



Investing in our future

The Global Fund

To Fight AIDS, Tuberculosis and Malaria

**Eighteenth Board Meeting
New Delhi, India, 7 – 8 November 2008**

**GF/B18/8
Attachment 1**

**ATTACHMENTS TO ANNUAL REPORT OF ETHICS COMMITTEE
REPORT OF THE WORKING GROUP ON CONFLICT OF INTEREST
SAFEGUARDS TO THE ETHICS COMMITTEE**

This document is part of an internal deliberative process of the Global Fund and as such can not be made public. Please refer to the Global Fund's documents policy for further guidance.



REPORT OF THE WORKING GROUP ON CONFLICT OF INTEREST SAFEGUARDS TO THE ETHICS COMMITTEE

BACKGROUND:

1. In November 2007, the Ethics Committee established a working group (the "Working Group") to help it assess whether the Global Fund's policies and procedures adequately safeguard against conflicts of interest that may arise where a person who occupies a prominent position in the governance structure of the Global Fund is also associated with a potential provider of goods and services to the organization.

2. The Working Group was composed of three members of the Ethics Committee, namely Dr. Jacob Gayle (Vice-Chair of the Ethics Committee), Dr Sigrun Møgedal, and Dr. Brian Brink. Dr. Gayle served as Chair of the Working Group.

3. The terms of reference for the Working Group were as follows:
 - (a) To review the following Global Fund policies:
 - (i) Policy on Ethics and Conflict of Interest for Global Fund Institutions (the "Ethics Policy");
 - (ii) Policy on Secretariat Procurement of Goods and Services (the "Procurement Policy"); and
 - (iii) Whistle-blowing Policy for the Secretariat and Governance Institutions of the Global Fund (the "Whistle-blowing Policy");
 - (b) To provide advice to the Ethics Committee on the extent to which the abovementioned policies provide sufficient protection against conflicts of interest that may arise where a person who occupies a prominent position in the governance structure of the Global Fund is also associated with a potential provider of goods and services to the organization, and identify any weaknesses or deficiencies in such policies;
 - (c) To make recommendations to the Ethics Committee on how (i) the abovementioned policies could be amended to address any weaknesses or deficiencies in existing conflict of interest safeguards; and (ii) how such policies could be strengthened in light of best policies and practices adopted by other public and private sector organizations; and
 - (d) To provide other advice to the Ethics Committee, upon request, on ethical considerations related to the above.

4. In order to accomplish the above tasks, the Working Group received technical advice on a pro bono basis from two consultants, namely Professor Peter Singer and Mr Carl Vacketta. Professor Singer is an ethics specialist who is Senior Scientist and Professor of Medicine at the McLaughlin-Rotman Center for Global Health, University Health Network and University of Toronto. Mr Vacketta is a senior partner with the international law firm of DLA Piper who has extensive experience in advising organizations on procurement processes. Mr Vacketta worked on this project with Fernand Lavallee, also a partner at DLA Piper.

5. The consultants reviewed the Global Fund policies mentioned in paragraph 3(a) above, and provided advice to the Working Group on whether these policies provide sufficient protection against conflicts of interest. The consultants also considered whether the policies could be strengthened in light of best policies and practices adopted by other public and private sector organizations.

6. The Working Group met in New York City on 8 June 2008 to review the consultants' advice and decide what recommendations should be made to the Ethics Committee.

7. This report describes the conclusions and recommendations of the consultants and of the Working Group with respect to the above terms of reference. It also sets out some additional issues for further consideration by the Ethics Committee.

CONCLUSIONS OF PROFESSOR SINGER

8. Professor Singer was of the view that the Ethics Policy offers adequate protection against conflicts of interest that may arise where a person who occupies a prominent position in the governance structure of the Global Fund is also associated with a potential provider of goods and services to the organization. He noted that the Procurement Policy and Whistle-blowing Policy operate with the Ethics Policy and establish "mechanisms for monitoring conflicts of interest and the public disclosure of these monitoring activities."¹ In addition, Professor Singer noted that "should a specific decision arise in which a particular Board member is specifically in conflict, the policies provide for that person to absent him/herself from the specific decision and also provide the Ethics Committee the discretion to issue a waiver so that person may continue administrative functions if for example he/she holds a prominent position in the governance of the Global Fund which requires such functions."² Finally, he concluded that "since procurement is a management and not a governance function, a person who occupies a prominent position in the governance of the Global Fund is likely to be insulated from decisions on procurement."³

9. Professor Singer also compared the Global Fund's Ethics Policy to best practices of other public sector organizations.⁴ He concluded that it was not necessary to amend or further strengthen the Ethics Policy as he considered it to be sufficiently robust to address conflicts of interest, including

¹ Report of Professor Peter A. Singer to the Ethics Working Group dated 25 May 2008, page 5.

² Report of Professor Peter A. Singer to the Ethics Working Group dated 25 May 2008, page 5.

³ Report of Professor Peter A. Singer to the Ethics Working Group dated 25 May 2008, page 5.

⁴ Such policies include those of GAVI, PATH and The Bill and Melinda Gates Foundation.

those that may arise where a person who occupies a prominent position in the governance structure of the Global Fund is also associated with a potential provider of goods and services.⁵

Professor's Singer's written advice to the Working Group is set out in Annex A to this report.

CONCLUSIONS OF DLA PIPER

10. DLA Piper noted that the definition of "conflict of interest" in the Ethics Policy could be strengthened to protect against the scenario where a prominent Covered Individual⁶ (e.g. a Board member) who is not involved in making a decision on a particular matter, but has a financial interest in it, attempts to "unofficially" influence another Covered Individual (e.g. staff member) who is involved in making the relevant decision. Accordingly, DLA Piper recommended that the definition of "conflict of interest" be amended as follows:

"A conflict of interest arises when a Covered Individual participates personally or substantially ~~in an official capacity in any particular Global Fund matter~~ in which, to his or her knowledge, he or she or an Associated Person⁷ or Associated Institution⁸ has a financial interest, if the particular matter ~~will~~ may have a direct and predictable effect of that interest."⁹

DLA Piper also recommended amending the definition of the terms "personally or substantially", as used in the definition of "Conflict of Interest", also in order to address further the risk of a prominent Covered Individual (e.g. a Board member) attempting to influence another Covered Individual (e.g. a staff member) who participates in a decision in which the prominent Covered Individual has a financial interest. Specifically, DLA Piper proposed to amend the definition of such terms as follows:

"Personally and substantially. To participate personally means to participate directly or to attempt to influence the outcome of a decision-making process, including, for example, consideration of a matter at a Board meeting, or direct and active supervision of a subordinate in a matter. To participate substantially means that the Covered Individual's involvement is of [significance] to the matter."

In addition, DLA Piper recommended adding the terms "actual or potential" prior to the terms "conflict of interest" in the sections of the Ethics Policy that deal with the duty to disclose conflicts of interest.¹⁰ The objective of this amendment is to ensure appropriate review of circumstances where it is not clear whether or not a conflict of interest exists, but the appearance of a conflict of interest should be sufficient to trigger the obligation to disclose the facts to the Ethics Committee.

DLA Piper's proposed amendments to the Ethics Policy are set out in Annex B to this Report.

⁵ Report of Professor Peter A. Singer to the Ethics Working Group dated 25 May 2008, page 6.

⁶ "Covered Individual" means a member of the Board of the Fund (a "Board member"), an alternate, a member of any committee, task force, the Technical Review Panel, or any other subsidiary body of the Fund, and professional employees of the Secretariat (Section 2(a) of the Ethics Policy).

⁷ "Associated Person" means a Covered Individual's spouse, minor or domestic partner (Section 2(b) of the Ethics Policy).

⁸ "Associated Institution" means (i) any organization, corporation or government in which Covered Individual is serving as an officer, director, trustee, partner or employee, that receives or may receive funding from the Fund or with which the Fund has an agreement, contract, grant or relationship; or (ii) any person, organization, corporation, government or similar institution with whom a Covered Individual is negotiation or has an arrangement concerning prospective employment (Section 2(c) of the Ethics Policy).

⁹ Section 3.1 of the Ethics Policy.

¹⁰ Specifically, Sections 4 and 5 of the Ethics Policy.

CONCLUSIONS OF THE WORKING GROUP

11. The Working Group analyzed the Global Fund's policies and procedures, in light of the advice provided by Professor Singer and DLA Piper. It agreed with Professor Singer's conclusion that the Global Fund's policies and procedures are sufficiently robust to address conflicts of interest that may arise where a person who occupies a prominent position in the governance structure of the Global Fund is also associated with a potential provider of goods and services.

12. The Working Group noted that the Ethics Policy specifically addresses the risk of such a conflict of interest arising by expressly including the following specific example of a conflict of interest:

“Board members using their position on the Board to advocate for or otherwise seek approval of any service contract between the Fund and an Associated Institution.”¹¹

13. However, the Working Group was of the view that the Ethics Policy could be further strengthened by adopting the recommendations made by DLA Piper.

FURTHER ISSUES FOR CONSIDERATION

14. In addition to the issues outlined above, the Working Group also discussed some broader ethical and social issues that were highlighted by Professor Singer. In particular, the Working Group discussed the possibility of extending the scope of the Ethics Policy to deal not only with conflicts of interest, but to also include other ethical commitments that may reflect the values and integrity of the Global Fund. The Working Group also considered the possibility of establishing mechanisms, including “social or ethics audits,” to monitor the progress of the organization in achieving its ethical commitments (see Peter Singer's note on this, attached as Annex C). This may be taken forward as part of the Ethics and Integrity initiative which the Inspector General plans to discuss with the Ethics Committee.

NEXT STEPS

15. If all members of the Ethics Committee agree with the conclusions and recommendations of the Working Group, it could request the Board's approval to amend the Ethics Policy as described in paragraph 10 of this report. This request may be presented in the Committee's Annual Report to the Board on this matter, which is due for submission at the Eighteenth Board Meeting in November 2008.

¹¹ Section 3.1 of Ethics Policy.



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ANNEX A

Report by Peter A. Singer, MD, MPH, FRSC

**Interim Director, Senior Scientist, and Professor of Medicine
McLaughlin-Rotman Centre for Global Health, University Health Network and University of Toronto**

**Sun Life Financial Chair in Bioethics and Director Emeritus
University of Toronto Joint Centre for Bioethics**

May 25, 2008

Statement of Task

The role of the Procurement Ethics Expert is to provide technical advice to the Working Group on whether, in light of best practices or other considerations, the Global Fund's policies and procedures provide adequate protection against conflicts of interest that may arise where a person who occupies a prominent position in the governance structure of the Global Fund is also associated with a potential provider of goods and services to the organizations.

