

Section 100802

CIRM Risk Premium Interim Regulation (Adopted 1.27.11)

1.0 Preface

Pursuant to CIRM's Loan Administration Policy, Loan Recipients are required to provide CIRM with stock warrants. In lieu of providing such warrants, under this interim regulation, Loan Recipients may elect to pay CIRM, as a risk premium, a multiple of the principal amount of their loan. The multiple payback owed is based on the achievement of certain revenue thresholds.

2.0 Definitions:

- 2.1. Capitalized terms which are undefined have the same meaning set forth in CIRM's Loan Administration Policy.
- 2.2. **Advisory Letter and Term Sheet** means correspondence issued by CIRM to the Loan Recipient identifying the sources of revenue streams that will be included in the definition of Product Revenue for Product-Backed Loans and Company-Backed Loans.
- 2.3. **Risk Premium Payment** means a payment due pursuant to sections 3.2 and 3.3 of this regulation.
- 2.4. **Product Revenue:** see section 3.4.

3.0 Risk Premium Payment

3.1. Election of Risk Premium Payment in Lieu of Warrants: A Loan Recipient may elect to pay CIRM the Risk Premium Payments set forth in this regulation in lieu of providing the warrants set forth in the Loan Administration Policy.

3.2. Company-Backed Loans: Subject to the conditions set forth in section 3.5, the Loan Recipient of a Company-Backed Loan shall, in addition to any other obligations it has under any CIRM loan agreement or under CIRM's Loan Administration Policy (excluding the requirement to provide warrants), pay up to three hundred percent (300%) of the principal loan amount, payable upon the achievement of certain milestone events as follows:

a. Upon generation of \$300 million of Product Revenue cumulatively, Loan Recipient shall pay to CIRM an amount equal to one hundred percent (100%) of the amount of the principal of the Company Backed Loan.

b. Upon generation of \$600 million of Product Revenue cumulatively, Loan Recipient shall pay to CIRM an amount equal to two hundred percent (200%) of the amount of the principal of the Company Backed Loan.

3.3. Product-Backed Loans: Subject to the conditions set forth in section 3.5, the Loan Recipient of a Product-Backed Loan shall, in addition to any other obligations it has under any CIRM loan agreement or under CIRM's Loan Administration Policy (excluding the requirement to provide warrants), pay up to five hundred percent (500%) of the principal loan amount, payable upon the achievement of certain milestone events as follows:

a. Upon generation of \$10 million of Product Revenue in a fiscal year, Loan Recipient shall pay to CIRM an amount equal to one hundred percent (100%) of the amount of the principal of the Product-Backed Loan.

b. Upon generation of \$300 million of Product Revenue cumulatively, Loan Recipient shall pay to CIRM an amount equal to two hundred percent (200%) of the amount of the principal of the Product-Backed Loan.

c. Upon generation of \$600 million of Product Revenue cumulatively, Loan Recipient shall pay to CIRM an amount equal to two hundred percent (200%) of the amount of the principal of the Product-Backed Loan.

3.4. Product Revenue:

a) Definition: Product Revenue shall be defined in accordance with an Advisory Letter and Term Sheet issued by CIRM following discussions with the Loan Recipient prior to the Loan Recipient's submission of its application in response to a Request for Application. Product Revenue shall include all revenue received by Loan Recipient, including royalty payments and milestone payments

b) Exclusions and Deductions: The following shall be excluded from Product Revenue in the event that they are included in the gross sales amount invoiced: (i) deductions for returns (including withdrawals and recalls), (ii) rebates or price reductions for government programs (e.g., Medicaid), (iii) volume or quantity discounts or other discounts offered at the time of invoicing, (iv) sales and other taxes directly linked to the gross sales amount. In addition, Product Revenue shall exclude, to the extent such costs were incurred in connection with the sale of a product or service included in Product Revenue, any freight and postage costs, transportation insurance, packaging materials for transporting the product, customs duties, and discounts for prompt payment or similar discounts applicable after the time of invoicing.

3.5. Conditions and Timing of Payment:

a) Upon achievement of the milestones described in Section 3.2 and 3.3, Loan Recipient shall pay CIRM the Risk Premium Payment quarterly in equal installments over 12 months starting in the first quarter following the achievement of such milestone, provided, however, that no Risk Premium Payments shall be due prior to the end of the initial term of the Loan.

b) In the even that a Product-Backed Loan is forgiven, Loan Recipient shall have no obligation to make the Risk Premium Payments unless and until the Loan is reinstated.

c) Pre-commercial revenues such as development milestone payments will trigger a Risk Premium Payment only in the event that the CIRM-Funded Project results in revenues from commercial sales and the revenue triggers in section 3.2 (for Company-Backed Loans) and section 3.3 (for Product-Backed Loans) are satisfied.

4.0. Assignment: The assignee of any CIRM-Funded Invention (as defined in CIRM's Chapter 6 – Intellectual Property and Revenue Sharing Requirements for Non-Profit and For-Profit Grantees), or successor in interest to the Loan Recipient by merger, purchase or otherwise shall have the same obligations as the Loan Recipient under the Loan Administration Policy (see Regulation 100611) and the CIRM Regulation for Risk Premium Multiple Payback Alternative. Any such assignment or transfer to a successor in interest shall be subject to CIRM's prior written approval which shall not be unreasonably withheld.

5.0 Sunset Provision: This regulation will cease to be effective as to any new loans after the July 27, 2012. Loans already entered into pursuant to this regulation shall be subject to these provisions, provided the Loan Recipient elected to make the risk premiums set forth in this chapter in lieu of providing warrants as set forth under the Loan Administration Policy.