



Forest Carbon Partnership Facility

Update on ERPA General Conditions

FCPF Carbon Fund Meeting (CF9)

Brussels, April 9-11, 2014

Overview

I. Roadmap for ERPA General Conditions

II. Transfer of Title to ERs

- Methodological Framework
- FCPF ERPA General Conditions (update)

III. Reversal Management Mechanism

- Methodological Framework
- FCPF ERPA General Conditions (update)

Time	Action
March 26, 2012	FCPF Carbon Fund (CF) established Carbon Fund Working Group (CFWG) to develop a Methodological Framework (MF) at CF3 (March 24-26, 2012 in Asuncion, Paraguay)
June 29, 2012	PC12 endorsed guiding principles on the MF for REDD per PC Resolution (Santa Marta, Colombia)
October 2012 & March, 2013	Meetings of the CFWG on the MF in Brazzaville and Washington DC
March 21, 2013	PC14 endorsed ERPA Term Sheet per PC Resolution requesting first draft of the ERPA General Conditions (GCs) by PC15 (June 30-July 1, 2013 in Lombok, Indonesia) with the initial objective of endorsement of ERPA GCs at PC16
June 21-23, 2013	Meeting of the CFWG on the MF in Paris
June 24-25, 2013	CF7 meeting in Paris to discuss certain issues of ERPA GCs
June 28, 2013	Pre-PC15 Workshop (Lombok, Indonesia) on ERPA GCs
June 30-July 1, 2013	Presentation of first draft of the ERPA GCs at PC15 (Lombok, Indonesia)

Time	Action
October 26-28, 2013	Meeting of the CFWG on the MF in Oslo
December 5-6	Meeting of the CFWG on the MF in Paris
December 8-9	CF8 meeting in Paris; approval of the MF
December 12, 2013	Pre-PC16 Workshop (Geneva, Switzerland) on Implications of MF on ERPA GCs
December 13-15, 2013	PC16 (Geneva, Switzerland) on Implications of MF on ERPA GCs
January-March 2014	Revision of the first draft of the ERPA GCs (in progress)
April 9-11, 2014	CF9 meeting in Brussels
April-June 2014	Videoconferences for PC members/Observers regarding crucial issues related to the draft of the ERPA GCs

Time	Action
June 2014	CF10
July 2014	PC17 (Lima, Peru); presentation of cornerstones of ERPA GCs (potentially with Pre-PC17 workshop)
August-October 2014	(Potentially) additional explanatory sessions on ERPA GCs (primarily for PC members with ER-PINs selected by the Carbon Fund)
November/December 2014	PC18 (tbd); endorsement of ERPA GCs by PC



Transfer of 'Title to ERs'

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- Methodological Framework -

