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CONFIDENTIAL

June 29, 2000

To:            Members of the Executive Board

From:         The Acting Secretary

Subject:      **Strengthening the Application of the Guidelines on Misreporting**

Attached for consideration by the Executive Directors is a paper on strengthening the application of the guidelines on misreporting of information to the Fund, which was tentatively scheduled for discussion on Friday, July 7, 2000 and will now be brought to the agenda for discussion on a date to be announced. Proposed decisions appear on pages 12-19.

Mr. Kapur (ext. 38732), Mr. T. Lane (ext. 37668), Mr. Leckow (ext. 34799) and Ms. R. Weeks (ext. 36869) are available to answer technical or factual questions relating to this paper prior to the Board discussion.

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## INTERNATIONAL MONETARY FUND

**Strengthening the Application of the Guidelines on Misreporting**

Prepared by the Policy Development and Review and Legal Departments

Approved by Jack Boorman and François Gianviti

June 29, 2000

**I. Introduction**

1. On March 17, 2000, the Executive Board discussed the misreporting of information to the Fund, evaluating the Fund's existing legal framework and internal procedures in light of recent cases.<sup>1</sup> The Board agreed on various steps to be taken to strengthen the Fund's framework for addressing cases of misreporting<sup>2</sup> when they arise, and asked the staff to return with specific recommendations on how to make these steps operational.

2. The Fund's legal framework for addressing misreporting contains two distinct but complementary elements.<sup>3</sup> The Misreporting Guidelines, including the 1984 Guidelines on Corrective Action for Misreporting and Noncomplying Purchases under Fund Arrangements ("the GRA Guidelines") for the General Resources Account and analogous guidelines for misreporting under the PRGF ("the PRGF Guidelines"), provide procedures and remedies to address cases in which members obtain, on the basis of inaccurate information, resources that they were not entitled to receive. Article VIII, Section 5 obligates members to provide the Fund with information it "deems necessary for its activities," while recognizing that a member's capacity to provide such information may be limited. This Article applies to the provision of information in the context of both surveillance and the use of resources in the General Resources Account. Consequently, an instance of misreporting involving the use of

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<sup>1</sup> The issues discussed by the Board are presented in the staff papers EBS/00/12 and EBS/00/13. The summing-up of this meeting, together with the subsequent meeting on the related topic of Strengthening Safeguards on the Use of Fund Resources, is contained in BUFF/00/48. The subsequent case of Pakistan (EBS/00/65) further illustrates several of the gaps in the coverage of the Guidelines.

<sup>2</sup> Similar to the approach used in the earlier staff papers on misreporting, this paper uses the term "misreporting" to refer to any situation in which a member provides inaccurate information to the Fund. This term is thus used more broadly than is the case in the Misreporting Guidelines discussed below.

<sup>3</sup> The legal framework is discussed in detail in EBS/00/13 and EBS/00/13, Supplement 1.

Fund resources in the General Resources Account may give rise to the application of the GRA Guidelines and to Article VIII, Section 5.<sup>4</sup>

3. This paper addresses issues related to the strengthening of the application of the Misreporting Guidelines, and related issues under Article VIII, Section 5. There are a number of additional issues that relate to the scope for more effective use of Article VIII Section 5; the remedies to be applied in cases of misreporting; and the treatment of misreporting in the context of assistance under the HIPC initiative. These issues will be addressed in a subsequent paper to be issued for Board consideration in October.

4. In its previous discussion of misreporting, the Board asked the staff to return with further considerations regarding several aspects of the application of the GRA Guidelines and the analogous PRGF Guidelines (which will be referred to collectively as the "Misreporting Guidelines"): (1) the extension of the GRA Guidelines to cover outright purchases in the General Resources Account; (2) the lengthening of the two-year limitation period (which limits the application of the Misreporting Guidelines to cases in which evidence of misreporting comes to the attention of the Fund within two years after a non-complying purchase or disbursement was made); (3) the application of the Misreporting Guidelines to prior actions; (4) the implications of waivers for the coverage of the Misreporting Guidelines and Article VIII, Section 5; and (5) the application of the Misreporting Guidelines and Article VIII, Section 5 to other essential information. The first two of these issues, discussed in section II, would require amendment of the relevant Guidelines.<sup>5</sup> The other three, discussed in section III, would not entail changes in the Guidelines themselves; instead, they would involve the formulation of general Fund policies regarding the use of conditions in decisions on the use of Fund resources. Section IV contains the draft decisions along with the revised texts of the Misreporting Guidelines; marked versions of the Misreporting Guidelines highlighting proposed changes are also included in Appendices I and II.<sup>6</sup>

## **II. Issues Requiring Amendment of the Misreporting Guidelines**

### **1. Outright Purchases**

5. The GRA Guidelines apply only to standby and extended arrangements (thus also covering purchases under the SRF and CCL). They do not apply to outright purchases,

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<sup>4</sup> Article VIII, Section 5 does not cover the reporting of information under the PRGF and HIPC. Consequently, discussions of Article VIII, Section 5 in this paper apply only to members using resources in the General Resources Account.

