Annex 1 OIG Methodology

1. OIG Investigations

1. The Investigations Unit of the OIG is responsible for conducting investigations of alleged fraud, abuse, misappropriation, corruption and mismanagement (collectively, "fraud and abuse") within Global Fund financed programs and by PRs and SRs, (collectively, "grant implementers"), CCMs and LFAs, as well as suppliers and service providers.¹

2. While the Global Fund does not typically have a direct relationship with the recipients' suppliers, the scope of OIG's work² encompasses the activities of those suppliers with regard to the provision of goods and services. The authority required to fulfill this mandate includes access to suppliers' documents and officials.³ The OIG relies on the cooperation of these suppliers to properly discharge its mandate.⁴

3. OIG investigations aim to: (i) identify the specific nature and extent of fraud and abuse affecting Global Fund grants, (ii) identify the entities responsible for such wrongdoings, (iii) determine the amount of grant funds that may be compromised by fraud and abuse, and (iv), place the Organization in the best position to obtain recoveries through identification of the location or uses to which the misused funds have been put.

4. OIG conducts administrative, not criminal, investigations. Its findings are based on facts and related analysis, which may include drawing reasonable inferences based upon established facts. Findings are established by a preponderance of credible and substantive evidence. All available evidence is considered by the OIG, including inculpatory and exculpatory information.⁵

5. The OIG finds, assesses and reports on facts. On that basis, it makes determination on the compliance of expenditures with the grant agreements and makes risk-prioritized recommendations.

6. Such recommendations may notably include identification of expenses deemed noncompliant for considerations of recovery, recommended administrative action related to grant management and recommendations for action under the Code of Conduct for Suppliers⁶ or the Code of Conduct for Recipients of Global Fund Resources⁷ (the "Codes"), as appropriate. The OIG does not determine how the Secretariat will address these determinations and recommendations. Nor does it make judicial decisions or issue sanctions.⁸

7. Recommendations to the Secretariat primarily aim to help identify, mitigate and manage risks to the Global Fund and its recipients' activities. The OIG defers to the Secretariat and, where appropriate, the recipients, their suppliers and/or the concerned national law enforcement agencies, for action upon the findings in its reports.

¹ Charter of the Office of the Inspector General (19 March 2013), available at

http://theglobalfund.org/documents/oig/OIG_OfficeOfInspectorGeneral_Charter_en/, accessed 01 November 2013 2013.

² Charter of the Office of the Inspector General (19 March 2013) § 2, 9.5 and 9.7.

³ Ibid., § 17.1 and 17.2.

⁴ Global Fund Code of Conduct for Suppliers (15 December 2009), § 17-18, available at <u>http://theglobalfund.org/documents/corporate/Corporate CodeOfConductForSuppliers Policy en/</u>, accessed of November 2013.

⁵ These principles comply with the *Uniform Guidelines for Investigations*, Conference of International Investigators, June 2009; available at <u>http://www.un.org/Depts/oios/pages/uniformguidlines.html</u>, accessed 01 <u>November 2013</u>.

⁶ See fn. 4, supra.

⁷ Code of Conduct for Recipients of Global Fund Resources (16 July 2012) available at <u>http://theglobalfund.org/documents/corporate/Corporate CodeOfConductForRecipients Policy en/, accessed</u> 01 November 2013.

⁸ Charter of the Office of the Inspector General (19 March 2013) § 8.1

8. The OIG is an administrative body with no law enforcement powers. It cannot issue subpoenas or initiate criminal prosecutions. As a result, its ability to obtain information is limited to the rights to it under the grant agreements agreed to with recipients by the Global Fund, including the terms of its Codes, and on the willingness of witnesses and other interested parties to voluntarily provide information.

9. The OIG also provides the Global Fund Board with an analysis of lessons learned for the purpose of understanding and mitigating identified risks to the grant portfolio related to fraud and abuse.

10. Finally, the OIG may make referrals to national authorities for prosecution of any crimes or other violations of national laws, and supports such authorities as necessary throughout the process, as appropriate.