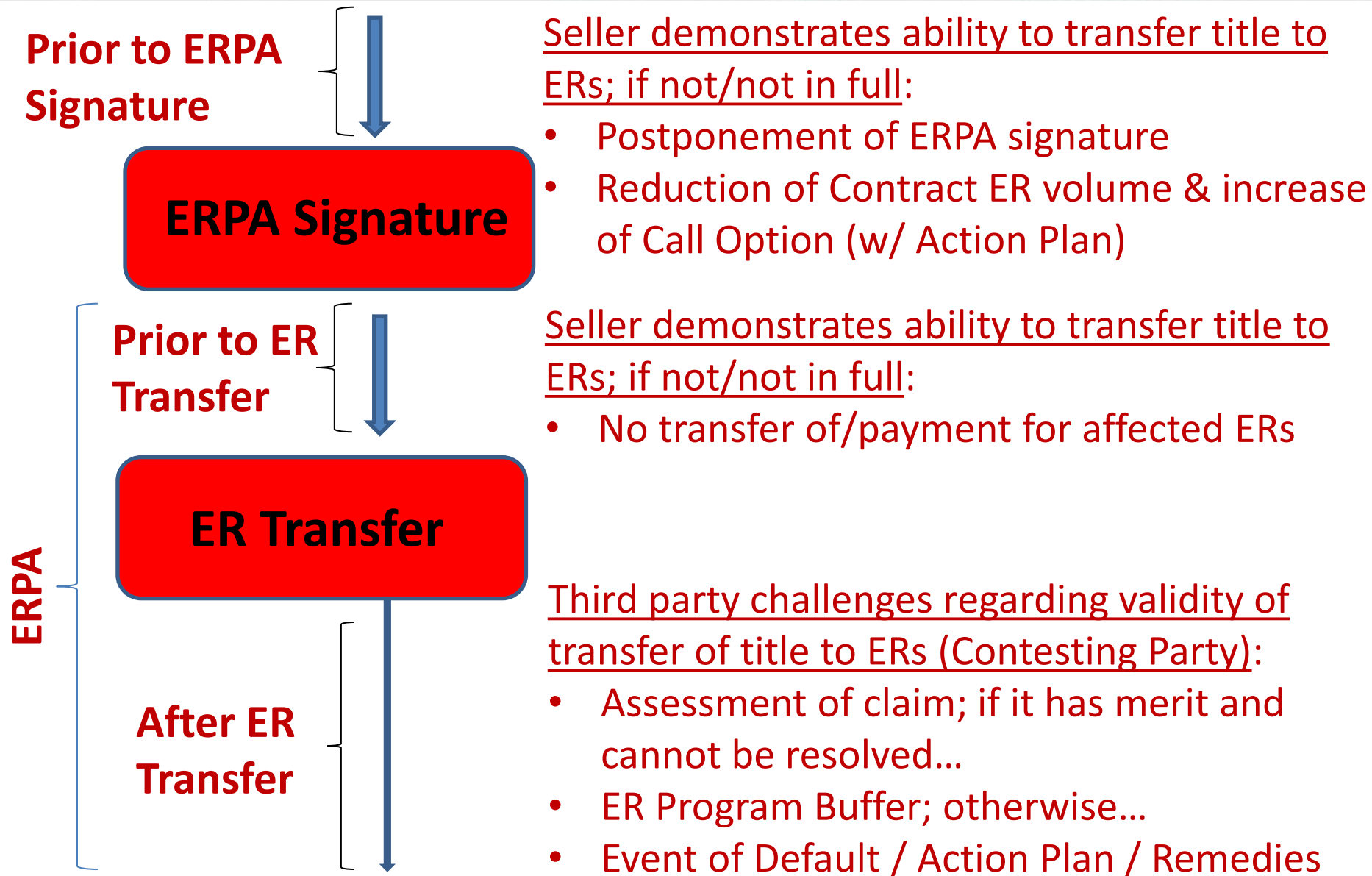
- **Indicator 36.2:** The ER Program Entity demonstrates
 - its ability to transfer Title to ERs
 - while respecting the land and resource tenure rights of the potential rights-holders, including Indigenous Peoples (i.e., those holding legal and customary rights, as identified by the land and resource tenure assessment conducted in the Accounting Area).
 - The ability to transfer Title to ERs may be demonstrated through various means, including e.g.:
 - reference to existing legal and regulatory frameworks,
 - sub-arrangements with potential land and resource tenure rights-holders (including those holding legal and customary rights), and
 - benefit-sharing arrangements under the Benefit-Sharing Plan.

Transfer of 'Title to ERs'

- Methodological Framework -

- **Indicator 36.3:** The ER Program Entity has to demonstrate its ability to transfer Title to ERs either
 - prior to ERPA signature, or at the latest,
 - at the time of ER Transfer.
 - Prior to ER Transfer, if this ability to transfer Title to ERs is still unclear or contested, an amount of ERs proportional to the Accounting Area where title is unclear or contested shall not be sold or transferred to the Carbon Fund.
 - After ER Transfer, if Title to ERs becomes contested, the ERPA should provide for appropriate remedies, including the potential use of a buffer reserve.

Process of Transfer of 'Title to ERs'



Transfer of 'Title to ERs'

- Prior to ERPA Signature -

- Seller has to provide Carbon Fund with **evidence demonstrating its ability to transfer Title to ERs.**
 - Question: What is the required level of scrutiny?
 - Carbon Fund may contract external adviser to help assessing such evidence
- If Carbon Fund determines that **Seller did not, fully or partially, demonstrate its ability to transfer Title to ERs:**
 - Buyer may **postpone ERPA signature** until further progress can be demonstrated (if the affected amount of ERs is significant)
 - Otherwise:
 - (Initially anticipated) **ERPA Contract ER volume may be reduced** accordingly
 - Reduction amount may be included in a **Call Option**
- In addition, Seller and Buyer may **agree on additional steps (Action Plan)** to maximize Seller's ability to transfer Title to such ERs at the time of ER Transfer:
 - Agreement on the Action Plan could become a **Condition Precedent for Sale and Payment** under the ERPA, and
 - Certain progress made regarding the implementation of such Action Plan could become a **milestone** for any advance payments to be made prior to ER Transfer

Transfer of 'Title to ERs'

- Prior to ER Transfer -

- Seller has to provide Carbon Fund with **(updated) evidence demonstrating its ability to transfer Title to ERs.**
 - Carbon Fund may contract external adviser to help assessing such evidence
- If Carbon Fund determines that **Seller's ability to transfer Title to ERs is still partially unclear:**
 - No transfer/purchase of such affected ERs
- If Carbon Fund determines that **Seller's ability to transfer Title to ERs has been partially contested:**
 - **Buyer may allow Seller to resolve the Title issue with the contesting party within specified time period** (e.g. through grievance redress mechanism).
 - **If Seller can resolve the Title issue** within specified time period, ER Transfer of the affected ERs can proceed.
 - **If Seller cannot resolve the Title issue** within that specified time period, such affected ERs shall not be transferred/purchased. Seller may continue to try to resolve the Title issue prior to the next ER Transfer.

