MULTI-STAKEHOLDER CONSULTATION MEETING
ON THE REVIEW OF THE WORLD BANK GROUP SANCTIONS SYSTEM

August 6, 2013, 10.30 a.m. – 1.00 p.m.
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TRANSCRIPT*

Moderator: We're going to get started, if everybody could take their seats, please. So, welcome everyone to this Consultation Meeting on the World Bank Group's Sanctions Process. My name is Maninder Malli, and I work with the Legal Vice Presidency of the World Bank, and I'm part of the Sanctions Review Team. We're going to start with some introductory remarks from Anne-Marie Leroy, who's the Senior Vice President and General Counsel of the World Bank, and then we're going to have a presentation from Frank Fariello, who's a Lead Counsel with the World Bank and leads the Sanctions Review Team.

Anne-Marie Leroy: Thank you. Good morning, ladies and gentlemen. Welcome to the World Bank, and thank you for participating in this Consultation on the Review of the Sanctions System that we have undertaken. Only a few months ago, President Kim reiterated that the World Bank has zero tolerance for corruption and, in partnership with other institutions, should help leaders embrace good governance.

Corruption represents a major obstacle to development, to growth and to effective functioning of the rule of law. Corrupt practices affect the legitimacy of offices and institutions. From an economic standpoint, corruption distorts capital flows from their intended purpose and thus depletes national wealth, undermining efforts to combat poverty.

From a socio-political standpoint, corruption reverses the principles of trust, on which democratic systems are founded. It harms the reputation of the state, of its institutions, and of its leadership, and it hinders the development of a strong civil society.

Our Sanctions System plays an important role within the overall Bank's anticorruption agenda by ensuring that firms or individuals who've been found to have engaged in corruption or fraud are excluded from working on World Bank financed projects and also by deterring fraud and corruption in the World Bank Group's operations. The system has evolved considerably over time, and it has been subject to various reforms in order to make it fairer, more open, and more transparent and also, of course, more effective.

* Participants agreed at the meeting that the transcript would be published without attribution according to Chatham House Rules. Accordingly, information that could lead to the identification of participants has been removed from the transcript. No other information has been removed.

The current two-tiered sanctions process began operations in 2007, and we think it is timely now, after six years of operations, to take a step back and to look at how the system is operating. The review is being conducted in two phases. The current phase one is a stock-taking exercise, focusing on the implementation of the various reforms since the current Sanctions System began operations in 2007. A second phase will advise the issues of overall efficiency and effectiveness of the system.

One of the main findings of the review is that by and large the system is working and is working well. We have to recognize, however, and I would like to ask you to bear this in mind in our discussions, that over time, because of our court immunities, we had to build, in order to have a fair system, a quasi-judicial system of review, including defense rights and due process, and that in the end we have a system which is very sophisticated and has reached a point of sophistication which may be the maximum that's bearable for an institution like ours.

But we do think that for a system which is based on administrative law, remember this is a fiduciary system and not a criminal law system, the due process which is afforded already to respondents is very sophisticated indeed, and we do believe that it gives a lot of guarantees to respondents.

So this is where we are. We, of course, are eager to hear your views on the review. We wait for your feedback before we go back to senior management for further decisions. So we want to hear from you, we want to hear your reactions and your ideas on how to make the system work better. Of course, we welcome your recommendations on the main findings of the review that has been, I think, summarized in the Initiating Discussion Brief that has been made available online and which will form the basis of the discussion today. I would also like to encourage those of you who have further reflections on today's discussion to, on one or other aspect of the system, to feel free to submit these reflections in a written feedback online. The consultation period will run through the end of September, so there's plenty of time to do that.

So, with this I would like to turn now to Frank Fariello to open the discussion. Frank has been leading the review. He's the main author of the paper that you have read, and I would like to reiterate my many thanks to you and my gratitude for participating in this meeting today, and we look forward to hearing from you. Thank you.

Frank Fariello: Thank you, Anne-Marie, thank you very much, and thank you all for coming. We're very gratified. We have a fantastic turnout, including some very important people in this area in the room today. So we're very privileged and honored to have you here. Let's begin. I just want to begin at the beginning, so to speak, and go over very quickly what the Sanctions System is all about, then share with you some of the main findings and recommendations we've made in the course of this first

part of the review, to get your feedback, remind you what many of you may have read already the brief, but just to kind of refresh our collective memories and then give you a little bit of a preview of how the review will proceed from today.

So to begin, the Sanctions System you're probably all familiar with, it's part of a larger strategy that the Bank has to promote good governance and anticorruption efforts, and we see this as one of the key elements. In fact, it was one of the first elements of that strategy. It's been around in one form or another since 1996, formed almost right after the famous cancer of corruption speech that then-President Wolfensohn made for the first time, really, making a point that corruption is a development issue, not just a political issue. This was one of the first things the Bank did to address that issue, and it's still with us today as one of the key elements of our anticorruption strategy.

Now, as Anne-Marie mentioned, it is an administrative process. It's not criminal, not civil, it is administrative, and that colors what we do. At the same time, for a number of reasons, it affords respondents what we call an appropriate level of due process and, of course, there can be a lot debate around what that level is, but it's certainly more robust than most administrative systems that we're aware of.

The system, for those of you who are not familiar with it, basically has three levels, and they can be actually further divided into two. There is an investigative stage that's conducted by our Integrity Vice Presidency and then an adjudicatory stage, which is conducted in the first instance by a Suspension and Debarment Officer and then by a Sanctions Board.

I will go through this very quickly, many of you probably are familiar with it. After an investigation is conducted, and if INT decides that, in their view, there is sufficient evidence to establish that some sanctionable practice has occurred, they draw up what we call an SAE, or a Statement of Accusations and Evidence, and present it to the SDO for review. The SDO evaluates that evidence, decides independently whether there is sufficient evidence to support allegations in the SAE, and if she does agree, she then issues a notice to the respondent that includes the SAE together with a recommended sanction and notification that the respondent has been suspended from eligibility for Bank financed contracts.

By the way, if she does not, then the SAE is returned to INT, and INT is allowed to then revise the SAE to meet the observations by the SDO. So for example, if the SDO were to say we don't find sufficient evidence against a particular respondent or on a particular accusation, INT can either add more evidence to the record if it has it, it can reopen the investigation, or it can drop that aspect of the case.

In any event, now the respondent receives the notice. It has two choices to make. It can actually pursue both avenues if it wishes to do so. It can

file an explanation with the SDO. This is a fairly short-form document, limited in page number and limited in time, only 30 days to reply. It's not meant to be a full adjudicatory phase, but it can at least point out some errors at least then from the point of view of the respondent in the record and argue for either dropping the case or modifying the agreed or the recommended sanction in light of mitigating factors, which may not have been brought to the attention of the SDO. The respondent also may within 90 days refer the case to the Sanctions Board. If that doesn't happen, then the recommended sanction by the SDO comes into effect.

The Sanctions Board is a body which has a majority of external people. There are four members from outside the Bank, three members that are Bank staff, and then the chair of that board is also from among the outside members. It reviews the case de novo, which is to say it is not a real appeal. It's not looking at the decision of the SDO necessarily, except for information on what the agreed, what the recommended sanction was, but it looks at the case anew, the notice, a response from the respondent and may hold hearings. It can hold hearings either because it itself wishes to do so or because one of the parties, INT or the respondent, has requested a hearing, which they may do more or less as a right, and then they take the final decision after deliberations. Those decisions are made public. As you know, we just recently in 2012 began to publish both the full decisions of this body and a digest of the illegal holdings.

Now this is a system that's, as Anne-Marie has mentioned, has been evolving over time quite a bit. The current system, I've said we've had the system like this since 96, but the current two-tiered system I've just described you has been in, was designed in 2004. It was the brainchild of a panel led by Dick Thornburgh, whom you may know, and actually I understand we are privileged to have members of that panel with us today. [. . .] This panel came up with the current design and its basic architecture, that was in 2004. They also recommended expanding the range of sanctions, which at that time it was just debarment to the range, essentially the same range of sanctions that we have today, as well.

Then in 2006, there was a further reform effort because, essentially to try to fill in some of what we saw to be loopholes in the coverage of the system. Most importantly, the original system really was embedded in the procurement policy of the Bank and therefore did not cover fraud and corruption that might happen outside of procurement. That was, we thought, a major loophole. So we in fact expanded that jurisdiction. We did so through adoption of new definitions, five sanctionable practices, the ones that you know today. Four of those were agreed with other MDBs, as well. So they were in fact shared with our sister institutions.

