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From Werner.Betzenbichler@beCe-experts.com  
Date 16. October 2011  
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Subject **Call for public input on the draft procedure for addressing significant deficiencies in past validation, verification or certification report**

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Chair of the DOE/AIE Forum

Honorable Members of the CDM Executive Board,

The DOE/AIE Forum appreciates the initiative of the CDM Executive Board to provide input on the draft procedure for addressing significant deficiencies in past validation, verification or certification report.

This input has been prepared by the Chair of the DOE/AIE Forum by consolidating comments received from various DOEs after inviting all members of the DOE/AIE Forum to provide feedback on their experiences, concerns and to make suggestions for improvement.

We submit our comments within two annexes to this cover letter, one to provide some generic comments, the other one with individual comment to each paragraph.

Although we commend the fact that this new draft accommodates the position of the DOE/AIE Forum to some extent, we still see the need for many adjustments in order to foreclose any inappropriate or unintended application of this procedure as otherwise we see high reputational risks for the whole CDM. We therefore offer our contribution in the further development of this procedure and will remain available for any action envisioned during the coming EB-meetings.

Kind regards,



Werner Betzenbichler  
Chair of the DOE/AIE Forum

#### Annexes

- Annex 1 General comments on the draft procedure for addressing significant deficiencies in past validation, verification or certification report
- Annex 2 Specific comments to the draft procedure for addressing significant deficiencies in past validation, verification and certification reports

## Comments on the draft procedure for addressing significant deficiencies in past validation, verification or certification report

First of all we want to express that we were given insufficient time to properly assess the implications of this procedure. The involvement of lawyers and insurance companies requires more time than was provided.

We recognize that the new draft was developed by guidance by the EB given at EB-63. We would like to emphasize that this document with the potential of huge impacts on the operation of an affected DOE needs to be developed with the same professional care as it is expected to be applied by DOE during their daily work. A decision on the procedure should be made only when all consequences are known and have been considered.

In particular we see still deficits in the practicability of the recent draft and thus the need for revising and improving the procedure especially with regard to the following aspects:

### Definition of Significant Deficiencies

The definition as given by the procedure is open for interpretation and does not necessarily lead to an application of the procedures only in exceptional cases. Notwithstanding the fact that EB clearly express the hope of rare or even no need of its application, we would like to emphasize that a frequent application would rather create reputational damage on the CDM. It might be even beneficial by referring in the definition section to the care or duty of care applied by DOEs, thus pointing to their main tasks in protecting the integrity of the CDM. The definition section may be written as follows.

*1. The professional duty of care required from each individual DOE when executing its services in the validation, verification and certification of CDM activities (including CDM Programmes of Activities) encompasses the responsibilities for*

- (a) Following the requirements of the accreditation standards in all conscience*
- (b) Applying corrective action requests issued by the EB or CDM-AP within the given time frame*
- (c) Establishing measures to protect its own operations against corruption and financial crime*
- (d) Protecting the integrity of the CDM by not requesting registration or issuance in case of any doubts on the justification/correctness of such a request*

*2. A significant deficiency, with regard to validation, verification, or certification reports means a failure by a DOE to conclude a validation, verification or certification process with all professional duty of care.*

*3. Excess issuance resulting from a significant deficiency means the fact that as consequence of a significant deficiency in validation, verification and certification reports more certified emission reductions have been issued compared to the situation when the DOE would have performed the service in accordance with the professional duty of care.*

### Cap on the liabilities resulting from the application of this process

As presented during workshop and at several other occasions DOEs are concerned on the fact that liabilities in terms of financial consequences resulting from this draft procedure are not in any relation to operations of a DOE, its service fees and the causes of a review. Furthermore some procedural aspects are considered impracticable as the wish to determine exactly the “real emission reduction” after some years is considered illusionary and will result in endless timelines when applying this procedure. We therefore recommend to

- Base the process on estimations of excess issuance
- Disconnect financial liabilities from the amount of excess issuance and rather use the existence of excess issuance to trigger the determination of liabilities
- Set a cap on liabilities which reflects the potential income by offering DOE services

