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Annex 19

COVER NOTE

DRAFT PROCEDURE FOR ADDRESSING SIGNIFICANT DEFICIENCIES IN VALIDATION, VERIFICATION OR CERTIFICATION REPORTS

I. Background

1. At its first session, in 2005, the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP), through the adoption of decision 3/CMP.1, established principles for ensuring the environmental integrity of the clean development mechanism (CDM) by addressing the cases where certified emission reductions (CERs) have been inappropriately issued. The relevant provisions require that, where the accreditation of a designated operational entity (DOE) is suspended or withdrawn under the relevant rules, if significant deficiencies are identified in the relevant validation, verification or certification report(s) for which the DOE was responsible, the Executive Board of the CDM (hereinafter referred to as the Board) is required to decide whether a different DOE be appointed to review, and where appropriate correct such deficiencies.

1. Furthermore, if such a review reveals that excess CERs were issued, the DOE whose accreditation has been suspended or withdrawn is required to acquire and transfer, within 30 days of the end of review, an amount of reduced tonnes of carbon dioxide equivalent equal to the excess CERs issued, as determined by the Board, to a cancellation account maintained in the CDM registry by the Board.[1]

2. At its sixth session, in 2010, the CMP requested the Board to adopt, taking into consideration the views of stakeholders, and subsequently apply a procedure to address significant deficiencies in validation or verification reports. In doing so, the CMP decided that the Board may review and amend specific elements of the original process, namely the suspension or withdrawal of DOEs prior to the application of such procedure, whether to appoint a second DOE to review or correct the deficiency, the time period for cancellation of units and the liability of DOEs.[2]

3. The Board, at its sixty-fourth and sixty-fifth meetings, considered a draft procedure for addressing significant deficiencies in past validation, verification or certification reports. The CMP, in decision 8/CMP.7 paragraphs 12-14, welcomed the work of the Board and requested the it, in consultation with stakeholders, to revise the draft procedure based on its findings, taking into account conclusions, if any, on the appeals process under consideration of the Subsidiary Body for Implementation, with the aim of avoiding duplication and promoting efficiency, for adoption by the CMP at its eighth session.

4. At its sixty-eighth meeting, the Board considered a concept note on draft recommendations in relation to the draft procedure for addressing significant deficiencies in past validation, verification and certification reports and agreed:

(a) To request the secretariat to further revise the draft procedure based on the input received from the Board at that meeting, for consideration by the Board at its sixty-ninth meeting;

[1] Decision 3/CMP.1, paragraphs 22-24.

[2] Decision 3/CMP.6, paragraphs 25 and 26.

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(b) To prepare a document describing the mandates from the CMP for the draft procedure, also for consideration by the Board at its sixty-ninth meeting.

5. In addition to the revised draft procedure, the document setting out the CMP mandates for the draft procedure is attached as an information note in appendix 1 to this annex. The information note also provides context to the CMP mandates by setting out the Board decisions and the work of the secretariat in response, and leading up to the CMP decisions.

II. Purpose

6. The purpose of the revised draft procedure for addressing significant deficiencies in validation, verification or certification reports is to:

(a) Provide a fair and transparent process for assessing and, where applicable, attributing liability for significant deficiencies in validation, verification or certification reports that are caused by a DOE's professional negligence or fraud;

(b) Provide a process for correcting significant deficiencies in validation, verification or certification reports; and

(c) Enhance the overall transparency and environmental integrity of the CDM.

III. Key issues and proposed solutions

7. With respect to revision of the draft procedure, there are a number of outstanding issues for the Board's consideration:

(a) **Link to materiality threshold in definition of significant deficiencies:** If the CDM rules and requirements permit a DOE or CME to apply a materiality threshold when preparing a validation, verification or certification report, then it follows that the DOE should not be held liable for errors that result in an amount of excess CERs being issued that is less than the relevant materiality threshold. Therefore, the definition of significant deficiency has been amended to reflect this link. The secretariat and the review team would need to consider the applicability of any materiality thresholds when reviewing a submission which identifies potential significant deficiencies;

(b) **Professional standard of care expected of DOEs**: A definition has been included in the revised draft procedure in response to the DOEs' request for greater clarity on the standard to which they are expected to perform their services to project participants and coordinating/ managing entities (CMEs);

(c) **Time cap or statute of limitations**: In response to concerns regarding the ability to investigate issues that occurred at a point too distant in the past, possible time limits have been included which would prevent reviews of potential significant deficiencies in validation, verification or certification reports that were submitted more than 5 years before the submission that identifies potential significant deficiencies. A related issue is whether reviews should be limited to validation, verification or certification reports which are submitted on or after the effective date of the procedure. This would mean that if there are any existing cases of significant deficiencies, they could not be investigated.

