

DOCUMENT OF INTERNATIONAL MONETARY FUND
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FOR
AGENDA

EBS/84/196
Supplement 1

CONFIDENTIAL

November 1, 1984

To: Members of the Executive Board

From: The Secretary

Subject: Misreporting and Noncomplying Purchases Under Fund Arrangements -
Guidelines on Remedial Action

Attached for consideration by the Executive Board is a revised draft of the guidelines on remedial action relating to misreporting and noncomplying purchases under Fund arrangements prepared in the light of the discussion at EBM/84/152 and EBM/84/153 (10/17/84).

This subject will be brought to the agenda for discussion on an early date to be announced.

Att: (1)

INTERNATIONAL MONETARY FUND

Misreporting and Noncomplying Purchases under Fund
Arrangements--Guidelines on Remedial Action

Prepared by the Legal and the Exchange and
Trade Relations Departments

Approved by George P. Nicoletopoulos and C. David Finch

October 31, 1984

Attached for consideration by the Executive Board is a revised draft of the guidelines on remedial action in cases of purchases made under stand-by or extended arrangements without full observance of the applicable performance criteria (see EBS/84/196, and Correction 1). The new draft has been prepared in light of the discussion in the Executive Board on October 17, 1984. The changes (other than purely editorial changes) are explained briefly below.

1. The second sentence of the draft guidelines has been amended to make clear what is meant by "other conditions". According to the revised text, the "conditions" referred to in the guidelines are limited to those which are not performance criteria as such but which, under the terms of the decision approving the arrangement, or another decision on the arrangement, must be met before a purchase could be made under the arrangement. Thus, a prior action will be covered by the proposed guidelines only if purchases under the arrangement were clearly conditioned on the taking of the prior action.

2. The word "repurchase" in the fourth sentence of the preamble has been replaced by the words "take corrective action" in order to encompass also such action, other than a repurchase, as might be taken to reverse the increase in the Fund's holdings of the member's currency resulting from a noncomplying purchase, i.e., the sale of that currency by the Fund.

3. Paragraph 2 of the guidelines has been amended to make it clear that a call on the member to repurchase in accordance with the expectation referred to in paragraph 3 could be made, or a waiver of the nonobservance involved in the purchase could be granted, only by a decision of the Executive Board. The last sentence of paragraph 2 states that normally a decision of the Fund to waive or to call on a member to make a repurchase would be taken on a lapse-of-time basis. This means that, although a decision would normally be taken without discussion by the Executive Board, any member of the Board could request that the matter be discussed by the Board.

4. Paragraph 3 reflects the preference of the Executive Board for a repurchase expectation rather than a repurchase obligation. The period prescribed for the repurchase would normally be thirty days but, if circumstances warranted it, the Board could agree to a longer period either at the time of the original decision pursuant to paragraph 2 of the guidelines, or, subsequently, at the request of the member. It is made clear that the period prescribed in paragraph 3 for the discharge of the repurchase expectation would begin from the date of the decision of the Board rather than from the date of the notification of the Managing Director's finding.

5. The new paragraph 5 deals with the procedure to be followed if the member did not act in accordance with the repurchase expectation pursuant to paragraph 3. It is made clear that the Managing Director will have to submit a report on the matter to the Executive Board as soon as possible, together with proposals as to how to deal with the matter, which may include a recommendation to proceed with action under Article V, Section 5 of the Articles.

6. Paragraph 6 corresponds to the first sentence of paragraph 5 in the draft attached to EBS/84/196. The automatic suspension of further purchases under an arrangement that could be brought about under a provision along the lines referred to in paragraph 6 would have the same effect as the standard paragraph in arrangements suspending the right to make further purchases under an arrangement in cases of overdue financial obligations to the Fund.

7. The new paragraph 7 is intended to make clear that the Fund will not be prevented by anything that is said by the guidelines from taking any other action in cases of noncomplying purchases that could be taken consistently with the provisions of the Articles, in addition to what is proposed in the guidelines. For instance, the Board could proceed with action under Article XXVI, Section 2, in any case in which there was clear evidence that inaccurate information had been deliberately reported to the Fund or that information which should have been reported had been deliberately suppressed.

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Draft Decision

Misreporting and Noncomplying Purchases
under Fund Arrangements--Guidelines on Corrective Action

In a few cases, it has been found that a member has made a purchase under a stand-by or extended arrangement which it was not entitled to make by the terms of the arrangement (a "noncomplying purchase"). The purchase was permitted because, on the basis of the information available to it at the time, the Fund was satisfied that all performance criteria that are applicable to the purchase under the arrangement, or other conditions applicable to purchases under the terms of the decisions on the arrangement, had been observed, but this information later proved to be incorrect. When such a case arises in the future, steps should be taken to improve the accuracy and completeness of the information to be reported to the Fund by the member under the arrangement and to define performance criteria and other applicable conditions in a manner that would ensure accurate reporting. The member will also be called upon to take corrective action regarding a noncomplying purchase to the extent that it is still outstanding, unless the Fund decides that the circumstances justify the member's continued use of the purchased resources. To this end, the Fund adopts the following guidelines, which shall apply to purchases made after the date of this decision:

1. Whenever evidence comes to the attention of the Fund indicating that a performance criterion or other condition applicable to an outstanding purchase made within the previous two years under a stand-by or extended arrangement may not have been observed, the Managing

Director shall promptly inform the member concerned.

2. If, after consultation with the member, the Managing Director finds that, in fact, the criterion or condition was not observed, he shall promptly notify the member of his finding. At the same time, he shall submit a report to the Executive Board together with his recommendations, which may include a recommendation that the member be called upon to take corrective action pursuant to paragraph 3 or that the non-observance be waived pursuant to paragraph 4. The Executive Board shall normally adopt its decision on the recommendations of the Managing Director on a lapse-of-time basis.

3. Unless the decision of the Executive Board is to grant a waiver pursuant to paragraph 4 or to take other action, the member shall be expected to repurchase from the Fund the outstanding amount of its currency resulting from the noncomplying purchase normally within a period of 30 days from the date of the Executive Board decision referred to in paragraph 2.

4. A waiver will normally be granted only if the deviation from the relevant performance criterion or other condition was minor or temporary, or if subsequent to the purchase the member had adopted additional policy measures appropriate to achieve the objectives of the program supported by the arrangement under which the purchase was made.

5. If a repurchase pursuant to the expectation under paragraph 3 has not been effected, the Managing Director shall submit promptly a report to the Executive Board accompanied by a proposal on how to deal with this matter, in which he may recommend that the Fund initiate

action under Article V, Section 5 of the Articles.

6. Provision shall be made in Fund arrangements for the suspension of further purchases under an arrangement whenever a member fails to meet a repurchase expectation pursuant to these guidelines.

7. Nothing in these guidelines shall limit the power of the Fund to take, in cases of noncomplying purchases, other action that could be taken pursuant to the Fund's Articles and Rules.