In 2007, we began implementation, as Anne-Marie mentioned, so we've been going for six years, but then after about two years of operation, we took stock, kind of a mini stock taking internally and saw that there were some issues with the system that needed to be tweaked. We found some

vulnerabilities in the system, as well, that we wanted to fix both at the back end and the front end. So we implemented early temporary suspension, which allows suspension even before proceedings begin. We added a mechanism for settling, which is an efficiency measure, and of course the public decisions were adopted at that time.

Then in 2010, as many of you know, we entered into an agreement with other MDBs for cross-recognition of debarment decisions.

Now the review. We are in the middle of a review. We've been at it for some time now through internal consultations and a desk review, looking at some hard data to look at this, kind of take a snapshot of the system to see how it's been working, what's been working well, what's not been working well, looking at each of these reforms we've made down the years. We've also looked at the impact that the system is having on Bank operations and on projects, on programs, and we've also looked at the fairness in transparency of the system and compared ourselves against comparable administrative systems, but also against general notions of due process and fairness. That's this phase and then, as Anne-Marie said, there's going to be a second phase down the road that will look at the bigger questions. This is really a kind of a stock taking, a technical level review, but there will be a more kind of first principles review at another time down the road.

Here is what the phase one, what we see it working out in terms of timelines. As I said, we've been working really since July 2011 on this. We came up with a preliminary report, which we discussed with our Audit Committee in March earlier this year. We are now, on instructions from the Audit Committee, conducting external consultations to get your views on this, both on the system and some of the findings and recommendations we've come up with.

Later this year, we will be putting all of that together, and these consultations will be running through the end of September, we're going to take some time to digest all of the feedback we get through this meeting and through others. By the way, we are planning to have a more focused targeted meetings with different constituencies, both the defense bar, private sector, civil society, government and alike both here in D.C. and, of course, outside D.C., as well. We're going to try to put all of that together come October-November and feed that into our final findings and recommendations, which we will bring to the Audit Committee late this year.

Once we have buy-in from our EDs, we will then come back in fact for another consultations, probably will be online, a comment period, when we have a final design, if you like, of changes we'd like to see in the system early next year, and then hopefully by the middle or perhaps late next year actually implement the various changes.

So that's, in essence, the timeline we're looking at here. We have, obviously, a fair amount of time ahead of us. Then, finally, let me tell you a bit about what we're doing today and from now until the end of September in these external consultations.

What we're really trying to do is to do the same thing, but with a broader audience, that we did with own internal stakeholders to try to take the temperature of what's been working well, what people feel hasn't been working so well perhaps, and to get your feedback on how you think things can be made better, keep bearing in mind the objectives of the system. Of course, we're going to have meetings, this meeting today, we're going to have further meetings, but we also, as Anne Marie said, have an online questionnaire that people can fill out, if they wish, or if you prefer, simply email your thoughts to us, and there's a place online for you to do that.

Now, let me get into very quickly what we ourselves in this first part of the evaluation have found. We looked at the sanctions process as a whole and, as Anne-Marie said, we actually found that that system is working essentially as it was intended to work. We had a fairly slow start, 2007-2008 you didn't see much activity, but things picked up rather rapidly after that, and we've seen, especially since 2010, both an increase in outputs and declining timelines, so greater efficiency as well. So we were gratified to see that result. Having said that, obviously things aren't perfect. We still see some significant variations in processing times. Some of that is normal since some cases are more complex than others, it's to be expected, but probably more variation than one would want in a system like this. There has been, in some cases, some churning, and we've looked, of course into some of the reasons behind that.

So we have a few things to recommend to try to make the system more efficient than it is at the moment. One is investigation times, because they take up a large part of this process in terms of the timelines, where appropriate, because it's a double-edged sword. We, everyone wants investigations to be done in a timely fashion for many reasons, but we don't want that to come at the expense of the quality or the thoroughness of investigations or to incentivize looking at simple cases over the more complex ones that might take longer. So there's, it's a caveated call for continuing in that vein because investigation times have already been cut significantly.

Then we have quality control, adoption of performance standards, just trying to make the system work better and to run a bit more smoothly. We've asked the Sanctions Board to consider using panels more often. The Sanctions Board can either meet in plenary or they can appoint a panel of three to hear cases more or less in real time, something they have not chosen to do lately. We think that would speed things up, at least in cases that don't pose novel issues, and then we're also asking for an accelerated roll-out of a case management system that will be an

integrated one across the system that will help, again, just smooth things out.

Now, looking at some of the reforms that we have implemented over the years and how we feel things have panned out. As I mentioned before, that exercise in 2006 was designed to close a large loophole by expanding the jurisdiction of the system beyond procurement. Well, the hard fact is that we have actually not had cases outside of procurement, notwithstanding that expansion of the jurisdiction and, of course, this poses some interesting questions as to why we haven't, and we don't think it's because there's no corruption going on outside procurement. What we weren't able to do, given the limited time that we had, was to really pin-point the exact reasons, and what we want to do going forward essentially is to sit down with the interested parties and talk through and try to get a real handle as to why this isn't happening. But one thing we do want to do and to push is to be more proactive in the way that we deal with corruption in our projects. Right now there is still a largely reactive mode in which INT receives allegations in the door and then acts on them, and there's a prioritization, of course, in that process, but we think going out and looking for the corruption, if you like, might be a better way to, and doing that on a risk analysis basis might be a better way to go about it, but one that potentially would be, of course, more time and resources absorptive. So we're going to have to think about that quite a bit.

The other thing is the baseline sanction, the use of the baseline sanction, which has moved from debarment to debarment with conditional release. We found that it has been used regularly. In fact, it's almost always been used, perhaps not surprising, it would be surprising if we had a different outcome, in fact, but if the system is meant to be proportional, our thought is perhaps we would have seen more variation in the sanction imposed, so we want to look at the sanctioning guidelines to see whether we can introduce a bit more flexibility into those guidelines.

Then, to move on to the more recent reforms. Early temporary suspension, to get into this a little bit more, this is essentially to try to help the system because we had situations where INT had pretty good intelligence, at least on one aspect of the case, and yet because they were still working to complete the investigation, companies would not be yet be suspended, would continue to get Bank-financed contracts. So we introduced this mechanism, something similar, as you may know, under the FAR, is available to the US government, where INT would go to the SDO, make an application, show that there's sufficient evidence to support at least one sanctionable practice by a company that's under investigation, and then have that company suspended. Now there's a way for companies to get off of that, they can contest it of course, but that would eliminate some of the fiduciary risk we see before a sanctions proceedings begin.

Now, that has been, in our view, underutilized. We've only had a handful of ETSs imposed, and we're looking into reasons why that was and looking at ways to try to make that a more frequent tool because it's an important problem in our system.

Corporate groups. One of the things we did in 2010 in response to feedback really from the system itself, from the Office of Suspension and Debarment, also from the Sanctions Board and others. They wanted more guidance on how to sanction affiliated companies when we're dealing with a group of companies, as often is the case, not just a single company, but one that may have parents and subsidiary, sister companies, how far do you go in terms of sanctioning affiliates, under what criteria and then what to do, how to handle changes in corporate form as well? That was done in 2010. There was some internal guidance that was issued in what we call the Sanctions Manual to help those decision makers in that, in those determinations.

The feedback we got is that that was very useful, when we were disengaged right now in our latest review, but that there was some areas they wanted more clarity on, including how to deal with SMEs, because that guidance was oriented more towards the larger corporate groups.

Then settlements, also we looked at, that was one of the things we did for efficiency's sake back in 2010. We had done some settlements before this, as you may know. You may have heard of the settlement we entered into with Siemens, but we decided it was best to kind of create a more structured approach to settlements, embedded in procedure and so on with appropriate procedural safeguards and the rest.

Now we looked at how that was working. It turns out, in our view, that it's working actually very well, or fairly well at least, because it's meeting the objectives that we set out for it. It creates legal certainty, basically by definition, because it ends in agreed sanction between the parties, INT and respondent, and it also has increased significantly the efficiency of the system. When we settle a case, it takes far shorter time and fewer resources than it does to bring a case through the quote-unquote normal channels.