More specifically, the Procurement Ethics Expert will be required to undertake the following tasks:

- (e) Review the following Global Fund policies:
 - (i) Ethics Policy (Attachment 1);
 - (ii) Procurement Policy (Attachment 2);
 - (iii) Whistle-blowing Policy for the Secretariat and Governance Institutions of the Global Fund (Attachment 3);
- (f) Provide oral and written advice to the Working Group on the extent to which the abovementioned policies provide sufficient protection against conflicts of interest that may arise where a person who occupies a prominent position in the governance structure of the Global Fund is also associated with a potential provider of goods and services to the organization, and identify any weaknesses or deficiencies in such policies;
- (g) Make oral and written recommendations to the Working Group on how (i) the above-mentioned policies should be amended to address any weaknesses or deficiencies in existing conflict of interest safeguards; and (ii) how such policies could be strengthened in light of best policies and practices adopted by other public and private sector organizations; and
- (h) Provide other advice to the Working Group, upon request, on ethical considerations related to the above.

In order to accomplish the above tasks, the Procurement Ethics Expert will be required to participate in meetings with the Working Group, both in person and by teleconference

Task 1: Review of Global Fund Ethics Policies

I have reviewed the relevant Global Fund Ethics policies including the Ethics Policy (which focuses primarily of conflicts of interest), the Procurement Policy, and the Whistle-Blowing Policy.

My overall impression is that these policies are comprehensive, detailed, and carefully crafted. The ethics policy focuses on the individuals with potential conflicts and how they should manage these. The procurement policy focuses on contracts and how these should be awarded to promote a fair and competitive process. The whistle-blowing policy provides the basis for monitoring the operation of these two policies (and other matters) by any individual. (I shall come back to the issue of monitoring later in this report.) **Taken together, this trio of policies provides a robust policy framework with respect to conflicts of interest in procurement of goods and services.**

Task 2: Protection against conflicts of interest that may arise where a person who occupies a prominent position in the governance structure of the Global Fund is also associated with a potential provider of goods and services to the organization

In this section, I will first describe in detail the provisions of the ethics policy relevant to the situation where a prominent person in the governance structure of the Global Fund is also associated with a potential provider of goods and services to the organization. Next I will analyze this policy for any weaknesses or deficiencies. Then I will briefly consider the operation of this policy alongside the procurement and whistle-blower policies.

Section 1.4 anticipates that conflicts of interest, including where a person who occupies a prominent position in the governance structure of the Global Fund will be at times associated with a potential provider of goods and services to the Global Fund, are inevitable given the structure of the Global Fund:

The Fund recognizes that the representative nature of its governing Board and its subsidiary units results in inherent conflicts when the Board or its other governing units must consider matters that have a direct result on the interest of governments, corporations, or organizations that hold governance positions in the Fund. The Fund recognizes that these institutional conflicts of interest must be managed with the highest degree of integrity to safeguard against any perception that participation by a government, corporation or organization in any position at the Fund confers an undue advantage for such entities in Fund decisions.

Section 2(a) explicitly includes under the policy the governance of the Global Fund:

Covered individual means a member of the Board of the Fund (“Board Member”), an alternate, a member of any committee, task force, the Technical Review Panel, or any other subsidiary body of the Fund, and employees of the Secretariat.

Section 2 (c)(i) explicitly includes the associated organization of a board member:

Associated Institution means (i) any organization, corporation or government in which a Covered Individual is serving as an officer, director, trustee, partner or employee, that receives or may receive funding from the Fund or with which the Fund has an agreement, contract, or relationship;

Section 2(d) defines personal and substantial involvement of the board member in decision making:

To participate personally means to participate directly, including, for example, consideration of a matter at a Board meeting, or direct and active supervision of a subordinate in a matter. To participate substantially means that the Covered Individual's involvement is of significance to the matter.

Section 3.1 defines conflict of interest under the policy:

A conflict of interest arises when a Covered Individual participates personally and substantially in an official capacity in any particular matter in which, to his or her knowledge, he or she or an Associated Person or Associated Institution has a financial interest, if the particular matter will have a direct and predictable effect on that interest

The section then goes on to give this general example of a deemed conflict:

Where the Covered Individual's actions create the perception that the Covered Individual is using his or her position at the Fund for personal benefit or for the direct financial benefit of an Associated Institution.

And this specific example:

Board Members using their position on the Board to advocate for or otherwise seek approval of any service contract between the Fund and an Associated Institution;

Section 4 requires disclosure of conflicts of interest on an annual or more frequent basis:

All Covered Individuals have a duty to disclose the existence of any conflict of interest, including those that derive from Associated Persons or Institutions, and the nature of such conflict

Section 5.2 covers the procedures when a conflict arises, including the role of the ethics committee:

It is the duty of the Ethics Committee, with the assistance of the Ethics Official, to review these disclosures and to decide whether a conflict of interest exists and, if so, whether to issue a waiver defining the extent to which such Covered Individual may participate in any discussion of the issue that has given rise to the conflict.

Section 5.3 describes appropriate behavior in the event of a conflict of interest:

When it is determined that a conflict of interest exists, the Covered Individual shall not participate in the matter that has given rise to the conflict absent a waiver from the Ethics Committee. With respect to the Board, this means that the Covered Individual shall not vote or speak on the matter, and shall absent himself/herself without comment before any discussion or voting on the matter, unless a waiver has been granted by the Ethics Committee. The waiver may be designed to allow for any level of participation the Ethics Committee deems appropriate. For example, it may permit the Covered Individual to present information of a technical nature, but not recommendations. Or, it may permit the Covered Individual to attend the meeting in order to fulfill his or her administrative responsibilities, but not to participate in any discussion on issues that have given rise to the conflict of interest. The names of Covered Individuals with conflicts of interest who participate in a particular meeting, and the issue on which there is a conflict, shall be recorded in the minutes for that meeting.

Section 5.4 contains this proviso related to groups of proposals:

When the Board considers groups of proposals for approval, a Board Member's participation in the consideration shall generally not be considered to be a conflict of interest even though his or her country or entity that he or she represents may have a direct interest in a proposal in the group. When the Board considers specific proposals, the Covered Individual or any other person shall alert the Board of any conflict of interest and follow the procedures outlined in this policy.

Analyzing these policies and applying them to the situation of a Global Fund board member yield the following conclusions. It is recognized that because of the structure of the global fund, conflicts of interest will be inevitable. A board member is covered by the conflict of interest policy. He/she has an obligation to disclose a conflict of interest related to an associated organization. A board member has a conflict of interest when he/she "participates personally and substantially in an official capacity in any particular matter in which, to his or her knowledge, he or she or an ... Associated Institution has a financial interest, if the particular matter will have a direct and predictable effect on that interest." Consideration of a matter at a board meeting constitutes personal and substantial involvement in decision making. The board member has a duty to disclose, and the ethics committee has a duty to review the disclosure, decide whether a conflict of interest exists, and determine how an individual may participate. Without a specific waiver from the ethics committee, the board member "shall not vote or speak on the matter, and shall absent himself/herself without comment before any discussion or voting on the matter." A waiver may permit the board member "to attend the meeting in order to fulfill his or her administrative responsibilities, but not to participate in any discussion on issues that have given rise to the conflict of interest." Finally, "the names of Covered Individuals with conflicts of interest who participate in a particular meeting, and the issue on which there is a conflict, shall be recorded in the minutes for that meeting.

Because this analysis needs to be seen in light of the governance policies of the Board, I also reviewed the Global Fund's By-laws (November 2007). This policy states, in article 8.2, that commissioning and supervising contracted work is a function of the Secretariat. That is, whilst the Board retains ultimate accountability, commissioning contracts are a management not a governance function.

Procurement is a management function, and the procurement policy should be seen as the process by which this function is discharged. The procurement policy lays out a clear path for a fair and competitive procurement process and decisions by management. There is and should be no governance involvement in this process.

A key issue in policies like the ethics and conflict of interest policy and the procurement policy is to ensure they are followed. The whistle-blowing policy is one mechanism to ensure compliance. Another is the mandate of the Ethics Committee itself, which is responsible for overseeing compliance with the Global Fund's Policy on Ethics and Conflicts of Interest.

Another important issue related to conflict of interest is reporting to stakeholders. In this regard I reviewed the policy for disclosure of OIG reports (the inspector general investigates reports from whistle-blowers) and the Documents Policy of the Global Fund. These policies both favor public disclosure. Therefore, the results of whistle-blowing investigations about conflicts of interest and Ethics Committee reports on its activities in relation to the Ethics and Conflict of Interest Policy are

likely to be reported not only to the stakeholder represented on the Board but also to the publics served by the Fund.

Finally, because the terms of reference described a person “who occupies a prominent position in the governance structure”, I also reviewed the Board Operating Procedures (April 2007). As expected, these state that the Chair’s (and Vice-Chairs) role is to be responsible for the conduct of Board meetings. Therefore, not only is the Board itself isolated from a management function such as procurement, but also Board officials are further isolated in the procedural role they are expected to play in the functioning of the Board.

In summary, the ethics and conflict of interest policy offers adequate protection against conflicts of interest that may arise where a person who occupies a prominent position in the governance structure of the Global Fund is also associated with a potential provider of goods and services to the organization. Whilst I did not analyze in detail the procurement and whistle-blowing policies, they seem robust and to operate in synchrony with the ethics and conflict of interest policy. There are policies which support mechanisms for monitoring of conflicts of interest and public disclosure of these monitoring activities. In addition to these general protections, should a specific decision arise in which a particular Board member is specifically in conflict, the policies provide for that person to absent him/herself from the specific decision and also provide the Ethics Committee the discretion to issue a waiver so that person may continue administrative functions if for example he/she holds a prominent position in the governance of the Global Fund which requires such functions. Finally, since procurement is a management not a governance function, and since Board officials play a procedural role in the conduct of Board meetings, a person who occupies a prominent position in the governance of the Global Fund, is likely to be insulated from decisions about procurement.

Task 3: Recommendations to the Working Group on how (i) the above-mentioned policies should be amended to address any weaknesses or deficiencies in existing conflict of interest safeguards; and (ii) how such policies could be strengthened in light of best policies and practices adopted by other public and private sector organizations;

As noted above, the policies themselves are internally consistent and offer adequate protection against conflicts of interest that may arise where a person who occupies a prominent position in the governance structure of the Global Fund is also associated with a potential provide of goods and services to the organization. **Therefore, on the basis of internal consistency, no amendments to the policies are required.**

In relation to best policies and practices of adopted by other public and private sector organizations, I surveyed the conflict of interest policies of the following organizations:

- GAVI Fund Conflict of Interest Policy
- PATH Guiding Principles on Conflict of Interest
- Bill and Melinda Gates Foundation Conflict of Interest Policy

As in the Global Fund’s policies, these policies of other organizations contain elements such as defining conflict of interest, procedures for determining if a conflict exists, procedures for disclosure, procedures for monitoring, and procedures for reporting. I could identify no practice in these policies

that would substantially improve the manner in which the Global Fund addresses conflicts of interest, particularly with respect to conflicts that might arise where a person who occupies a prominent position in the governance structure of the Fund is also associated with a potential provider of goods and services. **Therefore, on the basis of this external scan of comparable organizations' policies, no amendments to the Global Fund's policies are required.**

Task 4: Other advice to the Working Group on ethical considerations related to the above.

