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**NM SMALL BUSINESS INVESTMENT CORP**

**February 22, 2010**

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**MINUTES OF THE**  
**REGULAR MEETING**

**NEW MEXICO SMALL BUSINESS INVESTMENT CORP.**

**February 22, 2010**

A regular meeting of the New Mexico Small Business Investment Corporation was called to order on this date at approximately 10:00 a.m. in the conference room of the New Mexico Mortgage Finance Authority, 344 S. 4th Street, S.W., Albuquerque, New Mexico.

A quorum was present:

**Members Present:**

Mr. Andrew Baca, Chair  
Mr. Kit Caldwell  
Mr. Sam Cobb, Vice Chair (telephonically)  
Ms. Mary A. Garza  
Mr. Billy Knight  
Mr. Greg Kulka [designee of Adam Levine, Board Secretary]  
Ms. Marie Longserre, Treasurer

**Members Excused:**

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

**Legal Counsel to Board:**

Mr. Randy McDonald

**Financial Advisor to Board:**

Mr. Paul Goblet

**Guests Present:**

Mr. Robert Mr. DePasquale, Pulakos, LLC  
Mr. Dennis Garcia, First Community Bank

**APPROVAL OF AGENDA**

"Role of the Board Treasurer" was added to the Agenda.

Upon motion by Ms. Garza and seconded by Mr. Knight, the Agenda was approved by voice vote, as amended.

**APPROVAL OF MINUTES: January 25, 2010**

Ms. Longserre requested additional language on page 3 to reflect that the Board is now required by the IRS to formally accept the annual audit. The following amendment was made:

"Ms. Longserre additionally recommended that Board members routinely see all formal documents relating to the annual audit, and any other documents that the members should see in order to fulfill the Board's fiduciary responsibilities, in light of new IRS requirements that the Board formally accept the annual audit."

**Ms. Longserre moved to approve the Minutes of January 25 2010, as amended. Mr. Knight seconded the motion, which passed by voice vote.**

**PRESENTATION REGARDING PLEDGED COLLATERAL:  
Dennis Garcia, First Community Bank**

Mr. Goblet stated that Mr. Garcia works closely with Bill Smith of First Community Bank, where the Board has a checking account, money market account and a CD that will mature on February 25.

Mr. Goblet noted that Charter Bank is the latest of more than 100 banks seized in the U.S., and several banks in the state are operating under cease and desist orders. In view of these events, he asked Mr. Garcia to discuss what is happening at First Community.

Mr. Garcia noted that, under state statute, all public entities in the New Mexico are eligible for some level of collateralization. Until recently, he said those levels were at 50% and applied to Treasuries or agency securities; municipal securities in New Mexico, or letters of credit through the Federal Home Loan Bank.

Mr. Garcia stated that, since October 2008, all deposits in non-interest bearing accounts at institutions that participate in the FDIC's Temporary Guarantee Liquidity Program are 100% insured. He said institutions can opt into this program under the Transaction Account Guarantee (TAG) Program, which First Community opted into as soon as it became available. He said the TAG program is scheduled to expire on June 30, 2010.

Mr. Garcia said that, when First Community looks at public deposits, it looks at all insurance that is available, whether it is FDIC or collateral, in order to meet the depositor's total obligation.

Mr. Garcia said there has been a gradual movement in New Mexico over the past two years toward 100-102% collateral levels for public entities, and First

Community went to 100% collateralization before most public entities began requesting it. He said this means that any deposit that exceeds FDIC limits will be collateralized to 100% of the current market value of the asset being pledged. He stated that First Community is using the Federal Home Loan Bank letter of credit, which is 100% guaranteed by the Federal Home Loan Bank. In the case of the other deposit that the NMSBIC has, he said First Community is using bank issued and bank owned securities, which are government agencies in First Community's portfolio and are pledged at 100% of current market value. He stated that all of the assets that First Community holds are at the Federal Home Loan Bank in Dallas in a separate pool, and First Community cannot release securities without the NMSBIC's approval.