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(d) **Amount of the fee payable for a submission identifying potential significant deficiencies**: To discourage frivolous and vexatious submissions that purport to identify potential significant deficiencies, the Board decided that a refundable fee would be payable by "other stakeholders" when making a submission. In setting the amount of the fee, a balance needs to be reached between what is reasonable (i.e. to not inadvertently deter legitimate submissions) and what would deter such frivolous and vexatious submissions. On this basis the secretariat recommends the current amount of USD1,000;

(e) **Attributing liability to verifying DOEs**: Under the CDM rules and requirements a verifying DOE, and not a validating DOE, is responsible for correcting an incorrect parameter in a monitoring report. Consistent with this responsibility, the verifying DOE should be the only DOE that is liable in the event of a significant deficiency associated with that incorrect parameter; and

(f) **Process for independent review of the Board's decision**: To address concerns raised by stakeholders regarding the ability to appeal a finding by the Board against a DOE, until such time as the appeals process under consideration by the Subsidiary Body for Implementation is finalised, an independent review process dedicated to this procedure has been included in the draft procedure. Under the independent review process, the independent review committee cannot override the Board's decision; however it can recommend that the Board reconsider its original decision, taking into account the independent review committee's reasons.

IV. Proposed work and timelines

8. If the Board recommends the proposed draft procedure for adoption by the CMP, and the CMP subsequently adopts the draft procedure, then the secretariat would need to prepare the following supporting documents for consideration by the Board:

(a) Terms of reference of the review team;

(b) Terms of reference of the independent review committee; and

(c) Rules of procedure of the independent review committee.

9. In addition, the "Clean development mechanism project cycle procedure" will need consequential amendments. It is anticipated that first drafts of the supporting and amended regulatory documents would be presented to the Board at its first meeting in 2013.

V. Impacts

10. This procedure benefits the CDM as a whole by enhancing transparency and environmental integrity. DOE operating costs may be increased as a result of this procedure.

VI. Recommendations to the Board

11. The secretariat recommends that the Board agree:

(a) The definition of the standard of professional care expected of a DOE;

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(b) If a time limit should be imposed and, if so, what the time limit should be, including whether reviews should only be commenced in relation to validation, verification or certification reports submitted on or after the date on which the procedure enters into force;

(c) The amount of the fee that is payable by another stakeholder when making a submission identifying potential significant deficiencies;

(d) That liability should be attributed to the verifying DOEs in circumstances where a significant deficiency relates to an incorrect parameter in a monitoring plan;

(e) The inclusion and terms of the independent review process; and

(f) If each of the items in (a) to (e) above are agreed, to recommend the procedure, which incorporates these items as agreed, to the CMP for adoption at its eighth session.

12. The Board may wish to take note of the proposed work, and the timeline for that work, if the draft procedure is adopted by the CMP.

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(Version 02.1)

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I. Introduction[3]

1. The purpose of this procedure is to:

(a) Provide a fair and transparent process for assessing and, where applicable, attributing liability for significant deficiencies in validation, verification or certification reports that are caused by a DOE's professional negligence or fraud;

(b) Provide a process for correcting significant deficiencies in validation, verification or certification reports which are confirmed by the review team;

(c) Enhance the overall transparency and environmental integrity of the CDM.

II. Scope and applicability

A. Scope

2. This procedure prescribes the administrative steps to be followed by DOEs, other stakeholders, the Board, the review team, the secretariat and the independent review committee in making or responding to a submission identifying potential significant deficiencies in validation, verification or certification reports.

B. Applicability

3. A review of potential significant deficiencies in a validation, verification, or certification report(s) shall only be initiated under this procedure if the relevant report(s) was submitted on the later of:

(a) On or after [28 November 2008][The date on which this procedure enters into force]; and

(b) Less than [five (5)][seven (7)] years before the date of the submission identifying potential significant deficiencies in the relevant report(s).

C. Entry into force

4. This procedure enters into force on [1 January 2013].

III. Terms and definitions

5. A significant deficiency means, with regard to validation, verification, or certification report(s), a breach of the clean development mechanism (CDM) accreditation, validation and verification rules or requirements applicable at the time of the submission of the validation, verification or certification report(s), which has resulted in:

(a) A positive validation opinion where, if the breach had not occurred, a negative validation opinion would have been given; and/or

(b) More certified emission reductions (CERs) having been or intended to be issued to the registered CDM project activity or programme of activities (PoA) than would have been or

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[3] This procedure does not apply to cases of excess issuance of CERs resulting from erroneous inclusion of component project activities (CPAs) in a PoA. The ~~["Procedures for review of erroneous inclusion of a CPA"]~~[~~[~~"Clean development mechanism project cycle procedure"~~]~~ shall apply to such cases.

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would be issued if the breach had not occurred,[4] but excluding the number of excess CERs that fall below the materiality threshold as applied by the DOE, if any, in the relevant report(s).

6. The standard of professional care expected of a DOE when performing services for a client is the standard of skill, learning and diligence prescribed by the "CDM accreditation standard for operational entities" and the skill and care which is ordinarily exercised by professionals in good standing in the auditing profession who are experienced in validating, verifying and certifying CDM activities and practicing in the same or a similar locality under similar circumstances.

IV. Principles of liability for excess issuance of certified emission reductions

7. Where the review of potential significant deficiencies determines that there are no significant deficiencies, no liability or costs of the review undertaken in accordance with section VI. below shall be imposed on the DOE that was the subject of the review.

8. Where the significant deficiencies in any previous validation, verification or certification report(s) are a result of the professional negligence or fraud of a DOE that performed the validation, verification or certification, the DOE shall be liable for the excess issuance of CERs in accordance with section VII. below.