In relation to my broader experience studying and assisting private and public sector organizations in addressing ethical issues,¹² I also conclude that the **Global Fund's policies and practices for addressing conflicts of interest are robust**, including against conflicts of interest that may arise where a person who occupies a prominent position in the governance structure of the Global Fund is also associated with a potential provider of goods and services to the organization.

¹² This includes a book and article on *Bioindustry Ethics* which studies how private bioscience companies address ethical issues, as well as an article and a press release on our work on ethical, social and cultural issues in the Bill and Melinda Gates Foundation's Grand Challenges in Global Health initiative and Water Efficient Maize for Africa project. These references are available on request.



ANNEX B

PROPOSED AMENDMENTS TO THE ETHICS POLICY

Policy on Ethics and Conflict of Interest for Global Fund Institutions

1. General Principles

The Global Fund to Fight AIDS, Tuberculosis and Malaria (the Fund) was created to attract, manage and disburse additional resources through an innovative public-private partnership to make a sustainable and significant contribution to the reduction of infections, illness and death caused by HIV/AIDS, Tuberculosis and Malaria in countries in need. To achieve these goals, the Fund recognizes the need to involve many interested stakeholders, including recipient and donor states, for-profit and not-for-profit enterprises, and the international intergovernmental community.

Because of the diversity of interests and perspectives represented by these stakeholders, it is particularly important that the Fund operate in a balanced, ethical, collaborative, transparent, and open manner. This policy – provided for in Article 7.4 of the Fund Bylaws – provides guidance in identifying and addressing conflicts of interest. It is based on clear definitions of potential areas of concern, a duty to disclose, and outlines procedures (including the establishment of a Ethics Committee and the appointment of an Ethics Official) for managing these conflicts as they arise.

The purpose of this policy is to ensure fairness and a high standard of ethical conduct in the Fund's decision-making to protect the reputation and integrity of the Fund and its interests, and to ensure broad public trust and confidence in the Fund's decision-making and grant-making activities. Where provisions of this policy conflict with law or regulation applicable to a Covered Individual such provisions shall not apply. When possible, however, this policy shall be interpreted to be consistent with applicable law or regulation.

Comment [b1]: Important statement of objective

The Fund recognizes that the representative nature of its governing Board and its subsidiary units results in inherent conflicts when the Board or its other governing units must consider matters that have a direct result on the interest of governments, corporations, or organizations that hold governance positions in the Fund. The Fund recognizes that these institutional conflicts of interest must be managed with the highest degree of integrity to safeguard against any perception that participation by a government, corporation or organization in any position at the Fund confers an undue advantage for such entities in Fund decisions.

2. Definitions

- (a) *Covered individual* means a member of the Board of the Fund (“Board Member”), an alternate, a member of any committee, task force, the Technical Review Panel, or any other subsidiary body of the Fund, and professional employees of the Secretariat.^[2]
- (b) *Associated Person* means a Covered Individual’s (i) spouse, minor child, or domestic partner.
- (c) *Associated Institution* means (i) any organization, corporation or government in which a Covered Individual is serving as an officer, director, trustee, partner or employee, that receives or may receive funding from the Fund or with which the Fund has an agreement, contract, grant or relationship; or (ii) any person, organization, corporation, government or similar institution with whom a Covered Individual is negotiating or has an arrangement concerning prospective employment.
- (d) *Personally and substantially*. To participate personally means to participate directly or to attempt to influence the outcome of a decision-making process, including, for example, consideration of a matter at a Board meeting, or direct and active supervision of a subordinate in a matter. To participate substantially means that the Covered Individual’s involvement is of significance to the matter.
- (e) *Gift* means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, honorarium, or other item having monetary value. These include services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.
- (f) *Ethics Committee* means the standing Committee, composed of six Board Members, established to assist with the implementation of the Policy on Ethics and Conflict of Interest and to prevent situations that might affect the reputation and integrity of the Fund.
- (g) *Ethics Official* means the Secretariat employee designated by the Executive Director of the Fund Secretariat to assist the Ethics Committee in its work.

Comment [b2]: To address scenarios in which a prominent Covered Individual might attempt to influence one or more other Covered Individuals to make a decision in which he or she might have a financial interest

3. Conflicts of Interest

3.1 A conflict of interest arises when a Covered Individual participates personally and substantially in any particular Global Fund matter in which, to his or her knowledge, he or she or an Associated Person or Associated Institution has a financial interest, if the particular matter may have a direct and predictable effect on that interest.^[1] In general, and without limitation, conflicts may be deemed to exist in the following situations:

- Where a Covered Individual's financial interests, or the interests of an Associated Person or Institution could affect the conduct of his or her duties and responsibilities with respect to the Fund or result in a reasonable perception that such a conflict exists;
- Where a Covered Individual's actions compromise or undermine the trust that the public places in the Fund; and
- Where the Covered Individual's actions create the perception that the Covered Individual is using his or her position at the Fund for personal benefit or for the direct financial benefit of an Associated Institution.

Comment [b3]: 'official capacity' deleted as it could exclude situations in which one Covered Individual who is not involved in making a decision on a particular matter, but who has a financial interest in it, 'unofficially' attempts to influence another Covered Individual who is involved in making the decision.

Comment [b4]: 'will' changed to 'should' to broaden the scope of the definition, which should provide more robust protection from conflicts of interests and the appearance thereof.

Specific examples of such conflicts include:

- *Board Members advocating for approval of a particular grant in which his or her government, entity, or organization will serve as principal recipient, implementing agency, local fund agent, or play some other direct project implementation role or realize some other direct financial benefit;*
- *Board Members advocating for approval of a particular policy from which his or her government, entity, or organization will realize some direct financial benefit;*
- *Board Members using their position on the Board to advocate for or otherwise seek approval of any service contract between the Fund and an Associated Institution; or*
- *TRP members who are employees of a government, corporation, or organization participating in the assessment of a funding proposal in which an Associated Institution has any substantial interest.*

Conflicts do not in principle arise when a Covered Individual or Associated Person or Institution stands to receive a diffuse benefit from the action in question. For example, a Board Member does not have a conflict of interest based on his or her consideration of a proposal if his or her country would realize general population health benefits, or in which non-governmental organizations or entities incorporated in his or her country would receive diffuse benefits as a result of the grant, but in which the government or its entities would not directly participate in its implementation.

These lists are only illustrative, and are not intended to set out all instances where an actual or potential conflict of interest exists, but rather to articulate the principles the Fund will follow

in addressing such conflicts as they arise. Each situation will be assessed based upon its particular facts and circumstances, but decisions will be governed by the guidelines set out in this policy, which applies to all activities sponsored or supported by the Fund, public and private, for-profit and not-for-profit alike.

4. Transparency and disclosure

- 4.1 All Covered Individuals have a duty to disclose the existence of any actual or potential conflict of interest, including those that derive from Associated Persons or Institutions, and the nature of such conflict, whenever he or she becomes aware that a conflict exists or that a conflict is reasonably likely to occur or that there is the appearance of a conflict.
- 4.2 All Covered Individuals must complete and submit the attached “Declaration of Interest” to the Ethics Official.^[3]
- 4.3 Disclosure statements shall be updated annually and whenever there is a material change in the information they contain, and shall be maintained by the Ethics Official and made available for inspection by the Ethics Committee, and, only as deemed appropriate by the Ethics Committee, by the Board. Except as outlined above, these statements shall be maintained confidential.

Comment [b5]: Add ‘potential’ here and elsewhere to make consistent with references to potential conflicts elsewhere in the policy – and, most importantly, to make clear that there may be more borderline situations where it is the Ethics Committee that must determine whether there is a conflict – i.e. where there is a doubt as to whether there is a conflict there is an obligation to report the facts to the Committee

Comment [b6]: clarification

Comment [b7]: important to specify that, in the interest of the Global Fund’s reputation and robust protection against conflicts of interest, the appearance of a conflict is sufficient to trigger the reporting obligation

5. Procedure when a Conflict of Interest Arises

- 5.1 All conflicts of interest shall be immediately disclosed in writing to the Fund’s Ethics Committee through the Ethics Official. Individuals are encouraged to consult with the Ethics Official or members of the Ethics Committee for guidance if questions arise in the application of this policy.
- 5.2 It is the duty of the Ethics Committee, with the assistance of the Ethics Official, to review these disclosures and to decide whether an actual or potential conflict of interest exists and, if so, whether to issue a waiver defining the extent to which such Covered Individual may participate in any discussion of the issue that has given rise to the conflict. The Ethics Committee may also, at its discretion, bring any conflicts issue to the entire Board (excluding the individual or individuals with potential conflicts) for discussion and determination.
- 5.3 When it is determined that an actual or potential conflict of interest exists or there is the appearance of a conflict, the Covered Individual shall not participate in the matter that has given rise to the conflict absent a waiver from the Ethics Committee. With respect to the Board, this means that the Covered Individual shall not vote or speak on the matter, and shall absent himself/herself without comment before any discussion or voting on the matter, unless a waiver has been granted by the Ethics Committee. The waiver may be designed to allow for any level of participation the Ethics Committee deems appropriate. For example, it may permit the Covered

Individual to present information of a technical nature, but not recommendations. Or, it may permit the Covered Individual to attend the meeting in order to fulfill his or her administrative responsibilities, but not to participate in any discussion on issues that have given rise to the conflict of interest. The names of Covered Individuals with actual or potential conflicts of interest who participate in a particular meeting, and the issue on which there is a conflict, shall be recorded in the minutes for that meeting.

- 5.4 When the Board considers groups of proposals for approval, a Board Member's participation in the consideration shall generally not be considered to be a conflict of interest even though his or her country or entity that he or she represents may have a direct interest in a proposal in the group. When the Board considers specific proposals, the Covered Individual or any other person shall alert the Board of any actual or potential conflict of interest and follow the procedures outlined in this policy.
- 5.5 Should a Covered Individual be found to have a conflict of interest that has not been disclosed as required above, or the Ethics Committee has reasonable cause to believe that a Covered Individual has failed to disclose an actual or potential conflict of interest, it will inform the Covered Individual of the basis for such belief and provide him or her with the opportunity to explain the alleged failure to disclose. If, after hearing the response and making further investigations as may be warranted, the Ethics Committee determines that the interested person has in fact failed to disclose a conflict of interest, it shall notify the Board.

6. Gifts

- 6.1 All Covered Individuals and Associated Persons are prohibited from accepting Gifts under circumstances where it could reasonably be construed that the Gift is motivated by the position of the Covered Individual and interests that could be substantially affected by the Fund. All Covered Individuals and Associated Persons are prohibited from giving gifts where it could be reasonably construed that the gift is intended to affect the policies or practices of the Fund or any of the programs it funds. The Ethics Committee may waive this provision as appropriate.
- 6.2 Exceptions.
 - (a) A Covered Individual may accept unsolicited gifts on behalf of the Fund when refusal to do so would not be in the interest of the Fund. Gifts accepted on behalf of the Fund will be turned over to the Secretariat and handled under procedures developed by the Secretariat.
 - (b) A Covered Individual may accept unsolicited gifts or provide gifts having an aggregate value of \$20 or less, provided that the aggregate value of individual gifts received from or provided to any one person does not exceed \$50 in a calendar year.
 - (c) Widely attended gatherings and other events.