The following provides a possible solution for such a new approach:

*The liability of DOEs for excess issuance resulting from significant deficiencies shall neither be limited nor correlated to the quantity of excess CERs, but shall be up to the tenfold of the service fee(s) charged by the DOE for the validation, verification and certification of the CDM activity(ies) for which an excess issuance of CERs has been proven, limited to a maximum amount of three million US\$ for all projects under investigation. The liability shall take into account the impact on the integrity of the CDM by the significant deficiency. For excess issuance at a minor extent the liability shall be at least the double of the service fee(s). Minor extent means*

- *For small scale activities: an excess issuance of less than 1,000 CERs or less than 10 % of the estimated annual emission reduction, whichever is larger*
- *For large scale activities and PoAs: an excess issuance of less than 2,000 CERs or less than 2 % of the estimated annual emission reduction, whichever is larger*

*The EB shall request UNFCCC secretariat after receipt of the liability payment to cancel an equivalent amount of CERs at the recent market price from the ‘share of proceeds’ account.*

We would like to mention that at a profit margin of 10 % a liability of a tenfold of the service fee would result in a liability equivalent to the profit made by one hundred projects. Furthermore the introduction of flexibility will enable EB to take into account specific circumstances (e.g. size of the DOE, less severe cases, DOEs from developing countries)

Furthermore, it must be emphasized that prior to the adoption of the VVM on 28 November 2008, there were no clear requirements for how a DOE shall perform validations and verifications. Validations and verifications performed prior to 28 November 2008 shall thus not be subject to any review. This does not refer to the need of correcting registered PPDs from that period along the project cycle procedures and the Project Standard.

Date 17. October 2011  
Subject Call for public input on the draft procedure for addressing significant deficiencies in past validation, verification or certification report  
Annex 1 Comments on the draft procedure for addressing significant deficiencies in past validation, verification or certification report

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### Introduction of an appeals process

Finally we would like to mention that the proposed procedure is rather creating the unique situation that EB besides being the legislative body would also take over jurisdiction without giving any possibility to appeal a given sentence. We therefore demand an appeal process with regard to the final judgment given by EB. Knowing that this is not yet introduced we request EB to ask for further guidance by CMP.

An appeals process needs to be offered by a separate paragraph of the procedure, like:

*The DOE shall be entitled to launch an appeals process against the Board decision within [14] days in accordance with the appeals procedure (to be established). In this case the decision made under paragraphs xy shall be considered provisional and shall not be executed until the resolution of the appeals process.*