Transfer of 'Title to ERs'

- After ER Transfer -

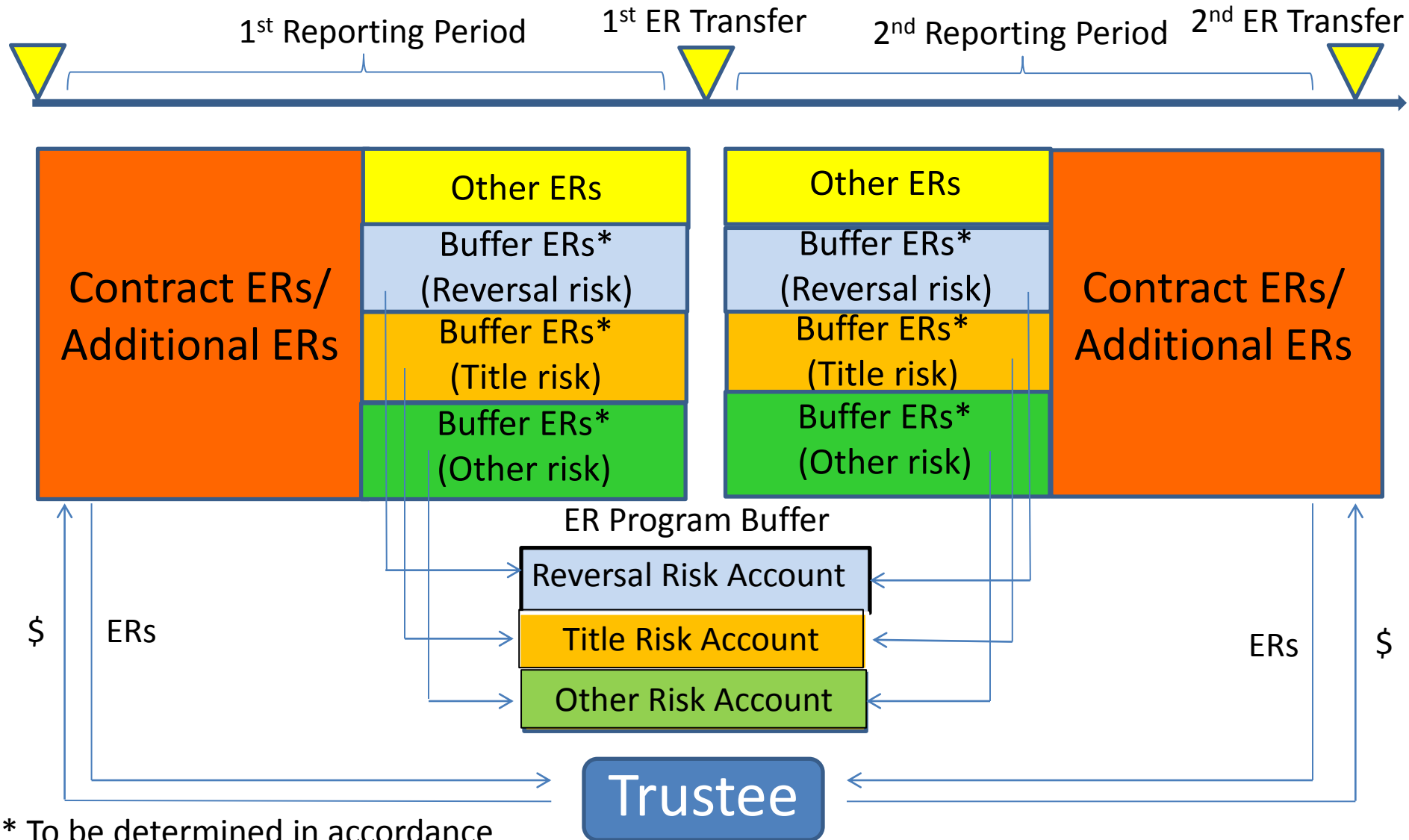
- If any **third party or group contests** Seller's ability to transfer Title to any previously transferred ERs, the following procedures could apply:
 - Seller shall be allowed to resolve Title issue with contesting party **within specified time period** (potentially by using an available grievance redress mechanism under the ER Program).
 - If the Title issue cannot be resolved within specified time period, Buyer (potentially with help of external adviser) assesses whether or not allegations by the contesting party **appear 'on its face' (*prima facie*) to have merit** under domestic law.
 - If such assessment concludes that contesting party's **allegations seem to have no merit**, no further action would be deemed necessary.
 - If such assessment concludes that contesting party's **allegations do have merit**, contesting party's alleged failure to transfer Title to the contested ERs would constitute a **Title Transfer Failure**, which, **unless** cured through the **ER Program Buffer**, would be an **Event of Default**.

