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INTERNATIONAL MONETARY FUND

Minutes of Executive Board Meeting 84/153

3:00 p.m., October 17, 1984

J. de Larosière, Chairman
R. D. Erb, Deputy Managing Director

Executive Directors	Alternate Executive Directors
A. Alfidja	
	M. K. Bush
	G. Ercel, Temporary
	G. E. L. Nguyen, Temporary
	C. A. Salinas, Temporary
M. Finaish	
H. Fujino	T. Yamashita
G. Grosche	
	Jaafar A.
	L. Leonard
A. Kafka	
	I. Angeloni, Temporary
R. N. Malhotra	A. S. Jayawardena
	J. E. Suraisry
J. J. Polak	T. de Vries
A. R. G. Prowse	
G. Salehkhou	O. Kabbaj
	S. M. Hassan, Temporary
	J. E. Rodríguez, Temporary
	A. Lindø
N. Wicks	
Zhang Z.	Wang E.

J. W. Lang, Jr., Acting Secretary
L. Collier, Assistant

Also Present
Asian Department: R. G. Di Calogero. European Department: L. A. Whittome, Counsellor and Director. Exchange and Trade Relations Department: C. D. Finch, Director; M. Guitían, Deputy Director; H. W. Gerhard, M. R. Kelly. Legal Department: G. P. Nicoletopoulos, Director; G. F. Rea, Deputy General Counsel; W. E. Holder, A. O. Liuksila, S. A. Silard. Research Department: N. M. Kaibni. Treasurer's Department: D. Berthet, K. Boese, D. S. Cutler, Q. Md. Hafiz, T. B. C. Leddy. Bureau of Statistics: M. R. P. Salgado. Personal Assistant to the Managing Director: S. P. Collins. Advisors to Executive Directors: A. A. Agah, E. A. Ajayi, H. A. Arias, L. K. Doe, G. W. K. Pickering, M. Z. M. Qureshi, E. M. Taha, D. C. Templeman, A. Vasudevan. Assistants to Executive Directors: E. M. Ainley, W.-R. Bengs, R. L. Bernardo, J. Bulloch, M. B. Chatah, Chen J., V. Govindarajan, A. K. Juusela, H. Kobayashi, K. Murakami, M. Rasyid, A. A. Scholten, Shao Z., S. Sornyanyontr, A. Yasseri.

1. MISREPORTING AND NONCOMPLYING PURCHASES UNDER FUND ARRANGEMENTS - GUIDELINES ON REMEDIAL ACTION

The Executive Directors continued from the previous meeting (EBM/84/152, 10/17/84) their consideration of a staff paper on guidelines on remedial action relating to misreporting and noncomplying purchases under Fund arrangements (EBS/84/196, 9/13/84; and Cor. 1, 9/18/84).

The Director of the Legal Department, commenting on the proposed procedures, explained that the Managing Director would formally notify the Board and the member that it had been found, after full consideration of the facts, that a performance criterion or other condition applicable to an outstanding purchase had not been observed, and that--according to the policy that would be incorporated in the guidelines--the member was expected to repurchase within 30 days. Alternatively, the notification would inform the member that, in spite of the noncomplying purchase, the Managing Director was proposing a waiver to the Board. That procedure was modeled after the one for compensatory financing purchases involving overcompensation; although those repurchases were not obligatory, and information was given to the Board periodically, rather than in each case, other aspects were comparable. In the case of noncomplying purchases, if neither the member nor an Executive Director wished to raise the matter for discussion in the Board, the member would have to repurchase within 30 days of the Managing Director's notification. If the Board considered the matter and agreed with the Managing Director's recommendation, the member would have to repurchase. On the other hand, if the Board considered the matter and decided that other measures should be taken, that course of action would have to be followed. Therefore, the Board would not be limited in its ability to take other action that could lead to ineligibility, if necessary.