- (i) When a Covered Individual is asked to present information on behalf of the Fund at a conference or other event, an offer of free attendance at the event is not covered under this policy when provided by the sponsor of the event.
- (ii) Widely attended gatherings. The Secretariat may approve the free attendance of individuals at widely-attended gatherings on a case-by-case basis, and may develop procedures for such attendance in lieu of individual approvals. In determining whether such approval is appropriate, the Secretariat should consider widely-attended gatherings to be those at which it is expected that a large number of persons will attend and that persons with a diversity of views or interests will be present, such that the actual and apparent degree of influence over the Covered Individual is sufficiently diluted.^[4]

7. Employment by the Global Fund Secretariat

Any individual who has served as a Board member, Alternate, a member of a Board Committee, or as Chair or Vice Chair of the Technical Review Panel shall not be eligible for employment by the Global Fund Secretariat until one year following their last date of service in such a position. The Ethics Committee may waive this provision as appropriate.

8. Uncompensated Involvement of an Associated Person

An Associated Person of any employee of the Secretariat shall not be engaged to carry out work without compensation either on or outside the Global Fund premises.

9. Country Coordinating Mechanisms

The transparent operation of Country Coordinating Mechanisms is necessary for the effective implementation of programs financed by the Global Fund, and for the integrity of proposal development and approval. Covered Individuals shall, as appropriate, individually and through Associated Institutions use their best efforts to ensure that Country Coordinating Mechanisms operate in a transparent manner and actively safeguard against conflicts of interest.

10. Dissemination and Review of Policy

- 10.1 The Fund Secretariat shall distribute a copy of this policy to all Covered Individuals annually, along with a copy of the Declaration of Interest form.
- 10.2 Copies of this policy and the Declaration of Interest form shall be posted on the Fund website.

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- [1] With respect to those Board Members and other Covered Individuals who serve on the Fund as representatives of national governments or entities, nothing in this document will be construed as to prohibit such person's participation in matters under consideration that will directly or indirectly affect the financial interests of such national government or entity, except that no Board Member or other Covered Individual shall participate in the consideration of a specific funding request that has been submitted by that government or entity, or any decision through which the government or entity may receive a direct financial benefit (e.g., a grant or a contract or policy), unless such participation has been authorized by the Board.
- [2] Professional employees are those who have significant decision-making authority, as opposed to support staff positions. The Executive Director will determine whether a particular individual is covered in circumstances where there is uncertainty.
- [3] Covered Individuals who are already subject to a code of ethics or standards of conduct regulation, and who, under such code or regulation, are required to complete and file a disclosure form that includes the information requested in the attached Declaration of Interest, may submit such form in lieu of the attached Declaration of Interest.
- [4] For Covered Individuals who serve on the Fund as representatives of governments, corporations, or organizations, and where such individual is subject to a code of ethics or standards of conduct regulation as a result of such position, such individual may accept complimentary invitations to widely-attended gatherings otherwise prohibited by this policy where attendance is permitted under the code of ethics or standards of conduct to which the individual is subject.



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ANNEX C

**NOTE ON MECHANISMS TO MONITOR PROGRESS IN ACHIEVING
ETHICAL OBJECTIVES BY PETER SINGER**

To: Global Fund Ethics Committee Working Group
From: Peter Singer
Re: Possible future directions
Date: June 8, 2008

This note is in follow up to our meeting today regarding possible future directions for the GF in ethical and social issues. Two issues were raised:

1. Addressing a broader spectrum of ethical issues and commitments

At the moment the focus of the ethics policies is on conflict of interest, and this is an appropriate first or primary focus for an organization involved in funding. As described in my earlier note and touched upon below, the policy framework for addressing conflict of interest in the Global Fund is robust. However, there is likely a broader set of ethical and social issues faced by the Fund. Examples mentioned today included ethical issues related to gender, and also to sustainability. It could be worthwhile for the ethics committee to deliberate on the question: What are the 3-5 key ethical commitments of the Global Fund to its stakeholders? Addressing this question explicitly would provide a common framework for stakeholders, may contribute to short to mid term organizational development, and may serve the Global Fund well in the long term as individuals representing participating organizations change.

2. Monitoring of ethical commitments

A way of continuing to reinforce trust amongst stakeholders in a multi-stakeholder organization is to monitor the progress the organization is making on its ethical commitments. For example, consider the ethical issue of conflict of interest. At the moment, the ethics committee monitors and addresses disclosures of conflicts of interest, and the Inspector General monitors and addresses whistle-blowing reports, some of which may relate to conflict of interest. In addition, these monitoring activities are publicly reported. These activities represent a robust approach to conflict of interest and are commensurate with the activities of other organizations. Further development would include enhanced monitoring of conflicts to further ensure that the Fund's ethical commitment that it will recognize and addresses conflicts of interest is met in practice. This monitoring could be done internally or externally, but external monitoring has the advantage of having an independent view on progress against an ethical and social commitment. An analogy here is financial auditing: a financial audit offers an independent view on the finances of an

organization and thereby serves to enhance the trustworthiness of the annual financial report. If an organization were to adopt a system of ethical and social monitoring and reporting (this could be called 'social auditing'), it could do so for a single domain (like conflict of interest) but a more comprehensive approach to monitoring would perhaps make more sense. Of course, logically anterior to monitoring a broader set of ethical and social commitments is for an organization to enunciate what these commitments are, as discussed above.



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To Fight AIDS, Tuberculosis and Malaria

**Eighteenth Board Meeting
New Delhi, India, 7 – 8 November 2008**

**GF/B18/8
Attachment 2 Revision 1**

ETHICS AND REPUTATIONAL RISK ASSESSMENT

October 2, 2008

ETHICS AND REPUTATIONAL RISK ASSESSMENT

The Global Fund

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- II. Foundational Principles
- III. Nature of an Ethics and Reputational Risk Assessment
- IV. Methodology
- V. Key Findings
- VI. Recommendations
- VII. Next Steps

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I. INTRODUCTION

The Global Fund was created in January 2002 as a public/private partnership to rapidly provide large amounts of additional financial resources to fight HIV/AIDS, tuberculosis, and

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malaria in poor countries. The Global Fund attracts, manages, and disburses funds. It does not engage in the direct delivery of medical services. As a partnership among governments, civil society, the private sector, and affected communities, the Global Fund works with other bilateral and multilateral organizations to help prevent the spread of these three diseases. It helps to provide treatment and care for people in need. The Global Fund's efforts support the United Nation's Millennium Development Goals.

Since 2002, the Global Fund has become the dominant player in providing financial support for programs to fight AIDS, tuberculosis, and malaria. It has approved funding of US \$10.7 billion for programs in 136 countries. So far, the world-wide programs supported by the Global Fund have averted more than two million deaths, provided AIDS treatment for 1.4 million people, provided TB treatment for 3.3 million people, and distributed 46 million insecticide-treated bed nets for the prevention of malaria. By 2010, the Global Fund plans to increase its overall funding to US \$5-6 billion annually.

In April 2008, the Inspector General presented, and the Finance and Audit Committee of the Board approved, priorities for the Office of the Inspector General. These priorities call for management to create a *Values and Integrity Initiative* to identify and define core values that will drive behaviour and articulate an organizational culture committed to ethical conduct.¹

The Inspector General consulted with The Rosentreter Group² to help implement the *Values and Integrity Initiative*. The first step was to conduct this ethics and reputational risk assessment. By understanding the kinds of ethical and reputational risks which the Global Fund faces, the organization—through its Inspector General and General Counsel—can take steps to reduce, mitigate, or eliminate those risks. In this fashion, the *Values and Integrity Initiative* can be tailored to those ethical considerations unique to the Global Fund.

¹ Sections 29 and 30 of the *Priorities of the Inspector General* state:

"29. Unethical conduct can result in considerable reputational damage. Global organizations must deliver against extremely high standards. Everyone must conduct themselves as moral actors-responsible agents who do their work within an ethical framework. The IG has proposed that management take forward a Values and Integrity Initiative for the Global Fund to identify and define the core values that should drive behaviour and articulate an organizational culture as one committed to ethical conduct. The initiative will demonstrate that both results and principles-what we achieve and how we achieve it-truly matter.

"30. The Values and Integrity Framework provides the underpinning for (i) a Code of Conduct that is unique to the Global Fund; (ii) education and training for all stakeholders to help them recognize, appreciate and resolve ethical dilemmas; (iii) a commitment entered into by suppliers used by grant recipients that they will follow ethical principles; (iv) whistleblower arrangements (including whistleblower protection) for reporting possible irregular or unethical conduct; (v) an investigation and sanction process that has due regard to human rights and due process; and (vi) a confidential advisory resource for management and staff. Under the oversight of the Ethics Committee, with input from the Finance and Audit Committee, OIG suggest that management should launch the Values and Integrity Initiative in 2008. Such an initiative would bring the Global Fund into line with similar ones in other international organizations."

² The Rosentreter Group is a management consultancy specializing in business ethics, corporate compliance, and organizational development.

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This Ethics Risk Assessment explores the kinds of ethical and reputational risks facing the Fund from the perspectives of key thought leaders involved with the Fund. As described below, the assessment is indicative and inferential. It is not, nor was it designed to be, a universal statement of risks facing the Global Fund.³ This Report includes several recommendations on how to implement a *Values and Integrity Initiative*. Upon approval of this Report, the Office of the Inspector General may propose a detailed Action Plan outlining the specific steps the Global Fund should take to prioritize and implement these recommendations.

A great debt of thanks and appreciation is owed to John Parsons, Inspector General of the Global Fund. His leadership vision and commitment to ethical conduct is tangible in all that he does. Mr. Parsons and his staff were uniformly gracious and patient in explaining how the Global Fund operates. Each of the individuals who consented to be interviewed was forthcoming, welcoming, and genuinely committed to the mission of the Global Fund. It has been a pleasure and honor to work with your organization.

³ The Global Fund is working with AON to develop a more universal approach to risk assessment and risk management. This report could be incorporated into that larger effort. It is possible that the risks identified in this report can be quantified and prioritized using an institution-wide and uniform methodology suggested by AON.

II. FOUNDATIONAL PRINCIPLES

Ethics and integrity refer to a commitment to moral thought and action in all aspects of how an organization is governed and run. Ethics and integrity describe the “oughts” and “shoulds” of how organizations relate to their stakeholders rather than the “musts.” There is a distinction between legal compliance and ethics and integrity. Legal compliance describes the necessary and minimum conditions for following the law and avoiding punishment. By way of contrast, ethics and integrity describe the moral choices that individuals and organizations alike may make. A focus on ethics and integrity supports an organization and its employees when operating in an area where the law, policies, or rules are unclear.