Having said that, there has been some, we know, obviously, that there have been some observations, both from within the Bank and from outside the Bank, perception that there is a lack of transparency around settlements. So we're looking at ways, and there are some perceptions that settlements may be favoring certain companies over others, etc. We actually looked into that issue, and we found that, at least systematically, we couldn't find a basis for that perception. Smaller companies do get lighter sanctions, larger companies get heavier sanctions, and it seems to correlate to what they did as well. So, but because of the lack of transparency, if you want to put it that way, the public doesn't see the fairness that actually exists in the system, nor does it fully appreciate the procedural safeguards. So we think there's room here to make the

system more transparent to the outside world so they understand what's going on within, and that may, hopefully will diffuse some of the concerns. Having said that, of course, we have to consider, on the other side, the potential impact on respondents who may or may not welcome that kind of transparency.

So, finally, fairness in transparency, this whole issue of how much, by way of due process rights, to grant respondents and also how much to share with the world, what's going on within the system. We've moved, really on both scores, we've already moved quite significantly from a system that was essentially in its initial phases in 1996 and beyond entirely untransparent, if I can be harsh on ourselves, to one which is probably among, certainly among international organizations, the most transparent, but there may be room for more transparency, we feel. We also feel that we have, looking at principles, fundamental principles, due process and global administrative law, that we feel that we really either meet or exceed many of those standards. Having said that, there are things that we can do to improve nevertheless.

Here are some of the ideas, two very important ones. One is to re-sequence the first tier of proceedings. As I mentioned before, the SDO proceeding is essentially ex parte, to begin with, looking only at one side of the case, which is INT's side, but then there's a fairly limited opportunity on the part of the respondent to come back and rebut at that level. Really, full rebuttal has to wait for the Sanctions Board. Our thought is that can be re-sequenced so the SDO takes decisions after she's heard from both sides of the case and then decide.

Secondly, and that obviously allows the respondent to have a bit more of a voice before a decision is taken in the first instance. The second would be to transition to an all external Sanctions Board. Right now we have majority external, and it's also headed by one of the external members, but we think that for full independence, we will need to have a Board which is only made up of extra people outside the Bank. Now, there are obvious issues raised by that in terms of what you're losing, in terms of the internal perspective, the kind of the reality test, if you like, that internal members bring to the decisions of the Board, but we think we can find ways to get that kind of expertise and insight for the Board without having them actually sitting on the board and deliberating, etc.

Then, finally, transparency. We think we have a rather, as I said, transparent system, very transparent for an administrative process like this, but we'd like to take a few steps further. Together with the re-sequencing, we'd like to see the decisions of the SDO actually being made public in all cases. Right now, only those which are uncontested are published, and they are also published in a very short-form manner. They would look a bit more like the Sanctions Board decisions may now, and those would then be the basis for deliberations if there is a referral to the Sanctions Board. So it would be more of an appellate type of structure.

Then we would also propose to make public some of the internal guidance that are given to the internal decision makers in the system, the advisory opinions of the General Counsel, of which we have or actually already started to put those online, and the Sanctions Manual, which is kind of the internal regulatory structure of the system, which we hope to put online actually very, very soon.

Now, two issues that we saw, kind of cross-cutting issues that we identified during the review. One was this notion of right-sizing. We noticed that a lot of cases involve relatively minor forms of fraud and corruption, forgeries of bid securities, things of that kind, that really don't necessarily need the full panoply of due process that we afford to all cases right now. Anne-Marie might have mentioned that, of course, we have a very sophisticated system that has developed over time. Some of these very, very tiny, you know, very, very minor cases may not need that full treatment. Just as every legal system has a traffic court, small claims court, we think we need something along those lines, and also there are things that never make it to the sanctions system. We need to find ways to deal with those in real time on an operational basis, as well. So we need to find a way to adjust our response to fraud and corruption to the seriousness of the corruption itself.

Then the other thing that we've noticed is, and this relates in many ways to the right-sizing issue, that some of the small and medium enterprises that make up many of our respondents are not engaging with the system. We have a large number of cases that are essentially decided by default because we never hear from the respondent at all, and those tend to be the smaller companies, of course. So we need to look for ways to engage those companies, if we can.

Okay, so that's what we've done. Now we have, we're going to open up the floor, believe it or not. Notwithstanding all the talking we've done, we're not really here principally today to talk, we're here to listen. So let's move on.

Moderator: Thanks, Frank. So, as Frank mentioned, the Bank's focus today is really to hear your feedback. So the emphasis is not going to be on questions for the Bank, but we'd like to start with a few clarification questions if there are any on the presentation that Frank gave, and of course if there are any other questions after the session, you can email them to the Sanctions Review email.

As you can see, we have a large and diverse turn-out today, and so unfortunately we're going to have to be a little bit strict with speaking time. If you wish to speak, just raise your hand towards my direction, and I'll keep track of the speakers. If you're sitting at the desk, there's a button to turn on your mike when you speak, turn it on and off, and if you're sitting around the room, there's a microphone that I understand is permanently on in the back, you can step up to that one there. Again,

because we have a big turnout, to the extent that we're pushing up against 1:00 pm, we're happy to stay past 1:00 pm to hear people's feedback if people still wish to speak, but of course people are free to leave at any time.

I also want to remind everyone that the session is being audio recorded, and that's solely for note taking purposes. We will operate according to Chatham House Rules today. The feedback that we receive will be summarized and posted online, but without attribution. This is intended to facilitate open discussion today so people don't feel that they're going to be tied to their comments. If you have any concerns with this aspect of the meeting or the fact that it's being audio recorded, please let me know now.

Okay, thank you. So if there are any clarification questions on the presentation, we'll start with those. Maybe we'll take two or three and then let Frank respond. Could everybody just please introduce themselves and state their affiliation before they comment?

[Participant]: [. . .] Just to clarify, you mentioned impact on the system of the Bank's operations, and I wanted to sort of have you clarify, were you talking about impact on the rate of corruption in Bank-financed projects is that what you were looking at? Or just impact on Bank operations? Is that what you were alluding to there? The second clarification was on the expansion, you know, in terms of the success rates that the Bank has so far in expanding its sanction system to MIGA and IFC, can you flesh out that a little bit further on why there hasn't been success, because I have, maybe at the point where we're giving, you know, suggestions, I have some suggestions to make, but I just want to get a little bit more on why there hasn't been success in that regard. Thank you.

Moderator: There was one more question over there.

[Participant]: [. . .] I was interested in the cases outside, of corruption, outside of procurement. What was intended or included there?

Moderator: Are there any other clarification questions before we move on?

[Participant]: Yes, [. . .]. In doing the recommendations and in doing the analysis of due process, because of the nature of the cross-debarment procedures, was there an examination or explicit consideration of the fact that there were different procedures in place at the other MDBs, since those can obviously trip into a sanction at the Bank?

Frank Fariello: Yeah, I'll do those. All right, more or less in order, there were two actually about the 2006 expansion outside of procurement, and then also actually I didn't mention it, but as you pointed out, there was also an expansion into private sector operations. We haven't seen really any cases so far, you know, in either area, but to explain what we mean by outside procurement, there are sometimes embedded in project design

certain agencies that can be private actors who are designated to as implementing agencies in a Bank project. Typically, they're either NGOs or financial intermediaries. They may not go through a selection process that involves procurement rules, etc. They might just be identified as part of the design of the project. We also have projects now that are largely based on cash transfers, not procurement. In fact, we found some projects can be mostly cash transfers, in fact. Those are not, again, subject to procurement. So those areas we're seeing were not covered originally by sanctions, and we thought we should cover them.

Now, why have there not been cases? Well, that's the $64,000 question. We don't actually know the answer, as I mentioned. Certainly with respect to, we have some idea about why that might be. Certainly, you know, that also goes between bidding and bidding for contracts and implementation of contracts, much more in bidding. We're beginning to see, but in a very limited way, more cases during implementation. One obvious educated guess would be that bidding creates winners and losers, and people with, who kind of have sour grapes and therefore have kind of in-built incentive to squeal, if you like, spill the beans about what's been going on. Other cases, of course, you occasionally might get a whistleblower whose conscious is bothering them because they've been involved in illicit activities, but the same incentives don't really apply in those kinds of situations. So that's one kind of obvious reason.

So, and if we're in a kind of reactive mode, where we're dealing with allegations that come in the door to us, then you're mostly going to get the people, the loser, people who are in the losing end of a corrupt transaction or somehow not profiting by it or have some other motivation like that, which is why we're thinking it will be a good idea to look for ways to go out and find that corruption, as opposed to wait for it to come in the door. But, again, these are educated guesses.