Mr. Garcia stated that the recent takeover of Charter Bank is a reminder of the potential risks in any financial institution and how quickly a change can take place at the behest of the regulators. He said First Community has been under an MOU with the federal regulators for the past approximately 18 months, and is working internally to raise capital in order to move its capital ratios to where the regulators would like to see them.

Mr. Garcia said five more banks were taken over by federal regulators over the last weekend, and he felt this trend would continue for another couple of years. He stated that a lot of institutions have very weak financial structures.

Mr. Garcia said the only time a public institution or entity has to worry about their deposits is when/if the FDIC fails the institution, which occurred at Charter Bank. In such an instance, he said depositors are given two business days to get their money out. In a collateralized institution, he said the entity presents their safekeeping receipt to the Federal Home Loan Bank, which either releases the collateral so it can be sold on the open market, or else takes the collateral back and hands over the deposit. In the current environment, he said he would suspect FHLB is doing the latter.

Mr. McDonald distributed an information sheet outlining the accounts the NMSBIC has at LANB and First Community, and the general basis for collateralization for each account.

Mr. Caldwell asked how the collateral reporting is done, and Mr. Garcia responded that the NMSBIC gets a safekeeping receipt that details the specific level of collateral and asset. If more securities need to be added, he said a new safekeeping receipt is issued. If there is a need to take something back, he said Mr. Goblet gets the safekeeping receipt and a request from the bank to sign a release, which is sent to the Federal Home Loan Bank releasing the assets.

Mr. Knight said he recently read that the federal government is restricting certain types of CDs from First Community, and Mr. Garcia explained that the limitation has

been placed on brokered deposits. He added that the federal government is imposing this limit on most institutions where there is an MOU.

Mr. Goblet added that these banks are also no longer able to pay more than 50 basis points above the national average, creating a less competitive environment and lower rates for CDs.

In reviewing the one-page information sheet outlining NMSBIC's accounts, Mr. McDonald noted that the NMSBIC has three CDs at LANB, and while they are backed for the principal amount at the Federal Home Loan Bank in Dallas, it would appear that the accrued interest would not be backed by a letter of credit.

Mr. McDonald noted that, at First Community, the NMSBIC has a letter of credit and the securities deposit that covers everything, so the accrued interest should be covered through one of the insurance sources.

Mr. McDonald said he has not seen the safekeeping receipts from First Community, and Mr. Garcia responded that First Community sends out a monthly letter, and he would double-check to make sure these are going to the NMSBIC.

Mr. Caldwell asked if the letter of credit is typically matched to the maturity date of the CD, and Mr. McDonald responded yes, although there might be an overlap of a day or two.

Mr. Kulka commented, then, that the NMSBIC would have to exercise the letter of credit before the maturity date if there were a problem at the institution, and Mr. Garcia responded that this was correct.

Mr. Caldwell said the NMSBIC could be technically uninsured if a CD and letter of credit were to mature on a certain date, and the NMSBIC were to let the CD sit for one day.

Mr. Garcia said that was correct; and in a situation like that, the NMSBIC needs to have a conversation with the bank in advance to determine how much latitude it has – is it one day, two days, etc.

Mr. Kulka asked if it is possible to have an open-ended letter of credit to cover these possibilities, and Mr. Garcia responded that this isn't possible with Federal Home Loan Bank.

**PRESENTATION REGARDING 990 REPORTING, STATUS OF CURRENT AND PRIOR 990 REPORTING: Robert DePasquale, Pulakos, LLC**

Mr. DePasquale distributed copies of an overview detailing recent changes to the 990 form that would impact the NMSBIC on its 2008 tax return, which Pulakos is currently working on.

Mr. DePasquale said Pulakos recommends that the NMSBIC do the 990 from a best practice standpoint and that it operate its Board and organization from a best practice standpoint, as well. He commented that transparency is key.