It had been suggested by a speaker at the previous meeting that, if after a noncomplying purchase the member had qualified for further purchases under the same or a subsequent arrangement, the Managing Director should not request a repurchase but rather propose a waiver, the Director recalled. The staff had indicated in paragraph 4(b) of the proposed guidelines that, normally, that procedure would be followed but did not exclude other possibilities. There could be circumstances in which it was felt that, even in such a case, a noncomplying purchase should be reversed.

The staff had tried to improve the definition and formulation of performance criteria and would continue to do so, the Director remarked. However, he cautioned that, regardless of the extent of improvement in the formulation of performance criteria for an arrangement, there would always be cases of ambiguity; the proposed guidelines were necessary to provide guidance in such cases. He could go along with Mr. Prowse's suggested addition to the preamble, which urged the Fund to try to define performance criteria so as to ensure accurate reporting.

There would be no difficulty in replacing "repurchase" with "reversal" in the preamble because it was not an operative provision, the Director explained. The reversal of a noncomplying purchase could be accomplished in various ways, such as a repurchase or the sale of the member's currency by the Fund. By contrast, in paragraph 3, on the member's obligation--if that formulation were accepted by the Board--the text must clearly state that the member was obliged to reverse by repurchase. However, if the Fund, with the collaboration of the member, had been able to use the currency in purchases, the need would not arise. Incidentally, "reversal" did not mean that the Fund would correct the account to reflect the member's position as though the noncomplying purchase had not occurred; it was virtually impossible to do so, because of changes in the Fund's holdings of currencies, and because of the various transactions that would have taken place since the purchase in question.

If the Board wished, the question of distinguishing between deliberate misreporting--fraud--and misreporting owing to error could be formulated in a separate paragraph in a revision of the draft decision, the Director suggested. The staff had not attempted to refer to that matter in the proposed decision.

On paragraph 5, the Director continued, Mr. Prowse had commented that, if the Board approved a period that afforded more flexibility than 30 days, the word "prescribed" would have to be modified. A sentence could be added to make it clear that, if a repurchase were not made within the prescribed period, the Managing Director would need to consider whether the Fund--which encompassed the Board as well as the Managing Director, who would initiate the action--should opt for the sanctions that were prescribed by the Articles or should employ some other procedure. In that case, the Managing Director would advise the Board, as he did in all cases where any overdue financial obligation occurred.

Mr. Prowse explained that he had wished to emphasize that the initiation of an action limiting or suspending a member's use of Fund resources should be the subject of a report to the Board by the Managing Director. The automatic sanction in the first sentence of paragraph 5 could be replaced by Board consideration on the basis of the Managing Director's report. The options could include suspension of purchases under existing arrangements; if the repurchase were not made within a further period of days or weeks, the process of limiting access or declaring a member ineligible to use Fund resources could be initiated.

The Director of the Legal Department pointed out that the first sentence in paragraph 5 referred to the procedure introduced about one year ago, according to which further purchases under existing arrangements were automatically suspended if a member had an overdue financial obligation to the Fund. If the Board endorsed the establishment of a repurchase obligation, and the member did not comply with that obligation, the same procedure would automatically apply. To comply with Mr. Prowse's suggestion, the relevant provision under stand-by arrangements would have to be amended.

Mr. Leonard asked whether the first notification of the Managing Director to the member concerning a problem of misreporting would be a formal notice, and whether the Board would be notified at the same time. A strong case existed for notifying the member discreetly, in order not to damage its creditworthiness.

The Director of the Legal Department said that the first approach to the member would not be, properly speaking, a notification. The staff would inform the member in a low-key manner that a problem of misreporting appeared to have arisen, and a letter from the Managing Director would follow, which would be a discreet communication. Indeed, the Board would not be notified of those contacts. A formal notification would be sent only when, after consultation with the member, the Managing Director was convinced that a noncomplying purchase had taken place. That formal notification would be communicated at the same time to the Executive Board. If the Board should decide that the communication by the Managing Director should not be definitive, and that in each case the Board should make a finding, then the communication of the Managing Director would take on a different purpose and form. The guidelines would have to be redrafted to provide for both automatic Board participation in making the finding and a procedure whereby the member could present its case to the Board before the final decision was reached.