~~(a) Any review of potential significant deficiencies shall be limited to validation, verification, or certification report(s) submitted on or after 28 November 2008~~

V. Initiation of review

A. Identification of potential significant deficiencies

9. The following parties may make a submission identifying potential significant deficiencies in previous validation, verification or certification report(s):

(a) The Board and/or the secretariat during the assessment or review of a request for registration of a proposed CDM project activity or PoA, or a request for issuance of CERs carried out in accordance with the "Clean development mechanism project cycle procedure";

(b) The CDM Accreditation Panel during the review of an assessment of a DOE conducted by a CDM assessment team in accordance with the "Procedure for accrediting operational entities by the Executive Board of the clean development mechanism";

(c) Another DOE with respect to the validation or previous verification for a CDM project activity or PoA for which it is carrying out a verification and certification activity;

(d) Any designated national authority (DNA) that has authorized a project participant in a CDM project activity or PoA;

(e) The DOE that originally produced the validation, verification or certification report; or

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[4] Such a deficiency may include an incorrect parameter, determined ex-ante at validation, used in the emission reduction calculations. In such a case, it is the validating DOE that is liable for any significant deficiency and not the verifying DOE. However, for a significant deficiency in a monitoring plan, where a verifying DOE is also responsible for correcting an incorrect parameter, it is the [verifying DOE] ~~[validating DOE] [both validating and verifying DOEs]~~ that [is] ~~[are]~~ liable.

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(f) Another stakeholder.

10. A submission setting out the potential significant deficiencies identified via paragraph 9(c)–(f) above shall be submitted to the secretariat through a dedicated interface on the UNFCCC CDM website, using the form F-CDM-COMP together with sufficient supporting documentary evidence. The submissions shall be treated as confidential and shall not be made public.

11. For submissions received from another stakeholder in paragraph 9(f) above, a refundable fee of [USD 1,000] per submission shall be lodged with the secretariat at the time of submission. The submission shall not be processed in accordance with paragraph 13 below until payment has been received by the secretariat.

12. In the case of self-declaration by the DOE referred to in paragraph 9(e) above, the submission shall contain any relevant corrected validation, verification or certification reports and any relevant monitoring reports and attached spreadsheets that it deems necessary, as well as a quantification of any excess issuance of CERs that may have occurred as a result of the significant deficiencies in the relevant validation, verification or certification reports.

B. Preliminary investigation and recommendation on review

1. Preliminary investigation

13. Within 28 days of the receipt of identification of potential significant deficiencies, the secretariat shall prepare a summary of the facts and evidence relating to the submission (ensuring that the confidentiality of sources of information is preserved), and provide it to the DOE that prepared the validation, verification or certification reports regarding which the submission is made. The DOE shall have 28 days to provide a response to the secretariat's summary. The deadline may be extended up to 90 days from receipt of the secretariat's summary upon the request of the DOE providing reasons.

14. Within 14 days of receipt of the DOE's response, or, if no such response is received, within 14 days of the end of the 28-day period in which the DOE may respond, the secretariat shall conduct an analysis of the submission based on the information held by the secretariat (including documentary evidence supplied by third parties) and taking into account any response provided by the DOE and shall determine one of the following courses of actions:

(a) No action is required because the information provided and the DOE's response do not support the possible existence of potential significant deficiencies. In this case, the secretariat shall proceed in accordance with paragraph 15 below;

(b) No review is required because the DOE has admitted potential significant deficiencies. In this case, the secretariat shall proceed in accordance with paragraph 16 below; or

(c) A review is required because the information provided in the submission and the DOE's response support the possible existence of potential significant deficiencies. In this case, the secretariat shall proceed in accordance with paragraphs 17–18 below.

2. No action required cases

15. Where the secretariat determines that no further action is required, the secretariat shall prepare a summary of findings of the analysis together with a recommendation of no further action. The secretariat shall submit the summary of findings and the recommendation to the Board for approval. If no member of

the Board objects to the summary of findings or the recommendation within 20 days, they shall be deemed accepted by the Board.

3. DOE admission cases

16. In the cases of DOE admission, referred to in paragraph A. 9(e) above and where the DOE's response under paragraph 13 above admits the existence of significant deficiencies and the documents referred to in paragraph 12 above have been provided, the secretariat shall assess the information provided by the DOE and prepare a summary of findings of the assessment, together with a recommendation that corrective action be taken in accordance with section VII. below. The secretariat shall submit the summary of findings and the recommendation to the Board for approval. If no member of the Board objects to the summary of findings or the recommendation within 20 days, they shall be deemed accepted by the Board.

4. Review required cases

17. Where the secretariat determines that the existence of potential significant deficiencies warrants a review, the secretariat shall prepare a summary of findings, together with a recommendation to initiate a review, and a scope of review, which includes:

(a) The proposed membership of the review team[5] that shall undertake the review of potential significant deficiencies;

(b) The relevant validation, verification and certification reports to be examined by the review;

(c) A summary of the facts and supporting evidence (ensuring that the confidentiality of sources of information is preserved) for each potential significant deficiency in previous validation, verification or certification reports;

(d) A summary of the CDM requirements in effect at the time of each potential significant deficiency and any interpretation of them applied to the facts; and

(e) If possible, an estimate of any excess issuance of CERs that may have occurred as a result of the potential significant deficiencies.

18. The secretariat shall submit the summary of findings, recommendation and scope of review to the Board for approval. If no member of the Board objects to the summary of findings, recommendation and the scope of review within 20 days, they shall be deemed accepted by the Board.