Text of draft procedure	Comments
<p>1. A deficiency, with regard to validation, verification, or certification report(s) means a breaching of clean development mechanism (CDM) rules and requirements by:</p> <ul style="list-style-type: none"> <li>a) Operating the validation or verification function in a manner that does not comply with the requirements of the CDM accreditation standard for operational entities” applicable at the time of the validation or verification activities;</li> <li>b) Insufficiently validating or verifying a fact or set of facts by omitting or failing to undertake all necessary validation or verification actions;</li> <li>c) Not applying or incorrectly applying a CDM rule or requirement in effect on the date of the submission of the request for registration of a project activity or programme of activities (PoA), or the submission of the request for issuance of certified emission reductions (CERs);</li> <li>d) Validating or verifying a fact or set of facts based on information that is incomplete, inconsistent with or contrary to such facts;</li> <li>e) Providing incorrect factual information to the Executive Board of the clean development mechanism (hereinafter referred to as the Board).</li> </ul>	<p>1 a) expands the situation for possible investigation to every non-conformity ever expressed along the accreditation procedures. In such a case a retroactive application may result in a nightmare of cases. Consequently this should only be applied for cases after the release of the procedure</p> <p>b) c) d) overlap to some extent; the incorrect application of a CDM rule should be related to professional negligence only, which is not clear at this stage</p> <p>e) is unacceptable as written, as it opens the process for every error detected; the intention of applying this procedure only in exceptional cases is contradicted by such a wording</p>
<p>2. A significant deficiency means:</p> <ul style="list-style-type: none"> <li>a) In the context of past validation of a project activity or PoA, or renewal of crediting period, a deficiency that has resulted in a positive validation opinion, where if the deficiency had not occurred, a negative validation opinion would have been given in relation to one or more of the following:           <ul style="list-style-type: none"> <li>(i) Local stakeholder consultations;</li> <li>(ii) Host Party approval;</li> <li>(iii) Environmental impact analysis;</li> <li>(iv) Additionality of the project activity or PoA;</li> <li>(v) Applicability of the applied methodology.</li> </ul> </li> <li>b) In the context of past validation of a project activity or PoA, or verification or certification of greenhouse gas (GHG) emission reductions or removal enhancements, a deficiency:           <ul style="list-style-type: none"> <li>(i) That resulted in the calculation of more GHG emission reductions or removal enhancements achieved by the registered CDM project activity or PoA than would have been or would be achieved if the deficiency had not occurred; and</li> <li>(ii) [The excess amount referred to in paragraph (i) above equates to or is greater than [threshold to be discussed by the Board].</li> </ul> </li> </ul>	<p>There is no need to provide this list under 2 a) which created largely confusion during the integrated workshop. A full stop after “given” is sufficient.</p> <p>We suggest thresholds of 5% over issuance for projects smaller than 100000 CERs/annum and 2% over issuance for projects greater than 100000 CERs/annum. These thresholds are also employed under JI.</p>
<p>3. Where the review of potential significant deficiencies determines that there are no significant deficiencies no liability (including for costs of the review undertaken in section IV below) shall be imposed on any party.</p>	<p>The procedure does not show how costs are imposed to any party that has triggered a review which was finally rejected, especially if this was initiated by individuals (stakeholders, AT members). There might be tremendous costs also at the DOE side (e.g. lawyers, personnel costs) which are nowhere referred to.</p>

Text of draft procedure	Comments
<p>4. Where the review of potential significant deficiencies determines that there are significant deficiencies in any previous validation, verification or certification report(s) that are a result of the professional negligence or fraud of a designated operational entity (DOE), the DOE shall be liable to compensate for the excess issuance of CERs in accordance with section V below.</p>	<p>The term “professional negligence”, although well known, needs to be defined. It is deemed acceptable referring to the special knowledge and expertise of the addressees of this procedure (the DOEs).          Fraud is an indictable offence and any application of this procedure should be based on or result in a valid sentence by a court of law. Any investigation in that context would require criminal complaints and the inclusion of police in the affected legislation.          The expression “compensate” implies the possibility to reproduce the absolute amount of “real” emission reductions. There is “professional doubt” that this will be possible for most of such cases.</p>
<p>5. [Where the review of potential significant deficiencies determines that there are significant deficiencies in previous validation, verification or certification reports that are a result of fraud by project participant(s) which could not reasonably be expected to have been detected by the DOE conducting the validation, verification, or certification activities, the project participant(s) shall be liable to compensate for the excess issuance of CERs in accordance with section V below.]</p>	<p>Firstly, this is inconsistent with the whole CDM timeline. If a DOE detects fraud it will not request registration or issuance. Thus, the past tense has to be applied (i.e. detection after registration or issuance).          Secondly, this procedure has to be seen in connection to the modalities and procedures of the CDM, which do not yet foresee the creation of post-issuance risks to project participants, which would have negative impacts on the market. DOEs would appreciate not being penalized if they had to face fraudulent behavior of the PP(s). Nonetheless, considering the urgency for approving such a procedure we recommend treating this aspect separately.</p>
<p>6. Notwithstanding paragraphs 4 and 5 above, the quantity of excess CERs shall be limited to the number of CERs issued based on requests for issuance submitted during the last [five (5) years] prior to the date of the Board’s decision to initiate a review less the number of CERs that the review of potential significant deficiencies determines should have been issued over the same time period, except in cases of fraud where there is no limit.</p>	<p>The mentioned timeframe of five years is too long. Furthermore, while this paragraph limits the amount of CERs that might have to be paid back to what has been issued over the last X years, it does not contain an expiration of liability arising from validations. There needs to be an expiration of liability arising from validation activities. Otherwise, the involved risk for validating DOEs becomes unworkable.          Penalties (regarding issuance) should only be applicable after this procedure is in force, the quantity of excess CERs issued should be calculated for the requests for issuance submitted in the last two years (moving to 3 if necessary.) 5 years gives far greater liability.          Review of significant deficiencies in validation should be triggered only for projects which were submitted to UNFCCC after Validation and Verification Manual (Version 1) was enforced by the CDM Executive Board (after November 2008) because this the first instance when the CDM EB’s guidance tools/ procedures were enforced as a ‘Standard’.</p>
<p>7. The DOE shall ensure that corrections are made, in accordance with section V below, to all relevant reports affected by the significant deficiencies determined by the review referred to in paragraph 4 above.</p>	<p>The need for correcting validation and verification reports is not understandable and would rather create confusion among market participants. Issuances will not be voided retroactively by this procedure and all CERs ever issued will remain valid. Thus reference should remain to the original requests for registration and requests for issuance, while no alternative request for registration or issuance will be submitted as result of this procedure. There is no need for ex-post corrections of reports, an obsolete burden to the anyway penalized DOE. Such a requirement would result in a huge amount of technical issues when preparing new reports (from format over applicable guidance versions to missing data). Implications on future requests are not affected when deleting this requirement.</p>

