



The Global Fund
To Fight AIDS, Tuberculosis and Malaria

Office of the Inspector General

Investigation Report of Global Fund Grants to Cambodia

**Principal Recipients CNM, NCHADS and MoH and NCHADS
Sub-recipient MEDiCAM**

**GF-OIG-13-050
14 November 2013**

A. Table of Contents

A.	Table of Contents	i
B.	Acronyms.....	ii
C.	Executive Summary	3
C.1.	Findings.....	3
C.2.	Global Fund Response to Investigation Findings and Continuation of Grant Programs in Cambodia.....	6
C.3.	Recommendations	7
D.	Message from the Executive Director of the Global Fund	9
E.	Background	12
E.1.	Global Fund Grants to Cambodia	12
E.2.	Allegations.....	17
F.	Methodology.....	18
F.1.	OIG Investigations Unit	18
F.2.	Applicable Concepts of Fraud and Abuse	18
F.3.	Investigative Process	18
F.4.	Investigative Challenges	18
F.5.	Scope of Investigation	20
G.	Investigative Findings.....	21
G.1.	National Centre for Parasitology, Entomology and Malaria Control	21
G.2.	National Center for HIV/AIDS, Dermatology and STD Control.....	53
G.3.	MEDiCAM	60
H.	Global Fund Secretariat Response to OIG Investigative Findings.....	65
I.	Cooperation and Remedial Measures Taken by LLIN Suppliers	67
I.1.	Sumitomo Chemical Singapore.....	67
I.2.	Vestergaard Frandsen	68
J.	Due process	71
K.	Expenditures Not Compliant with the Grant Agreements	82
K.1.	Determination of Compliance.....	82
K.2.	Reimbursements or Sanctions	82
K.3.	Summary of Expenditures Identified as Non-Compliant.....	82
L.	Recommendations	83

ANNEX 1: Illustrative Exhibits Referenced in OIG Report

ANNEX 2: OIG Response to CNM's Comments on Cambodia Investigation Report

ANNEX 3: OIG Response to SCS Comments on Cambodia Investigation Report

ANNEX 4: OIG Response to VF's Comments on Cambodia Investigation Report

ANNEX 5: OIG Response to NCHADS Comments on Cambodia Investigation Report

ANNEX 6: OIG Response to MEDiCAM's Comments on Cambodia Investigation Report

ANNEX 7A: OIG Investigations Unit

ANNEX 7B: Applicable Concepts of Fraud and Abuse

ANNEX 7C: Determination of Compliance

ANNEX 7D: Reimbursements or Sanctions

B. Acronyms

CCC	Country Coordinating Committee
CCM	Country Coordinating Mechanism
CSO	Civil Society Organization
CENAT	National Centre for Tuberculosis and Leprosy Control
CNM	National Centre for Parasitology, Entomology and Malaria Control
FPM	Fund Portfolio Manager
Global Fund	The Global Fund to Fight AIDS, Tuberculosis and Malaria
HSS	Health Systems Strengthening
LFA	Local Fund Agent
LLIHN	Long Lasting Insecticidal Treated Hammock Nets
LLINs	Long Lasting Insecticidal Nets
MoH	Ministry of Health
NAP	National AIDS Program
NCHADS	National Centre for HIV/AIDS, Dermatology and STD Control
NGO	Non-governmental organization
OIG	Office of the Inspector General
PO	Purchase Order
PQR	Price and Quality Reporting
PR	Principal Recipient
PSI	Population Services International
PU/DR	Progress Update and Disbursement Request
RCC	Rolling Continuation Channel
ROC	Record of conversation
SCS	Sumitomo Chemical Singapore
SR	Sub-recipient
SSF	Single Stream of Funding
SSR	Sub-sub-recipient
STCs	Standard Terms and Conditions of the Program Grant Agreement
STI	Swiss Tropical and Public Health Institute
USD	United States dollars
VF	Vestergaard Frandsen
VPP	Voluntary Pooled Procurement
WHO	World Health Organization
WHOPES	WHO Pesticide Evaluation Scheme

C. Executive Summary

C.1. Findings

1. The Investigations Unit of the Office of the Inspector General of the Global Fund has carried out an extensive investigation of allegations of fraud and financial abuse in Rounds 1 through 9 of multiple grant programs financed by the Global Fund to Fight AIDS, Tuberculosis and Malaria (the “Global Fund”) to the Kingdom of Cambodia. The investigation has focused upon certain government entity implementers in the health sector within Cambodia, including the National Centre for Parasitology, Entomology and Malaria Control (“CNM”), a Principal Recipient (“PR”); the National Centre for HIV/AIDS, Dermatology and STD Control (“NCHADS”), also a PR; and MEDiCAM, a Sub-recipient (“SR”) of the Ministry of Health (“MoH”) and NCHADS.¹ CNM and NCHADS are not distinct or separate legal entities from the MoH, and thus are considered part of the Cambodian government.
2. The OIG investigation was initiated as a result of findings from the 2009 OIG audit of the Global Fund grants to Cambodia, which included the identification of procurement irregularities and substantial weaknesses in internal controls, along with complaints received through the OIG anti-fraud web and whistle-blower hotlines. Further allegations, including those of fraud, abuse, bribery, corruption and other forms of financial abuse, such as misuse of funds by senior officials in Global Fund-supported programs, arose throughout the course of this investigation.
3. The investigation has identified sufficient credible and substantive evidence of corruption, procurement irregularities, and misuse and misappropriation of grant funds, in connection with Global Fund programs as follows:
 - a. Two CNM senior officials operated a scheme from approximately 2006 to 2012 that required two international manufacturers and suppliers of bednet products to continuously pay “commissions” as a condition of achieving contracts or as a reward for the execution of contract agreements. A fictitious local consultancy arrangement was established in order to disguise the true nature of the payments and their ultimate beneficiaries. These facilitation payments were executed through international bank wire transfers to these officials personally, or to their designees, and were calculated as a percentage of the gross contract amount. The improper commission payments total USD 410,712. The total value of Global Fund contracts that were compromised as a result of this scheme was USD 11,766,606.
 - b. At NCHADS, a Senior Procurement Officer regularly manipulated procurements conducted under Global Fund programs by tailoring bid quotations, attempting to influence the selection process, and compromising national vendors. This Officer also accepted a facilitation payment through a hand-to-hand cash transaction during the course of his supervision of Global Fund procurements. This Officer had established a practice of tampering with procurements and accepting inducements from national vendors, suppliers and contractors for four years prior to supervising Global Fund procurements at NCHADS during his work on a non-Global Fund program. Many of the same tainted vendors continued to compete for Global Fund-financed procurement contracts under the supervision of this Officer. The investigation revealed that the facilitation payments he received were made for his personal benefit and were paid as a condition of the award of the

¹ The Ministry of Health (“MoH”) and the National Centre for Tuberculosis and Leprosy Control (“CENAT”) Cambodia also received Global Fund grants, and were a focus of the OIG investigation. The OIG does not intend to report on any findings concerning these two entities in connection with the allegations OIG has investigated to date.

contracts, as a reward for contracts, and/or for the prospect of maintaining eligibility for future contracts with NCHADS in the Kingdom of Cambodia. The procurement Officer's improper actions compromised approximately USD 317,430 worth of Global Fund procurements.

- c. MEDiCAM improperly charged the Global Fund for two staff positions that were not filled in 2009. Moreover, MEDiCAM presented falsified documents to OIG to reinforce this scheme at various points during the investigation. The investigation also revealed that three other international donors were billed for the salary of one MEDiCAM employee who was supposed to hold the Global Fund-sponsored position. For the other MEDiCAM employee at issue, it seems that he was performing different duties than the ones the Global Fund had allocated to pay for and he was also being paid a salary by another bilateral donor. The Global Fund grant was improperly charged USD 20,725 for these two staff positions.

4. CNM, a government entity that served as both a SR and then as a PR of Global Fund grants during the relevant period of this investigation, received more than USD 17.8 million in contracts for Long Lasting Insecticidal Nets ("LLINs" or bednets) from 2006 to 2011 financed by the Global Fund. These contracts were won by two of the largest international manufacturers and suppliers of LLINs: Sumitomo Chemical Singapore ("SCS") and Vestergaard Frandsen ("VF") (collectively, the "Suppliers").² These Suppliers routinely paid commissions to the Director³, and in the case of SCS to the Deputy Director⁴, of CNM from 2006 to 2012 that amounted to between 2.25 percent and 6.5 percent of the total value of the contracts in order to secure said contracts. SCS paid a total of USD 256,471.00 while VF paid a total of USD 154,241.19 in improper commissions for bednet contracts financed by the Global Fund. Payments to CNM's Director amounted to as much as 6.5 percent of the total contract value, whereas the payments to the Deputy Director were frequently less, up to 2.5 percent of the contract sum. In total, the evidence shows that CNM's Director received USD 350,904 and the Deputy Director USD 59,809, from these Suppliers.⁵ The investigation also identified over USD 20,000 of other gifts and payments, including cash, payment of trips, lodging and other gratuities, that the Suppliers (primarily SCS) made to the CNM Director, his family members and other CNM government officials. These amounts are not included in the calculation of Global Fund compromised expenditures as they were paid out of the Suppliers' corporate funds, but OIG considers these payments to be further means of facilitating favorable treatment and obtaining contracts from CNM, which tainted the entire value of the contracts.

5. The inducements paid to CNM were masked as commission payments to a "consultant" or "agent", the creation of which was suggested by CNM's Director, whom the Suppliers hired to engage in business on their behalf in Cambodia. The OIG uncovered no evidence to indicate that this agent ever existed, with the exception of representations by

² One international LLIN supplier, Sumitomo Chemical Singapore, supplied approximately USD 10.7 million in bednet products to Cambodia between 2006 and 2011, while another international supplier, Vestergaard Frandsen, supplied approximately USD 7.1 million bednet products.

³ It should be further noted that the activities attributed to the "CNM Director" throughout this report refer to an individual who retired from CNM on 1 May 2011. The current CNM Director, who took office in CNM on 6 May 2011 and was nominated as Director on 11 May 2011, is not implicated or described at any point in these findings. CNM response letter to OIG draft report, dated 2 July 2013, p. 1. The OIG has learned that while the former Director is no longer officially affiliated with CNM, he continued to hold a physical office on CNM's premises and maintain an active CNM email account post-retirement. As of 25 July 2012, he was serving as Advisor to a member of the Cambodian Ministry. 25 July 2012 email from former CNM Director to OIG.

⁴ The CNM Deputy Director discussed in this report was employed at CNM until 13 September 2013, but was removed from her responsibilities over the Global Fund program as of 1 October 2012. This individual was one of 8 to 12 Deputy Directors at CNM. 3 July 2013 email from current CNM Director to OIG; 23 September 2013 response letter from CCC to OIG.

⁵ Records show that SCS paid the CNM Director USD 196,662.48 and the Deputy Director, USD 59,808.52. The OIG found no evidence that VF paid facilitation payments to anyone other than the CNM Director. See OIG report § G.1.4.2.

the CNM Director that this was his relative. The evidence clearly demonstrates that this agent served as a conduit for the improper payments in order to disguise the true beneficiaries of the money: CNM's Director and Deputy Director.

6. In 2011, the Global Fund began undertaking some of the international procurement of health products in Cambodia through the international Voluntary Pooled Procurement ("VPP") mechanism, which included LLIN contracts. The scheme involving the payments of commissions to CNM officials in exchange for LLIN contracts appears to have stopped at this time with respect to SCS as a result of this transition, but not with respect to VF who continued to make improper commission payments to an "agent" for contracts it was awarded under VPP.

7. The investigation confirms that all bednets supplied pursuant to the contracts at issue in this report were provided and delivered per the terms of their agreements. Indeed, SCS contends that the amount of the improper commission payments was built into the cost of doing business with the Government of Cambodia, and was subtracted from the Supplier's profit margin on the gross contract amount. While this investigation does not conclude that the prices charged for bednet products in Cambodia were higher than market value, if these products were priced normally and still included between 2.25 and 6.5 percent of the contract price for facilitation payments, then the Global Fund and its recipients did not enjoy the lowest or most competitive prices for these nets. When this is considered in light of the fact that together SCS and VF supplied over 80 percent of the bednet products that were purchased by the Global Fund until 2011—and the Global Fund is the largest procurer of bednets in the world—there exists a significant likelihood that the market prices are skewed by virtue of this corrupt scheme.⁶

8. NCHADS, also a government entity in the health sector and PR of Global Fund grants, employed a procurement official⁷ who manipulated the procurement process with at least six vendors⁸ bidding for various forms of health products from 2009 to 2012. This manipulation affected approximately USD 317,430 worth of procurements that were won by two of these compromised vendors. Additionally, this is notably corroborated by evidence that this Senior Procurement Officer received an improper facilitation payment in connection with awarding a Global Fund contract to one of these vendors. Through emails, hard copy documents, audio taped statements and admissions, the OIG learned that the Senior Procurement Officer established a pattern of requiring vendors to pay him sums of money up to 15 percent of the total value of the contracts, often in cash, in order to secure contracts with this government entity, during his time managing procurement for a non-Global Fund donor and immediately prior to his obtaining responsibility for the Global Fund program at NCHADS. The procurement Officer admitted that he required these payments from the vendors to secure contracts and other favors and acknowledged spending the funds on cars and other personal items. He admitted to engaging in this behavior throughout the duration of his involvement with the non-Global Fund donor program for approximately four years prior to managing the Global Fund program. Indeed, a representative of one vendor confirmed paying money to the Senior Procurement Officer as a way to either win contracts or remain eligible for future contracts.

⁶ Data provided from Global Fund: LLIN Quantities reported in PQR from 2009 through 2012; 13 September 2013 email from Global Fund Purchasing team to OIG regarding 2014 global forecast data for LLIN tenders.

⁷ OIG informed NCHADS of its preliminary findings in July 2012. Approximately one month later, OIG learned that NCHADS had placed a new employee in charge of Global Fund procurements. 08 April 2013 email from LFA to OIG.

⁸ The OIG sought to interview the vendors potentially involved in the scheme to pay money in exchange for influence, access and contracts. OIG contacted eight vendors during the course of its investigation of NCHADS. Only three out of those vendors agreed to meet with OIG; the remainder either did not respond at all or otherwise failed to agree to be interviewed by OIG. See OIG report Figure 5, *infra*. One of those who agreed to discuss these circumstances admitted the schemes when confronted with documentary evidence.

9. Additionally, substantial evidence has been identified by the OIG that the NCHADS Senior Procurement Officer regularly directed third party vendors to alter the content of their bids and to share pricing information with competitors, in order to give the outward appearance of honest competition in the bidding and selection process. A representative of one vendor confirmed that he improperly increased a price quotation and back-dated a bid submission in order to allow another vendor to win a contract. This was done with the expectation of receiving future contracts and favored treatment in NCHADS procurements. While many of the examples identified during this investigation took place when the procurement Officer was working on another donor program immediately before joining the Global Fund program, the Senior Procurement Officer worked with several of the same compromised local vendors under Global Fund procurements. The OIG also has located specific evidence tying this Officer to certain acts of procurement manipulation with at least six of the same vendors when he managed Global Fund procurements.

10. With respect to the misuse and misappropriation of grant funds disbursed to MEDiCAM, the investigation found that this entity charged against the Global Fund grant two staff positions, a Training Assistant and an HIV/AIDS Coordinator, in 2009 that were not actually filled as reported, provided the OIG with fictitious documents to support this claim, and committed other acts of mismanagement. Moreover, the investigation noted that other international donors were similarly billed for the employment of these two employees, but under different job titles. The “Training Assistant’s” salary was also paid by three other international donors under the job title, Advocacy Coordinator. Further, the “HIV/AIDS Coordinator” was fulfilling the Monitoring and Evaluation and Capacity Building role at MEDiCAM, which was simultaneously being charged to another bilateral donor. During the course of its investigation of Global Fund grant activity at MEDiCAM, the OIG collaborated with other donor entities and shared its findings with them to the extent relevant. As a result of MEDiCAM’s deceptive conduct, the Global Fund grant was improperly charged USD 20,725 for staff positions that were not filled.

11. It should be noted that the OIG reviewed approximately USD 86.9 million of expenditures related to Global Fund programs in Cambodia out of a total of USD 220.3 million disbursed from January 2003 through December 2010. This was due to the fact that OIG was not provided full access to the necessary financial records by grant recipients. Additionally, the OIG interviewed numerous third-party suppliers and vendors in connection with this investigation. With respect to the investigation pertaining to NCHADS, only three of eight local vendors agreed to be interviewed by OIG and the remaining five failed to agree to an interview.

C.2. Global Fund Response to Investigation Findings and Continuation of Grant Programs in Cambodia

12. The Secretariat was formally notified at the end of July 2012 of the preliminary findings of the OIG investigation, including credible and substantive evidence of fraud and abuse in grant programs in Cambodia. In response to these preliminary findings, and in line with Board Decision BM19/DP25⁹, the Secretariat has asserted that they have taken risk mitigating actions to safeguard Global Fund investments, including stronger fiduciary controls for procurement and financial transactions, replacing CNM as PR for the SSF malaria grant, appointing an external fiduciary agent to exercise control over NCHADS’s

⁹ Report of the Nineteenth Board Meeting, GF/B20/2, page 19, available at http://theglobalfund.org/documents/board/19/BM20_02NineteenthBoardMeeting_Report_en/, accessed 01 November 2013.

expenditures, and requiring the continuation of pooled procurement for all health products.

13. In light of these measures, the Global Fund has resumed its disbursement of funds to the entities discussed herein. Specifically, UNOPS (on behalf of CNM), NCHADS and MoH (partially on behalf of MEDiCAM) have recently received approximately USD 24.5 million in additional funding from June through August 2013.

C.3. Recommendations

14. Based on the evidence and analysis summarized in this report, the OIG provides the following recommendations to the Secretariat of the Global Fund:

- a. The Secretariat should seek to recover, from all parties responsible, expenditures of Global Fund grant funds that were not made in compliance with the terms of the relevant grant agreements, in accordance with the applicable legal rights and obligations, based on its determination of legal breach of the grant agreements and associated determination of recoverability. The Secretariat should ensure such entities are held accountable for their grant management practices, as well as take the appropriate management actions to ensure that the responsible individuals are held accountable for their actions and are no longer associated with the management of grant funds.
- b. The OIG recommends that the Secretariat assess and monitor on an as-needed basis the anti-corruption and compliance systems, including the use of agents and other intermediaries, of major LLIN suppliers. To this effect, a specific oversight and risk reduction approach should be developed by the Secretariat, with the assistance of the OIG. Once implemented and following validation of the outcomes by the OIG, that process should be extended to other major health product suppliers.
- c. The Executive Director should make the necessary determination to refer the facts of this report to a sanctioning process.¹⁰
- d. Procurement activities, especially single purchases of high value such as with bednet procurements, should be subject to enhanced oversight measures. The Secretariat should continue to assess and develop the feasibility and implications of having a centralized procurement mechanism for LLINs and similar high-value products managed globally for all recipients. To the extent it is not possible to implement centralized mechanisms expeditiously, then, at a minimum, such procurements should be undertaken with heightened scrutiny and considered “high risk” given the findings in this report.
- e. The OIG recommends that the Secretariat makes use of market dynamics and its pooled procurement activities to ensure demonstrated good business practices, anti-corruption measures and compliance efforts by suppliers in the LLIN industry are encouraged and rewarded through volume allocations or otherwise.
- f. The level of assurance placed on procurement agents and fiduciary agents across the portfolio should be critically reviewed, along with the terms of references and

¹⁰ In accordance with the Sanctions Procedures Relating to the Code of Conduct For Suppliers (amended October 2013), the report contains credible and substantive evidence of a breach of the Supplier Code of Conduct, including, but not limited to, corrupt, fraudulent, collusive, anti-competitive or coercive practices in competing for, or performing, a Global Fund-financed contract. Para. 17(a), http://theglobalfund.org/documents/corporate/Corporate_SanctionsProcedures_Policy_en/, accessed 3 November 2013.

procedures used by such agents. The value added of such agencies should not be unduly relied on without careful monitoring and review of their services.

- g. The Secretariat should undertake advocacy activities and compliance reviews of recipients related to the principles embodied in the Code of Conduct for Recipients, including but not limited to, anti-corruption training, adequate compliance processes, and effective procurement control processes.

D. Message from the Executive Director of the Global Fund



The Global Fund
To Fight AIDS, Tuberculosis and Malaria

Mark Tyebati, Executive Director

Mark.Tyebati@theglobalfund.org
www.theglobalfund.org

T: +41 58 791 1115
F: +41 58 791 1701

Chemins de Blandinier 8
1211 Vernier, Geneva
Switzerland

Ref: ORD/MD/SP/CK/DM/2013.11.14-Cambodia

14th November 2013

MESSAGE FROM THE EXECUTIVE DIRECTOR

Investigation Report – Cambodia

I would like to thank the Office of the Inspector General (OIG) for its thorough and insightful work on the investigation of Global Fund grants to Cambodia.

This report comes at a time when several steps at the Global Fund to significantly strengthen financial oversight and risk management are really paying off. We have built oversight and heightened risk mitigation into the implementation process for each grant, no matter how big or small. We have set up a governance and execution mechanism to recover misused funds. We have established a new framework for procurement, with a comprehensive approach to ensure all bulk purchasing is consistently undertaken in a fair, transparent, lawful and ethical manner. That in particular has shown very quick results. Over the past year, the Global Fund has tripled the value of products covered by safer pooled procurement practices. In 55 countries identified as high-risk for procurement, 83 percent of products are now in pooled procurement or by Global Fund appointed procurement agents, just above the benchmark 80 percent used in the private sector.

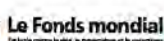
This report includes findings about incidents that occurred before these recent steps were implemented. The report summarizes the results of an investigation of Global Fund Round 1 to Round 9 grants of the National Centre for Parasitology, Entomology and Malaria Control (CNM), a Principal Recipient; the National Centre for HIV/AIDS, Dermatology and STD Control (NCHADS), also a Principal Recipient; and MEDiCAM, a Sub-recipient of the Ministry of Health and NCHADS. The investigation covered the period primarily from April 2003 to December 2010.

The investigation was initiated in March 2011, as a result of the 2009 findings of an OIG audit of Global Fund grants to Cambodia, subsequent procurement reviews by the Local Fund Agent in 2010, and whistleblower reports through OIG's whistleblower hotline, which included the identification of procurement irregularities, improperly supported expenditures, substantial weaknesses in internal controls, as well as allegations of fraud, abuse, bribery and corruption.

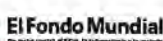
The OIG's subsequent investigation has identified evidence that senior program officials in the Cambodian government entity CNM, namely the former Director and Deputy Director, imposed a system from 2006 until around early 2011 in which international manufacturers and suppliers of long lasting insecticide-treated nets were required to make payments of



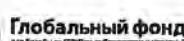
The Global Fund
To Fight AIDS, Tuberculosis and Malaria



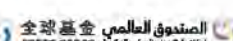
Le Fonds mondial
de lutte contre le sida, la tuberculose et le paludisme



El Fondo Mundial
de lucha contra el SIDA, la tuberculosis y la malaria



Глобальный фонд
для борьбы со СПИДом, туберкулезом и малярией



全球基金
防治艾滋病、肺结核和疟疾

الصندوق العالمي
للمكافحة فيروس نقص المناعة البشرية، السل والملاريا

commissions in connection with obtaining contracts, or as a reward for the execution of contract agreements. Specifically, CNM improperly received US\$410,712 in payments from two suppliers between 2006 and 2011.

Although this case had no direct impact on Cambodia's fight against malaria, taking commissions in exchange for contracts violates our mission of public service. We remain fully committed to pursuing fraud and taking action when we find it. After this report was completed, a Global Fund Sanctions Panel recommended suspending the two international manufacturers and suppliers, and we did so in early November 2013. Yet both of those suppliers fully cooperated with the investigation, have taken action against the employees involved, and have taken preventative steps to deter wrongful conduct in the future, agreeing that stronger measures will better serve the common goal of preventing the spread of malaria, particularly in high-risk countries.

It is worth noting that the Global Fund has supported programs in Cambodia fighting AIDS, TB and malaria with US\$331 million disbursed since 2003, achieving striking success and playing a key role in Cambodia's achievement of an 80 percent decline in malaria deaths, a 45 percent fall in TB cases and a 50 percent decline in cases of HIV.

The investigation also found that from 1 January 2009 through the end of August 2012, a senior procurement officer in the Cambodian government entity NCHADS regularly manipulated Global Fund contract procurements by tailoring bid quotations, attempting to influence the selection process, and compromising national vendors. The OIG's investigation also discovered that in 2009, MEDiCAM, a local non-governmental organization active in the health sector in Cambodia, billed the Global Fund for staff positions that were not filled or were paid simultaneously by other donors. As a result of this, the Global Fund was improperly charged US \$20,725.

The Global Fund Secretariat took several risk mitigating actions once learning about the wrongdoing. The CNM was replaced as the PR for the SSF malaria grant for the second period of implementation starting on 1 April 2013, appointing an external fiduciary agent to work within NCHADS beginning February 2013, embedding a procurement agent within NCHADS beginning October 2013, and requiring the continuation of pooled procurement for all health products. In September 2013, UNICEF began procuring all health products for Global Fund grants in Cambodia. Additional fiduciary controls are being put in place and financial control systems strengthened in the Sub-recipient, MEDiCAM and in the principal implementing entity of the national malaria program, CNM, under the new PR. In light of the findings, the Secretariat will consider what additional training, compliance and control processes might be warranted to ensure adherence to the principles embodied in the Code of Conduct for Recipients of Global Fund Resources.

The OIG has recommended that the Secretariat seek to recover from all parties responsible amounts deemed recoverable due to non-compliance with the terms of the grant agreement, and ensure such entities are held accountable for their grant management practices, as well as take the appropriate management actions to ensure that the responsible individuals are held accountable for their actions and are no longer associated with the management of grant funds.

The Secretariat is already taking initial steps towards recovery of the relevant funds. In addition, the OIG has rightly noted that remedial actions should be undertaken to address

3

the conduct of the concerned suppliers. It is essential for the Global Fund to enforce the accountability of suppliers in maintaining the integrity of Global Fund-supported procurement activities. The goal of the Global Fund's Code of Conduct for Suppliers is to describe supplier obligations in this regard. Based on the findings of this OIG report, I have requested the Global Fund's Sanctions Panel to consider the matter and advise the Secretariat on the appropriate sanction for any supplier named in this report that has breached the Supplier Code. After a full review, the Sanctions Panel will recommend what further sanctions are merited.

The Office of the Inspector General provides an essential form of quality control for the Global Fund. It plays an indispensable role in helping us all achieve our mission of effectively investing the world's money to save lives.

Sincerely



E. Background

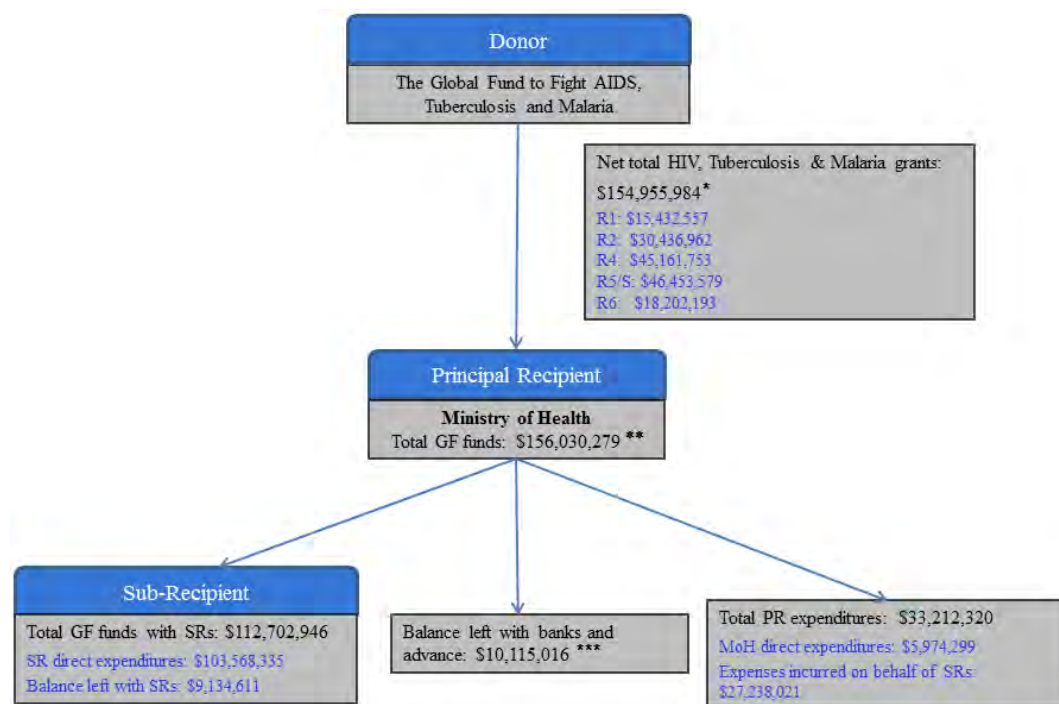
E.1. Global Fund Grants to Cambodia

15. In January 2003, the Global Fund awarded its first grants to Cambodia. The total disbursed grant amount to Cambodia as of 31 December 2010 was approximately USD 220 million, of which USD 118.1 million funded the HIV/AIDS programs, USD 72.5 million financed the malaria programs, USD 20.6 million supported the tuberculosis programs and USD 9 million paid for the Health Systems Strengthening (“HSS”) program.¹¹

E.1.1. Ministry of Health Cambodia

16. The Ministry of Health (“MoH”) was the grant implementer for the malaria, HIV/AIDS and tuberculosis programs under Global Fund financing Rounds 1 to 6, including the HSS program. As of 31 December 2010, MoH received a net total of USD 154.9 million from the Global Fund.¹²

Figure 1 : Global Fund grants flow chart to the MoH in USD (as of 31 December 2010)¹³



17. The OIG investigation reviewed the following in MoH’s accounts:

- Expenses incurred by MoH for itself;
- Expenses incurred by MoH through its Sub-recipients (“SRs”) and Sub-sub-recipients (“SSRs”) (including advance payments provided).

¹¹ <http://portfolio.theglobalfund.org/en/Downloads/DisbursementsInDetail>, accessed 17 January 2013.

¹² Figure does not include income generated (USD 1,074,295).

¹³ * USD 154,955,984 = Total Round 1-6 grants less a USD 731,060 refund for Round 1.

**USD 156,030,279 = Net total grants plus USD 1,074,295 for Round 2-6 income generated.

***USD 10,115,016 takes into account approximately USD 2,468 that lies in Accounts Payable. Additionally, there is a USD 3 discrepancy based on MoH’s records.

18. During the review process, it was noted that the Global Fund transferred a total of USD 156 million to MoH for Rounds 1 to 6. Of this amount, USD 6 million in direct expenditures was incurred by MoH for its own expenses, and USD 131 million incurred by SRs and SSRs or by MoH on their behalf.

19. In 2007, the Country Coordinating Committee (“CCC”), formerly known as the Country Coordinating Mechanism (“CCM”), noted that the growing size of the grants had strained the MoH’s capacity, and a decision was made to appoint the three MoH institutions central to fighting the three diseases as Principal Recipients (“PR”s). In 2009, MoH was replaced as PR by these three agencies: 1) the National Centre for HIV/AIDS, Dermatology and STD Control (“NCHADS”) in Round 7; 2) the National Centre for Parasitology, Entomology and Malaria Control (“CNM”) in Round 2 RCC; and 3) the National Centre for Tuberculosis and Leprosy Control (“CENAT”) in Round 7.

