

# IBFAN's concerns regarding FTSE4Good Breastmilk Substitutes criteria, assessment process and the BMS Committee.

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Baby Milk Action is a non-profit organisation which aims to save lives and protect infant and young child health through independent controls on babyfood marketing.

We are a member of the International Baby Food Action Network (IBFAN), a network of over 200 citizens groups in more than 100 countries.

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## This document sets out IBFAN's concerns about the FTSE4Good approach to baby food companies following communication with FTSE and a meeting with FTSE CEO Mark Makepeace.

This document was written by **Dr. Arun Gupta**, IBFAN Asia Coordinator, Director of the Breastfeeding Protection Network of India. **Patti Rundall** OBE Policy Director, **Mike Brady**, Campaigns and Networking Coordinator of Baby Milk Action (the UK member of IBFAN).

IBFAN is concerned that the FTSE4Good criteria and process is undermining efforts by governments and campaigners to hold baby food companies to account against the World Health Assembly marketing requirements and national legislation. IBFAN's specific concerns as communicated to FTSE are set out below.

### 1 The FTSE4Good assessment process

Nestlé was included in the FTSE4Good Index in March 2011 under the criteria introduced in September 2010. Nestlé would not have been included under the previous criteria. The new criteria differentiates between 'high' and 'low' risk countries, a distinction that conflicts with the *International Code of Marketing of Breastmilk Substitutes* that was adopted by the World Health Assembly as a minimum requirement for all countries.

For the assessment process, IBFAN offered to provide evidence of violations to the assessors to investigate the document trail. However, FTSE's BMS Committee selected countries with exemplary legislation in place and FTSE said it would notify Nestlé of these in advance. It asked IBFAN for information on health facilities/ clinics/ hospitals etc to look at, rather than evidence of violations.

IBFAN called on FTSE to review the assessment process in a letter on 7 June and choose countries where violations are known to be widespread, stating: *"In such cases, IBFAN could provide examples of violations that we have recorded so that your assessors could conduct a document search at the relevant company facilities to investigate the management systems that generate them. We understand that you are informing the company in advance where you will be conducting the assessment, giving them the opportunity to clean up their operations in the market prior to the assessors' visit, and so it is essential to consider the situation prior to the company being alerted."*

Mr. Makepeace responded on 17 June 2011 indicating that the audits would go ahead as planned and stated: *"In the area of BMS products there are cases where there are differences of interpretation of the Code and we will not be asking the assessors to act as a judge with regards specific allegations but rather to assess whether the companies practices on the ground are in-line with THEIR stated policies."* [Emphasis added]. [1] Despite evidence that Nestlé is systematically violating the Code and breaking the Indian law Nestlé remains in the Index.

IBFAN believes that instead of prompting the necessary improvements in Nestlé's policy and marketing practices, FTSE's assessment process is, by implication, endorsing Nestlé's weak interpretation of the UN requirements and its ongoing violations and illegal activities. It is, in effect,

being used to whitewash companies, providing them with a tool that will undermine governments' resolve to implement the International Code and WHA Resolutions effectively and undermining other efforts to hold them accountable.

A recent example of how Nestlé is misusing the FTSE4Good listing can be seen in the statement by Catherine O'Brien, Director of Communications, Nestlé Canada Inc. in the *Edmonton Journal*. "*With regard to breastfeeding, Nestlé is committed to fully complying with the World Health Organization's code of marketing of breast-milk substitutes and applying it as a minimum standard in the countries defined by UNICEF with high child mortality and malnutrition rates. We have been independently recognized as having the industry's toughest system to enforce the WHO code, and in March 2011 we were the first infant formula manufacturer to be included in the FTSE4Good index, which measures the performance of companies that meet globally recognized corporate responsibility standards.*" [2]

It is of relevance that the GAIN sponsored Access to Nutrition Index initially proposed to monitor breast milk substitutes marketing by focusing on compliance with companies' own policies and statements. This has now been abandoned because it was accepted that the scheme risked becoming a whitewashing exercise. [3]

### **Sponsorship and research**

Correspondence between FTSE and Nestlé has been posted on the FTSE website. Reference was made to sponsorship in FTSE's letter to Nestlé, though not its illegality. We attach evidence of current Nestlé sponsorship of health workers and research in infant feeding in India and a letter from the Government of India clarifying its position on sponsorship. (Annex 1 and 2).

*The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution Act, 1992, and Amendment Act 2003* (the IMS Act) is crystal clear in relation to sponsorship of conferences and research in infant and young child feeding.

