

Agenda item 4.3

Paragraph 85 of the annotated agenda, Annex 16

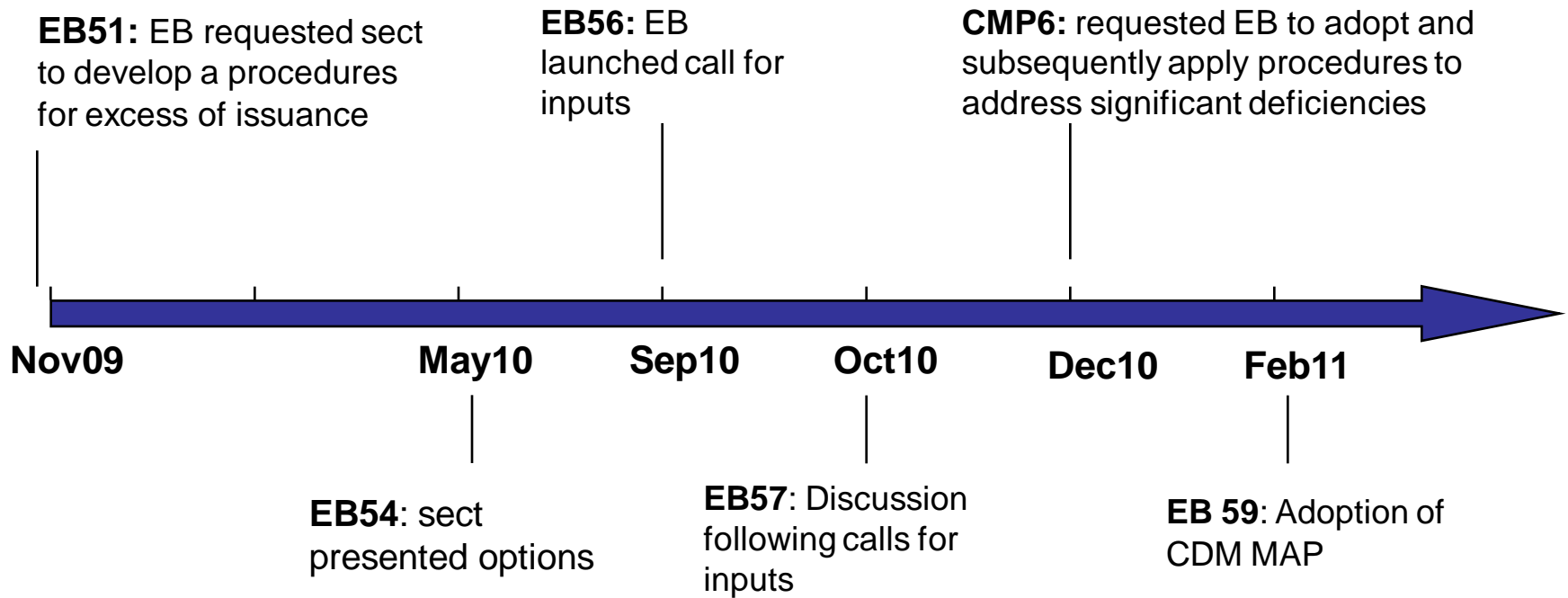
Information note on addressing significant deficiencies in past validation, verification or certification reports

CDM EB 63

Quito, Ecuador, 25 – 29 September, 2011



Background



Request from the CMP

From Decision 3/CMP.6 paragraphs 25 and 26

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:
- (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;”

Overview of essential procedural components

- The design of any procedure for addressing significant deficiencies should consist of the following components:
 - a) Clear scope of application of the procedure through definitions and principles
 - b) A process for
 - Identifying and assessing possible significant deficiencies
 - Initiating a review of the identified possible of the significant deficiencies
 - Conducting a review of the identified possible of the significant deficiencies
 - deciding the outcomes of a review of the significant deficiencies; and
 - implementing any consequences (including excess issuance of CERs) for the review finding of significant deficiencies

Guidance required from the Board

The Board may wish to provide guidance on:

- A definition of **significant deficiency** and **principles of liability** to be applied for excess issuance;
- The appropriate **means of identification** of significant deficiencies and the **decision to initiate** a review of significant deficiencies;
- The **selection of the appropriate reviewer**, a structure for the **process of the review** and the **means for decision making** for the review
- Any additional consequences for the DOE and/or the affected or responsible project participants for the **outcome of the review**.

