Date of issuance: November 10, 2016

Sanctions Board Decision No. 89

Decision of the World Bank Group! Sanctions Board denying a request for reconsideration of Sanctions Board Decision No.4 (2009) and/or Sanctions Board Decision No. 84 (2015), as filed by a respondent entity and the individual respondent in Sanctions Case No. 73 (respectively, the "Respondent Firm" and "Respondent Owner" and collectively, the "Respondents").2

I. INTRODUCTION

1. The Sanctions Board met in person and through virtual means in a panel session on
July 28, 2016, to review a request for reconsideration and a "supplemental plea in equity for [a] clarificatory examination of all witnesses" (the "Request") filed by the Respondents with regard to Sanctions Board Decision No.4 (2009) and/or Sanctions Board Decision No. 84 (2015). In Sanctions Board Decision No.4 (2009), the Sanctions Board debarred the Respondents for an indefinite period of time for collusive practices in Sanctions Case No. 73.3 In Sanctions Board Decision No. 84 (2015), the Sanctions Board denied a previous request for reconsideration filed by the Respondents with regard to Sanctions Board Decision No.4 (2009) (the "First Request")." F or deliberations on the present Request, the Sanctions Board was composed of J. James Spinner (Chair), Catherine O'Regan, and Judith Pearce.

2. The Sanctions Board deliberated and reached its decision on the Request based on the
entirety of the record, which included the following:

1. the Request submitted by the Respondents to the Secretary to the Sanctions Board
on January 20, 2016, and supplemented on April 14, 2016;

11. comments on the Request submitted by INT to the Secretary to the Sanctions Board
on June 20, 2016 ("INT's Comments");

1 In accordance with the World Bank Sanctions Procedures. as adopted October 15, 2006 (the "Sanctions Procedures"), the term "World Bank Group" means, collectively, the International Bank for Reconstruction and Development ("IBRD"), the International Development Association ("IDA"), the International Finance Corporation ("IFC"), and the Multilateral Investment Guarantee Agency ("MIGA"). See Sanctions Procedures
at Article I(a), n.1 and Article II, Section 1, n.10. As in the Sanctions Procedures, the terms "World Bank" and "Bank" are here used interchangeably to refer to both IBRD and IDA. See id. at Article I(a), n.1.

2 The Respondents frame their request as a request for reconsideration of Sanctions Board Decision No. 84 (2015), which denied a previous request for reconsideration filed by the Respondents with regard to Sanctions Board Decision No.4 (2009). In substance, however, the Respondents seek relief in the form of a "lift[ing]" of the sanctions imposed by the Sanctions Board in Sanctions Board Decision No.4 (2009).

3 See Sanctions Board Decision No.4 (2009) at paras. 6, 8.

4 See Sanctions Board Decision No. 84 (2015) at para. 39.

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facts or related evidence to the Sanctions Board, either on the advice of legal counselor for other reasons, do not warrant reconsideration. 12

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. The Respondents' Principal Contentions in the Request

5. The Respondents request a review of the Decision on the First Request and seek relief in
the form of a "lift[ing]" of the sanctions of indefinite debarment imposed pursuant to the Original Decision. Alternatively, the Respondents seek any "[0]ther reliefs consistent with equity and justice." The Respondents primarily assert the following grounds for reconsideration.

1. Developments following the Respondents' debarment in 2009 justify a review of
their sanctions of indefinite debarment.

11. The retroactive application of "beneficial rules" - i.e., rules favorable to
respondents - to "finalized judgement[s]" is a "generally accepted principle in
disciplinary proceedings in international and national jurisdictions." The "Unified
Sanctions Guidelines" constitute such types of "beneficial rules" and should
therefore be applied retroactively in this case. 13

111. The Respondents' sanctions of indefinite debarment are not in proportion with
the Sanctions Board's subsequent decisions, which have all imposed lighter
sanctions, even in cases of more egregious misconduct.

6. In addition, the Respondents assert that their "good behavior and outstanding track
record" since the Original Decision are "worthy of consideration." The Respondents also make a "supplemental plea in equity for [a] clarificatory examination of all witnesses."

B. INT's Principal Contentions in its Comments

7. INT asserts that "there is nothing in the [Request] which is new" and that there is "no
reason for the Sanctions Board to reverse its decision in Sanctions Board Decision No. 84." With respect to the Respondents' asserted grounds for reconsideration; INT submits the following main arguments.

1. Evidence presented by the Respondents in support of the asserted post-debarment
developments is of questionable evidentiary value and neither potentially decisive
nor newly available.

11. The Respondents do not provide persuasive legal support of the asserted universal
consensus on the retroactive application of beneficial rules.

12 See, e.g., ide

13 The Respondents appear to be. referring to the General Principles and Guidelines on Sanctions published in 2010 (the "2010 Sanctioning Guidelines").

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iii. In the Decision on the First Request, the Sanctions Board already rejected the Respondents' argument regarding

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the Respondents have not presented evidence of newly available and potentially decisive facts warranting reconsideration.

12. Second, the Respondents argue that the continued imposition of the Respondents'
sanctions of indefinite debarment cannot be justified under the 2010 Sanctioning Guidelines, which should be applied retroactively. In the Decision on the First Request, the Sanctions Board declined to consider the Bank's adoption of the 2010 Sanctioning Guidelines as an exceptional circumstance.!" and noted, among other things, that the Respondents could not point to any international law rule or precedent that would stipulate the retroactive application of beneficial rules in finalized cases.!" In the present Request, the Respondents cite to new legal materials in support of their assertion that beneficial rules should apply retroactively even in finalized cases. The cited materials concern criminal and disciplinary proceedings. Sanctions proceedings, however, are administrative in nature." In addition, and as the Sanctions Board observed in the Decision on the First Request, it is not apparent, as a factual matter, whether the Respondents would have received lighter sanctions under the 2010 Sanctioning Guidelines.'? In these circumstances, the Sanctions Board reaffirms its conclusion that the Bank's adoption of the 2010 Sanctioning Guidelines does not constitute an exceptional circumstance warranting reconsideration.i''

13. Finally, the Sanctions Board notes that the Respondents repeat, in their Request, a
number of the arguments that they made in their First Request, without presenting any material new evidence or legal reasoning in support of these arguments. Given that the Sanctions Board rejected these arguments, with reasons, in the Decision on the First Request, the Sanctions Board declines to reconsider them here and refers the Respondents to the Decision on the First Request."

14. For all of the reasons stated above, the Sanctions Board hereby denies the Respondents'
request for reconsideration.

B. "Supplemental plea in equity"

15. "[I]n the interest of due. process and fairness," the Respondents also make a
"supplemental plea in equity for [a] clarificatory examination of all witnesses" to determine "once and for all" the merits of the "ringleaders-of-cartel story" and the excessiveness of the of the