The Director of the Exchange and Trade Relations Department explained that the staff's proposals had been based on the cooperation and trust that existed between the Fund and members. For those rare cases where that trust was not justified, because of either fraud or inefficiencies in the reporting process, Fund policy must be clear and concise. The Fund was not making judgments against the borrowing countries, but was proposing procedures to enable the system to work efficiently. He agreed that the staff's responsibility for defining performance clauses correctly was important, and it would be discussed further in the papers on conditionality. In the present proposal, the staff had focused on the reporting of data that had led to an infraction of Fund rules.

"Other conditions" in the guidelines referred to actions that had been specified as prior conditions necessary for a drawing, the Director noted. The staff paper's descriptions of the country's actions or situation were not meant to penalize the member. The idea was to be fair to the countries that had acted scrupulously and competently; a country that had not been able to meet those standards should not be given preferred treatment. The Fund was acting to return the member to its position prior to its misreporting.

The Fund was anxious that the reputation of a country be protected, the Director continued, and the proposed procedures were intended to be as discreet as the present method of handling performance clauses, which involved no publicity or any indication of the existence of a problem. In those rare cases where there was a problem, however, it was the responsibility of staff and management not to ignore it.

With regard to Mr. Kafka's statement at EBM/84/152, the Director of the Exchange and Trade Relations Department confirmed that the staff would be scrupulous in its surveillance, regardless of whether the member had a parallel arrangement with commercial banks. The staff believed that it was important to show that the responsibility entrusted to it was discharged carefully through a low-key approach, not through the imposition of penalties on countries. In those rare instances where the staff discovered that there had been misreporting, it would present a report for Board consideration, thereby discharging its trustee function. He emphasized that the thrust of the staff approach was based on a cooperative, trustworthy relationship between the Fund and the member.

Mr. Kafka explained that his comments on a relatively shorter period of limitation had been prompted by his realization that the pressures of work would make it difficult for the staff to ensure equal emphasis on discovering errors or fraud and performing its other duties.

The Chairman noted that, while there had been differences of views on a number of questions relative to the proposed guidelines on corrective action, some general considerations that had arisen should be kept in mind.

No stigma should be attached to the "correction" of a drawing, and the procedures for a correction should ensure low-key treatment of such cases, the Chairman continued. The majority of Executive Directors did not wish to pass judgment on the motivations of misreporting countries, although a number of Directors would like to differentiate more clearly between accidental and intentional misreporting.

The majority of the Board wanted guidelines to deal with cases of misreporting and noncomplying purchases, which, although rare, were important, the Chairman said. Even those Directors who were reluctant to support the staff's views had stated that guidelines were needed.

Directors had noted that a reversal, or a corrective repurchase, should be required only if evidence of misreporting was clear and convincing, the Chairman stated. Executive Directors had stressed that he should be cautious in making his findings and should act, or propose action, only in clear cases.

The Board had not reached the 85 percent majority needed to institute an obligation to repurchase, the Chairman remarked. Although some doubts might remain concerning the legal aspect of that requirement, the lack of an 85 percent majority indicated that there might be a tendency among Executive Directors to favor an expectation to repurchase. If the latter view prevailed, further discussion would be necessary to clarify the roles of the Board and management in the finding, notification, and triggering of action with respect to misreporting. In any event, there was a clear desire for greater Board participation in the procedures than had been proposed by the staff. However, with regard to the determination of the facts that could underpin action on misreporting, the Board would continue to rely heavily on staff and management, which should have the authority to look into the facts, consult member countries when doubts arose about some aspect of reporting, and maintain contact with the member to try to redress the problem. Thus, the fact-finding function, like the evaluation of a country's compliance under a stand-by arrangement, would remain with management. But Executive Directors had proposed that an Executive Director should be able to place a misreporting problem on the Executive Board's agenda. While Executive Directors would have the opportunity to look at all the cases, guidelines would be necessary to enable management to deal with some cases without the benefit of a full-fledged Board discussion.