Mr. DePasquale stated that there is also a new level of expectation for Board members with this new reporting. He said one of the questions on the return is: What procedures and steps did the Board take to review and approve the 990 before its filing? He said the form is "voluminous" and places a much greater burden on nonprofits.

Mr. DePasquale said the Board may want to consider what steps, if any, should be taken going forward to go above the minimum reporting required by the IRS.

Mr. DePasquale stated that the NMSBIC has been given a filing extension until May 15. Once all of the necessary information is gathered and incorporated into the form, he said the Board would have enough time to review the 990 and ask questions.

Mr. DePasquale said the form asks whether the NMSBIC has a whistleblower (Report of Noncompliance) policy and a document retention policy. He said he understood the NMSBIC did not have a whistleblower policy.

Mr. McDonald said he has developed a list of policies he believes the NMSBIC should consider for adoption over the next two or three months. He stated that the list includes a draft whistleblower policy, which has been adapted to include contract service providers inasmuch as the NMSBIC does not have employees.

Mr. McDonald stated that the NMSBIC does not have a written document retention and disclosure policy, as it retains everything at this point. He said he would do additional research to see whether the NMSBIC is subject to the State Records Act and has to provide documents to the State Archives.

Mr. Kulka noted that the SIC posts most of its policies on the SIC website, and asked if this is something the NMSBIC should consider.

Mr. McDonald responded that he thought this would be a good idea, once the policies are in place.

On the public inspection of the 990 requirement, Ms. Longserre said this means people should be able to walk into an office and inspect the 990 documents. She asked if the "on request" meets the IRS guideline.

Mr. McDonald responded that he wasn't sure, but the easiest solution would be to direct people to GuideStar.org, where 990s for nonprofits can be posted.

Mr. Caldwell and Mr. Kulka recommended posting the 990 on the NMSBIC website, since that is where people are more likely to look for it.

Mr. McDonald noted that there is no charge for using GuideStar, and recommended that the NMSBIC post in both places.

Mr. DePasquale said a draft would be ready for Board review in about two weeks.

### **REVIEW OF FINANCIAL REPORT**

Mr. Goblet reported that the NMSBIC has been notified that its filing of the June 30, 2005, and June 30, 2007, tax returns were late and that the June 30, 2006, return was not filed.

Mr. Goblet said he has submitted a draft letter to Mr. McDonald for review citing various reasons for the late filings. He stated that he has looked at all of the available files provided by Nestor Romero, former Board Treasurer, but has not been able to determine the cause behind the late filings and failure to file.

Mr. DePasquale stated that the June 30, 2005, return was originally extended to May 15, 2006, and for some reason was filed on June 7, 2006.

Mr. DePasquale said the June 30, 2007, return was extended to February 15, 2008, and the tax return was received by the IRS in May 2008. He recommended finding out whether another extension was filed to May 15 and getting a copy of that document.

Mr. DePasquale suggested writing a letter to the IRS spelling out, by year, the facts and reasonable costs for the late filing issues and non-filing issues. He said the IRS has been fairly generous in abating penalties for the first year, but he did not know how they would treat the other two. He said the IRS has also been reasonable in granting abatement for year with the most significant penalties; and since the NMSBIC can expect to receive a notice of \$10,000 worth of penalties for the year no return was filed, this should be the focus of the abatement request.

Mr. DePasquale said Pulakos will prepare a Form 843, which is a request for abatement, to attach to the letter. He recommended that the letter be short and simple, emphasizing that this will never happen again.

Mr. Caldwell asked if Chairman Baca would be taking on any liability in signing the June 30, 2006, return, given that the Board did not see the 990 or that tax year, and Mr. Goblet responded that he did not believe Mr. Baca had exposure in any way, shape or form; and that the liability lies with the NMSBIC.