5. Board objections

19. If a member of the Board objects to the summary of findings and the recommendation, or the scope of review, received in accordance with paragraphs 15, 16 or 18 above, he/she shall notify the Chair of the Board through the secretariat, giving reasons in writing. The secretariat shall acknowledge receipt of the objection and make it available to the Board.

[5] The review team shall be drawn from experts who collectively have the necessary competences with regard to accreditation requirements, validation and verification requirements, methodological requirements, knowledge of the local context of the projects in question, legal requirements and shall be selected in accordance with a "Terms of reference for a significant deficiency review team".

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20. If a member of the Board objects to the summary of findings, the recommendation or the scope of review more than 14 days prior to the next Board meeting, the summary of findings, the recommendation or the scope of review shall be placed on the agenda of the next Board meeting; otherwise it shall be placed on the agenda of the subsequent Board meeting.

21. At the Board meeting at which the matter is placed on the agenda, the Board shall decide whether to initiate a review, and if so, shall decide the scope of review.

VI. Review of potential significant deficiencies

A. Assessment of significant deficiencies

22. Following the Board's decision to initiate a review and approval of the scope of review of significant deficiencies in previous validation, verification or certification reports, the secretariat shall do the following:

(a) Establish the review team to undertake the review of potential significant deficiencies;

(b) Notify the project participants and the DOE of the initiation of review;

(c) Make publicly available the Board's decision to initiate the review on the UNFCCC CDM website;

(d) For cases where a validation report is the subject of the scope of review, suspend the issuance of CERs for the relevant CDM project activity or PoA.

23. Within 28 days of the date of notification of the initiation of review of potential significant deficiencies, the DOE shall provide written responses to each potential significant deficiency in each relevant validation, verification or certification report as detailed in the scope of review. Such response may include:

(a) Clarification or rebuttal of the facts (including submission of any additional facts and documents) and the DOE's interpretation of the facts that apply to the potential significant deficiency; and/or

(b) Clarification or rebuttal of the CDM requirements in effect at the time of each potential significant deficiency and the DOE's interpretation of them applied to the facts.

24. Within the 28-day period for the DOE to provide responses to the scope of review of potential significant deficiencies, the DOE may request the review team, by email through a dedicated email address, to make a telephone call to it to provide clarifications on the issues identified if they are not sufficiently clear to it. In this case, the DOE shall provide the contact details of the person to be called with preferred time slots. The review team shall fix a call appointment within three (3) days of receipt of the request. The secretariat shall record the call.

25. Within 28 days of receipt of the DOE's response, the review team shall prepare an assessment report on the potential significant deficiencies in the context of the scope of review, the CDM requirements applicable to the project activities that were available at the time that the validation, verification and certification reports were submitted, and taking into account the responses of the DOE.

26. If, during the assessment, the review team requires further clarification or information from a party involved in the validation or verification activity, it shall ask the party to submit a response addressing the required clarification or provide the requested information. The party shall respond within 28 days to the review team after receiving such request. If the review team receives a response from the party, it shall,

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notwithstanding the provision in paragraph 25 above, finalize the assessment report within 14 days of receipt of the requested clarification or information. If no such response is received, the review team shall finalize the assessment report within 14 days following the end of the 28-day period in which the party was requested to respond.

27. If, during the assessment, the review team identifies that the assessment requires input from a relevant panel or working group, it shall request the secretariat to place the matter on the agenda of the next meeting of the panel or working group. In this case, the review team shall, notwithstanding the provision in paragraph 25 above, finalize the assessment report within 14 days of receipt of the input from the panel or working group.

28. If, during the review, the review team forms the opinion that an extension of the deadline is required for the assessment, or receives a request from the DOE for an extension of the deadline for a response referred to in paragraph 23 above, it shall submit a request for a specified extension of the deadline to the Chair of the Board, explaining the reasons for the request. The Chair of the Board shall grant the extension unless he/she is of the opinion that the reasons are unjustified.

29. The assessment report shall include the findings and recommendations from the review and the reasons and rationale for the findings and recommendations, including, but not limited to:

(a) A proposed decision to be taken by the Board;

(b) The facts and any interpretation of the facts by the review team that formed the basis of the proposed decision, including a determination of the reasons (including whether any significant deficiency was caused by professional negligence or fraud) and responsibility for the significant deficiencies in previous validation, verification or certification report(s);

(c) The CDM requirements applicable to the significant deficiencies in effect at the time of the submission of the request for registration or issuance of CERs and any interpretation of them applied to the facts;

(d) A summary of any corrections required to be made by the DOE in the validation, verification or certification report(s) in question as well as any relevant monitoring report(s) and attached spreadsheets;

(e) A quantification of any excess issuance of CERs that has occurred as a result of the significant deficiencies in the relevant validation, verification or certification reports.

B. Consideration of assessment of significant deficiencies

30. The secretariat shall forward the review team's assessment report to the DOE. The DOE shall have 14 days to submit, in writing, any objections to the findings or recommendations of the assessment report. If the DOE has raised any objections to the findings or recommendations of the assessment report it shall be given an opportunity for a hearing at a Board meeting before any decision is made by the Board. The secretariat shall forward the assessment report together with any written objections received to the Board, and shall place the matter on the agenda of the next available Board meeting.

