

**MINUTES OF THE**  
**NEW MEXICO SMALL BUSINESS INVESTMENT CORP.**

**July 18, 2014**

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**

Ms. Roxanna Meyers, Chair

Mr. Alan Fowler, Vice Chair [by telephone – signing off at 10:45 a.m.]

Mr. Lupe Garcia

Mr. Clarence L. Smith [designee of Hon. James Lewis, State Treasurer]

Ms. Launa Waller

**Members Excused:**

Mr. Joseph H. Badal, Past Board Chair

Mr. Steven E. Morgan, Secretary/Treasurer

**Financial Advisor to Board**

Mr. Russell Cummins

**Board Legal Counsel:**

Mr. Randy McDonald

**Recording Secretary:**

Ms. Judith Beatty

**Guests Present:**

Ms. Deborah Burns, NM Foreign Investment Center, LLC

Mr. Mark Lautman, NM Foreign Investment Center, LLC

Mr. Bob Singer, NM Foreign Investment Center, LLC

Ms. Holly Eakes, The Holly Company

**REVIEW AND ACCEPTANCE OF AGENDA**

The agenda was reprioritized.

**Mr. Smith moved to accept the agenda, as amended. Ms. Waller seconded the motion, which passed unanimously by voice vote.**

#### **REVIEW AND ACCEPTANCE OF MAY 23 AND JUNE 30, 2014 BOARD MINUTES**

**Mr. Fowler moved approval of the May 23 and June 30 minutes, as submitted. Mr. Smith seconded the motion, which passed unanimously by voice vote.**

#### **MAY 31, 2014, AND PRELIMINARY JUNE 30, 2014 FINANCIAL REPORTS**

Responding to Chair Meyers, Mr. Cummins said the NMSBIC was able to cover its total operating expenses with interest income for the 12 months ending 6/30/14. Chair Meyers commented that this is good news, as the NMSBIC has been working toward that goal for some time.

**Mr. Smith moved approval of the June 30, 2014 financial reports, as presented. Ms. Waller seconded the motion, which passed unanimously by voice vote.**

#### **VERGE 1 REQUEST FOR EXTENSION OF FUND END-DATE**

Mr. Cummins stated that the Verge I partnership is requesting approval to extend the fund end-date by one year to June 17, 2015. They have received the required endorsement from 66 and 2/3 percent of the limited partners. A total of three one-year extensions are allowed under the partnership agreement.

**Mr. Smith moved to approve the extension of the Verge I Fund end-date to June 17, 2015. Mr. Garcia seconded the motion, which passed unanimously by voice vote.**

#### **RENEWAL OF FINANCE NEW MEXICO CONTRACT**

Mr. Cummins recommended approval of a one-year renewal of the Finance New Mexico contract with The Holly Company, from October 1, 2014 to September 30, 2015. Proposed terms and pricing include:

- Release to participating newspapers and email subscribers a minimum of 12 articles per year under the authorship of NMSBIC, Accion, The Loan Fund, or WESST.
- Indicate NMSBIC sponsorship on the Finance New Mexico website home page, articles page, about us page, electronic newsletter, and marketing collateral.

- Indicate participation by Accion, The Loan Fund, and WESST by posting their respective logos and lending information on the Finance New Mexico website Find Funding page.
- The Holly Company to provide an annual report containing statistics on the website, newsletter, and newspaper publishing.

Mr. Cummins said the proposed fees are \$17,500 per year, plus gross receipts tax, paid quarterly (no change from previous year).

Mr. Cummins noted that Ms. Eakes would be making a presentation to the Board later in today's agenda.

Chair Meyers stated that she would ask Ms. Eakes to see if The Holly Company could secure booth access at the TEDxABQ conferences.

**Mr. Fowler moved for approval of a one-year renewal of the Finance New Mexico contract, as presented. Ms. Waller seconded the motion, which passed unanimously by voice vote.**

#### **PROFESSIONAL SERVICES CONTRACT – ACCOUNTING SERVICES**

Mr. Cummins recommended renewal of the professional services contract with Brescia Consulting LLC from October 1, 2014 to September 30, 2015, with terms unchanged from the previous contract, at \$131 per hour plus gross receipts tax (no change in price).