The Global Fund is a principles-based organization, enshrining its foundational principles in its original Framework. Seven principles⁴ guide all of its operations, from governance to grant-making. Stated simply, these principles include:

1. Operate as a financial instrument, not an implementing entity
2. Make available and leverage additional financial resources
3. Support programs that reflect national ownership
4. Operate in a balanced manner, in terms of different regions, diseases and interventions
5. Pursue an integrated and balanced approach to prevention and treatment
6. Evaluate proposals through independent review processes
7. Operate transparently and accountably, employing a simplified, rapid and innovative grant-making process

⁴ “A. The Fund is a financial instrument, not an implementing entity.
B. The Fund will make available and leverage additional financial resources to combat HIV/AIDS, tuberculosis and malaria.
C. The Fund will base its work on programs that reflect national ownership and respect country-led formulation and implementation processes.
D. The Fund will seek to operate in a balanced manner in terms of different regions, diseases and interventions.
E. The Fund will pursue an integrated and balanced approach covering prevention, treatment, and care and support in dealing with the three diseases.
F. The Fund will evaluate proposals through independent review processes based on the most appropriate scientific and technical standards that take into account local realities and priorities.
G. The Fund will seek to establish a simplified, rapid, innovative process with efficient and effective disbursement mechanisms, minimizing transaction costs and operating in a transparent and accountable manner based on clearly defined responsibilities. The Fund should make use of existing international mechanisms and health plans.” Section III, The Global Fund Framework Document, 2002.

These foundational principles provide a clear structure for how the Global Fund should operate. They are useful in detecting the Global Fund’s core ethical values. The Global Fund has not specifically identified, defined, and adopted core ethical values. However, each of these seven organizing principles can be linked to one or more universal ethical values:

Detecting Core Ethical Values

Stewardship	<ul style="list-style-type: none">• Operate as a financial instrument, not an implementing entity
Stewardship	<ul style="list-style-type: none">• Make available and leverage additional financial resources
Respect Self-determination	<ul style="list-style-type: none">• Support programs that reflect national ownership
Fair treatment	<ul style="list-style-type: none">• Operate in a balanced manner, in terms of different regions, diseases and interventions
Care Compassion	<ul style="list-style-type: none">• Pursue an integrated and balanced approach to prevention and treatment
Independence	<ul style="list-style-type: none">• Evaluate proposals through independent review processes
Transparency Accountability	<ul style="list-style-type: none">• Operate transparently and accountably, employing a simplified, rapid and innovative grant-making process

Core ethical values can be found in all religions, treatises on moral philosophy down through the ages, the United Nations Declaration of Human Rights and all resulting rights-related conventions and principles. Though there is significant “play” in how ethical values (such as integrity) can be defined, there is little doubt that what unites us is this ethical dimension. Different cultures, nations, and societies may differ about how to prioritize specific moral values. Nevertheless, all human societies seem to accept that a set of ethical values exists and that these values tend to unite—rather than divide—us.

In 2004, as part of a branding initiative, the Global Fund circulated a set of internal values including: Results Focus, Commitment, Respect, Team Work and Innovation. This initial effort to identify core beliefs and organizing principles was proposed in response to a rapid increase in staff and the need to quickly orient newcomers to the Global Fund. As noted during the interviews, these internal values are not well known or socialized among staff.

Core ethical values provide the moral compass unique to the Global Fund. They do not replace personal moral values or commitments—which can emanate from religious beliefs, family teaching, or cultural norms. Instead, core ethical values describe what the Global Fund, as an institution, believes. They describe the essence of Global Fund decision-making and frame the social contract between the Global Fund and each of its stakeholder groups. They guide conduct and decision-making at all levels of the organization.

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In this Report, the term “stakeholders” refers to those individuals or groups of individuals to whom the Global Fund owes rights, duties, or obligations, and from whom the Global Fund can expect reciprocal rights, duties, or obligations. The shorthand version is to think about who are the persons who care about the decisions of the Global Fund and who have a concrete stake in the outcome of its activities. These stakeholders include:

Major Stakeholders

Board
Secretariat Staff
Donors
Country Coordinating Mechanisms
Principal Recipients and Sub Recipients
Local Fund Agents
Vendors and Suppliers

Values and stakeholders matter a great deal. Clarity about the Global Fund’s core ethical values and its primary stakeholders is a critical and necessary step in creating the *Values and Integrity Initiative*. Core ethical values describe the most important commitments and expectations of the organization. Agreement about the identity of key stakeholders focuses the organization’s efforts on those individuals most critical to its long-term success.

Together, core ethical values and stakeholders lay the foundation for this initiative. They answer two key questions: What is important? And, to whom does this initiative matter?

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III. NATURE OF AN ETHICS AND REPUTATIONAL RISK ASSESSMENT

A. Systematic Approach

An ethics and reputational risk assessment is a systematic way to identify the ethics and integrity risks that could threaten the Global Fund's ability to fulfill its mission. "Ethics" refers to the application of moral judgment to the challenges of running the Global Fund. Thinking people will differ in what they define as "ethical". As a result, some amount of ambiguity must be tolerated. Any discussion of ethical risk must examine broad issues as well as specific dilemmas to reflect the diverse range of opinions about what is ethical.

A risk assessment examines both the likelihood and frequency that a particular risk will occur. It examines the potential seriousness of the risk, describing the potential harm that could result. This risk assessment should be included in the Fund's larger enterprise-wide risk assessment, examining, for example, other types of risks such as financial, operational, structural, and governance. This study and its recommendations may be integrated into those other initiatives, so that a more universal picture of risk emerges. One result may be a uniform understanding of risk, arising from a common vocabulary and common method of measuring risk.

An ethics and reputational risk assessment uses qualitative research to identify key strengths and vulnerabilities facing the Global Fund, in connection with its stakeholders. A broad-based assessment provides data about the current state of Global Fund culture, and the likelihood of significant reputational harm that could impact the ability of the organization to deliver on its commitments. A risk assessment need not, and in fact should not, focus solely on preventing illegal conduct. Multiple legal systems around the globe impose substantial civil and regulatory expectations upon organizational conduct as well.

Ultimately, the Fund must strike a balance between its **actual and perceived risks** and its **tolerance for risk**. An effective Values and Integrity Initiative must prioritize risks and tailor policies, procedures, and other responses to those defined risks. The Global Fund—like most organizations—has limited resources allocated for risk identification and mitigation. This means that the risk assessment must include a methodology to triage risk, so that the Global Fund can make informed choices about which risks to address and when.

Three factors inform the prioritization of risk:

1. The **nature and seriousness** of risks of unethical behavior, misconduct, or illegal acts within/among the Secretariat, third parties, and in-country recipients
2. The **likelihood** that such conduct could occur because of the nature of the Global Fund's business
3. **Prior history** of the Global Fund, its third parties, and in-country recipients

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B. Ethical and Reputational Risks

Ethical and reputational risks arise from (1) the Global Fund's **operations** as a financial instrument; (2) **behavior of individuals** related to or working with the Global Fund; and (3) **legitimacy and relevance** of the Global Fund's overall mission and work. Reputational risks related to individual conduct can be further defined as those risks related to "integrity"—associated with core character and exercise of judgment—and "people risks"—associated with risk of ethical lapses, misconduct, and/or behavior contrary to law.

Reputational risk is almost always perceived from the perspective of stakeholders outside of the organization. A frequent shorthand way to understand reputational risk is to ask how would a specific decision be portrayed in local, regional, national, or global press coverage. This is often referred to as the "front page of the newspaper" test.

Ethical risk is different. **Ethical risk must be examined both from the inside as well as the outside.** Internally facing ethical risks most often examine an institution's operations, its treatment of staff and workers, its governance structures, and its decision-making structures. Externally facing ethical risks most often examine how an institution delivers under its mission to its constituencies. As described more completely in the sections that follow, the individuals who participated in the qualitative data upon which this report is based focused almost universally upon internally facing ethical consideration.

There are some unique aspects to the Global Fund operations that enhance its ethical and reputational risk exposure.

- First, the Global Fund's mission is to facilitate the financing of fighting disease in partnership with governments, civil society organizations, private corporations, and private donors. Its operations are complex. Its long-term financial future depends on the ongoing good will and economic stability of its donors.
- Second, the Global Fund is charged with provision of large grants and other kinds of financial aid. Human greed is known to follow large pools of money.
- Third, the Global Fund operates in 136 countries, each with its own history, climate, and leadership. Political considerations impact ethical decisions. Some of these countries have a history of political instability and cultures tolerant of corruption.
- Finally, the Global Fund is young. It does not have a long organizational history that can illuminate recurring dilemmas and challenges.

C. Third Party Risks

The ethics and integrity risks of the Global Fund's supply chain can affect the organization's own risk profile. In the eyes of the public, there may be little difference between a principal and a sub-recipient, or a principal and one of its long-time consultants.

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Because the Global Fund is a financing instrument—not an implementing entity—it must be concerned with **how** its resources are ultimately used to fight AIDS, tuberculosis, and malaria. And because the Global Fund is a financing instrument, it can only be successful if its extensive partnerships are successful and managed for ethical and reputational risk.

The Global Fund is not in the business of direct delivery of preventative health care. It provides financial support to Principal Recipients for in-country programs. The Principal Recipients contract directly for goods and services. Though the Global Fund may purchase some supplies and services for its direct use, procurement by grant recipients represents nearly 60% of total expenditures.

The Global Fund must maintain an arms-length relationship with its Principal Recipients, who in turn should maintain a similar “arms-length” relationship with their suppliers and vendors and their own Sub Recipients. However, because of the trust placed by donors in the Global Fund’s approach, it cannot ignore the ethical and reputational risks incumbent in its innovative approach to funding disease prevention. **If Principal Recipients or their Sub Recipients fail to use the Global Fund’s grant monies as intended, in the eyes of the public at large—and especially in the eyes of major donors—it is the Global Fund that has failed. The arms-length relationships imagined by policy or contract is a legal concept. It is not an ethical or reputational concept.**

The Global Fund has taken strong stands against corruption, and received public acclaim for its actions. Nonetheless, if a Principal Recipient were to fraudulently divert resources obtained through the Global Fund and even if the Global Fund took a very public and aggressive stand, in the eyes of many the “fault” would fall onto the Global Fund’s shoulders. The Fund’s reputation would suffer damage by association.

Yet, if the Global Fund is overly aggressive in its ethical expectations of its in-country recipients and their suppliers, it runs the risk of becoming liable for the actions of these third parties. It is axiomatic that liability follows the degree of operational control. External stakeholders may expect the Global Fund to obtain the adherence of its third parties to the highest ethical standards. **In reality, the Global Fund has limited control over the behavior of its third parties. Ensuring ethical and compliant third party conduct will be challenging.**

D. Organizational Culture and Risk

An organization’s culture can contribute to ethical and reputational risk. In the context of this Report, the term “culture” refers to the written and unwritten rules of how things “get done” at the Global Fund. Culture refers to the shared assumptions of what members of an organization believe and how they work together to reach shared goals. Groups need to consider their culture consciously, especially in times of rapid change and growth, and when confronted with integrating newcomers quickly to the group.