31. If no objection to the findings or recommendations of the assessment report has been received in accordance with paragraph 30 above, the secretariat shall submit the assessment report to the Board for approval. If no member of the Board objects to the findings of the assessment report within 20 days, the assessment report shall be deemed accepted by the Board.

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32. If a member of the Board wishes to object to the findings or recommendations of the assessment report, he/she shall accordingly notify the Chair of the Board through the secretariat, giving reasons in writing. The secretariat shall acknowledge receipt of the objection and make it available to the Board.

33. If a member of the Board objects to the findings or recommendations of the assessment report more than 14 days prior to the next Board meeting, the matter shall be placed on the agenda of the next Board meeting; otherwise it shall be placed on the agenda of the subsequent Board meeting.

34. At the Board meeting for which the matter is placed on the agenda, the Board shall decide whether:

(a) If presented, to accept the DOE's argument(s) that certain or all of the significant deficiencies identified in the assessment report do not exist and that corrections to the validation, verification or certification reports are not necessary in total or in part. In this case, the Board may request the review team to re-calculate the quantity of excess CERs taking into account the Board's decision to accept the DOE's argument(s); or

(b) To accept the assessment report's finding that no significant deficiencies were identified and no further action is required; or

(c) To accept the assessment report's finding that confirms that significant deficiencies exist and the assessment report's recommendations, and to authorize the secretariat to implement the provisions in section VII. below; or

(d) To request the review team to clarify or expand on any aspect of the assessment report that the Board deems necessary in order for it to make a decision.

35. The review team shall complete any further work required by the Board within 14 days and submit a revised assessment report to the Board for consideration at the next available Board meeting. At that Board meeting, the Board shall make a decision in accordance with paragraphs 34(a)–(c) above.

VII. Consequences arising from finding of significant deficiencies

A. Independent review

36. A DOE may request an independent review of the Board's decision, made in accordance with paragraph 35 above, within [28] days of the publication of the Board's decision in the relevant meeting report, by following the provisions in section VIII. below. Independent review applications received after this date shall not be considered.

37. The secretariat shall not act to implement any corrective action or compensation directions against a DOE if the secretariat receives an independent review application from that DOE within the deadline set out in paragraph 36 above.

B. Corrective action and compensation

38. If the independent review application period has expired and no complete independent review application has been received, or the Board has made a second decision following an independent review, ~~I~~in accordance with the decision made under paragraphs 16, 31 ~~or~~ 34 above or paragraph 52 below , the secretariat shall do the following:

(a) Direct the DOE responsible for the occurrence of the significant deficiencies to make all necessary corrections to the validation, verification or certification report(s) as outlined in

the assessment report (including where the significant deficiency is not a result of the professional negligence or fraud of the DOE);

(b) Require the DOE responsible for the occurrence of the significant deficiencies, as a result of the DOE's professional negligence or fraud, to transfer an equivalent amount of emission reduction units (ERUs), CERs, assigned amount units (AAUs) and/or removal units (RMUs) equal to the excess CERs issued into the cancellation account in the CDM registry within 90 days or another timeframe decided by the Board taking into account the circumstances of each case;

(c) If applicable, resume issuance of CERs for the project activity or PoA for which significant deficiencies were ultimately not determined or for which corrections to the validation, verification or certification report(s) have been made in accordance with subparagraph (a) above to meet CDM requirements.

C. Additional consequences

39. The Board shall decide either at the meeting referred to in paragraph 34 above, or at the next available Board meeting after the decision is made in accordance with paragraph 31 above, whether:

(a) To suspend the accreditation of the DOE in accordance with the "Procedure for accrediting operational entities by the Executive Board of the clean development mechanism" (CDM accreditation procedure) where the significant deficiencies in the validation, verification or certification report(s) are due to fraud by the DOE; and/or

(b) No future issuances of CERs for the project activity or PoAs shall be allowed where the review and correction of the significant deficiencies in the validation have led to a positive validation opinion changing to a negative validation opinion.

40. The secretariat shall publish a summary of the Board's final decision on the review, and any corrected validation, verification or certification reports on the UNFCCC CDM website.

D. Failure to comply with secretariat's direction

41. If a DOE fails to respond to a scope of review within 28 days in accordance with paragraph 23 above, or fails to comply with the directions under subparagraphs B. 38(a)–(b) above, the Board shall suspend the DOE's accreditation in accordance with the CDM accreditation procedure until such time as it complies.

E. Costs of review

42. The DOE found to be responsible for the significant deficiencies as a result of professional negligence or fraud shall bear the costs of conducting the review.

43. A fee paid in accordance with paragraph 10 above shall be refunded if the Board decides to initiate a review of significant deficiencies.

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VIII. Independent review of decision by the Board

A. Independent review application

44. Any review application made by a DOE shall be submitted to the secretariat through a dedicated interface on the UNFCCC CDM website. The independent review application shall include a duly completed "Independent review of significant deficiencies decision form" (F-CDM-IRSDD), [together with an application fee of $X].

45. The secretariat shall not forward an independent review application to the independent review committee if it appears to the secretariat that the independent review application form is not complete.

46. If the independent review application form is not complete, the secretariat shall notify the DOE by email, explaining what needs to be completed. The DOE may resubmit an independent review application that is complete provided that such submission is made within the deadline set out in paragraph 36 above.

