

Market Consultation for Developing the FTSE4Good Breast Milk Substitutes Exclusion Criteria.

Comments from Baby Milk Action – 27 June 2003

Introduction and opening statement

Baby Milk Action is the UK member of the International Baby Food Action Network (IBFAN) and has over 20 years experience in monitoring company compliance with the International Code of Marketing of Breastmilk Substitutes and subsequent, relevant World Health Assembly Resolutions and advises policy makers on the implementation of these in national measures.

Baby Milk Action has a long history of engagement with the baby food industry, encouraging companies to fulfill their responsibilities under the Code and Resolutions and is fully aware of the tactics used by companies to divert criticism whilst continuing with business as usual. Our experience, backed by a recent study in 10 countries, is that it requires strong legislation, independently monitored and enforced, to bring about meaningful change in baby food company marketing practices. Where this has been achieved, year-on-year increases in breastfeeding rates are occurring, which leads on to reduced infant and young child mortality and morbidity. Where the route of voluntary codes between government and industry has been followed, violations remain widespread and breastfeeding continues to be undermined.

The original criteria in the FTSE4Good, though limited to only infant formula instead of covering all products within the scope of the Code, was a welcome contribution to the campaign to stop violations.

The proposed revised criteria, focusing on management systems rather than outcomes (what actually occurs on the ground), are a retrograde step, likely to divert attention into scrutinizing company statements and away from the company activities which contribute to infant and young child suffering and death.

We greatly appreciate the opportunity to comment in this consultation exercise and hope that the original approach will be followed in the exclusion criteria, but in a strengthened form to fully reflect the provisions of the International Code and Resolutions.

Detailed responses to the questionnaire follows.

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Q1. A) Is the issue of the marketing practices of companies involved in breast milk substitutes of importance in judging the social responsibility performance of those companies?

Yes.

According to UNICEF (State of the World's Children 2001):

“Improved breastfeeding practices and reduction of artificial feeding could save an estimated 1.5 million children a year.”

Aggressive marketing of breastmilk substitutes and other baby foods, idealizes artificial infant feeding and encourages mothers and health workers to favour this over breastfeeding. Aggressive marketing also undermines the efforts put into promoting breastfeeding, particularly as the resources employed by the baby food industry are far greater than those made available by governments. For example, in the UK, the baby feeding industry spends at least £20 per baby promoting its products, whereas the government spends about £1.60 to promote breastfeeding. In developing countries the disparity is likely to be far greater.

Where legislation implementing the Code and Resolutions has been implemented and is independently monitored and enforced, violations are reduced and breastfeeding rates are increasing. For example, Brazil has legislation covering breastmilk substitutes, feeding bottles and teats and some provisions covering complementary foods which are monitored by the health inspectorate. Increases in exclusive breastfeeding at 4 months of 4 percentage points per year have been achieved. Other countries with voluntary codes agreed between industry and government, such as Mexico, are awash with violations, including free supplies of breastmilk substitutes in hospitals.

Even countries with as yet limited commercial markets for breastmilk substitutes are targeted by baby food companies, which lobby for voluntary codes of conduct and aggressively target mothers and health workers. In countries such as Kenya, this is leading to a reduction in breastfeeding rates and an increase in bottle-feeding. Due to the expense of infant formula this may be over-diluted or cheaper alternatives such as powdered whole milks, cereals or animal milks are used. In many countries companies such as Nestlé place powdered whole milk next to the more expensive infant formula in the infant feeding sections of pharmacies and supermarkets and have refused to stop this practice, arguing that there are no marketing restrictions as powdered whole milk is not a recognized breastmilk substitute. Such contempt for infant health is deplorable.

In industrialized countries, where artificial feeding may be well established and part of the culture, infants not breastfed are still at increased risk of short and long-term illness. However, there is usually access to health care to treat such illness. In the UK an artificially-fed child is up to 10 times more likely to be hospitalized with gastro-enteritis and is at greater risk of respiratory infection, allergies, diabetes and other illnesses.

The cost in human suffering of aggressive baby food and feeding bottle and teat marketing practices makes this an important issue to be addressed.

