

MINUTES OF THE
NEW MEXICO SMALL BUSINESS INVESTMENT CORP.

December 9, 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. Alan Fowler, Chair
Ms. Roxanna Meyers, Vice Chair (arrived 10:00 a.m.)
Mr. Joseph H. Badal, Past Board Chair
Mr. Guadalupe Garcia
Mr. Steven E. Morgan, Secretary/Treasurer
Ms. Launa Waller (telephonically, joining 9:45 a.m.)

Members Excused

The Hon. Tim Eichenberg, New Mexico State Treasurer

Financial Adviser to Board

Mr. Russell Cummins

Board Legal Counsel:

Mr. Randy McDonald

Recording Secretary

Ms. Charmaine Clair, for Judith Beatty

Guests Present:

Ms. Dee Brescia, Contract Accountant
Robert De Pasquale, Pulakos CPAS
Ms. Ann Haines Yatskowitz, Accion
Mr. Greg Henderson, Accion
Mr. Mark Burkhart, member of the public
Mr. James Scott, Applied Capital

REVIEW AND ACCEPTANCE OF AGENDA

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

REVIEW AND ACCEPTANCE OF OCTOBER 24, 2016 BOARD MINUTES

Mr. Morgan moved approval of the October 24 minutes, as submitted. Mr. Garcia seconded the motion, which passed unanimously by voice vote.

IRS FORM 990: ROBERT DE PASQUALE, TAX PARTNER, PULAKOS CPAS

Mr. De Pasquale reviewed the IRS Form 990.

Mr. De Pasquale noted that there have been no major changes to the form. Mr. De Pasquale reviewed the form in depth and responded to several questions from the Directors.

Mr. Cummins stated that he and Ms. Brescia have reviewed the form.

Mr. Cummins said the list of Directors on the form as of June 30, 2016 would be changed as follows: replace Clarence Smith with Tim Eichenberg; change Joseph Badal to Vice Chair/Vice President; and change Roxanna Meyers to Past Board Chair, current Director.

Mr. De Pasquale said there would be one change on page 1, line 15, of the form, changing \$145,320 to \$146,400 to address timing differences between the calendar year and the fiscal year end amounts.

Mr. Badal moved to approve IRS Form 990 with the changes, as noted. Mr. Morgan seconded the motion, which passed unanimously by voice vote.

Mr. Badal noted that, at the last meeting, a board member raised the issue about rotation of auditor from the standpoint of good governance. He asked Mr. De Pasquale if he saw any issues about this, as Pulakos has been an auditor for many years.

Mr. De Pasquale responded that he could understand the interest in requiring auditor rotation for publicly traded companies, but there is an advantage in having the same auditor year after year because they have in-depth knowledge of the organization, and they are required to be independent. He said new auditors would have to be trained, which is a time consuming process for staff and incurs more expense for the company. He said he was not sure what would be gained from a best practice standpoint.

Mr. Badal asked Mr. De Pasquale if he has seen any kind of issues in this regard with other state agencies or quasi-state agencies. Mr. De Pasquale responded that he has not, although the question has come up and his response has been to ask what might be gained from changing auditors given the amount of work and expensive involved.

Responding to Chairman Fowler, Mr. De Pasquale said Pulakos serves most of the larger nonprofits in the state. Because Pulakos has people who have worked in the corporate world, the firm can bring more to the table from an audit standpoint and from a tax standpoint.

Mr. Badal said no one was recommending that NMSBIC find another auditor, but the board is raising this issue as a best practice.

Mr. Cummins noted that today's agenda includes discussion and possible action on an RFP for an audit and tax preparation. He asked if splitting these functions between Pulakos as tax preparer and another firm as auditor would present any challenges or concerns for Pulakos.

Mr. De Pasquale responded that Pulakos has had these types of clients before, but it means there are two separate firms “each doing their thing” and not necessarily having effective communication. He said it is feasible, but usually costs more money for the company and does not accomplish much.

Mr. Badal asked if splitting the two functions would be a seamless process, or does Pulakos have to do due diligence before accepting the audit results. Mr. De Pasquale responded that Pulakos would not have to do due diligence and would accept the numbers as is; however, it would incur a little more time on the tax side. He said he personally would not recommend bifurcating these services.

**ACCION NEW MEXICO PRESENTATION: ANNE HAINES YATSKOWITZ, PRESIDENT & CEO;
GREG HENDERSON, VICE PRESIDENT OF FINANCE**

[Ms. Waller joined the meeting by telephone during this presentation.]

Ms. Yatskowitz and Mr. Henderson made this presentation.

Ms. Yatskowitz said there have been a number of market factors that Accion has been closely watching in the last year. In recent years, there has been a proliferation of “marketplace lenders” that are financial technology firms that have risen up since the recession and are getting capital into the hands of entrepreneurs around the country, but the capital is not legally a loan in a regulatory sense. Because of that, they are able to structure the deals in a way that has become very confusing, and Accion is seeing the evolution of this along the coasts and in Chicago, but now these digital marketplace lenders are in New Mexico, and Accion is starting to see pre-recession levels of indebtedness here. She added that this is currently anecdotal and will have to be statistically examined.