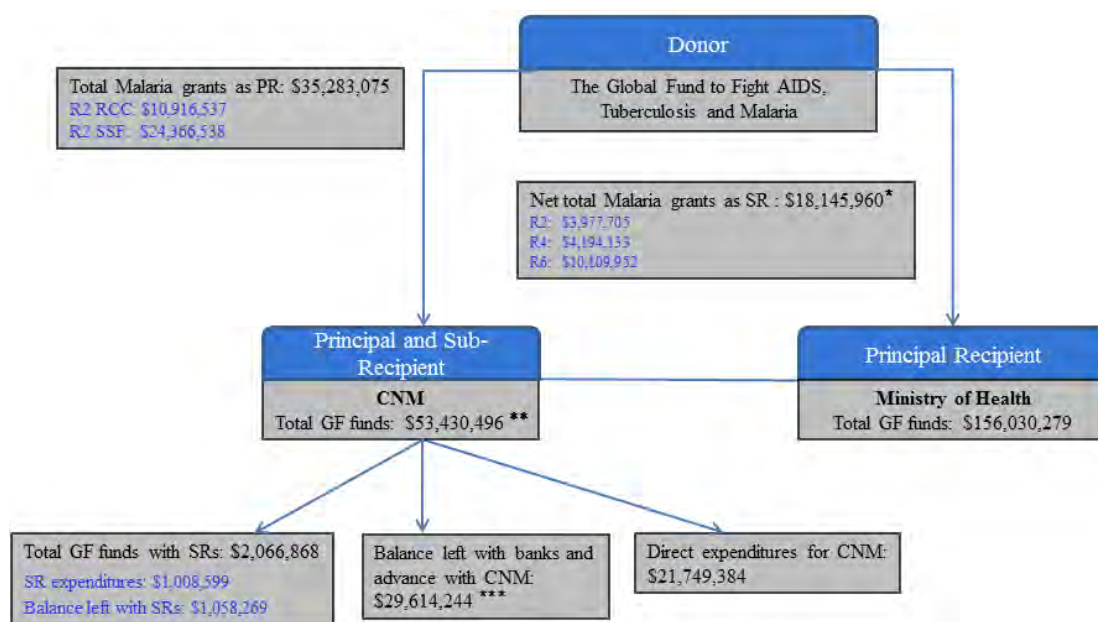
E.1.2. National Centre for Parasitology, Entomology and Malaria Control

20. CNM was established in 1984 as a semi-autonomous institution within the MoH. Its Director reports to the Director General of Health Services. CNM is responsible for controlling vector-borne diseases by conducting research, implementing, monitoring and evaluating disease control programs, and training health staff. CNM was a SR to the MoH under Rounds 2, 4, and 6. On or around 1 May 2009, CNM became a PR under the Round 2 RCC and SSF malaria grants.¹⁴

21. Since 2003, CNM has been a grant implementer for the Global Fund’s malaria programs. In addition to implementing programs, CNM also issued sub-grants to SRs and SSRs to implement on its behalf. Of the grants where CNM has served as PR, CNM has accounted for 75 percent of grant expenditures to date; the remaining 25 percent is distributed to SRs and SSRs for their expenditures. As of 31 December 2010, CNM had received USD 53.4 million from the Global Fund. As a SR to MoH for Round 2, 4 and 6, USD 18.1 million was transferred to the bank accounts of CNM by MoH, and as a PR for Rounds 2 RCC and a SSF CNM received an additional USD 35.3 million directly from the Global Fund.¹⁵

¹⁴ http://www.theglobalfund.org/GrantDocuments/CAM-202-G13-M_GA_2_en/, accessed 18 March 2013.

¹⁵ “Core_disbursement_DetailsRaw_Report_en.xls”

Figure 2 : Global Fund grants flow chart to CNM in USD (as of 31 December 2010)¹⁶

22. Of USD 21.7 million of expenses incurred by CNM, USD 15.8 million relate to its direct expenditures as SR under MoH. CNM's direct expenditures as PR amount to almost USD 5.9 million.

E.1.3. National Centre for HIV/AIDS, Dermatology and STD Control

23. NCHADS is a semi-autonomous institution within the MoH. It falls under the responsibility of the MoH's Director General of Health. NCHADS was established in 1998 following the amalgamation of the National Aids Program ("NAP") and the National STD and Dermatology Clinic. NCHADS operates in 24 provinces throughout the country. NCHADS's primary objective is to respond to the HIV/AIDS epidemic through the implementation of the HIV/AIDS strategic plan. NCHADS began receiving Global Fund financing as a SR to MoH in 2003. It operated as a SR under Rounds 1, 2, 4, and 5. NCHADS became a PR under the Round 7 grant in November 2008 and continues to serve in this capacity for the on-going Round 9/SSF grant.

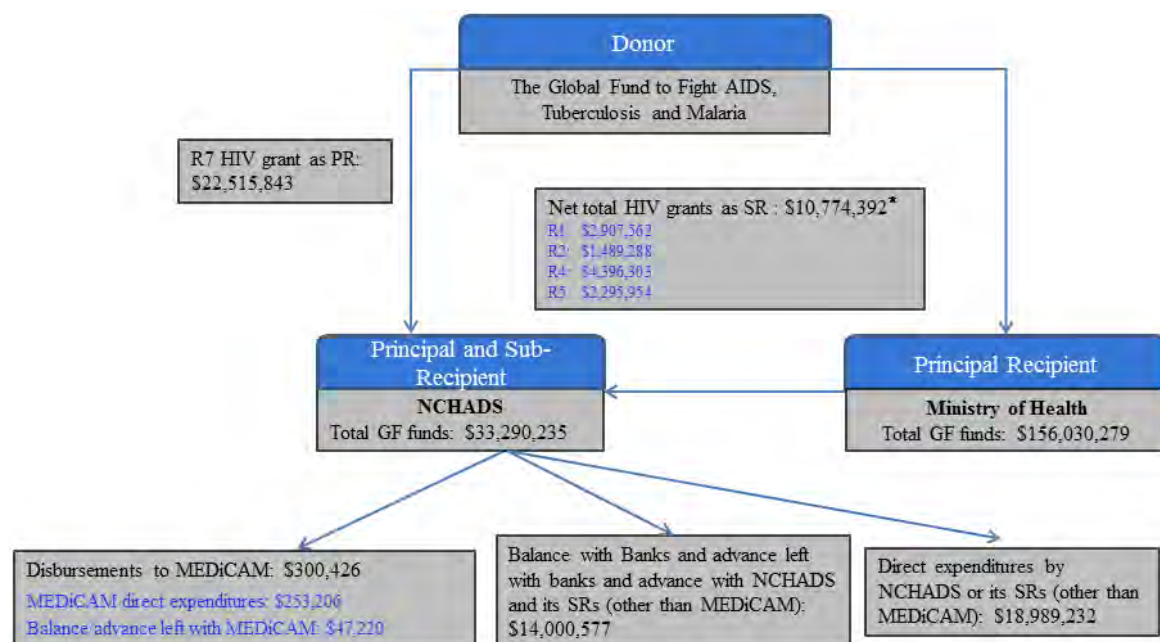
24. As of 31 December 2010, a total of USD 33.3 million of grant funds were transferred to the bank accounts of NCHADS, of which USD 10.7 million was disbursed from MoH to NCHADS under Rounds 1 through 5. This investigation also examined expenditures made pursuant to Round 9/SSF.¹⁷

¹⁶ * USD 18,145,960 = Total Round 2-6 grants less a USD 135,830 refund for Round 2.

^{**} USD 53,430,496 = Total malaria grants as PR and malaria grants as SR plus USD 1,461 for Round 6 income generated.

^{***} The USD 29,614,244 takes into account USD 2,690, a miscellaneous difference between the MoH and the CNM general ledgers.

¹⁷ <http://portfolio.theglobalfund.org/en/Downloads/DisbursementsInDetail>, accessed 17 January 2013 (a total of 43.6 million was disbursed from March 2011-January 2013, though OIG only examined disbursements through 31 August 2012).

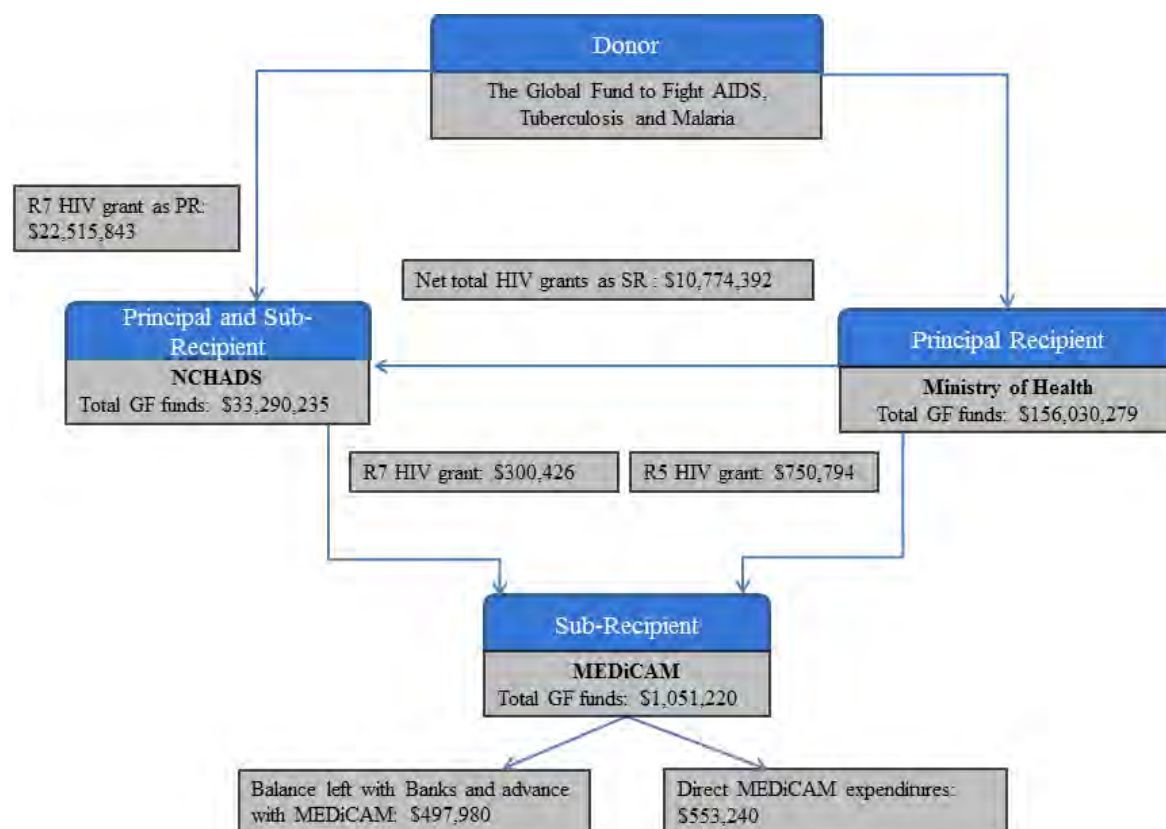
Figure 3 : Global Fund grants flow chart to NCHADS in USD (as of 31 December 2010)¹⁸

25. Of the USD 33.3 million received by NCHADS, USD 18.9 million was booked as expenses incurred by NCHADS, and USD 14 million recorded as the remaining balance left with the banks and advance payments made to SRs and SSRs. NCHADS disbursed USD 300,426 to SR MEDiCAM under the Round 7 HIV grant.

E.1.4. MEDiCAM

26. MEDiCAM is a membership organization for local nonprofit association and non-governmental organizations (“NGOs”) active in the health sector in Cambodia and counts approximately 120 Civil Society Organizations (“CSOs”) as active members. MEDiCAM receives funding from its active members through membership fees and grants from various international donor partners. MEDiCAM is engaged to facilitate policy exchanges between the local health partners and the government of Cambodia and to facilitate advocacy and capacity building of its members. MEDiCAM is currently a SR of Global Fund grants under the HSS grant as managed by PR-MoH and under the HIV grant managed by PR-NCHADS.

¹⁸ * USD 10,774,392 = total Rounds 1 to 5 grants less a USD 283,457 refund to MoH for Round 1 and a USD 31,258 refund to MoH for Round 2.

Figure 4 : Global Fund grants flow chart to MEDiCAM in USD (as of 31 December 2010)

27. As of December 31, 2010, MEDiCAM had received USD 750,794 in funds from MoH under Round 5, and USD 300,426 from NCHADS under Round 7, for a total of USD 1,051,220.¹⁹

28. The general ledger account of MEDiCAM listed USD 553,240 as expenses as of 31 December 2010.

E.1.5. Local Fund Agent

29. The Global Fund engaged KPMG LLP (“KPMG”) as the Local Fund Agent (“LFA”) of the Global Fund grants in Cambodia from their inception until the end of September 2008. The Swiss Tropical and Public Health Institute (“STI”) is the current LFA for the Global Fund grants to Cambodia.

E.1.6. Country Coordinating Committee

E.1.6.1. Background

30. The CCC operates as the CCM for Cambodia. It is a country-level multi-stakeholder partnership, unique to the Global Fund’s grant model, that includes representatives from the public and private sectors, including governments, multilateral or bilateral agencies, non-governmental organizations, academic institutions, private businesses and people living with the three diseases.²⁰

¹⁹ Per MoH, NCHADS and MEDiCAM general ledgers and related bank statements.

²⁰ <http://www.theglobalfund.org/en/ccm/>, accessed 15 May 2013.

E.2. Allegations

31. The OIG initiated its investigation in Cambodia in March 2011, following a 2009 OIG internal audit of Global Fund grants. The purpose of the audit was to assess the adequacy of internal controls and programmatic processes to manage Global Fund grants in Cambodia. As part of this audit, the OIG examined a total of 13 grants disbursed to the various PRs and SRs.

32. The results of the audit led to a review of procurements by the LFA in 2010. This investigation responded to red flags raised by the internal audit and the resulting 2010 LFA procurement review, in addition to multiple allegations of fraud, abuse and procurement irregularities reported to the OIG through its website hotline and email communications from individuals in the country.

F. Methodology

F.1. OIG Investigations Unit

33. See Annex 7A.

F.2. Applicable Concepts of Fraud and Abuse

34. See Annex 7B.

F.3. Investigative Process

35. As part of its investigation, two in-country missions were conducted in March 2011 and June 2012. The first in-country mission focused on collecting relevant evidence materials. The second in-country mission focused on recovering incomplete bank statements, procurement files, and unsupported general ledger transactions and on interviewing key witnesses, subjects and vendors who had been identified through the review and analysis of the evidence collected.

F.4. Investigative Challenges

36. **General limitations of the investigation:** The OIG investigation was limited by significant internal and external challenges. Several of the witnesses who cooperated with the OIG investigation expressed concerns about being identified by name in this report, indicating that they would be subject to retaliation if the information they provided was publicly attributed to them. As a result, these individuals are identified in this report as “covered” witnesses and have been promised anonymity. Their information is included in this report as it has been corroborated by other witnesses and documents.

37. **Non-cooperation of NCHADS vendors:** The OIG investigation sought to speak to the main vendors that were awarded the most contracts (in term of value and volume) by NCHADS, but only three out of eight of those vendors agreed to be interviewed. Dynamic Pharma Co., Ltd., Europe Continents, and Kuang Hsien Medical Instrument Co., Ltd. met with OIG officials for an interview. Medicom Co., Ltd., Bright Diamond, Castle Angkor Pitch Co., Indace International, and Pharmacy Sophanna declined to be interviewed by the OIG. The table below details the aggregate value of the Global Fund program-related contracts awarded to these eight vendors through the end of 2010. Highlighted in red are the vendors that failed to agree to interview requests by the OIG during its investigation.

Figure 5: Table of Global Fund-financed contracts awarded to eight selected vendors (through 31 December 2010)

Vendor Name	Beneficiary Name					Total (In USD)
	MoH	CNM	NCHADS	MEDICAM	CENAT	
Bright Diamond	-	-	26,347	-	-	26,347
Castle Angkor Pitch Co.	967,315	-	39,466	-	-	1,006,781
Dynamic Pharma Co., Ltd.	511,242	166,686	121,872	-	130,054	929,854
Europ Continents	171,480	-	122,226	-	48,581	342,287
Indace International	594,842	34,119	34,464	-	-	663,425
Kuang Hsien Medical Instrument Co., Ltd.	142,844	-	24,835	-	-	167,679
Medicom Co., Ltd.	48,726	-	810,719	-	400,845	1,260,290
Pharmacy Sophanna	-	480,330	-	-	-	480,330
Total (in USD)	2,436,449	681,135	1,179,929	-	579,480	4,876,993

38. Incomplete procurement files: Upon review of the general ledger accounts and procurement files, it was noted that procurement files were either completely missing or that selected elements of the files were not made available to OIG. These issues significantly prolonged the investigation.

- a. In the case of the MoH, for a sample of ten procurement files reviewed for the period 2007-2010 valued at USD 7,990,891, files were missing either one or more of the following documents: purchase orders, payment vouchers, third party delivery documents, bidders' quotations, request for proposals, contract awards and invoices.
- b. At CNM, for a sample of 18 procurement files reviewed for the period 2005-2010 valued at approximately USD 8,399,719, significant files, such as the documents listed above as missing for MoH, were similarly incomplete.
- c. At NCHADS and MEDiCAM, selected procurement files amounting to USD 615,917 and USD 73,029, respectively, were reviewed. Important elements were missing from the procurement files, such as the documents listed above as missing for MoH.

39. Missing bank statements of accounts: With the recipients' written consent, the OIG requested bank statements from 2004 through 2010 relating to the recipient grant fund accounts from six banks, including the National Bank of Cambodia. However, the OIG did not receive all the bank statements requested during its first in-country mission in March 2011 and long delays ensued before the OIG ultimately received the complete information requested from all banks in July 2012.²¹

40. Beneficiary names not available in bank statements: Following the review of financial statements obtained independently by the OIG, it was noted that beneficiary names were not available in the bank statements of selected accounts held at the Cambodian national banks. This lack of information also delayed and prolonged the investigation.

41. Possible attempts to intimidate staff during investigation: It appears that individuals affiliated with PRs MoH and CNM took actions that resulted in intimidating the OIG team. Photographs of the OIG staff, locally-hired Cambodian contractors, and other external consultants assisting with the investigation, were taken multiple times without authorization while they were working causing distress, delays and work interruptions. These actions further disrupted the investigative work of OIG as stricter security measures had to be implemented to avoid similar future occurrences.

42. Missing or unsupported expenditure documentation: Further challenges included the failure of grant recipients to provide the OIG with full access to financial accounting and procurement and supply management books and records. Upon review of the provided files for completeness, it was noted that some were either completely empty or that selected and critical elements of the files had not been made available to the OIG despite an official request to provide the OIG with complete and comprehensive records. As a result, out of approximately USD 220.3 million of expenses, supporting documentation relating to approximately USD 86.9 million was made available to the OIG and subsequently reviewed.

²¹ The National Bank of Cambodia, Acleda Bank Plc, and Foreign Trade Bank of Cambodia only provided a portion of the requested information until OIG revisited its request in June 2012. May Bank, Canadia Bank and Cambodia Bank all provided the requested materials upon receiving the first request.

F.5. Scope of Investigation

43. The OIG report focuses on investigative findings in connection with Global Fund Rounds 1 through 7 of the HIV and malaria programs in Cambodia from 2003 to 2010, in addition to Round 9/SSF for the HIV program²² and Rounds 2 RCC and SSF for the malaria program.

44. The OIG reviewed USD 86.9 million of expenditures from the time period covered by this investigation.

45. Five grant recipient entities were under review during OIG's investigation, including two entities for which there are no findings in this report: MoH and CENAT. This report therefore focuses on findings that pertain to two PRs, CNM and NCHADS, and SR MEDiCAM.

²² With respect to grant recipient NCHADS, the OIG reviewed certain supporting documentation relating to disbursements and expenditures from Round 9/SSF through 31 August 2012. See OIG report § G.2.3, fn. 295.

G. Investigative Findings

G.1. National Centre for Parasitology, Entomology and Malaria Control

G.1.1. Overview

46. CNM began cultivating relationships that encouraged, and eventually required, payments in connection with contracts even before it awarded the first contract to provide Long Lasting Insecticidal Nets (“LLINs”) to Cambodia in 2006. As early as 2003, a senior sales manager (“SCS Sales Manager” or “Sales Manager”) from one international supplier, Sumitomo Chemical Singapore (“SCS”), began to develop a relationship with CNM’s Director at a seminar on LLINs during which the Sales Manager discussed SCS’s desire to provide LLINs to Cambodia.²³ In 2004, SCS began paying for trips for CNM’s Director.²⁴ During these early meetings, the Director informed the SCS Sales Manager that a major international competitor was similarly interested in delivering bednets to Cambodia and was willing to pay for this opportunity²⁵. With this information, the SCS Sales Manager understood that his company would have to make a payment to the Director in order to win contracts from CNM.²⁶ In 2002, senior managers from international LLIN manufacturer and supplier, Vestergaard Frandsen (“VF”), also began to forge a relationship with top officials at CNM.²⁷

47. SCS’s Sales Manager knew SCS could not pay cash to CNM in order to win contracts²⁸, so a fictitious consultancy arrangement was created whereby the supplier paid a commission payment to this consultant/agent for every contract in which it provided LLIN products to Cambodia. VF undertook an identical arrangement. It was CNM’s Director’s idea to hire this “consultant”,²⁹ and the senior managers agreed to this arrangement despite never speaking to or meeting the consultant.³⁰

48. With this arrangement in place, CNM began to award LLIN contracts to SCS in 2006. Altogether, this supplier won at least seven contracts in direct procurements from CNM, sometimes facilitated by WHO as Procurement Agent, which were valued at over USD 4.6 million.³¹ The supplier paid a “commission” per the consultancy agreement on all of these contracts in amounts between 2.8 and 6.5 percent of the total value of the contracts. This resulted in USD 256,471 of improper commission payments made by the supplier to CNM in exchange for LLIN contracts awarded.

49. The same “pay to play” scheme was enacted with competitor supplier VF beginning in 2006. As mentioned above, VF began cultivating a relationship with CNM’s Director in 2002. VF also engaged in a fictitious agency agreement with an agent who received a commission for all contracts that resulted in nets being delivered to Cambodia, even when

²³ Interview of SCS Sales Manager, 17 August 2012 (Record of Conversation (“ROC”) ¶ 8).

²⁴ 15 July 2004 email between SCS Sales Manager and CNM regarding payment of airfare for CNM Director’s trip to Singapore.

²⁵ Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 12); Interview of SCS Sales Manager, 20 October 2012 (ROC ¶ 4-5, 42).

²⁶ Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 12); Interview of SCS Sales Manager, 20 October 2012 (ROC ¶ 5).

²⁷ 24 October 2002 email re: “PermaNet(R)” from VF to CNM Director discussing meeting with VF’s Regional Director (same person as the Director in VF’s Asian branch during 2006-2010) and 08 October 2003 email re: “PermaNet(R) for Global fund project in Cambodia” between VF Regional Director and CNM Director regarding a meeting between VF and CNM’s Director.

²⁸ Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 13).

²⁹ Ibid. at ¶ 13, 38.

³⁰ Ibid. at ¶ 14-16; VF Submission to OIG (“VF Submission”), dated 1 February 2013, p. 10-11, §7.1.2 and p. 13, §7.2.

³¹ This amount does not include the additional USD 6.1 million in contracts procured under the Voluntary Pooled Procurement (“VPP”) mechanism.

the procurements took place under the Voluntary Pooled Procurement (“VPP”) mechanism.³² Significantly, this “agent” had almost the identical name as the “consultant” hired by the competitor supplier, SCS, described above. As with SCS, CNM’s Director nominated this particular individual as an agent for VF. From 2006 forward, VF obtained over USD 7.1 million in bednet contracts in Cambodia and paid USD 154,241 in improper commission fees starting at 2.25 percent of the total contract value for Global Fund funded contracts. These payments were made in flat fees or as percentages of the total contract value (between 2.25 and 2.5 percent).

50. These “commission” payments made by SCS and VF (collectively “the Suppliers”) ultimately went to CNM’s Director and, occasionally, to its Deputy Director. At their direction, the relevant Finance and Accounting departments of the Suppliers wired money directly from corporate bank accounts, pursuant to their normal procedures, into the personal bank accounts of individuals designated by the Director and Deputy Director.

51. Beginning on or around 2011³³, the Global Fund decided to conduct the procurement of pharmaceutical and health products through VPP. This was compulsory for all Cambodia grants. While it appears that SCS ceased making commission payments once VPP was enacted, as instructed by SCS’s headquarters office³⁴, VF continued to make commission payments pursuant to its agency agreement despite CNM’s lack of involvement in the procurement process.³⁵ The OIG uncovered no evidence to suggest that Population Services International (“PSI”), as VPP implementer, was aware of the improper commission payment schemes discussed in this report.

52. These CNM officials, along with other CNM staff, also accepted gifts and favors from Suppliers as part of their ongoing relationships and in furtherance of the Suppliers’ efforts to develop said relationships so as to ultimately win Global Fund-financed contracts. Occasionally, these officials offered inside information regarding the procurement process as an incentive, thereby engaging in unfair procurement practices and anti-competitive behavior.

53. The CNM Director whose actions are discussed throughout this section retired from this position on 1 May 2011, but it seems he remained connected to both the Cambodian government and the procurement of bednets on its behalf beyond this date. (See OIG report ¶ 54, 112, 147-149 and Annex 1, Figure 55). As of 25 July 2012, he was serving as Advisor to a member of the Cambodian Ministry.³⁶ The CNM Director acknowledged his influence in the Cambodian bednet market when he told the OIG during its investigation, “I tell people to buy Olyset nets, yes. I introduced [bilateral organization], sometime... I introduce [NGO] to buy Olyset or to buy PermaNet nets.”³⁷

54. It should be noted that the current CNM Director did not take office in CNM until 6 May 2011 and was not nominated as Director until 11 May 2011. As such, the current CNM Director is not implicated in any of this report’s findings. However, while the CNM Director at issue in this report supposedly left office on 1 May 2011, the evidence shows that he continued to hold a physical office on CNM premises, to communicate from a CNM email address, and to receive (and subsequently forward to the Suppliers) information

³² According to VF, it is standard practice that an agent receive commissions for all sales within a given territory, even when procurement obtained by other sources. VF response to OIG draft report, dated 26 May 2013, p. 12-13, §3.1.

³³ The Global Fund introduced the actual grant condition to use VPP in the beginning of 2010; though, due to VPP’s long lead times for delivery of nets in 2010, certain procurements continued to be facilitated by WHO, as a Procurement Agent. Attachment to 2 October 2013 email from Global Fund Senior Fund Portfolio Manager to OIG, Comments to OIG draft report, p. 22.

³⁴ 18 May 2011 email from Sumitomo Managing Director to SCS Sales Manager re: “VPP Cambodia”.

³⁵ The CNM Director at issue in this report resigned from CNM in early May 2011. As this report discusses, it appears he remained involved in procurements to CNM beyond this date, including those done under VPP. See, e.g., OIG report ¶ 143.

³⁶ 25 July 2012 email from CNM Director to OIG.

³⁷ Audiotape of Interview with CNM Director, 26 July 2012, at 19:29 – 19:50.

related to procurement of bednets for CNM. By doing so, CNM as an institution tolerated, and even enabled, the then-former Director to continue to act with the apparent authority of the position he formerly held, which allowed him to continue his scheme of obtaining improper commission payments from one Supplier beyond his technical retirement from the post. The current CNM Director said he was unaware that the former Director was continuing to receive procurement-related information after he officially stepped down as CNM's Director in May 2011.³⁸

55. After being alerted to OIG's preliminary findings in this investigation, on 1 October 2012 CNM removed the Deputy Director³⁹ discussed in this report to a non-Global Fund program. There were between 8 and 12 Deputy Directors at CNM during the relevant time period of this investigation.⁴⁰ This Deputy Director remained employed at CNM until 13 September 2013.⁴¹

56. In all of the above procurements, bednets were produced and delivered successfully. However, the procurement process was tainted due to CNM's requirement that the Suppliers pay for the opportunity to provide bednets to Cambodia. These improper commission payments directly benefitted CNM's executive managers, along with the Suppliers who obtained contracts as a result, and were made in consideration for obtaining bednet contracts in Cambodia, thus compromising the procurement practice.

G.1.2. Procurement of LLINs

57. Until 2011 when procurements were handled on an international level under VPP, CNM procured LLINs through direct procurements.⁴² In order to assist it in the procurement of a large volume of LLINs, CNM occasionally engaged the assistance of the WHO as Procurement Agent.⁴³ In such cases, CNM would prepare requisition plans for tender offers and submit them to WHO Cambodia, who in turn would forward these plans to the WHO's Western Pacific Regional Office in Manila for processing. Procurement operations administered on behalf of Global Fund programs were conducted through WHO's procurement unit in the WHO Regional office for the Western Pacific Region in Manila, Philippines. As such, WHO Manila facilitated the procurement and the selection of entities that would supply LLINs to CNM and WHO Cambodia received the actual goods. WHO's Global Service Centre in Malaysia took instructions from WHO Manila and executed payment of any purchase orders upon request.⁴⁴ OIG found no evidence that WHO had any knowledge of or participation in the schemes discussed throughout this report.

58. Throughout these procurements, CNM maintained its Bid Evaluation Committee ("BEC"), which is part of the procurement department and which played an integral role in selecting the ultimate entity to win LLIN contracts.⁴⁵ CNM's Deputy Director was the chairperson of the BEC. The BEC sets the criteria for scoring the technical specifications

³⁸ CNM letter response to OIG draft report, dated 2 July 2013, p. 5-6.

³⁹ 28 September 2012 letter from CNM Director to Global Fund Regional Manager regarding replacement of Deputy Director as Manager of Global Fund malaria SSF grant as of 1 October 2012.

⁴⁰ 3 July 2013 email from current CNM Director to OIG.

⁴¹ Letter from Cambodian CCC Chair and Vice Chair to OIG, dated 23 September 2013, ¶ 4.

⁴² OIG uses the term "direct" to indicate that procurements were done by MoH or CNM regardless of whether they were done with the assistance of Procurement Agent WHO. It is also a means to distinguish these contracts from those conducted under the VPP mechanism.

⁴³ WHO Manila, as Procurement Agent, facilitated the following contracts for CNM:

- (i) 120,000 LLINs in October 2006 (won by SCS);
- (ii) 120,000 LLINs in June 2010 (won by SCS);
- (iii) 450,000 LLINs in July 2010 (won by VF).

VF maintains that it never obtained any contracts to provide bednet products to CNM under direct procurement. VF Response to OIG report, dated 26 May 2013, p. 7, ¶13.

⁴⁴ 14 June 2013 email from WHO to OIG.

⁴⁵ See, e.g., "Minutes of Technical Proposal Opening of Long-Lasting Insecticidal Nets Under the GFATM Round 6 Phase 1", dated 2 June 2008.

of LLINs. A subset of the BEC, the Technical Evaluation Committee, also chaired by CNM's Deputy Director, then evaluates bidders against these technical specifications.⁴⁶ Then the BEC recommends the awarding of a LLIN contract to a specific bidder after reviewing the financial proposals. CNM's Director selected the members of the BEC, including the Chairperson of the BEC.⁴⁷ CNM's Director served as an Observer during certain BEC procedures, such as the opening of bidders' technical and financial proposals.⁴⁸ Additionally, the Secretary of State under MoH who was responsible for administering Global Fund grants ("Secretary of State"), had oversight and approval authority for CNM's procurement function and approved all contracts exceeding USD 25,000 during the time MoH was PR for the malaria programs.⁴⁹

59. In March 2011, CNM Cambodia registered to the VPP mechanism and all procurements were handled at the international level by PSI as VPP Procurement Agent.⁵⁰ However, the PR still played a role at various stages of the VPP process, such as setting product specifications, quantities and delivery dates, and reviewing and accepting price quotations, in line with the mandate given by the Global Fund to the PR under VPP Procurement.⁵¹

60. Proper selection of a manufacturer and supplier of LLINs is of critical importance to the process, as the bednets must meet quality standards set forth by the WHO Pesticide Evaluation Scheme ("WHOPES"). The nets also must be procured and received in a timely fashion to ensure effective and comprehensive distribution in order to meet the goal of safeguarding the population from malaria. In this regard, the Global Fund requires procurement exercises to be undertaken in a fair, transparent, lawful and ethical manner, and forbids unethical and corrupt acts in connection with the use of its funds, including bribery, kickbacks and illegal gratuities.⁵²

G.1.3. LLIN Suppliers

61. SCS was established and incorporated on 15 July 1996 as a wholly-owned subsidiary of parent company Sumitomo Chemical Company, Ltd. ("Sumitomo Chemical Japan"), based in Tokyo, Japan and established in 1919. SCS's headquarters and MMA⁵³ production plant are in Singapore.⁵⁴

62. For seven of the contracts at issue in this section, SCS was the regional distributor within the South East Asia and Oceania regions of a WHOPES-approved insecticide-treated net called Olyset, appointed by the manufacturer and patent-owner, Sumitomo Chemical Japan. It bid on CNM's proposed contracts for the supply of LLINs.

63. From 2006 until 2010, SCS was the sole supplier of LLINs to CNM funded by the Global Fund, entering into contracts to provide over 874,000 LLIN products to CNM during this time period.⁵⁵ These contracts total approximately USD 4,627,472 in value. In 2011, Sumitomo Chemical Japan, the parent company, assumed responsibility for the

⁴⁶ See, e.g., "Report of Financial Proposals Opening of Long-Lasting Insecticidal Nets Under the GFATM Round 6 Phase 1 and Recommendation for Approval", dated 6 June 2008.

⁴⁷ MoH-PR Procurement Guidelines, Version 8, revised August 2006, § II.3.

⁴⁸ See, e.g., "Report of Financial Proposals Opening of Long-Lasting Insecticidal Nets Under the GFATM Round 6 Phase 1 and Recommendation for Approval", dated 6 June 2008.

⁴⁹ MoH-PR Procurement Guidelines, Version 8, revised August 2006, § II.1.

⁵⁰ Pursuant to the OIG audit review in 2009, as well as the LFA procurement reviews, the Global Fund instructed Cambodia to conduct its procurements through VPP or a UN agency, such as WHO or UNICEF.