<sup>5</sup> *I.e.*, of the GRA Guidelines, and the GRA and PRGF Guidelines, respectively.

<sup>6</sup> In addition to the revisions and conforming changes necessary to effect the desired amendments of the Misreporting Guidelines, some editorial changes have been made.

including in the credit tranches (e.g., emergency assistance) and under the CFF.<sup>7</sup> In addition, the GRA Guidelines would not, as presently formulated, automatically extend to outright purchases under any new facilities that may be established.

6. To extend the coverage in this regard, as agreed by the Board,<sup>8</sup> would require an amendment of the GRA Guidelines; a draft decision effecting this amendment is attached (GRA Decision I).<sup>9</sup> It should be noted, however, that since outright purchases are not subject to performance criteria, amending the GRA Guidelines to cover such purchases would be of operational relevance only if other conditions of purchase, such as prior actions or other essential information, were identified, as discussed below.<sup>10</sup>

## 2. Limitation Period

7. The Guidelines are subject to a two-year limitation period. The rationale for such a limitation period is that a member should not indefinitely be exposed to the risk that previous transactions will be reopened. But the experience of some recent cases suggests that two years may be too short for misreporting to be uncovered by the staff. If cases of misreporting cannot be addressed under the Guidelines because of an unduly short limitation period, the *credibility of the framework for misreporting may be weakened.*

8. Under the Guidelines in their present form, a noncomplying purchase or disbursement will be subject to the application of the Guidelines if it was made within the two-year period before the Fund staff uncovers evidence that suggests that the member may not have observed a performance criterion or other condition applicable to the purchase. For the purposes of the limitation period, it is sufficient that the staff obtain evidence that suggests that the performance criterion or other condition may not have been observed; it is not necessary to reach a final conclusion with respect to nonobservance. Moreover, the

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<sup>7</sup> The issue of outright purchases is not relevant to the PRGF, since the modalities for assistance under the PRGF do not provide for disbursements outside a PRGF arrangement.

<sup>8</sup> See BUFF/00/48, page 5.

<sup>9</sup> The change to cover outright purchases would only apply to purchases made after the date of the decision adopting the amendment.

<sup>10</sup> As the conditions imposed in connection with an outright purchase would relate to information provided to the Board prior to the purchase, they would not, in and of themselves, give rise to obligations under Article VIII, Section 5. This is because the Fund cannot retrospectively impose an obligation with respect to information that has already been provided by a member. Failure to accurately report this information, therefore, would give rise to application of the GRA Guidelines, but it would not constitute a breach of Article VIII, Section 5, except in cases where the information is independently required under Article VIII, Section 5 (i.e., information specifically listed in that section or additional information required by the Board).

Guidelines do not presently establish any specific period in which the staff or the Board must take action with respect to potential cases of misreporting that have been discovered.<sup>11</sup>

9. The Board has agreed to lengthen the limitation beyond the present two years, and an amendment of the Guidelines would be necessary for this purpose. There are at least three alternative approaches available to the Board.

10. The first approach would be to lengthen the maximum period—for example, to four years—between the date of the relevant purchase or disbursement and the date upon which evidence of misreporting comes to the attention of the staff. This approach would permit the Fund to respond to cases of misreporting that are discovered within a longer period after the relevant purchases or disbursements are made. However, as is the case with the present system, there would be no limit placed upon the period in which the Fund would have to act on a potential case of misreporting after it is discovered.

11. A second alternative would be to lengthen the limitation period but, at the same time, to provide for the limitation period to run from the date the relevant purchase or disbursement is made to the date upon which the Managing Director makes a final report to the Board regarding the misreporting. As is case with the first alternative, this approach would permit the Fund to respond to cases of misreporting that are discovered within a longer period after the relevant purchases or disbursements are made. It would have the additional benefit of forcing the staff and management to act more promptly upon discovery of evidence of misreporting, as the Managing Director would be required to make a final report to the Board within a specified period. In some cases, however, the establishment of such a period may preclude the staff from properly investigating cases before bringing them to the Board's attention (e.g., where the misreporting is discovered near the end of the limitation period). Accordingly, under this approach, it would be necessary to authorize the Board to extend the limitation period at the request of the Managing Director, whenever such an extension is necessary in order to permit the proper completion of an investigation.

