

STATE OF MINNESOTA

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

In the Matter of the Proposed
Rules Governing the Technology
Product Investment Program

STATEMENT OF NEED AND
REASONABLENESS

I. The Minnesota Energy and Economic Development Authority (authority) presents herein facts and justifications establishing the need for and reasonableness of its proposed rules governing loan application procedures the the Technology Product Investment Program. These proposed permanent rules are similiar to the existing rules for the Technology Product Investment Program, Minnesota Rules 8300.4101 to 8300.4112 [Emergency].

II. Impact on Small Business. Under the emergency rules, the authority has approved participation in one technology product loan. The total amount of the loan participation approved by the authority is approximately \$240,000. The authority's authorizing legislation directs that their powers be used for small business purposes. The authority manages several loan programs and is able to help qualified small businesses through the loan guarantees, loan participations, outright loans, or Technology Product Investment Program loans. The proposed investment program rules do not establish a regulatory compliance or reporting program with mandatory application. The rules prescribe policy and procedures for the operation of a benefit program, and the decision to participate in a financial assistance program is voluntary. A Minnesota software company can elect to participate in a financial assistance program and that decision can be made for each individual transaction.

In terms of compliance and reporting requirements, because the authority operates benefit programs rather than regulatory program, it operates on eligibility rather than compliance requirements. However, the authority has adopted the least stringent eligibility requirements consistent with statutory authorization of the programs. The proposed rules do not contain any design or operational standards.

The financial assistance programs are aimed at targeted small businesses or small businesses. All of the proposed rule requirements are promulgated with the capabilities and needs of smaller businesses in mind. The requirements adopted in the rules are those minimal and necessary to fulfillment of statutory requirements and standards; further exemptions are neither appropriate nor authorized. It should be noted that because these rules will govern a benefit program for only the software industry, the authority has made special efforts to make all known software businesses aware of the proposed rules. In addition to mailing the **Notice of Intent to Adopt Rules** to those individuals on the rulemaking notice list, the authority will also mail the Notice to approximately 500 software businesses known to the Minnesota Office of Software Technology Development.

III. Discussion of Proposed Rules. For the convenience of the reader, the proposed text of the rule is set forth and is followed by the section of the Statement of Need and Reasonableness which relates to the proposed section of the rules.

8300.4101 DEFINITIONS.

Subpart 1. Scope. For the purpose of parts 8300.4102 to 8000.4112, the following terms have the meanings given them.

Subpart 2. Product rights. "Product rights" means a product to which the rights have been acquired by the authority through purchase, lease, license, or loan default.

Subpart 3. Conceptual product. "Conceptual product" means an idea based upon a mental impression or general notion that can be documented in a technology-related product design or plan.

Subpart 4. Courseware. "Courseware" means specialized software for the delivery of education and training.

Subpart 5. Default. "Default" means the failure of the loan recipient to repay the principal and interest, to make royalty payments in accordance with the security agreement, or the breach by the loan recipient for more than ten days after mailing written notice of breach by the commissioner of any material covenant in the note, loan agreement, or in any instrument securing the loan which the commissioner determines constitutes an adverse change in the loan recipient's ability to repay the product loan. For purposes of these parts, a loan is considered in default if the principal and interest repayments and royalty payments are not received by the authority within ten days after the day specified in the security agreement.

Subpart 6. Derivative product. "Derivative product" means a product that contains or uses part of a previous product.

Subpart 7. Education. "Education" means the deliberate process of developing knowledge, mind, and character of an individual.

Subpart 8. Product. "Product" means something produced by a business and that exists in a usable form. Product includes, but is not limited to, a technology-related product, a conceptual product, or a prototype product, and all technical and user documentation, drawings, prototypes, models, test results, and source codes associated with the product.

Subpart 9. Product loan. "Product loan" means a loan made to a business for the development and for marketing of a product.

Subpart 10. Prototype product. "Prototype product" means a working model that approximates the function of a final technology-related product.

Subpart 11. Royalty. "Royalty" means the proceeds paid to the authority in connection with the loan agreement or in connection with product rights. Payments can be based on but not limited to a percent of sales of the product or a specific dollar amount for each unit of the product sold.