⁵¹ Global Fund "Procurement Support Services Guidelines for Participation Voluntary Pooled Procurement Process", dated March 2011.

⁵² MoH-PR Procurement Guidelines, Version 8, revised August 2006, § I.2 and I.3.

⁵³ MMA stands for Methyl Methacrylate Monomer.

⁵⁴ http://www.scs-chem.com.sg/aboutus_profile.html, accessed 7 June 2013.

⁵⁵ This figure is based on direct sales from SCS to CNM. It does not include the 1,571,000 LLIN products sold directly from manufacturer parent company, Sumitomo Chemical Japan, under VPP.

contracts with CNM resulting in more than USD 6 million of additional LLIN contracts, for a total of USD 10.7 million of bednet contracts.⁵⁶

64. The second international supplier, VF, was established in Denmark in 1957 and is now headquartered in Lausanne, Switzerland. It is a private company in the business of disease control products including malaria, diarrhea, pneumonia, HIV/AIDS and other tropical diseases. It also manufactures a WHOPES-approved LLIN product named PermaNet.⁵⁷

65. VF has been awarded four contracts to provide almost 1.8 million LLIN and Long Lasting Insecticidal Hammock Net (“LLIHN”) products to Cambodia since 2006, totaling approximately USD 7,139,134 in value. Of these contracts, the recipient of the first two was PSI as a SR of Global Fund funding, and the recipient of the last two contracts was CNM, with the 2010 contract facilitated by WHO and the 2011 contract (in three parts) procured under VPP.⁵⁸

G.1.4. Facts and Documentary Evidence

SUMITOMO CHEMICAL SINGAPORE

G.1.4.1. SCS made USD 256,471 in improper commission payments to Cambodian government officials in order to secure Global Fund-financed LLIN contracts in Cambodia

66. Between 2006 and 2010, SCS obtained approximately USD 4,627,472 of contracts to provide LLINs directly to CNM in Cambodia. The investigation has revealed that in connection with these contracts, SCS routinely made improper “commission” payments to the Director and Deputy Director of CNM on each contract it entered into with CNM to supply LLINs from 2006 through 2010.

67. In total, CNM officials, namely the Director and Deputy Director, received USD 256,471 from SCS in payments from SCS during the time SCS contracted directly with CNM to provide LLINs.⁵⁹

68. The SCS Sales Manager responsible for the Cambodia region was also responsible for cultivating a relationship with CNM in order to achieve LLIN business in Cambodia.⁶⁰ The SCS Sales Manager met the CNM Director around 2003.⁶¹ From the beginning, the CNM Director made it clear to the SCS Sales Manager that some kind of commission payment would be necessary in order for SCS to win LLIN contracts from CNM. In their initial conversations, the Director commented that a competitor company, VF, was willing to pay 80 to 90 cents on the dollar per net for the opportunity to deliver bednets to Cambodia.⁶² At this point, the SCS Sales Manager understood that “if this is the only way to get into the country, by paying off somebody, okay.”⁶³ Even CNM’s Director acknowledged the importance of forging a close “relationship”⁶⁴ in order to obtain business, stating “[Bidders] want to make friendship with us. You know I can say, yes, because not only this company, all company do the same way. When you want to do business, they give you some gifts like a tie, like a pen.”⁶⁵

⁵⁶ See chart listing Global Fund-financed contracts with SCS, Figure 27, *infra*.

⁵⁷ <http://www.vestergaard-frandsen.com/our-passion/about-us>, accessed 15 May 2013.

⁵⁸ See chart listing Global Fund-financed contracts with VF, Figure 47, *infra*.

⁵⁹ This amount includes LLIN contracts facilitated by WHO as Procurement Agent, as CNM deemed these to be direct contracts from SCS.

⁶⁰ Interview of SCS Sales Manager, 17 August 2012 (ROC ¶18).

⁶¹ *Ibid.* at ¶ 8.

⁶² *Ibid.* at ¶ 12; Interview of SCS Sales Manager, 20 October 2012 (ROC ¶ 5).

⁶³ Transcript of interview with SCS Sales Manager, 20 October 2012, p. 12.

⁶⁴ Audiotape of interview with CNM Director, 26 July 2012, at 37:44.

⁶⁵ Audiotape of interview with CNM Director, 26 July 2012, at 39:00.

69. However, since the Sales Manager knew that SCS could not pay cash outright in order to secure this business, a different scheme was devised.⁶⁶ The CNM Director suggested to the SCS Sales Manager that SCS hire a local “consultant” in Cambodia who could receive the commission payments in country and pass them on to him. The amount of these commission payments would be calculated as a percentage of the value of each contract.⁶⁷ The CNM Director then provided the name of a consultant, “Chhounou Kimchenda”,⁶⁸ for this purpose. The SCS Sales Manager endorsed⁶⁹ the use of this consultant to SCS management, and obtained approval from his supervisor, a Managing Director (“Sumitomo Managing Director” or “Managing Director”) located in Malaysia, to engage CNM in this manner.⁷⁰ The investigation did not reveal any selection process or consideration of other candidates before SCS made this decision. Both the Sales Manager and the Sumitomo Managing Director were interviewed by the OIG. The Sales Manager explicitly acknowledged that they were both aware that payments would be going to the CNM Director personally⁷¹, and that these payments were required in order for SCS to maintain competitiveness in the Cambodia market.⁷²

70. The consultancy agreement allowed SCS to pay its agent a percentage of the total value of the contract for work obtained in Cambodia. In its standard consultancy agreements, SCS allows for a fixed percentage for commission payments to its agents. However, the agreement for Cambodia was different from previous consultancy agreements SCS had entered into because it contained a special clause that, in addition to the standard 4 percent commission granted for services rendered, allowed for a “bonus” payment on a “case-by-case basis.”⁷³ (See Annex 1, Figure 6). The vague language of this clause allowed the Sales Manager to push improper commission payments through SCS’s accounting channels up to 6.5 percent of the total value of contracts.

71. Once the mechanism for making the payments was well in place, and after CNM’s Director began to receive his “commission” payments, in 2008 CNM’s Deputy Director and Head of the Procurement Bid Evaluation and Technical Evaluation Committees of CNM, began communicating to SCS her insistence on payments to her as well.⁷⁴ After SCS won a tender offer in 2008, CNM’s Deputy Director asked the SCS Sales Manager if he could give the tender committee a commission in light of the fact it was the Khmer New Year.⁷⁵ CNM’s Director reiterated this request by stating: “The committee do hope your company will win this bid (I try all my best). Because, we dropped PermaNet and Interceptor net. Now only 3 LLMIN in this process. But the procurement committee ask me to request some small commission (1 or 2%) from you.... In this case when they ask you about this you can have this idea with the committee or you can support as 2% for commission to avoid future procurement (maybe affect to my benefit). Up to you to

⁶⁶ Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 13).

⁶⁷ Interview of SCS Sales Manager, 17 August 2012 (¶ 24-25, 29-31, 38-41).

⁶⁸ Throughout this report, the consultant/agent’s name is placed in quotations to reflect the variety of spellings used by the Suppliers and CNM officials when referring to this individual.

⁶⁹ Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 14-16).

⁷⁰ See Interview of SCS Sales Manager, 20 October 2012 (ROC ¶ 5, 10-11, 13, 16, 27, 33) (explaining that SCS Sales Manager has two direct reports: the Regional Director and Head of the Health and Crop Sciences Sector based in Singapore and the Business Head of the Environmental Health and Vector Control Division (“EHD”), based in Malaysia). Further, the Business Head of the EHD had two titles: Managing Director of Sumitomo Chemical Enviro-Agro Asia Pacific Sdn. Bhd., Sumitomo’s legal entity within Malaysia, and EHD Regional Head for South/Southeast Asia and Australasia. Because he introduced himself as “Managing Director” to OIG during an interview, the OIG report refers to this individual as “Sumitomo Managing Director” throughout. Interview of Sumitomo Managing Director, 19 October 2012 (ROC ¶ 2).

⁷¹ Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 25, 30-32); Interview of SCS Sales Manager, 20 October 2012 (ROC ¶ 10-11, 13, 16-17, 27).

⁷² Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 12, 17); Interview of SCS Sales Manager, 20 October 2012 (ROC ¶ 5, 10-11, 27, 42).

⁷³ Interview of SCS Executive Assistant, 17 August 2012 (ROC ¶ 17-18).

⁷⁴ Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 29-31).

⁷⁵ *Ibid.* at ¶ 29.

decide, I just let you know about this request. Do not show this e-mail to other person. Thanks.” (See Annex 1, Figure 7).

72. The Sales Manager then asked the CNM Director to share a part of his commission payment with the Deputy Director, to which he agreed.⁷⁶ The SCS Sales Manager paid the CNM Deputy Director out of the CNM Director’s commission.⁷⁷

73. The evidence identified in the investigation has revealed that the CNM Director received a minimum of 2.8 percent commission fee on every contract with SCS from 2006 through 2010. Beginning in 2008, the Deputy Director also received a minimum of 1.5 percent in commission fees. Combined, these two commission payments equaled as much as 6.5 percent of the total value of the LLIN contracts. Whenever the Deputy Director received a commission, it would be paid out of a lump sum that was wired to the Director. He would then transfer the Deputy Director’s portion to a bank account designated by her.

74. In interviews with the OIG, the SCS Sales Manager admitted to making the payments knowingly and voluntarily, and acknowledged that it was wrong, and illegal, to do so.⁷⁸ In fact, the Sales Manager conceded, “Both me and [the Sumitomo Managing Director] knew that it is wrong. But at that time I was naïve. I thought the one that give would not suffer consequences. It is the one that receive [...] we know it is not the right thing to do [...] It is giving money to someone; it is corruption. But I thought that when it would be found eventually; the giver would not have punishment, it is the receiver that gets – especially when the giver [does] not benefit in any kind.”⁷⁹ Indeed, the evidence in the case demonstrates a consciousness of guilt on the part of both the SCS Sales Manager and the CNM Director in that emails reflect that the SCS Sales Manager and CNM Director often made requests to delete emails that referred to the commission payments. (See Annex 1, Figures 7, 8 and 22). The SCS Manager explained to the OIG that payment of commissions was the only way to obtain business from CNM, and that he believed commission payments are required to be paid for any contract in the Kingdom of Cambodia.⁸⁰ When asked if he heard that Cambodian officials are required to kick up portions of the payments they receive to higher-level officials, such as ministers, the Sales Manager responded, “I never asked. I don’t want to ask also.” Then he added, “I think it’s... in conversation, you know, ‘Oh, I need to give a New Year gift.’”⁸¹

75. When VPP began in 2011, procurement was handled by SCS’s parent company in Japan and SCS ceased payment of commissions to CNM. The Sales Manager explained that this was because the product was coming straight from the manufacturer.⁸² Sumitomo’s headquarters office was aware of the payments to the Cambodian agent and specifically instructed the SCS Managing Director not to continue paying these commissions under VPP: “[N]ot one cent to any agent as instructed by HQ on VPP tenders.”⁸³ SCS’s Sales Manager was relieved to be released from this obligation of paying commissions in order to do business in Cambodia, as the Sales Manager explained: “I said, [CNM Director] and [CNM Deputy Director], ‘under VPP we do not get any more commission from SCC. So for that I cannot pay you.’ And in fact, internally I was relieved. Finished; no more dealing. We were extremely relieved. [...] Because towards the beginning of 2008/2009 the company started to emphasize our compliance, SOX [Sarbanes-Oxley Act], which made me more aware [...]”⁸⁴ The OIG uncovered no evidence

⁷⁶ Interview of SCS Sales Manager, 17 August 2012 (¶ 30).

⁷⁷ *Ibid.* at ¶ 31.

⁷⁸ *Ibid.* at ¶ 34, 53, 55, 59; Interview of SCS Sales Manager 20 October 2012 (ROC ¶ 17, 39).

⁷⁹ Audio tape of interview with SCS Sales Manager, 20 October 2012, at 25:33.

⁸⁰ Interview of SCS Sales Manager, 20 October 2012 (ROC ¶ 10-12).

⁸¹ Transcript of Interview with SCS Sales Manager (Part II), 17 August 2012, p. 30.

⁸² Interview of SCS Sales Manager, 20 October 2012 (ROC ¶ 19).

⁸³ 18 May 2011 email from Sumitomo Managing Director to SCS Sales Manager re: “VPP Cambodia”.

⁸⁴ Audio tape of interview with SCS Sales Manager, 20 October 2012, at 35:02-35:38.

that SCS continued making improper commission payments from 2011 onwards in Cambodia.

G.1.4.2. *Payment of commissions were wired directly from SCS's bank account to the accounts designated by the CNM Director and Deputy Director*

76. SCS's payments to its agent in Cambodia were processed by its Accounts Department upon receipt of a remittance of payment request generated by the SCS Sales Manager. (See, e.g., Annex 1, Figure 9). These requests were accompanied by supporting documentation, such as the underlying Consultancy Agreement.⁸⁵ Ultimately, SCS wired these payments from its corporate bank account directly into the account designated to the "agent". (See, e.g., Annex 1, Figure 10).

77. In 2006, SCS won its first LLIN contract from CNM and paid a commission payment to the CNM Director in the amount of USD 20,000 in connection with Global Fund-financed contract GJ 06/24 valued at USD 706,580.⁸⁶ This payment was remitted on 22 September 2006 to "Chhounou Kimchenda", as authorized by Sumitomo Japan in Osaka.⁸⁷ This payment was made from Sumitomo Japan's "Outsourced Research Expense" account and booked to "Agrichemical development experiment expenses."⁸⁸ As with all of commission payments discussed herein, this payment was authorized pursuant to the 1 January 2006 Consultancy Agreement with "Chhounou Kimchenda", which set the floor of commission payments at 4 percent of the total value of the contract (though the OIG notes that this first commission payment appears to be approximately 2.8 percent of total value of the contract).

78. In October 2007, SCS paid a 4 percent improper commission to CNM's Director in the amount of USD 7,919.50. This payment pertained to Global Fund-financed LLIN contract DVMTO R4 No. 07/011 (P.O. 979/07 C.N.M.), with a total value of USD 197,987.40. The evidence reflects that upon the SCS Sales Manager's request, the money was transferred directly from SCS's bank account to the account of "Chhounou Kimchenda" and "[REDACTED] 1", as designated by the CNM Director. (See Annex 1, Figures 9-11). The OIG investigation revealed that the second beneficiary "[REDACTED] 1" is the CNM Director's daughter.

79. In December 2008, SCS paid a 6.5 percent improper commission, shared between the CNM Director and Deputy Director, in the amount of USD 84,311.50. (See Annex 1, Figures 12, 13, 15). This payment corresponded to Global Fund-financed contract DVMTO R6 08/015 (GFATM/CNM/LLINR6/005) for 238,000 LLINs, with a total value of USD 1,297,100. Of the commission amount, 5 percent (USD 64,855) was designated for the CNM Director and 1.5 percent (USD 19,456.50) for the CNM Deputy Director. (See Annex 1, Figure 14). These payments were made into the bank accounts designated by the Director and Deputy Director.

80. For three contracts between 20 July and 25 August 2009⁸⁹, valued at USD 1,731,585 in total, SCS paid a 6.28 percent improper commission to the CNM Director and Deputy Director in the total amount of USD 108,744. (See Annex 1, Figures 20-21). A 5 percent commission fee went to the CNM Director, while the evidence shows that the Deputy Director received USD 23,216.02. (See Annex 1, Figure 22).

⁸⁵ Interview of SCS Executive Assistant, 17 August 2012 (ROC ¶29).

⁸⁶ Payment records reflect that a payment in the amount of USD 20,000.00 posted on 22 September 2006 originating from Sumitomo Chemical Company Limited going to the ultimate beneficiary "Chhounou Kimchenda".

⁸⁷ Cash request list dated 06/09/14 [sic] regarding payment to "Chhounou Kinchenda" of USD 20,000 or 2,334,200 JPY (translated, original document in Japanese).

⁸⁸ Ibid.

⁸⁹ Contracts DVMTO Round 4 (09/015), Round 6 (09/016) & RCC (09/001).

81. On or around 19 July 2010, SCS paid a USD 35,496 commission for a contract executed in the amount of USD 694,220 on or around 30 June 2010 (DVMTO 10/01 GJ10/44E). (See Annex 1, Figures 23-24). The CNM Director received this amount in full, but agreed to transfer USD 17,136 to the Deputy Director's bank account. (See Annex 1, Figure 25). Notably, the SCS Sales Manager chose to write to the CNM Director's personal email account to discuss the remittance of payment as opposed to his official work account. The SCS Sales Manager has admitted to the OIG that he paid this commission to the Director and Deputy Director, noting that he was successful in bringing the total commission down from 6.5 percent to below 5.8 percent⁹⁰ as per the instructions of his supervisor, the Sumitomo Managing Director, on 24 June 2010.⁹¹ (See Annex 1, Figure 42).

82. A letter dated 5 July 2010, purportedly from "Chhounou Kimchenda" and addressed to the SCS Sales Manager, directs the Sales Manager to divide the commission payment between two accounts: to that of "Ms. Kimchenda Chhounou" and "[REDACTED]" and to that of the CNM Deputy Director. (See Annex 1, Figure 26). Thus, the evidence shows that it was the Sales Manager's intention for these improper commission payments ultimately to go to CNM's executive officers. The computer forensic metadata associated with this Microsoft Word document, which was found on the SCS Sales Manager's computer, indicates that the Sales Manager actually created this document himself on 12 July 2010 and back-dated it to 5 July.⁹² SCS confirmed to OIG that the SCS Sales Manager admitted to creating this document, and others like it, in an effort to make the consultancy arrangement appear legitimate.⁹³

83. In all of the contracts at issue with SCS, bednets were produced and delivered according to the terms of said contracts. In total, SCS provided over 874,000 LLINs to Cambodia through direct procurements for SCS, totaling over USD 4.6 million. The amount of money that SCS paid in commissions in order to obtain these contracts, as the table below indicates, is USD 256,471.

⁹⁰ Interview of SCS Sales Manager, 20 October 2012 (ROC ¶ 32).

⁹¹ *Ibid.* at ¶ 30-31.

⁹² Microsoft Word Document: custodian and author: SCS Sales Manager; created: 12 July 2010 at 10:02:00; MD5 Digest: 2c5606e932cf20bb122986ba4d9d33f5.

⁹³ 3 October 2013 email from SCS's legal counsel to OIG re: "Fictitious Documents – [SCS Sales Manager]".

Figure 27: Improper commissions paid in Global Fund-financed contracts where SCS provided bednet products to CNM

Contract/PO No.	Contract/PO Date (Approx.)	Invoice Date	Invoice No.	Amount of LLINs	Total Value of Contract (in USD)	Commission Payments (in USD)	Date of Payment (Approx.)
Purchase Order SUP/06/05689		24 Oct 2006	-----	120,000	706,580	20,000.00	22 Sept 2006
DVMTO R4 07/011 (614/07PR)	17 July 2007	25 Sept 2007	20020233	34,660 (+ 20 nets gratis)	197,987	7,919.50	17 Oct 2007
DVMTO R6 08/015 (658/08PR)	22 Aug 2008	19 Nov 2008	20022375	238,000	1,297,100	84,311.50	15 Dec 2008
DVMTO R4 09/015 (638/09PR)	20 July 2009	13 Nov 2009	20025339	174,000	833,460	108,744.00	21 Dec 2009
DVMTO R6 09/016 (638/09PR)	20 July 2009	13 Nov 2009	20025339	87,500	419,125	(Covered by 21 Dec 2009)	
DVMTO RCC 09/001 (1540/09)	25 Aug 2009	13 Nov 2009	20025339	100,000	479,000	(Covered by 21 Dec 2009)	
DVMTO 10/01 GJ10/44E		30 Jun 2010	-----	120,000	694,220	35,496.00	19 July 2010
Purchase Order 0975-ITN-VPP-0035		6 Oct 2011	H1134KH	785,500	3,063,450	-----	
Purchase Order 0975-ITN-VPP-0035		31 Oct 2011	D1133KH	785,500	3,063,450	-----	
Total				2,445,160	\$10,754,372	\$256,471.00	

G.1.4.3. The payments were disguised as commissions to a fictitious consultant

84. As mentioned above, SCS drafted a Consultancy Agreement, dated 1 January 2006, between SCS and an individual by the name of “Chhounou Kimchenda” for contracts obtained in Cambodia in order to provide a vehicle by which the commission payments could be requested from the SCS Accounting and Finance Department and made to CNM’s Director. The agreement set forth various responsibilities that consultant “Kimchenda” would be required to fulfill in his/her representation of SCS in Cambodia in order to receive a commission payment. However, the OIG uncovered no evidence that the “consultant” fulfilled any of the required duties required by the consultancy contract, such as drafting monthly progress reports, reporting on market information, or product development work.⁹⁴ Indeed, only four “reports”, all purporting to be from 2006, were uncovered during this investigation over the five-year period that the consultant was supposed to have worked under contract for SCS.⁹⁵ These reports were stored on the Sales Manager’s own computer, and do not appear to be the work product of “Chhounou Kimchenda.”⁹⁶ These reports detail activity in Cambodia from January 2006 through August 2006 only, and they contain unfinished sentences and spelling errors. In fact, the investigation revealed that the SCS Sales Manager created these and other documents in an effort to perpetuate the ruse of a “Kimchenda” consultancy.⁹⁷ Moreover, the Sales

⁹⁴ 1 January 2006 Consultancy Agreement, “Services”, Art.1(c) and (e).

⁹⁵ Cambodia Activity Reports, dated January 2006, March 2006, May 2006 and August 2006, by “Chhounou Kimchenda, Consultant”.

⁹⁶ SCS provided the Global Fund with select documents from the SCS Sales Manager’s hard drive. See OIG report ¶ 216.

⁹⁷ Computer forensic metadata from these documents show that all four reports were contained in one Microsoft Word Document file, for which the document custodian was the SCS Sales Manager and the author was “SCS” (MD5 Digest: faf6b7fdad9700aea57655213bc76869). These documents were created on 19 September 2006. The same documents were found in PDF format in one file again with the SCS Sales Manager as the custodian (MD5 Digest: ea3dd1db69fe7deeac28b1a881e9b7ef).

Manager admitted to signing “Chhounou Kimchenda’s” name on documents himself.⁹⁸ Thus, the OIG concludes that the main purpose for the consultancy agreement was to provide a mechanism to facilitate the payments to the CNM Director and Deputy Director. The agreement also supported the SCS Sales Manager’s requests for payment from the SCS Accounting and Finance Department, and facilitated their approval and transmission, as described in further detail in Section G.1.4.2 of this report.

85. Although the agreement is signed and dated 01 January 2006, the computer forensic metadata reveals that it was actually created by the SCS Sales Manager on 03 October 2007 and signed the same day, which supports a finding that the consultancy agreement was created to retroactively support payments already made to the CNM Director.⁹⁹

86. The SCS Sales Manager ultimately admitted to OIG that the consultancy arrangement was a fiction that facilitated the improper commission payments to Cambodian government officials.¹⁰⁰ He facilitated this arrangement despite his knowledge that “this was a fictitious deal. Basically, the consultant is not there. But I still continue because I thought we’d get away with it. No one knows but me, [CNM Director], and later [CNM Deputy Director].”¹⁰¹ The SCS Sales Manager obtained the necessary approval and authorization to execute the consultancy agreement from his direct supervisor, a Sumitomo Managing Director.¹⁰² The evidence gathered in the investigation reflects that the Managing Director was made aware of the fact that these payments were being delivered to the CNM Director personally.¹⁰³

87. The OIG has identified no evidence to prove that the person “Chhounou Kimchenda” actually exists other than the CNM Director’s claims that “Chhounou Kimchenda” is his relative.¹⁰⁴ The SCS Sales Manager stated to the OIG that he did not recall ever meeting this person and only “hired” him/her upon the CNM Director’s instruction.

88. In addition to commission payments, the SCS Sales Manager obtained a cash payment from the SCS Accounting and Finance Department in “Kimchenda’s” name for research and reports allegedly created by the consultant. A template letter confirming a USD 2,100 cash payment appears to have been created on the SCS Sales Manager’s computer, along with the interim report that was purportedly created by “Kimchenda” and which forms the basis for this cash payment.¹⁰⁵ The OIG could not confirm the ultimate beneficiary of this payment, but the weight of the evidence suggests that payments made to “Chhounou Kimchenda” ultimately went to the CNM Director.

⁹⁸ Audio tape of interview with SCS Sales Manager 20 October 2012, at 1:15:33 and Transcript p. 66; 3 October 2013 email from SCS’s legal counsel to OIG re: “Fictitious Documents – [SCS Sales Manager]” (SCS Sales Manager acknowledging that he had signed “Kimchenda”’s name on consultancy contract); see, e.g., 1 February 2008, letter from “Chhounou Kimchenda” acknowledging receipt of USD 2,100 cash payment from SCS Sales Manager and signed by “Chenda”. This document was found in Microsoft Word and PDF format on the SCS Sales Manager’s computer with him as the custodian and “SCS” as the author. MD5 Digest: 6d9ebacc513b58a2adaa71b37e7f10d7 (Word) and 55a91a0679d5cdd5ba4bb7d534f7be1 (PDF).

⁹⁹ The metadata for this document indicates the following information: custodian: SCS Sales Manager; item date: October 3, 2007, 10:27:00 AM; file name: “Consultant agreement (4).doc”; MD5 Digest: 05cbf41300ff535aflb72f56b193e343 (for unsigned version) and custodian: SCS Sales Manager; Item date: October 3, 2007, 10:39:58 AM; file name: “Consultant agreement (4).pdf Oct 07.pdf” (for signed version); MD5 Digest: 47aeb35366a5050e7ffdb720e47a2ldf. For both versions of this consultancy contract, the Path name is: D:/Documents and Settings/S1 [REDACTED]/My Documents/Cambodia Apr 08/Cambodia meeting June 06 onward. MD5 Digest: a7f6defc-ad8a-444f-a167-7067059124c5

¹⁰⁰ Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 37).

¹⁰¹ Audiotape of interview with SCS Sales Manager, Part II, 17 August 2012, at 01:45 – 2:07.

¹⁰² Interview of SCS Sales Manager, 20 October 2012 (ROC ¶ 11).

¹⁰³ Ibid. at ¶ 10-11. See § G.1.4.6 of OIG report for further discussion.

¹⁰⁴ In a 27 June 2006 email re: “Procurement of LLINs”, the CNM Director refers to “Chhounou Kimchenda” as his sister-in-law. See also OIG report ¶ 90, 119.

¹⁰⁵ 1 February 2008 letter from “Chhounou Kimchenda” acknowledging receipt of USD 2,100 cash payment from SCS Sales Manager (Word file and PDF file (with signature)).

G.1.4.4. Payment of improper commissions made to third parties to diminish ability to trace back to CNM officials

89. The investigation has identified that the SCS Sales Manager and the CNM Director and Deputy Director communicated often and repeatedly via email and short message service (“sms”) messages concerning the payment and receipt of these commissions.¹⁰⁶ These CNM officials directed the SCS Sales Manager to send commission payments to third parties so as to avoid having the money linked directly to them. Evidence has been obtained that the SCS Sales Manager would then make payment requests through SCS in order to have the money wired directly from SCS’s bank accounts into the accounts of individuals designated by the CNM Director and Deputy Director. (See Annex 1, Figures 11 and 29). The evidence further reveals that sometimes the payments to the CNM Director and Deputy Director were made separately, while other times the full payment went to the CNM Director, who then wired a designated amount to the Deputy Director himself.¹⁰⁷ (See Annex 1, Figure 25).

90. Among the designated recipients of the improper commission payments on behalf of the CNM Director and Deputy Director were the following: “Chhounou Kimchenda”, [REDACTED] 1, [REDACTED] 2 and [REDACTED] 3. “Chhounou Kimchenda” is SCS’s named consultant in Cambodia and CNM’s Director refers to this person as his “sister in law”, though he spells it in different ways at different times, such as “Chhounou Kim Chanda”.¹⁰⁸ (See Annex 1, Figure 11). [REDACTED] 1 is the daughter of the CNM Director and a member of CNM’s procurement team from October 2009 forward.¹⁰⁹ The CNM Deputy Director has admitted in interviews with the OIG that “[REDACTED] 3” is related to her, and that she told the Sales Manager to transfer the commission payment directly to “my relative bank account. My relative has chronic disease and I told [the Sales Manager] so that he can help my relative.”¹¹⁰ The investigation uncovered no other connection between [REDACTED] 2 and SCS or CNM business.

91. Although the SCS Sales Manager’s requests for payment directed that money go to the above-named individuals, it is clear that his intention was that CNM’s Director and Deputy Director personally receive these payments. The language of the emails discussed above reveals no other plausible explanation, and the SCS Sales Manager has fully acknowledged that the payments were intended for the CNM officials personally.¹¹¹ The email and sms communications demonstrate that the Director and Deputy Director repeatedly and openly communicated with the SCS Sales Manager on a regular basis to ask where their money was, or to give further instructions on where to send it. The OIG investigation uncovered no communications at all between the SCS Sales Manager, or anyone else at SCS, and consultant “Chhounou Kimchenda”.

G.1.4.5. SCS gave gifts and other items of value in effort to establish “close” relationship with CNM and to obtain contracts

92. In addition to improper commission payments, SCS spent at least USD 20,000 on gifts, trips and sponsorships for Cambodian government officials and other individuals who worked at CNM between 2004 and 2010. (See Annex 1, Figure 39). The SCS Sales Manager, with the knowledge and consent of the Sumitomo Managing Director,

¹⁰⁶ Source: SCS Sales Manager’s mobile phone sms records (created: 3 July 2009; last accessed: 16 August 2010), provided to OIG by SCS.

¹⁰⁷ Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 30).

¹⁰⁸ 17 November 2008 email from SCS Sales Manager to CNM Director re: “Greeting from [SCS Sales Manager]”; see also OIG report fn.164, discussing different spellings of the consultant’s name.

¹⁰⁹ 6 October 2009 email from CNM procurement officer to SCS Sales Manager re: “Request for booking hotel in Singapore”.

¹¹⁰ Interview of CNM Deputy Director, 27 July 2012 (ROC p. 2).

¹¹¹ Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 30-31, 38-41).

performed numerous non-business-related favors¹¹² for these individuals in connection with his efforts to develop close relationships so as to ultimately obtain LLIN contracts for SCS.¹¹³ The CNM Director and others readily accepted these gifts and favors, often initiating the request for favors from the SCS Sales Manager. The favors included paying for plane travel to and accommodation in Singapore, making doctor's appointments, buying medicine, purchasing gifts, such as televisions and phones, and scheduling family vacations.¹¹⁴ Upon questioning by the OIG, the SCS Sales Manager acknowledged that payment for such items is contrary to SCS's policies against gift-giving,¹¹⁵ and that this was part of the continuous effort for SCS to secure business from CNM.¹¹⁶

93. Prior to obtaining the first contract for LLINs with CNM in 2006, the SCS Sales Manager actively sought CNM's favor by paying for trips for Cambodian officials. For instance, the evidence establishes that the SCS Sales Manager used SCS money to fund a personal trip that the CNM Director sought to take to Singapore in October 2005. (See Annex 1, Figure 30). In response, the emails confirm that the SCS Sales Manager offered for SCS to pay for flight, accommodation and medical fees "if [the visit is] personal." The SCS Sales Manager then offered to book, and have SCS pay for, doctor's appointments at the Raffles hospital in Singapore for the CNM Director.

94. Indeed, most of the gifts and favors that were provided to the CNM Director were requested by the Director himself. The emails reflect that the CNM Director requested various commodities, such as medicine, as well as the scheduling of doctor's appointments, and, as shown above, payment for trips that were personal in nature. The emails further reflect that the SCS Sales Manager was more than willing to comply, and bought presents and extended favors for the Director's family members as well. For instance, in May 2010, the SCS Sales Manager committed SCS finances to pay for the CNM Director and his wife's visit to Singapore and scheduled a doctor's appointment for the Director's wife. SCS paid SD 918.06 for this doctor's visit.¹¹⁷ The CNM Director's daughter was also the beneficiary of gifts purchased by SCS, such as a mobile phone. (See Annex 1, Figure 31). On a more recent occasion, 4 February 2012, the CNM Director informed the SCS Sales Manager that his daughter was beginning an MBA in Singapore in March and needed to pay her tuition by 21 February.¹¹⁸ In response, the SCS Sales Manager asked the Director to have his daughter give him a call and said he would "deliver her luggages [sic] back to her dormitory". He further added that he planned to visit the CNM Director in mid-2012. It is unclear to the OIG if this daughter is the same person who was listed as a beneficiary and recipient, along with "Chhounou Kimchenda", of improper commission payments. (See OIG report ¶ 78, 90, *supra*, and Annex 1, Figure 11). On one occasion, the record reflects that the SCS Sales Manager fabricated a business purpose in order to take a trip to Phnom Penh to provide gifts to the Director's children: "My schedule to visit you on Aug 25 is confirmed as follow (my main purpose is to pass the Nokia N97 Black Phone to you)..." (See Annex 1, Figure 32). The Sales Manager submitted expense claim forms to SCS's Finance and Accounting departments requesting payment

¹¹² Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 42-49, 55, 57-60); Interview of SCS Sales Manager, 20 October 2012 (ROC ¶ 40-41).