Now with respect to the private sector, there are some, my private sector colleagues will say, well, again, since private sector actors are dealing with their own money, they have a built-in reason not to be corrupt, and I think there's something to that. I don't know if it's the whole story or not, but again we have to look into these things.

Cross-debarment, yes. This is an evaluation of the Bank system, so we haven't evaluated other MDBs. Having said that, we did do a benchmarking study. We asked our sister institutions about their systems in detail, of course, we knew more or less how they worked, and we are in more or less permanent dialogue with our sister institutions about that, to see how our systems exactly vary from the other banks, but we did that for our own purposes. We're, of course, not here to tell other institutions how to run their business. We have looked at cross-debarment, but just in the sense of: how is it working? Have there been any issues? Have there been any problems, etc.? Actually, we found that cross-debarment has been, you know, on a day-to-day basis working

actually quite well. We haven't come across, so far, any major issues with the way it's being implemented.

Moderator: Okay, so we'll start with the feedback portion now. There's a couple of questions on the screen, which could potentially guide your comments, but if you wish to speak now please let me know.

[Participant]: [. . .] A starting point would be a question whether or not the approach you're taking in the review is backwards. We are starting with a very good institutional review, I really agree with many of the recommendations, and then you go to first principles later. If you moved it around and looked at first principles first, that might be very helpful. What's really remarkable about the World Bank's sanctions system is that it's so different from the US debarment system. If we went to the other side of the building we could look down on the General Services Administration. They have, they are markedly different, and all the US agencies have a markedly different debarment system. What's ironic is that the US agencies are actually under severe criticism right now for their debarment system, largely from the Hill, and what's interesting is that the core of it is there are two basic first principles in debarment.

The debarment officials do two things. One is they deal with legitimacy issues, which you referred to as fiduciary responsibility issues, making sure that the money is spent wisely, that's what I would call a governance legitimacy issue, and the second is they deal with performance risk. The debarment officials in the US agencies have been down in the weeds dealing with performance risk, and they've lost track of legitimacy issues, and Congress has been upset that they haven't dealt with what they consider contractors that impair the legitimacy of the US government.

So what's funny is their problem is almost exactly the reverse of yours, where they've been focusing on performance risk, you've been focusing on legitimacy. If you went back to first principles and you started over from first principles, you'd say, well, how do we deal with performance risk, and almost none of the recommendations, none of the recommended changes would address the performance risk that's faced on the ground by borrowers, how they deal with projects that go bad. And the reason for that, the reason that the World Bank can't deal with that effectively is because the World Bank, in dealing with performance risk, procuring entities have to balance what they can do to make things work better versus checking a contractor out. They have to deal with things at a very granular level. The World Bank has a very difficult time doing that because the performance risk is going to be so variegated with the, even with an individual contractor across the world. So there's a logic that the World Bank focus on legitimacy issues. That said, the World Bank could do a lot more to help the borrower nations deal with performance risk.

I see three areas where you could do that. One is actually helping them set up the debarment systems, which the World Bank is doing indirectly by setting up, frankly, a terrific model for, but to explain to the borrower nations that their debarment systems are going to be different from the Bank's. While the Bank is addressing, through the adjudicative process, addressing legitimacy issues, they have to deal with the granular issues of performance risk.

The second area that you could work on is helping them address fraud, and that largely is a matter of whistleblowing, and actually what's interesting is that there's a lot of literature in the World Bank on whistleblower systems, incentivizing whistleblowers to bring forward issues of fraud and then dealing effectively with the issues of fraud.

The third is to deal with issues of compliance systems, shifting burdens to the contractors, and this largely will probably be the largest contractors. If you have a contractor that has clearly systemic problems worldwide, really using the sanctions process to force those contractors to set up better internal compliance systems, we should create benefits for all the borrowing nations, and also in the process you'd be teaching the borrowing nations how to force better compliance out of their contracting community. Thanks.

[Participant]: [. . .] Linked to my earlier question, I was wondering, the earlier question I had on the success rates that you have with respect to MIGA operations and IFC operations. Given that we're talking about corporate corruption, not just corruption, you know, government-related corruption, I noticed in your reports that you mentioned that you had consulted with MIGA and IFC, and I was curious to know the extent to which you plan on corroborating with them further in the future, and to what extent you've thought about using MIGA instruments, because they're very closely linked with private sector. We're talking about corporate corruption here, and that's the arm of the Bank that actually has firsthand direct, you know, relationship with the private sector. I actually have a Law Review article on this that just came out, and I guess that's how I was invited to this forum. But having to use MIGA instruments to regulate companies, you know, I guess I have a lot to talk about, I'll share my article with you, but I'm wondering the extent to which you've talked with them to see how you can collaborate closely. In other words, one of the things, just to summarize a little bit about what it's about, you talked about being proactive, and what it talks about in my proposal, one of the things I mentioned, is looking, you know, in terms of due diligence, you know, risk prevention, so to speak, before it actually happens, addressing it earlier on and also not just procurement, but it kind of expands the rubric of what you're trying to target here. So it's not, it's a carrot-stick approach, so to speak, it's called the draw strategy. So I'm wondering if you've heard what are the results of your consultation with them was and how they feel about this whole concept of you know the sanctions system?

Frank Fariello: Well, let me take that since it's, first of all, I look forward to reading your article, it sounds like a very interesting thing. We don't really have, I mean this was one of the areas where we don't have a good kind of grasp on, as I mentioned, on why, we have the finding, we know the fact, there haven't been any cases in our private sector operations. The whys and the wherefores are still, to some extent, educated guess work. We have to drill-down more and of course talk to our colleagues, and I think we may get some interesting ideas from your article on that regard.

Now in terms of the attitude, do remember, one other reason that my colleagues give besides the different incentives structures you have in the private sector operation is they engage in due diligence. I think that's an important point, which I should mention. Before they go into a project or deal with any other actor, they do their integrity and other due diligence, just as a private sector actor would, on whom they're doing business with. So they have a pretty good idea about whether or not their partner and their counterparts are clean or not, I hate to put it that way. That's not the case in public procurement, which is open to everyone, except if you've actually been caught and debarred or suspended or whatever. So that also has something to do with it as well, and maybe we have something to learn there. It's very hard to apply due diligence in an open procurement system. There may be some room for that, hopefully none of my procurement colleagues are here, because they'll kill me for saying that because they don't like the idea, for very valid reasons, but that's one of the big differences between the two.

[Participant]: But if there's that close collaboration and, of course, in the corporate sector, image matters, you see. So if there's a, you know, if a company has been debarred and that feeds into the MIGA system and, you know, because they have a system already of providing risk insurance to companies. It's almost like a car insurance scenario, you know, nobody goes to bash their car because they know that the premiums will go up. So there's a, the markets can take charge, and MIGA can also provide that, you know, I don't work for MIGA, but I think they have a role to play, you see, and IFC, too.

Frank Fariello: Yes, certainly.

Moderator: Other comments?

[Participant]: [. . .] A comment and a question on, to take up on [. . .] last comment on compliance and the compliance culture. I come at this from a administrative law trade regulatory perspective rather than the criminal side of private practice, and there there are particularly in the US government regulatory regimes, customs, export controls, there's wide leeway and discretion on the settlement process, if you will, but also in a set of procedures in all of those agencies on voluntary disclosures. And so and from my perspective, that works a whole lot better than say the criminal side, Foreign Corrupt Practices Act, for example, where there

are some voluntary disclosure guidelines, it's a real question as to whether you're getting any benefit out of that. What we find is companies who are going to voluntary disclose when there's a real benefit for it, the long-term effect is they get compliance religion, and it builds a better system overall because they know if they fix themselves and do it right and talk to the agencies, they can move on and not simply be debarred or pay large fines or whatever. So wondering if you considered a voluntary disclosure policy or process, wondering about, particularly when you talk about the SMEs, who aren't coming in at all, if they've got some incentive to get involved, there might be more activity there.

Moderator: Other comments?

[Participant]: [. . .] First of all, I'd like to commend the Bank for the publication of the Law Digest and Sanctions Board opinions. As a practitioner, I found that I can have a much more meaningful and productive dialogue with colleagues at INT and with my clients having those authorities available, and we would strongly support the publication of additional materials. In particular, we found the November 2010 Advisory Opinion covering the sources of law to be used in the sanctions system to be very helpful, and we would welcome the publication of as many of those sources as the Bank is prepared to publish.

