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# The Global Fund

To Fight AIDS, Tuberculosis and Malaria

**Tenth Board Meeting  
Geneva, 21-22 April 2005**

**GF/B10/6  
Information Only**

## **SPECIAL REPORT OF THE ETHICS COMMITTEE**

1. Under the Committee Rules and Guidelines of the Global Fund, the Ethics Committee is required to submit its annual report to the Board at its second meeting of each year. Accordingly, the Committee's annual report will be presented at the Tenth Board Meeting, on September 28 - 30, 2005.
2. However, the Ethics Committee wishes to report one development to the Board before it issues its annual report. Specifically, the World Health Organization ("WHO") has recently notified the Global Fund that it does not recognize the jurisdiction of this Committee to make decisions with respect to possible conflicts of interest of Secretariat employees who are WHO staff members, and the Ethics Committee considers it appropriate to alert the Board of this issue at this time.

### **Part 1: Background**

3. Under the Global Fund's Administrative Services Agreement with WHO (the "ASA Agreement"), Secretariat employees are also staff members of WHO. Accordingly, that Agreement provides that the WHO Staff Rules and Regulations (the "WHO Rules") apply to such employees.<sup>1</sup> It follows that Secretariat employees are covered by WHO Rules that pertain to ethics and conflict of interest as well as by the Global Fund's COI Policy.
4. Under the COI Policy, Secretariat employees – and members of other categories of individuals covered by the Policy – have a duty to disclose possible conflicts of interest with the Global Fund, including those that derive from Associated Persons (e.g. a spouse, child or domestic partner). The Ethics Committee is required, in each case, to decide whether facts reported to it constitute a conflict of interest.
5. The WHO Rules on ethics are very similar to the Global Fund's COI Policy. Under the WHO Rules, facts that may amount to a conflict of interest and gifts must be reported to the Director General of WHO, who decides what action is appropriate (this function is normally delegated to another person within WHO). In addition, staff members at the grade of Director or higher must annually submit a written declaration of interest.
6. The WHO requirements mean that a Secretariat employee would need to report conflicts of interest, and in some cases provide a declaration of interest form, to both the Ethics Committee and WHO.

### **Part 2: Contacts with WHO**

7. On April 20, 2004, WHO informed the Global Fund that it would not be possible to enforce the requirement that Secretariat employees complete and submit a Global Fund declaration of interest

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<sup>1</sup> ASA Agreement, Article 3.

form without an appropriate entry to the Log of Exceptions (the “Log”) of the ASA Agreement. The Log is a list of agreed “[...] adaptations of or exceptions to the WHO Rules that [...] are needed to meet the particular requirements of the Global Fund.”<sup>2</sup>

8. This caused the Ethics Committee to request the Secretariat to resolve this issue with WHO and bring to an end the overlap between the COI Policy and the WHO Rules.
9. Accordingly, on May 19, 2004 the Secretariat proposed to WHO that Secretariat employees be exempted from the overlapping requirements of the WHO Staff Rules.
10. WHO’s Legal Counsel responded to the Global Fund’s proposal in December 2005. In his letter, he indicated that:
  - (a) WHO cannot exempt secretariat employees from the requirement that conflicts of interest and gifts be reported to the Director General of WHO, as doing so would represent a *de facto* amendment of the WHO Staff Rules. Such action cannot be taken without confirmation by the Executive Board of WHO.
  - (b) WHO can allow the Global Fund to require that its own declaration of interest form be completed and submitted by Secretariat employees. However, there are two material “exceptions” to this conclusion:
    - The Global Fund cannot enforce its requirement that the interests of “domestic partners” be disclosed on the declaration of interest. However, it could request that such information be provided on a “voluntary” basis.
    - The Ethics Committee cannot decide on the compatibility with the COI Policy of interests disclosed on the form by secretariat employees. This is because, under the WHO Staff Rules, it is the Director General who decides on the compatibility of declared interests. The Director General can delegate that authority. However, he can only delegate it to a WHO staff member – for example to the Executive Director of the Global Fund, who could further delegate it to another staff member. But no delegation could be made to the Ethics Committee, as that body is not composed of WHO staff members.
11. WHO’s response addressed the review of annual declarations of interest rather than *ad hoc* reports of conflicts by Secretariat employees. However, by stating that disclosures by WHO staff members can only be reviewed by other staff members, WHO appeared to be denying the Committee’s jurisdiction over ethics and conflict of interest issues involving Secretariat employees.
12. The Secretariat therefore requested that WHO clarify this point. In reply, WHO’s legal department confirmed that it would not be able to recognize the Ethics Committee’s authority to make decisions with respect to conflicts of interest of Secretariat employees. A full application of the COI Policy – including the Committee’s authority to make decisions with respect to conflicts of interest of Secretariat employees – would amount to a “de facto amendment” of the staff rules, which would require the confirmation of WHO’s Executive Board. WHO has indicated informally that this process could be lengthy and that it would not necessarily yield a positive result.
13. However, WHO would have been amenable to the following compromise solution:
  - The Director General of WHO would delegate the authority to make decisions on conflicts of interest of Secretariat employees to the Executive Director of the Global Fund.

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<sup>2</sup> Id.

- Secretariat employees would continue to report possible conflicts of interest to the Ethics Committee.
- The Ethics Committee would consider the facts reported to it and make a recommendation, based on the COI Policy, to the Executive Director on whether there is a conflict of interest and on the action, if any, to be taken in connection with it.
- The authority to decide whether or not a conflict exists and, if so, any action to be taken would rest with the Executive Director of the Global Fund, as part of his delegated decision-making authority.

### **Part 3: Conclusions of the Ethics Committee**

14. In considering the compromise solution, the Ethics Committee noted that the COI Policy clearly allocates to it the authority and obligation to make decisions with respect to conflicts of interest of Secretariat employees. It accordingly concluded that any procedure that would dilute that obligation – even one that would retain for the Committee a power to make *recommendations* with respect to conflicts of interest of employees – would interfere with one of the Board’s key governance functions and therefore not be acceptable.
15. In the same way, the Committee notes that the requirements of the COI Policy apply to “associated persons” of covered individuals, including the domestic partners of Secretariat employees.<sup>3</sup> Accordingly, it considers that it would not be appropriate to accept WHO’s determination that information with respect to such persons can only be provided on a voluntary basis.
16. In short, the Ethics Committee considers that the Global Fund’s requirements with respect to conflicts of interest, including its own function in enforcing them against Secretariat employees, cannot be outsourced to WHO.
17. The Committee believes that it is essential to maintain a coherent position that adherence to the COI policy is not subject to compromise. Therefore, to address this problem, the Committee plans to exhort WHO to recognize the COI Policy and request again that all action required to allow the Committee to carry out its functions be taken promptly. The Committee does note that, consistent with the Headquarters Agreement signed in December, once the Secretariat transitions all employees off the WHO rolls and is able to move beyond the Administrative Services Agreement, the issue of competing conflict of interest obligations should become moot.

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<sup>3</sup> See COI Policy, Article 2(b).