Three facets of organizational culture are relevant to understanding and reducing ethical risk at the Global Fund:

Facets of Organizational Culture

Facet	Concern	Questions to consider
Leadership	Staff and other stakeholders carefully observe how their leaders act and what they say. The single strongest influence on ethical conduct is the role model established by one's immediate, or "line of sight" supervisor.	<ul style="list-style-type: none"> • Are Global Fund leaders "ethically committed"—making it clear how they apply the Global Fund's ethical values to current problems and challenged? • Are Global Fund leaders "ethically neutral"—assuming that staff know their ethical expectations but fail to articulate them?
Individual character	Who the Global Fund hires and with whom the Global Fund contracts has strong impact on organizational effectiveness, ethical decision-making, and risk. Human virtues and human vices are one of the universe's constants.	<ul style="list-style-type: none"> • Does the Global Fund feel confident that it knows its partners, suppliers, and grantees? • Does the Global Fund consider behavior (past and present) as an indicator of future conduct? • How willing are individuals to speak up if they see something that does not appear to be ethical?
Operational complexity	The Global Fund has adopted a seemingly simple business model that becomes rapidly more complex as it scales up. Operations are jargon laden, with multiple acronyms and overlapping areas of responsibility. It may take a lateral hire (mid-career professional) upwards to 18 months before becoming fully productive.	<ul style="list-style-type: none"> • Are the right things being measured? • Are roles and responsibilities clear and well defined? • Are individuals held accountable for their actions? • How and for what are individuals rewarded and recognized? • Are there any efforts to simplify processes, rather than create 136 different delivery models for 136 countries of operation?

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IV. METHODOLOGY

This risk assessment gathered primary data about ethics and reputational risks using a variety of techniques:

- Review of “problem cases”, including restrictions or withdrawal of grant funding (in whole or in part) to Myanmar, Uganda, and Ukraine due to allegations or suspicions of corruption, fraud, waste, or abuse
- Review of key documents describing the Global Fund
- Extensive conversations with members of the OIG and Legal Departments
- Confidential interviews with 18 identified thought leaders, including Secretariat staff and a WHO Board member, during a three day on-site visit to the Global Fund Headquarters in Geneva, Switzerland
- Email dialogue with three external thought leaders
- Group meeting with selected thought leaders to validate initial findings and key themes
- Review of key elements of the organizational ethics initiative already implemented
- Informal benchmarking with other international organizations

The majority of data gathering time was spent in 18 one-hour confidential interviews. Consistent with the protocols that govern other similar organizational development assessments, interviewees were advised as follows:

- Their identity would be maintained in confidence
- Key themes only would be reported out, following the “rule of three.” This rule teaches that if three or more individuals make the same or similar comment, there is significance to that observation.
- No attribution would be made to any one individual interviewee.
- Interview notes would be destroyed once the assessment was completed.

Each interviewee was asked to address the same six questions/areas of inquiry. This provided the opportunity to compare and contrast perceptions about ethics and risks.

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Interview Questionnaire

1. What do you think are some of the ethical “successes” that we have accomplished as an organization? In other words, what is working well and about which we should be rightfully proud?
2. What are the three most significant ethical and reputational issues and concerns facing the Global Fund?
3. What factors contribute the most to ethical and reputational risks within TGF?
4. Are some ethical issues more prevalent (or unique to) third parties (vendors and suppliers or in-country recipients as compared with the Global Fund Secretariat, and vice versa? What would these be? Why?
5. What “great mischief” could someone do to harm the Global Fund’s reputation for ethics and integrity?
6. If you could change one thing about the Global Fund, what would it be?

At the conclusion of the interviews, each interview was analyzed. Key themes and observations were reported back to all interviewees during a feedback session. This process resulted in a validation of the key findings, upon which these recommendations are based.

It is worth repeating that this report and its recommendations are indicative and inferential, rather than comprehensive. The majority of the work upon which this report is based comes from the 20+ hours of interview time and group briefing sessions. The input of key thought leaders was substantial. However, further consideration and dialogue may produce additional findings and recommendations.

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V. KEY FINDINGS

This section identifies several key findings that emerged from the one-on-one interviews held in Geneva, Switzerland. Findings must meet the “rule of three”, indicating that the themes expressed are significant to a critical number of staff members. Many of the interviewees spoke of ethics and reputational risk in terms of the organization’s culture, mission, and external environment. Often, an exact quote from an interviewee is included in this section to illustrate a point. Quotes are without attribution in order to preserve confidentiality.

Global Fund staff are ethically astute and aware

As is the case with many mission-driven organizations, Global Fund staff are hungry to talk about the ethical challenges they face on the job, and the ethical implications of their decisions. Ethics matters deeply to Global Fund staff.

Staff members are passionate, committed, and enthused by the Global Fund’s mission and its potential to have a positive impact on the health outcomes of millions of people. They are articulate, thoughtful, and willing to share their experiences. Unlike some non-profit professionals, this group of thought leaders did not express the opinion that since the mission of the Global Fund is noble, that there existed no need to focus upon ethics and integrity in the everyday discharge of their duties.

Global Fund staff use the language of ethics in their conversations. As utilitarians, they speak of finding the appropriate balance between harms and benefits. They speak of stakeholders and consequences. They are comfortable using ethical terms, such as stewardship, promise keeping, accountability, integrity, and fairness.

External leaders (a small subset of the total pool of interviewees) note positively the establishment of the Office of the Inspector General, adoption of a policy on conflicts of interest, adoption of whistleblowing facilities (both for in-country and Secretariat use), and the commitments for transparency and consensus decision-making. These efforts were recognized as specific ethical accomplishments.

The Global Fund is experiencing a time of significant—if not overwhelming—organizational change

During the course of the interviews, staff members identified at least ten significant **and** current organizational change projects.⁵ Several indicated that they were overwhelmed, and

⁵ These projects include: (1) organizational changes at the senior most staffing levels at the Secretariat, (2) the Technical Evaluation Review Group’s Five Year assessment; (3) the Grants Architectural Review; (4) the end of the Administrative Services Agreement with WHO and the need to develop all new systems by December 31, 2008; (5) development of a common pooled procurement mechanism, to provide a centralized purchasing function for PRs to utilize; (6) growth in disbursements from US\$2 billion to US \$5-6 billion/annually by 2010; (7)

(Continued)

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wanted the opportunity to reflect upon what they have accomplished and learned. In the words of one interviewee, “we need to pause and catch our breath.” Staff are worried that they cannot absorb these ongoing changes and thus will make inferior decisions that will result in harm to others. “We need to stop and take stock.”

Staff experience and describe the Global Fund’s organizational culture in the similar ways

The Global Fund is a young organization that asks formational and fundamental questions, such as “Who are we?” “Are we merely a funding mechanism, or are we a force for change, or are we entrepreneurs?” There is a shared sense that the Global Fund is unique and rightfully so, yet “we don’t want to let go of the WHO rules.” They find that the Global Fund is an expert/arrogant place to work. There is strong confidence that staff have superior skills and display high professional standards. The Global Fund can be flexible, and is not adverse to risk taking. Staff push themselves and others to succeed. It is hard “to say no.” Staff members describe themselves as filled with adrenaline, yet they want to be self-reflective and find the time to step back and learn from their successes and failures. “We are under pressure and fighting fires. This place can be a tough and unforgiving environment.”

External leaders (a small subset of the total pool of interviewees) also noted that there exists the potential for the Global Fund’s organizational culture to become influenced by political considerations, whether expressed at the major donor level or in country.

The business model is both the source of ethical success as well as risk

The Global Fund’s business model creates both ethical success and ethical risk. The model includes the following features:

- disbursing funds via performance-based grants to country-based principal recipients
- running the entire operation from a lean, central staff based in Geneva, without maintaining in-country operations or service centers
- requiring local ownership, support and oversight
- respecting country self-determination concerning the public health strategies and outcomes they wish to pursue
- focusing on disease eradication using existing technologies and medical interventions

rapid increase in the headcount at the Secretariat, and the hiring of 120+ staff during 2008; (8) the proposal to pursue Dual Track Financing; (9) conversion for 6 months to the GMS system offered by WHO; and (10) development of new kinds of grant mechanisms to strengthen countries’ health system infrastructures.

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- insisting upon transparency and accountability

The same words were used over and over by interviewees to describe the most significant ethical successes and risks facing the Global Fund:

- Transparency
- Accountability
- Self determination—rather than paternalism
- Trust
- Limited oversight into how funds are actually used in country
- Fund Portfolio Managers go on mission to their countries, but are not resident country managers as is the case with other development agencies
- Thin and lean staffing
- Performance based funding
- Standardized processes
- One size cannot fit all situations
- Size of the pool of funds to be disbursed is growing exponentially

In essence, interviewees believe that the very mission of the Global Fund requires the organization and its leaders to take ethical risks. “We are in muddy countries.” “Do we have the right balance yet between ethical success and risks?” “What’s our appetite for risk?”

Staff believe that ethical risks are inherent in the work that they do. These risks may be mitigated, but cannot be eliminated. They are concerned that senior leaders and governance have a different appreciation for ethical risks and believe that the organization can expand its capacity and eliminate **all** ethical risks at the same time.⁶

Many staff view the phenomenal growth of the Global Fund over the last seven years as the hallmark of its ethical success. By not externally managing public health expenditures in country, by not imposing its own systems for monitoring both how funds are spent and for what purpose, and by respecting country self-determination, the Fund has demonstrated a new way of providing development assistance. Yet, this model is not always successful. Though the model is ethical at its core, its “implementation in the very real and messy world is a challenge. We are not always successful.”

⁶ The limited number of interviewees conducted with leadership (governance and external) did not support this staff concern. There is a great deal of concordance about ethics at the Global Fund among all interviewees.

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This picture of ethical success must be tempered by several realizations that have their own ethical implications:

- As the Global Fund grows, it may face increasing pressure to set its own agenda, imposing conditions upon the use of the funds it provides. Conditions, such as on the types of medical interventions to be pursued, the kinds of drug therapies to be used, or the kinds of outcomes to be measured, etc., may help to ensure that Global Fund resources are spent effectively. However, these conditions can be seen as vehicles to diminish respect for local, in-country decision-making and self-determination. Conditionality can undermine respect for national priorities and program ownership.
- The magnitude of available Global Fund resources also creates ethical challenges. “More is not always better.” “Are we exceeding the capacity of countries to absorb and use these funds wisely?” “Are our funds straining a country’s health system infrastructure?” Staff ask whether one consequence of such large amounts of grant funds is to skew national health priorities, by attending to three high profile diseases at the expense of other public health needs.

The stories that staff tell about themselves and the Global Fund reflect ethical strength and success

Global Fund staff have the courage of their commitments. The Fund is willing to say “no, please try again” to a grant application that does not make the grade. Staff believe in the organization’s standards for performance based funding. “Grants are earned not owed.”

Stakeholders are “front and center” when decisions are made. The role of stakeholders is reflected in the composition of the Board and at every organizational level. Staff recognize that they owe duties of transparency and accountability to multiple stakeholders. They speak about the need to balance the obligation to disburse funds quickly and effectively with the need to be cautious and ensure that adequate oversight exists. They worry that by “saying no to corruption we could imperil the fight.”