47. Within 7 days of receipt of a complete independent review application, the secretariat shall forward it to each of the independent review committee members[6], together with the following documents:

(a) A copy of the review team's assessment report;

(b) A copy of any written objections submitted by the DOE in accordance with paragraph 30 above; and

(c) A copy of the Board's decision.

B. Process for managing independent review

1. Review by the independent review committee

48. The independent review committee shall consider the documents provided to it and decide how the independent review is to be dealt with, in accordance with the "Rules of procedure of the independent review committee".

49. In considering how the independent review shall proceed, the independent review committee:

(a) May request additional information or documents from any person or body who was involved in, or affected by, the original review ; and

(b) Shall schedule not less than one and not more than two hearings at the United Nations campus in Bonn, Germany, and shall invite each of the following parties:

(i) The DOE and/or its approved representative;

(ii) [The affected project participant(s)];

(iii) The review team;

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[6] The independent review committee shall be a standing committee of three persons drawn from a pool of experts each of whom shall have the necessary legal competencies, and collectively shall have the necessary technical competencies, in accordance with the "Terms of reference for the significant deficiency decision independent review committee".

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(iv) The Board;

(v) The secretariat; and

(c) Shall allow both oral and written statements from parties invited to the hearing; and

(d) Shall request the secretariat to ensure that all documents that the independent review committee consider in relation to the independent review are made available to the applicant DOE in advance of the hearing; and

(e) May, after the hearing, make recommendations based on its assessment of the documents and the hearing; or schedule a further hearing. After the further hearing, if any, the independent review committee shall make recommendations based on its assessment of the documents and the hearings.

2. Independent review committee recommendations

50. In making its recommendations, the independent review committee shall decide whether to:

(a) Concur with the Board's decision that is the subject of the review; or

(b) Recommend that the Board reconsider the decision that is being reviewed, providing reasons for such recommendation.

C. Reconsideration of the decision by the Board

51. If the independent review committee recommends that the Board reconsider the decision more than 14 days prior to the next Board meeting, the matter shall be placed on the agenda of the next Board meeting; otherwise it shall be placed on the agenda of the subsequent Board meeting.

52. At the Board meeting for which the matter is placed on the agenda, the Board shall reconsider the original decision taking into account the recommendations of the independent review committee and shall make a final decision.

53. The Board's decision taken in accordance with paragraph 52 above is final and no further review shall be allowed.

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History of the document

Version	Date	Nature of revision
02.1	28 August 2012	Revised paragraph 47 and footnote 6 to correct the terminology from “appeal” to “independent review” to be consistent.
02.0	27 August 2012	Published as an annex to the annotated agenda of EB69. Changes include input received from the Board at EB68.
01.0	8 November 2011	Published as an annex to the annotated agenda of EB65. No changes made between DRAFT 01.1 and version 01.0. Comments were taken into consideration during the meeting of EB65.
DRAFT 01.1	15 December 2011	Editorial revision to include the history of this document.
DRAFT 01.0	EB 64, Annex 3 26 October 2011	The Board agreed to continue considering this draft procedure at its next meeting (EB65), taking into account public comments to be received through the usual call for inputs to the annotated agenda. Therefore, the Board invited stakeholders to provide comments to this draft through this call. This modified draft will be annexed to the annotated agenda of the next meeting (EB65).
Decision Class: Regulatory **Document Type**: Procedure (DRAFT) **Business Function**: Registration, Issuance		

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Appendix 1

INFORMATION NOTE: DESCRIPTION OF THE MANDATES FROM THE CMP FOR THE DRAFT PROCEDURE FOR ADDRESSING SIGNIFICANT DEFICIENCIES IN VALIDATION, VERIFICATION AND CERTIFICATION REPORTS.

I. Introduction

1. At its sixty eighth meeting, the Executive Board of the Clean Development Mechanism (hereinafter referred to as "the Board") requested the secretariat to prepare a document for consideration by the Board at its sixty-ninth meeting "*describing the mandates from the CMP for the draft procedure* [for addressing significant deficiencies in validation, verification and certification reports]".

2. The purpose of this note is to set out and describe, chronologically, each of the mandates given by the CMP, as set out in section II. below. In order to provide context to, and to facilitate understanding of, the CMP decisions the Board decisions and work undertaken by the secretariat in response to and leading up to CMP decisions are set out in section III. below.

II. CMP mandates relating to significant deficiencies.

3. There are three CMP mandates that are relevant to the development of a draft procedure for addressing significant deficiencies in validation, verification and certification reports:

(a) Decision 2/CMP.1, paragraphs 22-24, (November 2005) the CMP requires:

22. Registered project activities shall not be affected by the suspension or withdrawal of designation of a designated operational entity unless significant deficiencies are identified in the relevant validation, verification or certification report for which the entity was responsible. In this case, the Executive Board shall decide whether a different designated operational entity shall be appointed to review, and where appropriate correct, such deficiencies. If such a review reveals that excess CERs were issued, the designated operational entity whose accreditation has been withdrawn or suspended shall acquire and transfer, within 30 days of the end of review, an amount of reduced tonnes of carbon dioxide equivalent equal to the excess CERs issued, as determined by the Executive Board, to a cancellation account maintained in the CDM registry by the Executive Board.