2. Applicable Concepts of Fraud and Abuse

11. As outlined in the previous section, the OIG bases its investigations on the contractual commitments undertaken by recipients and suppliers. It does so under the mandate set forth in its Charter to undertake investigations of allegations of fraud and abuse in Global Fund supported programs.

12. As such, it relies on the definitions of wrongdoing set out in the applicable grant agreements with the Global Fund and the contracts entered into by the recipients with other implementing entities in the course of program implementation.

13. Such agreements with SRs must notably include pass-through access rights and commitments to comply with the Codes. The Codes clarify the way in which recipients are expected to abide by the values of transparency, accountability and integrity which are critical to the success of funded programs. Specifically, the Code of Conduct for Recipients prohibits recipients from engaging in corruption, which includes the payment of bribes and kickbacks in relation to procurement activities.⁹

14. The Codes notably provide the following definitions of the relevant concepts of wrongdoings: 10

- "Anti-competitive practice" means any agreement, decision or practice which has as its object or effect the restriction or distortion of competition in any market.
- "Collusive practice" means an arrangement between two or more persons or entities designed to achieve an improper purpose, including influencing improperly the actions of another person or entity.
- "Corrupt practice" means the offering, promising, giving, receiving or soliciting, directly or indirectly, of anything of value or any other advantage to influence improperly the actions of another person or entity.
- "Fraudulent practice" means any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person or entity to obtain a financial or other benefit or to avoid an obligation.
- "Misappropriation" is the intentional misuse or misdirection of money or property for purposes that are inconsistent with the authorized and intended purpose of the money or assets, including for the benefit of the individual, entity or person they favor, either directly or indirectly.

15. The International Financial Institution Anti-Corruption Task Force provides similar definitions.¹¹

 ⁹ Code of Conduct for Recipients of Global Fund Resources, section 3.4.
 ¹⁰ Available at

http://theglobalfund.org/documents/corporate/Corporate CodeOfConductForRecipients Policy en/ and http://theglobalfund.org/documents/corporate/Corporate CodeOfConductForSuppliers Policy en/

¹¹ Uniform Framework for Preventing and Combating Fraud and Corruption, International Financial Institutions Anti-Corruption Task Force, September 2006; available at

3. Determination of Compliance

16. The OIG presents factual findings which identify compliance issues by the recipients with the terms of the Global Fund's Standard Terms and Conditions (STC) of the Program Grant Agreement. Such compliance issues may have links to the expenditure of grant funds by recipients, which then raises the issue of the eligibility of these expenses for funding by the Global Fund. Such non-compliance is based on the provisions of the STC.¹² The OIG does not aim to conclude on the appropriateness of seeking refunds from recipients, or other sanctions on the basis of the provisions of the Program Grant Agreement.

17. Various provisions of the STC provide guidance on whether a program expense is eligible for funding by the Global Fund. It is worth noting that the terms described in this section are to apply to Sub-recipients (SRs) as well as Principal Recipients (PRs).¹³

18. At a very fundamental level, it is the Principal Recipient's responsibility "to ensure that all Grant funds are prudently managed and shall take all necessary action to ensure that Grant funds are used solely for Program purposes and consistent with the terms of this Agreement".¹⁴

19. In practice, this entails abiding by the activities and budgetary ceilings proposed in the Requests for Disbursement, which in turn must correspond to the Summary Budget(s) attached to Annex A of the Program Grant Agreement. While this is one reason for expenses to be ineligible, expending grant funds in breach of other provisions of the Program Grant Agreement also results in a determination of non-compliance.

20. Even when the expenses are made in line with approved budgets and work plans, and properly accounted for in the program's books and records, such expenses must be the result of processes and business practices which are fair and transparent.