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

#### **SHORT TERM INVESTMENTS**

- a. **Reinvestment of \$1.5 million CD maturing September 8, 2014**
- b. **Approval to transfer funds between money market accounts**

Mr. Cummins reviewed a cash flow forecast reflecting projected cash needs, including:

- Loan demand from The Loan Fund and Accion, and anticipated draws on funds committed from NMSBIC;
- MFA-anticipated draws totaling \$1.5 million; and

-- NewCo anticipated draws totaling \$750,000.

**Mr. Cummins recommended that 1) proceeds from the \$1.5 million CD maturing on September 8, 2014, be transferred into the money market account at First National Santa Fe; and 2) that any two of the signors (two signatures required) on the NMSBIC's money market accounts at First National Santa Fe, Citizens Bank of Clovis, United Labor Bank, or City Bank of Ruidoso, be authorized to transfer such funds to the NMSBIC's money market account at US Bank.**

**Mr. Garcia moved for approval of both recommendations. Mr. Fowler seconded the motion, which passed unanimously by voice vote.**

### **NET EXCESS FUNDS CALCULATION**

Mr. Cummins stated that he has met with Dee Brescia and Randy McDonald regarding NMSA 58-29-7, which defines Net Excess for Funds for the NMSBIC. Because of the realized gains from the Verge Fund sale of ZTech, it was likely the NMSBIC was going to report realized gains on its financial statements. That led to the possibility the NMSBIC might have a distribution to the Severance Tax Permanent Fund this year.

Mr. Cummins noted that, as of May 31, the NMSBIC had \$266,000 in dividends and interest and \$224,000 in capital gains realized based on Verge's report from the sale of ZTech. Minus operating expenses and amounts reserve for loan losses, the NMSBIC had a balance of \$243,000 that could potentially be remitted to the STPF.

Mr. Cummins noted that the legislation states:

...For purposes of this section, "net excess of funds" means the return on investments to the corporation in the amount of dividends and interest actually received plus any capital gains actually realized, less the operating expenses of the corporation and less amounts reasonably reserved for losses.

Mr. Cummins stated that he, Mr. McDonald and Ms. Brescia are recommending that the NMSBIC use a different method for calculating Net Excess Funds. The method previously disclosed in the NMSBIC's annual report, and the recommended method, is as follows:

**1. "Annually, no later than thirty days after delivery of its annual report...the corporation shall return to the severance tax permanent fund an amount equal to..." – This was disclosed in the NMSBIC's annual report as of June 30, 2013, as an annual calculation. A previous NMSBIC Board member had in the past stated his opinion that this was intended to be a cumulative calculation, and not based on annual results. The recommendation is that the calculation continue to be made based on annual results..**

2. **“Dividends and interest actually received”** – The NMSBIC has previously been disclosing its interest and dividend income in the monthly financial statements and annual report, but on an accrued basis. It is recommended that reported interest and dividend income be adjusted from accrual to cash basis to accurately reflect “actually received.”

3. **“Capital gains actually realized”** – Realized gain on investments is reported in the monthly financial statements and annual report. GAAP refers to “realized gains,” but “capital gains” is a tax term and is not found in GAAP. Previously, NMSBIC has been reporting gains reported by equity partners as realized gains, whether there was cash received by NMSBIC or not. Because a capital gain received at a partnership level is not the same as a capital gain of the NMSBIC, which is a corporation, legal counsel states that NMSBIC should be looking at its total capital investment and the cash it gets back. It is therefore recommended that “capital gains actually realized” are distributions received from equity partners during the fiscal year, but only to the extent that cumulative life-to-date distributions from the partnership are greater than those paid to the partnership.

4. **“Operating expenses of the corporation”** – Direct operating expenses are being reported. No change is recommended.

