



MEMORANDUM

TO: Members of the ICOC
FROM: C. Scott Tocher, Counsel to the Chair
RE: **Item 3:** Consideration of Amendments to Loan Administration Policy
DATE: October 25, 2010

.....

Executive Summary

Since the first meeting of the Loan Task Force in December 2007, CIRM has been working to develop policies necessary to implement a loan program. A loan program is essential to achieving the goal of commercializing stem cell research-related products, and to that end CIRM will fund for-profit institutions in California to accelerate such commercialization. In concert with the Loan Task Force, the Finance Subcommittee has further developed financial elements of the Loan Policy and advised the ICOC on those matters. In 2009 CIRM’s Governing Board adopted an interim policy and in November of 2009 the agency began the process of finalizing the Loan Policy (“policy”) for formal approval by the Office of Administrative Law (“OAL”). At the Board meeting last week, the ICOC approved amendments to the policy addressing loan terms. **At this meeting staff requests the subcommittee approve language in the policy addressing loan forgiveness and criteria for evaluation.** The amendments from this meeting will be noticed to the public and be recommended for adoption by the ICOC at its next meeting.

I. Amendments

A. Types of Support – I.D. (at p. 3)

The subcommittee and Board have determined that CIRM will not offer loans in connection with RFAs that are budgeted under \$3 million per award. The language in this section is clarified to implement the Board’s intent.

B. Reporting Related to Loan Terms – H.5. (at p. 7)

The Interim Loan Administration Policy contained several triggering events that would result in accelerated payback of the loan. Among other triggers was if the Loan Recipient had an IPO or received follow-on financing above a certain threshold. Therefore, the interim policy required loan recipients to report to CIRM when such events occurred. Subsequently, the ICOC eliminated accelerated payback of the loan and the reporting requirements of this section were amended to delete the reporting of these two events. In retrospect, however, such events remain valuable to CIRM in tracking the success of the loan program and so the reporting requirement relative to these two events is reinstated.

C. Suspension and Forgiveness of Product-Backed Loans – G. (at pp.10-11)

The interim policy contained provisions that governed “Project Abandonment” and loan forgiveness. These provisions described the circumstances under which a loan recipient would be allowed to suspend its repayment obligations. The proposed amendments clarify how and under what circumstances a Product-Backed loan will be forgiven. The amendments provide for automatic forgiveness upon the satisfaction of three criteria: 1) compliance with all reporting requirements; 2) abandonment of the project; and 3) failure to obtain at least one market authorization (or otherwise fails to generate revenue).

Subpart (b) describes the mechanism by which a forgiven loan will be reinstated. In the event the Borrower receives revenue from the project, the loan will be reinstated automatically on terms that the Finance Subcommittee shall approve. In addition, if the revenue received is less than the amount owed on the loan, the Borrower remains eligible for forgiveness of the remaining amount of the loan.

D. Loan Application Process – J. (at p. 12)

In addition to scientific merit, the ICOC may decline a loan application on financial grounds. This section is amended to clarify the process for an applicant to select either a Company- or Product-Backed Loan and describes the criteria under which the loan will be evaluated.

“**Decision 1**” offers optional language describing the grounds for rejection of a loan by the ICOC. **Option A** provides denial of a loan on “one or more legal or financial grounds” and includes a non-exhaustive list of examples: bankruptcy, insolvency, failure to meet industry standards for financial practices or adhere to generally accepted accounting principles. By making the list non-exhaustive, **Option A** provides the ICOC with flexibility in determining whether to fund a loan. **Option B** contains similar criteria for rejection of a loan, but restricts the ICOC only to the named criteria. **Staff recommends Option A:** While the restrictive list in Option B may appeal to certain potential loan applicants, staff recommends preserving the ICOC’s flexibility to address unforeseen circumstances as embodied in Option A.

II. Recommendation:

Staff recommends the ICOC approve the amendments to the loan policy.