21. The STC specifically require that the PR ensures that: (i) contracts are awarded on a transparent and competitive basis, [...] and (iv) that the PR and its representatives and agents do not engage in any corrupt practices as described in Article 21(b) of the STC in relation to such procurement.¹⁵

22. The STCs explicitly forbid engagement in corruption or any other related or illegal acts when managing Grant Funds:

"The Principal Recipient shall not, and shall ensure that no Sub-recipient or person affiliated with the Principal Recipient or any Sub-recipient [...] participate(s) in any other practice that is or could be construed as an illegal or corrupt practice in the Host Country."¹⁶

23. Amongst prohibited practices is the rule that the PR shall not and shall ensure that no person affiliated with the PR "engage(s) in a scheme or arrangement between two or more bidders, with or without the knowledge of the Principal or Sub-Recipient, designed to establish bid prices at artificial, non-competitive levels."¹⁷

24. The Global Fund's Code of Conduct for Suppliers and Code of Conduct for Recipients further provide for additional principles by which recipients and contractors must abide, as

¹³ Standard Terms and Conditions (2012.09) at Art. 14(b):

http://www.theglobalfund.org/documents/core/grants/Core_StandardTermsAndConditions_Agreement_en_ ¹⁴ Id. at Art. 9(a) and Art 18(f)

¹⁵ Id. at Art. 18(a)

http://site resources.worldbank.org/INTDOII/Resources/FinalIFITaskForceFramework & Gdlines.pdf, accessed on November 2013.

¹² The STC are revised from time to time, but the provisions quoted below applied to all PRs at the time of the investigation.

¹⁶ Id., at Art. 21 (b).

¹⁷ Id. at Art. 21(b)

well as remedies in case of breaches of said fundamental principles of equity, integrity and good management. The Codes also provide useful definitions of prohibited conducts.¹⁸

25. The Codes are integrated into the STC through Article 21(d) under which the PR is obligated to ensure that the Global Fund's Code of Conduct for Suppliers is communicated to all bidders and suppliers.¹⁹ It explicitly states that the Global Fund may refuse to fund any contract with suppliers found not to be in compliance with the Code of Conduct for Suppliers. Similarly, Article 21(e) provides for communication of the Code of Conduct for Recipients to all Sub-recipients, as well as mandatory application through the SR agreements.²⁰

26. Principal Recipients are contractually liable to the Global Fund for the use of all grant funds, including expenses made by Sub-Recipients and contractors.²¹

27. The factual findings made by the OIG following its investigation and summarized through this report can be linked to the prohibited conducts or other matters incompatible with the terms of the Program Grant Agreements.

4. Reimbursements or Sanctions

28. The Secretariat of the Global Fund is subsequently tasked with determining what management actions or contractual remedies will be taken in response to those findings.

29. Such remedies may notably include the recovery of funds compromised by contractual breaches. Article 27 of the STC stipulates that the Global Fund may require the PR "to immediately refund to the Global Fund any disbursement of the Grant funds in the currency in which it was disbursed [in cases where] there has been a breach by the Principal Recipient of any provision of this (sic) Agreement [...] or the Principal Recipient has made a material misrepresentation with respect to any matter related to this Agreement."²²

30. According to Article 21(d), "in the event of non-compliance with the Code of Conduct, to be determined by the Global Fund in its sole discretion, the Global Fund reserves the right not to fund the contract between the Principal Recipient and the Supplier or seek the refund of the Grant funds in the event the payment has already been made to the Supplier."²³

31. Additional sanctions, including with respect to Suppliers, may be determined pursuant to the Sanction Procedure of the Global Fund, for breaches to the Codes.

¹⁸ Available at

http://www.theglobalfund.org/documents/corporate/Corporate CodeOfConductForSuppliers Policy en ; http://www.theglobalfund.org/documents/corporate/Corporate CodeOfConductForRecipients Policy en ¹⁹ Standard Terms and Conditions (2012.09) at Art. 21(d)

²⁰ Id. at Art. 21(e)

²¹ Id. at Art. 14

²² Id. at Art. 27(b) and (d)

²³ Id.