23. Any suspension or withdrawal of a designated operational entity that adversely affects registered project activities shall be recommended by the Executive Board only after the affected project participants have had the possibility of a hearing.

24. Any costs relating to the review referred to in paragraph 22 above shall be borne by the designated operational entity whose designation has been withdrawn or suspended.

(b) Decision 3/CMP.6, paragraphs 25-26, (December 2010) where the CMP:

25. Requests the Executive Board to adopt, taking into consideration the views of stakeholders, and subsequently apply a procedure to address significant deficiencies in validation or verification reports;

26. Decides that in developing such a procedure the Executive Board may review and amend the provisions contained in paragraphs 22–24 of the annex to decision 3/CMP.1 regarding:

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(a) The suspension of designated operational entities prior to the application of such a procedure;

(b) The appointment of a second designated operational entity to conduct the review or correct the deficiency;

(c) The 30-day time limit for the cancellation of units;

(d) The liability of designated operational entities.

(c) Decision 8/CMP.7, paragraphs 12-14, (December 2011) where the CMP:

12. Welcomes the work undertaken by the Executive Board to address liability in the context of the draft procedure on significant deficiencies in validation, verification and certification reports;

13. Requests the secretariat and the Executive Board to further investigate the impact of potential approaches to address significant deficiencies in validation, verification and certification reports and to prepare a report on its findings;

14. Also requests the Executive Board, in consultation with stakeholders, to revise the draft procedure based on its findings, taking into account conclusions, if any, on the appeals process under consideration of the Subsidiary Body for Implementation, with the aim of avoiding duplication and promoting efficiency, for adoption by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol at its eighth session.

III. EB mandates and secretariat work undertaken in relation to CMP mandates

4. At its fifty-first meeting, in December 2009, the Board requested the secretariat to develop a procedure, in collaboration with the CDM accreditation panel (CDM-AP), to address liability of the DOEs for excess issuance of the CERs in the context of the validation and verification activities which they have carried out. The Board specified that the proposal should take into account provisions stipulated in paragraph 22 of the CDM Modalities and Procedures, CDM validation and verification manual, CDM accreditation standard for operational entities and other relevant documents. The draft procedure was to be considered by the Board at its fifty-third meeting. (EB 51, para 18)

5. The procedure was presented by the secretariat and discussed at the Board's fifty sixth meeting, in September 2010. As per paragraph 15 of the meeting report: "*The Board considered a draft "Procedure on the matter of liability of the DOEs for excess issuance of the CERs" and agreed to launch a call for public inputs on this draft procedure. The Board further requested the secretariat to prepare a summary of the inputs received for consideration of the Board at the fifty-seventh meeting".* The Board agreed that at the next meeting it would consider if there was a need for bringing any matter related to this issue to the attention of the CMP and also agreed to launch a call of inputs.

6. The secretariat organized the public call between 17 September and 8 October 2010 and requested input on the following issues:

(a) Whether the draft procedure complies with the decisions of the CMP. If stakeholders consider that the provisions of the procedure do not comply with decisions of the CMP, a detailed explanation should be provided;

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(b) Specific suggested revisions to the decisions of the CMP. In particular, the provisions for identifying and correcting significant deficiencies contained in validation, verification and certification reports;

(c) Market implications if the draft procedure was adopted. In particular, any increased costs of conducting validations and verifications, including an explanation for the opinion;

(d) Specific suggested revisions to the decisions of the CMP and the draft procedure that would lessen the market impact, while upholding the general principle that excess-issued CERs should be replaced;

(e) Specific suggestions for what should be done in a situation where a project participant provides false or misleading information to a DOE, and that information led to the excess-issuance of CERs.

7. Eleven responses were received during the public call for inputs. At the Board's fifty-seventh meeting, in October 2010, the secretariat gave a presentation summarizing the public input[7]. Based on the inputs received from stakeholders, the secretariat proposed the following issues for consideration by the Board:

(a) Whether the treatment of excess issuance of CERs should be delinked from the suspension of the DOE;

(b) Whether the review of correction of significant deficiencies should be conducted by a second DOE, or whether the Board can request another body to conduct it;

(c) Whether a time limit should be introduced, and what the time limit should be;

(d) Clarification on the timing and situation in which PPs should be granted the right to a hearing;

(e) Whether PPs should be held liable in case they have omitted information, or provided false or misleading information;

(f) Whether the 30-day time limit to acquire and transfer excess issued CERs should be removed and replaced, for practical reasons by a provision that allows the Board to determine the appropriate time period for cancellation or require reductions in future issuance requests.

8. The Board's consideration of the stakeholder inputs and secretariat proposals was reflected in the meeting report as follows (EB 57, para 7 and para 8) (emphasis added):

> *7. The Board considered a summary of the public inputs received for the call on the draft "Procedures regarding the correction of significant deficiencies and excess issuance of CERs". In its examination of the responses to the call, the Board considered that the CMP may need to revise its current decisions to facilitate a fair and efficient procedure to address such situations. The Board agreed to recommend to the CMP to request the Board to adopt, and apply, as required on an interim basis, a procedure to address significant deficiencies, if*

[7] <http://unfccc2.meta-fusion.com/kongresse/cdm57/pdf/3a_Excess_CERs_EB57.pdf>

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any, in validation or verification reports, following a review of the provisions contained in the annex to decision 3/CMP.1, paragraphs 22–24, in particular the provisions requiring:

(a) A designated operational entity (DOE) to be suspended prior to the application of such procedure;

(b) A second DOE to be appointed to conduct the review or correct the deficiency;

(c) Units to be cancelled within 30 days of the end of the review.