Subpart 12. Software. "Software" means a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result, in any form of material object in which such statements or instructions may be fixed, by any method now known or hereafter developed, regardless of whether the statements or instructions are capable of being perceived by or communicated to humans. Software includes courseware.

Subpart 13. Technology-related product. "Technology-related product" means a product that results from a method or process for handling a specific technical problem. Technology-related product includes computer software and computer hardware products.

Subpart 14. Training. "Training" means the process which instructs so as to make a person proficient or qualified.

8300.4101 DEFINITIONS.

It is necessary and reasonable to inform readers of the definitions of these rules. The meanings ascribed to these definitions are reasonable and clarify the specific intent of the Act to the reader. Without these definitions, confusion could arise as to the specific meaning of the Act since many of these terms are not commonly found among other rules and regulations or defined in other existing statutes.

8300.4102 TECHNOLOGY PRODUCT INVESTMENT PROGRAM.

Subpart 1. Purpose. The authority shall make technology product loans to eligible applicants in compliance with Minnesota Statutes, chapter 116M in order to help create or retain jobs for the state. The authority shall also consider the value of the product to promote the public good of the state, especially in education and training. Loans may be made to eligible applicants for the development and marketing of technology-related products that exist as completed products, prototypes, or as conceptual products.

Subpart 1. Purpose. Parts 8300.4101 to 8300.4112 pertain to the Technology Product Investment Program under Minnesota Statutes, chapter 116.M.08, subd. 4, the authority can adopt rules. These programs' specific rules outline the parameters and requirements unique to this program. The program is defined as a provision of financial assistance by offering lower-than-conventional interest rate loans to an eligible small business for a technology product loan. By providing such loans, the authority will create and retain jobs in the software technology area for the State of Minnesota.

Under Minnesota Statutes, chapter 116.M.06, subd. 2, the authority is specifically authorized to use the economic development fund to participate in programs where technology-related products are purchased, leased or licensed. Under Minnesota Statutes, chapter 116.M.08, subd. 20, the authority may receive payments in the form of royalties, dividends or other proceeds in connection with technology-related products.

Subpart 2. Use of loan proceeds. The loan must be made to provide financial assistance for the development and marketing of a technology-related product. Proceeds of the loan may be used to pay the costs of computer and other technology-related equipment, and for working capital.

Subpart 2. Use of loan proceeds. It is necessary and reasonable to inform readers of the specific purposes for which loans may be utilized. Loans made under this program are to be specifically used for technology-related products as defined in part 8300.4101.

Subpart 3. Size of loan. The principal amount of any product loan issued by the authority may not exceed \$250,000 for technology-related equipment and for working capital for any one product, provided, however, the authority may make an additional loan not to exceed \$100,000 for the same product if the applicant can demonstrate that the additional loan is necessary to develop and market the product as described in the loan agreement or to modify the development and marketing plans if the authority determines that such modifications are necessary. Proceeds of the loan must be issued to the eligible applicant in accordance with an approved plan and timetable. The plan must establish significant events in the development and marketing activities of the product which, when determined by the authority to be complete, shall serve as an indicator to release subsequent loan proceeds in accordance with the plan and timetable.

Subpart 3. Size of loan. It is necessary and reasonable to inform readers of the amount of the loan and the conditions surrounding issuance of a loan. The authority has placed a limit of \$250,000 for technology-related equipment and working capital for any one product. This loan amount is reasonable because \$250,000 for any given product should provide adequate stimulus for a small business to develop and market a product as it is anticipated the small business will secure additional working capital as needed from regular lending sources or from venture capital firm.

The authority may make an additional loan not to exceed \$100,000 for the same product. The right to grant this additional loan amount is reasonable because such additional money could determine the success or failure of the effort and, as such, protect the state's initial loan principal. This ability to provide additional loan monies typifies the funding cycle of other technology companies in their development. The proceeds of the loan must be issued to the eligible applicant in accordance with an approved plan and timetable. This timetable is needed and reasonable and is to be used as a guide by the state to monitor the progress of the business in development of its product. It is also reasonable that an agreed-upon timetable shall serve as an indicator for the release of subsequent loan proceeds.

Subpart 4. Maximum term. The maximum term of the loan may not exceed four years.