Baby food and feeding bottle and teat companies are clearly responsible for how they market their own products. In addition, Article 11.3 of the International Code of Marketing of Breastmilk Substitutes states:

“Independently of any other measures taken for implementation of this Code, manufacturers and distributors of products within the scope of this Code should regard themselves as responsible for monitoring their marketing practices according to the principles and aim of this Code, and for taking steps to ensure that their conduct at every level conforms to them.”

Any credible ethical index must hold companies to this provision and seek verification that a company is complying through independent monitoring of marketing practices in the countries where the company operates.

B) Should the issue be a criteria for inclusion in the FTSE4Good Indices?

Yes.

The marketing of breastmilk substitutes impacts on the health and well-being of infants and young children and their families. Infant feeding decisions also have long-term impact. It is very appropriate that the issue is included in the FTSE4Good indices and failure to do so would call into question the value of the indices.

Transnational companies of the type currently excluded from all ethical investment funds because of their baby food and/or feeding bottle and teat marketing malpractice use any apparent endorsement of their ‘ethical’ position to try to divert attention from criticism of

the malpractice. If the criteria was dropped and violating companies included, FTSE4Good will become a weapon in company public relations strategies.

For example, Nestlé uses the fact that some respected charities have accepted donations from the company to argue that its behaviour must be acceptable, even in those cases where charities have claimed they were constrained by a legal obligation to accept funding from any source for the good their beneficiaries.

The inclusion of bottle and teat manufacturer, Johnson & Johnson, in the present indices has also raised questions, highlighting the weakness of restricting the criteria to infant formula. Monitoring has found Johnson & Johnson violates the Code and Resolutions and it was subject to legal action in India. While it recently divested its bottle and teat business, it continues to distribute feeding bottles and so is subject to the provisions of the Code and Resolutions.

Q2 A) Do you agree with the assumptions made in the International Code of Marketing of Breast-milk Substitutes, and subsequent relevant WHA resolutions?

Yes.

The inclusion of this question is in some ways surprising. It is not a light matter to challenge the assumptions of the Code and Resolutions.

The Code and Resolutions have been developed and adopted by the highest health policy setting body in the world after consideration of relevant scientific evidence and due democratic process involving representatives of the Member States. Where there have been questions over interpretation or responses required to changing scientific knowledge and company marketing practices, these are addressed in the biennial reviews of the effectiveness of the Code.

The Code and Resolutions also have status in international law under Article 24 of the Convention on the Rights of the Child and the United Nations Committee on the Rights of the Child, in its country reports, has highlighted the failure of some governments to implement the Code and Resolutions.

The Code and Resolutions are referenced by the latest World Health Assembly Resolution 55.25 of 2002, and in the Global Strategy for Infant and Young Child Feeding, adopted under that Resolution.

Clearly the international health community regards the Code and Resolutions as relevant today as when they were adopted and Baby Milk Action agrees with this position.

The assumption in the International Code regarding marketing practices will always be relevant. The Code states that: *“in the light of the foregoing considerations [set out in the Codes preamble], and in view of the vulnerability of infants in the early months of life and the risks involved in inappropriate feeding practices, including the unnecessary and*

improper use of breastmilk substitutes, the marketing of breastmilk substitutes requires special treatment, which makes usual marketing practices unsuitable for these products.”

Breastmilk substitutes have been described as a ‘nutritional medicine’ and to say that at some date or in certain circumstances they can be marketed in the same way as any other food product is to deny this reality.

B) Do you agree with the use of the Code and subsequent resolutions as the correct starting point for developing suitable criteria for companies involved in the marketing of breast milk substitutes?

Yes.

The argument set out in response to part A of this question, particularly in light of Article 11.3 of the Code, means that to disregard the suitability of the Code and Resolutions is to challenge the authority of the world’s highest health policy setting body and the detailed examination it has conducted of this issue.

If any company is suggesting that the Code and Resolutions are not the correct starting point this in itself demonstrated the company’s contempt for the measures.

Q3. Which approach do you believe is the most appropriate?

