

October 4, 2010

Input for the 57th Meeting of the CDM EB : Draft Procedure Regarding the Correction of Significant Deficiencies and the Excess Issuance of CERs

Japan Quality Assurance Organization

We would be very pleased if the CDM Executive Board takes into account our following comments upon considering the above draft procedure at the 57th Meeting:

<Overall Comment>

The draft procedure is proposed in accordance with paragraph 22 of “Modalities and Procedures for a Clean Development Mechanism” (“M&P”, Annex to the Decision 3/CMP.1), assuming the very specific case that the excess issuance of CERs is incurred by any deficiency in a validation, verification or certification report prepared by a DOE of which accreditation has been suspended or withdrawn by the EB. However, the causes of the excess issuance of CERs would be including, but not limited to, the above specific case. Other than the above specific case we can assume that any deficiency in an approved methodology could result in the excess issuance of CERs. Accordingly, we would ask the EB to consider this issue from not only the above specific case under paragraph 22 of M&P but also more broader view points such as the deficiency in the methodology or any deficiency in the data or information provided by a project participant as we discuss below. The following comments are related to our concerns on this issue;

<Joint or Several Responsibility of the EB together with a DOE>

Paragraph 4 of the draft procedure provides as follows;

“... the DOE who was responsible for the preparation of validation, verification or certification report that led to the excess issuance of CERs is strictly liable for the issuance of excess CERs, i.e. regardless of its intent or its degree of negligence.”

As everyone knows very well, CERs are issued not only directly through the preparation of validation, verification or certification reports by a DOE but also through the EB’s registration of proposed CDM project activities and approval of requests for issuance of CERs for registered CDM project activities after the completeness check by the Secretariat and, in some cases, review requests by the EB. Based on the above procedures it follows legally and logically that the EB is deeply involved in the issuances of CERs and that they cannot avoid any responsibility of the excess issuance of CERs, if any, because of its involvement, although the EB is not a legal entity. Accordingly, we think that in order to solve this issue appropriately and impartially the EB should consider not only the liability of the DOE, that has prepared the validation, verification or certification report related to the excess issuance of CERs, but also joint or several responsibility of itself that has made above certain involvement in the issuance of CERs at issue through registration of proposed CDM project activities and approval of requests for issuance of registered CDM project activities. In order for the

EB to implement such responsibility we would ask the EB to consider raising and managing a fund by which the CERs equivalent to the excess issuance is acquired and transferred to the cancellation account managed by the EB, instead of seeking liability against the DOE as proposed in the draft procedure. The fund should be raised by DOEs and project participants in proportion to the CERs of which issuance has been approved by the EB and should be managed by the EB.

Other than the above, the excess issuance of CERs would be incurred by any deficiency in a baseline-setting and monitoring methodology approved by the EB. In such event the same argument as the above-mentioned could be applied.

<Possible Liability of a Project Participant>

In case that the DOE could not find out, with appropriate care and under due diligence in accordance with the CDM requirements, any false or deficient data or information that was provided by a project participant and resulted in the excess issuance of CERs, we think that it would be too crucial to the DOE that the DOE “is strictly liable for the issuance of excess CERs, i.e. regardless of its intent or its degree of negligence.” In such case it would be desirable that the EB paves the way for the EB or the DOE to seek the liability of the project participant by taking into account such situation and provides such way in this Procedure, because it would be very difficult for the DOE to seek such liability against the project participant under the validation or verification service agreement without such provision in this Procedure.

<Difficulty of the Second DOE in Identifying Significant Deficiency in a Validation, Verification or Certification Report>

Practically speaking, regardless of paragraph 22 of M & P, it would be very difficult for the EB to find and appoint the second DOE that identifies significant deficiency in the validation, verification or certification report related to the excess issuance of CERs because of scarcity of the second DOE’s human resources. It would also be very difficult for the second DOE to implement the above identification independently and impartially because of the second DOE’s possible conflict of interests with the project participant, whose CDM project activity has resulted in the excess issuance of CERs, and the confidentiality obligation between the first DOE and the project participant. We would ask the EB to consider appointing not the second DOE but a body independent from the EB and DOEs for the above identification.