Text of draft procedure	Comments
<p>8. The following parties may make a submission identifying potential significant deficiencies in previous validation, verification or certification report(s):</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) A CDM assessment team during the conduct of an assessment of a DOE in accordance with the Procedure for accrediting operational entities by the Executive Board of the clean development mechanism;</li> <li>(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;</li> <li>(d) Any designated national authority (DNA) that has authorized a project participant in a CDM project activity or PoA;</li> <li>(e) The DOE that originally produced the validation, verification or certification report; or</li> <li>(f) Another stakeholder [directly and individually concerned with potential significant deficiencies related to a particular CDM project activity or PoA].</li> </ul>	<p>8b) the AT is considered inappropriate and only the AP is deemed acceptable. The AT may report such cases to the AP, which considers the further processing</p> <p>8 (c) The chance given for other DOEs to be able to submit a request for review may undermine the good understanding and professionalism among DOEs. Furthermore, this paragraph provides a strong incentive for verifications to be conducted by the validating DOE for SSC activities.</p> <p>8 f) is left this way it opens the door for unjustified, endless procedures initiated by opponents of the CDM comparable to the recent misuse in the global stakeholder consultation process.</p>
<p>9. A submission setting out the potential significant deficiencies identified via paragraph 8(c)-(e) 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.</p>	<p>The DOE should be notified already at this stage.</p>
<p>10. In the case of self-declaration by the DOE referred to in paragraph 8(e) above, the submission shall contain any relevant corrected validation, verification or certification reports as well as 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.</p>	<p>See comment under paragraph 7 concerning the need for corrected reports.</p> <p>Furthermore:        "...as well as any relevant monitoring reports...": The process would require the involvement of PP (to revise the PDD or monitoring reports / .calculation sheets) which is practicably not feasible to be organized by a DOE.</p>
<p>11. 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.</p>	<p>The DOE cannot respond within 28 days, as gathering of additional information may require additional onsite visits, legal implications may require the involvement of lawyers, etc. A minimum time period of three months appears to be more realistic.</p> <p>In the case of self-declarations this step seems unnecessary. We would add at the start, "Save in the case of self-declarations referred to in paragraph 10 above,"</p>
<p>12. 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:</p> <ul style="list-style-type: none"> <li>(a) No action is required because the information provided and the DOE's response does</li> </ul>	<p>We suggest amending paragraph 12 to read "Within 14 days of receipt of the DOE's response or receipt of a self-declaration referred to in paragraph 10 above..."</p>