Subpart 4. Maximum term. It is necessary to establish a maximum term of the loan so that small businesses may develop their plans for use of proceeds as well as payback schedules. For example, it is reasonable to establish the term for computer and other technology-related equipment on a four-year maximum term since the useful life of this equipment is typically three to five years. It is also reasonable to establish a four-year term for working capital since working capital does not represent tangible assets. It is anticipated that products developed as a result of these loans will have a typical "sales life" of three to five years and the payback period should coincide with the revenue derived from the product.

Subpart 5. Interest rate. The interest rate of a loan is five percentage points below a full faith and credit obligation of the United States government of comparable maturity, as of five working days before closing or as determined by the authority at the time of approval based upon its assessment of current interest rate conditions.

Subpart 5. Interest rate. It is necessary to inform readers of the rules that they can expect in terms of interest rates. An interest rate that is five percentage points below a full faith and credit obligation of the United States government of comparable maturity, at the time of submission of the complete application to the authority, is reasonable because the program provides a credit product which is not currently available to the marketplace. The program thus fills a void that helps promote economic development in the state in the area of technology and also helps to fulfill the purposes of the Act. The interest rate is similar to that set for other authority programs. See Minn. Rules, pt. 8300.3033 and pt. 8300.3064.

Subpart 6. Security requirements. In addition to security interests in collateral as specified in part 8300.3012, the authority shall require a security interest in the product in the form of a royalty on the product and, in case of default, full rights to the product, including all patents, copyrights, mask work, trade secrets, trademarks, service marks, and any other intellectual property rights. The royalty payment must be based upon net receipts of the product not to exceed 25 percent and must be set forth in a security agreement that shall be entered into at the same time the loan is made. Royalty payments must be made to the authority in accordance with the schedule appearing in the security agreement.

The security agreement must set forth the terms and conditions applicable to all derivatives of the product, and must bind all future assignees of the product. The amount of royalty paid to the authority shall be set forth in the security agreement. Royalty terms provided in the security agreement may not extend more than seven years from the date of the loan agreement unless the authority and the eligible applicant agree to an extension. The maximum amount of royalty paid to the authority shall not exceed three times the amount of the loan principal. The security agreement must contain a provision for assignment of all product rights, including copyrights and patents to the authority upon default of the loan.

Subpart 6. Security requirements. It is necessary for the authority to protect its financial exposure pursuant to Minnesota Statutes, chapter 116M.06, subd. 2. It is reasonable for the authority to acquire collateral in accordance with generally accepted commercial lending practices to protect its interest in this financial assistance program. Specified forms of acceptable collateral are generally accepted forms by commercial lending practices and standards. The discretion to require additional security in the form of a royalty is reasonable because it permits the authority to enter into various types of financial assistance agreements and to obtain the best available collateral as required pursuant to Minnesota Statutes, chapter 116.M.06, subd. 2.

Further, it is also reasonable to limit the amount of royalty to be paid to the authority to no more than 25 percent of sales and three times the loan amount. This will permit sufficient funds to be retained by the eligible small business to expand and create new business opportunities. It is also reasonable to protect the authority's interest by providing full rights to the product including all patents, copyrights, mask work, trade secrets, trademarks, service marks or any other intellectual property rights related to the project since intellectual property would have been produced as a result of the loan.

It is also reasonable for the state to protect its interest through the restriction of derivative products. In the hardware and software industry, it is relatively easy to redesign a given product into a new product; and in many situations, a new product is often based substantially upon the work which went into the original product. Therefore, loan monies used to produce a given product should be secured not only through that product's lifetime, but through other derivative products which may utilize the technology developed for the original product.

Subpart 7. Loan servicing. The commissioner shall be the authority's authorized agent for purposes of administration of the loan including approval of required documentation prior to disbursements, the determination of a default and the exercise of remedies upon default. The commissioner shall monitor the repayment of the principal and interest as provided in the amortization schedule. The commissioner may restructure the loan at the request of the borrower or upon his or her own initiative if the commissioner determines that restructuring the loan will increase the probability that the loan will be repaid to the state.

If the borrower requests the commissioner to restructure the loan, the commissioner shall charge the borrower a fee in the amount of one-half percent on the outstanding principal amount of the loan.