The decision to withdraw funding from Ukraine in 2003 was described by many as an epochal decision, demonstrating how staff had internalized the organizing principles of the Global Fund. This is the Global Fund’s “Tylenol” story, comparable to the decision by Johnson & Johnson in the fall of 1982 to recall all Tylenol products when it was discovered that Extra Strength Tylenol had been subject to tampering in Chicago, Illinois, US. When faced with evidence of corruption and mismanagement in Ukraine, the Global Fund stopped funding grants and found alternate ways to continue serving individuals with dire medical needs. Staff believe that there is a moral imperative to continue to meet the needs of those who have AIDS, tuberculosis or malaria regardless of the evidence of corruption. Staff worked hard to avert the dire consequences of stopping the flow of grant monies.

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Thought leaders spoke about three primary areas of ethical and reputational risk

Repeatedly, staff described three areas of ethical risk:

1. *Accountability* – at the personal and organizational level. Accountability risks include confusion over roles and responsibilities, missing or weak internal controls, unclear or missing policies, as well as failure to train and educate on expectations.
2. *Compromised product* – even though the Global Fund provides the funding and does not make direct purchasing decisions, compromised products purchased and distributed under the aegis of a Global Fund grant can harm the institution's reputation
3. *Diversion of funds* – when funds are not used as intended, beneficiaries are not served and donors' intentions cannot be honored. Into this area of ethical risk falls all types of fraud, waste, abuse, and corruption.

For each risk area, staff offered a number of examples that illustrate these risk areas. It would be premature to prioritize these three categories of ethical risk. All three are serious and significant; what cannot be determined at this point is the frequency with which these risks actually occur. Most would concur that failure to consider and address these risks could have significant negative impact on donor and country trust.

Accountability risks

Accountability refers to the willingness of the organization to hold itself, its staff, its partners, and other stakeholders responsible for both successes and failures in delivering on expectations. Accountability systems require:

- Clear statements of expectations
- Clear roles and responsibilities
- Clear understanding of consequences for meeting—and not meeting—those expectations
- Visible and tangible rewards systems
- Uniform, consistent, and fair disciplinary actions

The fundamental design of the Global Fund requires trust and reliance on others. The Global Fund cannot achieve its mission without depending upon its partners to do their jobs. “There is only so much that the Global Fund can do as a financing agency.”

Examples of accountability related risks include:

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- The public face of the Global Fund—the most permanent presence in any one country—are the Local Fund Agents. Fund Portfolio Managers may be present in their assigned countries a few times each year, but at the operational level, the Local Fund Agents have the greatest capacity to develop on-going working relationships with country officials and Principal Recipients and to provide assurance services. The difficulty is that the Global Fund must rely upon contractual or agency relationships with Local Fund Agents rather than the more direct kind of control that emanates from an employer/employee relationship. Holding an agent accountable is more difficult than holding an employee accountable.
- Because of the arms-length relationship that the Global Fund has with its Principal Recipients, it has limited oversight into how procurement decisions are made locally. For instance, the Global Fund has had issues with stock-outs, where the supply chain fails to deliver goods in a timely fashion in order to stock warehouses, clinics, hospitals, and health centers with appropriate drugs. The Global Fund could also experience problems with expired drugs in the distribution chain, off-label use of drugs, and inability to process a manufacturer's drug recall.
- The Global Fund's whistleblowing mechanism is underdeveloped. Though there exist two policies on whistleblowing (for the Secretariat and for "in-country"), there has been limited communication and publicity about this mechanism. Staff are not aware that the Global Fund encourages whistleblowers and protects them from retaliation. It is highly unlikely that partners and other in-country stakeholders are even aware of the whistleblowing mechanism. The whistleblowing line is answered directly in the Office of the Inspector General, without the benefit of a third-party vendor to provide 24/7/365 "live" coverage. Not surprisingly, there are very few calls or contacts to this whistleblowing facility.
- There is considerable disagreement about the roles of the Fund Portfolio Managers, and the potential that they could lose objectivity when promoting needs and resources for "their" countries. It is unclear who has the authority to make decisions to halt or stop grant funding where there is evidence of possible diversion of funds, misuse, or corruption. It is also unclear how decisions are made to resume grant funding.
- Staff are under significant pressure to disburse funds and shorten the time frames between proposals, technical review, grant award and grant signing. By speeding the process, many argue that additional lives will be saved. Others express concern that by speeding the disbursement of funds, oversight and vigilance will be reduced, thus opening the door to diversion of funds and/or purchase of compromised product.
- The planned separation from WHO by December 31, 2008, makes it imperative that the Global Fund develop any number of its own administrative, personnel-related, budget and finance, legal, and information technology systems. Many staff are worried that the magnitude of this transition is overwhelming. They fear that they will not be able to complete the transition in a timely and competent fashion.
- Perceived unfairness in the selection process used to fill senior level leadership positions identified in a recently completed reorganization of the Secretariat

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External leaders (a small subset of the total pool of interviewees) spoke persuasively about the paramount importance of expecting and demanding accountability at all levels of Global Fund operations.

- “Conflicts of interest at any level, whether personal or institutional, as well as questionable professional conduct, contribute most to ethical and reputational risk. Impropriety at country level is attributed to country very quickly. It is impropriety at any level in the Global Fund that must be of primary concern.”
- “The most significant ethical and reputation issues concerning the Global Fund relate to practices that are in contrast with the Global Fund governing rules procedures, policies, as well as misuse or waste of Global Fund resources. If any of the above misconduct is unchecked or unaddressed, this may harm the reputation of the Fund.”
- “Great mischief can ensue from not adhering to the Bylaws or trying to circumvent them, not carrying out duties as prescribed, not having the necessary checks and balances in place, and not being entirely professional....The more senior people are, both in-country and at the Secretariat, the more important it is to be vigilant that these policies are being observed.”

Compromised product risks

It is estimated that close to 60% of all financing support supplied by the Global Fund is used by grantees to purchase various kinds of health care goods and products. These include pharmaceuticals, health care products, and other devices that help prevent the spread of disease. **The Global Fund’s reputation can be harmed if compromised products are purchased and distributed under its auspices.**

The Global Fund does not assume overarching control for the purchasing decisions made by grantees. Funding is not conditioned on the purchase and use by Principal Recipients and Sub-Recipients of specific types of products—for instance, those listed in an approved formulary, manufactured under specific quality control conditions, or produced and sold by certain companies. Principal Recipients are encouraged to purchase drugs and other medical/health care devices and materials from WHO approved sources, or from vendors and suppliers whose quality assurance processes meet WHO production standards. Principal Recipients are encouraged to make their purchasing decisions locally.

Principal Recipients are delegated primary responsibility for making purchasing decisions. **The products (both goods and services) obtained by Principal Recipients, using Global Fund grants, are presumed to meet quality assurance standards concerning efficacy, manufacture, and distribution. Where local or national regulatory control is weak and where individuals in country are inclined to tolerate corrupt practices, this presumption is flawed.** The Global Fund does not exert centralized control over the purchasing decisions of its Principal Recipients or their Sub Recipients. There is a risk that Principal Recipients are buying and distributing compromised products that cannot effectively treat diseases. And should this occur, it is the Global Fund’s reputation that can suffer.

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Though the Global Fund does what it can to communicate its role as a financing—not purchasing—instrument, in the eyes of the larger communities, it is difficult to separate source of funds from the goods and services purchased with those funds. Should Global Fund resources be used to purchase compromised products, reputational—but probably not legal—liability can flow back to the Global Fund. No funding source can guarantee how its donated resources will be used as intended. No funder has that type of oversight capacity. **Yet, the sheer volume of financial support supplied by the Global Fund magnifies the risk that its donated resources could be used to purchase compromised product.**

No amount of oversight for quality assurance, good manufacturing practices, and distribution, will eliminate the potential for product substitution or counterfeit drugs. This requires confidence in the law enforcement authorities of each country purchasing drugs and each country where drugs are manufactured and sold. Ultimately, the risk of counterfeit drugs must be addressed along with other types of criminal activity that can occur within the developing world.

Diversion of funds risks

The Global Fund operates in 136 countries worldwide, including nearly all developing nations and emerging economies. It has presence—and has made grants to—most of the countries listed on the Corruption Index issued by Transparency International. “Corruption is a learned behavior,” said one interviewee.

Human greed follows money. The magnitude of the financing available through the Global Fund is staggering. The potential for diversion of funds—whether through inadvertence, negligence, or criminal intent—cannot be minimized. **With a bare-bones Secretariat, large amounts of donated resources to be disbursed, high and visible need for services, limited oversight and accountability systems, and a business model that relies upon the good will and trust of its arms-length partners, it is not surprising that the potential for diversion of funds is relatively high.**

Despite this reality—which was readily discussed during the interviews—no one stated that the Global Fund has adopted a “zero tolerance” policy for corruption. In action, the response to problems in Ukraine demonstrate a “no tolerance” policy for corruption. By failing to clearly articulate this policy to multiple stakeholders, the Global Fund loses an opportunity to take a firm stance against corruption.

There have been several headline grabbing situations where grants have been stopped or suspended due to fraud, waste, abuse, and corruption. The situations in Myanmar, Chad, and Ukraine appear to have been resolved through the passage of time. The situation in Uganda continues and has not yet been fully resolved. **Responsibility for protecting donated resources and ensuring that they are used as intended flows back to the Global Fund**—even though the decisions that created the opportunity for fraud, waste, and abuse are made locally.

Most of the ethical risks identified by interviewees are internally facing

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The vast majority of the ethical and reputational risks identified by interviewees are internally facing. Internally facing ethical risks examine an institution's operations, its treatment of staff and workers, its governance structures, and its decision-making structures. Externally facing ethical risks most often examine how an institution delivers under its mission to its constituencies.

Accountability, compromised product risks, and the potential for diversion of funds are types of internally facing risks. These three topics include specific ethical concerns, such as fraud, waste and abuse, dealing with corruption, nepotism, conflicts of interest, favoritism and cronyism, political speech, loss of independence, self-dealing, fair employment practices, and governance practices.

One can imagine a number of externally facing ethical risks that the Global Fund could encounter. These include issues such as the potential for bias or discrimination in the provision of health services, even-handed distribution of scarce medical supplies or services, and independence in grant evaluations. What is noteworthy is that this second broad category of ethical risk was not mentioned with any frequency in the qualitative interviews.

It is not that either internally facing or externally facing issues are more important, more severe, or more challenging. Both should be considered when implementing a *Values and Integrity Initiative*. Organizations that have failed to consider both can suffer loss of credibility with their stakeholders and loss of stature. Organizations that focus only on the externally facing issues fail to recognize the importance of ethically committed leadership, strong governance, and accountability systems. Organizations that focus only on the internally facing issues fail to pay attention to the impact of their overall mission.