12. The third alternative would be to eliminate the limitation period entirely and to introduce a system under which the Guidelines could be applied to any case of misreporting for as long as the relevant purchases or disbursements remain outstanding. This approach would be better anchored in the logic of the Guidelines that a member should promptly repay any outstanding purchase or loan that it was not entitled to make or receive. But this option would require the Fund to pursue cases of misreporting long after the fact—up to 10 years

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<sup>11</sup> When evidence of potential misreporting is discovered, the Guidelines require the Managing Director to “promptly” inform the member concerned, and to conduct an investigation; when the Managing Director finds that a noncomplying purchase was, in fact, made, he must “promptly” inform the member of his finding and, at the same time, advise the Executive Board. However, the Guidelines do not specify any period in which the actual investigation must be conducted.

following a purchase or disbursement under current maturities in the case of the EFF and the PRGF. It also implies that the length of the period over which a past transaction could be reopened would be different, depending on the facility from which the relevant resources were received (and the maturities which apply under that facility).<sup>12</sup> Even if it were considered appropriate to hold a member accountable for misreporting so many years after the fact, the passage of time may weaken the capacity to bring cases of possible misreporting to a clear conclusion. First, it may be difficult to investigate the circumstances of misreporting so long after the fact, as data files may have been deleted, and memories of the surrounding events become less reliable. Second, the commitment to apply remedies long after the fact may not be credible, for instance, because governments and responsible officials have changed.

13. On balance, based on these considerations, the staff would recommend lengthening the limitation period to four years, while providing (in line with the second approach) that this period runs from the date the relevant purchase or disbursement is made to the date upon which the Managing Director makes a final report to the Board regarding the misreporting, with the possibility for Board extension of the limitation period where this is necessary to permit proper completion of an investigation.<sup>13</sup> The suggested four-year period would be intended to strike a balance between strengthening the Fund's tools to address cases of misreporting that arise and protecting the country against the risk that transactions are reopened long after the fact. At the same time, the ability to extend the limitation period would allow completion of an investigation even where the misreporting is discovered close to the end of the limitation period. Draft decisions incorporating this approach for both the GRA and PRGF Guidelines are attached for Directors' consideration (GRA Decision I and PRGF Decision I). It should be noted that, even after the expiration of the limitation period under the Misreporting Guidelines, the Board could still take remedial action with respect to misreporting that constitutes a breach of obligation under Article VIII, Section 5.

14. A further issue concerns the Fund's relations with a country during the period while the circumstances of possible misreporting by that country are being examined. The practice has frequently been for the Fund to resolve any case of possible misreporting before approving a new arrangement or completing a review under an existing arrangement for that member. This practice has not been formalized, however. Under an existing arrangement, unless the next purchase or disbursement is subject to completion of a review, there are limited circumstances in which the Board can refuse to make further resources available to a

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<sup>12</sup> For example, members with extended arrangements and PRGF arrangements would be subject to the application of the Misreporting Guidelines for up to 10 years after a purchase or disbursement, while those with stand-by arrangements would be subject to the application of the Guidelines for only 5 years.

<sup>13</sup> The first extension would have to be approved before the expiration of the four-year period.

member pending completion of an investigation. Specifically, the Board can suspend purchases only after the Board has made a decision to suspend purchases generally (i.e., for all members); or to suspend purchases in order to consider a proposal by an Executive Director or the Managing Director formally to suppress or to limit the eligibility of a particular member to use Fund resources. This provision (which is a standard clause in the texts of stand-by and extended arrangements) applies only to use of resources in the General Resources Account. Consequently, under an existing arrangement in which the next purchase is not subject to completion of a review (i.e., if it depends only on observance of performance criteria), the Board could suspend use of the Fund's general resources only (1) in connection with the use of resources in the GRA, and (2) after an Executive Director or the Managing Director had made a proposal to suppress or limit the eligibility of the particular member to use the Fund's general resources (e.g., in connection with a breach of obligation). The Board may wish to consider expanding this framework, for example, to enable a suspension of purchases in the GRA, when no review is due, and even where the Managing Director or an Executive Director has not made a proposal to suppress or limit the eligibility of the particular member; or to enable a suspension of disbursements under a PRGF arrangement when no review is due. However, any such expansion could be instituted only through a general Board policy on the issue, and through appropriate amendments to the terms of individual arrangements. A "time out" (suspension of use of the Fund's general resources) may, however, be specified as a remedial action in cases in which a member has been found to have breached Article VIII, Section 5; this will be discussed in the paper scheduled for Board consideration in October.

### **III. Issues Not Requiring Amendment of the Misreporting Guidelines**

#### **1. Prior Actions**

15. Under the Fund's current practice, implementation of prior actions has not formally been made a condition for decisions on the use of Fund resources. Consequently, the Misreporting Guidelines have not hitherto applied to misreporting concerning the implementation of prior actions—in which the Board approves the use of the Fund's resources after the authorities have reported that certain actions have been taken, but it was later discovered that these reports were incorrect. Such a case would be subject to the application of Misreporting Guidelines if the Board had explicitly stated that the implementation of the prior action was a condition on the basis of which the decision for the use of Fund resources was approved. The Board has expressed its intention to begin specifying prior actions as explicit conditions in decisions regarding the use of Fund resources (BUFF/00/48, page 5); this would include decisions approving an arrangement or an outright purchase, completing a review, or waiving a performance criterion.