Text of draft procedure	Comments
<p>not support the possible existence of potential significant deficiencies. In this case, the secretariat shall proceed in accordance with paragraph 13 below;</p> <p>(b) No review is required because the DOE has admitted potential significant deficiencies. In this case, the secretariat shall proceed in accordance with paragraph 14 below; or</p> <p>(c) A review is required because the information provided in the submission and the DOE's response supports the possible existence of potential significant deficiencies. In this case, the secretariat shall proceed in accordance with paragraphs 15 -16 below.</p>	
<p>13. 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, and submit it to the Chair of the Board for approval. If no objection is received from the Chair of the Board within seven (7) days, the summary of findings and the recommendation shall be deemed accepted by the Board. If the Chair of the Board objects to the recommendation, it shall be placed on the agenda of the next Board meeting for its consideration.</p>	<p>This paragraph and others should include the continuous notification of DOEs about the current status.</p>
<p>14. In the cases of DOE admission, referred to in paragraph 8(e) above and where the DOE's response under paragraph 11 above admits the existence of significant deficiencies and the documents referred to in paragraph 10 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 V below, and submit them to the Chair of the Board for approval. If no objection is received from the Chair of the Board within seven (7) days, the recommendation shall be deemed accepted by the Board. If the Chair of the Board objects to the recommendation, it shall be placed on the agenda of the next Board meeting for its consideration.</p>	<p>Approval by a single person (the Chair of the Board) might be considered problematic (e.g. conflict of interest situation). Furthermore the summary of findings should be submitted first to the DOE in order to confirm its admission. Otherwise an unknown text would imply this confirmation.</p>
<p>15. 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:</p> <p>(a) The proposed membership of the review team<sup>3</sup> that shall undertake the review of potential significant deficiencies;</p> <p>(b) The relevant validation, verification and certification reports to be examined by the review;</p> <p>(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;</p> <p>(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</p> <p>(e) If possible, an estimate of any excess issuance of CERs that may have occurred as a result of the potential significant deficiencies.</p>	<p>Paragraph 15 (d) In case the review team has not the experience of the actual situation at the time of the Val/Ver activity, any interpretation is only subjective and influenced by new guidelines and requirements. The information on "...requirements in effect at the time of ..." should be made available to DOE and the review team beforehand as well as the interpretation of the secretariat on the requirements.</p> <p>It must be emphasized that prior to the adoption of the VVM on 28 November 2008, there were no clear requirements for how a DOE shall perform validations and verifications. As such, no DOE can be accused of professional negligence for validations and verifications performed prior to 28 November 2008. Validations and verifications performed prior to 28 November 2008 shall thus not be subject to any review, or in case they are subject to a review, the review may result in the project no longer being allowed to have future issuances, but no liability shall be imposed on the DOE.</p>
<p>16. 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,</p>	<p>A clear information path and possibility for an appeal shall be given to the DOEs.</p>



Text of draft procedure	Comments
<p>recommendation and the scope of review within 20 days, they shall be deemed accepted by the Board.</p>	
<p>17. If a member of the Board wishes to object to the summary of findings, recommendation or the scope of review, 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.</p> <p>18. If a member of the Board objects to the summary of findings, recommendation or the scope of review more than 14 days prior to the next Board meeting, the summary of findings, 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.</p>	-
<p>19. 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.</p>	<p>There should be an obligation upon the secretariat to keep the DOE and other relevant parties informed of any decisions made.</p>
<p>20. 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:</p> <ul style="list-style-type: none"> <li>(a) Establish the review team to undertake the review of potential significant deficiencies;</li> <li>(b) Notify the project participants and the DOE of the initiation of review;</li> <li>(c) Make publicly available the Board's decision to initiate the review and the scope of review on the UNFCCC CDM website;</li> <li>(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.</li> </ul>	<p>It has not been defined who can be/will be part of the review team, meaning EB, AT members, external staff?</p> <p>Furthermore making such a case publicly available with reference to an individual DOE (especially if not suspended) will create reputational damage, while a decision on a case can only be made after the review. We do not expect that somebody is willing to determine and to impose resulting damages to any party.</p> <p>20(d) This should not only be limited to validation reports being the scope of review but should also cover verification reports.</p>
<p>21. 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:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(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.</li> </ul>	<p>The 28 days period needs to be extended here and in other paragraphs where it appears (compare above).</p>
<p>22. 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. Only one such request shall be allowed. In this case, the DOE shall provide the contact details of the person to be called with preferred time slots.</p>	<p>We welcome the chance to be able to have a telephone conference with the review team if necessary. However, constraining to just one opportunity should be revised. A Gantt diagram with the milestones and timelines of the process would be welcome.</p>