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VI. KEY FEATURES OF A VALUES AND INTEGRITY INITIATIVE

The Office of the Inspector General has proposed that the Global Fund undertake a *Values and Integrity Initiative*, comprised of six major features:

1. Codes of Conduct addressed to the unique ethical duties and obligations of (a) Secretariat and Board of Directors; (b) Principal Recipients; and (c) Vendors and Suppliers
2. Broadly based education and training on values, ethics, accountability, and ethical expectations
3. Incorporation into supplier agreements of the commitment to follow ethical business practices
4. Whistleblower arrangements and protections
5. Investigations and sanctioning process
6. Confidential ethics advisory services

Elements of each of these six major features exist at the Global Fund. What must occur next is to carefully analyze what is already in place, identify any gaps, and then proceed to build on the existing foundation.⁷

Organizational ethics initiatives are becoming more common in the private sector, public sector, civil society, and international financial institutions and apply most often to employer-employee relationships. Because the Global Fund operates through third parties, these features may need to be modified to fit the Global Fund's business model.

There are a number of considerations in extending the Values and Integrity initiative to third parties. Each of these approaches carries its own set of implementing challenges. In setting expectations for ethical conduct by vendors, the Global Fund will need to consider how to monitor whether those expectations have been met. A list of debarred contractors can be maintained and checked before a contract is executed. But, to maintain an on-going list of ethics and integrity preferred vendors requires an on-going commitment to integrity due diligence. This presumes a substantial investment in resources and mechanisms.

What follows is an illustrative list of possible approaches for extending the Global Fund's expectations on ethical conduct to its vendors and suppliers:

- Describing in a Secretariat-focused code of conduct how staff should interact with third parties

⁷ This is the Action Plan to be developed by the Office of the Inspector General, as previously noted.

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- Setting the expectation that suppliers, consultants, and contractors will adopt ethics and integrity initiatives similar to that adopted directly by the Global Fund
- Requiring Principal Recipients to complete background checks and due diligence on vendors and suppliers
- Creating a separate code of conduct specific to third parties (Principal Recipients and Vendors/Suppliers) which becomes part of their contractual obligations
- Creating an ethics and integrity preferred vendors list (and its corollary—a debarred or suspended vendors list) for use by Principal Recipients and Sub Recipients
- Making third parties aware of the Global Fund's whistleblower system and encouraging its use to identify fraud, waste, abuse, corruption, and misconduct
- Offering ethics training to the Global Fund's staff as well as the employees of vendors, suppliers, Local Fund Agents, and Principal Recipients
- Supporting an annual vendors/suppliers conference
- Supporting cooperative efforts with local governments to address corruption issues
- Encouraging vendors and suppliers to enter into local integrity or anti-bribery pacts

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VII. RECOMMENDATIONS

What follows is a set of high-level recommendations designed to stimulate further discussion. As leaders become more comfortable with the concept of ethical and reputational risk, these recommendations can form the basis for a more detailed Action Plan. The first step is to determine whether these recommendations are directionally correct. If so, these recommendations and the more detailed plan can set priorities, establish timeframes, and identify responsible offices.

1. **Regularly review and renew the Global Fund Framework Document**—its founding principles—on an ongoing basis. This periodic (e.g., every five years) review should involve the Board, all levels of staff, donors, partners, Country Coordinating Mechanisms, Principal Recipients, civil society, impacted communities, and persons living with disease. The purpose of this review is to ensure that the Global Fund is in fact living up to its foundational principles and, if necessary, to modify or update those principles.⁸ This review process will ensure that these foundational principles are fully integrated into organizational culture, regularly used in decision-making, and relevant during times of change. To be effective, the executive management team must serve as the champions for this type of review and renewal.
2. **Adopt and define a clear set of ethical values** that will permeate Global Fund operations and decision-making. These values must emanate from the Fund's Framework and operating principles, and should replace the previously articulated—but poorly circulated or integrated—internal working principles. Adoption of a revised set of ethical values by the Executive Management Team and Board sends a very clear signal about the “tone from the top” at the Global Fund.
3. **Accept that the Global Fund is in a fundamentally risky business.** It is critical that Board and Executive Management recognize that the Global Fund's business model assumes that some element of risk will be ever present. They should freely discuss both the nature of these risks and their appetite for risk. Discussions must include the vocabulary of risk, risk tolerance, and risk mitigation. These kinds of conversations are ideally suited for Board retreats and strategy planning sessions. The disbursement of US \$5-6 billion annually can never be completely risk free. This conversation must also be shared with major donors—both governmental and corporate—in order for donors to understand the limits that can be realistically placed on how their donations will be used, spent, and controlled.
4. **Understand that mitigating ethical risk depends in some large part on the degree of operational control which the Global Fund can exercise.** Different risk strategies

⁸ As noted by one interviewee, “The Global Fund Framework Document speaks to the many distinct features of governance.... I am not convinced that when the rhetoric is finished and decisions are being made that the GF actually adheres to its performance based criteria once political stakes are high and people have vested interests.”

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apply to the Secretariat, the Board, and executive management, than can apply to third parties and other stakeholder groups. Different tools will work with different levels of efficacy depending upon the type of risk and stakeholder. Increasing operational control can reduce risk but at the expense of respect for country self-determination.

5. **Tell the story of the founding of the Global Fund** and its ethical successes. While memories and players are still accessible, video tape and otherwise record the stories and memories of how the Global Fund came to be and its early successes and challenges. This will become a critical part of how the Global Fund acculturates new staff in the next 3-5 years. Founders may no longer be available to mentor and guide newcomers. Shaping an organization's culture for ethics and integrity can be—and should be—intentional on the part of leaders and managers.
6. **Take a prominent and global stand against corruption and diversion of funds.** The Global Fund's leadership, both at the executive director and board levels, can make a significant impact in denouncing the mismanagement and accountability failures that lead to corrupt practices. Diversion of funds from their intended purposes is morally offensive. The most vulnerable people in the world are harmed. By taking a stand against corruption, Global Fund's leaders reinforce this "tone from the top." When the leadership agenda of the Global Fund includes expectations on anti-corruption and ethical decision-making, stakeholders (both internal and external) become very clear about what is expected of them in terms of their own behavior.
7. **Ask each department or office in the Secretariat to propose process, rule, and/or policy changes** (including contract terms where necessary) that serve to minimize the three major categories of ethical risk: accountability, compromised product, and diversion of funds. This exercise will enhance the Secretariat's willingness to talk about risk and risk appetite. Those most familiar with these systems will be tasked with identifying a number of operational changes. Small and incremental changes can collectively reduce overall ethical and reputational risk. All new policies must be clearly written, communicated, and distributed to staff. Training on policy changes should become routine.
8. **Develop an accountability framework and related systems** that include, at a minimum, clear statements of roles and responsibilities (including updated job descriptions and charters for each major organizational unit); delegations of authority for decision-making; codes of conduct specific to major stakeholder groups; enhanced and reinforced whistleblowing system; clear internal rules and guidance on how misconduct allegations will be investigated and resolved—whether arising within the Secretariat, Principal Recipients, Sub-Recipients, Local Fund Agents, and/or Country Coordinating Mechanisms; incorporation of ethical conduct performance standards into the review and selection process for new grants; staff performance management systems (linked to promotion and compensation decisions) that document performance that is consistent with the Global Fund's core ethical values; and a uniform disciplinary system with oversight provided by governance.
9. **Enhance product and services oversight by Local Fund Agents**, who serve at an arm's length distance from the Principal Recipients and Country Coordinating Mechanism. Local Fund Agents are the proverbial "eyes and ears" of the Global Fund

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when it comes to financial oversight. The Local Fund Agents already review procurement plans. Their roles could be enlarged to include oversight services for purchasing decisions by Principal Recipients and Sub Recipients, review of how the approved procurement plans are implemented, product “spot checks,” inventory control, warehousing and distribution, and product re-call.

10. **Clarify how decisions to halt or suspend grants** due to diversion or corruption shall be made. The Global Fund will continue to receive or uncover evidence of fraud, waste, abuse, or corruption. The Fund will need to make immediate decisions concerning grant funding and alternate mechanisms to deliver disease fighting services. Being clear about who makes these ultimate decisions will enhance accountability and encourage appropriate levels of oversight and controls. The reverse also holds true, by identifying who makes the decisions to restore grant funding after evidence of corruption has been uncovered. Responsibility for these kinds of decisions must lie among the Executive Director, his/her executive management team, and/or the Board.
11. **Emphasize the Global Fund’s role as a responsible steward for donated funds**, ensuring that these resources are used as intended by donors. Many organizations take an aggressive stance to foster stewardship, by adopting rigorous internal rules and policies on transparency in accounting, complete and honest books and records, conflicts of interest, organizational conflicts of interest, disclosure rules, competitive and fair trade practices, procurement, nepotism, and confidentiality. Promulgating a “zero tolerance for corruption” policy may be beneficial. Policies and codes can be incorporated by reference into Grant Agreements, agency contracts, and various terms of reference.
12. **Provide ethics training** to enable all stakeholders to recognize, appreciate, and resolve ethical dilemmas and to reinforce the Global Fund’s expectations concerning appropriate business-related conduct. Encourage conversations about ethical and reputational risk and mitigation strategies at multiple opportunities, with all stakeholders. The Global Fund can use its ethics training strategy to reinforce its key messages about anti-corruption and ethical action with Secretariat staff, Principal Recipients, Local Fund Agents, vendors and suppliers, and Country Coordinating Mechanisms.
13. **Incorporate ethical conduct expectations into grant agreements and agency contracts**, through the adoption of codes of conduct, standards, or guidance on ethical business conduct.

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VIII. NEXT STEPS

This ethics and reputational risk assessment presents a number of suggestions and recommendations for your consideration. As with any external assessment, the richness of the findings is enhanced by the contributions of the organization and its members. Its recommendations are limited by the imperfect and inadequate perspective of the author.

Getting feedback on this report is a critical first step, to ensure that these observations are valid and that the interviewees' perspectives are well represented. Additional conversations about the recommendations will lead to consensus on what needs to be done, by whom, and by when. You may want to share this report with the Executive Management Team and/or the Finance and Audit Committee and the Ethics Committee. More detailed information on many of the implementing recommendations can be provided, as you determine the priorities for moving forward.

No organization has successfully implemented a Values and Integrity Initiative in under 24 months. Most organizations view this as a multiple year journey, so that the initiative is well integrated into other organizational changes and systems. Several of the recommendations can be styled as pilots, to test their validity and "road worthiness".

Though not essential, many international organizations⁹ are establishing formal ethics and compliance offices with accountability for many of the kinds of undertakings discussed in this report. We can discuss how to structure such a function, determine its reporting structure, source and recruit candidates, and establish an initial set of priorities and middle range goals.

It is an honor to work with the Global Fund. I sincerely hope that this assessment will prove useful for you.

Respectfully submitted,

Joan Elise Dubinsky
President
Rosentreter Group
October 2, 2008

⁹ A representative sample includes the United Nations, the World Bank, the International Monetary Fund, UNICEF, World Food Programme, Office for Security and Cooperation in Europe, Pan-American Health Organization, InterAmerican Development Bank, and the European Bank for Reconstruction and Development.