16. The Board already has the ability to bring the Misreporting Guidelines to bear on misreporting with respect to the implementation of prior actions in any case it considers appropriate, without any formal general decision. This can be done by specifying, in decisions approving use of the Fund's resources—e.g. approval of a request for an arrangement, or completion of a review—any prior actions whose implementation is a

condition for the decision being taken. If it later turns out that any one of the reported prior actions had not actually been implemented, the purchase or disbursement made on the basis of this decision would be a non-complying purchase or disbursement as defined under the Misreporting Guidelines and the remedial provisions of the Guidelines would become applicable (including those regarding the expectation of early repurchase).<sup>14</sup>

17. The Board may also wish to adopt a general policy on prior actions—since there is considerable benefit to uniformity in this area. Specifically, the Board could take a general decision to the effect that in future, all decisions on the use of Fund resources will be adopted on the condition that the information provided by the member on the implementation of specified prior actions is accurate. Adhering to such a policy would ensure that all misreporting concerning the implementation of prior actions would be covered by the Misreporting Guidelines. Draft decisions, which would establish the Fund's general policy in this area, are attached (GRA Decision II and PRGF Decision II). These would need to be supplemented with appropriate language in country-specific decisions involving the use of Fund resources; it would also be necessary to specify the relevant prior actions in each country case. It should be noted that specifying prior actions as conditions in decisions could lead to the Misreporting Guidelines becoming applicable to multiple purchases or disbursements in connection with the same set of prior actions. For example, if there is misreporting with respect to a prior action that is a condition for approval of an arrangement, then all purchases or disbursements made after approval would be subject to application of the Misreporting Guidelines. Similarly, if there is misreporting with respect to a prior action that is a condition for completion of a review, all purchases or disbursements made after the review would be subject to the Misreporting Guidelines.<sup>15</sup>

18. Specifying prior actions as conditions in decisions would also have the effect of imposing greater discipline on the choice of prior actions and the way they are specified. In particular, it is likely that as a result of this new policy, prior actions would become more limited in number, and would be winnowed down to those measures that are truly essential to the program and to the Board's decision. Under current practice, prior actions are sometimes treated more informally: in some cases, for instance, implementation of a "critical mass" of

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<sup>14</sup> As mentioned above in the context of outright purchases, conditions relating to information already provided to the Fund would not in and of themselves give rise to obligations under Article VIII, Section 5, as an obligation cannot be imposed in connection with information that has already been provided by a member.

<sup>15</sup> It would be open to the Board, however, to provide in individual cases that the conditions specified in a decision apply only to a specified purchase (e.g., the purchase immediately following approval of an arrangement or completion of a review). If this is done, then misreporting with respect to these conditions would result in application of the Guidelines only to the specified purchase. This would likely be appropriate only in cases in which the condition is relevant to the program's objectives for only a limited period.

the prior actions initially agreed by the authorities and staff may be deemed sufficient to demonstrate the authorities' commitment; and in some cases the authorities may substitute alternative prior actions which the staff views as equivalent to those initially agreed. Under the proposed procedure, only the final set of prior actions actually reported as having been implemented, and viewed as essential to the Board's decision to approve the program, would be listed as prior actions in the decision. In implementing this approach, it would also be particularly important that prior actions be specified objectively and unambiguously, in order to ensure that there is no room for misunderstanding between the Fund and the authorities regarding their precise content and what their implementation means. This may not be a straightforward matter in practice, however, given the nature of many prior actions.<sup>16</sup> Establishing such a policy of conditioning decisions on implementation of prior actions would thus, in addition to broadening the application of the Misreporting Guidelines, help enhance the focus and transparency of programs presented to the Board.<sup>17</sup>

## 2. Waivers

19. In some recent cases of misreporting, a specific issue has arisen with regard to waivers. Thus far, both waivers of nonobservance and of applicability of a performance criterion have generally been unconditional. If the Board grants an unqualified waiver for nonobservance of a performance criterion, then observing that performance criterion ceases to be a condition of purchase, so that the Guidelines on Misreporting do not apply to any purchases or disbursements made in connection with that performance criterion.<sup>18</sup> This is presumably not what the Board intends when it grants a waiver: rather, the information

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<sup>16</sup> See *Prior Actions: Fund Policy and Practice* (EBS/96/164). This paper noted that prior actions must be discrete measures, defined without ambiguity with their implementation readily verifiable. This may be difficult to achieve in practice, however. For instance, if a prior action for completion of a review is "adoption of a strategy for the reform of the public pension system", this leaves open to interpretation what kind of strategy would be acceptable and whether it needs to be implemented or only formulated.

<sup>17</sup> It may be useful to reinforce this approach by establishing as normal practice that all prior actions must have been carried out at least five working days before the Board discussion to which they relate. This would contrast with some recent instances in which the implementation of prior actions has been reported to the Fund shortly before the Board discussion, allowing no time even for minimal clarification of details.