Text of draft procedure	Comments
The review team shall fix a call appointment within three (3) days of receipt of the request. The secretariat shall record the call.	
23. 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.	-
Paragraphs 24 – 27	No comments
28. 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.	Paragraph 28 and paragraph 34 can be combined.
Paragraphs 29 – 36	No comments
<p>37. In accordance with the decision made under paragraphs 14, 31 or 35 above, the secretariat shall do the following:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) Require the DOE responsible for the occurrence of the significant deficiencies 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;</li> <li>(c) Require the DOE responsible for the occurrence of the significant deficiencies to pay the costs of the review in accordance with paragraph 41 below;</li> <li>(d) [Where the significant deficiencies in the validation report are due to fraud by a project participant(s), require the project participant(s) to contract a DOE to make all necessary corrections to the validation, verification or certification report(s) in accordance with the assessment report, and] [Option 1: request the project participant(s) responsible for the fraud to transfer an equivalent amount of ERUs, CERs, AAUs and/or RMUs equal to the excess CERs issued into the cancellation account in the CDM registry within a timeframe decided by the Board, and notify the project participant(s) that unless such a transfer is made an equivalent number of CERs from a future issuance of CERs for the CDM project activity or PoA will be forwarded to a cancellation account by the CDM registry administrator within 90 days or another timeframe decided by the Board taking into account the circumstances of each case.] [Option 2: notify the project participant(s) of the number of CERs that shall be deducted from future issuance for the specified project activity or PoA;</li> </ul>	<ul style="list-style-type: none"> <li>a) See comments to paragraph 7</li> <li>b) There would be other possibilities than an estimate of excess CERs to determine the amount of penalty (see alternative approach presented under our annex 1, general comments). The given procedure may run endlessly.</li> <li>c) -</li> <li>d) See comments to paragraph 5</li> </ul>

Text of draft procedure	Comments
<p>and/or] [Option 3: notify the project participants that no future issuances of CERs for the project activity or PoAs shall be allowed;4]</p> <p>(e) 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.</p>	<p>e) This is obsolete as covered under other standards (activity changes)</p>
<p>38. Where the significant deficiencies in the validation, verification or certification report(s) are due to fraud by the DOE, the Board shall 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).</p>	<p>This paragraph contradicts the common understanding achieved during the integrated workshop among all participating parties. The automatism prescribed by the “shall” will disable the EB to consider the actual circumstances. We could accept a “may” or inclusion of a provision as follows:        ...if the DOE can show that the fraud refers to one or several specific employees the DOE shall expel these employees and take legal and corrective actions to assure the avoidance of further fraud activities, but shall not be suspended.</p>
<p>39. 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.</p>	<p>This paragraph should include a timeline during which the summary is be published. Furthermore, entities which are found liable should be informed prior to publishing the summary.</p>
<p>40. If a DOE fails to respond to a scope of review within 28 days in accordance with paragraph 21 above, or fails to comply with the directions under subparagraphs 37(a) - (b) above, the Board shall suspend the DOE’s accreditation in accordance with the CDM accreditation procedure until such time as it complies.</p>	<p>-</p>
<p>41. Costs relating to the review referred to in section IV above shall be borne by the party found to be responsible for the significant deficiencies.</p>	<p>Procedural costs e.g. cost for lawyers and internal costs should also be referred to in this procedure. In the case of a non-proven/non-justified review, the party lodging the complaint should bear the whole cost</p>
<p>Footnote 3:        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.</p>	<p>The competence shall cover all the requirements for a DOE auditor according to the standard and include further competences. The impartiality of the persons shall be assessed completely by the secretariat and by the affected DOE and the DOE shall have the right to reject any team member.</p>