A) The code should apply universally to all countries irrespective of whether or how national governments have enacted the code in their domestic legislation.

B) The code should be accepted as a recommendation to governments and national legislative and social frameworks should be applied.

C) National legislative and social frameworks should be applied in developed economies where such countries have determined which aspects of the code to enact. The code should apply in its entirety in developing economies in economies where infant mortality is higher than average.

Alternatively, please state another approach and the reasons for supporting your proposal.

The proposed text in part 4 is consistent with the International Code, if part 5 and all reference to it is deleted.

To suggest otherwise, implies that the position of the World Health Assembly can be disregarded.

The International Code was adopted under Resolution 34.22 as a ‘minimum requirement’ for all countries and to be implemented in its ‘entirety’. The Convention on the Rights of the Child, Article 24, has given the requirement to implement the Code and Resolutions

status in international law and the United Nations Committee on the Rights of the Child has instructed a number of governments which have not yet taken adequate action to do so.

In the context of corporate behaviour, particularly that which is to be labeled by FTSE4Good as 'corporate responsibility', it is Article 11.3 which applies. Companies should abide by the provisions of the Code and Resolutions independently of government measures in every country, and this includes in the United States and Canada.

There is no logical reason why the mothers in the US and Canada should be the target of the direct advertising and promotion of infant formula and other breastmilk substitutes they currently experience. They and their infants are as deserving of protection as those in any other country. If companies argue that they can disregard the Code and Resolutions in certain countries, as they do, this demonstrates their double standards.

In expert testimony to the European Parliament Public Hearing into Nestlé baby food marketing malpractice on 22nd November 2000, UNICEF's Legal Officer, David Clark, stated:

"The Code applies in ALL COUNTRIES. As its name suggests, the Code is INTERNATIONAL and applies globally. The drafters never contemplated that it should apply only to developing countries. Parents of infants in Europe and North America have the same right to protection from inappropriate marketing as parents in Asia, Africa and South America."

Q4. A) Do you agree that the management systems requirements are appropriate to manage the implementation of the policies across companies?

B) What additional measures if any would you also include?

C) Should any of the requirements be amended?

The management system proposals, though interesting, are not an appropriate measure of corporate compliance with the International Code and Resolutions and may well divert time and resources from what is the appropriate measure: the practices employed by companies on the ground. Measuring process is not going to help to save infant lives, if the outputs, the marketing practices, are ignored and do not change.

Independent monitoring of baby food marketing practices is conducted by the International Baby Food Action Network (IBFAN), which publishes reports from which the actual marketing practices of companies can be ascertained. This is utilized in the current criteria and should continue.

The reason is simple: it is the marketing practices which violate the International Code and Resolutions which undermine breastfeeding and contribute to the unnecessary death

and suffering of infants. The aim should be to ensure that no such violations occur in the future. Evidence of violations in the vast majority of cases involves materials and labels produced by the companies themselves and otherwise involves the practices of a company's trained marketing staff. Any evidence of violations should be sufficient in itself to exclude a company, irrespective of the management systems the company claims to have in place, however well verified those systems may be. If there are violations, the systems are not ensuring compliance.

Absence of violations is not necessarily proof of compliance as violations may conceivably be missed by monitoring. However, IBFAN is very adept at monitoring and if it does not find violations, then it is also unlikely that mothers, health workers or others are encountering violations, which is our aim. It is perhaps interesting to note that the International Nestlé Boycott Committee states that it will call off the boycott if IBFAN monitoring finds no Nestlé violations for a period of 18 months.

During over 20 years of experience monitoring the industry and calling on it to stop violations, Baby Milk Action has seen many initiatives by baby food companies and industry bodies. In some cases these have been welcomed, but continued monitoring has demonstrated that little changes on the ground, unless these changes are forced by legislation or other independent controls.

The danger of looking only at management systems is demonstrated by Nestlé's activities in Pakistan. Extensive monitoring in 33 cities conducted by the Network for Consumer Protection in Pakistan found widespread violations, with Nestlé being particularly aggressive. Nestlé was further highlighted by evidence brought into the public domain by former employee, Syed Amar Raza. This evidence implicates members of management at the highest level of the company in corrupt practices, including the bribing of doctors. Although Nestlé denies most of the wrong-doing, the company has never brought any legal action against Syed Amar Raza, The Network, Baby Milk Action or any other organization repeating these allegations.

