

## Agenda item 4.2

Paragraph 56 of the annotated agenda, Annex 15

# Procedure for addressing significant deficiencies in past validation, verification or certification reports

**CDM EB 65**

Durban, South Africa, 20– 25 November 2011



## Background (1)

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- At EB 63, the Board provided guidance on each area of the procedure, and requested the secretariat to draft a procedure
- At EB 64, the Board considered a draft procedure, agreed on main elements after modifying the draft
- Also at EB 64, the Board agreed to continue considering this draft procedure at EB 65, 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.



## Background (2)

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- Changes made to the draft at EB 64
  - a) Modified definition of “significant deficiency”
  - b) Removed the provisions concerning liability of project participants
  - c) Changed the temporal scope of liability to “on or after 28 November 2008” (i.e. when Validation and Verification Manual was first introduced)
  - d) Changed the process of approval of secretariat’s recommendation on the course of action as a result of preliminary investigation, making it to be approved by the entire Board (rather than only by the Chair of the Board) for all cases
  - e) Introduced a fee for submission by “another stakeholder”



## Stakeholders' comments (1)

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- Stakeholders' comments (as part of comments on EB 65 annotations) on the revised draft:

### General comments

- The size of the liability and the degree of risk of being held liable for excess issuance is impossible to quantify under this procedure. The difficulty in quantifying the liability and the risk presents a significant uncertainty for insurers.
- The fact that the procedure does not reference a financial loss by a specific legal entity means that it will not be the result of, or defensible as part of, a normal legal process, which would normally be a pre-requisite under any liability insurance.
- Critical need for an appeal process before this procedure can be applied.
- The lack of any recourse to an independent body is a fundamental and serious concern under this procedure.
- No need for such procedure as the CDM is already overly conservative, and also due to frequent assessments and checks on DOEs that would prevent them acting fraudulently or with negligence.



## Stakeholders' comments (2)

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### Feedback from insurers

- Insurers clearly expressed that either their products do not cover these risks or that they do not feel able to offer such products at costs which bear any relation to the service costs for validation and verification. Even if the liability is quantifiable or limited, if this limit is too high, the cost of insuring against it would be prohibitive.

### Specific comments

- The scope should not include intended excess issuance of CER that have not occurred.
  - The scope should also include cases of under-issuance of CERs due to negligence of DOEs or issuance of DOEs of negative opinion.
  - The procedure should introduce a threshold above which the procedure is triggered.
  - Introduce definition of the fraud and professional negligence.
  - The cut-off date for the application of the procedure should be the adoption of the procedure not the VVM as it would be difficult to deal with requests that have been a result of errors in PDDs or validations that were done before the VVM. Also it is difficult to follow audit trails.
  - Propose to include a status of limitations for liability (2 years or 4 issuances).
  - Introduce a standard for identification of significant deficiencies to avoid unjustified claims.
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## Stakeholders' comments (3)

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### Suggestions

- Appeals unequivocally to the Board to desist from the approval of the draft procedure at EB 65, which would damage the whole CDM system without delivering the environmental integrity that the procedure is designed to secure.
- Suggests organizing a roundtable with members of the Board, the secretariat, representatives of DOEs and representatives of insurers. The expected outcome from this roundtable would be a proposed procedure with the single objective to address cases of fraud and professional negligence that would be insurable at rates that enable all parties to operate the CDM system without a significant increase in costs to the system.
- Requests the Board to return the issue of significant deficiencies to the CMP for further guidance, taking the views of stakeholders into account.



## Expectation from EB 65

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- The Board may, taking into account the stakeholders' comments, wish to:
  - a) Decide to organize a roundtable consultation with DOEs before adopting the procedure; AND
  - b) Limit the scope of the roundtable consultation to aspects of the draft procedure that relate to the ability of DOEs to insure against potential liabilities
  - c) Request the secretariat to undertake an analysis with appropriate professional and independent advice of the claims made in the letters
- Work to be conducted in a timeframe to allow the Board to consider a final proposal of the procedure at EB [66] [67]