A number of Directors had said that they would like to have options in addition to a waiver and a repurchase, the Chairman continued. The Board could widen the options, but there might be clear-cut cases to which the proposed guidelines could be applied. The Board's proposed input could be intensified. The Board could examine a case of misreporting not only if the country concerned wished to appeal to the Board, but also if any Board member wished to do so. Board participation could possibly lead to more varied solutions than those described in the staff paper; however, the proposed procedures could be expected to be applicable in most cases.

With regard to the contents of the guidelines, the Chairman said that Executive Directors' views might change if the Board opted for an expectation to repurchase, rather than an obligation. For example, some Executive Directors favored a shorter period of limitation than the staff had proposed, although a majority of speakers had expressed a strong view in favor of 30 days for the period of repurchase. The consideration of the appropriate starting point of the repurchase period should take into account the Board's input with regard to the finding of misreporting and the launching of the procedures for repayment.

There was agreement on the proposal to permit waivers in certain circumstances, the Chairman noted. The provision for the suspension of further drawings if the required repurchase were not made would have to be carefully redrafted if an expectation to repurchase were finally agreed by the Board.

Mr. Wicks said that he was disappointed by the lack of a consensus. If Executive Directors were to favor an expectation to repurchase, two additional measures, described on page 11 of the paper, would be required. One had been mentioned by the Chairman and would be included in the decision: if a member did not meet the expectation to repurchase within the prescribed period, its right to make further purchases would be suspended until the expected repurchase had taken place. The second measure--to initiate action under Article V, Section 5 to limit the member's use of the Fund's resources or to declare it ineligible if after a certain time the member had not fulfilled the repurchase expectation--should also be included in the guidelines.

He was very much in favor of the two-year period of limitation, Mr. Wicks stated; in fact, during the discussion in May 1984 (EBM/80/80 and EBM/80/81, 5/23/84) he had proposed lengthening the period. He would prefer a small increase in the 30-day period of repurchase to a reduction in the two-year period of limitation.

Mr. Malhotra noted that under draft paragraph 5 a member's right to future purchases under an arrangement could be suspended, thereby virtually making the repurchase an obligation. Suspending future purchase rights had the same effect as the provision in the arrangements to suspend purchase rights if an obligation to repurchase had not been met. He could not go along with, on the one hand, a decision to have an expectation to repurchase in the event of misreporting and, on the other, separate provisions that, for all intents and purposes, would make the repurchase an obligation. As to the measure whereby the Fund might initiate limitation or ineligibility action under Article V, Section 5, further guidelines were not needed, as the relevant procedures were well established.

Mr. Grosche stated that he regretted the shift in Executive Directors' preferences toward an expectation. He favored a limitation period of two years, a repurchase period of 30 days, and, like Mr. Wicks, the enactment of at least one of the safeguards proposed on page 11 of the staff paper to reinforce the repurchase expectation; he suggested that procedures should be reviewed after three to five years.

The Director of the Legal Department explained that at present the standard provision in stand-by and extended arrangements brought about a suspension of further purchases only in the case of an overdue obligation. If the Board should favor requiring a repurchase expectation in misreporting cases, the standard provision in arrangements would apply only if the Board adopted the proposal formulated in the staff paper. The second procedure--to initiate limitation or ineligibility procedures under the Rules and Articles--would be available in cases of both a repurchase obligation and a repurchase expectation. Fund action under Article V, Section 5 did not depend on whether there had been a formal violation of an obligation, but on whether the use of the Fund's resources had been contrary to the purposes of the Fund. The Fund could legitimately find that there had been use contrary to its purposes in either case. The staff proposal provided that, whether a violation of an obligation or an expectation was involved, the Managing Director would initiate action and the Board would follow it up.

