

MINUTES OF THE

NEW MEXICO SMALL BUSINESS INVESTMENT CORP.

July 22, 2016

A meeting of the New Mexico Small Business Investment Corporation was called to order on this date at 9:00 a.m. in the conference room of WESST Enterprise Center, 609 Broadway Boulevard, N.E., Albuquerque, New Mexico. A quorum was present.

Members Present

Mr. Joseph H. Badal, Past Board Chair
The Hon. Tim Eichenberg, New Mexico State Treasurer
Mr. Lupe Garcia
Mr. Steven E. Morgan, Secretary/Treasurer

Members Excused

Mr. Alan Fowler, Chair
Ms. Roxanna Meyers, Vice Chair
Ms. Launa Waller

Financial Adviser to Board

Mr. Russell Cummins

Board Legal Counsel:

Mr. Randy McDonald

Recording Secretary:

Ms. Judith Beatty

Guests Present:

Mr. Lynn Carrozza, Rio Vista Growth Capital
Ms. Holly Eakes, Finance New Mexico

REVIEW AND ACCEPTANCE OF AGENDA

Mr. Eichenberg moved acceptance of the agenda, as published. Mr. Garcia seconded the motion, which passed unanimously by voice vote.

REVIEW AND ACCEPTANCE OF BOARD MINUTES

-- **May 20, 2016**

Mr. Eichenberg moved approval of the May 20, 2016, minutes, as submitted. Mr. Garcia seconded the motion, which passed unanimously by voice vote.

-- **June 9, 2016**

Mr. Garcia moved approval of the June 9, 2016, minutes, as submitted. Mr. Morgan seconded the motion, which passed by voice vote, with Mr. Eichenberg in abstention.

FINANCIAL REPORTS AS OF MAY 31, 2016

Mr. Cummins reviewed the May financial reports, with the following highlights:

-- Loan balances are at about \$16 million. Equity balances dropped during May due to the sale of an equity fund portfolio company, MIOX.

-- At the time of this report, \$2.6 million was available for investments, but that has since increased to \$8.4 million in early July as a result of \$6.8 million in distributions related to the sale of IntelliCyt, which was a portfolio company of several equity funds.

Mr. Cummins discussed a possible remittance to the NMSIC in net excess funds, although a final figure will not be known until financial reports are received from the equity partners.

Mr. Garcia moved acceptance of the financial reports as of May 31, 2016. Mr. Morgan seconded the motion, which passed unanimously by voice vote.

RIO VISTA GROWTH CAPITAL, PROPOSED CHANGES TO LOAN AGREEMENT

Mr. Carrozza joined the meeting.

Mr. Cummins summarized changes that Lynn Carrozza had proposed to his original request at the June meeting:

-- Round 2 follow-on funding: The new \$1 million commitment could be drawn in two stages. The first draw (\$600,000 to \$800,000) would be used to provide Portfolio Company a five-year loan. Later, if Portfolio Company needs additional working capital during the five-year term and can demonstrate the ability to pay back the loan principal and interest upon the original loan maturity date, RVGC can draw on the remaining unused commitment from NMSBIC on a line of credit. Mr. Carrozza would be willing to co-invest with the NMSBIC's second loan draw on a \$0.50 for every dollar basis with a \$150,000 loan cap. The NMSBIC would still be in a senior secured position.

In discussion on the third tranche (Subordinate Secured Loan Requirements), Mr. Carrozza noted the existing requirements for subordinate financing:

- Achieved positive EBITDA and project future EBITDA margins of at least 5% net margin of revenues over the last 12 months.
- Demonstrated debt service capability or projected ability to service total debt commensurate with realistic EBITDA projections
- Reasonable prospects to pay off RVGC's loan on or before original maturity date.

Mr. Carrozza left the meeting.

Board members expressed concern that, under the scenario proposed by Mr. Carrozza, the NMSBIC's secured loan would end up in a subordinated position if RVGC's Portfolio Company were to borrow additional money from a bank. The NMSBIC's original commitment would effectively be venture capital with no upside.

Mr. Cummins noted that the current discussions with RVGC started with a question from NMSBIC about only allowing senior secured loans. While round two is an innovative proposed change and keeps the NMSBIC in a senior position, NMSBIC feels the proposed terms that would allow a subordinate position takes too much risk with taxpayer dollars.

Mr. Cummins said he would continue the discussion with Mr. Carrozza and report back to the board.

FINANCE NEW MEXICO ANNUAL REPORT: HOLLY BRADSHAW EAKES, THE HOLLY COMPANY

Ms. Eakes distributed FNM's 2015 Annual Report and a list of articles published by FNM.

Mr. Eichenberg moved to renew the Finance New Mexico agreement for another year. Mr. Morgan seconded the motion, which passed unanimously by voice vote.

EXECUTIVE DIRECTOR/INVESTMENT ADVISOR REPORT

Mr. Cummins reported that NMSBIC received the December 31, 2015, New Mexico Mezzanine Partners financial reports, which reflect an investment loss of \$1.2 million for the quarter, representing a write-down of the entire remaining balance of the fund's investment in one company. NMSBIC's 48 percent share of this loss is \$611,537. Mr. Cummins added that Mike Doolittle noted this company has cash flow, and appears to have the ability to make

payments on this loan over a long term, however, the company did not have the ability to repay the loan based on the original loan terms.

For the other two loans in the portfolio, Mr. Cummins said Mr. Doolittle feels both are reasonably close to having take-out financing in the next 60 days.