<sup>18</sup> For instance, suppose the performance criterion for NIR were 100, the country reported reserves of 99, and the Board granted an unconditional waiver; if it is later learned that reserves were actually 10, the Guidelines would not apply. For purchases in the General Resources Account, however, such misreporting would nonetheless be a breach of obligation under Article VIII, Section 5, since establishing the performance criterion created an obligation for the member to report accurate information.

provided by the authorities (for example, on the magnitude of the nonobservance) is essential input into the decision of whether or not to waive nonobservance of a performance criterion. In order for the Misreporting Guidelines to apply to misreporting of a performance criterion notwithstanding a waiver of nonobservance, the Board would need to make the accuracy of the reported information concerning the performance criterion a condition in its decision granting the waiver.

20. The Board already has the ability to make any waiver conditional on information provided by a member regarding the performance criterion in question. But it would seem preferable to establish a general policy in this regard to ensure uniformity in the Fund's approach. The Board could take a general decision that, henceforth, all waivers of non-observance will be conditioned on the accuracy of the data or other information reported by the authorities regarding the performance criterion in question. Draft decisions instituting such a general policy are attached (GRA Decision III and PRGF Decision III).<sup>19</sup>

21. Waivers of applicability raise different issues since, in that case, information on the performance criterion for which the waiver is granted would not have been reported to the Fund at the time the waiver is granted.<sup>20</sup> In that case, while the waiver cannot be made conditional on reported levels of the performance criterion, it could nonetheless be made conditional on other information that is important in motivating the Board's decision to waive applicability—in particular, on the accuracy of the report that data are unavailable<sup>21</sup> and on the accuracy of reported levels of the relevant performance criterion for the previous period.<sup>22 23</sup> Consistent with the approach proposed for waivers of nonobservance, decisions

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<sup>19</sup> To implement this general decision, it would also be necessary to include standard language in country-specific decisions that references the general decision.

<sup>20</sup> The granting of an unqualified waiver of applicability has the effect of excusing a member from the need to report information respecting the relevant performance criterion under both the Misreporting Guidelines and Article VIII, Section 5 (except to the extent that the information is required under Article VIII, Section 5 independent of the performance criterion, or the performance criterion continues to apply to a subsequent purchase that is not covered by the waiver). For this reason, in the recent case of Pakistan, for example, a waiver of applicability implied that neither the Misreporting Guidelines nor Article VIII, Section 5 applied to one of the purchases made in the period during which incorrect fiscal data was being provided to the Fund (EBS/00/65).

<sup>21</sup> The condition concerning accuracy of the report that data is unavailable would not give rise to an obligation under Article VIII, Section 5, as the report would have been made prior to the decision that imposed the condition (as discussed above, the Fund cannot impose obligations with respect to past acts).

<sup>22</sup> For purchases in the General Resources Account, even without the establishment of such a condition, the information necessary to assess observance of a performance criterion for the

instituting this approach as a general policy are attached for the Board's consideration (GRA Decision III and PRGF Decision III).<sup>24</sup> Similar to the analysis for prior actions, specifying conditions in connection with waivers could result in the Misreporting Guidelines becoming applicable to multiple purchases or disbursements in connection with the same set of conditions, as all purchases or disbursements made as a result of the waiver would be subject to application of the Misreporting Guidelines. The most noteworthy consequences are likely to arise for misreporting of conditions related to the waiver of nonobservance of a continuous performance criterion.<sup>25</sup> In such a case, the Misreporting Guidelines would not merely apply to purchases made before the next test date under the arrangement, but rather to all purchases made subsequent to the waiver.<sup>26</sup>

### **3. Other Essential Information**

22. The Board has also expressed the desire to extend the application of the Guidelines to other essential information (BUFF/00/48, page 5). As with prior actions, each decision on the

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previous test date is already required of the member by the performance criterion and, therefore, under Article VIII, Section 5 (unless the earlier performance criterion had itself previously been subject to a waiver of applicability). Accordingly, the establishment of such a condition in a decision on the arrangement would normally not impose additional obligations under Article VIII, Section 5.

<sup>23</sup> By its terms, this condition would only apply to performance criteria that operate as of particular test dates, rather than to performance criteria that operate on a "continuous" basis. However, as the Fund normally has the data necessary to assess observance of continuous performance criteria, it does not normally grant waivers of applicability of such performance criteria.

<sup>24</sup> This general decision would need to be expressly incorporated in country-specific decisions granting a waiver of applicability.

<sup>25</sup> Even if no conditions are specified in waiver decisions, a similar result (i.e., application of the Misreporting Guidelines to multiple purchases) could result in connection with continuous performance criteria. Specifically, if a member misreports information regarding its observance of a continuous performance criterion, and then makes a series of purchases without seeking a waiver of nonobservance, all purchases made after the nonobservance would be subject to the Misreporting Guidelines.