Annex 2 OIG Response to RCAIDS' Comments on the Draft Investigation Report

Summary of RCAIDS comments	OIG response
(unofficial translation from Russian)	
On 29 July 2006 a contract No. 06/09 was made with JSC "Interfarma-K" in the amount of 15,225,000 KZT for purchase of 609 packages (164,430 tablets) of Viracept 250 mg No. 270. Then on 11 September 2006 a contract No. 06/14 was made with JSC "Interfarma -K" in the amount of 2,700,000 KZT for purchase of 108 packages (29,160 tablets) of Viracept 250 mg No. 270. In accordance with the contracts, JSC "Interfarma-K" delivered Viracept 250 mg No.270 drugs to Regional AIDS Centers. Confirmations of delivery and reception of drugs that were signed by the Heads of the AIDS Centers are available. The contracts were fulfilled on time (the last delivery of drugs took place on 28 November 2006). According to all financial documents and accounting records, the contracts No. 06/09, dated 29 June 2006, and No. 06/14, dated 11 September 2006, have been implemented and fully paid to the supplier JSC "Interfarma-K".	The OIG takes note of RCAIDS comments and notes that regardless of the fact that Viracept drugs were delivered, most of those were recalled in 2007 by Hoffmann-La Roche, as detailed in this report (see section E.1) and confirmed through various evidence, including the subsequent agreements made on 12 March and 27 June 2012 between RCAIDS and Hoffmann-La Roche (see section E.2 of this report), which referred to the fact of recall of drugs delivered by Interfarma-K.
Grant No. KAZ-202-G-01-H-00 has been closed based on an official letter dated 17 December 2010 from the Global Fund (No. EECA/AT/233-17/12/2010), which stated that the Global Fund had received from RCAIDS the refund of grant amounts, which had not been expended as of the end date of Phase 2, in the amount of USD 8,704.80, as well as "a grant closure report from the LFA and a confirmation that all documents provided by RCAIDS had been satisfactory". Consequently, all parties are deemed to have acknowledged during the past five years that the grant had been implemented and that there are no financial claims from any party, as evidenced by the financial statements and the letter on closure of the grant No. KAZ-202-G-01-H-00. Moreover, the independent audit conducted by LLC "Lira-Audit" (audit report of 22 June 2007) on the implementation of the grant No. KAZ-202-G-01-H-00 also confirmed that the grant had overall been implemented correctly, and that no violations had been noted in its implementation. The subsequent independent audits also established that there had been no violations.	The OIG takes note of RCAIDS comments and notes that regardless of the closure of grant KAZ-202-G01-H-00, in accordance with the Article 39 of the Standard Terms and Conditions (STC) in the "amended and restated" program grant agreement for this grant, signed on 24 May 2005 between the Global Fund and RCAIDS, "the provisions of Article 27 (Refunds) shall survive and remain in full force and effect regardless of the expiry of the Program Term".
Considering that company F. Hoffmann-La Roche Ltd. was not a party to the contract and had no obligations to RCAIDS , the latter accepted the funds provided by F. Hoffmann-La Roche Ltd. as an independent grant for purposes provided for by the Agreement of 27 June 2012. The funds were subsequently used for an information campaign to combat and prevent the spread of HIV for the support of national programs on HIV/AIDS, in accordance with the signed Agreement. In this regard, a contract and confirmations on delivery of services are available.	The OIG takes note of RCAIDS comments and notes that regardless of the fact that RCAIDS and Hoffmann-La Roche amended their 12 March 2012 agreement on 27 June 2012 by formalizing "the reimbursement of the cost of withdrawn Viracept" as a "grant", this does not contradict the fact that the drugs had been recalled and reimbursed to RCAIDS by Hoffmann-La Roche, as confirmed through various evidence, including the abovementioned agreements between RCAIDS and Hoffmann-La Roche.
The issues, which are raised by the OIG in its report, is the field of relations solely between RCAIDS and the company F. Hoffmann-La Roche Ltd., regulated by Agreements signed between the two organizations. In accordance with the abovementioned, the Global Fund's claims of reimbursement of funds are unfounded.	The OIG disagrees with RCAIDS comments and notes that regardless of the relations between RCAIDS and Hoffmann-La Roche, this report raises issues (see the Executive Summary) into <i>attempted misappropriation</i> and, ultimately, <i>misuse of grant funds,</i> <i>misrepresentation</i> , and <i>anti-competitive</i> and <i>collusive</i> <i>practices</i> with regard to funds of the Global Fund grant KAZ-202-G01-H-00.