Mr. Polak said that a large number of Directors had suggested that the Fund should be more severe in cases of fraud than in cases of error. It would be useful to indicate in the proposed decision that whatever limitations were imposed on the Fund in the guidelines did not limit what it could do under its Articles or Rules. He suggested that, instead of the sentence at the end of paragraph 5, the following new paragraph should be included: "Nothing in this decision shall limit the right of the Fund to initiate limitation or ineligibility action under the Articles or the Rules." That paragraph would make it clear that the limitation of one or two years, whichever was agreed, would be a general one that would not prevent the Fund from deciding that a member was ineligible to use its resources. Similarly, the statement in the preamble that the guidelines would apply to purchases after the date of the decision, also would not prevent the Fund from taking severe action if required by subsequent knowledge of a noncomplying purchase. A general indication might make it easier for some Directors to support a one-year period, as they would know that a case of misreporting could be handled even after that time limit if necessary.

Mr. Kafka considered that the Board could not avoid making distinctions between fraud and error. He agreed with Mr. Dallara and Mr. Polak that avoiding the distinction would be unfair to those members that had committed an error, rather than fraud; any misreporting, especially in light of the very few cases that had arisen, would carry an opprobrious implication.

The initial notice, which presumably would be much less formal than the word "notice" suggested, would be sent by the staff, Mr. Kafka continued. Before a finding of misreporting was made, the member should be able to approach the Board without prejudicing the Board's decision on the member's case. On the question of 30 days, several Directors had suggested that there could be more elasticity. The Board should be able to consider a misreporting case in the same manner as cases of overcompensation under the compensatory financing facility. He agreed with Mr. Malhotra on the question of the suspension of a member's right to purchase. Finally, the suggestion by Mr. Prowse to include in the decision a sentence stating that the Fund should improve its formulation of performance criteria was appealing.

Mr. Malhotra stated that an agreement in the Board that an expectation was warranted would invariably result in a repurchase, unless the member concerned was simply unable to pay the Fund. Therefore, the question of a limitation on a member's purchase right would not be affected by the decision to provide for an expectation as opposed to an obligation. He was more interested in lessening the uncertainty about past drawings; one way to do so would be to limit the period within which it could be found that a purchase had not complied with the terms of the arrangement; any irregularity should surface within a short period. He did not question the role of management with regard to the verification of facts; if the case were brought to the Board for a decision, Executive Directors would not have independent means of ascertaining the facts. Hence, he supported the tradition of honoring management's judgment on appropriately presenting the facts of a case, holding discussions with the member, and making appropriate recommendations to the Board. However, there could be doubts when the performance criteria were ambiguous and the misreporting case hinged not on a matter of fact, but on a matter of interpretation. In the past, the staff had acknowledged that there had been instances of some ambiguity in the wording of performance criteria. The Board should consider only those misreporting cases where it had not been possible to reach an agreement between the member and management; most cases should be settled by management.

There were practical reasons why effectively converting a repurchase expectation into an obligation by suspending future drawings should not be agreed, Mr. Malhotra continued. If the program was on track, suspension of future drawings because of misreporting would cause unnecessary harm to the member: the disruption of purchases would result in serious problems, especially in those cases involving bank rescheduling. For both theoretical and practical reasons, therefore, he urged that the "expectation" not be converted into an "obligation" in an indirect fashion. Mr. Prowse's proposed paragraph should be considered in a future paper.

In comparing misreporting with overcompensation under the compensatory financing facility, Directors should bear in mind that the noncomplying purchase would be due to errors in reporting facts and rarely to fraud, Mr. Malhotra commented, while overcompensation would be due to an error of estimation. The timing of a repurchase and a member's ability to repurchase required further examination.