Transfer of 'Title to ERs'

- After ER Transfer (*continued*) -

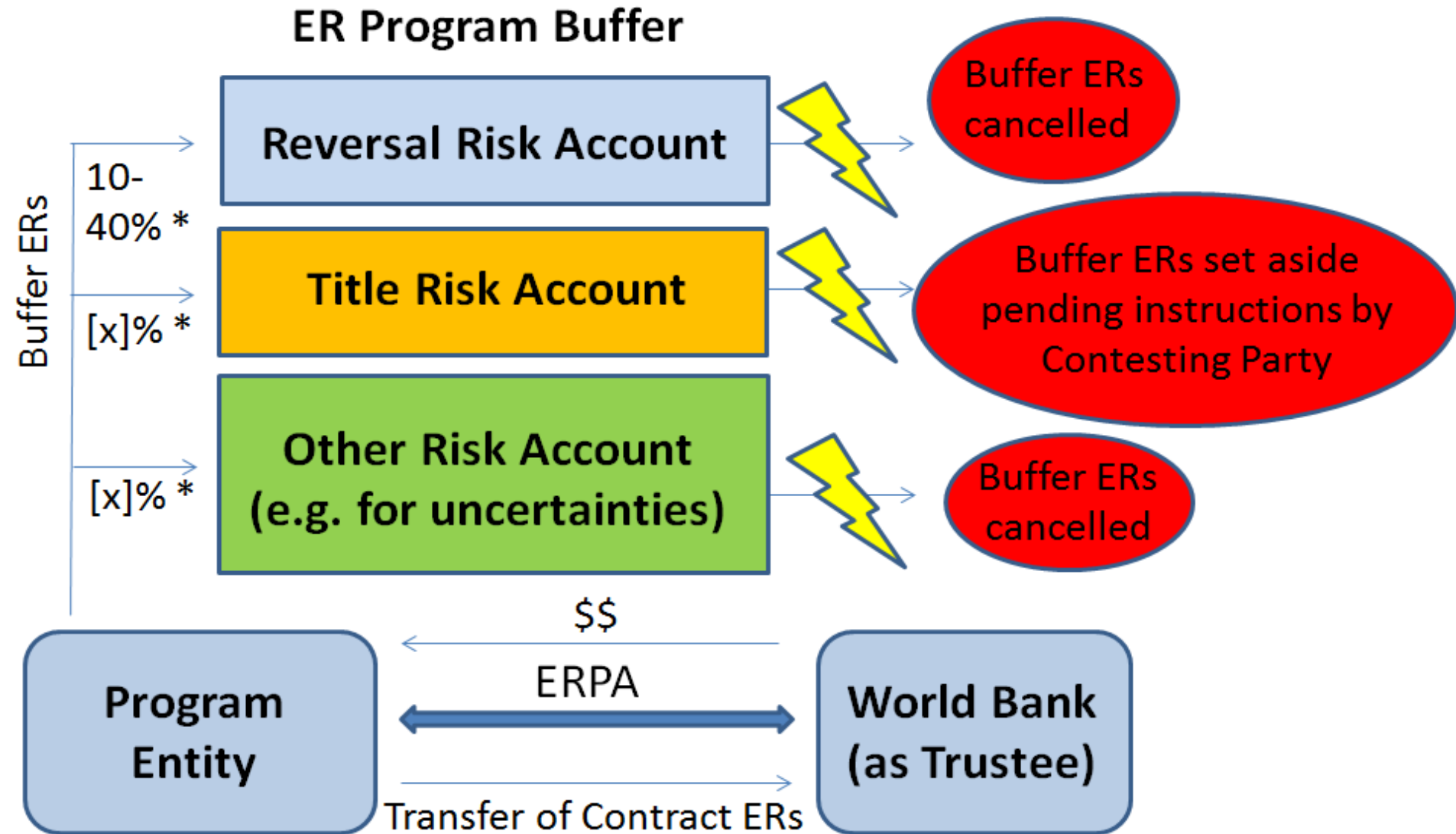
- In the event ER Program Buffer does not exist or does not suffice to cover such contested ERs in full, the Buyer may issue a **Default Notice** and either
 - Allow the Seller to **cure the (remaining) Title Transfer Failure** during a 90-day cure period, or
 - Agree with Seller on an **Action Plan** process to **cure the (remaining) Title Transfer Failure** during a specified time period (e.g. by way of having Seller and contesting party agree on including the contesting party in the Benefit Sharing Plan in return for an express assignment of Title to the contested ERs from the contesting party to the Seller).
- If Seller is able to cure Title Transfer Failure within prescribed time period no further action would be deemed necessary.
- If Seller fails to cure Title Transfer Failure within prescribed time period, Buyer may decide to enter into a (**new**) **Action Plan** with Seller **or** to exercise the **following remedies**:
 - **Exclude the relevant area of land** from the Accounting Area.
 - If the amount of such contested ERs equals or exceeds [x]% of the ERPA Contract ER volume, **terminate the FCPF ERPA**.