Ms. Yatskowitz said a lot of these individuals have gotten into indebted relationships where there is not clarity or transparency about their obligations, and money is being directly taken out of their merchant cash accounts regardless of how the business is doing. A lot of these clients are now in dire financial straits as a result.

Ms. Yatskowitz said Accion has responded to this by creating a credit enhancement mechanism to enable some of those entrepreneurs who would otherwise go to those sources to come to Accion and repay their loans through a “split funding product.” Accion is now offering “Presto Loans” from \$1,000 to \$12,000, with funding provided within 24 hours.

Ms. Yatskowitz noted that, for every 1 percent increase in entrepreneurship in New Mexico, there is a 2 percent decrease in poverty. Accion has reconfirmed a commitment to make loans of up to \$1 million and also to work with low and moderate income entrepreneurs with \$1,000 and \$5,000 loans. She said one of Accion’s top priorities is to boost the opportunities for bridging and bonding for entrepreneurs, which is critical. She said this bridging and bonding involves levels of activity where people are gathering formally and informally in what Accion calls a “social capital network.”

[Ms. Meyers joined the meeting.]

Mr. Henderson reviewed an update of the Accion loan portfolio.

[Break.]

**ACCION NEW MEXICO 2013 LENDING PROGRAM – PROPOSED INCREASE IN
MAXIMUM FUNDING AMOUNT**

Mr. Cummins stated that Accion's outstanding NMSBIC loan balance was at 97 percent of the \$6.5 million Maximum Available Funding as of October 31, 2016. They have requested an increase of \$1.25 million, which is their projection of their net loan growth (new loans less payoffs) in New Mexico over the next 12 months.

Mr. Cummins said the new agreement, which was put in place by the NMSBIC in 2013, has been working well and there is good loan growth. The old agreement has been paying off according to the terms of those loans, and the balance is down to \$445,000. The new agreement has grown to \$5.9 million.

Mr. Henderson said that, separate from today's request to increase the Maximum Available Funding, Accion would like the NMSBIC at some point in the future to consider a change to (i) a flat 2 percent interest rate, (ii) change from a participation agreement to a note payable, (iii) Accion would be responsible for all loan losses, and (iv) that the line of credit be unsecured. This would be consistent with the arrangement Accion has with other banks. He said the banks have expressed concern about the arrangement Accion has with NMSBIC, because the other lenders have a negative pledge covenant, which is an unsecured loan where Accion agrees not to pledge its assets to anybody else under a secured borrowing. The other lenders consider Accion's participation agreement with the NMSBIC to be a secured borrowing.

Mr. Cummins recommended that Accion's Maximum Available Funding from the NMSBIC be increased by \$1.25 million, from \$6,500,000 to \$7,750,000.

Ms. Meyers so moved. Mr. Badal seconded the motion.

Mr. Badal asked Mr. Cummins to prepare an in-depth analysis of Accion's loan portfolio for the next meeting, given Ms. Yatskowitz's comments today about small businesses obtaining loans from financial technology firms and Accion's decision to offer Presto Loans. He asked Mr. Cummins to convey the board's concerns.

The motion passed unanimously by voice vote.

**REQUEST FOR PROPOSALS, INDEPENDENT AUDIT AND TAX PREPARATION,
JUNE 30, 2017 FISCAL YEAR END**

Ms. Meyers commented that, with someone of Mr. Cummins' acumen and background, the board might be quite comfortable with its current auditor and tax preparer and feel no need to change. She said she thought it was a very good idea that Pulakos rotated its partners serving the NMSBIC three or four years ago, which was at the board's request.

Mr. Badal said he saw no risk in taking no action at this time, whereas taking action would involve considerable expense.

Mr. Morgan noted Mr. Eichenberg's comments at a previous meeting about the fact that this is a public board and there is the appearance question. Mr. Morgan said he personally thought changing

auditors would be a waste of financial resources, and it wasn't required, but agreed with potential concerns about appearance down the road.

Mr. Badal wondered if the NMSBIC could hire another independent CPA firm to do a peer review.

Ms. Meyers moved to table the conversation and to ask Mr. Cummins to find out about a peer review and what that would entail. Mr. Morgan seconded the motion, which passed unanimously by voice vote.

[Ms. Meyers exited the meeting.]

FINANCIAL REPORTS AS OF OCTOBER 31, 2016

Mr. Cummins stated that the financials were in the packet, and he would entertain questions.

Mr. Badal moved to accept the financials, as presented. Mr. Garcia seconded the motion, which passed unanimously by voice vote.