Definitions and principles of liability

Definition of Significant Deficiency

- Not all deficiencies should be covered by this procedure, only those that are considered to be “**significant**” and what is considered significant may differ between registration and issuance.
- What deficiencies are considered to be sufficiently significant enough to warrant review and correction? And in what circumstances?

Liability for Excess Issuance

- Currently para 22 assigns liability for all excess issuance to the DOE responsible, but CMP requested the Board to review and, where necessary, amend this provision.
- What type of liability should the procedure be concerned with? For example, it could be a strict, no-fault liability or limited only to professional negligence or fraud?
- Should liability for excess issuance only be attributed to a DOE? What about if a project participant is at fault? Should liability extend to that project participant?
- Should there be a limit on any liability that arises from the significant deficiencies?

Identification and initiation of review

Identification of Significant Deficiencies

- Concerns regarding the possible existence of significant deficiencies in previous reports could be identified in a variety of circumstances and from differing sources of information.
- This may have a significant impact on secretariat and stakeholder resources.
- Who should be entitled to bring concerns about possible existence of significant deficiencies to the Board's attention?
- Should all concerns result in a review or should there be some initial analysis undertaken to ensure that only credible concerns lead to a review? Who should do this analysis, the secretariat or some other person/body?

Initiation of a Review of Significant Deficiencies

- At what point does the Board wish to be involved in the procedure? For example, from the first identification of the concern or only at the point at which a review is to be initiated?

Review of significant deficiencies (I)

Nature of the Review

- A review of the possible existence of significant deficiencies in previous reports is essentially investigatory and fact finding in nature.
- Such a review would address questions like; do the deficiencies exist? If the deficiencies are corrected or addressed, what should have been the correct outcome compared to the original? Who and/or what caused the deficiencies?

Selection of the Reviewer

- Who would be an appropriate person or body, to be responsible for undertaking such an investigatory process?
- For example, the review could be the secretariat, the Board or possibly a new ad hoc body?

Review of significant deficiencies (II)

Process of the Review

- The procedural steps may need to be as facultative as possible to allow the reviewer to find those answers while at the same time ensure that procedural fairness for the DOE being reviewed is maintained.
- At a minimum, what procedural steps should be included in a procedure for addressing significant deficiencies?
- For a DOE that voluntarily identifies significant deficiencies in its own past reports or that acknowledges significant deficiencies when brought to its attention and voluntarily agrees to undertake corrections, should it be subjected to the same review process or could it follow a shorter process?

Decision Point for the Review

- At what point does the Board wish to be involved in the determining of the review? For example, should the reviewer make an initial decision that should be reviewed by the Board or should the review recommend a decision to be made by the Board?

Consequences of significant deficiencies

Outcome of the Review

- Paragraph 22 establishes some mandatory consequences for the finding of significant deficiencies; i.e. the correction of reports, to the extent that correction is possible and appropriate; and that any excess issuance of CERs will be addressed by the transfer and cancelation of equivalent units.
- What, if any, additional consequences may be imposed on DOEs who have been found responsible of the significant deficiencies. For example, a DOE could be placed under spot check.
- Depending on the Board's decision, if project participants are found responsible for a significant deficiency that has resulted in excess issuance, how should that excess issuance be addressed? For example, through reduced future issuance or through direct transfer and cancelation of equivalent units? Should, and in what circumstances, future issuance for the affected project activity be disallowed?

Next steps

The Board may wish to request the secretariat to:

- Draft a procedure for addressing significant deficiencies in previous validation, verification or certification reports based on the outcome of the Board's discussions.
- Further interact with the relevant stakeholders on the draft a procedure for addressing significant deficiencies.
- Draft proposed amendments to the CDM modalities and procedures that may be required as a result of such a procedure for consideration by the CMP.

Current Paragraphs 22-24 of CDM M&P

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.”