

## THE MANAGING DIRECTOR’S CONTRACT—APPLICABLE STANDARDS OF CONDUCT

Subject to specific exceptions that are not relevant to the investigation, the contract between the Managing Director and the Executive Board requires the Managing Director to observe the standards of conduct applicable to staff members of the Fund.<sup>1</sup> At the request of the Executive Board, set forth below is an analysis of the standards of conduct applicable to staff that are relevant to the investigation being conducted by the law firm of Morgan Lewis LLP.<sup>2</sup> To provide a framework for the fact-finding process, this analysis was provided to Morgan Lewis at the outset of its investigation, who also reviewed the Fund’s policies, rules and regulations in this area.

With the authorization of the Executive Board, the analysis set forth below also incorporates the views of the Ethics Officer regarding applicable staff policies and practices, given her responsibility to conduct investigations into allegations of misconduct on the part of Fund staff and contractual employees.

For purposes of the analysis set forth below, and taking into account the Managing Director’s responsibility under the Articles of Agreement as chief of the operating staff,<sup>3</sup> the Managing Director should be regarded as the supervisor of all staff.

### A. Sexual Relationships Between a Supervisor and a Subordinate

1. A supervisor who has a sexual relationship with a subordinate engages in misconduct in either of the following situations.

(a) *When it is determined that the establishment of the relationship constitutes sexual harassment and an abuse of authority*— The Fund’s Policy on Harassment defines sexual harassment as “any behavior of a sexual nature that is unwelcome, offensive or embarrassing to the individuals exposed to the behavior, or that creates a hostile or intimidating work environment.”<sup>4</sup> The Harassment Policy notes that “a particularly abhorrent” situation of sexual harassment occurs when “a more senior person takes improper

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<sup>1</sup> See “Terms of Appointment” at <http://www.imf.org/external/np/sec/pr/2007/pr07245.htm>.

<sup>2</sup> These standards are set forth not only in the Rules and Regulations approved by the Executive Board, but also in the personnel policies adopted by management, including, but not limited to, the policy on misconduct set forth in General Administrative Order No. 33 and other personnel policies that pertain to conduct, as explained in the Staff Code of Conduct.

<sup>3</sup> Article XII, Section 4(b).

<sup>4</sup> Paragraph 5 of the Policy on Harassment.

advantage of his or her rank to try to elicit sexual favors from a subordinate”.<sup>5</sup> Such conduct would also be considered an abuse of authority under General Administrative Order No. 33, Section 7.<sup>6</sup> However, the Harrassment Policy also provides that “intimate personal relationships between supervisors and subordinates do not, in and of themselves, constitute harassment.”<sup>7</sup> Accordingly, if it is determined that the sexual relationship is entirely consensual, the establishment of such a relationship would not constitute either sexual harassment or an abuse of authority.

(b) *When it is determined that the relationship, once established, had a subsequent impact in the workplace*—Even if the sexual relationship was established on an entirely consensual basis, it will constitute an abuse of authority—and therefore give rise to misconduct—if it is determined that the relationship, once established, subsequently resulted in either (i) favoritism, or (ii) adverse action or pressure against the subordinate (e.g., retaliation once the relationship is terminated).

2. When a supervisor and a subordinate have an intimate personal relationship, the Harassment Policy provides that the individuals involved “should seek confidential ethics advice to prevent actual or apparent conflicts of interest” that may result in the favoritism or adverse action discussed in paragraph 1(b) above.<sup>8</sup> However, the failure of the supervisor to seek such advice or disclose the existence of the relationship to the Fund has not been treated as misconduct. Rather, when the Fund discovers the existence of a consensual sexual relationship between a supervisor and a subordinate, the practice has been to separate the supervisor and the subordinate from the supervisory relationship so as to avoid the potential for any workplace impact. No disciplinary action is taken in those circumstances unless it is determined that the relationship has already had an impact in the workplace, as described in paragraph 1(b) above.

3. Complaints and information regarding harassment or abuse of authority may be received through a number of different channels. The fact that a subordinate has not come forward to complain about the behavior in question would not preclude a finding of harassment or abuse of authority on the part of the supervisor. In this regard, the subordinate’s silence could itself be indicative of a hostile or intimidating work environment.

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<sup>5</sup> Paragraph 7 of the Policy on Harrassment.

<sup>6</sup> “For the purpose of this Order, conduct for which disciplinary measures may be imposed shall include the following . . . (v) misconduct in an official capacity, including abuse of authority and discrimination on the basis of sex, sexual orientation, race, creed, or national origin.”

<sup>7</sup> Paragraph 8 of the Policy on Harassment.

<sup>8</sup> Paragraph 8 of the Policy on Harassment.

Therefore, the absence of any complaint is not conclusive on the question of harassment or abuse of authority.

**B. Favoritism in the Appointment Process**

A staff member would be abusing his or her authority—and would therefore engage in misconduct—if he or she used his rank or position to interfere with or impose pressure on the Fund’s appointment process for the purpose of securing the appointment of an individual with whom his relationship is entirely of a personal nature. However, a staff member’s referral of the name and qualifications of such an individual for consideration by the Fund in accordance with the established standards and procedures is not, in and of itself, misconduct.

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