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## M E M O R A N D U M

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**TO:** INTELLECTUAL PROPERTY AND INDUSRTY  
SUBCOMMITTEE

**FROM:** ELONA BAUM AND SCOTT TOCHER

**SUBJECT:** PROPOSED AMENDMENTS TO LOAN ADMINISTRATION  
POLICY

**DATE:** MAY 1, 2012

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In 2009 CIRM's Governing Board adopted an interim Loan Administration 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"). That process was finalized at the end of 2010. In May of last year, the ICOC considered draft amendments to the policy and instructed staff and the Intellectual Property and Industry Subcommittee to consider those and other amendments to further clarify the develop the policy. That process has been initiated with OAL after a meeting to consider the first round of amendments.

For consideration today is a second round of amendments to the LAP for final review and recommendation to the ICOC for final adoption. Because these amendments have not been finally approved by the Office of Administrative Law, they are identified on the attached in track changes. The newest proposed amendments, which have not yet been approved by the ICOC, appear in track changes and are highlighted. Some of these are clarifying amendments and others are more substantive and deserve specific consideration. The proposed amendments that are more substantive in nature and warrant specific consideration are marked with an asterisk.

**1. \*PURPOSE. Page 1.**

This section is new and consolidates statements made in Proposition 71, CIRM's Intellectual Property (IP) FAQ, and other IP policy documents. The intent is to provide guidance in developing and interpreting the policy.

**2. \*Definition of Net Commercial Revenue – Page 3**

- a. Amendment excludes revenue obtained from an upfront or milestone payment made in connection with a development agreement.
- b. Broadly defined to apply to sales revenue from not only Drugs but also the licensing of any methods, CIRM Funded Technology (which includes data and know how) and revenues from services.

3. Types of Support (Section I.D)

Clarifying amendment; changes to reflect practice of identifying within the RFA as opposed to the Concept Plan presented to the ICOC whether the award to a For-Profits is in the form of a loan as opposed to a grant.

4. **\*Roles and Responsibilities (Section I.E) – Page 4**

This change is made to allow flexibility with respect to the due diligence function. The regulation states that we will charge the expense of the use of an outside party to conduct due diligence and monitor the loan. A slight change of the verbiage to reflect that in the future we may decide to conduct such due diligence with our own internal resources. At a subsequent Subcommittee meeting we will address performing this function in-house.

5. Payments and Use of Funds – Facility Costs (Section V B.3)

Clarifying amendment made to reflect that facilities costs cover the operating costs of the facility where research is conducted and/or managed.

6. Payment and Use of Funds- Prior Approvals (section V. D)

Clarifying amendment; amendment provides that any transferee of a Loan must satisfy the eligibility requirements of the initial award.

**\*Highlighted section – Pages 7-8:**

The first sentence regarding ongoing obligations is eliminated to avoid confusion as to whether these are new requirements. Any rules in effect in different policies are by operation of those rules and govern regardless of this section. The second through fourth sentences are better addressed in a “change of control” section later in the policy.

7. **\* Project Close-Out – Page 9**

The highlighted language is deleted as the IP regulations require that a Grantee make reasonable efforts to bring CIRM funded IP to practical application. Inclusion of an obligation here suggests that this is a different requirement.

8. **\*Payment and Use of Funds – Page 9**

New Section: Termination (Section V.K) - While our regulations provided specific provisions relating to relinquishment and transfer of a loan award, additional provisions were added to clarify that CIRM is not obligated to return any warrants that were due and owing and delineate obligations which apply in the event that either CIRM or the Loan Recipient seek to terminate a loan. Additionally provisions existing in other sections were move into this section for better organization.

**9. \*Definition of Product Backed Loan Pages 10-11**

Exclude up to 50% of costs incurred to generate revenue in the event project is not successful so that Loan Recipient is incentivized to expend resources to outlicense CIRM Funded Inventions and Technology rather than to simply publish.

**10. Interest rate**

Clarifying amendment. The ICOC has not yet approved is the clause “from the base rate” that serves to clarify that if the loan term is extended at Loan Recipient’s request, the interest rate rises 1% from the previous year. ICOC approved all other language.

**11. \*Warrants: Pages 12-14**

- a. Clarifications that (i) warrant obligations are calculated upon each disbursement (ii) that the 20% cap on CIRM’s equity interest in the Loan Recipient pertains to the amount of warrants owed over the course of the full Loan Amount and(iii) fully diluted includes stock options.
- b. \*Calculation: The 20% cap applies to each loan and is cumulative such that if the Loan Recipient has two loans, the cap on warrants is 40% of Loan Recipients shares, fully diluted.

**12. \*Multiple Risk Premium: Pages 14-17**

- a. Eliminated reference to Advisory Letter and Term Sheet because this is not utilized in practice.
- b. Product Backed Loans - In recognition that many of the Loans that will be the subject of of a CIRM loan will be a Disease Team award of up to \$20M, the initial trigger for a multiple risk premium was changed from \$10M to \$50M in annual revenue; paid out over 18 mos. as opposed to 12 mos.
- c. Eliminated requirement the CIRM and the Loan Recipient negotiate prior to the award a definition of Product Revenue.
- d. Changed “ income” to “Net Commercial Revenue”

**13. \*Acceleration: Page 18**

- a. Added provision allowing acceleration in the event a Loan Recipient of a Company-Backed Loan terminated the CIRM Funded Project.
- b. Changes current provisions stating that the IP Subcommittee may accelerate upon a change of control, which creates uncertainty, to a provision stating that there will be no ability to accelerate in the event that the described conditions are met.
- c. Adds a section describing the circumstance of assignment of the CIRM-Funded IP, which results in the assignee having the same obligations that the Loan Recipient would otherwise have.