

MINUTES OF THE
NEW MEXICO SMALL BUSINESS INVESTMENT CORP.
ONLINE/CALL-IN MEETING

April 23, 2020

A meeting of the New Mexico Small Business Investment Corporation was called to order on this date at 9:00 a.m. via teleconference. A quorum was established.

Members Present

Mr. Joseph H. Badal, Chair
Mr. Steven E. Morgan, Secretary/Treasurer
Mr. Alan Fowler
Mr. Guadalupe Garcia
The Hon. Tim Eichenberg, New Mexico State Treasurer

Members Excused

Ms. Roxanna Meyers, Vice Chair

Financial Adviser to Board

Mr. Russell Cummins

Board Legal Counsel

Mr. Randy McDonald

Recording Secretary

Ms. Charmaine Clair, for Judith Beatty

Guests Present

Mr. Chris Traylor, Manager, NM GAP Fund I
Mr. Todd Clarke, Ventana Fund

REVIEW AND ACCEPTANCE OF AGENDA

Mr. Cummins requested that the agenda be amended to include the item that was addressed in the supplemental package emailed to the members yesterday.

Mr. Fowler moved acceptance of the agenda, as amended, with the addition of the supplemental emergency package regarding additional funding for small businesses impacted by the COVID-19 crisis. Mr. Garcia seconded the motion and it passed unanimously.

REVIEW AND ACCEPTANCE OF BOARD MINUTES FOR FEBRUARY 10, MARCH 23, AND APRIL 14, 2020

Mr. Fowler moved acceptance of the board minutes for February 10, March 23, and April 14, 2020 as presented. Mr. Garcia seconded the motion, which passed unanimously.

**NEW MEXICO GAP FUND I, PROPOSAL TO TERMINATE THE LIMITED PARTNERSHIP:
CHRIS TRAYLOR, MANAGER OF NEW MEXICO GAP FUND I**

Mr. Cummins introduced Chris Traylor, who manages New Mexico GAP Fund I for the NMSBIC and is a venture partner with Flywheel Ventures. At the last meeting, the board discussed the termination and winding up of the New Mexico GAP Fund partnership, and he was authorized by the board to make an offer to the Fund of 25 percent of the fair value, for the two remaining convertible notes that are held by the partnership. Mr. Traylor informed him that he has talked with the partners, who are interested in moving forward.

Mr. Traylor presented a spreadsheet he had prepared to accompany his remarks. He said two investments remain in the portfolio, and the general partners believe it no longer makes sense to extend the fund life. He said Company A and Company B are both Albuquerque based. He believes it will take multiple years for either of them to achieve liquidity, and the partners are receptive to the NMSBIC's offer of purchasing the assets at a deep discount. He said the structure being contemplated is for the NMSBIC to purchase the Fund's interests in the remaining assets, which would make this a transaction with a single entity and the benefit to the NMSBIC is that purchase of loans would not increase the NMSBIC's exposure to equity investments.

Mr. Traylor stated that Mr. Cummins has proposed a discount of 75 percent of the value. For interests not already owned by the NMSBIC, the discounted balance among the three other limited partners is \$37,902.21.

Mr. Traylor said the partners also favor this proposal because it would benefit both companies to maintain relations with a single investor, and particularly with the NMSBIC. He said he and Mr. Cummins have suggested that approval be contingent upon: (1) agreeing on the transaction value of \$37,902.21, (2) obtaining approval from the NMSBIC board of directors and consent from the other limited partners, (3) completion of due diligence by NMSBIC, (4) drafting the purchase documents, (5) obtaining approvals from Company A and Company B, and (6) execution of the purchase the purchase documents and the transfer funds. He said the New Mexico GAP Fund is asking for a maximum of \$10,000 from the NMSBIC to cover legal and wind-up costs of the partnership, if approved.