Subpart 7. Loan servicing. It is reasonable and necessary to designate the commissioner as the day-to-day administrator of the loan for ministerial matters which often require prompt action. Also, it is necessary for the eligible borrower to understand the servicing of the loan. Further, it is reasonable that the loan be restructured at the request of the borrower if, by doing so, the restructuring will increase the probability the loan will be repaid to the state. It is further reasonable that the commissioner may charge the borrower a fee for the restructuring if such restructuring is requested by the borrower.

Subpart 8. Loan payments; royalties. Loan payments must be made as provided in the amortization schedule. The first principal payment is due 12 months after issuance of the final proceeds of the loan.

The authority, in its sole discretion, may accept royalty payments in lieu of loan payments if it appears that this arrangement will increase the probability that the loan will be repaid. The amount of royalty paid in lieu of loan payments may not reduce the total amount of royalty due.

Subpart 8. Loan payments; royalties. It is necessary for the eligible borrower to be informed about the loan amortization schedule. It is also reasonable for the authority to delay the first principal payment until 12 months after the issuance of the final proceeds of the loan because there is a portion of time that expires between the development and marketing of a product and the time when substantial sales are realized for that product. This 12-month period is reasonable in that it would allow a company to establish its sales before it must repay the loan.

8300.4103 ELIGIBLE LOAN APPLICANTS.

A person, partnership, firm, or corporation engaged in and determined by the authority to constitute a small business as defined in the regulations of the United States Small Business Administration, Code of Federal Regulations, title 13, part 121, standard industrial code (SIC) 7372, is considered an eligible small business or an eligible applicant for a technology product loan.

8300.4103 ELIGIBLE LOAN APPLICANTS.

It is necessary and reasonable to inform readers what the eligibility criteria are for the program. The definition of an eligible borrower is a technology business as defined by the standard industrial classification (SIC) code, and is consistent with other programs which also use the same regulation. Under Minnesota Statutes, chapter 116.03, subd. 4 (1984), eligible small businesses are considered to be eligible under the regulations of the United States Small Business Administration (SBA) pursuant to United States Code, Title 15, Sections 631-647. The SIC code found at 13 CFR is a regulation of the SBA. We note that the Minnesota Supreme Court has expressly held the corporation of SBA definitions as to the eligible small business is not an unconstitutional delegation of state legislative power to the federal government. [See Minnesota Energy and Economic Development Authority vs. Printy, 351 northwest second 319, 351 (Minnesota 1984).]

8300.4104 FINANCING ELIGIBLE SMALL BUSINESSES AND TARGETED SMALL BUSINESSES.

The authority may use funds available for product loans to help finance eligible small businesses. Two-thirds of these available funds must be allocated to help finance targeted small businesses.

The authority shall make a determination as to the use of funds four months prior to the close of its fiscal year. At that time the authority may reallocate its remaining funds between the categories of eligible small businesses and targeted small businesses if it determines that by doing so participation in the program may increase.

8300.4104 FINANCING ELIGIBLE SMALL BUSINESSES AND TARGETED SMALL BUSINESSES.

It is reasonable for the authority to limit the program to those small businesses as defined in Minnesota Statutes, chapter 116.M.03, subd. 8 (1984). Targeted small businesses are defined as very small businesses. Typically these smaller technology businesses have the most difficulty in obtaining financing and are in the most need of assistance. It is, therefore, reasonable for the authority to use a greater proportion of its limited funds to assist those businesses with the greatest need. By establishing a program which provides a greater portion of the available funds for targeted small businesses, the authority is implementing the directive of the legislature in helping to assure that targeted businesses receive financial assistance from the authority instead of allocating all available funding to much larger businesses.

8300.4105 LOAN DEFAULT.

If the commissioner determines the loan to be in default, the commissioner may take such actions provided in law or in equity to protect its interests. Upon default, the commissioner shall notify the loan recipient in writing of the default and give the loan recipient 60 days to re-establish the good standing of the loan. During this time period the commissioner may permit the borrower to sell or reassign the product rights or licenses, prepare derivative products, or undertake other measures that will increase the probability that remaining loan payments will be made. If the loan remains in default at the end of the initial 60-day time period, the commissioner may extend the time period for an additional 60 days if the loan recipient can demonstrate that the additional period of time is necessary to re-establish the good standing of the loan. If the loan remains in default at the end of the initial 60-day time period and any granted extension, all product rights as provided in the security agreement transfer automatically to the authority. The loan recipient shall also provide to the commissioner, if requested, all relevant materials including technical and user documentation, drawings, prototypes, models, test results, and source codes associated with the product.