Second, I'd like to commend the Bank for the focus on SMEs and looking at ways to encourage them to engage with the system. I don't have any answers, but what I would encourage the Bank to do would be to consider creating a pro bono panel of practitioners who could be available to provide advice and representation for SMEs on a no-cost or reduced-cost basis, depending on their circumstances, and we at [. . .] would be happy to participate in that.

Third point is that we agree that the settlement regime is working well for clients and for practitioners. It provides more certainty, it provides more efficiency in the system, so we would strongly encourage all efforts to promote settlements, and I'll just offer a few suggestions.

First of all, I would urge the Bank not to impose conditions on settlement that would make it less likely for them to happen. I noted that one of the recommendations that was discussed was to require a contractor to refrain from bidding during the pendency of settlement discussions. Respectfully, I think that's a very bad idea. First of all, it will have a disparate impact between contractors who have ongoing contracting business and those who don't. Second, I think it will, in many cases, discourage larger contractors who have recurring business from participating in the discussion process.

Second, I would urge the Bank to consider providing for no-admit settlements in the context of negotiated resolution agreements. Those of you who are US practitioners have probably followed the dialogue

recently about the SEC's practices in this regard, and there has been some controversy about whether publications like the SEC should allow companies to settle cases without admitting the allegations. Generally speaking, the courts have rejected the notion that settlement must include an admission, and although the SEC, in particular, is moving slightly away from that, the vast majority of cases, other than criminal cases, are still going to be settled on a no-admit basis, particularly because the agreement, at least at this phase, are non-public, it's hard to see any useful purpose being served in requiring the contractor to admit the conduct. So I would strongly encourage the Bank to consider using no-admit settlements, at least in the broad range of cases, perhaps with some exceptions.

Finally, on proportionality, again, strongly agree, Frank, with your comments on making the system more proportional and more flexible. The availability of non-debarment sanctions and sanctions which are a year or less and therefore don't trigger cross-debarment, I think would encourage settlements and only result in more certainty, more transparency, and more efficiency. Thank you.

[Participant]: [. . .] Sort of a follow-up question off of that. At what point does World Bank normally engage in settlement discussions? Is it after a contract, a recipient has been proposed for, I guess, debarment or suspended in some form or another, or does World Bank have any tools where you can initiate that sort of settlement discussion prior to just firing the first official salvo?

Frank Fariello: Let me just answer that question. The answer is at any time in fact, so it can happen before. In fact, the proposal that was, that we had some negative remarks about, was actually geared at that kind of settlement because we found that because settlements can happen before proceedings begin, they can be quite protracted at some times, whether or not the solution is the right one, we're open to hearing different points of view, but we do have settlements. Basically, they can happen at any time, and we also, by the way, to answer another question, we do have a voluntary disclosure program, perhaps not as well-known as it could be. I suspect, since the question you obviously didn't know about it, and I don't know how much we actually go out and advertise it, but we do have that option as well. So the answer is a settlement can happen from more or less as early as INT or the respondent wish to engage in settlement discussions all the way up to right before actually a Sanctions Board decision, so at any time during proceedings as well. So we, because we try to encourage that, we do think it's a good way to, notwithstanding some of the critiques that have been lobbied at it, we actually think it's a very good thing.

By the way, getting back to the comment that came before, we see in settlements more proportionality because it's an agreed sanction, I guess it's obvious, they tend to be more finely tailored in terms of what the ultimate sanctions are. We also find much more engagement by the, in

terms of compliance later on, you know, because we have release conditions, and there's an actual dialogue with the respondent about what those conditions should be and how compliance should work, etc. So there's, it's a much more fruitful, if you like, would like to put it that way, relationship with the respondent when we have a settlement because there's an active engagement. It's not something we're imposing on that company, it's something we're coming to an agreement on. So there are a lot of benefits to it, for sure.

[Participant]: [. . .] I know the Bank has long written about the problems caused by fraud and corruption in emerging countries, in the countries in which Bank-financed project occur, and I know that you collaborate, especially recently, with law enforcement officials, not only in the United States but in those countries as well. I was wondering if the Bank has considered whether it could have even more impact and the countries could have even more impact if the Bank also collaborated with state-owned and controlled entities which have their own sanctions review and suspension and debarment processes? Not so that you would debar parties that were debarred by a state-owned and controlled entity, but to the extent that the Bank does due diligence on contractors, etc., and those state-owned and controlled entities don't necessarily publicize their suspensions and debarments, but probably would be willing to collaborate with the Bank, once final decisions are made, so that the Bank would have important information about potential international contractors. I represent more than one state-owned and controlled entity, and I think whether they be in Asia or the Middle East, I think there could be a role for that kind of collaboration, once determinations are finalized, if we really want to address in a comprehensive way the impact of fraud and corruption in major projects.

[Participant]: [. . .] I just want to join in the comments from [. . .] on the SMEs and proportionality. I think it's very important. I think it would also be helpful to take into account the compliance monitoring side of things, so on the back end it's going to be I think inviting more people to participate if you can make it more affordable for the smaller enterprises to engage in somebody on the compliance monitoring side because it can be very expensive if they're required to engage services of a larger organization that does an excellent job in doing that for some of the larger respondents and larger companies, but I've got a client who is involved with $1400 worth of sales in [. . .], and they are being required to engage the services of somebody that's going to cost tens of thousands of dollars. It's very difficult for the smaller entities to do that and so, you know, I would just try to look for ways to be more creative on that end of the settlement process, and I think that will, the word will get out and people will see that it's a process that, number one, they should engage in for the right reason, number two, that they can engage in because they can afford it.

On the front end, too, our client had the problem of not realizing that what they were dealing with when they were providing [. . .] to a local

health clinic, they didn't realize that they were being involved in a World Bank-sponsored project, and so they didn't realize that they were getting engaged in all the rules dealing with the World Bank. So, on the front end, when they were first contacted by the World Bank investigators, they had no idea why they were contacting them, and quite frankly they thought it was a scam. So they ignored the investigators because, you know, why is the World Bank calling from Washington, D.C.? I'm here in a small city, you laugh, but on their end they just had no idea why they were being contacted, and I wonder how many of the SMEs are having that same reaction. These are people in small cities and small villages being contacted, and so they ignored the contacts initially until at some point they escalated it to a law firm, and the law firm contacted us. The law firm still thought it was a scam. We looked into it and realized it was the real deal. So we told them they needed to get serious, but by that point they were already far enough in the process where they had lost credibility with the World Bank because the people here in Washington thought that they were, you know, flagrantly ignoring them as opposed to just being confused. So I would just offer those comments on ways maybe to further engage the SMEs. I will say that although there were, you know, those points of confusion on the ground, once I got involved here in D.C. that people here were very helpful, and I thought the process was excellent and transparent, but by that point, again, I had sort of lost some credibility with the client because they perceived the World Bank as being this big bad bully at that point and, you know, they perceived what we would believe to be you know rightful regulation as harassment because of the big entity from Washington, D.C., coming down and doing this to them. So if you're looking for ways to engage the SMEs and getting them to respond and interact, I think just that kind of common sense approach on the ground would be very helpful.

Frank Fariello: Excellent. Thank you very much for all those comments. I just want to jump in because a couple of things to clarify and react to. One is that we do have now, it used to be that most of the early settlements were done with larger companies, for obvious reasons, they're the ones who knew about settlements and would bring them up sometimes of their own accord, but now the policy is to allow all respondents at least to, not to allow them to settle necessarily, but to inform all respondents that this is an option. So I don't know if that was done in this case because it might have been too long ago, but we are doing that now. Of course, that becomes a double-edged sword because when we settle with larger companies, there are those who are skeptical, saying, well, we're favoring the big players, when we settle with smaller ones, are you taking advantage of someone who doesn't have, you know, negotiating power, etc., etc. So, but now we try to do it across the board, to make it at least an option. The ICO also, by the way, picking up on the idea of the pro bono bar, has actually reached out to some lawyers who are retired who are willing to give their time pro bono to help with compliance and so on, so that's also happening. I think it's an excellent idea to extend that out just to proceedings more generally.