Chairman Badal said he appreciated Mr. Traylor's quick response and consideration of the board's offer. He noted that the original estimated amount of \$37,500 is less than \$37,902.21 that Mr. Traylor is proposing, which is 25% of the current estimated value of the interests of the

three other limited partners. Board approval would also include \$10,000 in wind-up and legal costs.

Mr. Fowler moved approval to amend the original offer from \$37,500 to \$37,902.21, plus wind-up and legal costs capped at \$10,000. Mr. Eichenberg seconded the motion.

Mr. Traylor said the \$10,000, along with remaining cash in the partnership, would be sufficient to cover wind-up and legal costs for closing the partnership.

The motion passed unanimously.

SUPPLEMENTAL EMERGENCY PACKAGE REGARDING ADDITIONAL FUNDING FOR SMALL BUSINESSES IMPACTED BY THE COVID-19 CRISIS

Mr. Cummins called the board's attention to two memorandums that were included in the supplemental board package emailed yesterday.

a. NMSBIC SIC Core Plus Bond Fund Losses/Cash Flow and Available Funds Projection

Mr. Cummins said no action is being requested but feedback from the board would be helpful:

- On April 20, he received the report from the SIC showing that about \$49 million invested at the SIC in the Core Plus Bond Fund experienced a market value loss of \$2.6 million in March.
- Depending on what direction the NMSBIC might want to go with additional funding for DreamSpring and the possibility of needing additional money for future contingencies, notice will have to be given to the SIC this Friday regarding the amount the NMSBIC wants to withdraw from the SIC Core Plus Bond Pool as of May 1, 2020. The NMSBIC can only contribute or withdraw funds on the first day of each month and has to provide notice one week in advance.
- While normally he would withdraw about \$16 million to cover current commitments, things are changing on almost a daily basis, and there is currently a belief that round 2 of the SBA Paycheck Protection Program ("PPP") will be approved today by the US House of Representatives, and signed by the President. Having additional liquidity might be prudent during the month of May. The board should be aware that cashing out from a fund that is in a loss position is effectively locking in that loss without an opportunity to recover it.

Chairman Badal said an additional consideration is that the monies set aside for DreamSpring could be substantially more than what they get E-Tran approval for and can fund. In effect, the NMSBIC would not only be locking in losses, but the money approved for DreamSpring might not get PPP approval for all of the loan applications they have and wouldn't be deployed.

Mr. Eichenberg stated that cash is not something people want to be invested in given that the situation seems to worsen by the day, and he would like to see the NMSBIC withdraw the money as soon as possible.

Responding to Mr. Fowler, Mr. Cummins said the monthly reporting on the SIC Core Plus Bond Pool has a 15-day lag. The market value of the fund is fluctuating daily, but he does not know what the value is today.

Mr. Cummins said \$13.5 million has been committed to partners but would not be drawn in May, and he is comfortable with leaving that invested, which would leave \$33 million that could be withdrawn. The NMSBIC also needs to withdraw \$16 million that the partners can draw on within the next 30 days. He said he was not sure how much in PPP loans DreamSpring could get through their system. He suggested withdrawing \$16 million for committed amounts that can be drawn by partners in the next 30 days, plus an additional \$10 million to provide liquidity for unknowns.

Responding to a suggestion by Mr. Fowler, Mr. Cummins said he would look into the possibility of borrowing against the NMSBIC funds that the SIC has invested in the bond pool.

Mr. Eichenberg moved to approve the withdrawal of \$26 million. Mr. Morgan seconded the motion, which passed unanimously.

b. Additional Funding for DreamSpring

Mr. Cummins said the NMSBIC approved \$25 million in additional funding for all of the lending partners on March 23. This was increased on April 14 to \$35 million. There is currently \$6 million available that can be allocated for PPP loans, which would just be DreamSpring.

Mr. Cummins asked the board to consider increasing the cap from \$35 million to \$45 million with the additional \$10 million being withdrawn from the SIC. He recommended authorizing him and Chairman Badal to allocate it with the contingency that it can only be to an existing lending partner and only used for the federally backed PPP loans.