5. **“Amounts reasonably reserved for loan losses”** – NMSBIC has previously disclosed a provision for loan losses in the income statement. Legal counsel feels the language refers to the allowance for loan losses that is on the balance sheet.

**Mr. Cummins additionally recommended:**

- A supplementary schedule be added to the NMSBIC’s audited financial statements showing the calculations and amounts used in the Net Excess Funds calculation; and
- The Board obtains a written legal and accounting opinion regarding the method used to calculate Net Excess Funds under NMSA 58-29-7.

It was suggested that Ms. Meyers, Mr. Cummins, and Mr. McDonald meet with SIC staff once the written opinions are completed, and report back to the Board.

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

#### **THE HOLLY COMPANY: HOLLY BRADSHAW EAKES**

- a. **Finance New Mexico Annual Report**
- b. **Planning for Community Outreach Meeting in Clovis, NM**

Ms. Eakes presented this report to the Board.

At the Chair's request, Ms. Eakes agreed to work with Mr. Cummins to see whether surveys done by the NMSBIC's lending partners include a question about where applicants learned about this loan source and whether it was from Finance New Mexico.

Regarding publicity generated by Finance New Mexico for the October community outreach meeting in Clovis, Ms. Eakes stated that she has not been successful in getting the newspaper to print articles sent them by FNM. Ms. Waller said she would meet with the editor-in-chief.

Responding to Ms. Waller, Ms. Eakes said FNM has much more success with Twitter than with Facebook.

The Board agreed to hold the Community Outreach meeting on October 27, 2014, with the Board meeting the following morning, on October 28, 2014.

[Mr. Fowler and Mr. Smith left the meeting.]

[Break.]

**NEW MEXICO FOREIGN INVESTMENT CENTER LLC, EB-5 REGIONAL CENTER:  
DEBORAH BURNS, EXECUTIVE DIRECTOR; MARK LAUTMAN; BOB SINGER**

Ms. Burns made a presentation with Mr. Lautman and Mr. Singer, founders of the New Mexico Foreign Investment Center.

Mr. Lautman stated that, after the 2008 financial crisis, the banking system they relied on to bank the economic-based job creation projects had collapsed in New Mexico. They began looking for ways to plug the gaps in deal structures once the economy began to recover. The New Mexico Foreign Investment Center, which is under the U.S. Citizenship and Immigration Services Immigrant Investor Pilot Program, is intended to serve as a community economic development resource to help jumpstart New Mexico's economy with foreign venture capital placed into high-quality and economically sound public and private enterprises.

Ms. Burns stated that the EB-5 regional center application was filed in September 2013, which could be approved at any time.

**ANNUAL BOARD CONFLICT OF INTEREST CERTIFICATION**

Mr. McDonald said he would email the conflict of interest report to individual Board members. He stated that he and Mr. Cummins have developed a certification document to

send to the lending and equity partners so they can certify that they are in compliance with all legislative requirements. These forms will be sent out annually.

**EXECUTIVE DIRECTOR/INVESTMENT ADVISOR REPORT**

Mr. Cummins reviewed a report on the NMSBIC lending program, reflecting estimated months of available funding for The Loan Fund and Accion. Based on loan demand, he estimates that Accion has 7 months left and The Loan Fund has 7-9 months left. He anticipates the Board may need to consider increases in the maximum funding amounts this fall.

Mr. Cummins reviewed the status of Mesa Capital Partners. He stated that they may request approval from the Board to restructure their investment in ClingZ.

**BOARD CONTINUING EDUCATION: ARTICLE 15, 10-15-1 ET. SEQ.,  
OPEN MEETINGS ACT**

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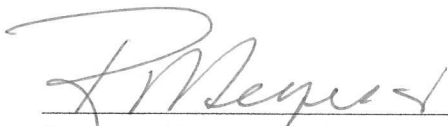
[Postponed.]

**CHAIRMAN'S COMMENTS**

None.

**ADJOURNMENT**

Its business completed, the NMSBIC Board adjourned the meeting at 11:45 a.m.



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Roxanna Meyers, Chairman and President

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Date

10-27-14