Then finally, we are thinking about, I didn't mention it in my presentation, but it's in the report, we're thinking about reconsidering or revisiting debarment with conditional release as the baseline. For cases in particular like the one you mentioned, for obvious reasons, we're thinking it might be overkill, and we're also not seeing, it's not really working because we were not getting the respondents coming to us and working with us on conditions, so it turns into a kind of de facto indefinite debarment for something that may be extremely minor, and that's not really the result we want. So we're thinking about going back and, of course, keeping the conditions for appropriate cases, but maybe not in all cases or in maybe not even in the majority of cases. So just thoughts for you there, but, and I also agree that we need to be better in informing our bidders about the fact that there is this system and it could come back to bite them potentially. The word isn't always out there it's clearly I think as it could be. So I would thank you for all your comments.

Moderator: I see on the agenda that we're due for a coffee break, and this is probably a good time to pause. So we'll take 10 minutes and reconvene at noon. I've also been told to ask any of you that didn't sign in on your way in that there's a sign-up sheet outside, if you could just sign in next to your name. Oh, it's right here if you want to sign in, thank you. So we'll re-convene at noon sharp.

[break]

Moderator: I know we had a comment from [. . .], so maybe we can start there.

[Participant]: Thank you very much. [. . .] I have three comments. Let me begin first by thanking the Bank and commending the Bank for the work on this consultation. This is a very important topic, and we greatly appreciate the Bank undertaking a careful look at the sanctions process. That is something that we obviously feel is very important, and I also appreciate, as Vice President Leroy mentioned, the General Counsel, at the beginning, the recognition that this ties to the broader anticorruption agenda. So congratulations to the Bank and our appreciation for your focus and your contextualization of this work.

In thinking about the thoughtful work that's been done in laying out a number of recommendations, it strikes us that it would be very helpful for those of us, those around the table, those who are not able to participate today, to be able to see the report that has been delivered up to the Audit Committee. I think we're all concerned that whatever recommendations come forward and are reacted on actually correspond to issues and to challenges that are being seen in practice, and also that we avoid unintended consequences in evaluating proposed courses of action.

So it would be very helpful, very appreciated, if that report could be shared that's been sent to the Audit Committee as part of this work. If

there is concern about names, I could foresee a redacted version being available as well and having access to the data that's in that report and probably referenced in that report, but I think would be very helpful in us thinking about a way forward with the Bank.

Secondly, and my thanks for allowing us to comment on the process and on this event and for the broad audience that you've assembled. I'd just like to underscore the importance, and we did mention this in an earlier letter to the Bank, as you know, about having a transparent and comprehensive process. The Bank has a good history of this, we've seen it in past consultations, including on procurement. I hope we will use at least those standards, and perhaps we could even do better. If possible, I would love to see transcripts made available of today, people's names could be masked if they wanted to keep the Chatham House focus on that. Also, to ensure that when submissions come in that they're not just summaries of submissions, but the full submission, because that can give greater detail and flavor, as well as avoid the possibility of something being missed or not captured quite as the party providing the submission intended, and clearly any ancillary documents, if those could be posted and made available to the website, we would like to see that.

Then third, in terms of substance and specific recommendations, and we will be providing a written submission at a later date. I think it's important, and I know that many commissions and panels who advise the Bank on this have considered that we keep in mind that this is a two-tiered system, and as various reforms and procedural changes are considered and analyzed, I'd like to stress the importance of maintaining an appropriate segregation of duties and responsibilities, one could say checks and balances as well, between the investigatory unit and the suspension and debarment officer, as well as the other functions involved in the sanctions process. But once again, thank you very much for taking this work forward, and we look forward to continuing to participate on this.

Moderator: We're happy to post the transcript without attribution unless there are any objections from the group here. Comments?

[Participant]: [. . .] I've watched this process evolve for the last 15 years or so, and it certainly has become much more sophisticated and the addition of many earmarks of due process. I've always wondered, though, why the thoughtfulness that goes into the compliance process once a case reaches the end can't somehow be shoved earlier into the contract entry stage? The kinds of obligations that are put on parties at the end of a case for future compliance to be able to get their stain removed, you know, perhaps there's some of that but to be pushed forward at the very beginning, it would have a salutary effect.

Frank Fariello: I don't mean to jump in too prematurely, but actually it's an intriguing topic. I don't know if you wanted to elaborate a little bit more on how that might work in practice?

[Participant]: I think, I hope it's not new, I think I've talked about it actually in this room before. But, you know, some of the, I guess it's two-fold. Some of the responsibilities, we were talking before, talking at break about this, some of the responsibilities of the contractor, the do's and don'ts, could either through contraction provisions or pre-entry education could be inculcated. I think, I'm not sure of the breadth of the Advisory Opinions that come out of the General Counsel's Office, but there do seem to be a number of issues that could be addressed up front that contractors need guidance on. An example: I'm a joint venture partner, I'm here in the United States, I'm doing a joint venture in X-country with an indigenous joint venture partner. What are my responsibilities with regard to that partner's behavior? Those kinds of pragmatic things, I think if they were spelled out as far as you can spell them out, there are obviously limits, you know, could be beneficial.

Frank Fariello: Again, we're here to listen not to speak, but actually on that latter point, we do, one of the things that I didn't focus on my presentation, but there are a number of lingering issues in the system. One of them is that the partnerships, joint ventures, consortia, exactly how we deal with them, that's still not entirely well defined. The other big issue is the liability of corporate officers for things that might happen quote-unquote on their watch, but they're not necessarily a part of it. So there are a number of issues, and that's certainly one of them, that we think we need to clarify possibly through an advisory opinion in the very near future.

[Participant]: If I could just follow up on two of the comments that were made by my colleague on [. . .] comment about adding pro bono systems on SMEs, there's actually a lot of pent-up demand in the Bar here to provide that kind of SME support. It's traditionally not been provided to American SMEs because there are often, there are political and policy reasons that people don't devote a chunk of their lives to doing that type of pro bono work, but I think from, in terms of supporting the Bank and moving forward in systemic structural reforms by supporting SMEs, I think you're going to find much more enthusiasm in the Bar. There is pent-up enthusiasm for doing that kind of work.

With regards to [. . .] comments on compliance, just a couple of technical strokes on this. There are in the Federal Acquisition Regulation, there's a requirement for contractors to have compliance systems in place, that's at 48 CFR 52.203-13, and it's a possible basis for debarment at 48 CFR 9.404. And [. . .], who's here, has actually written with other colleagues on the fact that the compliance, the corporate compliance standards have converged internationally between the UK Bribery Act, the US requirements, OECD requirements, they're uniform. So were the World Bank to say, you need to have a world standard compliance system in place if you're going to be a contractor on a World Bank project, what that means is actually very accessible.

[Participant]: [. . .] First, I'd just like to say that we welcome the continued dedication of the Bank to improving the effectiveness of the sanctions system. This is an area where I think the Bank has really been a leader among the multilateral development banks. The Bank has played a leading role in the international campaign against corruption, starting with the first operation of the sanction system in 1997, that's the same year that a group of major trading countries, most of them OECD members, signed the Antibribery Convention. [. . .] We welcome the fact that the Bank is undertaking this reassessment of the sanction system. I think it's very appropriate. Process improvements are always a good idea. Corruption continues to evolve, so it's good that you're taking a look at this. I did want to make a few specific comments about some of the recommendations that have been put forward. We strongly support efforts to mainstream the use of early temporary suspension. As a leading supporter of the Bank, the United States favors effective measures to protect Bank operations from the risks that you discussed, fiduciary, reputational, operational risks. On the other recommendations, such as revision of the corporate groups guidance, enhancing the transparency of settlements, revisiting the designation of debarment with conditional release as the baseline sanction, we would very much like to see more information, more details on exactly what the Bank is proposing. For instance, if debarred parties are not engaging with the Integrity Compliance Office on conditional release, this still leaves the original goal of minimizing the fiduciary or reputational risk raised by permitting these firms to bid on contracts. So if the baseline changes, it would be interesting to know what the implications are, how the Bank would address that, just to have more clarity on how that might work.

I also would like to point out that we support the policy of INT making referrals to local authorities, where the Integrity Vice Presidency has found evidence that might warrant further action by the local authorities. We echo the view of the Independent Advisory Board that more systematic reporting of the results of such referrals would be useful. I would just like to point out that US law enforcement has a very positive relationship with INT that's actually turned into a very fruitful exercise.

So we will look forward to providing more comments, we welcome this opportunity to consult with you about the sanctions review, and again we think this is a very, very positive initiative that the Bank has undertaking. It is an important development priority. Thank you.

