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Call for public inputs on Programme of Activities (PoA) from 6 August 2008 until 3 September 2008

Dear Mr. Sethi,
Dear Members of the CDM Executive Board,

KfW appreciates the opportunity to submit its views on issues associated with the development of Programmes of Activities as CDM Project Activities and difficulties in the validation and submission of registration of PoAs.

As a public promotional and development Bank KfW looks back at more than 50 years of experience in designing and implementing promotional and incentive schemes worldwide. KfW understands its carbon finance activities as market development efforts. This is why KfW has a strong focus on CDM project activities that are not yet marketable by themselves. Programmes of Activities are of utmost importance in this context.

Experience has shown that despite their huge potential in low-cost greenhouse gas mitigation and in contribution to sustainable development, PoAs face major market introduction barriers. To a large degree these barriers are due to lack of capacity in current carbon markets to design, implement and operate complex CDM-based climate protection programmes. Due to this institutional barrier and time required to go through the learning curve KfW would not expect that PoAs could already be implemented on a full scale in the first Kyoto commitment period until 2012 whatever the underlying PoA procedures and guidance would be.

Nevertheless, the remaining years until 2012 could become an important first phase for PoAs and could enable at least PoA implementation on a limited scale in order to gain experiences with this approach. However, all experiences show that current PoA procedures and guidance prevent the start of a PoA first phase. This is not because the rules impose too strict requirements to ensure additionality, conservatism



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and integrity of PoAs but because the modalities to achieve these necessary requirements are imperfect.

In our view, from a regulatory perspective a PoA is nothing other than and nothing more than a modality to register CDM project activities besides registration as stand-alone projects or as bundles. The one essential characteristic of a PoA is the ex post identification of the CDM activities as being part of the PoA. Starting from here we are of the opinion that the PoA specific guidance and procedures provided by the CDM Executive Board can be simplified without any risk to the integrity and conservatism of the approach.

In our view the main shortcoming of the current PoA guidance and procedures is to burden PoAs with lasting regulatory uncertainty and risk exposure that continues after PoA registration and even first CER issuance until the very end of the crediting periods of the CDM programme activities (CPAs). There are three main issues here: (i) extended and permanent DOE liability on CPA level for erroneous CPA inclusion in paragraph 15 of the 'Procedures for registration of a programme of activities as a single CDM project activity and issuance of certified emission reductions for a programme of activities' (PoA-Procedures) and for erroneous renewal of the CPA crediting period (paragraph 36 in the PoA Procedures); (ii) permanent exposure of registered PoAs to the CDM methodology process (section F of the PoA-Procedures) and (iii) late start requirement for CPAs (Glossary of CDM terms, page 28).

The practical consequence of (i) is that the identification of one single CPA that fails to comply with the requirements of the registered PoA would put on hold the whole PoA for issuance of CERs and further CPA inclusion. Given that all CPAs that are already included in the PoA shall be reviewed in a non-specified period of time before the PoA can continue its operation, this rule can result in substantial losses in CERs for the PoA operating entity.

It is this effect on CER risk exposure that makes the extended and permanent DOE liability a market barrier for PoA introduction and rather not the fact that the liability is with the DOEs. Through appropriate contractual arrangements between the PoA managing entity, CER buyer and DOE the burden of liability and risk exposure could be redistributed, but the unacceptable regulatory uncertainty for overall CER delivery out of the PoA that results from the liability on the CPA level cannot be resolved in such a way.

In our view it would be completely unrealistic and not practical to expect that all activities (100%) under a programme fully comply with all programme requirements. In

hundreds of thousands of efficient lights, tens of thousands of refurbished buildings and thousands of efficient industrial boilers promoted by corresponding programmes there will always be some with less than 100% compliance with programme requirements. Under such conditions conservatism can only be achieved on a statistical level (on average) in discounting observed results with an appropriate margin of error. Obviously this can only be done in the monitoring and verification phase within a PoA and not in a validation-like inclusion phase even if individual activities are grouped into larger sub-sets within a CPA, which the PoA Procedures rightly provide for.