¹¹³ Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 30-31, 38-41); Interview of SCS Sales Manager, 20 October 2012 (ROC ¶ 42).

¹¹⁴ See, e.g., 18 October 2005 email re: "LLIN Procurement", and 23 September 2008 email re: "Hotel name", between SCS Sales Manager and CNM Director.

¹¹⁵ Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 55).

¹¹⁶ Interview of SCS Sales Manager, 20 October 2012 (ROC ¶ 40-42); See OIG report ¶ 100, *infra*, discussing SCS's Code of Ethics.

¹¹⁷ SCS expense claim form dated 24 June 2010, where SCS Sales Manager requests reimbursement; corresponding Tax Invoice, dated 14 May 2010, for services rendered by [REDACTED] of the Diabetes, Thyroid and Hormone Clinic to [REDACTED].

¹¹⁸ 7 February 2012 email exchange between CNM Director and SCS Sales Manager re: "Greeting".

for these gifts and favors, which were approved and made.¹¹⁹ Such requests routinely had to be approved by a supervisor.¹²⁰

95. It appears that the CNM Director informed the Sales Manager that one of the Secretaries of State¹²¹ within MoH (“Secretary of State”), who was connected to the granting of Global Fund-financed LLIN contracts, expected gifts or compensation from SCS’s Sales Manager. The OIG investigation uncovered no evidence of direct communication between this Secretary of State and the Sales Manager or the CNM Director in which the Secretary made such requests himself. The Secretary of State was a signatory to CNM’s contracts with SCS in July 2009 and signed Notification of Award letters during the time CNM was SR to MoH.¹²² It is likely that the CNM Director was aware of this individual’s influence and authority to sole source LLIN contracts to CNM (as SR) and leveraged this knowledge in his pursuit to obtain additional improper commission payments.¹²³ Indeed, this Secretary of State authorized PSI to sole source LLINs from VF in March 2006.¹²⁴ A 23 September 2009 email from the CNM Director to the SCS Sales Manager discusses a request that the Secretary of State supposedly made through the CNM Deputy Director: “████ informed me that █████ remind her that you have promised to give him some gift? I think maybe I propose you last time to give him a new mobile phone. It’s ok if you can send other stuff such as a tie or watch?” (See Annex 1, Figure 33).

96. Records obtained by OIG also reflect that the SCS Sales Manager made a USD 1,000 payment to CNM’s Director with the stated intention for the Director to forward the money to the Secretary of State under the MoH on or around November 2009. (See Annex 1, Figure 34). The OIG did not uncover any evidence that this USD 1,000 was actually solicited by or provided to the Secretary of State.

97. The evidence also reflects that the SCS Sales Manager made efforts to develop a close relationship with a scientist/WHO Cambodia employee. WHO Cambodia worked in connection with its affiliate office in Manila, which served as Procurement Agent for several Global Fund contracts. (See OIG report ¶ 57). Additionally, this employee was a member of CNM’s BEC for Global Fund procurements in which SCS competed¹²⁵. The OIG uncovered evidence that indicates the SCS Sales Manager offered to pay for private trips for the WHO Cambodia employee. In June 2009, the SCS Sales Manager corresponded with the WHO Cambodia employee via his private email account and offered to pay airfare for a private trip, stating that he would “arrange accommodation as before.” (See Annex 1, Figure 35). To justify this payment, the SCS Sales Manager submitted it to his company as sponsorship for the Emerging Infectious Diseases conference in Singapore, even though the WHO Cambodia employee said he was unable to attend this conference. (See Annex 1, Figure 35). Ultimately, SCS paid SD 2,769.05¹²⁶ to

¹¹⁹ The SCS Sales Manager’s handwritten note to “SCS Executive Assistant”, dated 23 March 2008, on a letter received from CNM, dated 18 March 2008, indicates that the Sumitomo Managing Director approved this cost, which was used as accounting support for the payment request.

¹²⁰ Interview of Director of Health and Crop Sciences, 19 October 2012 (ROC ¶ 20).

¹²¹ There are currently 8 Secretaries of State who serve under the leadership of the MoH. Current CNM Director’s 17 June 2013 comment on OIG 14 June 2013 draft report.

¹²² See, e.g., 20 July 2009 contract to purchase 261,500 LLINs in the amount of USD 1,252,585 under Global Fund grant Rounds 4 and 6. CNM was SR to MoH-PR for three Rounds: 2 (1 January 2004 – 31 December 2008); 4 (1 September 2005 – 31 August 2010); and 6 (1 January 2008 – 31 December 2012).

¹²³ MoH-PR Procurement Guidelines, Version 8, revised August 2006, § V.1.

¹²⁴ 4 May 2006 email from PSI-Cambodia to VF Sales Manager, Indian branch re: “Net sole source”.

¹²⁵ “Minutes of Technical Proposal Opening of Long-Lasting Insecticidal Nets Under the GFATM Round 6 Phase 1”, dated 2 June 2008; “Report of Financial Proposals Opening of Long-Lasting Insecticidal Nets Under the GFATM Round 6, Phase 1 and Recommendation for Approval”, dated 6 June 2008.

¹²⁶ Price discussed between parties is in Singapore Dollars. The chart in Annex 1, Figure 39 converts this figure to U.S. dollars (\$1,990.26).

the WHO Cambodia employee for this private trip.¹²⁷ Earlier in this same email chain, in January 2009, the SCS Sales Manager confirmed payment for a hotel for the WHO Cambodia employee and his wife who was joining him on holiday. (See Annex 1, Figure 36).

98. This employee of WHO also appears to have shared information about upcoming LLIN needs in Cambodia with SCS during its efforts to win LLIN contracts. In January 2009, the WHO Cambodia employee wrote to SCS's Sales Manager from his personal email account in order to provide advanced notice of an upcoming procurement of LLINs at CNM. Significantly, he specifically asked SCS's Sales Manager not to tell anyone that he provided him with said information. (See Annex 1, Figure 37). This came less than two weeks after SCS's Sales Manager agreed to pay the WHO employee and his wife's hotel costs during a holiday. The OIG finds that the offering of monetary favors to an individual who worked at WHO Cambodia and who sat on CNM's procurement evaluation team was improper. Further, and as discussed in OIG report ¶ 112, 151, sharing strategic or future procurement plans with only one bidder could provide that bidder with a competitive advantage over the others, as it enables the preplanning of production capacity and availability of stock.

99. Between 2004 and 2010, it appears that SCS paid over USD 20,000 to fund travel and to sponsor CNM's employees and other Cambodian government officials to attend conferences. (See Annex 1, Figure 39). The connection of these trips to SCS business is not evident. The evidence reveals that some trips likely were purely for personal reasons. It is clear, however, that SCS Sales Manager understood there was a direct link between making these payments and obtaining contracts from CNM. For example, in 2008, SCS Sales Manager tells his Managing Director supervisor that SCS has "little choice" but to sponsor lunches for CNM's annual malaria conference in light of SCS's "participation to bid for supply of 200,000 nets to CNM." (See Annex 1, Figure 38). These trips and other items of value were paid for from SCS's corporate funds, were part of the scheme to curry favorable treatment and ultimately business from CNM by a company competing for its business.

100. Such payments as those detailed in Annex 1, Figure 39, in addition to the frequent gift giving and the improper facilitation payments to the CNM Director and Deputy Director, appear to be in violation of SCS's Code of Ethics. SCS provided OIG with a draft of its Code of Ethics dated and taking effect as of 13 January 2005 and a revised, updated version of the Code of Ethics dated July 2009.¹²⁸ According to SCS, the Code of Ethics was communicated to all SCS employees and periodic trainings were conducted. The SCS Sales Manager signed a Certificate of Understanding and Compliance for both the 2005 and 2009 versions of the Code of Ethics to certify that he had read the Code of Ethics and understood his responsibility to comply and that failure to do so could lead to disciplinary action, including dismissal.¹²⁹ Yet, he told the OIG that he did not remember attending any compliance or anti-corruption trainings until July 2012.¹³⁰ Both versions of the Code of Ethics have a section on Improper Payments, Section 7, which reads in relevant part:

"The Company specifically prohibits offering, giving, soliciting, or receiving any form of bribe or kickback. These are criminal acts and can result in criminal prosecution of both the individual involved and the Company. Personal funds or resources may not be used to do that which is otherwise prohibited.

¹²⁷ 9 December 2009 email chain between SCS Sales Manager and WHO Cambodia employee re: "Sponsorship: Personal request/remittance [sic] date".

¹²⁸ Sumitomo Chemical Singapore Pte Ltd Code of Ethics (Draft), 2005/01/13; Sumitomo Chemical Singapore Pte Ltd Code of Ethics, July 2009.

¹²⁹ Certificates of Understanding and Compliance, dated 31 August 2005 and 31 June 2009.

¹³⁰ Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 66).

As a general rule, all gifts to public officials are forbidden. In those infrequent instances when it may be customary and lawful to give such a gift, its appropriateness must be discussed with your supervisor or the Ethics Compliance Officer. Any gifts provided under these circumstances must be given in an open and aboveboard manner.

With respect to government officials, it is not necessary that the item be given with the intent to influence that government official to constitute a violation of the applicable laws in Singapore. The law also prohibits the bribery of foreign government officials.”

101. Beyond gift-giving and payments for personal trips, the SCS Sales Manager also performed “favors” for CNM that extended beyond normal business practices. CNM took advantage of the SCS Sales Manager’s willingness to oblige the CNM Director’s many requests by asking him to make fraudulent and material misrepresentations on behalf of SCS that would be submitted to the U.S. Embassy in Phnom Penh. In November 2008, the CNM Director asked the SCS Sales Manager to provide a letter in support of two CNM employees’ visa applications claiming that Sumitomo will sponsor the airfare and accommodation of this individual for a conference in New Orleans.¹³¹ The CNM Director assured the SCS Sales Manager that the employees would cover all costs themselves, but asked for his help in making the visa arrangements. Again, the SCS Sales Manager complied with these requests and drafted letters on SCS stationary.¹³² This “favor” is completely unconnected to SCS’s business with CNM, is highly improper, and is indicative of the less-than-arms-length relationship the SCS Sales Manager established with the CNM Director.

102. Whether it was in the form of gifts, trips or other favors, SCS appears to have extended well beyond what its corporate Code of Ethics permitted in terms of appropriate business expenditures. OIG finds that the controls and processes in place at SCS were not robust enough to ensure compliance with SCS’s Code of Ethics during the relevant time period (2006-2010).

G.1.4.6. *Sumitomo senior management had knowledge of and approved improper commission scheme and gift giving*

103. Although the SCS Sales Manager was based in Singapore, during all relevant times his direct manager was the Sumitomo Managing Director, who was based in Malaysia.¹³³ This Managing Director had direct and explicit knowledge of the scheme to make improper payments to government officials in exchange for contracts via “commission” fees to a sham consultant from its inception. (See Annex 1, Figure 40). The Sumitomo Managing Director was also made aware that the consultancy contract for “Chhounou Kimchenda” was a cover for payments being made to a “Cambodian official”, meaning the CNM Director.¹³⁴ Despite this knowledge, the Sumitomo Managing Director approved and authorized the consultancy agreement.¹³⁵

¹³¹ Interview of SCS Sales Manager, 17 August 2012 (¶ 58); Transcript of Interview with SCS Sales Manager (Part II), 17 August 2012, p. 12-15; 10 November 2008 chain re: “Need your help” between CNM Director and SCS Sales Manager.

¹³² Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 58); Transcript of interview with SCS Sales Manager (Part II), 17 August 2012, p. 12-15.

¹³³ When interviewed, the Sumitomo Managing Director denied being a supervisor of SCS Sales Manager and attempted to create an artificial distance between them, claiming he was more of an “unofficial mentor”. Interview of Sumitomo Managing Director, 19 October 2012 (ROC ¶ 73, 75). Both SCS Sales Manager and Director of SCS’s Health and Crop Sciences Sector unequivocally confirm that the Sumitomo Managing Director had direct supervisory responsibility for the SCS Sales Manager at all relevant times. Interview of SCS Sales Manager, 20 October 2012 (ROC ¶ 10-11), and Interview of Director of SCS’s Health and Crop Sciences, 19 October 2012 (ROC ¶ 8).

¹³⁴ 6 July 2006 email from SCS Sales Manager to Sumitomo Managing Director re: “FW: Agreement”.

¹³⁵ Interview of Director of SCS’s Health and Crop Sciences, 19 October 2012 (ROC ¶10, 18).

104. Not only was the Sumitomo Managing Director included in numerous correspondence concerning the fictitious consultancy arrangement in Cambodia, he also actively engaged in discussions regarding the amount of commission to be paid.¹³⁶ Moreover, he was put on notice that CNM officials expected to get paid for influencing procurements in favor of SCS. The SCS Sales Manager informed this supervisor that CNM's procurement team was getting "greedier" for commissions because they managed to convince the Global Fund to sole source procurements while avoiding international tenders. (See Annex 1, Figure 41).

105. Further, while SCS was willing to provide bednets to Cambodia for very little profit, as part of a corporate responsibility campaign, the Sumitomo Managing Director cautioned against allowing the profit margin to disappear completely or causing the company a loss lest it be "questioned by 'authorities' within SCS."¹³⁷ (See Annex 1, Figure 42). He then engaged in a discussion regarding how much Sumitomo could cut into its profit margin in order to maintain its relationship with CNM. He also referenced "both agents" in his communication with the Sales Manager, indicating that he is, in fact, referring to CNM's Director and Deputy Director and not consultant "Chhounou Kimchenda."

106. The Sumitomo Managing Director also explicitly approved the use of SCS funds to pay for personal trips and doctor's visits for CNM officials. Further signifying his complicity in this scheme, the Managing Director even suggested that Sales Manager submit the charges for the CNM Director's private visit to Singapore for medical treatment as a "promotional visit to SCS to discuss vector control!" (See Annex 1, Figure 43).

107. The evidence from this investigation indicates that knowledge of the improper consultancy arrangement was not restricted to the SCS Sales Manager and the Sumitomo Managing Director. Another Sumitomo employee located at various times in Malaysia, Singapore and Japan, also listed as a supervisor to the SCS Sales Manager in the Sumitomo Chemical Organizational chart, was copied on correspondence that explicitly stated the true recipient of the commission payment in Cambodia was CNM's Director: "For Cambodia our commission is 3% to [CNM Director] for Olyset sales procured using Global Fund."¹³⁸ This individual and a different senior manager (who reported to the Sumitomo Managing Director) in SCS were copied on the SCS Sales Manager's requisition forms to authorize wire payments to agent "Chhounou Kimchenda" and the CNM Director's daughter as joint beneficiaries. (See Annex 1, Figure 9). Additionally, the SCS senior manager was copied on emails in which the CNM Director was sharing the pricing information of other bidders with SCS.¹³⁹ (See Annex 1, Figure 44). In the same message, the SCS Sales Manager responded by asking the CNM Director for bid advice concerning how to outbid VF then requested that the CNM Director "[p]lease delete all email after reading." While the SCS Sales Manager and Sumitomo Managing Director were most heavily involved in the commission scheme with CNM, the evidence demonstrates that other senior-level managers, both in and outside of SCS, had sufficient opportunity to question the legitimacy of the consultancy arrangement and the appropriateness of the SCS Sales Manager's relationship with the CNM Director. Consequently, the OIG finds that SCS management and senior management outside of the Singapore office should have known about the improper commission payments.

¹³⁶ 28 March 2006 email from SCS Sales Manager to Sumitomo Managing Director and carbon copy to [REDACTED]@sumitmo-chem.com.my re: "WHO order for Laos".

¹³⁷ Interview of SCS Sales Manager, 20 October 2012 (ROC ¶ 31).

¹³⁸ 28 March 2006 email from SCS Sales Manager to Sumitomo Managing Director and carbon copy to [REDACTED]@sumitmo-chem.com.my re: "WHO order for Laos".

¹³⁹ 11 April 2008 email between SCS Sales Manager, Sumitomo Managing Director and CNM Director, with a carbon copy to SCS senior manager re: "[SPAM]Pollution in Singapore."

G.1.4.7. CNM engaged in unfair competitive procurement practices by sharing inside information with SCS regarding LLIN contracts

108. The OIG finds that the improper commission payments, gifts and favors given by SCS to CNM officials were all directed at gaining an advantage in the procurement of LLIN contracts. Indeed, as a result of the close relationship that the SCS Sales Manager cultivated with the CNM Director, the CNM Deputy Director and others, SCS was privy to inside information regarding their potential competitors and these procurements. Such non-transparent practices resulted in unfair competition and tainted the entire procurement practice of LLINs as conducted by CNM from 2006 through 2010.

109. The investigation uncovered numerous examples of communication between the SCS Sales Manager and the CNM Director that indicates their combined effort to keep other competitors, such as VF, from winning LLIN contracts.¹⁴⁰ (See Annex 1, Figures 44 and 7). On 7 April 2008, the CNM Director told SCS's Sales Manager: "I got from PR the price of LLIN for different companies as follow [size and price information for Vestergaard, BASF, Durante, and Best Net Europe]... this is the top secret for bidding. Please do not inform to other people. I will try my best to support your Olyset net."¹⁴¹ Again from the CNM Director to SCS Sales Manager on 6 April 2008: "It's importance [sic] that you should attend the opening bid. The committee do hope your company will win this bid (I try all my best). Because, we dropped Permanet and Interceptor net. Now only 3 LLIN in this process...."¹⁴²

110. Even the head of CNM's Bid Evaluation Committee, the Deputy Director, knowingly shared inside information with the SCS Sales Manager prior to the awarding of LLIN contracts, such as alerting him to CNM's upcoming net requirements and the contact at WHO to lobby for the contract. (See Annex 1, Figure 45). The SCS Sales Manager agreed not to tell anyone that CNM's Deputy Director provided him with procurement-related information in advance. Additionally, the CNM Director tried to put the SCS Sales Manager in contact with a new WHO representative so he could begin to foster a relationship with that person.¹⁴³ (See Annex 1, Figure 46).

111. As the above emails indicate, most of the inside information and tips that the CNM Director and the CNM Deputy Director provided to the SCS Sales Manager came after the Sales Manager had established a firm practice of paying improper commissions and/or buying gifts, starting in 2004. Indeed, the Sales Manager's job was to secure business for SCS in his designated region, which included Cambodia.¹⁴⁴ He did not receive any individual bonuses or monetary compensation for the achievement of bednet contracts in Cambodia.¹⁴⁵ But the connection between the favors and payments to CNM and the objective to win LLIN contracts for SCS is clear.

112. Even after the CNM Director's supposed retirement on 1 May 2011, he continued to stay in contact with the SCS Sales Manager on matters related to procurement and social events through at least June 2012.¹⁴⁶ On 19 May 2011, he forwarded to SCS the bid opening report, evaluation and narrative for a VPP procurement for CNM despite the fact that he technically did not serve as CNM's Director at the time.¹⁴⁷ CNM's Director forwarded the same email to VF. (See Annex 1, Figure 55). Sharing this kind of

¹⁴⁰ 18 June 2009 email re: "Propose using Sumitomo's Pesguard FG161 for thermal fogging".

¹⁴¹ 7 April 2008 email from CNM Director to SCS Sales Manager re: "[Spam] RE: Pollution in Singapore".

¹⁴² 6 April 2008 email exchange between CNM Director and SCS Sales Manager re: "Invitation for Financial Proposal Opening".

¹⁴³ 13 January 2009 email from CNM Director to SCS Sales Manager re: "Olyset".

¹⁴⁴ Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 5).

¹⁴⁵ Ibid. at ¶ 6.

¹⁴⁶ 6 June 2012 email from CNM Director to SCS Sales Manager re: "Get together in Nov/Request for meeting in June 12/13".

¹⁴⁷ 19 May 2011 email from CNM Director to SCS Sales Manager re: "CAM-S10-G14-M (CNM) and CAM-607-G10-M (MoH) Cambodia Bid Opening Report, Evaluation, and Narrative".

information, especially before a contract is awarded, is highly improper as it provides bidders with an unfair advantage when it enters into negotiations with the VPP Procurement Agent as they will know what the procurement committee wants, how they evaluate the bids and what they are willing to pay for it. Further, the sharing of the evaluation scorecard with SCS and VF only allows them to see their competitors' prices and their production timeframes, thus giving them a distinct advantage in future procurements. Sending such inside information to SCS and VF creates an uneven playing field for both other bidders and the procurement committee who is trying to obtain the best possible price for the Global Fund. These actions violate the principles of equity in procurement and ultimately compromise the entire process.

113. Another example of the unfair advantage SCS received from inside information can be seen in a 5 March 2008 email in which the SCS Sales Manager informed the Sumitomo Managing Director that the CNM Director sent him a sms message telling him to reduce SCS's bid price since the PR (MoH) would be asking for quotations from five suppliers, even though the Director proposed that the PR sole source to SCS.¹⁴⁸ Then the Director said he would check the bidding price but that "[h]e has lost control over LLIN supply in Cambodia as money going for malaria control especially for LLIN is about USD 30 million...[and he and PR-MoH] do not see eye to eye."¹⁴⁹ The SCS Sales Manager cautioned that it looked like the PR was "making [its procurement] decision based on pricing alone."¹⁵⁰ Also in this message was the SCS Sales Manager's suggestion that they offer up to 1.5 percent commission to lobby the PR for this contract. The subject line of this email was "Cambodia LLIN procurement – not smooth for Olyset net."

114. SCS was the sole recipient of Global Fund-financed contracts with CNM for LLINs from 2006 until 2010, at which point VF began to win LLIN contracts with CNM.¹⁵¹ VPP procurements, which took procurement authority away from CNM and vested it with international agent PSI, began in 2011 and the OIG uncovered no evidence to indicate that SCS continued to make improper commission payments after this point.

VESTERGAARD FRANDSEN

G.1.4.8. VF made USD 154,241 in improper commission payments to Cambodian Government Officials in order to secure Global Fund-financed LLIN contracts in Cambodia

115. VF a long-time leader in the bednet industry, began supplying anti-malarial products, such as insecticide-treated hammock nets ("LLIHNS") and LLINs, to Cambodia as early as 2006. VF is a privately-held international company with a presence in many developing countries. It operates under a humanitarian entrepreneurship business model with a "profit for a purpose" perspective.¹⁵² In 2006 and 2007, VF provided 100,000 and 120,700 bednet products, respectively, to PSI, a Global Fund SR.¹⁵³ From 2010 to 2011, VF provided over 1.5 million additional bednet products to CNM through two procurements.¹⁵⁴ The first procurement in 2010 was facilitated by WHO as Procurement Agent, and the last procurement in 2011 was divided into three orders and conducted

¹⁴⁸ 5 March 2008 email from SCS Sales Manager to Sumitomo Managing Director re: "Cambodia LLIN procurement – not smooth for Olyset yet."

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ VF also won two contracts for bednet products in 2006 and 2007 for Global Fund Sub-recipient PSI, not CNM (see OIG report fn. 157).

¹⁵² www.vestergaard-frandsen.com/our-passion/business-conduct-principles, accessed 15 May 2013.

¹⁵³ PSI was a SR of Global Fund financing for Malaria Rounds 2, 4 and 6 grants under the Principal Recipient MoH. As SR, PSI operated out of Phnom Penh, Cambodia. This branch of PSI is a distinct entity from the PSI Procurement Unit, operating out of Washington, D.C., who handled Global Fund's VPP starting in 2011 in Cambodia. OIG internal email, dated 28 March 2013, regarding role of PSI; See also OIG report § G.1.2.

¹⁵⁴ For the first two contracts, 0002-04-06 and 0002-04-07 (listed in Figure 47), PSI (as SR) was the recipient of the bednet products. For the remaining two contracts, CNM was the recipient.

under VPP. But even though VF did not supply nets to CNM directly until 2010, it began cultivating its relationship with CNM's Director as early as 2002 via individuals in the VF India Ltd. Pvt. office (hereafter, the "Indian branch").¹⁵⁵

116. The total value of contracts that VF won in Cambodia between 2006 and 2011 was USD 7,139,133.56. (See Figure 47, *infra*). Contracts #0002-04-06 (Parts I and II) and #0002-04-07 were to provide net products to PSI (as SR), while the remaining contracts were to provide net products to CNM. VF confirmed making commission payments to an "agent" chosen by CNM's Director for each of these contracts, totaling USD 154,241.19.

Figure 47: Improper commissions paid in Global Fund-financed contracts where VF provided bednet products to Cambodia

Contract/PO No.	Contract/PO Date (Approx.)	Invoice Date	Invoice No.	Amount of LLINs/ LLIHNS	Total Value of Contract (in USD)	Commission Payments (in USD)	Date of Payment (Approx.)
#0002-04-06 (Part I)	19 Jul 2006	01 Sep 2006	SI02607	70,000	438,503.38	10,000.00	27 Mar 2007
#0002-04-06 (Part II)		29 Sep 2006	SI02725	30,000	201,595.87	(Covered by 27 Mar 2007)	" "
#0002-04-07	30 May 2007	31 Jul 2007	SI20170	120,700	760,259.31	10,000.00	20 Sept 2007
WHO Revised Purchase Order 200228998 Rev.01	16 Jul 2010	30 Sep 2010	SI26778	450,000	2,047,500.00	51,187.50	04 Jan 2011
PSI N/A (Part I)	N/A	15 Sep 2011	SI28816	275,000	710,325.00	83,053.69	02 Feb 2012
PSI N/A (Part II)	N/A	29 Sep 2011	SI28817	320,000	1,122,240.00	(Covered by 02 Feb 2012)	" "
PSI N/A (Part III)	N/A	28 Oct 2011	SI28965	530,000	1,858,710.00	(Covered by 02 Feb 2012)	" "
TOTAL				1,795,700	\$7,139,133.56	\$154,241.19	

117. In Cambodia, VF was represented by a Sales Manager covering the Southeast Asia region for the company from 2004 to 2010 out of VF's Indian branch ("VF Sales Manager" or "Sales Manager"). This Manager was directly involved in the company's bids to achieve contracts in Cambodia including, but not limited to, LLIN and LLIHN contracts.¹⁵⁶ The Sales Manager was directly supervised by a Regional Director, also located at the Indian branch ("Regional Director").

118. VF was put on notice that CNM's Director required payment in exchange for receiving bednet contracts in Cambodia early on. In fact, VF's Regional Director and Sales Manager met with CNM's Director in person on several occasions between 2004 and 2010, during which time the CNM Director made it clear that commission payments would ultimately go to him.¹⁵⁷ VF's Sales Manager further understood that these payments were being made for the CNM Director's benefit and as a condition for receiving contracts from CNM.¹⁵⁸

¹⁵⁵ 24 October 2002 email from VF to CNM Director re: "Permanet(R)" concerning VF's Regional Director (same person as the Director in VF's Asian branch during 2006-2010) visit to CNM to discuss PermaNet products; 08 October 2003 email between VF and CNM re: "Permanet (R) for Global fund project in Cambodia" concerning incorporating VF's PermaNet LLINs in Cambodia; 03 December 2004 email between VF and CNM re: "Tender for Global fund untreated nets" concerning VF's desire to bid for nets; 23 March 2005 email from VF Regional Director (same person as the Director in VF's Asian branch during 2006-2010) re: "ticket for Dubai" offering to pay for CNM Director's airfare to Dubai. VF notes that its relationship with CNM was still described as "weak" and perceived the CNM Director to be "pro Olyset" as late as 2007. See VF Response to OIG report, dated 26 May 2013, p. 7, ¶ 15 (citing VF's February 2007 SWOT memorandum).

¹⁵⁶ Interview of VF's Sales Manager, 17 October 2012 (ROC p. 1-2).

¹⁵⁷ Interview of VF Sales Manager, 17 October 2012 (ROC p. 2).

¹⁵⁸ Interview of VF Sales Manager, 17 October 2012 (ROC p. 2).

119. As he had done with SCS, CNM's Director nominated an agent for VF's work in Cambodia and provided VF Indian branch's Sales Manager with the name and bank account details for this agent on 23 February 2007.¹⁵⁹ (See Annex 1, Figure 48). This was only 3 days after he informed the VF Sales Manager that he had "agreed for PSI to procure LLMIN/PermaNet for phase two."¹⁶⁰ Then on 27 September 2007, CNM's Director emailed the bank account information again and informed the VF Sales Manager that this was his sister's account. (See Annex 1, Figure 49). No selection process occurred, nor were other candidates considered to fill this role. Significantly, this "agent" had the same name as the one he suggested to SCS, although it was spelled slightly differently: "Chhou Nou Kimchenda".¹⁶¹

120. In total, VF prepared five versions of its agency contract with "Kimchenda", at least three of which were fully endorsed and executed over the course of VF's five-year history with this "agent".¹⁶² The first Agency Agreement, dated 1 January 2007, was drafted between agent "Chhou Nou Kimchenda" and Vestergaard Frandsen S.A.,¹⁶³ VF's headquarters office in Lausanne, Switzerland. This document was signed by "Chhou Nou Kimchenda", but not by VF. A second version of this contract, also dated 1 January 2007, was ultimately signed and executed by both parties, "Chhou Nou Kimchenda" and a VF Executive Officer, in March 2007. The scope of this contract granted "Kimchenda" the right to represent VF in sales to Cambodia for the procurement of LLINs.¹⁶⁴ This contract was retroactively valid as of 1 July 2006.¹⁶⁵ However, VF was not made aware of who the agent was until CNM provided this information to certain individuals in VF's Indian branch in February 2007¹⁶⁶, which indicates that the "agent" could not have performed substantive work for VF prior to that point. Notwithstanding this fact, VF wired a USD 10,000 commission payment to "Chhou Nou Kimchenda" on or about 27 March 2007 in connection with a contract for 100,000 bednets it was awarded by PSI *in September 2006*, almost 6 months prior to even knowing who the agent purportedly was, pursuant to the 1 January 2007 executed Agency Agreement.¹⁶⁷ This payment was approved by a Director in VF's Asia Pvt. Ltd. (hereafter, "Asian branch").¹⁶⁸ Furthermore, this first commission payment was rushed through as "urgent" by VF, even though there was no signed contract in place at the time of the payment.¹⁶⁹

¹⁵⁹ 23 February 2007 email from CNM Director to VF Sales Manager re: "PR's Plan Round 2 Year 4&5".

¹⁶⁰ Ibid.

¹⁶¹ This agent's name is spelled in a variety of ways, such as "Kim Nou Chounoa" or "Chhou Noukim Chenda", "Nou Kim Chounda", oftentimes misspelled by the CNM Director himself further indicating that this person was fictional. 10 June 2009 email from CNM Director to VF Sales Manager re: "Commission transfer"; 17 August 2010 email from CNM Director to VF Sales Manager re: "Quiet"; See OIG report Annex 1, Figure 53.

¹⁶² VF was in contractual privity with agent "Kimchenda" from 1 July 2006 until 30 June 2011. There were two contracts (one fully executed, one not) dated 1 January 2007, which covered the period from 1 July 2006 to 1 July 2007; a third contract was executed to begin on 1 July 2007 and was automatically renewed until 30 June 2010; a fourth contract replaced the July 2007 contract and was valid from 01 July 2010 through 30 June 2011; and a fifth contract was drafted to cover 17 November 2011 to 16 November 2012, but it was only signed by VF.

¹⁶³ VF underwent a restructuring in 2007 and consequently transferred the 01 July 2007 Agency Agreement to Vestergaard Frandsen Group SA, an entity which retained the same physical address as VF and entered into all future contracts with the agent.

¹⁶⁴ Executed Agency Agreement Between "Chhou Nou Kimchenda" and VF, dated 1 January 2007, § 1.

¹⁶⁵ Ibid. at § 7.1.1.

¹⁶⁶ 23 February 2007 email from CNM Director to VF Sales Manager.

¹⁶⁷ Credit Suisse debit advice slip, dated 27 March 2007 (showing payment order for USD 10,000 to Chhou Nou Kimchenda).

¹⁶⁸ VF Submission to OIG ("VF Submission"), dated 1 February 2013, p. 18, §7.4.2.1. VF informed OIG that its offices in India are actually VF subsidiaries and that while its Indian branch and its Asian branch were separate legal entities, they were often located in the same physical location in Delhi. 20 September 2013 letter from VF counsel to OIG, ¶¶ 1d and 1g.

¹⁶⁹ 26 March 2007 emails between VF's Director in Asian branch, VF's legal department and VF Sales Manager, Indian branch.