Moderator: Other comments? I don't want to put people on the spot, but there's a couple of other important stakeholders that we haven't heard from that I might invite to speak. One is [. . .] and, secondly, if there is anybody that's here representing a company that has gone through, at the company level, that has gone through a sanctions proceeding, we would be very interested to hear from them as well.

[Participant]: [. . .], not to be put on the spot here! Well, first, again we would echo the sentiment of everyone here that we welcome the Review and opening it up to stakeholders. My only comment is, have you looked into opening it up or encouraging more whistleblowers? You know, the SEC whistleblowing program, which is discussed a lot these days and offers remuneration to whistleblowers, has been fairly successful, and I'm wondering if the World Bank is open to that idea? That's all.

Frank Fariello: Just to react, I think that's a very, very important point actually because, as I said, we're looking at a situation where most of the intelligence we have is coming out of bidding, where you might have kind of natural opportunities, but one of the ways to get intelligence, I think important way to get outside that process, could easily be through more whistleblowing. So I think that's a very important point, especially as we embark on more operations that don't necessarily have Bank-supervised procurement, and thinking about PforR, the new instrument we have. That's going to be a particular challenge in light of some of the findings we have coming out of the review. So thank you for that and, [. . .], I just wanted to get back to you. We will certainly, the reason you don't have details is we don't have details either, we've kind of just identified to some extent areas where we need more work and more thought. It's not that we're kind of holding anything back necessarily, but there's a lot of, this review is kind of let's think about this, let's think about. We have the diagnostic, we don't necessarily have the solution, and certainly we'll be as open as we can be in terms of what we're thinking about in terms of solutions.

One of the things, in terms of transparency, that we have proposed, which you may have noticed in the brief, is in the future, before we change policies or rules, we will allow for a 30-day comment period online as we do for our operational policies so people can react and know what we're intending to do and give their feedback before we make changes.

On the debarment with conditional release, I think, you know, some of the initial thinking is not that we're going to get rid of it by any means, but for cases a little bit like the one that was raised before, where it just seems totally out of proportion to what happened, and yet because we have the baseline, that's kind of, it's there, that's the kind of case we're thinking well it really may not, it's overkill and it really does, it's not realistic even to do so. But we haven't, we're by no means saying we're going to get rid of it at all, and it's actually working quite well in certain areas, in particular in settlements it seems to be working quite well. So just a few thoughts on that.

[Participant]: [. . .] I just wanted to say that we also welcome, as everyone in the room has stated, the Bank's reaching out in an extensive consultation, also including us from the private sector, of course. My colleagues in [. . .] were going through the discussion paper currently, putting together our thoughts, and we will be, after our internal consultation, will be

submitting something back to the Bank, probably by email. I think, just judging from what we have been concentrating on, we'll be looking primarily at voluntary disclosure, as has already come up, and also the institution of corporate compliance programs in terms of bidding on Bank-financed projects. Thank you.

[Participant]: [. . .] I just, first, echo the sentiment, this has been a very productive, but also very well-run by you guys, and I wanted to commend you for good organization. Just wanted to reinforce what you observed, I think, Frank, in your opening comments, the 2012 decision to publish the various decisions was very helpful, and I know probably that those initial seven or eight decisions that were published have been read far more than you realize. A lot of people were very hungry for that guidance.

The only additional point I would make on that front is that, picking up on [. . .] comment about the compliance programs and the importance of those that we've faced in FCPA and UK Bribery Act investigations, it's such an important part of the dialogue with government authorities, what kind of compliance program did you have at the time that the conduct took place. It's relevant to everything, including the ultimate disposition of the investigation. So, I would suggest that at the Sanctions Board level, if additional information is disclosed at the lower level, the initial level, it would be extremely helpful in the discussion of what happened to include what happened before the conduct, meaning what did the company do to put into in place such a compliance program, what was that compliance program, and what kind of training did they have? If a third party was acting on behalf of the company, what kind of instructions did that third party have, what kind of vetting happened, and that sort of thing. All of this, in the last two or three years, has been explored a lot at the national level, and I think it will be helpful, as you all struggle with what's the best outcome when misconduct has occurred, for you to tell the world, when you publish these decisions, what was the framework in which that company, that entity, was operating? And how did you feel about it? And, you know, how did it affect the result, that kind of thing? Thanks.

[Participant]: Just to follow up on [. . .] comments there. We can't stress from the private sector side, how important it is to get that guidance on what went wrong, what went right, those mitigating factors, as we might describe them. I had a conversation about 10 years ago with [. . .] about this very issue, and they sort of looked at me and said, well, you know, voluntary disclosure, we go through a process and, you know, we have actually quite high no penalties if the mitigation guidelines are gone through and give credit, but at the time they were in the same, worse position almost. They were not publishing that, and you could almost see the light bulb go off when I said, well, you know, if you tell people that, maybe they're going to do things a little better in terms of compliance. And shortly after that, they started publishing cases. Shortly after that, they put out mitigation guidelines, and it made a huge difference for companies. So I can't stress that one enough.

Frank Fariello: Just a quick reaction, one of the things we noticed in looking at the guidelines, the sanctions guidelines as they exist, is that there is perhaps not enough credit given for mitigation, so that even companies that are fully clean today may still get dinged with a three-year debarment or two-year or whatever it is, notwithstanding the fact that, of course, we don't have a present responsibility system as the US government does, so if there's a different analysis involved, but we think there may be room for more credit for remedial actions taken, assuming they're voluntary actions and not just kind of strategy for, litigation strategy, and a more flexible use so there's more proportionality in the system, so point's very well taken.

[Participant]: Frank, I just had a question on the Voluntary Disclosure Program. Can you sort of enlighten us as to what the experience has been here? I've always been a little leery of going down that path and would be interested, I guess it's in effect for, what, four or five years?

Frank Fariello: Actually, I can honestly say, I don't know. The Voluntary Disclosure Program has not been included in the review, maybe if there's a need, maybe we should include it. We have not included the VDP because it's not considered part of the Sanctions System per se, but rather something INT does in lieu of sanctions, in fact, because part of the deal is that you're not sanctioned. What I do know is, well, and it's a very closely held, for reasons, I think, that will be obvious to everyone, a very closely held program and to protect the participants, in particular, even people like myself don't even know who's in the program, etc., or how many. I do know there were a couple of years ago some moves to change, tweak some of the requirements. It was felt that the uptake was not as much as we wanted it to be, and perhaps some of the initial requirements were a bit too onerous. So there was some tweaking of the program, I don't know exactly when it was, maybe two years ago, just guessing, but beyond that I honestly don't know much about how things are working. Just from the questions around the table, I kind of get the feeling it could be better known, but that's an impressionistic thing, so don't have much to tell you really on that.

[Participant]: Let me just follow up on the point I raised, and I think a couple people have raised this point. On the proposed change on the baseline from reporting, I'm sorry, when companies should come back and get their conditional release, you indicated in the discussion brief that's not very widely used. What is your view, having looked more in depth at the experience in INT and the sanctions process as to why so few companies are coming back for that conditional release? That would be helpful in understanding the proposal and the implications and possibilities. Thank you.

Frank Fariello: Well, in fact, we don't know for sure because, of course, ideally you'd go back to the respondent to try to figure out why they haven't come forward. I mean, there are lots of different possibilities. One would be

that they're simply to them not worth it, they don't do enough business with the Bank to want to bother to go through the expense of compliance programs, etc. Another might be that a this kind of a less sanguine result is they've basically set up shop under some other name, they've kind of found out some way to get around it, and they don't care that the old company is debarred forever. It may be that they are simply, this goes back to the SME issue, overwhelmed both by the process and by the requirements to get back into the system, don't understand even, we've had a couple of cases where respondents don't even understand an integrity compliance program is, let alone how to put one in place and what it means, etc. So there's a variety of potential reasons, but because we, up to now, this review has basically been a desk review and internal consultations, we don't have the means to know with any kind of degree of certainty what it is that's driving. It's probably a variety of factors.

[Participant]: [. . .] One of the questions I would have relates to the Voluntary Disclosure Program, which you may be able to answer or maybe Pascale will go into the mike and respond. It would be encouraging to companies to do more disclosures to the Bank if there was also a clear assurance that the disclosure would necessarily be the subject of a possible referral on a very serious matter to authorities here in the United States, and I don't know if the Bank takes a position in that regard, that is, a company comes forward with a very serious disclosure, tells it all, lays it all out, documents it all, and it is the kind of disclosure, though, that the authorities here in Washington would feel is appropriates, and the company does not represent to you one way or the other whether they're going to disclose to those authorities, and it's not really the Bank's jurisdiction. I'm just curious whether or not that, you know, consideration, leniency, credit also extends to referrals to law enforcement here in the US on a serious matter that clearly would be violative of US law.