Article 9.2 states: "*No producer, supplier or distributor referred to in sub-section (1), shall offer or give any contribution or pecuniary benefit to a health worker or any association of health workers, including funding of seminar, meeting, conferences, educational course, contest, fellowship, research work or sponsorship.*"

In its response to FTSE, Nestlé suggests that the issue of sponsorship is a 'grey area' and makes no mention of either the law or the WHA Resolutions, which clarify the *International Code* and refer to the need to guard against conflicts of interest, in order to protect the independence and integrity of health professionals. [4]

### **Labelling**

Article 2 of the IMS Act states: "*(2) No container or label referred to in sub-section (1) relating to infant milk substitute or infant food shall [...] (b) have pictures or other graphic material or phrases designed to increase the saleability of infant milk substitutes or infant food.*"

We enclose one current label of Nestlé's *Nan 1* infant formula that uses health and nutrition claims and graphics that idealise and are designed to '*increase the saleability*' of the product. This is in clear breach of the Indian law. (Annex 3) Such labels are not a small matter. They are seen millions of times and in this case will convey the false impression that the use of the product will support "*the immune system*' '*healthy gut flora*' and '*natural defences*' and '*contribute to the development of brain and vision.*' In fact the use of the product will greatly increase the risk of ill health.

This indicates that either the assessors did not examine labels carefully or that they did not have knowledge of the provisions of the Code and the Indian law.

## **2 Conflict of Interest in the members of the BMS Committee and collaborators**

In our view there is a serious problem in FTSE4Good's decision making-process. FTSE claims its processes are "independent" even though the BMS Committee "collaborated" with the Church of IBFAN to FTSE4Good 4.3.2012

England, the United Reformed Church, the Methodist Central Finance Board and GAIN in developing the assessment process (FTSE email 2 June 2011). If this term “independent” is to be used in this context then at the very least the conflicts of interest outlined below should be declared and a risk assessment carried out:

- The Methodist Central Finance Board and the Church of England both have financial interests in the Nestlé’s business as shareholders and so profit directly from its business activities. In addition, they have faced criticism from their church members about these investments. Similarly, the United Reformed Church Mission Committee faced criticism from church members when it dropped its opposition to investing in Nestlé on the basis of the FTSE4Good listing. Organisations that may have an interest in having a company included in the FTSE4Good Index cannot be independent when it comes to defining the procedures for including that company.
- The Public Private Partnership, Global Alliance for Improved Nutrition (GAIN), works with over 600 corporations - including BMS manufacturers. GAIN provides these businesses with an opportunity “to improve corporate reputation, increase their brand equity, and increase staff motivation...” For example GAIN has been actively working to influence trade rules in order to allow promotional claims on baby foods. Such claims are recognized to undermine optimal infant and young child feeding and are illegal in India and other countries. [5] We understand that GAIN also funded/part funded the FTSE4Good assessment.

Regarding the criteria, the assessment process and the membership of the BMS Committee we understand from a FTSE email of 6 May 2011 that: “UNICEF are not on the FTSE4Good BMS Committee, but are an observer on the overall FTSE4Good Policy Committee which the BMS Committee reports into.” It would be helpful if the relationship between UNICEF, the UNICEF UK Committee and the BMS Committee could be clarified and that the membership of the BMS Committee is posted on the FTSE4Good website

### 3 Review of the FTSE4Good BMS Criteria

In earlier correspondence Mr. Makepeace informed us that the criteria were changed in September 2010 because: “In the infant food sector we were not able to engage the companies as they were all being excluded from the index. Our experience in other areas is that once you have standards that leading companies can meet, they will compete with others in their sector to meet the requirements and the standards can then be raised over time.”[1]

However, FTSE4Good statements continue to imply that the criteria is actually stronger than the Code: “The FTSE4Good Breast Milk Substitutes marketing inclusion criteria build on the WHO Code, but in addition to criteria requiring company policies to be aligned with the WHO Code it goes further by assessing how a company implements this in practice.”[6]

We do not understand how FTSE4Good can claim to ‘build on the WHO Code’ when it is not using the whole Code as a minimum and admits that it is not able to judge whether practices are violations.

