

SM/00/97
Supplement 2

February 2, 2001

To: Members of the Executive Board

From: The Secretary

Subject: **Cooperation with Investigations on Fund Activities by Auditing
Institutions of Members**

Attached for the information of Executive Directors is a note by the staff in response to the request by Ms. Lissakers and concerns of Mr. Milleron with respect to cooperation with investigations on Fund activities by auditing institutions of members.

Questions may be referred to Mr. Gianviti (ext. 38329) and Mr. Elizalde (ext. 37796).

Att: (1)

Other Distribution:
Department Heads

Cooperation with Investigations on Fund Activities by Auditing Institutions of Members

During the Executive Board discussion of the proposed decision on cooperation with investigations on Fund activities by auditing institutions of members (EBM/01/7, 1/22/01), Executive Directors agreed that the words "in keeping with the existing procedures" would be added to the first sentence of paragraph 3 of the proposed decision. The revised text of that sentence (SM/00/97, Rev. 1, Sup. 1, p. 2) now reads as follows: "In principle only documents and information available to the Executive Board will be made available to the agency, in keeping with existing procedures."

Based on the views expressed by different Executive Directors, it appears that there is no agreement on the meaning of the words "in keeping with existing procedures."

If the view was taken that these words refer to the procedures prescribed by Decision No. 11192-(96/2), January 17, 1996 (as amended by Decision No. 11915-(99/23, March 8, 1999) for access to Fund archives by "outside persons," it would mean that the communication to an auditing agency of any Board document less than 5 years old would require Board approval.

In practice, however, this procedure will usually not be necessary. An auditing agency is very unlikely to request access to Board documents because they have probably already been communicated to the agency by its government or the Executive Director for that member. The fact that the inquiry is initiated with the support of the Executive Director appointed or elected by the member implies governmental support and communication of relevant documents. Therefore, the requirement of Board approval for the communication of Board documents would only have a limiting effect if the circulation of Board documents by Executive Directors to their governments and official agencies within or outside the government (e.g., central banks) was also limited by Fund decisions, which is not the case. It is left to each Executive Director's judgment to communicate Fund documents to entities or persons that he/she regards as his/her authorities (government, central bank, various organs or agencies) and for those authorities to ensure the confidentiality of those documents. Decision No. 11192 does not apply to such communications of documents, which are not regarded as being made to outside persons even though some agencies such as central banks are legally separate entities, distinct from the government.

Moreover, if Decision No. 11192 was applicable, it would subject an auditing agency of a member to a more limited access to Board documents than a number of international organizations for which special, less restrictive, procedures have been approved.

Finally, the application of Decision No. 11192 would amount to submitting an auditing agency of a member, which is bound to preserve the confidentiality of Fund documents, to the same procedural requirements as a scholar or journalist who intends to publish the contents of the information made available by the Fund. It is clear from the

record that Decision No. 11192 was intended to protect Board documents from public disclosure, not to regulate access to Board documents of members' governmental organs or agencies through Executive Directors' offices or other channels.

For the reasons stated above, the position of the Legal Department is that a request for Board documents by an auditing agency of a member, whose inquiry is supported by the Executive Director for the member and which undertakes to preserve the confidentiality of the documents so requested, is not subject to Decision No. 11192. This has been the practice of the staff in connection with previous enquiries. Accordingly, the reference to existing procedures in the proposed decision should be understood as a continuation of the procedures that have governed the communication of documents to auditing agencies, not as a reference to Decision No. 11192.