Mr. Garcia moved to approve increasing the cap from \$35 million to \$45 million and authorizing Chair Badal and Mr. Cummins to allocate the funds with the contingency the funding is only to existing lending partners to be used for federally based PPP loans. Mr. Morgan seconded the motion.

Mr. McDonald pointed out that neither item in the supplemental board package had been properly noticed in accordance with the Open Meetings Act.

Mr. McDonald said he believed board action on both of these items is permitted as emergency matters under the Open Meetings Act.

Mr. McDonald said the Open Meetings Act requires reasonable notice of a vote 72 hours before the meeting, and an exception in the Act allows votes on emergency matters, which are unforeseen circumstances that if not addressed immediately will likely result in injury or damage to persons or property, or a substantial financial loss to the public body. Mr. McDonald stated that in his opinion there is sufficient basis to say this is an emergency situation. He noted that there has been a presidential declaration of a national emergency, the existence of the Governor's declaration of an emergency, the issuance by the New Mexico State Department of Health emergency orders on public health, and that when the notice of this meeting was initially sent out, the NMSBIC was unaware of DreamSpring's need for additional funding or the possibility that the federal government would pass new legislation making more funds available.

Mr. McDonald said he felt this was enough to constitute an emergency. He said he would comply with the requirements of the Open Meetings Act and send a letter to the Attorney General advising him of the action taken within ten days, as required.

The motion passed unanimously.

[Mr. Eichenberg signed off from the meeting.]

**VENTANA FUND, PROPOSED MODIFICATIONS TO REVOLVING LINE OF CREDIT:
TODD CLARKE, EXECUTIVE DIRECTOR**

Mr. Cummins introduced Mr. Clarke and presented three proposed modifications to the NMSBIC's revolving line of credit with Ventana Fund.

- 1. Proposed increase in maximum loan amount from \$4 million to \$5.5 million.**
- 2. Allow monthly draws rather than quarterly draws.**

Mr. Cummins said he would recommend using the same process as the NMSBIC uses for The Loan Fund, where they would continue to provide a quarterly report but monthly draws would be allowed and documented by a loan trial balance showing loans in the NMSBIC Loan Portfolio.

- 3. Allow LIHTC (Low Income Housing Tax Credit) loans as collateral.**

The Ventana Fund would be allowed to include LIHTC loans in the NMSBIC Loan Portfolio and is also proposing that they keep their 200 percent collateral requirement, but that for LIHTC loans, the collateral value be based on Ventana Fund's loan amount. The Ventana Fund is not in a first position in these loans, but there is a takeout for the LIHTC loans, where a large portion of the cost is funded by a federal tax credit, which reduces risk. Also, Ventana Fund is guaranteeing the NMSBIC against loss with their net assets. Given that there is a takeout on these loans, he feels there is added protection for these loans.

Responding to Mr. Garcia, Mr. Cummins stated that, in anticipation of this discussion, he included the additional \$1.5 million in the \$16 million in funds he is planning to withdraw from the SIC Core Plus Bond Pool.

Mr. Garcia moved to approve the three modifications to the revolving line of credit, as presented. Mr. Fowler seconded the motion, which passed unanimously.

FINANCIAL REPORTS AS OF JANUARY 31, FEBRUARY 29 AND MARCH 31, 2020

Mr. Cummins said the board package includes highlights with a projected schedule of available funds, which was replaced with the updated information already discussed in the supplemental package.

Mr. Morgan moved to accept the financial reports, as presented. Mr. Garcia seconded the motion, which passed unanimously.