What Nestlé did do was contract external auditors Emerging Market Economics (EME) to analyse its systems in Pakistan, using Nestlé's own policies as the terms of reference. The terms of reference were substantially narrower than the International Code and Resolutions. The auditors were instructed they could not contact Syed Amar Raza or any Non-Governmental Organisations and were restricted to interviewing doctors from a list provided by Nestlé. Baby Milk Action contacted Nestlé and offered to provide documentary evidence to the auditors. This offer was not passed on to the auditors.

The resulting audit gave Nestlé a clean bill of health, although the auditors made some surprising conclusions from the evidence they had gathered. For example, many doctors interviewed claimed that Nestlé and other companies were violating the Code and Resolutions. EME concluded that as it believed Nestlé's management systems did not permit violations, the doctors were confusing the Nestlé marketing staff with those of other companies and Nestlé was being 'tarred with the same brush'.

Nestlé has gone on to use the audit to attack the evidence presented by Syed Aamar Raza, though the auditors state clearly in the audit that they did not investigate the allegations made by Aamar. This fact is glossed over by Nestlé management in its misuse of the audit.

Syed Aamar Raza has been in exile from Pakistan for nearly four years after first issuing a Legal Notice against Nestlé for its malpractice and then going public with his evidence. Aamar says his Legal Notice prompted threats to his life and that of his family from Nestlé management in Pakistan and that he was offered a substantial sum of money to drop the case (Nestlé since claimed he tried to blackmail the company, but has refused requests from Baby Milk Action to substantiate this claim and refuses to release the tape of a telephone conversation which it says proves it – Aamar claims the tape implicates Nestlé in trying to bribe him). Aamar's family have received threatening letters attributed to doctors implicated in taking bribes, and gunshots were fired at Aamar's former home whilst he was in Europe publicizing the evidence. It is perhaps significant that doctors were aware of Aamar going public on this issue after the story broke in the German-language magazine Stern, which somehow came to their attention in Sialkot, Pakistan.

When Nestlé launched an ombudsman scheme ostensibly to allow whistleblowers to voice their concerns, Baby Milk Action raised Aamar's case. Instead of accepting the legitimacy of his documentary evidence, senior management, including the Chief Executive, continue to attack him.

Baby Milk Action has written to the Nestlé ombudsman asking if investigations can be made into the many violations reported to the Chief Executive, who claims to review any hint of a violation but has not taken the necessary action to stop the violations. No reply has been received from the ombudsman.

It is interesting to note that Baby Milk Action often receives information in confidence from employees of various companies about institutionalized malpractice, but that the employees are unwilling to report their concerns to management or to go public for fear of repercussions.

In conclusion, having management systems in place should not be seen as sufficient for a company to be included in the indices and it may be counter-productive to put time and resources into reviewing these if this is done at the expense of considering the evidence of independent monitoring.

However, there may be some value in automatically excluding any company whose policies do not fully reflect the Code and Resolutions. Aside from the issue of the universality of the Code, the scope is often limited by the companies. As UNICEF's Legal Officer told the European Parliament Public Hearing into Nestlé baby food marketing malpractice:

*“The Code applies to **ALL BREASTMILK SUBSTITUTES** and related products, which include feeding bottles and teats. The Code is not limited to basic infant formula intended for healthy babies born after nine months of gestation and with adequate weight and length for age as many companies would argue. The Code covers special formulae such as those for premature infants, hypoallergenic formulae, lactose free formulae and follow-on formulae. It also covers waters, juices, teas, and foods if marketed or in any other way represented as a partial or total replacement for breastmilk.*

“These two principles, universality and the scope including all breastmilk substitutes, cannot be overemphasised given the tendency of the infant feeding industry to attempt to limit the application of the Code.”

Q5. Do you agree with the requirement for external verification of management and monitoring systems?

If not, please state your reasons and your preferred alternative.