A similar problem of huge CER delivery risk exposure results from the second issue of permanent exposure of registered PoAs to the CDM methodology process. Unlike general CDM rules the PoA Procedures stipulate that putting on hold or withdrawing an approved CDM methodology affects PoAs that have already been registered. In case the underlying methodology is put on hold or withdrawn, a registered PoA cannot include new CPAs any more until re-validation of the whole PoA on the basis of the revised methodology. Given the frequency of such changes in methodology and the time the validation of a CDM project activity typically takes, this extended exposure of PoAs to the CDM methodology process can also result in substantial losses in expected CER deliveries.

The third issue that contributes to potential losses in CER delivery is the following rule that appears only in the Glossary of CDM terms (page 28): 'The starting date of the CPA cannot be before the date of registration of the PoA'. Given the uncertainty that faces each CDM project owner when developing a CDM project on its exact future registration date, given the time it typically takes from project development to registration and also given the complexity of PoA implementation and operation this rule - which is unique in the CDM modalities and procedures - prevents the prompt start of PoA that would be required in order to allow for a PoA pilot phase within the pre-2012 period.

Taken together the three issues discussed above can easily result in the situation in which a registered PoA can never earn a single CER because of its involvement in a permanent correction and modification process. In our view, this extreme CER delivery uncertainty is the major reason for the fact that even after one year of availability of the EB-PoA rules and after more than three years of intensive international discussion on PoAs not a single PoA is registered and only very few are known to be in preparation.

Fast action is required to change this situation and to allow at least some PoAs to be registered before 2012. Based on the existing guidance and procedures we suggest the following modifications:

- (i) The extended and permanent liability on CPA level should be deleted from the PoA Procedures. The general CDM modalities and procedures as stipulated in Decision3/CMP.1 apply mutatis mutandis.
- (ii) The ruling on implications of an approved methodology being put on hold or withdrawn should be deleted from the PoA Procedures.¹ The general CDM modalities and procedures as stipulated in Decision3/CMP.1 and Decision 4/CMP.1 apply mutatis mutandis.
- (iii) The requirement that the starting date of a CPA cannot be before the date of registration of the PoA should be deleted from the Glossary of CDM terms.

We understand that specific restrictions on PoAs and distinctions from other CDM project activities were introduced in a situation of uncertainty on the development of PoAs and as a safeguard against unexpected PoA quantities and qualities. In order to accommodate such concerns we suggest further modifying and extending the current PoA Procedures with the following:

- (iv) Post-verification inclusion: Inclusion of CPAs by the PoA validating DOE as stipulated in section D of the PoA Procedures should be done after verification of the corresponding CPAs. The crediting period of the CPAs should start with the operation date of the CPAs or the PoA registration date - whichever comes later.
- (v) Estimate of overall emissions reductions under the registered PoA: In line with the PDD requirements of other CDM project activities the PoA-DD should be extended for an indication of the expected emissions reductions over the lifetime of the PoA and the crediting periods of the CPAs.

In our view, item (iv) would better correspond to the basic PoA principle of ex post identification of activities under the PoA and could provide more comfort that only eligible CPAs would be included in the PoA. Furthermore, post-verification inclusion would allow transaction costs to be reduced because inclusion and verification could be done in one single step. Item (v) would add to the conservatism of the overall approach in providing an estimate of the CER potential of the whole PoA supporting the validation and registration decision.

¹ If the reference to the 'Procedures for the revision of an approved baseline and monitoring methodology' in paragraph 25 of the PoA-Procedures is meant to limit the implications of methodology revisions to the renewal of the crediting periods of the CPAs section F could alternatively be included in section G of the PoA-Procedures.

We believe that these suggested modifications of the PoA Procedures can be introduced easily and fast on the basis of the existing documents and that they could reduce the main regulatory barriers to PoA market introduction while maintaining the integrity and conservatism of the whole approach.

We hope that our contribution will be of some help to you. We are always ready to further explain our position and to contribute to the regulatory PoA discussion.

Yours sincerely,



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