<sup>26</sup> As mentioned above, however, the Board could on a case-by-case basis provide that the conditions specified in connection with a waiver apply only to a particular purchase (e.g., the purchase immediately following the waiver); a subsequent discovery of misreporting would then result in application of the Guidelines only to the specified purchase. This is likely to be appropriate only in a few cases, in which the prior action is relevant to the program's objectives for only a limited period of time.

use of Fund resources—approving an arrangement or an outright purchase, completing a review, or waiving nonobservance or applicability of a performance criterion—could specify the essential information already provided to the Fund whose accuracy is a condition of the decision. If essential information were made a condition in this way, then any misreporting of such information would trigger the application of the Misreporting Guidelines. The Board already has the option of following this approach on a case-by-case basis. Alternatively, a general decision could be taken, stating that decisions related to the use of Fund resources would be conditioned on the accuracy of certain specified essential information.

23. Either approach could be applied in a straightforward way to data that are not normally subject to revision, such as data on initial levels of variables being monitored as performance criteria. If the Board wanted the Guidelines also to cover data that are typically revised—often substantially—in light of new information—such as GDP or consumer price data—some method would be needed to avoid the necessity of initiating misreporting procedures for every revision. This issue will require further consideration by the staff.

24. Separately, it should be noted that, in connection with the use of Fund resources in the General Resources Account, the Board can complement the Misreporting Guidelines *through more effective use of Article VIII, Section 5*, especially as it relates to the provision of essential information to the Fund. For example, pursuant to the authority of Article VIII, Section 5, the Board, at the time of approval of an arrangement involving resources in the GRA, could require that specified essential information be provided to the Fund on a *prospective* basis at designated intervals (i.e., after the date of the decision requiring the information).<sup>27</sup> If a member thereafter inaccurately reports this information, the misreporting would constitute a breach of Article VIII, Section 5, and the Board would have the option of applying the remedial measures specified for breach of obligation in Article XXVI of the Articles. Moreover, after the information required under Article VIII, Section 5 is provided to the Fund, accuracy of this information could be specified as a condition in a decision on the arrangement—e.g., a decision completing a review. If such a condition is specified, and if it is subsequently discovered that the information had been reported inaccurately, the misreporting would not only constitute a breach of Article VIII, Section 5 (as discussed above), but would also give rise to the application of the GRA Guidelines.

25. These and other issues raised by the incorporation of other information into program decisions are related to those associated with the extension of coverage of Article VIII Section 5, which is to be taken up in a paper to be discussed by the Board in October. The staff would therefore propose to return to the Board on this issue in the context of the latter paper.

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<sup>27</sup> As an alternative to requiring prospective information in a country-specific decision, the Board could require such information in a general decision applicable to all members using resources in the General Resources Account.

#### **IV. Proposed Decisions**

The following draft decisions are proposed for adoption by the Executive Board:

##### **A. General Resources Account**

##### **1. Amendment of the Guidelines on Corrective Action for Misreporting and Noncomplying Purchases under Stand-by or Extended Arrangements**

The Guidelines on Corrective Action for Misreporting and Noncomplying Purchases under Stand-by or Extended Arrangements (Decision No. 7842-(84/165), adopted November 16, 1984) are hereby revised to read as set forth below.

##### **Misreporting and Noncomplying Purchases in the General Resources Account— Guidelines on Corrective Action**

In some cases, it has been found that a member has made a purchase in the General Resources Account that it was not entitled to make under the terms of the arrangement or other decisions governing the purchase (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 or other conditions applicable to the purchase under the terms of the relevant decision had been observed, but this information later proved to be incorrect. When such a case arises in the future, the member will be called upon to take corrective action regarding a noncomplying purchase, to the extent that it is still outstanding,

either by repurchase or by the use of its currency in transactions and operations of the Fund, unless the Fund decides that the circumstances justify the member's continued use of the purchased resources. Steps should also be taken to improve the accuracy and completeness of the information to be reported to the Fund by the member in connection with its use of the Fund's general resources, and to define performance criteria and other applicable conditions in a manner that would facilitate accurate reporting. 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 staff indicating that a performance criterion or other condition applicable to an outstanding purchase made in the General Resources Account 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 performance criterion or other 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.

3. In any case where the noncomplying purchase was made no more than four years prior to the date of the Managing Director's report mentioned in paragraph 2, and subject to paragraph 4, the Executive Board may decide either (a) that 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, or (b) that the nonobservance will be waived pursuant to paragraph 6.

4. The Executive Board may extend the four-year period specified in paragraph 3 in order to allow adequate time for completion of the Managing Director's report.

5. Instead of repurchasing from the Fund the outstanding amount of its currency resulting from the noncomplying purchase as provided for in paragraph 3(a), the member may request the Fund to use an equivalent amount of its holdings of the member's currency in the Fund's transactions and operations, but if such use cannot be made within 20 days from the date of the Executive Board decision the member shall be expected to make a repurchase in accordance with paragraph 3(a).