EXECUTIVE DIRECTOR/INVESTMENT ADVISOR REPORT

Mr. Cummins focused his report on potential new lending partners:

-- New Mexico Finance Authority: He has had continuing discussion with John Brooks at the New Mexico Finance Authority (NMFA) about the possibility of the NMSBIC partnering with NMFA to provide funding for their bank loan program. Although the COVID-19 crisis has interrupted the flow of that discussion, he will continue to follow up.

-- Nusenda: He has had several conversations with Maggie Newman, program manager with City Alive, who coordinates the Co-Op Capital program with Nusenda and the Kellogg Foundation. They have proposed a loan agreement, which he plans to put on the agenda for the next meeting. These are funds that don't qualify for bank financing or financing from CDFIs like DreamSpring or The Loan Fund. There are nonprofit partners approved through this program, where the nonprofit sponsors a small business and provides them with intensive coaching. The nonprofit approves the loan and puts 10 percent of the loan amount into a loan loss reserve, and is in first loss position for the businesses they sponsor. Nusenda would provide collateral equal to 20 percent and the Kellogg Foundation would provide collateral equal to 70 percent. Nusenda would guarantee the loan.

-- InvestUS & Arctaris: He has had meetings and communications with Deborah Burns, managing partner of the InvestUS Opportunity Fund, who is working on a partnership with Arctaris, a lender that has worked with other states to originate small business loans to promote job growth. The structure originally proposed by Ms. Burns was for the NMSBIC to be a limited partner equity investor in a fund, managed by Actaris, with Ms. Burns serving as a local representative in New Mexico. Mr. Cummins responded to Ms. Burns that the NMSBIC would not likely be interested in making a limited partnership equity investment, but might

consider providing a line of credit to a fund, but would not be interested in having a first loss position. Ms. Burns has inquired if the NMSBIC might be able to apply for State Small Business Credit Initiative (SSBCI) federal grant funds and use those funds to serve as a first-loss pool. Additional SSBCI grants might be part of future federal government stimulus in the current COVID-19 crisis. He has discussed this with Joe Badal, and has asked Randy McDonald to research whether the NMSBIC would be able to receive grant funds.

-- Advantage Capital: Mr. Cummins has had continuing conversations with Mark Scheffel, Senior Vice President of Advantage Capital. Mr. Scheffel is working on a proposal for the NMSBIC, which he plans to present at the June meeting.

-- NMEDD: The NMSBIC has had discussions with the New Mexico Economic Development Department about entering into a Joint Powers Agreement with NMEDD, where the NMSBIC would provide funding that NMEDD would administer with SSBCI funds in first loss position. NMEDD has about \$3 million in funding for their business loan guarantee program, which is SSBCI grant funding left over from 2007/2008 federal stimulus money. As of late last week, NMEDD has committed about half of that funding.

-- City of Albuquerque: Mr. Cummins spoke with Nyika Allen last week regarding the proposed loan from the NMSBIC to the City of Albuquerque Economic Development Department to develop a planned business park at the Sunport. Ms. Allen said the City Attorney's Office is concerned about the City's ability to borrow outside of their bonding authority. He told Ms. Allen that the NMSBIC has had a similar discussion with NMEDD, and are discussing a Joint Powers Agreement (JPA) rather than a loan. Ms. Allen responded that this structure might resolve the City's legal concerns. There are also discussions regarding cash collateral, or a written takeout commitment from the City for when construction is completed.

PULAKOS CPAS, PROPOSED ENGAGEMENT LETTER FOR JUNE 30, 2020 EXTERNAL AUDIT AND TAX RETURN PREPARATION

Mr. Cummins reviewed the proposed Engagement Letter from Pulakos CPAs. He noted that there is no proposed GASB research and conversion cost for this fiscal year, and the proposed fee for audit services includes outside consulting and review by a GASB expert, and also takes into account an increased number of approved NMSBIC lending partners.

Mr. Cummins recommended approval of the proposed Engagement Letter for the year ending June 30, 2020, and that Steve Morgan, NMSBIC Secretary/Treasurer, be authorized to execute the Engagement Letter.

