigations either with INT during the investigation or as part of the proceedings before the Sanctions Board. Such absence is not remedied by disclosure to another entity such as the ADB. The Sanctions Board therefore does not apply additional mitigation for the internal investigations.

76. *Admission/acceptance of guilt/responsibility*: Section V.C.3 of the Sanctioning Guidelines recognizes cooperation in the form of a respondent's admission or acceptance of guilt or responsibility, with the condition that early admissions or acceptance merit more weight than admissions or acceptance coming later in the investigation or sanctions proceedings. Respondents claim mitigation for agreeing not to contest the facts stipulated in the uncontested SAE. INT asserts that Respondents' "limited no-contest" position in the SAE merits little mitigating weight, given its narrow scope and late timing.

77. In general, a "no-contest" agreement does not necessarily merit the same mitigating credit as an affirmative admission of guilt or responsibility. In the present case, any mitigating credit for Respondents' decision not to contest the SAE must be balanced against Respondents' subsequent attempts to minimize their culpability and – by denying on appeal that the Respondent Consultant engaged in any fraudulent practices – to contradict and abandon a core stipulation in the SAE. In the Response, for example, Respondents assert that INT failed to show all the requisite elements of fraudulent practice for the Respondent Consultant, whose mere failure of oversight "is not fraudulent conduct under the Sanctions Procedures, but strict liability (or at the most negligence)." In view of this departure from the uncontested SAE, the Sanctions Board found it necessary at the final hearing to clarify whether each of the Respondents still agreed not to contest that it had engaged in fraudulent practices. While Respondents then reaffirmed their original stipulations in the SAE, the Sanctions Board concludes that an inconsistent and limited "no-contest" position – through proceedings characterized more by contestation than cooperation – merits no additional mitigation.

78. *Voluntary restraint*: Section V.C.4 of the Sanctioning Guidelines suggests cooperation may take the form of "[v]oluntary restraint from bidding on Bank-financed tenders pending the outcome of an investigation." Respondents, citing a prior agreement with INT, request full credit against any period of debarment for the approximately fourteen months during which they agreed to refrain from bidding on Bank-Financed Projects.

79. The Sanctions Board finds that Respondents' period of voluntary restraint merits some mitigating credit. The record reflects that, on April 16, 2010, Respondents undertook a commitment to voluntarily refrain from bidding on new projects, withdrew from seven projects awarded but not yet started, and withdrew eighteen additional bids. The period of

voluntary restraint ended with the EO's issuance of the Notice and temporary suspension of Respondents on June 7, 2011. Respondents may thus be credited with voluntary restraint up to the point at which their temporary suspension commenced.[17] The record does not support Respondents' asserted agreement with INT, however. The document Respondents rely upon shows that INT agreed to give "appropriate credit" in a "final [settlement] agreement," but INT did not agree to a one-for-one reduction equivalent to the full length of Respondents' voluntary restraint as part of any settlement, or suggest that INT could commit to any reduction outside the settlement context. In any event, as the parties did not execute a settlement agreement under Article XI of the Sanctions Procedures, the choice of sanction and length of debarment in such contested matter are, consistent with INT's representations, left to the Sanctions Board's discretion under Articles VIII and IX.

e. Period of temporary suspension already served

80. Section 9.02(h) of the Sanctions Procedures requires the sanctions determination to take into account the period of temporary suspension already served by a sanctioned party. The Sanctions Board notes that Respondents have been temporarily suspended since the EO's issuance of the Notice on June 7, 2011, and factors the length of and reasons for this extended period into its final determinations.

f. Other considerations

81. Under Section 9.02(i) of the Sanctions Procedures, the Sanctions Board shall consider "any other factor that . . . the Sanctions Board . . . reasonably deems relevant to the sanctioned party's culpability or responsibility in relation to the Sanctionable Practice."

82. *Proportionality with settling parties*: Respondents assert that they should receive significantly lesser sanctions than the Manager and the Sub-Consultant, who were centrally responsible for the misconduct and received negotiated debarments of three years each. INT argues that Respondents should receive greater sanctions than the Manager and the Sub-Consultant, who admitted guilt, accepted responsibility, and through their settlement agreements voluntarily committed to further compliance measures and cooperation with INT. The Sanctions Board, however, does not consider that the sanctions that the Manager and the Sub-Consultant negotiated should bear upon its determination of contested sanctions for Respondents. In any settlement, the final sanctions may be shaped by considerations extrinsic to the sanctioned party's relative culpability or responsibility for misconduct. In settlements reached prior to the initiation of sanctions proceedings, in particular, little or no information is available to the Sanctions Board about the facts, allegations, or negotiations underlying those settlements.

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[17] See Sanctions Board Decision No. 44 (2011) at para. 66 (finding that a respondent cannot be credited for "voluntary" restraint once its temporary suspension has started).