121. Over the course of the five separate Agency Agreements between “Kimchenda” and VF, the manner in which VF calculated commission payments for its agent changed. For the first couple of contracts, the agency commission was fixed at a flat rate of USD 10,000 for orders of at least 100,000 nets. This was done despite VF’s stated policy against fixed rate commissions.¹⁷⁰ Indeed, even after being instructed by VF’s legal department that fixed rate commissions were prohibited, the Regional Director and Sales Manager continued to try to push an agency agreement through that contained a fixed rate commission.¹⁷¹ By July 2010, the commission payments were scaled on a percentage of the contract price, between 2.25 percent and 2.5 percent, with varying conditions on the type of product sold as well as the tasks performed by the agent. VF informs OIG that for the types of nets sold in Cambodia, the maximum amount of commission was 3.5 percent.¹⁷²

122. As the table in Figure 47, supra, indicates, VF made a total of four commission payments covering four contracts to provide bednet products to Cambodia between 2006 and 2011. The total amount of these commission payments was USD 154,241. These payments were made as bank wire transfers from VF headquarters’ corporate accounts to various bank accounts for beneficiary “Chhou Nou Kimchenda”. As such, these payments were executed by the Finance and Accounting department in the headquarters office at the request of VF senior management in various branch offices.¹⁷³ VF provided OIG with a chart created internally in the course of its investigation to keep track of these commission payments. (See Annex 1, Figure 50). CNM’s Director provided the bank account information for “Kimchenda”. (See Annex 1, Figure 49). In fact, there were two different bank account numbers at the same bank used for this agent during the relevant time period.¹⁷⁴ At no point in time does it appear that VF raised any concerns about the change in bank account numbers or the fact that the spelling of the beneficiary name had changed.¹⁷⁵

123. As mentioned above, the commission payments were made by wire transfer from VF’s corporate accounts at Credit Suisse to Beneficiary “Chhou Nou Kimchenda’s” account at Canadia Bank Ltd. in Phnom Penh.¹⁷⁶ The final payment of USD 83,053.69 was ultimately sent to the account of another beneficiary, [REDACTED] Capital Limited, at Standard Chartered Bank in Hong Kong, Annex 1, Figure 52, for the stated purpose of passing a cash transfer of the commission payment to “Chhou Nou Kimchenda’s” husband in Thailand for “tax reasons.”¹⁷⁷

G.1.4.9. VF’s Agency Agreement with “Chhou Nou Kimchenda” was a fiction

124. As was the case with SCS, VF paid commissions to agent “Chhou Nou Kimchenda” with the knowledge that the agency arrangement was fictional, serving as a conduit for making payments to CNM’s Director. During the course of its investigation, the OIG did not uncover any evidence that any VF employee ever met or had direct communication with “Chhou Nou Kimchenda”.¹⁷⁸ While VF’s Regional Director at the Indian branch

¹⁷⁰ VF Submission, dated 1 February 2013, p. 15-16, § 7.3.2.4.

¹⁷¹ Ibid; 02 August 2010 email between VF’s Regional Director and VF.

¹⁷² VF Response to OIG report, dated 26 May 2013, p. 8, ¶ 20.

¹⁷³ VF Submission, dated 1 February 2013, p. 17-22, § 7.4.2. Note that a Director in VF Asian branch approved the first commission payment.

¹⁷⁴ The first three commission payments were made to “Kimchenda’s” Canadia Bank account #1100 [REDACTED] 319. The January 2011 payment went to account #019 [REDACTED] 15. 29 May 2009 email re: “NEW BANK ACCOUNT” between CNM’s Director and VF’s Sales Manager providing new bank account information for “Chhou Noukim Chenda”; see also 10 June 2009 email re: “Commission transfer”.

¹⁷⁵ See OIG report § G.1.4.10, infra (discussing name change for USD 83,054 payment).

¹⁷⁶ Credit Suisse issued debit advice slips for each of these payments confirming the transactions.

¹⁷⁷ VF Submission, dated 1 February 2013, p. 21-22, § 7.4.2.5.

¹⁷⁸ On 06 December 2012, VF received an email purportedly from agent “Kimchenda” in response to VF’s 3 December 2012 letter request to audit “Kimchenda’s” activities. This email, written in English and sent from the email address [REDACTED]@yahoo.com, contained incorrect information and advised VF to cease its bednet

believed he has spoken to “Kimchenda’s” husband, VF was unable to confirm that any company employee ever met or interacted with the agent directly, and certainly no substantive or business interaction transpired.¹⁷⁹ Moreover, the Regional Director claimed that “Kimchenda” only speaks Khmer and not English, which raises another concern given that the Agency Agreements were all drafted in English. Moreover, the only communication VF provided to OIG that purportedly came from “Kimchenda” was an email from a yahoo address written in English. (See OIG report fn. 181).¹⁸⁰

125. Employees of VF, particularly VF’s Indian branch Sales Manager, communicated exclusively with CNM’s Director on all matters relating to VF’s work in Cambodia and the corresponding agency relationship – from negotiating the agreement, to getting the agent’s signature and sending it back to VF, to inquiring about the status of commission payments.¹⁸¹ Notably, when VF’s Regional Director at the Indian branch inquired as to whether an agency commission payment had been received, CNM’s Director replied, via email: “Thanks. *I got it.*”¹⁸² (emphasis added) (See Annex 1, Figure 51).

126. The Agency Agreements contained a number of requirements that agent “Kimchenda” had to deliver in order to adequately fulfill the contractual terms. Standard among them was the requirement to produce regular written reports with information about the development of the market and visits to clients.¹⁸³ VF has been unable to locate any reports produced by this agent.¹⁸⁴ VF’s Sales Manager at the Indian branch also confirmed that he had never received any commission reports or other work product from, nor had any direct communication with, this agent.¹⁸⁵ By the 2010 version of the contract, there was an entire annex of Agent responsibilities, requiring such things as the following: frequent customer visits to promote VF activities; assistance with local registration process; monitoring and reporting on competitor activities and registration status; facilitating meetings to introduce new and existing products; assisting in submission of bids; and accompanying VF to tender openings.¹⁸⁶

127. OIG found no evidence that VF questioned whether “Kimchenda” was fulfilling the terms of the agency contract. Moreover, VF was willing to make commission payments to “Kimchenda” for contracts VF won before it had a contractual relationship with “Kimchenda”, or even knew this person existed. (See OIG report ¶ 120, *supra*).

128. The OIG located no evidence that VF took action when certain parts of the agency agreement were unfulfilled or otherwise not adhered to, further supporting the OIG’s finding that the agency agreement was a façade to facilitate the actual payment of money to CNM’s Director personally.

business in Cambodia. See also VF Submission, dated 1 February 2013, p. 35, § 10. As of the date of VF’s submission to OIG, VF had not conducted an audit of “Kimchenda”.

¹⁷⁹ VF Submission, dated 1 February 2013, p. 11, § 7.1.2

¹⁸⁰ VF Submission, dated 1 February 2013, p. 10, § 7.1.2.

¹⁸¹ See, e.g., 2 March 2007 email re: “scan signature” (where CNM Director agrees to express mail Agency Agreement with “Kimchenda’s” signature); 26 July 2007 email re: “New Agency agreement” (where CNM Director confirms he sent another version of signed contract by express mail); 26 February email re: “Agency Agreement” (where VF Sales Manager sends agency agreement to CNM Director and asks him to courier signed documents back to VF).

¹⁸² 11 January 2011 email chain from CNM Director to VF Regional Director re: “Happy New Year”.

¹⁸³ 1 January 2007 Agency Agreement, § 3.4 (requiring monthly reports); 01 July 2007 and 01 July 2010 Agency Agreements § 5.4 (requiring regular reports).

¹⁸⁴ 22 December 2012 email from VF’s General Counsel to the OIG.

¹⁸⁵ Interview of VF Sales Manager, 17 October 2012 (ROC p. 2).

¹⁸⁶ Appendix I of Agency Agreement, effective 1 July 2010, “Agent Responsibilities”.

G.1.4.10. VF final payment to “Agent” inconsistent with good business practices and potentially violated VF Business Conduct Principles

129. In October 2008, VF enacted Business Conduct Principles that set forth how the company and all personnel within VF shall conduct their professional affairs.¹⁸⁷ Throughout this code, there is an emphasis on responsibility and integrity. There is also a specific provision addressing corruption:

“Vestergaard Frandsen will not tolerate corruption, extortion or bribery. Corruption is the abuse of entrusted power for personal gain. Employees of Vestergaard Frandsen must never accept or give a bribe or kickback etc.” § 2.4, Corruption.

130. These corporate principles include an “Anti-Corruption Compliance” Appendix, which further elaborates on what constitutes corrupt activities. This appendix states that:

“As an employee, agent, consultant, contractor or other entity representing Vestergaard Frandsen, bribery kickbacks etc. of any kind is prohibited. Vestergaard Frandsen seeks to ensure that agents, consultants, contractors, suppliers etc. do not give bribes on behalf of Vestergaard Frandsen. This means that **Employees are prohibited from promising, offering, giving, inducing the giving of or authorizing such giving or accepting anything of value directly or indirectly, e.g. through an intermediary such as agents, business consultants etc., in order to obtain an improper advantage or to influence official action.**” § 1, General Practice (emphasis added).

131. According to these principles, it is further the employee’s responsibility to ensure that business partners and other third-party entities acting on behalf of VF abide by these principles.¹⁸⁸

132. It appears, based on these implemented principles, that VF’s position on corruption and bribery has been strong and straight-forward since 2008. Even before these principles came into effect, as a leader in the bednet industry, VF launched several industry discussions concerning integrity in the market and strengthening compliance controls.¹⁸⁹ These initiatives ultimately led to the adoption of a Stakeholder Action Proposal that set forth “Industry Action Commitments”, which included a need to draw specific attention to anti-corruption/bribery practices in the codes of conduct for industry participants, such as VF.¹⁹⁰

133. As a way to monitor compliance, VF offered training and required employees to self-certify that business activities had been conducted in accordance with the above-stated principles. Indeed, VF’s Regional Director at the Indian branch certified as much on behalf of VF’s work in Asia for the time period 14 October 2008 through 24 November 2010.¹⁹¹ Despite these rules and initiatives, VF’s employees in the regional office, and even the VF headquarters¹⁹², did not scrutinize carefully enough the agency arrangement in Cambodia.

134. VF’s employees did not follow these compliance measures and anti-corruption principles with respect to VF’s February 2012 payment of USD 83,053.69 in commission payments to cover one contract (split into three separate orders) for LLINs in September 2011. This payment was authorized by an Executive Officer at VF headquarters after he

¹⁸⁷ General Business Conduct Principles, www.vestergaard-frandsen.com/our-passion/buisness-conduct-principles, accessed 15 May 2013.

¹⁸⁸ General Business Conduct Principles, Anti-Corruption Compliance, Appendix § 1 (see fn. 190 for link).

¹⁸⁹ VF Submission, dated 1 February 2013, p. 30, § 9.1.

¹⁹⁰ “Improving Global Bed Net Procurement: Stakeholder Action Proposal”, dated July 2009.

¹⁹¹ VF Submission, dated 1 February 2013, p. 33, § 9.3.2; Certification of Compliance with Business Conduct Principles, dated 3 December 2009; Business Conduct Principles Affirmation, dated 30 November 2010.

¹⁹² As discussed in greater detail in this report, ¶ 120, 122, 154, VF headquarters office was directly involved in approving payment to its agent in Cambodia through its Finance and Accounting department and, on one occasion, after the approval of an Executive Officer.

raised concerns about making a full commission payment to the agent due to liquidated damages incurred by the company as a result of delayed delivery.¹⁹³ Upon receiving representations by the Indian branch Regional Director of the “hard work” of the agent, VF’s Executive Officer approved the full commission payment.¹⁹⁴ No further documentation was requested or presented in association with this decision. This was the largest commission payment up until that point in Cambodia, and it covered all of the contracts that VF won to supply CNM with bednets under VPP in 2011. VF’s stated intention was to provide this payment to agent “Kimchenda”.¹⁹⁵ The booking details for this payment confirm that it was for an “agent commission”, though the beneficiary name was spelled “Kim Nou Chounoa” and it was sent to a bank account that had never been used before. (See Annex 1, Figure 52).

135. Unlike all the other “agent” commission transactions, this payment was not wired directly to “Kimchenda’s” Canadia Bank account. Although VF initially requested for payment to be made to incorrectly-spelled agent “Kim Nou Chounoa” on 31 January, 2012, approximately one week later VF requested Credit Suisse to change the name of the beneficiary to “[REDACTED] Capital Limited” and asked for confirmation that the funds were credited to the same beneficiary’s account at Standard Chartered Bank in Hong Kong on 02 February 2012. (See Annex 1, Figure 53).

136. VF explained that the purpose for the diversion from usual practice was that “Kimchenda” wanted to be paid in cash for “tax reasons”.¹⁹⁶ This request was communicated to VF’s Indian branch Regional Director, directly from CNM’s Director.¹⁹⁷ To accommodate this request, VF wired this payment to a friend of VF’s agent in Thailand, “Mr. T [REDACTED]”, who lived in Hong Kong and who was willing to accept this transfer of money. Mr. T [REDACTED], whose full name is unknown, was supposed to then cash the USD 83,054 payment, which would then be carried across international borders from Hong Kong to Bangkok. Then, presumably, Mr. T [REDACTED] would deliver it to VF’s Thai agent who in turn would give it to Cambodian agent “Kimchenda’s” husband¹⁹⁸. No explanation was proffered as to the need for this sudden departure from VF’s normal process for paying commissions. No evidence was provided to indicate a formal agreement was put in place with the friend of VF’s Thai agent. According to its corporate investigation report and subsequent communication with OIG, VF further acknowledges that it has no official record that this commission payment of USD 83,053.69 ultimately ended up in “Kimchenda’s” possession, though VF’s Regional Director claimed the Thai agent has a receipt for payment provided to “Kimchenda’s” husband.¹⁹⁹ VF has not been able to locate or produce said receipt as of the date of this report’s release. As of the date of the VF submission, VF had not successfully confirmed whether or not this money ended up with agent “Kimchenda”.²⁰⁰

137. OIG questions the legitimate business purpose of making a commission payment in the manner described above. Certainly, the justification that it was done for “tax reasons” raises significant concerns. Moreover, the convoluted and circuitous nature of this payment seems designed to obstruct detection, from parties such as tax authorities, and to

¹⁹³ VF Submission, dated 1 February 2013, p. 21, § 7.4.2.5; 16 February 2012 email chain between VF Executive officer in headquarters to Regional Director, et al., re: “Cambodia: 10% penalty late delivery from VF alias 10-10 textiles”.

¹⁹⁴ VF Submission, dated 1 February 2013, p. 21-22, § 7.4.2.5.

¹⁹⁵ Ibid.

¹⁹⁶ The discovery of the stated purpose and circuitous nature of the final commission payment resulted from VF’s discussion with its Regional Director, Indian branch, during its internal corporate investigation. VF Submission, dated 1 February 2013, p. 22, § 7.4.2.5.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid. at p. 21-22, § 7.4.2.5; 31 January 2012 email from VF’s Thai agent to Regional Director, Indian branch, re: “Fwd: HK Account”.

¹⁹⁹ VF Submission, dated 1 February 2013, at p. 22, § 7.4.2.5; 20 June 2013 email from VF to OIG.

²⁰⁰ VF Submission, dated 1 February 2013, p. 35, § 10.

hide the trajectory of money to the ultimate recipient. VF's General Business Conduct Principles clearly require transparent financial transactions: "Vestergaard Frandsen will not participate in any form of money laundering and all financial transactions must be documented and transparent."²⁰¹ Making a large cash payment to unknown or undisclosed recipients without confirmation of its ultimate destination seems to violate these corporate principles, especially when considered in terms of the actual purpose for these payments: to pay CNM's Director in exchange for the awarding of bednet contracts. Moreover, this final commission payment was routed through an international Correspondent Bank in New York. (See Annex 1, Figure 53).

138. Where this final "commission" payment ultimately ended up is unclear, but VF's stated purpose was to provide this money to its agent "Kimchenda", who was serving as a conduit to direct the payment to CNM's Director. As such, OIG holds VF accountable for making a final commission payment to agent "Kimchenda" in the amount of USD 83,053.69.

G.1.4.11. VF made improper commission payments and other "favors" in order to obtain advantage in Cambodian procurements

139. VF began its campaign to cultivate a relationship with CNM years before winning a contract to provide CNM with bednet products.²⁰² Part of this effort was forging a relationship with CNM's Director and finding a way to break into the Cambodian market. As VF's Asian branch Regional Director²⁰³ noted in an October 2003 email, VF received the CNM Director's advice on who could represent VF in Cambodia to "secure govt. business as they would know how to move in the govt. circles." (See Annex 1, Figure 54).

140. VF's Regional Director knew that CNM's Director, a government official, was very influential in Cambodia and could influence things in favor of VF.²⁰⁴ In fact, VF's Sales Manager wrote a SWOT ("strengths, weaknesses, opportunities and threats") memorandum on 09 February 2007 appraising VF's position in Cambodia. This memo stated that the CNM Director would be present for seven to eight more years, so "[i]f we are not able to influence him in our favor we have a major blockade in him for succeeding in this country."²⁰⁵ This memo indicated that VF felt it was trailing a major competitor in the Cambodian market. The SWOT memo cited VF's "weak relationship" with the CNM Director and highlighted that Director's preference for Olyset nets, the bednet product offered by VF's main competitor, Sumitomo Chemical, at the time.²⁰⁶

141. After the VF Indian branch Sales Manager, released the SWOT memorandum, on 15 February 2007, he and VF's Director from the Asian branch ("Director") visited the CNM Director in Cambodia.²⁰⁷ Days later, CNM's Director informed VF that he agreed to let PSI procure VF's PermaNet nets under a contract financed by the Global Fund during Round 2, Phase 2 financing.²⁰⁸ About a month later, the Sales Manager learned that CNM's Director had indeed supported the sole sourcing of nets to PSI in favor of VF and passed this recommendation to the Secretary of State.²⁰⁹ Ultimately, VF won this contract, though the Secretary of State did not agree with the CNM Director's request to sole source

²⁰¹ General Business Conduct Principles, Money Laundering, §2.2, (see fn. 190 for link).

²⁰² See citations in OIG report, fn. 158.

²⁰³ Note that this is not the same Regional Director as the one from VF's Indian branch referred to throughout this report.

²⁰⁴ VF Submission, dated 1 February 2013, p. 12, § 7.2.

²⁰⁵ 9 February 2007 SWOT Analysis Memo from VF Sales Manager.

²⁰⁶ Ibid. From 2004 to 2007, there were only three WHOPES-approved bednet manufacturers and suppliers: VF, SCS and BASF (as of December 2006). "Global LLIN Market – Suppliers and Products" graph supplied by UNICEF/The Global Fund.

²⁰⁷ 08 February 2007 email from VF Sales Manager to CNM Director re: "Our visit to Phnom Penh".

²⁰⁸ 20 February 2007 email between VF Sales Manager and CNM Director re: "PR's Plan Round 2 Year 4&5".

²⁰⁹ 6 April 2007 email from PSI-Cambodia to VF Sales Manager re: "follow up on net procurement".

the contract to VF.²¹⁰ The Notification of Awards for this contract was dated 30 May 2007, which is 2 months after VF made its first commission payment to its Cambodian agent. CNM's Director had clear involvement in the procurement of bednet products that were going to entities besides CNM, such as this contract with PSI, even during the time that CNM was still a SR under the MoH. The connection between the influence VF sought from the CNM Director and the commission payments is made even more apparent by the fact that in the same chain of emails where CNM's Director informs VF that he is allowing PSI to procure bednets from VF, the VF Sales Manager thanked him for his decision and asked him to send "the account no. as suggested by you on the phone. This would help us in sending you the agreement papers as discussed with you."²¹¹ The agreement being referenced in this message was the first Agency Agreement with "Chhounou Kimchenda", and the account number was "Kimchenda's" bank account.

142. CNM's influence also extended to WHO, who sometimes operated as a Procurement Agent for Global Fund-related contracts with CNM. On 15 January 2009, CNM's Director informed VF's Sales Manager he told WHO that CNM used PermaNet products and requested that CNM's next bednet order go to VF.²¹² He further added that he gave "sole source to WHO Manila to avoid the tender process."²¹³ In advance of the tender, CNM's Director then forwarded to VF an email between WHO Manila and CNM regarding WHO's questions/concerns about the potential timing of VF's delivery of product and the composition of this product, and describing WHO's request for a quotation from VF's main competitor Sumitomo Chemical.²¹⁴ VF welcomed this information and thanked CNM's Director for sharing the "useful information", to which the Director replied, "I just endorse the quotation and send back to WHO".²¹⁵ It is unclear to the OIG whether this email contained information that was meant to be confidential between CNM and WHO, or whether it was permissible for CNM's Director to share it with VF. The OIG uncovered no evidence to show that WHO was aware of the representations that CNM's Director made to VF. CNM's Director then informed VF that he had endorsed its quotation and, ultimately, VF won this contract. While OIG believes this particular discussion refers to a non-Global Fund contract, WHO Manila was involved in several Global Fund procurements so CNM's relationship with that office is noteworthy.

143. Even the switch to international-based procurements (VPP) did not wholly eliminate the CNM Director's ability to influence outcomes. CNM's Director continued to apply his influence in VF's favor and share confidential bid information during procurements held under VPP and after he had officially "retired" from the directorship of CNM. When a country registers under the Global Fund's VPP mechanism, it must sign a schedule containing PR undertakings for VPP. Among these is the commitment to keep confidential any documents or information provided to them by the Global Fund in connection with the procurements that are designated as confidential, or should reasonably be known to be confidential.²¹⁶ On 19 May 2011, the CNM Director forwarded to VF private communication between CNM, MoH, and PSI as VPP implementer, in which PSI attached its bid evaluation narrative and price quotes from competing suppliers in a tender for 2,696,000 nets. (See Annex 1, Figure 55). As mentioned in ¶ 112, *supra*, CNM's Director similarly sent this information to SCS. But the OIG identified no evidence that he sent it to any other bidders who were competing for these tenders. Also, the OIG

²¹⁰ 11 April 2007 email from PSI-Cambodia to VF Sales Manager re: "Your meeting with the Secretary of State"; 30 May 2007 email from PSI-Washington to VF Sales Manager re: "Contract PSI-0002-05-07 (35,000 hammock and 85,700 family nets)".

²¹¹ 20 February 2007 email between VF Sales Manager and CNM Director re: "PR's Plan Round 2 Year 4&5".

²¹² 15 January 2009 email between CNM Director and VF Sales Manager re: "Appointment with you".

²¹³ VF asserts that WHO Manila had no procurement authority. VF Submission, dated 1 February 2013, p.26, § 8.2. This assertion is incorrect. WHO Manila is the main office who facilitated procurements on behalf of the Global Fund. See OIG report § G.1.2, *supra*, discussing the role of WHO Manila as Procurement Agent.

²¹⁴ 22 January 2009 email re: "Quote for WHO, Manila" from VF Sales Manager to CNM Director.

²¹⁵ *Ibid.*

²¹⁶ Global Fund's Schedule, Principal Recipient Undertakings for VPP, §D.1.

uncovered no evidence to demonstrate that PSI was aware that CNM's Director forwarded this communication. Further, there is no evidence that PSI was influenced in any way by the improper commission payments highlighted in this report.

144. Upon receiving the CNM Director's 19 May 2011 message, Annex, Figure 55, VF's Indian branch Regional Director replied that he needed to speak to CNM's Director "urgently" and asked for his phone number. Hours after requesting to speak with the CNM Director, VF's Regional Director then emailed him and appeared to ask him to interfere with the procurement deliberation process: "Pl [sic] say 10 days not important. If we go with lowest bid we save more and we get more value for money."²¹⁷ The investigation learned that VF could only deliver products at 30 days as compared to competitor Sumitomo Chemical's 20 days. CNM's Director agreed to do this. (See Annex 1, Figure 56). While the ultimate effect of CNM's Director's willingness to express VF's position to PSI is unknown, the OIG finds that VF's request indicates that the CNM Director's recommendations still had weight under VPP, or that VF *perceived* it as such, so much so that it needed to make this request to him "urgently". Ultimately, VF received a contract under VPP and was charged a 10 percent penalty fee for late deliveries under these procurements.²¹⁸ When a senior manager at VF's headquarters tried to reduce the agent's commission fee accordingly, VF's Indian branch Regional Director, argued against it and insisted that the agent keep the full commission.²¹⁹ (See OIG report ¶ 134, 156). The Executive Officer from headquarters ultimately approved payment of the full commission but expressed reservation about future payments being made to agents under similar circumstances.

145. Several months later, in August 2011, once again in connection with the VPP procurements, CNM's Director sent an email to VF informing it of PSI's decision to purchase PermaNet products. The OIG uncovered no evidence that this message was also sent to Sumitomo, the other winning bidder, and it contained information about VF's competitor. Significantly, the Director specifically instructed VF's Regional Director: "DON'T SHARE THIS EMAIL TO OTHER PEOPLE". (See Annex 1, Figure 57).

146. As stated above, VF ended up winning one contract that was divided into 3 deliveries to provide bednet products under VPP in 2011, which included the contracts being discussed in Annex 1, Figures 55-57, and which were valued at approximately USD 3.7 million. On or around 02 February 2012, VF paid USD 83,053.69 in commission payments to its "agent" in connection with this contract, despite the complete lack of involvement of the local agent in this international procurement. (See Annex 1, Figure 52).

147. Although CNM was no longer directly involved in Global Fund-related procurements under VPP, it still had some involvement in the procurement process, such as drafting initial technical specifications²²⁰ and accepting or declining price quotations upon receipt and review of bid proposals.²²¹ In fact, when PSI shared the bid Evaluation Narrative for IFB 0972-ITN-VPP-0035 with CNM's Director, see Annex 1, Figure 55, which the Director ultimately passed along to VF and SCS, it stated: "PSI will issue an RFQ for freight once the PR [CNM] provides approval of recommendation, as well as the selected option." As these emails indicate, the OIG finds that CNM's Director remained an influential figure in the Cambodian health sector, with the actual – or perceived – power to exercise influence

²¹⁷ 20 May 2011 email between VF Regional Director and CNM Director re: "CAM-S10-G14-M (CNM) and CAM-607-G10-M (MoH) Cambodia Bid Opening Report, Evaluation, and Narrative".

²¹⁸ 16 February 2012 email chain between VF Executive Officer in headquarters to Regional Director, et al., re: "Cambodia: 10% penalty late delivery from VF alias 10-10 textiles".

²¹⁹ Ibid.

²²⁰ Such specifications were standard and reviewed by the Global Fund. 2 October 2013 email from Senior Fund Portfolio Manager to OIG.

²²¹ See Global Fund "Procurement Support Services Guidelines for Participation Voluntary Pooled Procurement", dated March 2011.

over procurements that took place for Cambodia under VPP, even despite his alleged “retirement” from the directorship.

148. Although the CNM Director had technically resigned from his position at the time of this final improper commission payment, he continued to remain involved in CNM-related procurements as Figures 55-57 (Annex 1) indicate and acted with the apparent authority of the Director position. He retained his physical office at CNM, used a CNM email address, was involved in discussions with VPP agent PSI regarding the timing of deliveries and shared confidential information with active bidders, VF and SCS. The OIG maintains that these factors combined demonstrate a clear and continued connection between the then-former CNM Director and CNM business activities, rendering the status of his employment moot. Moreover, it appears CNM tolerated this misperception by allowing the then-former CNM Director to be kept in the information loop on procurement matters subsequent to his retirement. Indeed, at least three other current CNM employees, including the Chief of Procurement, were included on the email in Figure 57, which was also sent to the then-former CNM Director *3 months after* his departure. The OIG finds that this further explains how he was able to remain influential and secure improper commission payments from VF post-retirement from CNM.

149. PSI, the VPP agent for CNM procurements, continued to include the then-former Director on emails concerning Global Fund procurements as late as September 2011, 4 months after his official “retirement” from CNM. It is not clear at what point PSI was notified about the CNM Director’s retirement, but an employee of CNM sent an email on 29 September 2011 to a PSI procurement officer “re-informing” PSI that the CNM Director had retired and asking PSI not to continue to share information with him.²²²

150. Beyond the payment of commissions, VF was willing to extend other favors to CNM in an effort to forge a strong relationship. Much like its competitor SCS, VF appears to have offered to pay for non-work-related trips that the CNM Director took. Payment for such trips would appear to violate VF’s policy against paying for personal trips.²²³ In one example in 2010, it appears that VF paid the hotel and flight costs for the CNM Director and his wife’s trip to Singapore, which was purely personal in nature. (See Annex 1, Figure 58). On another occasion, in March 2005, VF’s Regional Director offered to pay for the CNM Director’s airfare to Dubai, but informed the Director that he could only provide an economy class ticket, despite the Director’s request for business class.²²⁴ The OIG investigation did not uncover any evidence to prove that VF made these payments, only that the offers to pay were made.²²⁵

151. VF contends that it never received a business advantage from the commission payments it made in connection with the contracts awarded in Cambodia.²²⁶ However, the OIG finds that even being alerted to what future needs for LLINs in Cambodia were gives one competitor an edge over others. For example, in late 2010, CNM’s Director shared CNM’s future procurement plans under VPP with VF’s Indian branch Regional Director to give an idea of what the volume of nets would be.²²⁷ CNM’s Director specifically asked VF not to share this information with other people. The OIG finds that the access and opportunities afforded to VF as a result of the close relationship it forged with CNM’s Director are every bit as much of a benefit gained as the bednet contracts themselves.

152. This close relationship is also demonstrated by VF’s Regional Director’s acknowledgment that CNM’s Director was in charge of *informing* VF about what was

²²² 29 September 2011 email from CNM to PSI Senior VPP Procurement & Logistics Officer re: “URGENT! Cambodia: CAM-M-CN...”

²²³ Business Conduct Principles, Anti-Corruption Compliance Appendix, § 3: “travels [sic], meals and entertainment must be business-related.” (See fn. 190 for link).

²²⁴ 23 March 2005 email between VF Regional Director and CNM Director re: “ticket for Dubai”.

²²⁵ See VF response to OIG draft report, dated 26 May 2013, p. 6, ¶11.

²²⁶ VF Submission, dated 1 February 2013, p. 30, § 8.

²²⁷ 27 December 2010 email between CNM Director and VF Regional Director re: “Quiet”.

happening with its agent, despite the fact that this agent supposedly worked for VF to obtain bednet contracts.²²⁸ The intimate involvement of CNM's Director with VF's agency arrangement is a conflict of interest, as CNM is the ultimate beneficiary of LLIN contracts and the agent works for an entity that is competing for this business. The additional fact that this "agent" is possibly a relative of the CNM Director is another conflict of interest, further supporting a finding that the agency arrangement only existed to allow for the payment of improper commissions. Indeed, the evidence supports a finding that the commission payments and the other gratuities offered were made with the purpose of obtaining contracts to provide bednet products to Cambodia. That these improper commission payments continued under VPP, when CNM was no longer in charge of the procurement process, further highlights the importance VF placed on maintaining a good relationship with CNM.²²⁹

G.1.4.12. VF management should have known about improper commission payments

153. The Regional Sales Director at VF's Indian branch was responsible for the selection and hiring of "Chhou Nou Kimchenda" as VF's agent in Cambodia.²³⁰ VF's Regional Director, however, disassociated himself from this agent, claiming he never met the agent and had only met the agent's husband once or twice.²³¹ The Regional Director communicated directly with CNM's Director on issues related to the agency contract and commission payments.²³² As discussed above, at one point he even asked for the CNM Director's phone number because he needed to speak to him "urgently" after the CNM Director forwarded an email concerning PSI's evaluation of a bid submission in May 2011.²³³ (See Annex 1, Figure 55). This same Regional Director pushed hard for the agent to receive full commission on the contract to provide bednets in 2011, despite late delivery of goods, claiming that the contract was won as a result of "all the hard work of the agent" to justify his position – work that the Regional Director could have had no knowledge of since he admitted having had no contact with said agent.²³⁴

154. In 2007, VF's Indian branch Regional Director instructed the Sales Manager to prepare an agency agreement in Cambodia, which the Regional Director later approved and forwarded to VF headquarters in Switzerland for review by the legal department and signature by an executive officer.²³⁵ All commission payments under this agreement were executed and paid from the headquarters office.²³⁶ Significantly, a senior official approved the first commission payment to agent "Kimchenda" before a valid and executed agency agreement was in place. VF's Director in its Asian branch authorized payment to "Kimchenda" on 27 March 2007 despite the fact that there was no agency agreement in effect.²³⁷ This approval to pay the first agent commission payment took place

²²⁸ VF Submission, dated 1 February 2013, p. 23, § 7.6.

²²⁹ VF informed OIG that it is standard practice for an agent to receive commission whenever a sale takes place within a given territory, even when procurements are conducted by another entity. VF Response to OIG draft report, dated 26 May 2013, p. 6, ¶ 8.

²³⁰ VF Submission, dated 1 February 2013, p. 13 § 7.3.1; Interview of VF Sales Manager, 17 October 2012 (ROC p. 2).

²³¹ VF Submission, dated 1 February 2013, p. 11, § 7.1.2.

²³² See, e.g., 17 August 2010 email regarding sending signed agency agreement to CNM; 16 October 2010 email regarding confirmation of payment to agent's account; 11 January 2011 email confirming CNM Director received funds from VF.