The Resolution that adopted the *International Code* in 1981 (WHA 34.22) stated that: “...the adoption of and adherence to the *International Code*...is a minimum requirement and only one of several important actions required in order to protect health practices in respect of infant and young child feeding... [WHA] urges all Member States to give full and unanimous support to the ...*International Code* in its entirety as an expression of the collective will of the membership of the World Health Organisation.” [Our emphasis]

Even though IBFAN had concerns about the previous criteria used by FTSE4Good (which looked to company reports rather than independent monitoring), we publicly welcomed the fact that FTSE4Good – like ethical investment funds – excluded companies that violate the Code and Resolutions. When the criteria were weakened we hoped the assessment process would be thorough enough to ensure that violations – especially systematic ones - would be taken seriously. Regrettably, despite such evidence

(including illegal activity) being found and with no promise that significant changes would be made, Nestlé continues to be listed and can now promote its policy as best practice according to FTSE. Even if it is FTSE's intention to raise standards in the future, allowing the companies that systematically violate the Code, WHA Resolution and legislation to be listed, is a fundamental flaw.

Sadly, instead of improving corporate behavior, FTSE4Good is now undermining efforts to hold companies to account, undermining the efforts of governments who are working to introduce and enforce effective legislation to protect child health, [7] so contributing, even exacerbating the ongoing threat to infant and young child health and survival.

## Requests to FTSE

We have requested that FTSE provide a simple statement that can be used to counter misunderstandings and misrepresentation regarding FTSE4Good. Specifically, we ask FTSE to simply state that under the latest criteria and assessment process it is not necessary for a company to bring its marketing practices into line with the *International Code of Marketing of Breastmilk Substitutes* and subsequent, relevant Resolutions of the World Health Assembly or national laws implementing these measures to be included in the FTSE4Good Index.

Alternatively FTSE could perhaps endorse or draw on UNICEF's public statement regarding the inclusion of Nestlé: *"The evidence available to us suggests that all breastmilk substitute manufacturers currently violate the International Code routinely. We are therefore following the inclusion of Nestlé on the index carefully and will be looking for evidence that their marketing begins to comply with the Code."*

## Future action

In view of the concerns outlined, and the risks to infant and young child health of the current FTSE4Good procedures, we request the following actions as a matter of urgency:

1. The BMS Committee reconsiders its decision on Nestlé on the basis of the evidence provided and Nestlé's inadequate response.
2. The criteria for membership of the BMS Committee and its collaborators are reviewed to ensure that all members are free from conflicts of interest in relation to this issue.
3. FTSE4Good Criteria for assessment are reviewed to exclude companies that systematically violate the *International Code of Marketing of Breast-milk Substitutes* and subsequent WHA Resolutions.
4. FTSE4Good write to UNICEF HQ to request its opinion on the new FTSE criteria; ask whether GAIN should be excluded from defining the procedures for including companies in the index; clarify the role of UNICEF UK and the appropriate use of the name UNICEF.
5. The Assessment Report of the monitoring is made public.
6. A clear statement is made that companies that systematically violate the Code and Resolutions can be included in the FTSE4Good Index under the current criteria and assessment criteria.

In the meantime, we will continue to refer to UNICEF's evaluation and our own briefing on FTSE4Good.

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[1] Letter from Mark Makepeace, FTSE4Good CEO to Dr Arun Gupta, 17<sup>th</sup> June 2011.

[2] [www.edmontonjournal.com/health/Nestl%C3%A9+chair+poor+choice+degree/6189684/story.html](http://www.edmontonjournal.com/health/Nestl%C3%A9+chair+poor+choice+degree/6189684/story.html)

[3] 2012 Correspondence and dialogue between Patti Rundall, Baby Milk Action and Rachel Crossly and Chris Walker, Consultants for the ATNI Project, Innovative Finance Programme, GAIN - Global Alliance for Improved Nutrition. Feb 2012

[4] Resolution WHA58.32 2005 Urges Member States: *"to ensure that financial support and other incentives for programmes and health professionals working in infant and young child health do not create conflicts of interest"*.

[5] The Business of malnutrition: breaking down trade rules to profit from the poor *IBFAN Press release Nov 2011*.  
<http://info.babymilkaction.org/pressrelease/pressrelease24nov110>

[6] *How does the FTSE4Good BMS Criteria relate to the WHO Code?* FTSE4Good Statement, Feb 2012.

[7] State of the Code by Country 2010, ICDC analysis of progress made in Code implementation.

**Annex 1:** Examples of Nestlé sponsorship of health workers and research, including Probiotic research in Pune.

**Annex 2:** Examples of Nestlé Nutrition Institute sponsorship of conferences in India, plus a letter from the Indian Government clearly stating that this sponsorship is illegal.

**Annex 3:** Examples of Nestlé infant formula labels currently on sale in violation of the IMS Act.