Annex 3 The OIG's Investigation Findings Referred to in the Report

From: [@rcaids.kz]	
Sent: Thursday, 15 April 2010 3:02 PM	
To:	
Cc: info@rcaids.kz	Dente
Subject: RE:	Bank:
	Westpac Banking Corporation
Dear	219 Don McKinnon Drive,
We are satisfied that the contract, which you sent to us earlier, just need to	Albany, Auckland, New Zealand
change the name of general director , the initials of the current director	SWIFT: WPACNZ2W
	IBAN:109960EUR374001
Bank details, see annex.	
Destanced	
Best regards,	

Figure 1 E-mail communication of the Financial Manager of RCAIDS to Hoffmann La-Roche (15 April 2010)

From: <u>Preaids.kz</u>]	The Financial Manager of RCAIDS wrote:
Sent: Tuesday, April 27, 2010 9:33 PM	"[Name of the representative of Hoffmann la-Roche],
To: Phar~Almaty}	This company delivers ARV drugs and test systems to
Cc: 'info@rcaids.kz'	RCAIDS in 2010.
Subject: RE: Viracept comepnsation	Sincerely, [Name of the Financial Manager of RCAIDS]"
Эта компания поставляет в РЦ СПИД АРВ препара С уважением,	ты и тест-системы в 2010 году.

Figure 2 E-mail communication of the Financial Manager of RCAIDS to Hoffmann La-Roche (27 April 2010)

From: Drcaids.kz] Sent: Wednesday, 27 October 2010 10:20 AM To: Subject: RE: test form Importance: Low	The Director General of RCAIDS responded: "Hello brother! Thank you for congratulations. How are you, where are you? Happy to hear from you. My phone number: () See you, [his name]"
Здорово, брат! Спасибо за поздравления. Как ты, где ты? Рад весто	чке от тебя.
Мой тел. C/y, From:[mailto:	The Director of <i>LLC Pilot Communication</i> wrote: <i>"Hi</i> [nickname of the Director General of RCAIDS], <i>This is</i> [name of the Director of <i>LLC Pilot Communication</i>]. <i>How are you? Congratulations with appointment. My sister told</i> <i>me that you both spoke during the conference in Alatau.</i> [Nickname of the Director General of RCAIDS], <i>I have your mobile</i> <i>number but probably an old one.</i> <i>I have the same number:</i> () <i>Let's talk on the phone or send me your number</i> <i>Will talk :)</i> <i>Best regards,</i> [Name of the Director of <i>LLC Pilot Communication</i>]"
как дела? поздравляю с назначением - мне сестра с у меня остался твой сотовый, но по-моему ст мой прежний - давай созвонимся или отправь мне свой поговорим:)	жазала, что вы разговаривали на конференции в Алатау тарый
Best regards,	

Figure 3 E-mail communication between the Director of LLC Pilot Communication and the Director General of RCAIDS (27 October 2010)

Ne	Наименование работ и услуг	Количество	Стоимость за ед./тг.	Bcero/TT.
1	Услуги по разработке креативной концепции и дизайна	1	1 932 000	1 932 000
2	Верстка, подготовка производственных файлов, макетов и презентаций	1	638 500	639 500
3	Выкуп слайдов, проведение фотосессии, корректировка, перевод	1	968 000	968 047,91
	Итого:		195 - C	3 539 547,91

Figure 4 Adjustments in bid of LLC MGS Group for it to fit with the total value of funds available for the procurements

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LLC Pilot Communication bid		Горы	Размер	Стоимость врежды стороны в месян	Станимисть проясноляетая за 1 сторону	Количест во сторон	Скизка	Срок размещения мес.	обща стоямо арека		Эбнаам онтость пэмодетна	ни	05.00		
communication bid		Алиаты	3,14*2,3ы	179 200	20 R50	15	50%	2	2 688 00	00 31	312 750,00 312 750,00		750,00		
		Астана	3,14*2,36	179.200	20 850	35	50%	2	2 688 00	1,00 312			750,00		
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Figure 5 Bids of LLC Pilot Communication, IB and LLC Outdoor Technology for one of the procurements