6. A waiver under paragraph 3(b) 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 supported by the relevant decision.

7. If a repurchase pursuant to the expectation under paragraph 3(a) 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.

8. 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.

9. 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.

## II. Establishment of General Policy to Condition GRA Decisions on Accuracy of Information Regarding Implementation of Prior Actions

Any decision on the use of resources in the General Resources Account (including decisions approving an arrangement or an outright purchase, completing a review, or granting a waiver either of applicability or for the nonobservance of a performance criterion) will be made conditional upon the accuracy of information provided by the member regarding implementation of prior actions specified in the decision.

## III. Establishment of General Policy to Condition GRA Waiver Decisions on Accuracy of Information Regarding Performance Criteria

Any decision granting a waiver for the nonobservance of a performance criterion under an arrangement will be made conditional upon the accuracy of data or other

information provided by the member to assess observance of the performance criterion in question.

Any decision waiving the applicability of a performance criterion under an arrangement will be made conditional upon (i) the accuracy of the member's representation that the information necessary to assess observance of the relevant performance criterion is unavailable, and (ii) the accuracy of data provided by the member to assess observance of the same performance criterion for a preceding period (if applicable for that period).

## **B. Poverty Reduction and Growth Facility**

### **I. Amendment of the Provisions on Corrective Action for Misreporting and Noncomplying Disbursements Under PRGF Arrangements**

Appendix I of the Instrument to Establish the Poverty Reduction and Growth Facility (adopted November 20, 1998 in Decision 11832-(98/119) ESAF) is hereby revised to read as set forth below.

#### **Misreporting and Noncomplying Disbursements under PRGF Arrangements—Provisions on Corrective Action**

a. A noncomplying disbursement occurs when (i) the Trustee makes a disbursement to a member under an arrangement approved in accordance with the Instrument on the basis of a finding by the Trustee or the Managing Director that all applicable conditions established for that disbursement under the terms of the decisions on the

arrangement have been observed, and (ii) that finding later proves to be incorrect. For the purposes of these provisions, a condition established under the terms of a decision on an arrangement means a condition specified in the arrangement, or in a decision approving the arrangement, completing a review, or granting a waiver of applicability or for the nonobservance of a performance criterion under the arrangement.

b. Whenever evidence comes to the attention of the staff of the Trustee indicating that a member may have received a noncomplying disbursement, the Managing Director shall promptly inform the member concerned.

c. If, after consultation with the member, the Managing Director determines that the member did receive a noncomplying disbursement, he shall promptly notify the member and submit a report to the Executive Board together with his recommendations.

d. In any case where the noncomplying disbursement was made no more than four years prior to the date of the Managing Director's report mentioned in paragraph (c), and subject to paragraph (e), the Executive Board may decide either (i), that the member will be called upon to make an early repayment, or (ii) that the nonobservance will be waived.

e. The Executive Board may extend the four-year period specified in paragraph (d) in order to allow adequate time for completion of the Managing Director's report.

f. If the decision of the Executive Board is to call upon the member to make an early repayment as provided for in paragraph (d)(i), the member will be expected to repay an amount equivalent to the noncomplying disbursement, together with any interest accrued thereon, within a period of 30 days from the date of the Executive Board decision.

g. A waiver under paragraph (d)(ii) will be granted only if the deviation from the relevant performance criterion or other condition was minor or temporary, or if, subsequent to the disbursement, the member had adopted additional measures appropriate to achieve the objectives of the program supported by the arrangement under which the disbursement was made.

h. If a member fails to meet a repayment expectation under these guidelines within the period established by the Executive Board, (i) the Managing Director shall promptly submit a report to the Executive Board together with a proposal on how to deal with the matter, and (ii) interest shall be charged on the amount subject to the repayment expectation at the rate applicable to overdue amounts under Section II, Paragraph 4 of the Instrument.

## II. Establishment of General Policy to Condition PRGF Decisions on Accuracy of Information Regarding Implementation of Prior Actions

Any decision on the use of resources under the Poverty Reduction and Growth Facility (PRGF) (including decisions approving an arrangement, completing a review, or

granting a waiver either of applicability or for the nonobservance of a performance criterion) will be made conditional upon the accuracy of information provided by the member regarding implementation of prior actions specified in the decision.

### III. Establishment of General Policy to Condition PRGF Waiver Decisions on Accuracy of Information Regarding Performance Criteria

Any decision granting a waiver for the nonobservance of a performance criterion under a PRGF arrangement will be made conditional upon the accuracy of data or other information provided by the member to assess observance of the performance criterion in question.

Any decision waiving the applicability of a performance criterion under a PRGF arrangement will be made conditional upon (i) the accuracy of the member's representation that the information necessary to assess observance of the relevant performance criterion is unavailable, and (ii) the accuracy of data provided by the member to assess observance of the same performance criterion for a preceding period (if applicable for that period).