Ms. Bush indicated that the proposed two-year period of limitation was appropriate. If the Board were moving toward an expectation to repurchase, she would prefer that the additional steps described by the staff on page 11--a provision added to arrangements that would call for a suspension of the right to purchase, and the possibility of initiating action under Article V, Section 5--be included in the decision.

While it was hoped and assumed that there were few cases of fraud or deliberate misleading of the Fund, Ms. Bush said, she continued to believe that some distinction should be made in those cases, especially if the option of expectation, rather than obligatory repurchase, were chosen. She therefore hoped that a sixth paragraph along the lines of the language suggested by Mr. Dallara at the previous meeting could be included in a final decision.

Mr. Prowse stated that he continued to see no benefit in introducing into the decision a distinction between honest mistakes and dishonest reporting. Requiring the Board to determine a member's motivation would be a departure from present practice and should not be agreed to lightly. It should also be kept in mind that the information that a mistake had been made would usually come from the member.

The objective of the proposed decision was to obtain prompt repayment--normally within 30 days--when it had been discovered that a purchase had been unjustified, Mr. Prowse continued, and it would not be helpful in reaching that objective to provide for categories of misreporting. When a mistake had occurred, the Fund should encourage quick reporting by the member within the framework of a neutral decision that provided the member with an opportunity to repurchase.

The Articles provided severe sanctions whenever a member was dishonest in its dealings with the Fund, not merely in the case of noncomplying purchases, Mr. Prowse commented. Therefore, it was unnecessary to define those sanctions, other than perhaps to accept Mr. Polak's suggestion to add a paragraph stating that nothing in the decision would be seen as detracting from or diminishing the Fund's ability to initiate limitation or ineligibility action under the Articles and Rules. That addition would be reassuring to those who were concerned about the remote possibility that the Fund might discover that a member had been dishonest in reporting to the Fund; dishonesty in other dealings with the Fund would be affected by the same sanctions provided under the Articles. In sum, the Board would be doing itself a disservice by inserting in the decision specific references to motivations and penalties.

As to the first additional measure cited by the staff on page 11 of EBS/84/196, the proposed decision could state that, if the member did not meet the repurchase expectation within the specified period, the Executive Board would be advised promptly and would decide on an appropriate course of action consistent with the terms of the decision, Mr. Prowse suggested. It would thus be clear to the member that it was expected to repay promptly, normally within the stipulated period to avoid the severe sanctions permitted under the Articles. Under that approach, Executive Directors would emphasize the importance of misreporting without detracting from the spirit of the decision favored by the Board.

Mr. Suraisry commented that, since the relationship between the Fund and its members was based upon cooperation and honesty, it would not be helpful to differentiate between intentional and unintentional misreporting in the decision; to do so would formally recognize that some members were dishonest. It would be wiser to leave the decision as drafted, especially as it already differentiated between the two cases by stating that members that had misreported intentionally were not probable candidates for waivers.

Although he preferred a two-year period of limitation, he was willing, in spirit of compromise, to consider 18 months, Mr. Suraisry said. He also preferred the 30-day repurchase period but could accept 45 or 60 days. He supported making a repurchase an expectation, with the safeguards mentioned in the staff paper on page 11.

Mr. Leonard stated that he favored an obligation to repurchase. If that were not agreed, he would not wish to see the Fund's position weakened to any great extent; accordingly, all arrangements should include a standard provision suspending a member's right to further drawings when an expectation had not been met and action under Article V, Section 5 was called for. The 30-day period for repurchase should run from the date of Board approval of the Managing Director's finding.

Mr. Malhotra said that he agreed with Directors who did not want a reference to deliberate misreporting or fraud in the decision. In the past, the Board had avoided making such a distinction in the interest of maintaining the Fund's smooth relationship with its members. He therefore urged the Board to avoid a reference to any distinction between deliberate or accidental misreporting, although the Board would consider all the facts of a case.