8300.4105 LOAN DEFAULT

It is necessary to establish orderly procedures to be followed if a loan is in default. The procedures established are reasonable in that they require the commissioner to notify the loan recipient in writing of the default and give the loan recipient 60 days to re-establish the good standing of the loan. Further, it is reasonable for the commissioner to have authority to protect the interests of the state by granting an additional extension to the loan recipient if that time will help re-establish the loan in good standing.

It is also reasonable that, if the loan is in default, the state's interests shall be protected. This is provided for in that all works associated with the product, including all intellectual property rights incident to the product, transfer automatically to the state. In this way, the state will receive items of value that have been developed from the loan proceeds and which could possibly be used or resold by the state to protect or recapture its initial investment.

8300.4106 DISPOSITION OF ACQUIRED PRODUCTS.

Subpart 1. Sales. For product rights acquired under loan default, the authority may sell the acquired product and all intellectual property rights incident to in a commercially reasonable manner to any person or business.

Subpart 1. Sales. It is necessary that the state have an orderly means for the disposition of a product acquired under loan default. It is reasonable that the state may sell the acquired product and its intellectual property rights in a commercially acceptable manner in order to recover part or all of its investment in the original loan. Such policies are in keeping with generally accepted business practices should a loan go into default.

Subpart 2. No product warranty. No warranty may be expressed or implied by the authority for products distributed under subpart 1. Product recipients shall assume all risk of use. The state, the authority, and its employees may not be held liable for any damages, including any lost profits, lost savings, or other incidental or consequential damages arising out of the use or inability to use the product.

Subpart 2. No product warranty. It is necessary to communicate to the readers of this document, as well as to any potential users of products that are acquired by the state through the default of a loan, that no warranty is expressed or implied on those products. It is reasonable that no warranty be provided because production of the product has been outside the control of the state and as such the state has no assurance of the quality of the product. The purchaser of the product should consider the benefits of the product when making a decision whether or not to purchase the product.

8300.4107 CERTIFICATIONS.

For products financed by the authority, the eligible loan recipient shall agree to and execute a certification statement acceptable in form and content to the commissioner. This statement must certify at least the following:

A. that the product is original;

B. that the product does not infringe upon copyrights, patents, mask work, trade secrets, trademarks, service marks, and any other intellectual product rights;

C. that the product will substantially perform the tasks it has represented in its documentation that it will perform;

D. that the loan recipient will hold the authority harmless.

8300.4107 CERTIFICATIONS.

It is necessary to inform the eligible loan applicant that upon issuance of a loan, the eligible applicant will be required to certify certain statements. It is reasonable to request these certifications from the eligible business to protect the interests of the state and to assure that the loan recipient has made true representation in the documents that he or she has filed in obtaining the loan.

8300.4108 DATA, PUBLIC AND PRIVATE.

An applicant shall execute an acknowledgement that data provided as part of the application or loan servicing process may be considered public data. If the eligible applicant considers any part of the data to be provided to the authority to be a trade secret, and if the authority agrees that the data is a trade secret as defined in the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13, then the authority shall enter into an agreement with the eligible applicant regarding the data.

8300.4108 DATA, PUBLIC AND PRIVATE.

The authority treats most applicant information as private data (see Minnesota Statutes, chapter 116.M.08, subd. 17 and Minnesota Statutes §13.37). However, it is necessary to inform prospective and eligible loan applicants that, upon submission of a loan application, certain information they provide in the application may in fact be considered public information. Since the Technology Product Investment Program provides funds to create new and advanced technological products, these new products may contain trade secrets, and their developers are concerned to the extent that those trade secrets may be available to the public. It is reasonable to utilize the existing Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13, to govern the way in which data may be protected as a trade secret.

