

MINUTES OF THE

NEW MEXICO SMALL BUSINESS INVESTMENT CORP.

April 13, 2018

A meeting of the New Mexico Small Business Investment Corporation was called to order on this date at 10:00 a.m. at New Mexico Tech, Skeen Library, Tripp Room (Room 212), 801 Leroy Place, Socorro, New Mexico. A quorum was present.

Members Present

Mr. Alan Fowler, Chair

Mr. Joseph H. Badal, Vice Chair [by telephone]

Mr. Guadalupe Garcia

The Hon. Tim Eichenberg, New Mexico State Treasurer

Mr. Steven E. Morgan

Members Excused

Ms. Roxanna Meyers, Secretary/Treasurer

Financial Adviser to Board

Mr. Russell Cummins

Board Legal Counsel:

Mr. Randy McDonald [by telephone]

Recording Secretary

Ms. Judith Beatty [by telephone]

Guests Present:

None.

REVIEW AND ACCEPTANCE OF AGENDA

Mr. Morgan moved acceptance of the agenda, as published. Mr. Garcia seconded the motion, which passed unanimously.

REVIEW AND ACCEPTANCE OF FEBRUARY 23, 2018 BOARD MINUTES

Mr. Morgan moved to accept the February 23, 2018, minutes, as submitted. Mr. Garcia seconded the motion, which passed unanimously.

FINANCIAL REPORTS AS OF FEBRUARY 28, 2018

Mr. Cummins reported that the NMSBIC received slightly over \$1.6 million from the Severance Tax Permanent Fund in early March. As a result, funds available for investment are now at about \$5.6 million.

Mr. Eichenberg stated that, according to statute, a government agency has to pay interest earned on funds they have invested on behalf of another entity. He asked Mr. McDonald to research whether this applies to Severance Tax Permanent Fund monies held and invested by the NMSIC before being allocated to the NMSBIC.

Mr. Badal moved acceptance of the financial reports, as presented. Mr. Eichenberg seconded the motion, which passed unanimously.

THE LOAN FUND (NMCDLF) AGGREGATE LOANS GREATER THAN \$500,000

Mr. Cummins stated that, at the December 4, 2017 board meeting, Leroy Pacheco, director of The Loan Fund, mentioned that The Loan Fund had made some loans with NMSBIC funds and then had used other sources of funding to make additional loans to the same small businesses. Mr. Badal asked Mr. Cummins to obtain more information about these loans.

Mr. Cummins said the NMSBIC's loan agreement with The Loan Fund states, "Without the written consent of Lender, no loan to any New Mexico Business...with Loan funds received from Lender under this agreement, when aggregated with all other loans made by Borrower to such New Mexico Business...shall exceed...\$500,000."

Mr. Cummins said he followed up with The Loan Fund and asked them to provide him with information on any loans that would meet these criteria. The Loan Fund identified three such loans, which he detailed with the board. He said it appears The Loan Fund is out of compliance with its loan agreement in these three instances.

Mr. Cummins stated the NMSBIC board might consider granting written consent for the three loans, or the board might consider revising the terms of the loan agreement. For example, the board might change the written consent to a reporting requirement only. This would then not create a responsibility for the NMSBIC to know detailed information about The Loan Fund's customers. He said it is a problem for the NMSBIC to discuss confidential details about The Loan Fund's customers in a public meeting.

Mr. McDonald said this provision was included to prevent the NMSBIC from being overly exposed to any one borrower in the portfolio. The provision was added when The Loan Fund indicated in the negotiation process that they might, in certain cases, want to exceed that maximum dollar amount of funding provided to one borrower. Mr. McDonald agreed that it imposed an additional obligation on the NMSBIC to make a decision about whether or not to

give consent, but it also should have added extra scrutiny at The Loan Fund for this, and apparently the provision was being overlooked by The Loan Fund.

Mr. McDonald noted that in a recent meeting the board agreed to allow The Loan Fund to make loans up to \$750,000 under certain circumstances if the loan is secured by real estate. He said another option to address the current situation could be to not allow The Loan Fund to exceed the \$500,000 limit for any one borrower unless it met some specific objective criteria, such as the board did with the real estate secured loans.

Mr. Eichenberg said he would prefer that the board not provide written consent for the three loans, but rather that the board communicate to The Loan Fund that the three loans were reviewed by the NMSBIC board, that the loans will be monitored, and that no action was taken with respect to the three loans.

Mr. Badal suggested that he meet with Mr. Cummins and one or two other board members, and review all the covenants in the loan agreements with The Loan Fund and Accion, and determine what kind of exposure the NMSBIC wants to have going forward, including how much exposure to any one borrower should be allowed.