Report by Steve Morgan on Economic Development Council Course

Mr. Morgan reported on his attendance this month at the five-day Basic Economic Development Course, held by the International Economic Development Council, at Western New Mexico University in Silver City.

[Break.]

NMSBIC PROPOSED POLICY LIMITING VENDOR INDIRECT COSTS

Mr. Cummins stated that Dr. Jeffrey Mitchell and the Bureau of Business and Economic Research are requesting a signed letter from NMSBIC regarding a limit on indirect costs. He said 50 percent of any money BBER collects goes to UNM unless the organization has a policy that limits indirect costs to no more than 20 percent. He said he and Randy McDonald agree that such a policy would make sense.

Mr. Cummins said he is proposing that NMSBIC approve the following:

-- **Regarding any contracts between the Small Business Investment Corporation and the University of New Mexico Bureau of Business and Economic Research, it is the NMSBIC's policy that indirect costs related to such contracts not be more than 20 percent of the total contract cost.**

Mr. Eichenberg said it was not clear to him whether the money was going into the UNM budget or the BBER budget and what the money would be used for.

Mr. Badal suggested that the board adopt this policy but look into renegotiating the price if it goes to Phase 2 and Phase 3.

Mr. Eichenberg moved approval of the policy. Mr. Garcia seconded the motion, which passed unanimously by voice vote.

VERGE I.5, REQUEST TO EXTEND LIMITED PARTNERSHIP END-DATE

Mr. Cummins stated that, after the NMSBIC Board approved a one-year extension of Verge I.5, Verge Managing Partner Tom Stephenson requested that the board approve a revised extension agreement lowering the Verge I.5 management fees. This is the result of a request by one of the partners that Verge cut their management fees in exchange for an extension of time,

which the General Partner has agreed to; however, this will require a new extension amendment reflecting the change.

Mr. Cummins said this would reduce the NMSBIC's management fee roughly from \$40,000 to \$30,000 per year.

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

SHORT TERM INVESTMENTS: INCREASE INVESTMENT IN SIC CORE PLUS BOND POOL

Mr. Cummins stated that a 12-month cash flow forecast is included in the board package. He recommended moving \$6 million into the SIC Core Plus Bond Pool at the beginning of August, bringing the total in the pool to \$9 million.

Mr. Cummins stated that, in order to avoid having to schedule a special board meeting in order to move money between the Core Plus Bond Pool and the money market account, he is proposing that he be able to move money at any time between the SIC Core Plus Bond Pool and other NMSBIC deposit accounts, with the approval of two board members.

Mr. Cummins recommended approval of the following language:

-- **NMSBIC funds may be transferred to, or redeemed from, the SIC core Plus Bond Pool, at any time, with approval of two authorized NMSBIC Board Members. Authorized Board Members are Alan Fowler, Joseph Badal, Steve Morgan, and Roxanna Meyers. Transfer to and from the SIC Core Plus Bond Pool will be made from or to the NMSBIC's deposit accounts at First National Santa Fe.**

Mr. Garcia so moved. Mr. Morgan seconded the motion, which passed unanimously by voice vote.

DIRECTORS AND OFFICERS INSURANCE POLICY RENEWAL

Mr. Cummins reported that the Directors and Officers insurance policy has been renewed from Jun 23, 2016, to June 23, 2017. The premium has been paid and remains unchanged from last year, at \$3,230.

COMMUNITY MEETING IN ALBUQUERQUE, NM, OCTOBER 2016

Board members discussed tentative dates for this event, which would take place during the third week of October.

BOARD CONTINUING EDUCATION, NET EXCESS FUNDS CALCULATION

Mr. Cummins reported that he, Randy McDonald and Dee Brescia have been discussing the impact of the recent IntelliCyt sale with respect to the NMSBIC's net excess of funds statute. Regarding the statute's reference to "capital gains," Mr. McDonald's opinion states:

As was the case with respect to dividends and interest, it is reasonable to read §58-7-29 of the Act as being consistent with other provisions of the Act that require SBIC to provide reports based on audited financial statements. Consequently, it's my recommendation and opinion that the calculation of net excess of funds under §58-7-29 of the Act should be made utilizing the amount of any realized gain on investments derived from the SBIC audited financial statements.

Mr. Cummins stated that he had prepared a very rough and very preliminary calculation for the board's review. He stressed that the NMSBIC does not yet have the 6/30/16 reports from equity partners or preliminary NMSBIC 6/30/16 financial statements, so the calculation is subject to material changes.

Mr. Cummins noted that any funds must be sent to the NMSIC no later than 30 days after delivery of the Annual Report, which is due on October 1, 2016.

Responding to Mr. Badal, Mr. McDonald stated that the audited financial statements refer to "realized capital gains," and that is a netted number. For 2013 and 2014, that is the number the NMSBIC has used in the calculation.

CHAIRMAN'S COMMENTS

Mr. Badal disclosed that he had a couple of conversations with Boomtime CEO Mark Canon, who had asked for some feedback on his efforts to put together an entity regarding book sales. Mr. Badal said he is not an investor in Boomtime and was not paid for giving this advice. Mr. Badal indicated that this disclosure was made for complete transparency, and that there was no conflict of interest.

ADJOURNMENT

Its business completed, the NMSBIC Board adjourned the meeting at 11:30 a.m.



Joseph H. Badal, Past Board Chair

October 24, 2016

Date