How ER Program Buffer May Work (1)



* To be determined in accordance with Risk Assessment Tool prior to each ER Transfer

How ER Program Buffer May Work (2)



* Percentage relates to transferred Contract ERs/Additional ERs and is determined in accordance with Risk Assessment Tool



Reversal Management Mechanism

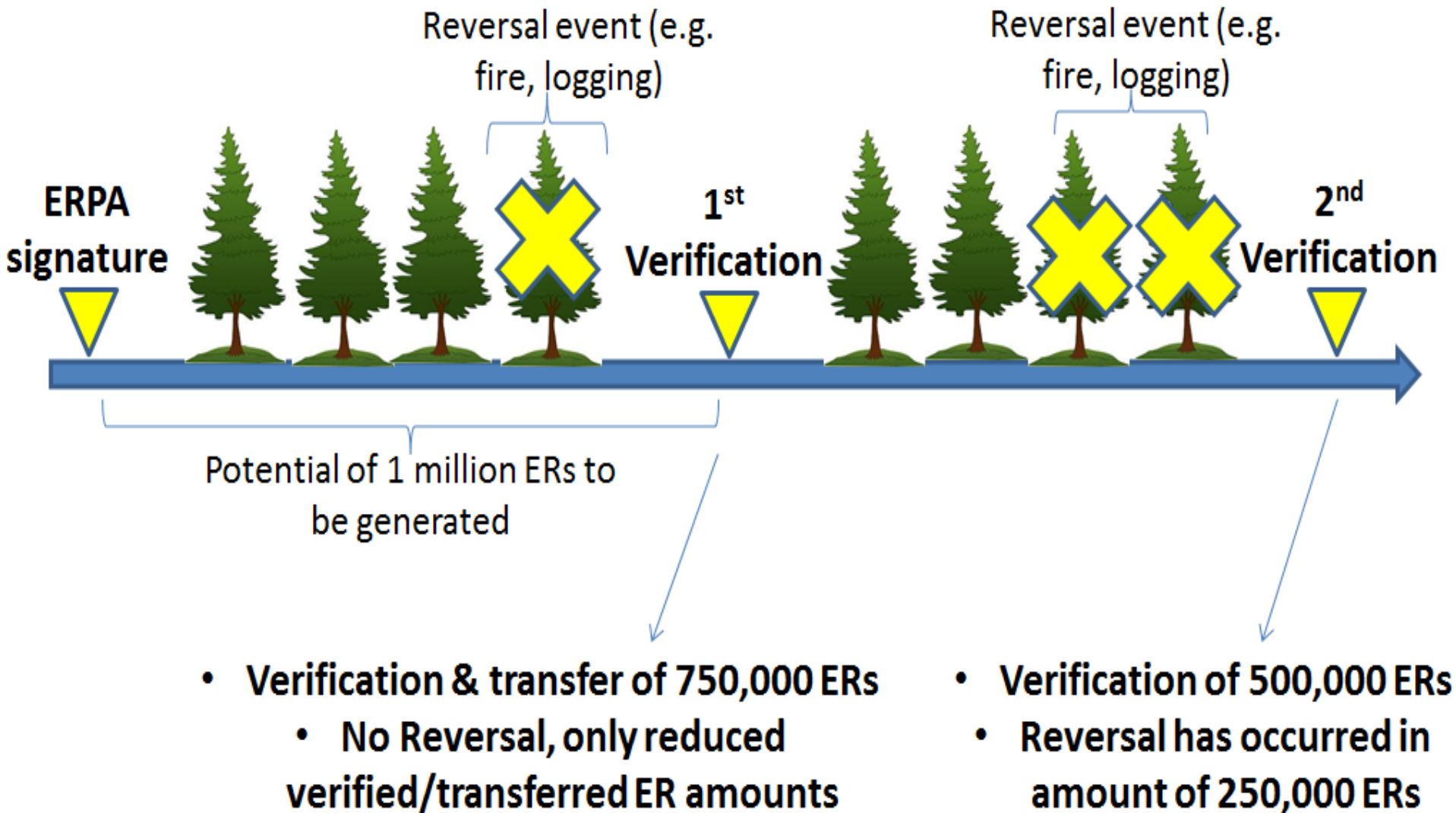
Reversal Management Mechanism

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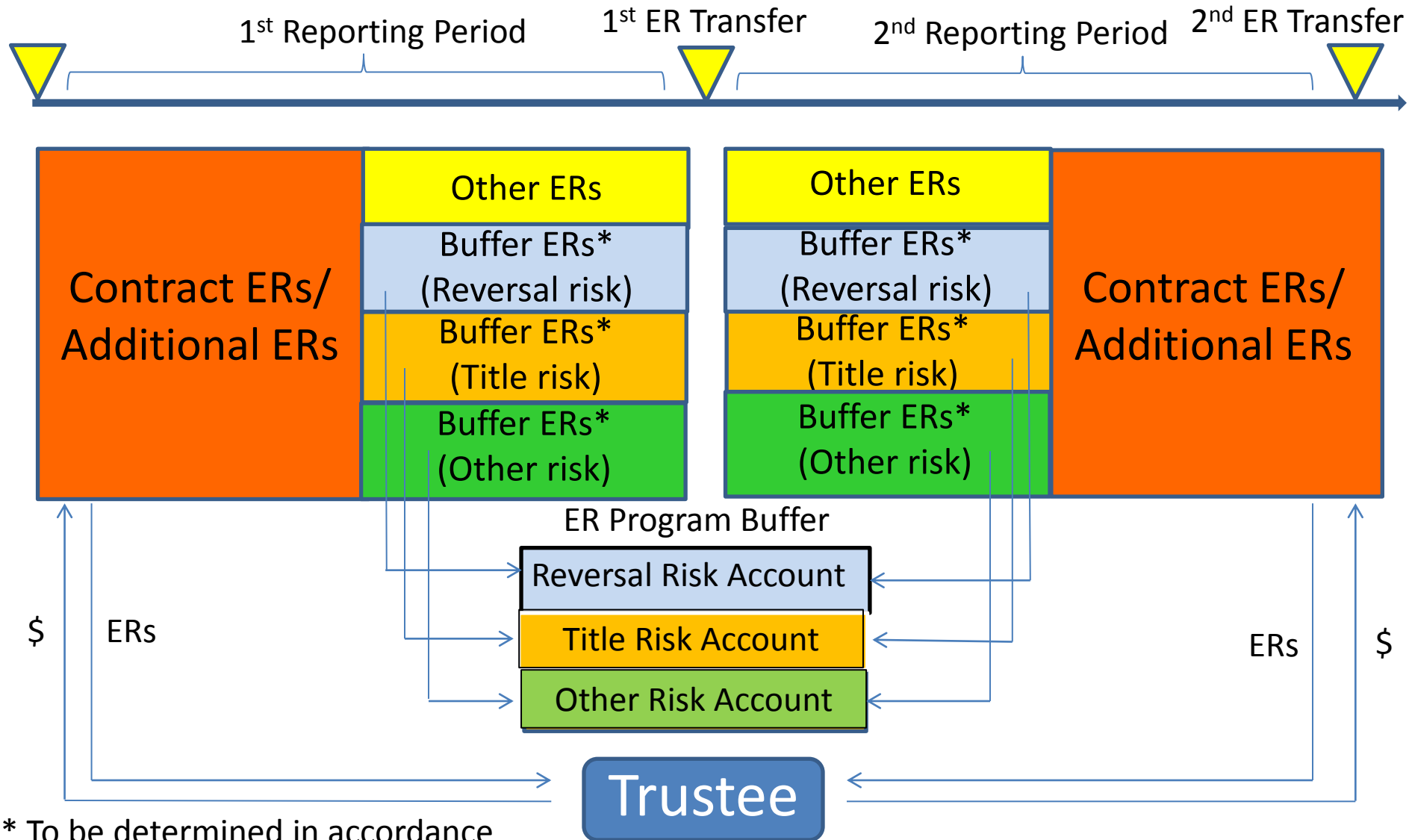
- Methodological Framework -