8. The Board further requested the secretariat to continue to revise this draft procedure, in consultation with the CDM Accreditation Panel (CDM-AP), to account for the comments received, especially to clarify the scope and nature of the liability with the intention to address the concerns of participants and stakeholders in the CDM.

9. The Board's recommendation was subsequently reported in the Board's 2010 annual report to the CMP[8] (emphasis added):

"The Board also addressed the matter of the liability of the DOEs for excess issuance of CERs in the context of the validation and verification activities which they have carried out. In doing so the Board considered a draft procedure regarding the correction of significant deficiencies and the excess issuance of CERs, and sought stakeholders' comments on this proposed procedure. In this regard, the Board recommends that the CMP request the Board to adopt, and apply, as required on an interim basis, a procedure to address significant deficiencies, if any, in validation or verification reports, following a review of the provisions contained in the annex to decision 3/CMP.1, paragraphs 22–24, in particular the provisions requiring:

(a) A DOE to be suspended prior to the application of such a procedure;

(b) A second DOE to be appointed to conduct the review or correct the deficiency;

(c) Units to be cancelled within 30 days of the end of the review."

10. Following the Board's 2010 report, the CMP decided to request the Board to *"review and amend"* certain aspects of the mandate in paragraphs 22 to 24 of Decision 3.CMP/1, as set out in paragraph 3(b) above.

11. In accordance with the modified CMP mandate, the secretariat prepared, for the consideration of the Board, an information note on addressing significant *deficiencies in previous validation, verification and/or certification reports*. The Board considered the information note at EB 63, in September 2011 (paragraph 120). At its sixty-fourth meeting, in October 2011, the Board considered *"the draft procedure for addressing significant deficiencies in past validation, verification or certification reports and agreed on main elements to be included in a modified draft (…). The Board agreed to continue considering this draft procedure at its next meeting, taking into account public comments to be received through the usual call for inputs to the*

[8] Paragraph 44 of the annual report of the Executive Board of the clean development mechanism to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (29 November to 10 December 2010), <http://unfccc.int/resource/docs/2010/cmp6/eng/10.pdf>

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annotated agenda. Therefore, the Board invited stakeholders to provide comments to this draft through this call." (EB 64, para 25)

12. At its sixty-fifth meeting, in November 2011, the Board considered the inputs provided by stakeholders on the draft "*Procedure for addressing significant deficiencies in past validation, verification or certification reports*" and requested the secretariat to conduct a study involving experts in the relevant fields. The Board agreed that the scope of the study should be a review of the availability of insurance and related products, including their cost, as well as any other means that are or may be available to DOEs, to address liability in the context of the draft procedure and the relevant rules applicable to DOEs under the CDM (including the CDM accreditation standard). The Board requested the secretariat to report back on the above study at a future meeting and subsequently organize a roundtable consultation with DOEs. The Board agreed to decide on the scope of the roundtable consultation at the meeting at which the Board considers the outcome of the study. The Board also decided to consider the outcome of the study and roundtable consultation at the meeting at which it further considers the draft procedure for adoption. (Paragraphs 110 and 111 of the meeting report).

13. In its report to the CMP in 2011, the Board noted that it "*has worked to address significant deficiencies in validation and verification reports and has developed procedures for that purpose, which have not yet been approved as comments from stakeholders were sought. The Board will consider these procedures for approval at its* [sixty-sixth] *meeting, taking into account comments received from stakeholders.*"

14. As set out in paragraph 3(c) above, in decision 8/CMP.7, the CMP welcomed the work undertaken by the Executive Board to address liability in the context of the draft procedure on significant deficiencies in validation, verification and certification reports. The CMP requested a report from the Board and a revised draft procedure for adoption at its eighth session.

15. Further decisions of the Board regarding significant deficiencies include:

(a) At its sixty-seventh meeting, in May 2012 : The Board considered the scope of a consultation with DOEs in relation to insurance and liability management issues arising from the draft "Procedure to address significant deficiencies in past validation, verification or certification reports" considered at its sixty-fifth meeting, and agreed to the workplan for 2012, which included a DOE consultation. The Board approved the terms of reference for the consultation, as contained in annex 32 to this report, and nominated members to attend it (paragraph 102 of the meeting report);

(b) At its sixty-eighth meeting, in July 2012: The Board considered a concept note on draft recommendations in relation to the draft procedure for addressing significant deficiencies in a past validation, verification and certification reports and agreed:

(i) To request the secretariat to further revise the draft procedure based on the input received from the Board at this meeting, for consideration by the Board at its sixty-ninth meeting;

(ii) To prepare a document describing the mandates from the CMP for the draft procedure, also for consideration by the Board at its sixty-ninth meeting;

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(iii) To launch a call for inputs, which will be open from 23 July 2012 to 10 August 2012, on a reserve/pool structure to complement the draft procedure and, in particular, to request input on:

– The purpose of such a reserve/pool;

– How the reserve/pool could be created;

– Who should manage the reserve/pool;

– How moral hazard in the use of the reserve/pool could be avoided. (see paragraph 120 of the meeting report).