²³³ 20 May 2011 email between CNM Director and VF Regional Director.

²³⁴ 16 February 2012 email chain between VF Executive Officer in headquarters to Regional Director, et al., re: "Cambodia: 10% penalty late delivery from VF alias 10-10 textiles".

²³⁵ Interview of VF Sales Manager, 17 October 2012 (ROC p. 2); VF Submission, dated 1 February 2013, p. 13, § 7.3.1.

²³⁶ Ibid. VF Submission, dated 1 February 2013, p. 17-22, § 7.4.2.

²³⁷ VF Submission, dated 1 February 2013, p. 18, § 7.4.2.1; 26 November 2012 email re: "Cambodia Commission – urgent request" between VF legal department and Director in VF's Asian branch in which Director asks for payment to be remitted and assures the contract will be signed "asap"; see also 26 March

approximately one month after VF's Asian branch Director and Indian branch Sales Manager met with CNM's Director in Cambodia on 15 February 2007.²³⁸ Such involvement by managers from different offices demonstrates, at the very least, an awareness of this agency arrangement and the financial implications thereof in different offices. Like VF's Indian branch Regional Director, the Asian branch Director also stated he had never met this agent.²³⁹ Further, the Asian branch Director is still employed by VF in an executive-level position.²⁴⁰

155. Beginning in 2008, VF's headquarters office implemented a new agency agreement template that standardized business conduct principles and set commission levels.²⁴¹ Yet, VF continued to use the agency agreement drafted in 2007 with "Kimchenda", which lacked these company-standardized provisions and additional agent requirements, until July 2010. Presumably, VF's Indian branch Regional Director knew about these corporate-wide changes but did not implement them until 2010.

156. As stated in ¶ 134, 144, *supra*, VF's Executive Officer at headquarters debated the merits of paying this agent a full commission in February 2012 with the Regional Director after VF was penalized for late delivery of goods.²⁴² The Executive Officer ultimately approved full payment of USD 83,054 to this agent at the insistence of VF's Regional Director.²⁴³

157. Despite having no personal contact with the agent "Kimchenda", VF senior management approved agency agreements and commission payments to said individual under circumstances that do not appear to be normal, e.g. where payment was made pursuant to an unexecuted back-dated contract before the identity of the agent was known and where payment was made without submission of valid monthly market reports as required by the agency agreements. Moreover, VF produced numerous communications between VF management and CNM's Director on the agent's behalf. VF did not notice that the agency arrangement for Cambodia was not compliant with established practices, nor did these two facts combined raise red flags to VF management about its dealings in Cambodia. Instead, VF management, including its headquarters office, continued to renew agency agreements and authorize payment of commissions to this agent over a five-year period.

158. Whether VF employees at headquarters knew about the real nature of the improper commission payments has not been conclusively demonstrated; such a finding can only be made for employees in the Indian and Asian branches of VF. However, the evidence demonstrates that enough information was available and being processed at the headquarters level to raise serious concerns about the legitimacy of the agency arrangement and the associated commission payments. As such, OIG considers VF management should have known about the improper commission payments.

G.1.5. Conclusions

159. Sufficient credible and substantive evidence exists for the OIG to conclude that senior program officials in CNM, namely the Director and Deputy Director, imposed a system from approximately 2006 to 2011 in which two international suppliers of bednet products were required to make payments in connection with obtaining contracts to

2007 email between VF employees re: "Payment of commission against blue files SQ13974 and SQ14743 – very urgent!!".

²³⁸ VF Submission, dated 1 February 2013, p. 12, § 7.1.2.

²³⁹ *Ibid.* at p. 11, § 7.1.2.

²⁴⁰ *Ibid.* at p. 6, § 4.2.1.

²⁴¹ *Ibid.* at p. 13, § 7.3.1, but see p. 34, § 9.3.2, which states that the new agency template was introduced in April 2009.

²⁴² 16 February 2012 email chain between VF Executive Officer in headquarters to Regional Director, et al., re: "Cambodia: 10% penalty late delivery from VF alias 10-10 textiles".

²⁴³ *Ibid.*

provide insecticide-treated bednets to Cambodia. This corrupt scheme was facilitated by commission payments to a third-party “consultant” or “agent”, which concealed the actual path of money that led directly back to CNM’s Director and Deputy Director.

160. In total, CNM received over USD 17.8 million worth of bednet products from SCS and VF from 2006 to 2011, over USD 11.7 million of which is under investigation in this report for having been tainted by this corrupt scheme.

161. The total amount of money that CNM improperly received from SCS in connection with the bednet contracts is USD 256,471.

162. The total amount of money that CNM improperly received from VF in connection with the bednet contracts is USD 154,241.

163. In addition to soliciting and requiring payment in connection with these contracts, CNM officials requested and accepted payment in the form of gifts, trips and favors from the same international Suppliers throughout the duration of CNM’s relationship with the Suppliers, and the cost associated with travel alone exceeded USD 20,000.

164. There is also credible and substantive evidence that all of the bednets at issue in these contracts were provided and delivered per the terms of their agreements.

G.2. National Center for HIV/AIDS, Dermatology and STD Control

G.2.1. Overview

165. From 01 January 2009 until approximately 31 August 2012, the National Center for HIV/AIDS, Dermatology and STD (“NCHADS”) employed a Senior Procurement Officer²⁴⁴ to manage Global Fund-financed procurements starting in 2009 under financing Rounds 7 and 9/SSF.²⁴⁵ This individual had previously served as a procurement officer for another bilateral donor program (“Donor 1”) at NCHADS from 2005 to 2008.²⁴⁶ As Senior Procurement Officer, this individual oversaw the tender offer process, including the development of bid specifications and receipt of price quotations, and was involved with the bid selection committee.²⁴⁷ He played an integral role in dealing with bidders throughout this process and developed close relationships with vendors such as Dynamic Pharma Co., Ltd., MIG Group, Kuang Hsein Medical Instrument Co., Ltd. and BIOMED Phnom Penh. He worked with these vendors under the Donor 1 program, and numerous of these vendors subsequently bid for and/or were awarded contracts funded by the Global Fund.

166. The OIG’s investigation has identified evidence that the NCHADS’s Senior Procurement Officer instructed vendors to include a payment of 15 percent commission in their bid price before, and as a condition for, the award of a contract with NCHADS under the Donor 1 program.²⁴⁸ In interviews with the OIG, this individual ultimately admitted to having often required commission payments on contracts and otherwise manipulating the procurement process to help favored bidders win contracts, a practice that he engaged in for the duration of his tenure as Donor 1’s procurement officer.²⁴⁹ He further stated that he was paid in cash and admitted utilizing these funds for his own personal benefit and to fund his lifestyle, which included the purchase of meals and cars.²⁵⁰ He has acknowledged that he knew this behavior was wrong, and illegal.²⁵¹ The Senior Procurement Officer has signed a statement in this regard.²⁵²

167. The Senior Procurement Officer had a history of interfering with fair and equitable procurement practices in other ways, again during his time as a procurement officer under the Donor 1 program. The Officer admitted to directing and tailoring quotations in such a manner that the procurement selection committee would choose the bidder favored by him and to interfering with the procurement process in other significant ways throughout his work for Donor 1.²⁵³

168. The evidence shows that he continued to interfere with and manipulate procurement practices as Senior Procurement Officer of the Global Fund project.²⁵⁴ While he initially

²⁴⁴ Initially, this individual’s title was “Procurement Officer”, but at some point during his tenure on the Global Fund project, he was promoted to “Senior Procurement Officer”, which is how he is referred to throughout this report.

²⁴⁵ Interview of NCHADS Senior Procurement Officer, 24 July 2012 (ROC p. 1). NB: Witness reviewed and signed the ROC following the interview and confirmed its accuracy.

²⁴⁶ Ibid.

²⁴⁷ MoH/NCHADS Terms of Reference for a “Senior Procurement Officer” for GFATM Round 7. According to NCHADS, the Senior Procurement Officer served as Secretary of the Bid Evaluation Committee (“BEC”) and was not a “member” as such. See “Response of NCHADS to the OIG draft report”, dated 19 July 2013, p. 2. The OIG’s records reflect that in 2004 and 2005, while serving as a Procurement Assistant under another program, this individual was a member of NCHADS’s BEC. See, e.g., NCHADS Bid Evaluation Report And Recommendation for Award of Contract, for Procurement of Civil Works, dated 20 January 2005, and for The Procurement of Medical and Laboratory Equipment, dated 17 March 2005.

²⁴⁸ Interview of NCHADS Senior Procurement Officer, 24 July 2012 (ROC p. 4-5, 10).

²⁴⁹ Ibid. at p. 10.

²⁵⁰ Ibid. at p. 4-5.

²⁵¹ Ibid. at p. 5.

²⁵² Ibid. at p. 11.

²⁵³ Ibid. at p. 6-7, 9-10.

²⁵⁴ Ibid. at p. 8.

claimed to OIG that he did not continue soliciting facilitation payments or bid tampering under the Global Fund program, the OIG identified sufficient credible and substantive evidence to show that such activities indeed continued. The OIG also uncovered an instance where the Senior Procurement Officer accepted a facilitation payment from a winning bidder for a Global Fund procurement. Moreover, this individual's credibility is questionable as he equivocated several times during his interview with OIG—initially denying acceptance of facilitation payments and bid rigging and only to later admit these acts once confronted with hard evidence. (See OIG report ¶ 179, *infra*).

169. The Senior Procurement Officer ceased working on Global Fund projects as of early September 2012, after his interview referenced above and after the OIG orally communicated some of its initial findings with respect to this individual to the NCHADS Deputy Director.²⁵⁵

G.2.2. Facts and Documentary Evidence

G.2.2.1. *NCHADS Senior Procurement Officer obtained commission payments in connection with the award of contracts by NCHADS under another donor project*

170. Prior to the Senior Procurement Officer's work with Global Fund procurements in January 2009, he developed close ties with a number of local vendors under the Donor 1 program. Many of these same vendors, such as MIG Group Co., Ltd. and Dynamic Pharma Co., Ltd., continued to bid for contracts under the Global Fund program. While working under the Donor 1 program, the Senior Procurement Officer established a network of "favored" vendors and used these relationships to require that these vendors build improper commissions into contracts as a precondition to the award of NCHADS procurements.²⁵⁶ He admitted to receiving commissions from the following six vendors in exchange for helping them to win contracts: Kuang Hsien Medical Instrument Co., Ltd.; Dynamic Pharma Co., Ltd.; Ontaracheat Co., Ltd.; MEAS Sovuthidy Co., Ltd.; Infotech Computer System Pte. Ltd.; and MIG Group Co., Ltd.²⁵⁷ OIG received confirmation from one of these vendors that it indeed paid commissions to the Senior Procurement Officer upon demand.²⁵⁸ Specific examples of his solicitation of improper facilitation payments are discussed below.

171. According to documentary evidence, witness statements and admissions by the Senior Procurement Officer, this Officer instructed a Product Manager at Dynamic Pharma to include a commission of 15 percent in the price quotation for a contract with NCHADS in November 2008.²⁵⁹ This communication took place only two months prior to his taking over as Senior Procurement Officer of the Global Fund project. Further, in his 03 November 2008 email to the Dynamic Pharma employee he referenced previous occasions where such a commission was built into the total contract bid price offered by Dynamic Pharma: "Could you prepare another quotation... which include the commission 15%... as we already did it before?" (See Annex 1, Figure 59). The Senior Procurement Officer has acknowledged receiving the payment in cash from the Dynamic Pharma Product Manager.²⁶⁰ The Dynamic Pharma employee also confirmed paying cash to him.²⁶¹ Furthermore, it is noteworthy that another person was employed simultaneously

²⁵⁵ 8 April 2013 email from LFA to OIG explaining that a new employee would handle communication concerning Global Fund procurements beginning 7 September 2012. According to NCHADS, it terminated the Senior Procurement Officer's employment effective 31 August 2012. "Response of NCHADS to the OIG draft report", dated 19 July 2013, p. 3.

²⁵⁶ Interview of NCHADS Senior Procurement Officer, 24 July 2012 (ROC p. 3,5, 9-10).

²⁵⁷ *Ibid.* at p. 4-10.

²⁵⁸ Interview of Dynamic Pharma representative, 26 July 2012 (ROC ¶ 13-15, 21).

²⁵⁹ Interview of NCHADS Senior Procurement Officer, 24 July 2012 (ROC p. 5).

²⁶⁰ *Ibid.* at p. 5.

²⁶¹ Interview of Dynamic Pharma representative, 26 July 2012 (ROC ¶ 21).

at Dynamic Pharma and at NCHADS, representing a potential conflict of interest with this company as well.²⁶²

172. The Senior Procurement Officer admitted that he had taken commissions on other occasions also, and that he used these commission payments for his personal benefit.²⁶³ For instance, he admitted to helping Ontaracheat Co., Ltd. and Meas Sovuthidy Co., Ltd. win construction contracts in exchange for commission payments.²⁶⁴ He also admitted that Infotech Computer System Pte. Ltd. paid him for favors in 2011, including the award of a contract.²⁶⁵

G.2.2.2. *The Senior Procurement Officer had a history of interfering with NCHADS's procurement processes which resulted in unfair competition*

173. While serving as Procurement Officer under the Donor 1 program, this Officer manipulated and interfered with the procurement process in such a way as to steer contracts to preferred vendors. The OIG uncovered numerous instances where he directed vendors to tailor their price quotations in such a way that the Bid Evaluation Committee would choose the bidder favored by him.²⁶⁶ (See, e.g., Annex 1, Figures 61-63). He also assisted vendors in preparing bid documentation and price quotations and shared competitor information to the same effect. (See Annex 1, Figure 65). These practices began as early as 2006 under the Donor 1-funded program.

174. During his interview with the OIG, the Senior Procurement Officer admitted to giving preferential treatment to Infotech Computer System by helping its agent prepare bid documentation.²⁶⁷ On 16 October 2006, the NCHADS Officer *himself* inserted the price into Infotech Computer System's price quotation. Next, the Officer emailed the Infotech representative and asked him to sign the document on behalf of Infotech and to take it to his competing bidders, Deam and Neeka. (See Annex 1, Figure 61). He further instructed him to back-date the document to 4 September 2006. In his interview with the OIG, the Senior Procurement Officer confirmed that Infotech and Deam colluded to allow the Officer to steer the contract to Infotech.²⁶⁸ Additionally, he admitted that Infotech paid him a commission for his efforts.²⁶⁹ These admissions came after the Officer told the OIG that providing the price quotation of one bidder to another was improper and something he "never did."²⁷⁰

175. This Officer also assisted vendors in preparing bid submission paperwork, going so far as to break costs down by unit price for a vendor. (See Annex 1, Figure 62). He frequently requested that vendors back-date bid proposals. (See Annex 1, Figures 61, 63, 68).²⁷¹ He did so with two vendors who also appear to have been sharing bid-related information: Kuang Hsien and BIOMED.²⁷²

176. He also made several requests to an employee of BIOMED Phnom Penh to back-date bid-related documents, such as price quotations and acknowledgment receipts. (See Annex 1, Figures 63-64).

²⁶² According to NCHADS, it terminated this Dynamic Pharma Employee's contract effective 30 September 2012 upon being notified by OIG of the potential conflict. "Response of NCHADS to the OIG draft report" dated 19 July 2013, p. 5.

²⁶³ Interview of NCHADS Senior Procurement Officer, 24 July 2012 (ROC p. 3,5).

²⁶⁴ Ibid. at p. 7.

²⁶⁵ Ibid. at p. 9.

²⁶⁶ Ibid. at p. 8.

²⁶⁷ Ibid. at p. 6.

²⁶⁸ Ibid. at p. 9.

²⁶⁹ Ibid. at p. 9.

²⁷⁰ Ibid. at p. 2.

²⁷¹ Ibid. at p. 6, 8, 9.

²⁷² An employee of Kuang Hsein, was the author of a file named "Biomed Quotation.xls", which contained bid quotation documents for Kuang Hsien and competitor BIOMED. Ernst & Young report to OIG, dated 22 September 2012, p. 59 & 61, ln. 22.

177. Moreover, the Senior Procurement Officer shared competitor information with favored vendors during the procurement process. For instance, he shared a price quote evaluation sheet with both BIOMED and MIG Group who were “competitors” in a procurement exercise for Serodia HIV kits. (See Annex 1, Figures 65-66). Again, he did this despite acknowledging to OIG that it is improper to give one vendor the price quotation information of another vendor.²⁷³

178. On 4 December 2006, the Officer sent evaluation sheets listing the price quotations of competing bidders to a representative of MIG Group. (See Annex 1, Figure 66). This included some of the same price quotation information the Officer shared with a BIOMED employee on 1 December 2006, except in his attachment to MIG Group he included a price quotation from “Great Pharma Co., Ltd.” who appears to be the only bidder to have a higher bid than MIG Group. (See Annex 1, Figure 65). Noted is the absence of Great Pharma’s bid information just days earlier in the email to BIOMED, which indicates that it may have been a last-minute addition in order to fulfill the requirement of having a certain number of bidders or in order to make sure MIG Group’s bid was not the highest. Whatever the reason, OIG finds that sharing such information amongst bidders during a procurement exercise to be improper. It violates the imperative principles of equity and fairness in procurement exercises and undermines the entire procurement process. Thus, the ultimate recipients of the goods in question suffer for not receiving the best possible price for the right product, which is what a proper procurement process is designed to achieve.

179. It is important to note that while the Senior Procurement Officer ultimately admitted that he repeatedly requested commission payments throughout his time as Procurement Officer under the Donor 1 program²⁷⁴, he initially denied doing so to the OIG. In fact, throughout his interview, he was not straight-forward concerning his improper dealings with local vendors. At first, he denied ever soliciting or receiving improper commission payments from vendors in exchange for awarding NCHADS contracts and said that it would be wrong to do so.²⁷⁵ However, after being confronted with a 2 July 2009 email showing that he did just this, Annex 1, Figure 60, he admitted to taking a commission for his own personal benefit – but only on this one occasion.²⁷⁶ Then after being shown evidence of another improper facilitation payment in a 3 November 2008 email, Annex 1, Figure 59, he admitted that he did it again and on more occasions and from other vendors than the several referenced specifically in this report.²⁷⁷ He further admitted that he had been doing so throughout the entire time he had been handling Donor 1 contracts (2005-2008).²⁷⁸ The OIG asked the Senior Procurement Officer if he ever shared bid quotations with other vendors and he denied ever doing so.²⁷⁹ Then later in the interview, after being shown a 21 January 2011 email, Annex 1, Figure 67, in which he clearly shared MIG group’s quotation with Dynamic Pharma, he admitted that he did this in order to allow his preferred vendor to win.²⁸⁰ The fact that this procurement Officer only admitted what he could not deny when presented with hard evidence of wrongdoing, lends little credibility to his statements that he did not manipulate or otherwise tamper with the procurement process under the Global Fund program or continue to take improper facilitation payments as he had done under the Donor 1 program. The evidence discussed below provides sufficient credible and substantive evidence to the contrary, as the OIG investigation uncovered documentary proof that the

²⁷³ Interview of NCHADS Senior Procurement Officer, 24 July 2012 (ROC p. 2).

²⁷⁴ *Ibid.* at p. 10.

²⁷⁵ *Ibid.* at p. 2-3.

²⁷⁶ *Ibid.* at p. 4-5.

²⁷⁷ *Ibid.* at p. 4-5.

²⁷⁸ *Ibid.* at p. 4, 5, 10.

²⁷⁹ *Ibid.* at p. 3.

²⁸⁰ *Ibid.* at p. 8.

practices he cultivated under the Donor 1 program continued to some extent under the Global Fund program.

G.2.2.3. Continuation of Senior Procurement Officer's interference with NCHADS procurement process and acceptance of facilitation payment under Global Fund program

180. The evidence demonstrates that the Senior Procurement Officer required “favors” by bidders who did not ultimately win contracts but who knowingly participated in manipulation of the procurement process to allow him to steer the contract towards his chosen bidder. On at least one occasion, this was done because the Officer needed to comply with the minimum of three quotations requirement of the purchase process.²⁸¹ A representative of a vendor who regularly bid for NCHADS contracts admitted to OIG that he improperly altered bid documents at the Officer's request to ensure that another vendor would win a contract, and that this was done with the expectation of receiving future contracts from NCHADS.²⁸² This example of the Senior Procurement Officer's manipulation of the procurement process occurred in connection with a Global Fund contract and with the apparent complicity of other vendors. In January 2011, he asked Dynamic Pharma and other vendors to increase their quotation price so that MIG Group would win a particular procurement contract: “Please help me to issue the quotation and back date to **13 December 2010**. For the price you should increase around or above 3,500.00 USD.”²⁸³ (See Annex 1, Figure 67). In fact, according to the Dynamic Pharma representative, MIG had already won the contract at this time.²⁸⁴ The Senior Procurement Officer informed OIG that he received USD 400 from MIG Group for these actions.²⁸⁵ His efforts to inflate the bids prejudiced the actual selection process and undermined the integrity of the procurement process. While the Senior Procurement Officer claimed the Global Fund procurement policies were too strict to allow him to steer contracts to preferred vendors in exchange for facilitation payments, this statement was clearly untrue as evidenced by this email, and casts further doubt on his credibility.²⁸⁶

181. Substantive and credible evidence also exists that the Officer convinced a vendor to bid for a contract funded by Global Fund even after they had declined the initial invitation due to lack of time to prepare the materials. On 29 December 2010, the Senior Procurement Officer instructed International Elevator Co., Ltd. to submit a bid for work weeks after the bid deadline and after the company had previously informed him that they would not be submitting a bid due to lack of time to appraise the job. (See Annex 1, Figure 68). Moreover, the Officer told the vendor to back-date the quotation to 07 December 2010 and directed them to set the price at USD 2,400.00. In this instance, the Senior Procurement Officer may have been trying to select his own preferred vendor for this contract despite their rejection of the bid invitation or even falsely representing the existence of a losing bidder.

182. In the case of one 2009 procurement, the Senior Procurement Officer instructed another favored vendor, Kuang Hsien Medical Instrument Co., Ltd., to build a commission payment into the vendor's bid for medical equipment. While NCHADS contends that this was not a Global Fund-financed procurement and was for a program called the “Cambodian Treatment Access Project”, it occurred during the same time period as he was overseeing Global Fund procurement activities, July 2009. Specifically, he instructed the Kuang Hsien employee to “add 15% into the total price” in an email dated 02 July 2009. (See Annex 1, Figure 60). The Officer confirmed that this additional 15 percent was in fact

²⁸¹ Interview of Dynamic Pharma Representative, 26 July 2012 (ROC p. 22-23); See also Procurement MoH-PR Procurement Guidelines, Version 8, revised August 2006, § V.10.

²⁸² Interview of Dynamic Pharma Representative, 26 July 2012 (ROC ¶ 22-23).

²⁸³ Interview of NCHADS Senior Procurement Officer, 24 July 2012 (ROC p. 8).

²⁸⁴ Interview of Dynamic Pharma Representative, 26 July 2012 (ROC p. 21).

²⁸⁵ Interview of NCHADS Senior Procurement Officer, 24 July 2012 (ROC p. 8).

²⁸⁶ Ibid. at p. 10-11.

an improper commission that he received in cash from the Kuang Hsien employee in exchange for awarding a contract to Kuang Hsien Medical Instrument Co., Ltd.²⁸⁷ He further told the Kuang Hsien employee not to forget to include the supplemental payment in his bid quotation, indicating that this was not the first time he has made such a request to the vendor. It is noteworthy that the Officer requested the Kuang Hsien employee to prepare a price bid on behalf of a competitor company, BIOMED, a vendor with whom this Officer had also dealt under the Donor 1 program. (See Annex 1, Figure 60). The OIG investigation did not uncover any information concerning the source of funding for the “Cambodian Treatment Access Project”.

G.2.3. Conclusions

183. NCHADS has been the recipient of approximately USD 76.9 million of Global Fund disbursements²⁸⁸ through November 2012, approximately USD 51.9 million²⁸⁹ of which was received during the Senior Procurement Officer’s direct supervision of procurement under Rounds 7 and 9 of the Global Fund program. The OIG found that NCHADS entered into procurement exercises resulting into contracts with local third party vendors totaling between USD 5,570,769 and 6,237,317 under Rounds 7 and 9.²⁹⁰

184. Related to these procurement expenditures, the evidence demonstrates that at least 6 local vendors²⁹¹ participated in procurement manipulation under the Donor 1 program and continued to do so under the Global Fund program by tailoring price quotations and bid-related paperwork at the request of NCHADS’s Senior Procurement Officer. Two of them, Dynamic Pharma and MIG Group, ultimately won Global Fund-funded contracts. The OIG uncovered evidence of one occasion where a vendor, MIG Group, paid an improper facilitation payment to the Senior Procurement Officer in connection with a fraudulent procurement scheme. As the Figure 69 table indicates, the Global Fund program disbursed a total of approximately USD 317,430 in Round 7 and 9 to these compromised vendors.

Figure 69: Value of Global Fund procurements won by local vendors who participated in tainted procurements with NCHADS (in USD)

Vendor name	Round 7	Round 9	Total
Dynamic, Pharma Co., Ltd.	26,641 ²⁹²	198,054	224,695
MIG Group Co., Ltd	92,735	0	92,735
Total	119,376	198,054	317,430

²⁸⁷ Interview of NCHADS Senior Procurement Officer, 24 July 2012 (ROC p. 3-4).

²⁸⁸ This figure comes from the addition of Round 1 - Round 5 (USD 10,774,392), Round 7 (USD 22,515,843) and Round 9/SSF (USD 43,576,496) disbursed through January 2013 (including disbursements made under VPP). This figure includes all disbursements, not just procurement-related disbursements.

²⁸⁹ This figure comes from MoH and NCHADS general ledger: (i) USD 22,469,495 of total Round 7 disbursements, excluding payments made directly to VPP; and (ii) USD 29,412,651 of Round 9 disbursements up to 31 August 2012, excluding payments made directly to VPP.

²⁹⁰ The USD 6,237,317 is derived from procurement details of NCHADS General Ledger for the select procurement transactions. Disbursements to local vendors for Round 7 and Round 9 cover the time period through 31 August 2012, which was the end of the Senior Procurement Officer’s supervision of the Global Fund program. See “[Senior Procurement Officer] All Procurements from EY India and LFA_REVISED.xlsx”. NCHADS informed OIG that according to its records, the total for said disbursements is USD 5,570,768.61. “Response of NCHADS to the OIG draft report” dated 19 July 2013, p. 19. At the time of this report’s publication, OIG was not provided with the necessary transactional information to examine this discrepancy; therefore, the report refers to a range between NCHADS and OIG’s figures.

²⁹¹ The six vendors are: Dynamic Pharma Co., Ltd; MIG Group Co., Ltd; Kuang Hsien Medical Instrument Co., Ltd; Infotech Computer System Pte. Ltd; Ontaracheat Co., Ltd; and MEAS Sovuthidy Co., Ltd.

²⁹² The full amount of procurements to Dynamic Pharma in Round 7 is USD 26,815; however, based on NCHADS’s representation that NCHADS had no involvement beyond payment of a the purchase of Opportunistic Infection drugs during a pooled procurement with PR-MoH during this period, the OIG has removed the amount of this payment (USD 174.43) from the total. “Response of NCHADS to the OIG draft report”, dated 19 July 2013, p.20-21.

185. A sufficient amount of credible and substantive evidence supports a finding that from 1 January 2009 until the end of August 2012, NCHADS, through the unchecked actions of its Senior Procurement Officer, compromised the integrity of the Global Fund procurements through improper manipulation of the procurement process by requesting vendors to back-date quotations or insert artificially high prices and by accepting an improper facilitation payment.

186. The contracts, which were obtained with Global Fund financing as a result of these tainted processes, likely were compromised in their entirety. The OIG bases this finding on the following facts: (i) the vendors listed in Figure 69 were involved in the Senior Procurement Officer's manipulations during the time he supervised Global Fund procurements; (ii) the Officer accepted a USD 400 facilitation payment from at least one vendor; and (iii) this Officer lacks credibility as a witness based on his initial denials of wrongdoing and equivocations during the OIG interview. As such, the OIG finds that NCHADS put approximately USD 317,430 worth of procurements at risk during this Officer's supervision of the Global Fund program.

G.3. MEDiCAM

G.3.1. Overview

187. MEDiCAM is a SR of two PRs, the MOH and NCHADS, under Rounds 5 and 7. It received USD 1,051,220 in Global Fund funding during this period. (See OIG report § E, “Background”). The activities described herein fall under the NCHADS-supervised grant program. During the time that MEDiCAM received Global Fund funding, it also received funds from other international donors.

188. In general terms, the OIG found that MEDiCAM presents itself as a viable organization with working offices, actual staff and evidence of work productivity, including an extensive website with significant content. Notwithstanding, OIG’s investigation revealed that MEDiCAM charged the Global Fund grant USD 20,725 for staff costs related to two MEDiCAM employees that did little or no Global Fund-related work and did not hold the positions MEDiCAM reported to The Global Fund that they held. Moreover, MEDiCAM created false documentation to conceal this fact.

189. The OIG identified this wrongdoing on the basis of its review of data and documentation it acquired from the PR and MEDiCAM, as well as a review of limited documentation provided by other international donors to MEDiCAM. The OIG has exchanged information and evidence with these donors in the course of its investigation and may provide additional support as requested to assist in any additional investigations by these entities in relation to misuse of their funds by MEDiCAM.

G.3.2. Facts and Documentary Evidence

G.3.2.1. *Global Fund improperly charged for salary of “Training Assistant” post when actually funded “Advocacy Coordinator” position*

(a) *“Training Assistant” post was not filled in 2009*

190. Under Round 7 HIV grant, the Global Fund budget allowed for a “Training Assistant” staff post at MEDiCAM at a rate of USD 575 per month.²⁹³ The OIG confirms that such a post was charged to the Global Fund beginning in February 2009 for the duration of the year, for a total of USD 6,325. However, the OIG found no evidence to substantiate that anyone actually held this position in 2009. In fact, MEDiCAM has conceded to OIG that no one person filled the “Training Assistant” post, claiming instead that the entire MEDiCAM staff stepped in to perform the duties of this role “in the spirit of team work.”²⁹⁴ MEDiCAM further admits that it used the Global Fund budget allocation for a “Training Assistant” to pay the salary of an “Advocacy Coordinator,” who performed duties unrelated to Global Fund grants, without alerting the Global Fund or NCHADS (its PR) to this deviation.

191. During the course of its investigation, the OIG uncovered two different full-time staff contracts for one individual, “Staff Member A”, during the same 2009 time period. One contract was for the staff position of “Advocacy Coordinator” while the other was for a “Training Assistant” position. (See Annex 1, Figure 70). Both contracts were signed by Staff Member A. Both contracts were dated on the same day: 2 February 2009.

192. The OIG also found on a MEDiCAM official’s computer hard drive the Microsoft Word documents used to generate the Staff Member A employment contracts.²⁹⁵ The

²⁹³ Letter from MEDiCAM Executive Director to OIG, 8 October 2012, p. 4; “CAM HIV Rd7 PU/DR#2 MEDiCAM (Dec08-Jun 09 expenditure report).xls”, Tab 2, Row 21, and “CAM HIV Rd7 PU/DR#3 MEDiCAM (Jul-Dec 09 expenditure report).xls”, Tab 2, Row 21.

²⁹⁴ “MEDiCAM’s Response to OIG draft report Submitted to MEDiCAM on 15th June, 2013”, dated 17 July 2013, p. 3; See also “Due Process” section of OIG report, § J.

