

Independent Citizens' Oversight Committee



Proposed Amendments to Loan Administration Policy

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San Francisco

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Background

- Two sets of proposed amendments are identified on mark-up of the Loan Administration Policy
 - First set of changes were approved by ICOC in 2010 and are still reflected as proposed changes because they are pending final approval by the Office of Administrative Law
 - Second set of changes are for consideration today and these are highlighted in yellow.
- IP and Industry Subcommittee met May 8, 2012 and by unanimous vote of those present passed a motion recommending approval of the second set of changes which are addressed today



Summary

- Purpose section added (p.1)
 - recognizes the importance of industry participation and the need to fund companies that would not likely qualify for a commercial loan
- Net Commercial Revenue definition (p.3)
 - Excludes pre-commercial milestones
- Financial Services Provider (I.E.3,p4)
 - As a result of proposed amendment, financial due diligence activities may be performed internally or through a third party



Summary

- Eliminated certain provisions which overlap with IP regulations to ensure consistency, for example
 - that Loan Recipient is responsible for ongoing obligations under IP regulations, as applicable (p.7 & 8)
 - successor in interest lang. which is in IP regulations (p.9)
- In the event a project supported by a Product Backed Loan is terminated, Loan Recipient may retain revenue (e.g. from licensing) equal to 50% of third party costs which is incurred in generating such revenue (VII.B, p.10)



Summary

- Warrants:
 - Clarified that warrants are due upon each disbursement and are calculated based on the amount of the loan disbursed (VII.D, p. 12)
 - Clarification of definition of term “fully diluted” (VII.D, p.13)
 - Clarification that cap on total warrants owed (e.g. 20% of Loan Recipients shares) is cumulative over multiple loans
 - Borrower may elect common or preferred stock (VII.D, p.13)
 - Clarified that CIRM is entitled to retain warrants regardless of project success or final disposition of the loan



Summary

- Multiple Risk Premium
 - Changed first trigger from \$10M to \$50M; paid quarterly over 18 mos (rather than 12 mos.) (pp15-16)
- Change of Control/Loan Acceleration
 - CIRM may accelerate a loan upon a change of control except in the event the surviving entity assumes the loan obligations and has shareholder equity equal to or greater than Loan Recipient's prior to change of control (p.17/18)
- Assignees have same obligations as Loan Recipient under IP regs. (p.18)



Summary

- Subordination – President to decide on a case-by-case basis as to whether to agree to subordinate to subsequent debt



Recommendation



- Approval of the Interim Regulations