It's okay if you don't know or if you prefer not to comment. Okay.

Mamta Kaushal: I'm Mamta Kaushal from INT. We did do the revisions that Frank spoke about a few years ago. And with those revisions we've actually tried to make it a little bit less onerous on companies when they are disclosing to us, in terms of what we're requiring, because in the past we used to require all kinds of disclosure on past misconduct, which might not be relevant to either the Bank's interests or our partner's interests. As to disclosures in referrals, so currently we do still have an obligation to make referrals on information that we've received. The timing is something that we talk about with the companies, and also we will not refer anything that would disclose the identity of the participant. So, we're trying to make it a much more pragmatic program and working with the participants, but we also we have a more vibrant cooperation with our colleagues across the law enforcement agencies, so we would probably encourage some disclosures up front because we're not trying to enable anybody to violate any national law or facilitate that in any way. So, it's kind of something that's...

[Participant]: Tricky.

Mamta Kaushal: It's very tricky, but we have a very pragmatic team in place that's taking these cases forward, so we encourage you to come forward and reach out to INT and talk to us about it.

[Participant]: Great.

[Participant]: [. . .] I was wondering if you've sort of set up some kind of criteria for monitoring the success of the sanctions system and if you have like a timeline, and what the criteria are. In terms of specifically measuring the rate of corruption at the point at which you started, I know when Wolfensohn started the process in 1996, you then modified it. Have you sort of taken a step back to look at what worked when you started and how you changed. I'm saying this because, moving forward, you want to see the areas that have really worked and how to improve upon it, and I'm wondering if you had like a criteria that you set up in terms of measuring your success, quantifying it in actual numbers, because I know you have economists here, and this is the World Bank, and I'm wondering how much you've done that and if you can give me figures in terms of monetary as to how much was gained from the sanctions, countries to the borrower nations and, of course, losses to corporations, if you've measured that? So all the parties involved, to what extent have you measured success?

Moderator: We're nearing the end, so if there are any final comments, I'll take them now, and then Frank can start his closing remarks with a response to that comment.

[Participant]: [. . .] Coming from the perspective of the defense of companies that are subject to the sanctions proceedings, we expect to provide some written comments based on our experience and observations and suggestions, and we again appreciate and commend the Bank for having this consultation period and opening it up on such a broad basis.

We think that areas that we would recommend be looked at is, number one is increased publication of those guidelines and policies that form the operational basis of the sanctioning system. That will increase, we think, more faith in the system itself and satisfy those principles of fundamental fairness. We would encourage the Bank to look at how to implement those mechanisms to increase some of these fundamental principles that underlie the sanctioning system, for instance, proportionality. As an example, in early suspensions, the Bank has expressed, I think, the correct sentiments as far as those principles in proportionality that should be a part of the decision on what kind of early suspension should be imposed for companies that are subject to sanctions proceedings, but when it comes down to the mechanics of actually trying to challenge or modify those early suspensions, we find that there's a distinct lack of any real mechanism, and it results in a

fairly, I think, dangerous disproportionality that can occur in early temporary suspensions. As an example, there was recently a client who received a global enterprise-wide early suspension for a very, very minor infraction that they looked at and ultimately took care of it quickly, but they lost about $3 billion in potential business. This kind of proportionality or disproportionality I call dangerous because I think that it opens the sanctioning system, World Bank's sanctioning efforts, to legal challenges, and it erodes the fundamental basis and support for the system itself. So I would encourage the Bank to bring in some mechanisms to raise those issues.

Then I would encourage the Bank to look at how to increase its ability to exercise asymmetrical enforcement of its sanctioning rules. By this, I mean if you look, say, at DOJ that has a large percentage of success and very little litigation, and I think we all recognize the adversarial aspect of the sanctions systems actually detracts from its fundamental purposes, and it's causing some real problems, especially as we see small and medium-sized enterprises not being represented by counsel or not engaging in the process because the process itself is extremely expensive and burdensome, and perhaps the Bank looking at how other enforcement systems through member nations are successful in exercising asymmetrical enforcement might be productive.

Just to segue into that with the discussion of Voluntary Disclosure Program, you know, it's all about getting the incentives right and getting the balance of the incentives right and where the Bank can look at those programs that are not perhaps generating the kind of involvement that they might expect, taking a look at where the incentives are and trying to rebalance those incentives so that they can achieve greater results. Thank you.

Moderator: Any other final comments?

[Participant]: [. . .] I'd like to echo everyone else in thanking the Bank for having us here today and just make two comments related to compliance programs.

First of all, I agree with the prior comments that were made that the private sector would, the private law firms would be very happy to help with the pro bono efforts in helping small and medium companies establish compliance programs as part of World Bank resolutions. This is something [. . .] that we've actually been doing for quite some time for nonprofit organizations that perhaps have limited exposure to liability under the FCPA and other national anticorruption laws, but have a real interest in knowing where their funds are going. We've been able to take sort of the more complicated, sophisticated compliance programs of the very large multi-national companies and tailor them to something that's very workable and sustainable for a small company. So I agree that there's definitely room out there for the law firms to get involved in helping with that effort.

Secondly, with regard to some of the other comments that were made about the compliance program aspects of the settlements of the World Bank, I agree with the comments that were made that it would be nice to see some tailoring of the compliance program requirements and the settlements. In recent years, in DOJ and SEC settlements, we've seen a lot of tailoring and move away from simply imposing a three-year monitorship on all companies in the move towards more self-monitorships, limited one-time reporting requirements, for those companies that have already gotten compliance religion, and it would be nice to also see in World Bank settlements similar tailoring perhaps to compliance, enhancing the compliance failures that happened for the conduct that was an issue that was the result of a settlement. Thank you.

Moderator: Frank, then I guess we can move to your closing remarks.

Frank Fariello: I'll answer just a couple of questions and get to kind of a wrap-up. There was an observation about early temporary suspension and the inability to challenge suspensions, whether they be early or not, but actually one of the proposals in the report is to allow decisions of the SDO to be appealed to the Sanctions Board, and that would include suspension decisions, so just so you know on that one, it's part of that restructuring, that resequencing that we talked about.

With respect to the larger picture of the system and its effectiveness in terms of actually reducing corruption. Huge question. We are going to attempt to answer that question in phase two as part of this kind of the larger questions. This part of the review is a kind of, as I said, a stocktaking, a kind of a more technical level review. There will be a more first principles review, including that question.

Of course, as you can imagine, I say attempt because measuring corruption is notoriously difficult to do, and to measure the impact of a particular player in corruption, like ourselves, when there's so many other factors impinging, extremely difficult to do. So, but we're going to try, obviously, because if you're trying to figure out are you getting, you know, is this system actually doing what it's supposed to be doing, you have to at least make the attempt, of course, and we're going to try to do that in the future, not just with us lawyers because, of course, lawyers are good for some things, less good for others. That will have to be a much more multi-disciplinary kind of thought process.

In any event, wrapping up, I just want to thank you all because this has been really beyond any expectations I had in terms of the richness of the discussions, the substantive inputs you've had, and the constructive dialogue. I'm really quite delighted, and I think all of us at the Bank are quite delighted to hear this constructive engagement. I've certainly learned a lot. We're coming away with a lot of food for thought, a lot of excellent ideas that we're going to take forward. We heard ideas on this issue of SMEs, on settlements, on transparency, on ways to improve the

compliance aspect of the system, and I'm particularly gratified to hear the willingness of the Bar to engage in pro bono work to help us out in those areas, and that's excellent. I also am gratified because, with some caveats, it seems to me that what I'm hearing today is that we're more or less on the right track when it comes to the findings and recommendations, so I'm very gratified of course to hear that as well.

So thank you very much. This is not the end of the story, of course, this is in a sense just the beginning of the story. We welcome your written remarks. You'll see on the screen right now, we have links if you want to submit by email or through questionnaires or want more updates on what's happening in the review, you have a website there to go to. We also look forward to engaging in focus group meetings with constituencies and hope you will participate in that process as well. So thank you very much for coming.

[end of transcript]