²⁹⁵ “Advocacy Coordinator (██████████ GR7).14176 .doc” and “Advocacy Coordinator (Staff Member A).14249.doc”.

filename used for the Advocacy Coordinator contract was “Advocacy Coordinator ([Staff Member A]).doc”. Interestingly, the filename for the Training Assistant contract was “Advocacy Coordinator ([Staff Member A] GR7).doc”. The OIG notes that the Training Assistant contract filename merely adds reference to the Global Fund Round 7 grant while maintaining the “Advocacy Coordinator” description, which indicates that it was duplicated from the Advocacy Coordinator contract despite the fact that Global Fund did not fund such a staff position. Further, the metadata indicates that the Advocacy Coordinator contract file was originally created on 24 December 2008, about five weeks before the commencement of Staff Member A’s employment at MEDiCAM, which is not unusual given that she would have likely negotiated her employment around that time. The second file for the “Training Assistant” contract, however, was not created until 23 October 2009 and was modified on 01 December 2009. These dates indicate that the second file was created to justify the Global Fund expenditures and was likely not signed until late 2009 and back-dated to February 2009 to fraudulently justify the 2009 expenditures charged to the Global Fund Round 7 grant.²⁹⁶

193. Sufficient additional documentary evidence and witness testimony exist to confirm that MEDiCAM Staff Member A was, in fact, hired for the one and only Advocacy Coordinator post within MEDiCAM. For example, minutes of a MEDiCAM staff meeting on 13 February 2009 introduced the new employee as follows: “[Staff Member A] is the MEDiCAM Advocacy Coordinator. She started working with MEDiCAM on February 2, 2009 [...]”²⁹⁷ An organizational chart dated August 2009 also lists the employee in question as the “Advocacy Coordinator”. (See Annex 1, Figure 71). Further, various MEDiCAM staff listings and phone directories list the position for this individual as “Advocacy Coordinator”.²⁹⁸ Finally, MEDiCAM’s own annual report for 2009, which is publically available on its own website, lists Staff Member A as the “Advocacy Coordinator.”²⁹⁹

194. There is no evidence that Staff Member A performed any work in relation to the Global Fund Round 7 grant, and certainly not in the capacity of a “Training Assistant”. Furthermore, Global Fund covered witnesses, who are in a position to provide such information, confirmed this fact.³⁰⁰

195. When MEDiCAM was initially presented with OIG’s findings on this topic in September 2012, it responded by letter, dated 8 October 2012, indicating that Staff Member A held the “Training Assistant” position in 2009 and another person, Staff Member B, actually held the position of Advocacy Coordinator from 3 April 2008 to December 2009.³⁰¹ To support this assertion, MEDiCAM provided OIG with a copy of the signed employment contracts of Staff Member B to that effect (See Annex 1, Figure 72). The second (of two) contract for Staff Member B was signed and dated 1 October 2008, although it took effect one month earlier on 1 September 2008.³⁰² Notably, MEDiCAM did not provide OIG with any contracts to support the claim that Staff Member A served as Training Assistant during this time period. MEDiCAM subsequently reversed this

²⁹⁶ “CAM HIV Rd7 PU/DR#2 MEDiCAM (Dec08-Jun 09 expenditure report).xls” and “CAM HIV Rd7 PU/DR#3 MEDiCAM (Jul-Dec 09 expenditure report).xls”.

²⁹⁷ W: \[REDACTED] \USB\C\On desktop\Desktop\General Staff Meeting Minute 13022009.doc.

²⁹⁸ W: \[REDACTED] \USB\C\ [REDACTED] \ [REDACTED] on 'MserverMedicam'(z)\ [REDACTED] \List Name of Staff\MEDiCAM Staff name.xls.

²⁹⁹ MEDiCAM 2009 Annual Report, p. 41, http://www.medicam-cambodia.org/about_us/source/annual_report/Annual_Report_2009.pdf, accessed on 1 November 2013.

³⁰⁰ Interview with Covered Witness #2, 28 September 2012, p. 2, ¶ 5; “Medicam Investigation: Summary Report” by A Freelance Consultant (Covered Witness #1), dated 10 April 2012, p. 5.

³⁰¹ “Clarification Response to Financial Investigation of MEDiCAM Dated 21st September, 2012”, dated 8 October 2010; See also “Due Process” section of OIG report, § J, *infra*.

³⁰² The employment contract superseded a previous contract for the Advocacy Coordinator position with the effective dates of 3 April 2008 to 31 March 2009 to purportedly reflect Staff Member B’s increased salary effective 1 September 2008.

position in another letter to OIG, dated 17 July 2013, when responding to a draft of this investigation report. This time, MEDiCAM claimed that Staff Member B only held the position of Advocacy Coordinator from 3 April to 31 August 2008 by way of explaining how the position opened up for Staff Member A to fill in February 2009.³⁰³ In an effort to prove the point that Staff Member B held the Advocacy Coordinator position through August 2008, MEDiCAM provided OIG with Staff Member B's employment contract for the position of "Health Information Sharing Manager" from 1 September 2008 to 31 August 2009. (See Annex 1, Figure 72).³⁰⁴ Interestingly, this contract was signed by Staff Member B and dated 1 September 2008, *one month before* the contract MEDiCAM initially gave OIG representing that Staff Member B was an Advocacy Coordinator during the same time period. It is illogical that Staff Member B would sign a contract for an Advocacy Coordinator position on 1 October 2008 if he had actually started working (and signed a contract to that effect) as Health Information Sharing Manager one month earlier. OIG finds that at least one of these employment contracts is a fabrication and that it was created in order to misrepresent the true roles of MEDiCAM's staff.

196. Interestingly, MEDiCAM claimed in its 17 July 2013 response to OIG's draft investigation report that no one filled the Training Assistant position and that the work of this job was done by MEDiCAM's entire staff "in the spirit of teamwork." Further, MEDiCAM declined to comment on the fact that OIG uncovered evidence of a signed "Training Assistant" employment contract during the relevant time period (2 February 2009 – 31 January 2010) signed by Staff Member A during the course of its investigation.³⁰⁵

197. Likewise, the OIG finds that MEDiCAM's creation of two separate employment contracts for Staff Member A served no other purpose than to create fictitious documentation supporting the billing of the same staff member to different donors. (See OIG report § G.3.2.1(b) for further discussion). The OIG finds that MEDiCAM was intentionally deceitful in charging the Global Fund Round 7 grant a total of USD 6,325 during 2009 for a "Training Assistant" staff position.³⁰⁶

(b) Salary of "Advocacy Coordinator" post was simultaneously paid by other donors

198. The OIG notes that various donor grant agreements included a provision for payment of the salary of an Advocacy Coordinator as well. In 2009, for example, three different bilateral or multilateral donors provided funding for the position as detailed below:

³⁰³ Supposedly, Staff Member B held the position of Health Information Sharing Manager from 1 September 2008 to December 2008 and then Research Coordinator from 1 January 2009 to 31 December 2009. "MEDiCAM's Response to OIG draft Report Submitted to MEDiCAM on 15th June, 2013" dated 17 July 2013, p. 1-2.

³⁰⁴ The staff member was promoted to the position of Research Coordinator on 1 January 2009, a position he held during 2009.

³⁰⁵ "MEDiCAM's Response to OIG draft Report Submitted to MEDiCAM on 15th June, 2013", dated 17 July 2013.

³⁰⁶ The actual expenses billed to the Global Fund for "Training Assistant" were USD 2,875 for the first half of 2009 and USD 3,450 for the second half. "CAM HIV Rd7 PU/DR#2 MEDiCAM (Deco8-Jun 09 expenditure report).xls", Tab 2, Row 21, and "CAM HIV Rd7 PU/DR#3 MEDiCAM (Jul-Dec 09 expenditure report).xls", Tab 2, Row 21.

Figure 73: Other donor grants supporting Advocacy Coordinator post³⁰⁷

Donor	Staff position	Monthly amount charged
Donor A	Advocacy Coordinator	USD 1,000
Donor B	Advocacy Coordinator	USD 900
Donor C	Advocacy Coordinator/Officer	USD 481

199. Further, according to a review of records of work activities and output, this individual appears to have performed advocacy coordination work for two donors, Donor A and Donor C.³⁰⁸ Indeed, financial reports prepared for Donor A indicate that the Donor A grant was charged USD 1,000 per month for the salary of an Advocacy Coordinator and Donor C financial reports indicate that its grant was charged an average of approximately USD 481 per month for advocacy work performed.³⁰⁹ So it appears as if these two donors were collectively charged USD 1,481 a month for the Advocacy Coordinator position, even though MEDiCAM recorded only USD 800 per month as the salary for this staff member.³¹⁰ Moreover, the OIG notes that Donor B funds were reported by MEDiCAM as having been used to pay for an “Advocacy Coordinator” position at USD 900 per month. As far as the OIG investigation could determine, MEDiCAM only employed one Advocacy Coordinator during this time period.

200. Therefore, in addition to finding that the Global Fund Round 7 grant was fraudulently charged for a “Training Assistant” staff position for Staff Member A in 2009, OIG further finds that Staff Member A’s salary was fully charged (and in fact over-charged) to the Donor A and Donor C grants, and likely to the Donor B grant, for the “Advocacy Coordinator” position in 2009.

G.3.2.2. Global Fund charged for salary of same staff member simultaneously holding two positions: HIV/AIDS Coordinator and M&E Capacity Building Manager

201. The OIG identified another similar instance related to a different employee. The OIG was charged with and paid for the salary of an HIV/AIDS Coordinator in 2009 in the total amount of USD 14,400. Again, MEDiCAM conceded that there was no HIV/AIDS Coordinator during this time period and explained that it used this money to fund an M&E Coordinator position instead.³¹¹

202. OIG identified two different staff contracts on a MEDiCAM official’s computer hard drive for the same time period, 1 January 2009 through 31 December 2009, for MEDiCAM Staff Member C. (See Annex 1, Figure 74). One contract, which is signed, states his position as M&E Coordinator. In contrast, the other contract, which is not signed, is for Staff Member C to serve as HIV/AIDS Coordinator. MEDiCAM charged the

³⁰⁷ W:\[redacted]\Desktop\D\ [redacted] \MEDiCAM\MEDiCAM [redacted] \Report of 1st Tor\Financial Report for [redacted].xls; W:\[redacted] \USB\C\ [redacted] \ [redacted] \Financial Report for [redacted] Jul09-Jul10.xls; W:\[redacted] \USB\C\ [redacted] \ [redacted] on 'MserverMedicam'(z)\ [redacted] \Summary Report Jun08-Jun09.xls; W:\[redacted] \USB\C\ [redacted] \ [redacted] on 'MserverMedicam'(z)\ [redacted] \Spreadsheet [redacted].xls.

³⁰⁸ “[Staff Member A] Weekly Activity Reports” (March – December 2009); “Financial Report for [redacted].xls.”

³⁰⁹ See, e.g., “Financial report for [redacted] Jul09-Jul10.xls” and “Financial Report for [redacted].xls”; see also “spreadsheet [redacted].xls”.

³¹⁰ MEDiCAM Employment Contract for “Staff Member A” for the position of “Advocacy Coordinator” dated 2 February 2009; MEDiCAM Employee Pay slip, for Staff Member A, dated 25 March 2009 (showing net salary of USD 800); MEDiCAM Staff Payment Roll for Pay Date 25 March 2009 (listing USD 800 as net salary for Staff Member A).

³¹¹ “MEDiCAM’s Response to OIG draft Report Submitted to MEDiCAM on 15th June, 2013”, dated 17 July 2013, p. 4-6; See also “Due Process” section of OIG report, § J.

entirety of this employee's salary during 2009 to the Global Fund Round 7 grant as HIV/AIDS Coordinator.

203. An OIG covered witness stated that Staff Member C did not perform any HIV/AIDS coordination work related to the Global Fund Round 7 grant.³¹² The 2009 MEDiCAM organizational chart corroborates this fact as he is listed therein as the M&E Capacity Building Manager and not the HIV/AIDS Coordinator. (See Annex 1, Figure 75).

204. The OIG further identified on the MEDiCAM office manager's computer a job announcement in Microsoft Word format for the HIV AIDS Coordinator post. The announcement requests interested parties to reply "no later than 04 September 2009" which suggests that the position remained unfilled for at least some portion of 2009.³¹³

205. While the OIG did not perform an exhaustive review of the work output generated by Staff Member C, it did find a 2009 performance appraisal for him on the hard drive of the MEDiCAM Executive Director.³¹⁴ In answer to the appraisal's inquiries "state your understanding of your main duties and responsibilities" and "describe what you have achieved in the past year", there are no references to any work related to HIV/AIDS coordination.

206. The OIG's investigation further uncovered evidence that indicates another bilateral donor also supported a M&E staff member post at MEDiCAM during the same time period. This bilateral donor's grant was charged during 2009 under the "M&E Coordinator" staff description.³¹⁵ The fact that the Global Fund Round 7 grant was separately charged a total of USD 14,400 for an HIV/AIDS Coordinator who was actually performing the role of M&E Coordinator indicates that MEDiCAM was double-billing for this staff member's salary also.³¹⁶

G.3.3. Conclusions

207. Sufficient credible and substantive evidence exists for the OIG to conclude that in 2009 MEDiCAM billed the Global Fund for staff salary expenses related to the "Training Assistant" position that was not filled and instead used this money to fund the "Advocacy Coordinator" post. Moreover, MEDiCAM fabricated documents to support this false impression. The salary for this "Advocacy Coordinator" post was also billed to three other international and bilateral donors. The total amount of money MEDiCAM improperly charged to the Global Fund for this staff member is USD 6,325.

208. OIG further concludes that in 2009 MEDiCAM billed the Global Fund for the salary of an "HIV/AIDS Coordinator" position that was not filled. Further, this staff member was instead performing the work of an M&E Manager, a position that was being simultaneously funded by another bilateral donor. The total amount of money MEDiCAM improperly charged to the Global Fund for this staff member is USD 14,400.

209. MEDiCAM created false documentation to support the charges of one of the staff member's salaries and, in the case of one if not both of these staff members, double-billed the Global Fund and other international and bilateral donors. The overall total that the Global Fund was improperly charged for these salaries is USD 20,725.

³¹² Medicam Investigation: Summary Report" by A Freelance Consultant (Covered Witness #1), dated 10 April 2012, p. 8.

³¹³ W:\ [REDACTED] \USB\C\ [REDACTED] \ [REDACTED] on 'MserverMedicam'(z)\Job Announcement\Job Announcement HIV AIDS Coordinator 2009 approved by ED.doc.

³¹⁴ D:\ [REDACTED] \Appraisal Format\[Staff Member C] Performance Appraisal.doc.

³¹⁵ CSCF 0433 Financial Report.xls and CSCF 433 MEDiCAM Cambodia Financial Report for 2009-10.xls provided by bilateral donor.

³¹⁶ The actual expenses billed to Global Fund for HIV/AIDS Coordinator were USD 7,200 for the first half of 2009 and USD 7,200 for the second half. "CAM HIV Rd7 PU/DR#2 MEDiCAM (Dec08-Jun 09 expenditure report).xls", Tab 2, Row 16, and "CAM HIV Rd7 PU/DR#3 MEDiCAM (Jul-Dec 09 expenditure report).xls", Tab 2, Row 16..

H. Global Fund Secretariat Response to OIG Investigative Findings

210. The OIG notified the Global Fund Secretariat via memo on 30 July 2012 of its findings of credible and substantive evidence of fraud, misappropriation and abuse at NCHADS, CNM and MEDiCAM.³¹⁷ These findings were further developed in partial and full draft reports sent to the Secretariat in December 2012, April 2013, and August 2013. The OIG also shared the Notice of Findings letters for CNM and MEDiCAM with the Secretariat in September 2012.

211. With respect to the OIG's findings and key issues raised in this report, the Secretariat has taken a number of significant actions regarding Global Fund grants in Cambodia. These actions were initiated upon communication of the OIG's initial findings and follow prior pro-active measures taken by the Secretariat to manage known risks within the Cambodia portfolio. Collectively, these actions reflect the Secretariat's commitment to fulfill its obligations to take "strong, immediate action" in response to adverse findings by OIG audits and investigations and to manage portfolio risk.³¹⁸ To-date, the Secretariat has implemented the following measures:³¹⁹

- a. Beginning October 2012, provisionally restricted the PR's budgets to undertake only services essential to program delivery until appropriate risk mitigation measures could be implemented in relation to the investigation's findings;³²⁰
- b. Required replacement of CNM as the PR for the SSF malaria grant for its phase 2 starting on 1 April 2013;³²¹
- c. Appointed an external fiduciary agent to work within NCHADS beginning February 2013 to ensure that all financial management and procurement activities are appropriately conducted;³²² Additionally, a procurement agent was embedded within NCHADS;³²³
- d. Engaged in negotiations to place a fiduciary agent in MEDiCAM, ongoing at the time of this report's release;³²⁴
- e. Prior to the OIG investigation, during 2009 to 2011, required all health products to be procured through VPP or UNICEF;³²⁵ Also instituted measures to increase planning and coordination of procurements across PRs and augmented the LFA's review and monitoring of non-health procurements.³²⁶

212. The Secretariat has also undertaken proactive measures with respect to procurement activities within the Cambodia portfolio, such as eliminating Procurement

³¹⁷ Action taken pursuant to Board Decision Point GF/B19/DP25, May 2009. Report of the Nineteenth Board Meeting, GF/B20/2, p. 19, available at http://theglobalfund.org/documents/board/19/BM20_02NineteenthBoardMeeting_Report_en/, accessed 01 November 2013.

³¹⁸ Ibid.

³¹⁹ Response from the Global Fund Secretariat to OIG Draft, dated 10 May 2013.

³²⁰ Global Fund Senior Program Officer, South & East Asia, email to Cambodia PRs and CCC, 01 October 2012.

³²¹ Global Fund, Regional Manager, South & East Asia, letter to CCC Chair, 30 October 2012. The new PR is UNOPS and it is managing CNM's budget, undertaking all procurement for CNM above USD 2,499 and monitoring all procurement undertaken by CNM under USD 2,499. 23 July 2013 and 4 October 2013 emails from Global Fund Senior Fund Portfolio Manager.

³²² Global Fund Regional Manager, South & East Asia, letter to CCC Chair, 15 January 2013; Fiscal Agent Terms of Reference.

³²³ 2 October 2013 email from Global Fund Senior Fund Portfolio Manager to OIG (attaching Terms of Reference for Procurement Agent from 1 October 2013 until 31 December 2015).

³²⁴ Ibid.

³²⁵ Global Fund Regional Manager, South & East Asia, letter to CCC Chair, 17 October 2012.

³²⁶ Global Fund Senior Fund Portfolio Manager email to OIG, 30 January 2013.

Agents as the point of contact to manufacturers, in order to strengthen controls and tighten compliance, increase transparency and efficiencies, harmonize product specifications and undertake joint global tenders, and ensure fair and transparent product pricing.³²⁷

213. In light of these measures, the Global Fund has resumed its disbursement of funds to the entities discussed herein to allow for the continuation of programmatic activities. Specifically, UNOPS (on behalf of CNM), NCHADS and MoH (both partially on behalf of MEDiCAM) have recently received approximately USD 24.5 million in additional funding from June through August 2013 as the below chart indicates:

Figure 76: Global Fund grant disbursements from June through August 2013 to Principal Recipients

Disease: Grant No.	Date	Amount in USD	Recipient
HIV: CAM-H-NCHADS	June 2013	7,500,000	Country: National Center for HIV/AIDS, Dermatology and STI (NCHADS) ³²⁸
	June 2013	4,247,002	Procurement agent: VPP
	June 2013	217,545	Fiduciary Agent: GFA Consulting Group
	July 2013	274,268	Procurement Agent: VPP
Malaria: CAM-M-UNOPS	June 2013	8,170,074	United Nations Office for Project Services (UNOPS)
	August 2013	843,706	United Nations Office for Project Services (UNOPS)
HSS: CAM-H-PRMOH	June 2013	3,208,449	Ministry of Health of Cambodia (PRMOH) ³²⁹
Total		24,461,044	

214. The OIG would also like to recognize the full cooperation of the Secretariat to the OIG investigation and support it provided to the OIG investigative team. It proactively engaged with senior officials in the Ministry of Health and CCM on behalf of the OIG to ensure their full cooperation with the investigation and responded quickly to efforts to disrupt or block the OIG's work in-country.

³²⁷ Response from the Global Fund Secretariat to OIG draft, dated 10 May 2013.

³²⁸ Of this total disbursement to NCHADS, a maximum of USD 128,002 will be distributed to MEDiCAM as SR. See Global Fund Senior Program Officer email to OIG, dated 16 September 2013.

³²⁹ Of this total disbursement to MoH, a maximum of USD 822,417 will be distributed to MEDiCAM as SR. Ibid.

I. Cooperation and Remedial Measures Taken by LLIN Suppliers

I.1. Sumitomo Chemical Singapore

I.1.1. Level of cooperation during investigation

215. SCS became aware of OIG's investigation at the end of July 2012 after the OIG contacted SCS's Sales Manager in connection with its investigation.³³⁰ Shortly thereafter, SCS engaged its external legal counsel in Singapore, Baker & McKenzie. Wong & Leow, to communicate with OIG regarding this matter. SCS (via its counsel) informed OIG that it was undertaking its own internal investigation concerning the payment of improper commission payments. This internal investigation lasted from August 2012 to March 2013. SCS further made available several individuals from its Singapore and Malaysia offices to speak with OIG, in the presence of SCS counsel, including the SCS Sales Manager and Sumitomo Managing Director discussed at length in this report.

216. On 24 August 2012, OIG made numerous requests for documents to SCS, including key word searches of computer hard drives, which SCS complied with on a rolling basis until September 2013.³³¹ Some of the material provided to OIG contained incriminating information about SCS employees and Cambodian officials. SCS has also made oral proffers of evidence regarding some of OIG's requests.

217. On 3 April 2013, SCS, representatives from Sumitomo Chemical Co. Japan, and legal counsel came to Geneva to make a presentation to OIG regarding, *inter alia*, its Olyset net business, corporate structure, response to being notified of OIG's investigation, internal investigative findings and conclusions, compliance efforts and remediation measures. SCS subsequently informed the OIG that the SCS Sales Manager's employment was terminated on 14 June 2013 and the Sumitomo Managing Director's employment was terminated on 3 May 2013.³³²

218. OIG provided SCS with the opportunity to issue a statement reflecting the nature of its cooperation during this investigation and SCS provided the following statement:

The OIG was able to uncover the incriminating evidence and conclude its investigations within a short timeframe as a result of SCS' full cooperation with the OIG's investigations. From the moment SCS was made aware of the OIG's investigations, SCS agreed to all of our interview requests (5 interviews spanning a total of 8 hours) and hosted us at its external counsel's office for the interviews where we had unfettered access in questioning the interviewees. SCS also voluntarily provided us with copies of incriminating emails from the Sales Manager when the OIG conducted its first interview in Singapore, and made prompt voluntary disclosure of the SCS General Manager's knowledge and involvement (which, until then, was unknown to the OIG). Furthermore, SCS (through its external counsel) worked with the OIG on an agreed set of search terms for trawling the Sales Manager's company hard drive and provided the OIG with over 2,800 of Global Fund-related documents uncovered from the Sales Manager's company hard drive and over 350 hard copy documents that were responsive to the OIG's document requests. Also we are advised that SCS has put the SCS General Manager

³³⁰ 27 July 2012 email from OIG to SCS Sales Manager re: "Contract for provision of Global Fund financed Long Lasting Insectidal [sic] Nets to Cambodia".

³³¹ The majority of documents produced by SCS were provided by December 2012 (pursuant to 24 August 2012 letter from OIG to SCS external legal counsel requesting documents in connection with investigation); however, there were some outstanding requests, which led to SCS providing OIG with a supplemental production that was completed by 19 September 2013; .

³³² 27 September 2013 email from SCS counsel to OIG.

and the Sales Manager on an agreed leave of absence throughout the duration of the internal investigations in order to assist the OIG in its investigations, and promptly thereafter carried out disciplinary procedures against the SCS General Manager and steps to terminate his employment and the Sales Manager's employment. Among other co-operative efforts, on 3 April 2013, SCS and its external counsel came to Geneva to make a presentation to the OIG on its investigation findings and the remediation measures adopted (and to be adopted) by SCS. During the presentation, SCS engaged with the OIG and offered the OIG an opportunity to raise questions in order to complete a draft of this investigation report. The OIG acknowledges that the cooperation provided by SCS was of substantial benefit to the OIG's investigation in that the cooperation was material and useful, resulting in a more efficient and effective OIG investigation and significant savings of Global Fund resources.³³³

I.1.2. Action taken in response to OIG findings

219. As mentioned above, on 3 April 2013, SCS made a presentation to OIG in Geneva that included remediation measures taken in response to OIG findings. According to SCS, the following actions have been (and will be) implemented:³³⁴

- a. Inclusion of specific policy on bribery prevention in Bribery Prevention Manual implemented in March 2013, which adds more specific prohibitions on giving and accepting bribes, rules and procedures on giving and accepting gifts, entertainment and sponsorships, guidelines on what constitutes bribes, gifts and entertainment to government officials, and procedures for the appointment and compensation of business partners, in addition to the existing statements of principle in the SCS Code of Ethics. A copy of the new Manual has been provided to the OIG.
- b. Implementation of external accountants' recommendations on strengthening the payment requisition system.
- c. Establishment of dedicated regional legal affairs and compliance teams to monitor legal risks and promote compliance in business operations whose job will include reviewing and authorizing all contracts, monitoring legal risks, monitoring bribery risks, and assisting in compliance training and educational programs.
- d. Improvement to employees' compliance training and education, including training on new and enhanced anti-bribery measures.

I.2. Vestergaard Frandsen

I.2.1. Level of cooperation during investigation

220. OIG notified VF of its investigation on 13 November 2012 via an email to the headquarters office.³³⁵ On 16 November 2012, OIG made requests for documents, including key word searches of computer hard drives, which VF complied with on 1 February 2013.³³⁶ VF further provided OIG on that date with a written brief summarizing the content and findings of an internal investigation that VF's external legal counsel, Schellenberg Wittmer, conducted at VF's request, along with supporting documentation.

³³³ SCS Response to OIG draft report, dated 7 June 2013, p. 3.

³³⁴ SCS Response to OIG draft report, dated 7 June 2013, p. 4.

³³⁵ 13 November 2012 email from OIG to VF legal counsel re: "Vestergaard Frandsen – GF board meeting".

³³⁶ 16 November 2012 letter from OIG to VF requesting documents in connection with investigation.

In this brief, VF informed OIG that the Indian branch Regional Director at issue in this report was suspended on 28 November 2012 and ultimately resigned.³³⁷

221. On 26 May 2013, VF submitted a written response to the OIG's draft investigative findings, and two days later, representatives of VF headquarters office and its external legal counsel met at OIG's office in Geneva to discuss the findings and their response in further detail. Both in their written response and in the 28 May presentation, VF discussed, *inter alia*, comments and suggestions concerning the draft report, theories of responsibility for actions uncovered, compliance and governance measures adopted by VF, VF's cooperation throughout the investigation, and remedial steps taken by VF.

222. OIG provided VF with the opportunity to issue a statement reflecting the nature of its cooperation during this investigation and VF provided the following information to be included in this report:³³⁸

- a. VF undertook a full search of any and all relevant information in response to OIG's 16 November 2012 request for documents. VF also undertook a corporate investigation of VF's operations in Cambodia from 2006 to 2012, which included a review of documents and interviews of employees.
- b. On 1 February 2013, VF's external legal counsel met with OIG and voluntarily provided the OIG with a corporate investigation report and corresponding exhibits, and all information and data found within VF on an electronic device. VF states that it went beyond the requested scope by providing information predating the requested 2006 timeline.
- c. VF provided OIG with a technical note to explain the process for the collection and organization of evidence provided on 8 February 2013.
- d. VF notes that OIG made extensive use of information contained in, or provided in connection with, the 1 February 2013 corporate investigation report, which VF contends was voluntarily provided.

I.2.2. Action taken in response to OIG findings

223. According to VF, the following actions have been (and will be) implemented:³³⁹

- a. VF suspended the Regional Director, Indian branch, on 28 November 2012, and he subsequently resigned.
- b. VF reached out to the Cambodian "agent" at issue in this report as well as other witnesses, in an effort to obtain additional information.
- c. VF terminated the contract of the Thai agent who was involved in the transfer of the final commission payment on 15 March 2013.
- d. VF is undertaking a review of all active agents and alignment of agreements throughout its global offices, and all employees and agents are receiving a "refresher" course on VF's Business Conduct Principles ("BCP", instituted in October 2008). New agent agreements contain commitments to clean business practices, audit rights for VF and a carefully designed structure. Agency contracts will only be valid for 2-year terms going forward. VF is introducing stricter guidelines regarding agent activities and related commissions, more thorough screening of new agents, annual BCP self-certification for agents, and standardized documents to justify commission payments. VF is also establishing new rules to identify "red flags" in relation to commission payments and a three-level control process for payment of commissions.

³³⁷ VF Submission, dated 1 February 2013, p. 11, § 7.1.4.

³³⁸ VF Response to OIG draft report, dated 26 May 2013.

³³⁹ Ibid. at p. 16-17, 37-40.

- e. A systematic effort is underway to methodically identify significant areas for improvement in relation to the BCP's risk management and control framework. This effort is focused on anti-bribery and corruption and implementation of priority actions, such as BCP training and development of a company-wide agent screening process, began in May 2013.³⁴⁰

³⁴⁰ 2 October 2013 email from VF counsel to OIG (with attachments) regarding VF's ongoing efforts to improve anti-corruption objectives.

J. Due process

224. The OIG investigation has provided the subject entities in Cambodia, the CCC Cambodia and other third party vendors (the Suppliers), an opportunity to review and comment on the relevant substantive sections of this report prior to publication, in compliance with the procedures of the Global Fund and the principles of due process.³⁴¹

225. Prior to the finalization of the report, the OIG provided Notice of Findings Letters to relevant entities, including CNM, NCHADS, and MEDiCAM, as well as individual subjects within these entities implicated in the described schemes.³⁴² These letters outlined the evidence obtained in the case thus far and included preliminary findings. The recipients were asked to comment on the evidence and the findings. The Global Fund Secretariat and the Global Fund Legal Unit received copies of these communications. The OIG invited each of these entities to supply a written response.

226. On 14 June 2013, OIG provided the CCC, CNM, NCHADS, and MEDiCAM with their respective portions of the draft report's factual findings to date, along with the opportunity to provide feedback and comments prior to the report's finalization. OIG requested that this feedback be returned by 5 July 2013, though the CCC requested an extension of time to respond, which OIG granted to 19 July 2013. All parties submitted written responses to the draft report excerpts, as did specific individuals implicated or otherwise mentioned in the reported schemes. Responses received are addressed in summary below and, where necessary, summarized in a chart and appended to this report as an annex.

227. On 19 August 2013, the OIG released a full and complete draft of its investigative report to the CCC and provided a two-week timeframe in which the CCC could offer comments and feedback on the portions of the report that had not previously been shared. The deadline for this feedback was 2 September 2013, but the CCC requested a three-week extension so the OIG extended the time for comments to 23 September 2013. The OIG received the CCC's comments by letter on 23 September 2013 and to the extent these comments raised additional points beyond the CCC's 19 July 2013 response, they are addressed herein.

228. The OIG held several in-person meetings and conference calls with the Suppliers at their request during the course of the investigation and the finalization of this report. See Section I, Cooperation and Remedial Measures Taken by CNM Suppliers, *supra*, for more details. Several months later, on 17 May 2013, the OIG presented a draft copy of its factual findings as they related specifically to the Suppliers, SCS and VF, discussed in Section G.1 (CNM) of the report. The relevant excerpts of the draft report were sent to each Supplier, respectively, and the OIG invited them to share comments by 31 May 2013. VF provided comments on 26 May 2013 and SCS provided comments on 7 June 2013.³⁴³ Then on 20 August 2013, OIG provided both Suppliers with the relevant section of the draft report concerning their cooperation and remedial measures for their review and comment within a two-week time period. Responses received are addressed in summary below and specific objections are summarized in a chart appended to this report.

³⁴¹ While the OIG does not develop regulations or apply sanctions, it strives to ensure that the subjects of its reports, as well as the Secretariat and the relevant CCMs, are kept informed of its findings prior to publication and are given a chance to review and provide comments on the preliminary findings.

³⁴² OIG sent Notice of Findings letters to the following individuals/entities on the following dates:

- (i) 21 September 2012: to Executive Director of MEDiCAM
- (ii) 24 September 2012: current CNM Director; former CNM Director; and CNM Deputy Director.
- (iii) 27 November 2012: Director, NCHADS.

³⁴³ SCS requested a one-week extension to respond due to the length of the draft report excerpt, which OIG granted.

229. On 3 September 2013, OIG had an in-person meeting with VF during which outstanding issues pertaining to the report's findings and OIG's due process procedures were discussed. On 4 September, a similar discussion was had during a conference call with SCS. On 17 September, the Suppliers were provided another copy of the factual findings section related to them and the "Cooperation and Remedial Measures" section – as revised according to the Suppliers' comments to the 17 May and 20 August drafts. Additionally, the OIG shared the relevant Due Process report excerpt and a draft chart that addressed the Suppliers' suggested edits and amendments.

J.1.1.1.CCC

230. In its 19 July 2013 response to the OIG's factual findings in connection with its investigation in Cambodia, the CCC requested a copy of the full draft report before its completion. As mentioned above, on 19 August 2013, the OIG released a full and complete draft to the CCC and provided a five-week timeframe in which the CCC could offer comments and feedback on the portions of the report that the OIG had not previously shared.

231. The CCC acknowledges that there was serious financial mismanagement at MEDiCAM, but asks the Global Fund to confirm that no Global Fund resources were intentionally misappropriated and that all procurement undertaken was delivered on time and to the specifications required. While we can confirm that the investigation determined LLIN products were received as per the contractual agreements, the OIG makes no finding on the timing of delivery or the specifications required. Moreover, the OIG cannot agree with the CCC's assertion that there was no intentional misappropriation of Global Fund resources. Indeed, the evidence supports a finding that MEDiCAM intentionally misled the Global Fund concerning the financing of two staff positions and fabricated documents to support this misrepresentation. See Section G.3 of report. Moreover, the schemes perpetrated by the CNM and NCHADS officials put over USD 12 million in contracts financed by the Global Fund at risk, which was both intentional and misleading.