83. *Proportionality across Respondents*: In proceedings involving multiple contesting respondents, the Sanctions Board evaluates evidence of the respondents' relative culpability or responsibility to determine proportionate sanctions for each.[18] INT contests Respondents' assertion that the Respondent Consultant should receive lesser sanctions than the Respondent Affiliated Firm and the Respondent Business Centre. The Sanctions Board agrees that the record demonstrates that the Respondent Consultant was at least as responsible for the fraudulent practices as the other two Respondents. It was the Respondent Consultant that chose to compete for the Contract, submit the Proposal, and execute the Contract in its own name; employed the Manager to lead its Indonesian operations and appointed him as the IREP Project Director; and relied on the Manager's assurances in proceeding without adequate supervision or controls. While the Respondent Consultant claims that it had limited experience in Indonesia and was thus compelled to rely heavily on the Manager, the Sanctions Board notes the Respondent Consultant's representations in its Proposal that it had thirty years of continuous presence in Indonesia, decades of experience working with all levels of the Indonesian government, and hundreds of in-country staff members.

84. *Mistake*: As the Sanctions Board finds that Respondents acted knowingly or at least recklessly in the misconduct at issue, the Sanctions Board does not find support for Respondents' argument that they should receive lighter sanctions because their misrepresentations resulted from reasonable misunderstandings as to the Contract's requirements.

85. *Absence of past misconduct*: The Sanctions Board does not find that Respondents' purported lack of prior misconduct warrants mitigating credit. While a record of past sanctionable misconduct may merit treatment as an aggravating factor, the Sanctions Board considers its absence a neutral fact.[19]

86. *Financial losses*: The Sanctions Board finds no merit in the Respondent Consultant's arguments for mitigating credit based on its claimed losses incurred in Contract execution and reimbursement delays, or based on its alleged costs in investigating its own misconduct and cooperating with relevant authorities. Such losses – which in this case flow directly from Respondents' misconduct – do not merit mitigation.

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[18] See, e.g., Sanctions Board Decision No. 51 (2012) at para. 93.

[19] Sanctions Board Decision No. 45 (2011) at para. 64; Sanctions Board Decision No. 52 (2012) at para. 46.

87. *Status of the Respondent Affiliated Firm and Respondent Business Centre*: Respondents assert that they have withdrawn their personnel from Indonesia, withdrawn from any projects there, and chosen not to undertake any new business in that country. Respondents also stated at the hearing that, although the Respondent Affiliated Firm still exists, neither it nor the Respondent Business Centre – which never had an independent legal identity – is operating anymore. At the same time, Respondents maintain that sanctions should be limited to these two inactive Respondents. While INT seeks sanctions for the Respondent Consultant as well, INT asserts continued value in sanctioning entities that have ceased to operate, in order to limit the risk that they may later resurface and circumvent the effect of sanctions imposed on other entities. INT also asserts the value of sanctioning the Respondent Business Centre, despite its lack of independent legal status, as it was referenced in the Respondent Consultant's Proposal and Contract, and would warrant attention if it re-appeared in documentation for future bids.

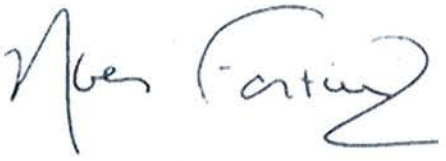
88. Sanctions proceedings in which an entity without separate legal status is named as a respondent may raise concerns of proper notification and representation for the non-legal entity from the commencement of the proceedings, as well as practical difficulties in subsequently implementing and monitoring any sanctions against the non-legal entity.[20] The Sanctions Board finds concerns of notice and representation to be alleviated in this case insofar as the two legal entities controlling or constituting the Respondent Business Centre – the Respondent Consultant and Respondent Affiliated Firm – also appear as named respondents in the same proceedings. Moreover, the Sanctions Board has not found reasons to allocate substantially different degrees of culpability among Respondents. The Sanctions Board also agrees with INT that sanctions may be warranted for entities whether currently active or not, as their present status does not determine their future activity or reduce risks of evasion. However, the record does not make clear how sanctions imposed directly upon the Respondent Business Centre as a non-legal entity would be implemented or monitored. Given that the Respondent Business Centre appears to have acted on behalf of the Respondent Consultant in regard to the fraudulent practices in this case, the Sanctions Board sanctions the Respondent Consultant both in its own name and in its capacity doing business as the Respondent Business Centre.

3. Determination of appropriate sanctions for Respondents

89. Considering the full record and all the factors discussed above, the Sanctions Board hereby determines that the Respondent Consultant, both in its own name and in its capacity doing business as the Respondent Business Centre, and the Respondent Affiliated Firm, together with any entity that is an Affiliate directly or indirectly controlled by either the Respondent Consultant or the Respondent Affiliated Firm, shall be, and hereby declares that they are, ineligible to (i) be awarded a contract for any Bank-Financed Projects, (ii) be a nominated subcontractor, consultant, manufacturer or supplier, or service provider 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

[20] See Sanctions Board Decision No. 55 (2013) at para. 87.

period of ineligibility of one (1) year, each of the Respondents may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, (a) adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank and (b) with respect to the Respondent Consultant, cooperated with INT by providing the results of all internal investigations relating to the sanctionable practices in this case. The ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on Respondents for fraudulent practices as defined in Paragraph 1.22(a)(ii) of the May 2004 Consultant Guidelines. The period of ineligibility shall begin on the date this decision issues.



L. Yves Fortier (Chair)

On behalf of the
World Bank Group Sanctions Board

L. Yves Fortier
Hassane Cissé
Marielle Cohen-Branche
Patricia Diaz Dennis
Hoonae Kim