Board members agreed to not grant any requests for increased funding (including one by Accion on today's agenda) until a proposal for revised terms for loan agreements could be reviewed and approved by the board.

Mr. Cummins stated that he would communicate with The Loan Fund's President/CEO, Leroy Pacheco, advising him that the NMSBIC had reviewed the three loans at its board meeting, that no action was taken, and that the NMSBIC will monitor the three loans cited earlier. Mr. Cummins also indicated he would remind Mr. Pacheco about the provision in the loan agreement requiring written consent.

NEW MEXICO COMMUNITY CAPITAL (NMCC) PROPOSED EXTENSION

Mr. Cummins stated that, at the last board meeting, Michael Schafer, Managing Director of New Mexico Community Capital Fund I (NMCC), requested a 27 month extension of NMCC Fund I, which has a June 30, 2018 end date. The board approved a 12-month extension.

Mr. Cummins said Mr. Schafer has come back to the NMSBIC requesting that the board revise the 12-month extension to 18 months, a proposal that the NMCC Board and the LPAC have endorsed. Mr. Schafer has been in discussions with the remaining key portfolio company that feels it can achieve a sale of the company by December 31, 2019, which is expected to generate significant value. Mr. Cummins said the management fee for the extension would be \$10,000 per month, of which the NMSBIC's 47.78 percent share would be \$4,778 per month.

Mr. Cummins recommended approval of an amendment of the NMCC Fund I limited

partnership agreement to (i) extend the fund for 18 months to December 31, 2019, and (ii) approve a management fee of \$10,000 per month plus fund expenses; and that Alan Fowler be authorized to execute any and all documents related to the amendment.

Mr. Badal so moved. Mr. Morgan seconded the motion, and it passed unanimously.

NEW MEXICO MEZZANINE PARTNERS (NMMP) PROPOSED EXTENSION

Mr. Cummins stated that New Mexico Mezzanine Partners (NMMP) has a fund end-date of April 30, 2018.

Mr. Cummins said a discussion was held on March 29 with Alan Fowler, Joe Badal, Randy McDonald and himself to discuss confidential details about NMMP's two active loans and possible plans for NMMP after the fund end-date. He reviewed the status of Company #1 and Company #2.

Mr. Cummins said suggestions from that meeting were to (1) find out if Company #2 has the ability to make payments on a restructured note, (2) have conversations with the other limited partners with significant ownership, and (3) consider approving a three-month extension. Updating the board, Mr. Cummins said Mike Doolittle has reported that Company #2 does not have cash flow at this time to make payments on a restructured loan, but is restructuring its operations so that it may have that ability in the near future.

Mr. Cummins stated that, on April 3, he spoke with Patrick Smith, Vice President of Retail Banking at Los Alamos National Bank, who said LANB is interested in being paid off but is not interested in doing a forced liquidation if patience and time will provide better value. Mr. Smith also indicated that LANB would prefer to do an 18-month extension with the understanding that this extension would be final.

Mr. Cummins stated that Sandia Pueblo also indicated in a phone conversation on April 5 that the Pueblo would prefer an 18-month extension. They also stated that they wanted the extension structured such that the management fee would only be paid from a percentage of proceeds received from a liquidity event and only if a liquidity event were to occur.

Mr. Cummins said he communicated these discussions with Mike Doolittle, who responded with a recommendation for an 18-month extension with a management fee equal to 3 percent of a repayment, sale of assets, or whatever form of cash flow is

generated.

Mr. Cummins stated the total loans outstanding are roughly \$2 million, so 3 percent of that would be roughly \$60,000 for the 18-month period. Mr. Cummins said he has not discussed the 3 percent request with the other limited partners at this point, but suggested that the board consider approving an 18-month extension with up to 3 percent management fee, only paid from the liquidation proceeds, plus expenses.

Mr. Cummins stated approval of this amendment would require approval of 67 percent of the partnership, and would be subject to NMMP obtaining the required number of votes.

Mr. Morgan moved to accept Mr. Cummins' recommendation. Mr. Eichenberg seconded the motion, which passed unanimously.

ACCION REQUEST FOR INCREASE IN FUNDING

Mr. Cummins stated that, at the last board meeting, Accion's new chief financial officer, Ray Ziler, provided an update about Accion's lending staff. It was noted that Accion previously had two senior loan officers, and one resigned. The remaining senior loan officer was promoted to lending manager, and they have hired three new loan officers in New Mexico who they plan to develop and promote from within.