- **Indicator 19.1:** During the Term of the ERPA, the ER Program accounts for Reversals from ERs using one of the following options:
 - **Option 1: a Reversal Management Mechanism** (e.g., buffer reserve or insurance) that is substantially equivalent to the Reversal risk mitigation assurance provided by Option 2.
 - **Option 2 (default option):** an **ER Program Buffer** into which ERs from the ER Program are deposited to cover any potential future Reversals in the Accounting Area and which is managed by or on behalf of the Carbon Fund. In the event of a Reversal during the Term of the ERPA, ERs deposited in the ER Program Buffer (Buffer ERs) will be cancelled equivalent to amount of transferred ERs affected by the Reversal, provided that Seller is in full compliance with its ERPA obligations.

When does a 'Reversal' occur ?

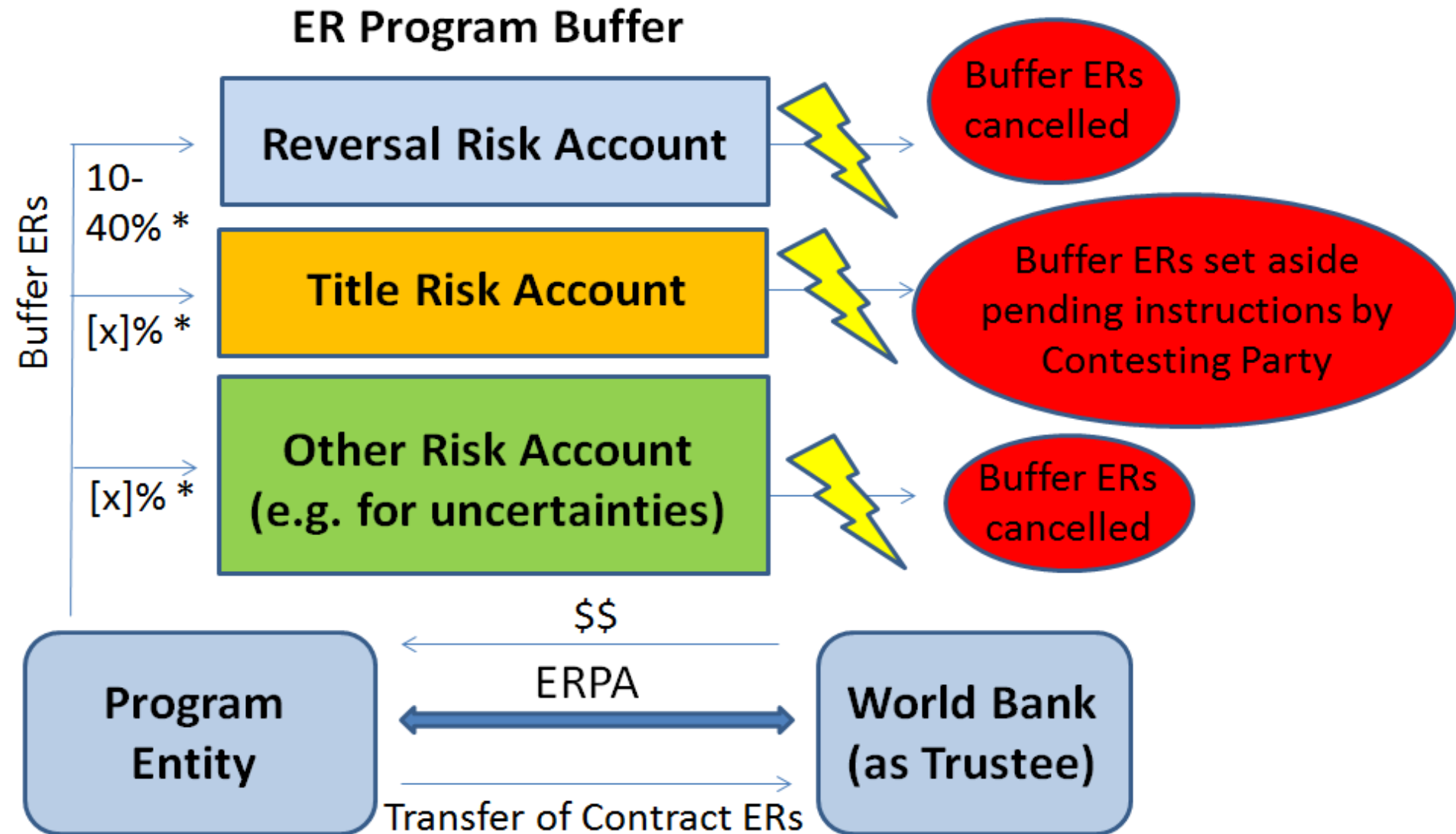


How ER Program Buffer May Work (1)