EXECUTIVE DIRECTOR/INVESTMENT ADVISOR REPORT

Mr. Cummins stated that he and Mr. Badal made a presentation to the NMSIC Investment Committee on November 10. The presentation was very well received, and committee members asked very good questions and congratulated the NMSBIC on what they said was a very good turnaround of the organization.

Mr. Badal said the committee expressed concern about the follow-on investment made in Verge II.5, as the committee felt the NMSBIC had made a pledge to never do another equity investment. He said he reminded the committee that the NMSBIC had not made such a pledge but that the NMSBIC's focus and policy remained on lending. He said he explained to the committee that this follow-on investment was an opportunity based on its analysis that the risk associated with it was significantly less than the original investment risks.

Mr. Cummins also reported that he and Mr. Fowler made a presentation to the NMSIC on November 22, when they provided a condensed version of the presentation that he and Mr. Badal had given previously. In response to NMSIC member Peter Frank expressing concern about the Verge II.5 investment, they discussed the positive track record from the Verge funds, the jobs created, and the fact that the Verge IIS invests will be in later stage companies with proven markets, management teams, and products.

NEW MEXICO MEZZANINE PARTNERS: PROPOSED EXTENSION OF LIMITED PARTNERSHIP

Mr. Cummins distributed and reviewed a discussion term sheet, detailing a proposed third amendment to extend the term of the partnership to April 30, 2018. It is anticipated that the outstanding loan principal and interest will likely be collected by September 25, 2017. In addition, there are warrants that expire through April 2018. He said he hoped this would be the final extension.

Mr. Cummins discussed details of the portfolio.

Mr. Morgan moved to approve the proposed extension. Mr. Badal seconded the motion, which passed unanimously by voice vote.

ELECTION OF NMSBIC OFFICERS – NMSBIC SECRETARY/TREASURER

Mr. Badal moved to nominate Roxanna Meyers as Secretary/Treasurer of the NMSBIC. Mr. Morgan seconded the motion, which passed unanimously by voice vote.

2017 BOARD MEETING DATES

Mr. Cummins said he had included the meeting dates as a reminder.

APPLIED CAPITAL, PURCHASE ORDER AND ACCOUNTS RECEIVABLE FINANCE – JAMES SCOTT, PRESIDENT

Mr. Cummins introduced Jim Scott, president of Applied Capital (AC). Mr. Scott attended the NMSBIC community meeting held at the Workforce Training Center, and said he would like to address the board about the type of lending he is doing in New Mexico.

Mr. Scott made a presentation to the board. He said his company, which provides funding throughout the U.S. and Canada and Puerto Rico, was established in 1998 and has done over \$250 million in secured lending. He said the company would like more clients in New Mexico.

Mr. Scott reviewed the two kinds of financing offered by AC: accounts receivable financing, where AC advances a percentage of the capital to the client; and purchase order financing, where AC can provide 100 percent of the cash required to fill the order.

Mr. Badal asked what AC's capacity is for volume right now. Mr. Scott responded that they have done deals as small as \$5,000 and as large as \$4.5 million, so there is no cap. In accounts receivable financing, he said rates range from 2 to 3 percent of the face amount of the invoice, but it depends on the size of the deal and the creditworthiness of the customer. On purchase order financing, AC does not like to advance more than 70 percent of the goods provided, and the rates vary.

Chairman Fowler asked why AC doesn't have more of a presence in New Mexico. Mr. Scott responded that they have not done much networking, but would like to begin attending more networking events to get the word out. He said he had met Holly Eakes of Finance New Mexico at the NMSBIC's community meeting and would follow up with her as a first step in increasing awareness of what AC is doing in New Mexico.

Mr. Cummins said he would follow up with Mr. Scott to discuss potential ways that NMSBIC might work with Applied Capital in the future.

Comment from Members of the Public in Attendance

Mark Burkhart introduced himself to the board. He said he has been in financing for the last 20+ years, and is looking into the idea of a community lending platform where businesses could leverage relationships with key customers in their community by bringing them in as participants, and leveraging that with other money from the community. He said this would fill a need that is not currently being met by typical micro-lenders.

Chairman Fowler asked Mr. Burkhart to stay in touch and provide more information to Mr. Cummins.

**RANDY MCDONALD FOLLOW-UP FROM OCTOBER 24, 2016 MEETING:
OPEN MEETINGS ACT INFORMATION; STATE OF NM PROCUREMENT CODE**

Mr. McDonald said Mr. Eichenberg had asked him to check with the State Auditor to make sure that NMSBIC is not subject to the Procurement Code. He said the NMSBIC is exempted from the Procurement Code by statute in the Small Business Investment Act.

Mr. Badal commended Mr. Cummins on his work with the RFP.

CHAIRMAN'S COMMENTS

None.

ADJOURNMENT

Its business completed, the NMSBIC Board adjourned the meeting at 12:25 p.m.



Alan Fowler, Chairman

1/20/17

Date