Mr. Morgan so moved this recommendation. Mr. Fowler seconded the motion, which passed unanimously.

[Mr. Fowler signed off from the meeting.]

NMSBIC INVESTMENT POLICY ANNUAL REVIEW

Mr. Cummins stated that this review is done annually and in connection with the Joint Powers Agreement to provide the SIC an annual updated investment policy. He said he had no changes, other than to the date.

Mr. Garcia moved to approve the investment policy annual review, as presented. Mr. Morgan seconded the motion, and it passed unanimously.

DIRECTORS AND OFFICERS INSURANCE POLICY RENEWAL

Mr. Cummins referred to a proposed renewal from HUB International of the NMSBIC's Directors and Officers Directors and Officers insurance policy. The proposed annual premium has increased to \$4,228.18, from \$3,294.04. The reason for the increase is due to the increase in the NMSBIC's assets from \$39.5 million at June 30, 2019, to \$98.6 million as of March 31, 2020.

Mr. Cummins recommended approval of the policy renewal.

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

RDC ADVISORS, LLC, RENEWAL OF PROFESSIONAL SERVICES AGREEMENT

Chairman Badal stated that, because of the changes in management of some of the equity investments, he asked Mr. Cummins to propose a compensation arrangement if he were to take on the management of these equity investments as the funds liquidate and distribute stock or other direct equity investments in portfolio companies to the NMSBIC. Mr. Cummins, with Mr. McDonald's input, has recommended he assume those responsibilities and that the board, based on all the facts and circumstances, make a determination whether additional compensation is warranted. Mr. Cummins recommended not tying compensation to a results-oriented compensation program. Chairman Badal said that Mr. Cummins is recommending that the board review his performance at the end of the year and determine if a bonus is warranted related to management of direct investments, solely at the board's discretion.

Mr. Cummins said he was happy to provide the service of working with these companies, adding he thought that under a results-based compensation program, there could be potential issues if substantial compensation were paid by a nonprofit company that is funded with taxpayer dollars.

Mr. McDonald said he told Mr. Cummins and Chairman Badal that, while he did not see any legal concerns around a compensation arrangement, what Mr. Cummins is proposing is honorable and it shows his integrity. He recommended that Mr. Cummins keep track of the

time and energy he is expending, as that will be helpful to the board when it later considers any bonus compensation.

Mr. McDonald recommended adding into the professional services agreement for Mr. Cummins that the board will consider discretionary bonuses based on performance, including the additional time spent on these types of tasks.

Chairman Badal suggested taking Mr. McDonald's recommendation and asked Mr. Cummins to resubmit his renewal contract at the next board meeting with the additional language included.

NMSBIC PRESS RELEASE REGARDING APRIL 14, 2020 SPECIAL BOARD MEETING

The press release was included in the board package. Chairman Badal suggested board members keep copies of these press releases.

BOARD CONTINUING EDUCATION

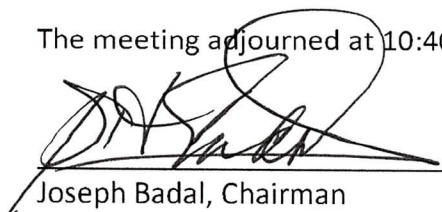
Mr. Cummins said he has included the quarterly BBER report in the board package and would continue providing these reports on a quarterly basis.

CHAIRMAN'S COMMENTS

Chairman Badal commented that the moving target that the NMSBIC has had to deal with during this COVID-19 crisis has been amazing. His feedback from the Governor's Office, lending partners, and community has only reinforced his commitment to the NMSBIC and its mission. He pointed out that the NMSBIC is really making a difference. He added that the NMSBIC has received more exposure as a result of its activities in the last 30 days than it has received over the last five years.

ADJOURNMENT

The meeting adjourned at 10:40 a.m.



Joseph Badal, Chairman

7/4/20

Date