* To be determined in accordance with Risk Assessment Tool prior to each ER Transfer

How ER Program Buffer May Work (2)



* Percentage relates to transferred Contract ERs/Additional ERs and is determined in accordance with Risk Assessment Tool

Reversal Management Mechanism - Methodological Framework -

- **Criterion 20:** Provides incentives for the Seller to establish a Reversal Management Mechanism beyond ERPA term (**Post-ERPA Mechanism**):
 - **At the latest 1 year before Term of ERPA ends**, Seller should have in place a robust Post-ERPA Mechanism to addresses risks of Reversals beyond ERPA term.
 - If Post-ERPA Mechanism allows for use of Buffer ERs, **all or a portion of the remaining Buffer ERs** in the ER Program Buffer at the end of the ERPA term will be **transferred to that Post-ERPA Mechanism**.
- If **no Post-ERPA Mechanism** is in place 1 year before ERPA term ends, **all remaining Buffer ERs** in the ER Program Buffer will be **cancelled**.

Reversal Management Mechanism

- FCPF ERPA General Conditions -

A. CONDITION PRECEDENT FOR SALE AND PURCHASE

- Unless a Reversal Management Mechanism is in place at ERPA signature, the establishment of a **Reversal Management Mechanism** could become a Condition Precedent for Sale and Payment under the ERPA.

B. COVENANTS (GENERAL)

- The Seller would have to:
 - Implement and operate the Reversal Management Mechanism in accordance with **best practices**
 - **Inform** the Trustee if events occur that have the potential to (1) result in a Reversal and/or (2) negatively affect the risk mitigation assurance level provided by such mechanism
 - **Report** on the status of the Reversal Management Mechanism periodically

Reversal Management Mechanism

- FCPF ERPA General Conditions -

C. COVENANTS ('ER PROGRAM BUFFER'-SPECIFIC)

- If 'ER Program Buffer' is the Reversal Management Mechanism, at **each time of ER Transfer**, Seller would **deposit** additional amount of ERs (equivalent to **10-40%** of the amount of ERs transferred to the Carbon Fund) **into the ER Program Buffer** as Buffer ERs.
- Buffer ERs would be **different from** and **additional to** Contract ERs and Additional ERs.
- **No extra payment** would be required for Buffer ERs.
- Buffer ERs are **non-transferable**.
- ER Program Buffer covers **intentional and un-intentional Reversal events**, provided that Seller is in full compliance with its ERPA obligations.

Reversal Management Mechanism

- FCPF ERPA General Conditions -

D. REMEDIES

- In the event of a Reversal during the ERPA term, any **Reversal Management Mechanism** put in place will be **used** to ensure that validity of any previously transferred ERs remains unaffected.
- **In case of an ER Program Buffer**, an amount of **Buffer ERs** equivalent to the amount of previously transferred ERs that is affected by the Reversal would be **released** and **cancelled**.
- If the Reversal Management Mechanism **does not suffice** to ensure the continued validity of all previously transferred ERs during the ERPA term, the Buyer may issue a **Default Notice** and either
 - Allow the Seller to **cure the Reversal** during a 90-day cure period, or
 - Agree with Seller on an **Action Plan** process **to cure the Reversal** during a specified time period (e.g. by way of having Seller cancel other ERs generated under the ER Program that are neither Contract ERs nor Buffer ERs under the ERPA).

Reversal Management Mechanism

- FCPF ERPA General Conditions -

D. REMEDIES (*continued*)

- If Seller is able to cure Reversal within prescribed time period no further action would be deemed necessary.
- If Seller fails to cure Reversal within prescribed time period, Buyer may decide to enter into a **(new) Action Plan** with Seller **or** to exercise the **following remedies**:
 - **Terminate the FCPF ERPA**
 - Request payment of **incurred Costs/unrecovered advance payments**
 - [Request **liquidated damages**: e.g. ER unit price X amount of transferred ERs that remain affected by the Reversal event]

Next Steps

- The FMT will present the ERPA General Conditions in a more simplified manner at the next PC17 (July 2014, Lima (Peru))
- The FMT would appreciate it if the target date for PC endorsement of the ERPA General Conditions is moved from PC17 to PC18 (November/December 2014)
- The FMT will organize a pre-PC17 workshop
- Prior to PC17, the FMT will organize targeted information sessions for countries by video-conference, especially for countries under consideration of the FCPF Carbon Fund



THANK YOU