**Misreporting and Noncomplying Purchases in the General Resources Account under  
Stand-by or Extended Arrangements—Guidelines on Corrective Action**

In ~~some a few~~ cases, it has been found that a member has made a purchase in the General Resources Account that under a stand-by or extended arrangement which it was not entitled to make under by the terms of the arrangement or other decisions governing the purchase 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 were applicable to the purchase under the arrangement,~~ or other conditions applicable to the purchase\_s under the terms of the relevant decision\_s ~~on the arrangement,~~ had been observed, but this information later proved to be incorrect. When such a case arises in the future, the member will be called upon to take corrective action regarding a noncomplying purchase, to the extent that it is still outstanding, either by repurchase or by the use of its currency in transactions and operations of the Fund, unless the Fund decides that the circumstances justify the member’s continued use of the purchased resources. Steps should also be taken to improve the accuracy and completeness of the information to be reported to the Fund by the member in connection with its use of the Fund’s general resources, under the arrangement and to define performance criteria and other applicable conditions in a manner that would facilitate accurate reporting. 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 ~~staff Fund~~ indicating that a performance criterion or other condition applicable to an outstanding purchase made in the General Resources Account may 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 performance criterion or other 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.
3. In any case where the noncomplying purchase was made no more than four years prior to the date of the Managing Director’s report mentioned in paragraph 2, and subject to paragraph 4, the Executive Board may decide either (a) that 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, or (b) , which may include a recommendation that the member be called upon to take corrective action pursuant to paragraph 3 or that the nonobservance will be waived pursuant to paragraph 6. ~~4. The recommendations of the Managing Director shall be submitted to the Executive Board on a lapse-of-time basis giving Executive Directors a period of at least 10 days during which they could ask that the matter be placed on the agenda of the Executive Board for consideration.~~

4. The Executive Board may extend the four-year period specified in paragraph 3 in order to allow adequate time for completion of the Managing Director's report.

~~5. 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. Instead of repurchasing from the Fund the outstanding amount of its currency resulting from the noncomplying purchase as provided for in paragraph 3(a), the member may request the Fund to use an equivalent amount of its holdings of the member's currency in the Fund's transactions and operations, but if such use cannot be made within 20 days from the date of the Executive Board decision the member shall be expected to make a repurchase in accordance with this paragraph 3(a).~~

~~6. 4. A waiver under paragraph 3(b) 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 supported by the relevant decision. of the program supported by the arrangement under which the purchase was made.~~

~~7. 5. If a repurchase pursuant to the expectation under paragraph 3(a) 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.~~

~~8. 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.~~

~~9. 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.~~

**Misreporting and Noncomplying Disbursements under  
PRGF Arrangements—Provisions on Corrective Action**

a. A noncomplying disbursement occurs when (i) the Trustee makes a disbursement to a member under an arrangement approved in accordance with the Instrument on the basis of a finding by the Trustee or the Managing Director that all applicable performance criteria and other conditions established for that disbursement under the terms of the decisions on the arrangement have been observed, and (ii) that finding later proves to be incorrect. For the purposes of these provisions, a condition established under the terms of a decision on an arrangement means a condition specified in the arrangement, or in a decision approving the arrangement, completing a review, or granting a waiver of applicability or for the nonobservance of a performance criterion under the arrangement.

b. Whenever evidence comes to the attention of the staff of the Trustee indicating that a member may have received a noncomplying disbursement ~~within the previous two years~~, the Managing Director shall promptly inform the member concerned.

c. If, after consultation with the member, the Managing Director determines that the member did receive a noncomplying disbursement, he shall promptly notify the member and submit a report to the Executive Board together with his recommendations.

d. In any case where the noncomplying disbursement was made no more than four years prior to the date of the Managing Director's report mentioned in paragraph (c), and subject to paragraph (e), the Executive Board may decide either (i), which may include a recommendation that the member will be called upon to make an early repayment, or (ii) that the nonobservance will be waived.

e. The Executive Board may extend the four-year period specified in paragraph (d) in order to allow adequate time for completion of the Managing Director's report.

f. If the decision of the Executive Board is to call upon the member to make an early repayment as provided for in paragraph (d)(i), the member will be expected to repay an amount equivalent to the noncomplying disbursement, together with any interest accrued thereon, within a period of 30 days from the date of the Executive Board decision.

gd. A waiver under paragraph (d)(ii) will be granted only if the deviation from the relevant performance criterion or other condition was minor or temporary, or if, subsequent to the disbursement, the member had adopted additional measures appropriate to achieve the objectives of the program supported by the arrangement under which the disbursement was made.

he. If a member fails to meet a repayment expectation under these guidelines within the period established by the Executive Board, (i) the Managing Director shall promptly submit a report to the Executive Board together with a proposal on how to deal with the matter, and (ii) interest shall be charged on the amount subject to the repayment expectation at the rate applicable to overdue amounts under Section II, Paragraph 4 of the Instrument.