8300.4109 CONTENT OF APPLICATION.

In addition to the data required by part 8300.3011, an applicant for the technology product investment program shall provide the following information:

A. specific product descriptions and comparison data to similar or related products, projected life cycle of the product, need for the product, pricing considerations, profit margins, and future product trends;

B. market research data including a description of the targeted audience that will use and purchase the product; how the product will be packaged, promoted, and sold, including pricing considerations;

C. a market plan describing primary strategies, distribution agreements, if any, and opportunities for leverage with other products;

D. a product packaging, documentation, and manufacturing plan including projected cost of product and inventory levels;

E. product descriptions, sales, and profit data on other technology products under the control of the business;

F. projected financial performance of the proposed product including sales and profit projections and cash flow and return on investment analysis;

G. jobs maintained or created as a result of the loan; and

H. a description of how the product will serve the public good of the state, especially in education and training.

8300.4109 CONTENT OF APPLICATION.

It is reasonable to inform prospective applicants of the required contents of an application for funds under the Technology Product Investment Program. The information requested is similar to the information requested of all loan applicants by the authority. The contents of the application are reasonable and request information necessary for the authority to adequately evaluate the loan application.

8300.4110 SUBMISSION AND EVALUATION CRITERIA.

Subpart 1. Evaluation criteria. The authority shall evaluate an application according to the standards and requirements in parts 8300.4101 to 8300.4112, the laws governing the program, and the following criteria:

- A. the number of jobs created and maintained;
- B. the ability of the product to attract private investment capital;
- C. the projected financial success of the product;
- D. the probability that royalty projections will be realized;
- E. the projected return on investment to the state;
- F. the degree to which the product serves the public good and reduces other state expenses; and
- G. the degree to which the product can be expected to meet the needs of the marketplace.

Subpart 1. Evaluation criteria. It is necessary to define for potential applicants the specific criteria that will be used to judge their application. The criteria are reasonable because they target the intent of the Act which is to create and maintain jobs in the high technology area in the State of Minnesota and they define standards which will reflect the intent of the Act in terms of the number of jobs created and maintained. The criteria also make the eligible applicant aware of standards that protect the state's interest for a secure loan.

Subpart 2. Use of consultants. The authority shall evaluate applications using the evaluation criteria. The commissioner may employ consultants as needed to extend the expertise of staff. The commissioner shall take steps that are reasonable to ensure that consultants are free from any conflicts of interests and that they use reasonable means to protect confidentiality of data.

Subpart 2. Use of consultants. It is reasonable for the commissioner to employ needed consultant expertise to assist his or her staff in the evaluation of submitted applications. Applications for the Technology Product Investment Program may be highly technical with computer software and hardware information. It is unlikely that the commissioner or his/her staff will have the needed expertise in the various software vertical markets and, therefore, reasonable that the commissioner may employ outside consultants to review applications using the evaluation criteria.

Subpart 3. Priority funding. The commissioner may make priority funding recommendations to the authority based on the evaluation of the applications.

Subpart 3. Priority funding. It is necessary to communicate to eligible applicants that resources for loans are limited and priority recommendations for funding may be made to the authority based on application evaluations. It is reasonable that the commissioner make priority funding recommendations to ensure the most efficient and effective use of the state's resources, to stimulate the greatest amount of economic development and to provide the greatest security for the state's interest.

8300.4111 INTELLECTUAL PROPERTY RIGHTS.

Copyrights, patents, mask work, trade secrets, trademarks, service marks, and any other intellectual property rights in the product shall remain with the business unless specifically transferred to the authority under a mutual agreement or through loan default.

8300.4111 INTELLECTUAL PROPERTY RIGHTS.

It is necessary to define intellectual property rights and it is reasonable that such property remain with the business unless it is specifically transferred to the authority under agreement or through the loan default process.

8300.4112 DERIVATIVE PRODUCTS AND SUCCESSOR BUSINESSES.

All agreements made as part of the technology product investment program, including product loan and security agreements, must contain an appropriate clause to maintain and secure the authority's financial interests in derivative products and successor businesses.

8300.4112 DERIVATIVE PRODUCTS AND SUCCESSOR BUSINESSES.

It is often easy to transform existing hardware and software products into other derivative products. Therefore, it is reasonable that the state should protect its interest in the business by requiring that the security agreement contain an appropriate clause to maintain the state's rights to loan paybacks and to the product for all derivative products which originate based on the original product for which the loan was made. It is also reasonable that the state protect its interest through an appropriate clause that successor businesses must be responsible for the loan as stated in the security agreement made with the original business, as such successor businesses will derive benefits from the original loan.