Ms. Bush recalled that there had been some discussion as to whether the finding of misreporting should be made by management or the Board. One solution might be for the Board to consider all cases on a lapse of time basis; any Board member could bring a case to the agenda. Otherwise, management would take the action that it considered appropriate. Finally, Mr. Prowse's comments that members would hesitate to disclose misreporting voluntarily if there was a possibility of a finding that the misreporting had been deliberate led her to support the text suggested by Mr. Polak for handling the issue.

Mr. Wicks said that he supported the proposed procedure whereby the Managing Director would consider the facts in a misreporting case, with advice from the staff, and reach a finding that would be subject to review by the Board. The usual period for lapse of time consideration was short; the complicated document dealing with a factual situation would call for prompt judgment without allowing time for consultation with the Executive Director's authorities.

The Chairman noted that management could ascertain that there had been misreporting that was considered sufficiently clear and substantive to warrant action. Then, after consultation with the member, management would notify the member as well as the Board of the finding. Alternatively, as a number of Directors had suggested, the Board could be given the opportunity in, he hoped, rare instances, to have a full discussion of a misreporting case.

The Director of the Legal Department suggested that, once it had been ascertained on the basis of facts that there had been a noncomplying purchase, the notification to the member could be delayed one week while the Board was notified. If, at the end of the week, no Executive Director wished to place the matter on the agenda, the notification could then be sent to the member. The Board would not be called upon to discuss the facts, but Executive Directors would have an opportunity to discuss the case within a particular period.

Mr. Wicks commented that two actions were involved: to find the facts, and to notify the member. The Board should not be involved in the first one, but it could be legitimately involved in the notification to the member.

The Director of the Exchange and Trade Relations Department remarked that care should be taken not to formulate the decision too precisely. While there could be doubt about the facts in some cases, often the member itself would have drawn attention to a possible problem and would understand that an examination of the facts would be required. The usual process for handling cases would be to determine the conditions in which the staff could support a waiver. The discussion would center on the actions necessary to keep the program on track in the light of the new data. It should be made clear that there would be a period of discussion and reconciliation, consistent with the objectives of the Fund and the member, to determine how to cope with the problem.

The Chairman agreed that the notification would have to be discreet and confidential. Only in the event of an intractable problem or serious doubts about the statistical legitimacy of a drawing would the proposed actions be taken.

Mr. Polak stated that, to ensure greater input by the Board, all cases, including requests for waivers, should be brought to the Board's agenda, rather than be considered on a lapse of time basis. The suggestion that, in certain circumstances, the time frame for some members might be longer than that for others, depending on whether Board consideration had been proposed, was not desirable. On the other hand, the Board should not feel pressured by a time constraint to take a decision before it was convinced of the facts. Each case should be brought to the Board, but perhaps with a notice of one week instead of three weeks.

The Chairman suggested that determining the facts should be the subject of a Board discussion only in exceptional circumstances.

Mr. Leonard commented that, as the 30-day repurchase period had not been unanimously endorsed, the Board could adopt a somewhat longer lapse of time period for Board approval of a decision on a misreporting case. The extra week proposed by the Director of the Legal Department would help to meet some of the objections to a 30-day period and allow for adequate Board input. Of course, the Board would not need to involve itself if it did not wish to do so.

Ms. Bush considered that fact finding, along with any determination of whether performance criteria had been met, was the province of the Managing Director. Her proposal regarding lapse of time consideration had been made largely as a compromise in view of the proposal to provide for greater Board involvement in misreporting cases, but she hoped that there would be routine cases that would not have to be formally presented to the Board, even on a lapse of time basis.