232. Next, the CCC questioned the degree of extrapolation used in the OIG's findings – a point raised in both their 19 July and 23 September responses to OIG. The OIG maintains that its findings are connected to specific instances and facts uncovered during its investigation. With respect to NCHADS's concern about the sufficiency of proof that the NCHADS procurement Officer's actions compromised Global Fund grants in the approximate amount of USD 317,430, OIG wishes to emphasize that these conclusions are not a result of generalizations or extrapolations. Rather, OIG arrived at its conclusions based on both documentary and witness testimonial evidence of wrongdoing and the questionable credibility of the Senior Procurement Officer who denied engaging in certain behaviors under the Global Fund program until confronted with hard evidence to the contrary. To the extent that estimations are involved in the identification of Global Fund resources put at risk under NCHADS, they are reasonable inferences to draw based on the actions of NCHADS's Senior Procurement Officer when he was administering another donor's grants. Moreover, the report contains direct evidence that he continued tampering with NCHADS procurements while managing the Global Fund program. See Section G.2.2.3 of the report.

233. Moreover, the CCC identified a conclusion in the report that attributed knowledge, or solicitation, of improper gifts to a senior government official, referenced in the report as a "Secretary of State". The OIG has reviewed the evidence on this point and ensured that the report properly reflects that the CNM Director informed the SCS Sales Manager that a Secretary of State within MoH expected gifts but not that this official actively solicited gifts or money. No such knowledge is imputed to the Secretary of State in the report.

234. The CCC asked OIG to clarify that the CNM Director at issue in the report has been replaced by the current CNM Director and that there are several people who share the

Deputy Director title. The OIG has added such clarification language to the report, specifically stating that the current CNM Director replaced the one mentioned throughout the report and is not implicated or described at any point in the report's findings and that there are between 8 and 12 individuals at CNM who held the position of Deputy Director during the relevant time period. See ¶ 4 (fn. 3&4), 66 and Section G.1.4 of this report.

235. With respect to CNM, the CCC asserts in its 23 September 2013 response letter, that the payment of improper commissions by Suppliers in exchange for the award of bednet contracts did not lead to material loss for the Global Fund. The CCC further disagrees that this wrongdoing automatically leads to ineligibility of the entire expenditure of procurements of bednets. The OIG refers the CCC to report Section G.1.4.7, which discusses the damage that occurs with such anti-competitive practices, and Section K, regarding the determination of non-compliance with the Global Fund's Standard Terms and Conditions of the Program Grant Agreement ("STCs").

236. The CCC proffers another argument that CNM was not aware of and cannot be held responsible for actions and arrangements by the former CNM Director after his retirement in May 2011. See the OIG's response to CNM on this topic in ¶ 4 (fn. 3), 160, *supra*.

237. In its 23 September response letter, the CCC communicates several comments on behalf of the MoH. The OIG accepted the comments clarifying the amount of money MoH received as PR of the non-compliant expenditures, in addition to indicating that NCHADS was the PR for MEDiCAM's non-compliant expenditures. The OIG also accepted the clarifications that MoH's Secretary of State only had oversight and approval authority for the time when MoH was PR to CNM as SR. Regarding the investigative challenge concerning photographs of OIG staff taken by MoH representatives, the OIG maintains that the information contained in this report is factually accurate.

238. Finally, the OIG has reported on the progress made by the Secretariat and participants in country with respect to remedial measures taken since the investigation in Cambodia began, including the change of PR for the malaria grant, the resignation of relevant individuals, and other corrective measures. See Section H of the report.

J.1.2.CNM

J.1.2.1. CNM

239. The current CNM Director, not the subject of this report, presented comments on behalf of CNM in response to the factual findings shared by the OIG on 14 June 2013 (comments discussed herein will be attributed to "CNM"). CNM raised nine points for the OIG to consider when finalizing the report, discussed below. The OIG also responded to comments in more specific detail in a chart appended hereto as Annex 2.

240. First, CNM asked for the report to clarify that the former Director resigned from his post on 1 May 2011 and the current Director took office at CNM on 6 May 2011 and was elected to Director on 11 May 2011. The report reflects this information. See OIG report Section G.1.1, ¶ 53. CNM also contends that CNM never engaged its former Director for any services after he retired and never shared information on the procurement processes. The OIG investigation uncovered no overt efforts for CNM to engage with the former Director after 1 May 2011; however, the evidence suggests that CNM allowed the former CNM Director the ability to access information pertaining to procurements that transpired after his retirement. See OIG report Section G.1.4.11, ¶ 148 for more detail.

241. Next, CNM stated some of the contracts discussed in the report were "outside the boundaries" of the Program Grant Agreements and Memorandum of Agreements. The OIG has taken note of this comment and removed discussion regarding contracts to CNM not funded by Global Fund grants. In support of this position, CNM offers that CNM was not the procurement agent for certain contracts. CNM further argues that these actions should be seen as those of an individual(s) and not as acts by CNM as an organization.

The OIG agrees that not all of the procurements discussed in the report were procured by CNM itself. Some were done via a procurement agent. However, the use of a procurement agent does not absolve a PR or SR of responsibility for improper commission payments made in connection with said procurements. Further, for contracts where other entities besides CNM were the recipients, such as the 2006 and 2007 contracts won by VF (See OIG report Figure 47, *supra*), the evidence still shows that the CNM Director requested and received an improper commission payment. The report finds that CNM is responsible for the actions taken by officers acting in their official capacity on matters such as procurement activities and using their positions to facilitate contracts and improperly influence the competitive procurements of bednets in Cambodia. OIG finds that it was exactly because of their positions that the CNM Director and Deputy Director could request and receive improper commission payments.

242. CNM also asserts that the OIG does not present concrete evidence to confirm all the ultimate beneficiaries of the commission payments. The OIG maintains that the evidence in the report is clear: the improper commission payments were made for the benefit of the CNM Director and Deputy Director. These payments were wired to third-party beneficiaries, at the Director and Deputy Director's instruction, in order to avoid detection of a connection back to said CNM officers.

243. Fourth, CNM does not accept that offerings such as fellowships or dinners can be considered as improper payments, and describes them as "just humanitarian and/or cultural ... made in the spirit of public private partnership as a mean to achieve the Millennium Development Goals." To support its point, CNM relies solely on examples in which companies have donated medicine in the fight against tropical diseases. CNM's reliance on the donation of health products as a means to explain why dinners, gifts, trips and other favors are acceptable is misplaced. Further, the report clearly points out that the Suppliers have codes of ethics specifically prohibiting the giving of such gratuities as the ones describe in this report, specifically because of the danger that it could be seen as an attempt to obtain influence or other preferential treatment.

244. Fifth, CNM takes issue with the length of time the investigation took and the volume of documents retrieved in connection therewith. The OIG points out that it conducted an extensive investigation of allegations of fraud and financial abuse in Rounds 1 through 9 of multiple grant programs financed by the Global Fund to the Kingdom of Cambodia, covering a 7-year period and USD 86.9 million. Moreover, the activities of at least 4 other recipient entities and 2 bednet suppliers were also examined during this investigation. Further, OIG denies CNM's request to delay the finalization of OIG's report for an additional 18 months in order for CNM to conduct its own forensic investigation of the findings in this report. OIG notes that CNM was put on notice of specific preliminary findings, almost all of which are contained in the final report, including evidence supporting these findings, both in person in July 2012 and via a Notice of Findings letter, dated 24 September 2012. CNM had ample opportunity to act in good faith and conduct its own internal investigation—as other entities discussed in this report did—beginning over a year ago. The failure to do so does not warrant further delays to the finalization of this report. The OIG, however, welcomes CNM's desire to continue to look into these matters for its own benefit and with an eye to strengthening its internal control processes.

245. Next, CNM asserts that the OIG uncovered no evidence that SCS paid commission payments under the VPP procurements in 2011. The OIG does not dispute this fact and the report confirms this. Further, CNM claims it should not be responsible for any commission payments made to the Director after 1 May 2011 because CNM no longer engaged him to offer any services in management of CNM and he no longer had influence in CNM. The report makes clear that CNM's Director resigned from his post on 1 May 2011. However, the investigation found that this individual: (i) continued to use a CNM email account; (ii) continued to maintain his physical office on CNM premises; and (iii) received confidential information via email from VPP agent PSI related to contracts for bednets that were to be delivered to CNM post 1 May 2011, which he then improperly

shared with the Suppliers. OIG maintains that these actions demonstrate a clear and continued connection between the then-former CNM Director and CNM's ongoing business activities. Moreover, CNM as an institution tolerated, and enabled the misperception that the former CNM Director created by continuing to be kept in the information loop on CNM bednet procurement matters. At a minimum, CNM allowed the former Director to maintain an active email account on its server and an office on its premises. And CNM had knowledge, or at least the opportunity to know, that the former CNM Director was receiving procurement-related information as late as August 2011 because other CNM employees were also included as recipients on certain of these emails, including the Chief of Procurement.

246. In connection with this argument, CNM also contends that VPP agent PSI may have deliberately violated procurement procedures by continuing to include the former Director on procurement-related emails despite being notified on multiple occasions by CNM employees that he was no longer acting in that capacity. OIG uncovered evidence that shows PSI procurement officers continued to email the former Director until at least 6 September 2011. CNM provided OIG with email evidence that on 29 September 2011, a CNM employee wrote to PSI to remind them that all communication should be directed to the current CNM Director. CNM informed OIG that CNM officer communicated this message to PSI many times before September 2011, but could not provide documentary evidence to support this assertion. Therefore, the OIG can make no finding with respect to exactly when PSI learned that the CNM Director had changed, though OIG acknowledges that a different PSI employee included the current, not the former, CNM Director on a procurement-related email on 11 May 2011.

247. Next, CNM revisits a point made earlier that for the contracts during which CNM was acting as a SR under PR-MoH, the OIG has no mandate to investigate. This understanding is incorrect. OIG refers CNM to the STCs regarding the OIG's Right of Access (Art. 13 of the current version of the STCs), which requires that PRs and SRs permit the OIG, and any third party authorized by the Global Fund, unrestricted access to all program books and records.

248. Finally, CNM contends that OIG should conclude on the shared responsibilities of parties such as the VPP agent and the Suppliers. The OIG has already addressed CNM's point regarding PSI as VPP agent above, and asserts that it adequately addresses the actions of the Suppliers and the extent of their involvement in the payment of improper commissions in this investigation report.

J.1.2.2. Former CNM Director

249. The former CNM Director at issue in the report was provided a copy of the draft findings pertaining to CNM by the CCC. In his response, he asserted that he did not ask any company to overprice LLINs during the procurement bidding process. Significantly, at no point does the former CNM Director deny soliciting and accepting improper commission payments in connection with the awarding of LLIN contracts.

250. The OIG report makes no finding regarding whether or not the LLIN Suppliers increased their bid price. Rather, the evidence in this investigation reveals a scheme in which the winning bidder ultimately paid an improper commission to the CNM Director, and, occasionally, Deputy Director, that was a percentage of the total value of the contract. As such, the OIG concludes that these actions were anti-competitive and likely resulted in the Global Fund not benefitting from the most fair and competitive prices. See OIG report Section G.1.4.7.

251. Finally, the former CNM Director claimed that he was not involved in the two net purchase orders administered by VPP in late 2011, as they occurred after his retirement. The OIG report reflects the fact that the former CNM Director at issue in this report retired on 1 May 2011. See OIG report Section C.1, ¶ 4 (fn. 3), Section G.1.1, ¶53. However, there is direct evidence in this report that shows this individual's continued involvement

in the VPP procurements for CNM beyond his retirement date. See OIG report Section G.1.4.11, ¶ 143-148.

J.1.2.3. CNM Deputy Director

252. CNM's Deputy Director, who worked on Global Fund-financed programs from 2004 and throughout the time period covered by this report, was provided a copy of the draft findings pertaining to CNM by the CCC. In her reply, she "disclaim[s] responsibility" for commission payments made in connection with the bednet contracts listed in Figures 27 and 47 of the report, based on arguments such as certain contracts were not funded by the Global Fund, were not related to her position involving procurement, or were not awarded to CNM as procurement agent. She further points out that the OIG uncovered no evidence of the ultimate beneficiaries of the commission payments.

253. The OIG maintains that all of the contracts listed in the two charts mentioned above were funded by the Global Fund, and that some procurements took place with the assistance of a Procurement Agent. Moreover, the OIG uncovered evidence indicating that the Deputy Director specifically requested, and received, a percentage commission payment in connection with at least five of these contracts via payments made to a beneficiary at the Deputy Director's request. See OIG report Sections G.1.4.2 and G.1.4.4. Importantly, there is email evidence that the Deputy Director instructed the LLIN sales manager to send the commission payment to "my bank account" while providing the specific details associated therewith. See Annex 1, Figure 29.

254. The Deputy Director mentions that there was no loss of Global Fund money as a result of commission payments on certain contracts due to the fact that CNM's Bid Evaluation Committee ("BEC") could not make decisions without Global Fund approval. This argument misses the point of the OIG's findings, as the scheme uncovered concerns with the payment of improper commissions in connection with the awarding of LLIN contracts to the two Suppliers mentioned in this report. See OIG report Section G.1.4.7, which discusses the anti-competitive effect of building commission payments into the total price of the contracts. Such action compromised the integrity of the entire procurement process and was not submitted to the Global Fund for approval at any stage during this process. Therefore, the OIG rejects this argument in its entirety.

255. Finally, the Deputy Director asserts that CNM's BEC did not facilitate SCS's bids to win LLIN contracts. In support of this point, the Deputy Director disagrees with the report paragraph concerning the BEC (Section G.1.2, ¶ 58). This paragraph describes the role of the BEC within CNM and does not address whether or not the BEC facilitated contracts for SCS. The Deputy Director's objections to this paragraph are misplaced. Moreover, the Deputy Director does not suggest any clarification to OIG's description of the BEC's role.

J.1.2.4. Secretary of State, MoH

256. A Secretary of State under the MoH, who was involved in overseeing and authorizing the procurement activities of CNM, was provided a copy of the draft findings pertaining to CNM by the CCC. This individual stated that he has never received anything in connection with the award of LLIN contracts to CNM, nor has he solicited gifts or money from the SCS Sales Manager directly or through the former CNM Director. Indeed, the OIG reviewed the evidence and concurs that there is no proof of such actions. The report reflects that the OIG uncovered no evidence of direct communication between this individual and the SCS Sales Manager or the CNM Director, and no evidence that this individual made the requests attributed to him by the CNM Director. See OIG report Section G.1.4.5, ¶ 95-96.

257. The OIG report also reflects that the 2007 procurement referred to in ¶ 141 of the report was not sole sourced. This information comports with claims from Supplier VF

that this procurement was a competitive process and not sole-sourced. The OIG report contains evidence that the CNM Director told the SCS Sales Manager he supported sole sourcing of this contract and passed that recommendation along to the Secretary of State. The evidence further indicates that the Secretary of State declined to accept this recommendation and ordered a competitive process. The Secretary of State's letter response on this point seems inconsistent in that he states both that he agreed to sole source the procurement of bednets to VF based on the bednet specifications required and the needs of PSI and that the April 2007 sole source procurement concerned artesunate suppositories and not bednets. The OIG assumes that the Secretary of State is referring to the time he sole sourced a procurement to VF in March 2006 in the first instance, and to a different 2007 procurement in the second.

258. Finally, the Secretary of State offers his opinion that the actions described in the report should be attributed to an individual and not the institution. The OIG declines to agree with this position based on the evidence uncovered during this report, the breadth and duration of the scheme detailed herein, and the responsibilities of the PR to ensure that neither it, nor its SRs, engage in any corrupt practices in connection with Global Fund-financed procurements. See the STCs, Art. 21(b).

J.1.2.5. Sumitomo Chemical Singapore

259. SCS issued a response to the draft copy of the OIG investigation's factual findings pertaining specifically to SCS on 7 June 2013. This response included a detailed chart of corrections and/or suggested amendments that SCS wanted OIG to consider before finalizing its report. The OIG responded to SCS's specific comments in a chart appended hereto as Annex 3.

260. In general, SCS objects to the fact that the intentions and conduct of two of its employees are attributed to the company throughout the report. The OIG endeavored to identify and attribute specific actions to specific people; however, the OIG takes the view for purposes of this report that SCS as an institution is responsible for the ultimate actions of payment of the improper commissions and contracting with an agent, who provided no actual or legitimate services, as a vehicle through which to make these improper commission payments. As the OIG report describes in detail, there were several layers of approval associated with these actions, by employees at various supervisory levels. Moreover, SCS has taken steps to strengthen its risk mitigation activities in the wake of the findings contained in this report, which indicates that the company's trainings and existing ethical codes were insufficient to prevent the actions that transpired at the time of their occurrence. It is also noteworthy that the SCS Sales Manager at issue in this report received no personal bonus or promotion based on his performance in the Cambodian portfolio.³⁴⁴ Ultimately, it was the company, SCS, who stood to benefit directly from the attainment of business in Cambodia through these LLIN contracts.

261. In this report, the OIG does not seek to assign a level or degree of culpability to specific parties and does not evaluate its findings under a criminal or civil legal evidentiary standard. Rather, it endeavors to set forth the facts as determined during the investigation and as demonstrated by the ultimate actions taken by the company. To the extent that the report attributes actions of an employee to its employer, this is not a determination of legal liability and is instead a determination of accountability with respect to the Global Fund's Code of Conduct for Suppliers, which specifically prohibits corrupt, fraudulent, collusive, anti-competitive or coercive practices of any kind involving Global Fund resources.³⁴⁵

³⁴⁴ Interview of SCS Sales Manager, 17 August 2012 (ROC ¶ 6).

³⁴⁵ Global Fund Code of Conduct for Suppliers (15 December 2009), "Fair and Transparent Practice", ¶ 7-12, available at

262. An additional point raised by SCS is that one of the individuals referred to in the report as a “Managing Director” is actually a “General Manager”. SCS contends that this distinction supports its position that this employee was not a sufficiently senior-level employee to be considered as the controlling mind and will of the company. SCS provided OIG with evidence that this individual held two titles: the Business Head of the Environmental Health and Vector Control Division (“EHD”) for South/Southeast Asia and Australasia, and Managing Director of Sumitomo Chemical Enviro-Agro Asia Pacific Sdn. Bhd. (“SCEA”), Sumitomo’s legal entity within Malaysia. He joined SCEA in 2001 and managed a research facility of 30 people.³⁴⁶ The OIG spoke with this individual during the course of its investigation and he described his position as being a “Managing Director” of Sumitomo Chemical’s research and development facility in Malaysia.³⁴⁷ He was also described by his supervisor as the Business Head of the EHD and was fully empowered to run this business.³⁴⁸ He reports to the Regional Director and Head of the Health and Crop Sciences Sector.³⁴⁹ The OIG believes the particular title this individual holds is incidental to the fact that he held a supervisory role within the company and was involved in the scheme to pay improper commission payments. For these reasons, and for ease of reference throughout the report, the OIG refers to this individual as “Sumitomo Managing Director”, while recognizing that he also held the position of Business Head of EHD.

J.1.2.6. Vestergaard Frandsen

263. VF issued a response to the draft copy of the OIG investigation’s factual findings pertaining specifically to VF on 26 May 2013. This response included a detailed chart of corrections and/or suggested amendments that VF wanted OIG to consider before finalizing its report. The OIG responded to VF’s specific comments in a chart appended hereto as Annex 4.

264. In general, VF makes objections similar to those of SCS with respect to the fact that the intentions and conduct of its employees are attributed to the company throughout the report. The OIG incorporates its position as detailed in ¶ 260-261, supra, with respect to attributing liability to VF for the ultimate actions of payment of the improper commissions and contracting with an agent, who provided no actual or legitimate services, as a vehicle through which to make these improper commission payments.

265. An extension of this argument, VF also states that the OIG draft report does not properly distinguish between VF, VF’s headquarters office in Switzerland, VF’s Indian branch, and individuals working for VF’s Indian branch. As a result, the OIG endeavored to attribute to particular individuals the particular actions in which they engaged throughout the final report and the specific VF office where these individuals worked.

266. VF further states that the draft report is biased towards proving VF’s guilt through interpretation and extrapolation and tends to “jump to conclusions.” The OIG maintains that it drew reasonable inferences based on the evidence identified throughout its investigation, based on, inter alia, documentary evidence, such as wire transfer records and emails, as well as the admissions of witnesses. The OIG reiterates the fact that it is not a law enforcement body and does not attempt to determine or assign a level or degree of culpability to specific parties, and does not evaluate its findings under a criminal or civil legal evidentiary standard.

267. VF asked that their employees mentioned in the report be referred to generically, while identifying the specific VF branch office at which these employees worked. The OIG

http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForSuppliers_Policy_en/, accessed 01 November 2013.

³⁴⁶ Interview of Sumitomo Managing Director, 19 October 2012 (ROC ¶ 2,4).

³⁴⁷ Interview of Sumitomo Managing Director, 19 October 2012 (ROC ¶ 2,4).

³⁴⁸ Interview of Director of Health and Crop Sciences, 19 October 2012 (ROC ¶ 5-6).

³⁴⁹ Interview of Sumitomo Managing Director, 19 October 2012 (ROC ¶ 68).

accepted this request and selected titles that were sufficiently general, while still reflecting the appropriate level of authority and attributing certain actions to particular individuals as VF had also requested.

J.1.3.NCHADS

J.1.3.1. *Improper Procurement Practices*

268. In its response to OIG's findings on improper procurement practices by a Senior Procurement Officer, NCHADS agreed with the OIG's position that improper commissions, back-dated quotations, tailored price quotations and favored treatments are clearly improper. NCHADS also agreed with the OIG's findings that its Senior Procurement Officer did orchestrate such improper procurement practices and did receive commissions for personal gain on Donor 1 projects.

269. In its response, NCHADS devotes considerable effort to clarifying the time period in which the improper procurement practices presented in the OIG's report occurred and the donor to which the acts related. In particular, NCHADS emphasizes that the majority of the direct evidence of improper acts presented in the OIG's report relate to procurements financed by Donor 1 and not the Global Fund. The OIG has taken these points into consideration in finalizing its report and conclusions and ensured that the report makes the distinction between activities under various donor programs clear.

270. NCHADS also argues that there is insufficient direct evidence of improper practices continued from Donor 1's program under Global Fund-financed procurements by its Procurement Officer. NCHADS further takes issue with what it perceives as OIG's efforts to extrapolate that such activities continued from January 2009 forward. The OIG's investigative report provides specific examples of situations where the Senior Procurement Officer asked vendors to artificially inflate their price, submit a quotation after a bid had concluded, and back-date quotations. One such vendor even paid a facilitation payment to this procurement Officer under the Global Fund program. This evidence, when viewed in the more numerous instances uncovered where the Senior Procurement Officer conducted these and other manipulations of the procurement process under the Donor 1 program, makes it likely that this Officer continued these improper acts systematically under the Global Fund program.

271. The OIG also disagrees with NCHADS's contention that their Senior Procurement Officer's practices of soliciting kickbacks, inflating contract prices, manipulating bid quotations, rigging tenders, facilitating collusion, and steering contracts to favored vendors all for personal gain did not result in risk to Global Fund funds. The far-reaching effects of procurement tampering is well-recognized by the Global Fund and is taken very seriously. (See OIG report Sections G.2.2.2, ¶ 178, and K.1-K.2). The consequences of such actions can result in compromising the entire value of the contracts.

272. NCHADS claims that its Senior Procurement Officer's manipulation of procurement processes for personal gain could not have possibly continued under the Global Fund-financed procurements purportedly due to an atmosphere of tighter procurement restrictions and oversight. NCHADS has offered no evidence to demonstrate what is different about the Global Fund procurement policy that makes it more stringent than those being followed under Donor 1's program. Further, the OIG report provides evidence that such acts did continue under the Global Fund program.

273. Finally, NCHADS asserts that the OIG's interview with its Senior Procurement Officer, which produced a verbal and signed statement of admissions of a wide range of improper procurement practices, was questionable due to the manner, location, participants and method of said interview and did not respect the witness' legal rights. The OIG maintains that the interview was conducted properly, in accordance with the Principles and Guidelines for Investigations as endorsed by the International Financial Institutions Anti-Corruption Task Force and the Conference of International Investigators

and its own internal policies and codes of conduct. Moreover, it is noteworthy that although NCHADS objects on behalf of its Senior Procurement Officer to the fact that the interview was conducted in English, this individual conducted all of his business transactions (emails, letters, documentation) in English, responded in English to his interviewers, and did not request the assistance of an interpreter at any stage of the interview.

274. OIG appends a chart hereto that addresses NCHADS's specific responses in greater detail. (See Annex 5).

J.1.4.MEDiCAM

J.1.4.1. *Misuse of funds for "Training Assistant"*

275. In its response to OIG's report, MEDiCAM ultimately confirmed the OIG's findings that the Global Fund Round 7 HIV funding of USD 575 per month budgeted for the position of "Training Assistant" in 2009 was instead used to pay the majority of the "Advocacy Coordinator's" salary, a position that evidence shows was funded by three other international donors. MEDiCAM also confirmed the OIG's findings that the "Training Assistant" position that Global Fund monies were designated for was unfilled during 2009.³⁵⁰

276. Further, as shown in Figure 77, the OIG notes that information and documented evidence provided by MEDiCAM on two separate occasions in response to the OIG's findings provide conflicting accounts and further show MEDiCAM's intent to misrepresent their use of Global Fund grant funds and to mislead the OIG.

277. On 8 October 2012, MEDiCAM reported that Staff Member A held the "Training Assistant" position and that another individual (Staff Member B) held the "Advocacy Coordinator" position during 2009.³⁵¹ As support for its arguments, MEDiCAM provided the signed contract of Staff Member B for the "Advocacy Coordinator" position.³⁵² In a response dated 17 July 2013, however, MEDiCAM reversed its position and reported that Staff Member A actually held the "Advocacy Coordinator" position, as had been reported by the OIG, and that Staff Member B held the positions of "Health Information Sharing Manager" in 2008 and then "Research Coordinator" during 2009.³⁵³ As support, MEDiCAM provided Staff Member A's signed contract for the "Advocacy Coordinator" position, which was not provided in its earlier response, and provided another signed contract of Staff Member B but this time for the "Research Coordinator" position.³⁵⁴

³⁵⁰ "MEDiCAM's Response to OIG draft Report Submitted to MEDiCAM on 15th June, 2013", dated 17 July 2013, p. 2.

³⁵¹ Letter from MEDiCAM Executive Director to the OIG, 8 October 2012.

³⁵² Ibid. (enclosing Staff Member B employment contract for Advocacy Coordinator from 1 September 2008 to 31 December 2009, signed by the staff member and a MEDiCAM representative on 1 October 2008).

³⁵³ "MEDiCAM's Response to OIG draft Report Submitted to MEDiCAM on 15th June, 2013", dated 17 July 2013, p. 1-2. In its response, MEDiCAM admits that it again misdirected funds by using funds budgeted by Donor B for the Advocacy Coordinator position to fund the Research Coordinator position, since the Global Fund grant was funding the Advocacy Coordinator position.

³⁵⁴ Ibid. (enclosing Staff Member B employment contract for Research Coordinator from 1 January 2009 to 31 December 2009).

Figure 77: Comparison of MEDiCAM's conflicting comments and misleading supporting documentation in its responses to OIG

	MEDiCAM's 8 October 2012 Response	MEDiCAM's 17 July 2013 Response	OIG Evaluation
Training Assistant	Filled by Staff Member A	Unfilled	MEDiCAM misled the OIG in its 8 October response
Advocacy Coordinator	Filled by Staff Member B	Filled by Staff Member A	
Staff Member A	Provided no signed employment contract*	Provided signed employment contract for Advocacy Coordinator position*	MEDiCAM originally provided Donor B with fabricated and false documentation
Staff Member B	Provided signed employment contract for Advocacy Coordinator position	Provided signed contract for Research Coordinator position	MEDiCAM originally provided the OIG with fabricated and false documentation

* The OIG notes that during its investigation, Donor B provided the OIG with a signed employment contract for Staff Member A for the position of Training Assistant for the period 2 February 2009 to 31 January 2010, further demonstrating MEDiCAM's practice of fabricating supporting documentation to support its misuse of donor funds.

J.1.4.2. Misuse of funds for "HIV/AIDS Coordinator"

278. In its response, MEDiCAM confirmed the OIG's findings, as it did with its response to the "Training Assistant" findings, that the Global Fund Round 7 HIV grant monies of USD 14,400 budgeted for the position of "HIV/AIDS Coordinator" in 2009 were instead used to pay for the salary of the "M & E and Capacity Building Manager", a position that evidence shows was funded by another donor. MEDiCAM also confirmed the OIG's findings that the "HIV/AIDS Coordinator" position that Global Fund monies was designated for was unfilled during 2009.³⁵⁵

279. In light of the evidence and MEDiCAM's production of conflicting and false explanations and documented evidence, the OIG finds it difficult to accept MEDiCAM's actions as management "missteps" rather than intentional efforts to mislead its donors and the OIG. See chart appended hereto as Annex 6 for further specific arguments and responses.

³⁵⁵ "MEDiCAM's Response to OIG draft Report Submitted to MEDiCAM on 15th June, 2013", dated 17 July 2013, p. 4-6.

K. Expenditures Not Compliant with the Grant Agreements

K.1. Determination of Compliance

280. See Annex 7C.

K.2. Reimbursements or Sanctions

281. See Annex 7D.

K.3. Summary of Expenditures Identified as Non-Compliant

282. The OIG finds that expenses of grant funds amounting to USD 12,104,761 were compromised for the reasons summarized in the table below and, therefore, such amounts were not compliant with the terms of the grant agreements.

Figure 78: Non-compliant expenditures by recipient (in USD)

Recipient:	NCHADS	CNM	MEDiCAM	Total
Non-compliance explanation				
Expenditures compromised by use of deceptive means to conceal their true nature and purpose			20,725**	20,725
Total value of contracts compromised by procurement irregularities (fabrication of documents, non-competitive tenders)	317,430			12,084,036
Total value of contracts compromised by inappropriate facilitation payments		11,766,606*		
Total				12,104,761

*Of this total value of contracts, MoH was the direct recipient of USD 5,976,850.56 as PR for distribution to CNM-SR during Rounds 4 and 6. CNM received USD 5,789,755.00 directly in its capacity as PR during Rounds 2-RCC and SSF.

**These expenditures were made under the Round 7 HIV grant, for which NCHADS was the PR.

L. Recommendations

283. Based on the evidence and analysis summarized in this report, the OIG provides the following recommendations to the Secretariat of the Global Fund:

- a. The Secretariat should seek to recover, from all parties responsible, expenditures of Global Fund grant funds that were not made in compliance with the terms of the relevant grant agreements, in accordance with the applicable legal rights and obligations, based on its determination of legal breach of the grant agreements and associated determination of recoverability. The Secretariat should ensure such entities are held accountable for their grant management practices, as well as take the appropriate management actions to ensure that the responsible individuals are held accountable for their actions and are no longer associated with the management of grant funds.
- b. The OIG recommends that the Secretariat assess and monitor on an as-needed basis the anti-corruption and compliance systems, including the use of agents and other intermediaries, of major LLIN suppliers. To this effect, a specific oversight and risk reduction approach should be developed by the Secretariat, with the assistance of the OIG. Once implemented and following validation of the outcomes by the OIG, that process should be extended to other major health product suppliers.
- c. The Executive Director should make the necessary determination to refer the facts of this report to a sanctioning process.³⁵⁶
- d. Procurement activities, especially single purchases of high value such as with bednet procurements, should be subject to enhanced oversight measures. The Secretariat should continue to assess and develop the feasibility and implications of having a centralized procurement mechanism for LLINs and similar high-value products managed globally for all recipients. To the extent it is not possible to implement centralized mechanisms expeditiously, then, at a minimum, such procurements should be undertaken with heightened scrutiny and considered “high risk” given the findings in this report.
- e. The OIG recommends that the Secretariat makes use of market dynamics and its pooled procurement activities to ensure demonstrated good business practices, anti-corruption measures and compliance efforts by suppliers in the LLIN industry are encouraged and rewarded through volume allocations or otherwise.
- f. The level of assurance placed on procurement agents and fiduciary agents across the portfolio should be critically reviewed, along with the terms of references and procedures used by such agents. The value added of such agencies should not be unduly relied on without careful monitoring and review of their services.
- g. The Secretariat should undertake advocacy activities and compliance reviews of recipients related to the principles embodied in the Code of Conduct for Recipients, including but not limited to, anti-corruption training, adequate compliance processes, and effective procurement control processes.

³⁵⁶ In accordance with the Sanctions Procedures Relating to the Code of Conduct For Suppliers (amended October 2013), the report contains credible and substantive evidence of a breach of the Supplier Code of Conduct, including, but not limited to, corrupt, fraudulent, collusive, anti-competitive or coercive practices in competing for, or performing, a Global Fund-financed contract. Para. 17(a), http://theglobalfund.org/documents/corporate/Corporate_SanctionsProcedures_Policy_en/, accessed 3 November 2013.