No, because, as argued above, it is company practices on the ground which impact on infant and young child health and family poverty and these are best ascertained by independent monitoring, such as that conducted by IBFAN.

IBFAN and others continue to find widespread violations that demonstrate systematic and institutionalized malpractice, not one off ‘errors’ or ‘rogue staff’. The British Medical Journal carried such a study in January 2003, based on monitoring in Togo and Burkina Faso. The evidence includes company publications, advertisements and product labels, which are unarguably the responsibility of the company.

If such violations occur, a company should be excluded.

As previously mentioned, companies could also be excluded if their policy statements do not accept that the Code and Resolutions apply to countries and all products within their scope, but having such statements is not sufficient for inclusion.

Companies exposed by independent monitoring already claim to have adequate management and monitoring systems in place and promise to act on reports of violations. They do not. Other than excluding a company whose policies do not fully reflect the Code and Resolutions, in particular their universality and scope, an implicit or explicit endorsement of company statements and reports will be counter-productive.

The criteria should include a statement like the following:

“Any company involved in the manufacture or distribution of baby foods, feeding bottle or teats found to violate the International Code of Marketing of Breastmilk Substitutes and subsequent, relevant World Health Assembly Resolutions in the

independent monitoring conducted by the International Baby Food Action Network will be excluded.”

Q6. Do you have a view on the membership of the Expert Committee?

If a decision to include or exclude a company in the FTSE4Good indices is made on assessment of company's own statements and reports, this will undermine the indices credibility. Exclusions should be made on the basis of independent monitoring of company practices.

As IBFAN monitoring is conducted in an objective manner, it is questionable whether an Expert Committee is required to conduct further analysis of the results and conclusions of that monitoring.

If there is to be an Expert Committee to review independent monitoring, this should exclude the baby food industry, though the industry could be invited to submit its comments for consideration. IBFAN invites industry to comment on its reports as standard practice.

Q7. Are there any additional comments you would like to add?

The proposed exclusion criteria on breastmilk substitutes would be a retrograde step.

The proposed criteria seek to use a committee including company representatives to evaluate the statements and reports produced by a company. It is possible that this will motivate companies to produce yet more glossy brochures propounding their 'corporate responsibility' whilst changing little on the ground.

To have credibility the criteria needs to look at the results of independent monitoring and that conducted by IBFAN is recommended.

A recent example helps to illustrate this. In May 2003 Nestlé began distributing a 'Code Action Report' claiming "Nestlé takes the lead on 6 month labeling". It has been a requirement since the 1994 World Health Assembly Resolution that complementary feeding is fostered from about 6 months of age, but companies continue to promote complementary foods for use before this age. Further Resolutions at the World Health Assembly, government measures implementing the 1994 Resolution and monitoring and exposure of companies by campaigners led up to Nestlé issuing its 'taking the lead' statement 9 years after it should have been making changes to its marketing practices. Nestlé management and monitoring systems are supposed to reflect this new policy and may look very convincing on paper. However, a rapid investigation of what is happening on the ground conducted by Baby Milk Action and its IBFAN partners found that Nestlé

continues to promote complementary foods for use before 6 months, even launching high-profile promotions with a 4 months age of use after its 'Code Action Report' was published and distributed. In countries where it has introduced new labels, such as in India, this has been forced by new legislation and in new advertisements the prominent age of use information on the pack is covered over and only appears in small print in the text of the advertisement. These are not the actions of a company fulfilling its responsibilities under the Code and Resolutions and this has been demonstrated by independent monitoring, yet the route suggested in the criteria, evaluating Nestlé on its promises, may well have accepted these at face value and infants would be in a worse situation.

The ultimate objective of Baby Milk Action's work is to protect infant and young child health. Companies do change their behaviour when forced to do so by legislation or are sufficiently shamed by public exposure. The fact that companies violating the International Code and Resolutions have mainly been excluded from the existing FTSE4Good indices has been very important in raising awareness of this issue. Strengthening the existing criteria to bring it into line with the Code and Resolutions and maintaining the assessment based on independent monitoring of marketing activities around the world will continue this good work.