Mr. Malhotra said that he agreed with Mr. Polak. As cases would be rare, he did not support a lapse of time procedure allowing one week or ten days for Board examination of the Managing Director's finding. A definitive procedure should be established whereby, following the Managing Director's factual conclusion, the matter would be considered by the Board. The procedure proposed by the staff could place the Managing Director in an awkward position, because his notice and the Board's consideration could take place concurrently; therefore, the Board could conceivably overturn a judgment by the Managing Director that had already been conveyed to the member. He could not support that procedure.

Mr. Prowse noted that paragraph 2 of the guidelines stated that the Managing Director would find out the facts, notify the member of his finding, and submit a report to the Executive Board in which he would recommend some course of action, conceivably including a waiver. That report could be considered on a lapse of time basis. It was important, however, that there should be a standard procedure; it would not be desirable to select some cases for discussion and others for lapse of time consideration. The Managing Director would not be able to notify the member of his proposed recommendations before Board consideration because of the potential difficulties described by Mr. Malhotra. The proposed draft provided for approval of a decision on misreporting on a lapse of time basis. The Managing Director would establish the facts and notify the member; at the same time, he would report the facts and recommend a course of action to the Board. If, within a week or fortnight, the Board had indicated no objection, the Managing Director would advise the member that the 30 days for repurchase or reversal would run from the date of the Managing Director's notification to the member of the decision. The 30-day period should not run from the date of initial notification, because the member would not know what was required at that time; in fact, a waiver might be approved.

The Chairman agreed that there should be no disparity in treatment. He could notify the facts to the member and to the Board, then propose to the Board a standard decision, a waiver, or another course of action; the Board could examine the report promptly, either on a lapse of time basis or in a discussion; and when the decision was taken, he could notify the member of that decision, thus initiating the period for repurchase.

Mr. Fujino said that he favored not distinguishing between a simple reporting mistake and intentional misreporting. In the case of a mistake, a country would be ready to accept the finding and to rectify the mistake; therefore, the guidelines would apply only in exceptional cases. If it were agreed that the findings must be made by the Board, it could also be decided that, when the country had accepted the finding, there need be no further discussion of the matter by the Board.

The Chairman added that if the member agreed to the finding, the repayment would become merely a technical matter, and the case need not be brought to the Board.

Mr. Suraisry said that, as there were few cases of misreporting for which a waiver would not be recommended, the decisions for such cases could appropriately be considered on a lapse of time basis. That procedure would allow for Board discussion if desired.

The Acting Secretary indicated that of those who had addressed the proposed two-year period of limitation, those with somewhat less than 50 percent of the voting power had supported two years, and those with somewhat less than 40 percent of the voting power had supported, less than two years. The positions of Mr. Angeloni, Mr. Salehkhou, and Mr. Lindø were not included.

Mr. Angeloni said that he could be flexible on the question of timing, perhaps more so on the 30-day repurchase period than the two-year period of limitation. He supported the Chairman's suggestion to make the input of the Board optional. He asked for further clarification of the phrase "other conditions" in the draft decision.

Mr. Kabbaj stated that he preferred a period of limitation that would extend until the next review or consultation, or not more than one year. He favored a repurchase period of three to six months instead of 30 days.

Mr. Lindø said that he supported the staff's proposals; he favored two years for the period of limitation, but he could be flexible concerning the 30-day repurchase period.

The Director of the Legal Department said that it would be possible to add language to clarify the definition of the "other conditions" mentioned in the draft decision. Those conditions had been specified in the decisions on individual stand-by arrangements, although they were not performance criteria in the legal sense. For example, some decisions had stated that a stand-by arrangement would become operative when a particular condition had been met.

The Chairman said that the staff would prepare a revised decision, based on Executive Directors' comments, for consideration at a later date. 1/

The Executive Directors for the time being concluded their discussion on misreporting and noncomplying purchases under Fund Arrangements.

APPROVED: July 19, 1985

LEO VAN HOUTVEN
Secretary

1/ See Decision No. 7842-(84/165) adopted at EBM/84/165 (11/16/84).