Mr. Cummins reviewed charge-offs from Accion's total portfolio. Mr. Cummins stated that said Accion anticipates charge-offs, as a percentage of outstanding loans, will be lower in 2018 than in 2017. He said he has requested first-quarter charge-off numbers from Accion, which have not yet been received.

Mr. Cummins said he liked Mr. Badal's suggestion (made under The Loan Fund agenda item) that the NMSBIC take a step back and re-evaluate the risk of its overall relationship with The Loan Fund and Accion and come back with recommendations.

Mr. Cummins therefore recommended that the board defer any action with respect to Accion's proposed increase subject to that review.

Mr. Badal so moved. Mr. Garcia seconded the motion, which passed unanimously.

2018 AUDIT AND TAX ENGAGEMENT LETTER, PULAKOS CPAS

Mr. Cummins recommended approval of the engagement letter, and to authorize Roxanna Meyers, NMSBIC Treasurer, to sign the engagement letter. The proposed

services are unchanged, and the proposed fees are also unchanged at \$23,350 for audit services and \$3,850 for tax services, plus gross receipts tax.

Mr. Garcia moved for approval. Mr. Morgan seconded the motion, which passed unanimously.

NONPROFIT MANAGEMENT LIABILITY INSURANCE RENEWAL

Mr. Cummins stated that the NMSBIC's executive protection insurance policy expires on June 23, 2018. The annual cost of the policy premium has been unchanged the past two years at \$3,230. According to the NMSBIC's HUB insurance agent, no significant change in the coverage or premium is anticipated.

Mr. Cummins recommended renewal of the policy for one year, from June 23, 2018 to June 23, 2019.

Mr. Morgan so moved. Mr. Badal seconded the motion, which passed unanimously.

[Mr. Badal left the meeting.]

PROPOSED BBER RESEARCH

Mr. Cummins stated that, at the last meeting, Jeff Mitchell and Julian Baca made a presentation about a proposed demand study to measure the amount of demand that might be out there for CDFI type loans. They proposed working with the NMSBIC's partners to develop questions to determine business characteristics that would likely result in CDFI loan approval.

Mr. Cummins stated that, at the last board meeting, Ray Ziler, Accion's CFO, commented that their constraints are not related to loan demand but are based on internal factors. In addition, Leroy Pacheco, President/CEO of The Loan Fund, subsequently indicated that there is plenty of loan demand, and their constraints are related to other factors.

Given this feedback from the NMSBIC's lending partners, Mr. Cummins recommended that the board not proceed with the BBER CDFI demand study.

EXECUTIVE DIRECTOR/INVESTMENT ADVISOR REPORT

Highlights from Mr. Cummins' report:

WESST Corp.: WESST had a charge-off in February of about \$3,200 because the borrower had passed away. WESST is working with legal counsel to determine if any of the loss can be recovered from the borrower's estate.

New Mexico Community Capital: NMCC announced the sale of Armed Response Team. They plan to distribute roughly \$1.55 million to limited partners, and the NMSBIC's 48 percent share should be roughly \$740,000.

SIC Core Plus Bond Pool: There have been a couple of months of negative market adjustments. However, the life-to-date return is still positive, and the value is currently at \$7.43 million versus \$7.0 million in original net principal invested. For the eight months ended February 28, 2018, the annualized net yield, including those losses, was 1.20 percent. \$1 million was transferred to the pool in March, which was part of the funds (\$1.6 million) received that month from the Severance Tax Permanent Fund.

Local Government investment Pool: The LGIP investment yield in January was 1.33 percent, with \$500,000 transferred to the LGIP in March, bringing the balance to about \$1 million. The transfer was part of the funds received in March from the Severance Tax Permanent Fund.

Responding to a request from Mr. Eichenberg, Mr. Cummins agreed to bring a proposal to the next meeting for a three-year contract for his services from July 1, 2018 to July 1, 2021. This would replace the existing contract, which expires on July 1, 2019.

BOARD CONTINUING EDUCATION

The board package included NMSA 7-27-6, which is the NMSBIC's funding legislation. Also included were letters from Randy McDonald regarding 2008 changes to the legislation.

Regarding Mr. Eichenberg's suggestion earlier in this meeting that the NMSBIC may be entitled to interest on Severance Tax Permanent Fund monies held by the NMSIC prior to distribution, Mr. Cummins said the legislation did not specifically address interest, and interest has not been paid in the past.

Mr. McDonald said he saw nothing in the wording that would support a strong argument that the NMSBIC would be owed interest.

CHAIRMAN'S COMMENTS

None.

ADJOURNMENT

The meeting was adjourned at 12:05 p.m.



Alan Fowler, Chairman

6/22/18

Date