**Ms. Longserre moved that the Board formally adopt a policy requiring that the Board review and formally accept the NMSBIC tax return each year prior to filing. Mr. Knight seconded the motion, which passed by voice vote.**

Mr. Goblet commented that Mr. McDonald has asked him why this happened. He said the answer is that the Board relied very heavily on then-Board Treasurer Nestor Romero, who is a CPA. He said Moss Adams prepared the June 30, 2005, return, and Kardas, Abeyta & Weiner did the other two. He said those two returns were mailed to Mr. Romero's home, and the Moss Adams return was mailed to Mr. Romero's office. Given that the NMSBIC had auditors and accountants throughout this period, he said he thought the Board just assumed that the 990 forms were not only filed, but were filed on a timely basis.

Ms. Longserre asked Mr. DePasquale if the NMSBIC should go back to 2001, 2002 and 2003 to see if the 990s were filed then, and Mr. DePasquale responded that the IRS is only looking forward from 2005.

Mr. DePasquale also clarified that Pulakos has set up the NMSBIC's returns for electronic filing once the Board approves the return and the Board President signs it.

Mr. McDonald stated that he and Mr. Goblet would prepare a request for abatement and send it to the IRS.

Mr. DePasquale stated that the IRS has cracked down on CPAs providing information to third parties; and since Mr. Goblet is not an employee of the NMSBIC, Pulakos cannot provide him with information without written consent from the Board. He submitted a consent form to the Board Chairman for signature and presented a copy to Mr. Goblet for the files.

[Break.]

### **ROLE OF BOARD TREASURER**

Ms. Longserre said she would be happy to continue as Board Treasurer, but not under the existing process and procedures, because her duties are not appropriate



for that role. She added that it is very difficult to keep up— she receives 35-55 emails each month on NMSBIC-related business.

Ms. Longserre stated that she has been treasurer for several nonprofit boards and a national nonprofit board, and the treasurer normally doesn't pay the bills, make transfers, and so forth—rather, the treasurer oversees and helps with policies and procedures. She said she agreed with Mr. McDonald's suggestion at the last meeting that these additional responsibilities could be giving the Board Treasurer too much authority.

Ms. Longserre said the Board should take another look at the role of Treasurer and taking care of the organization's basic bookkeeping. She noted that, when the subcommittee met prior to renewing Mr. Goblet's contract, there was discussion about anticipated IRS changes and the need for additional help.

Ms. Longserre said she was not sure what format is needed, but perhaps REDW should be asked to take on some bill paying obligations, or perhaps a bookkeeper should be hired to take on certain duties every month. She also suggested developing some forms, for signature by the appropriate people, to ensure there are checks and balances.

Mr. Goblet said he would meet with REDW and return to the next meeting with information and recommendations.

Mr. Kulka suggested that the NMSBIC develop a written procedure for capital calls.

#### **REVIEW OF ADVISOR'S REPORT**

Mr. Goblet reviewed the December financial report prepared by REDW. He said he felt REDW should have had the January financials available by now.

Mr. Goblet said he would also be meeting with REDW shortly to discuss the need for more detail in these reports.

Mr. Goblet noted that the NMSBIC has never had a budget, and the scope of work with REDW does not include one. He said he thought having a budget would be beneficial to the Board.

#### **DISCUSSION AND POSSIBLE VOTE ON MATURING CD**

Mr. Goblet reported that he has approached several banks, seeking bids on the \$6.15 million CD that will mature at First Community Bank this week. He noted that two banks declined to bid, citing concerns about collateral requirements.

Mr. Goblet stated that First Community bid 55 basis points higher than other bidders on a six month CD, and 65 basis points higher on the twelve month CD.

Mr. Goblet said he would recommend that the NMSBIC roll the CD over into a six month CD at First Community. He said there is ample collateral to cover it, there is a very small difference in basis points between the six month CD and the twelve month CD, and the money is as safe at First Community as at another bank, relatively speaking.

Mr. Goblet said two more CDs will mature next month at LANB at a total of \$8 million. At that time, he said the Board may want to further diversify its depository base.

Mr. Kulka stated that he has been redoing the SIC's collateral requirements based on those of the State Treasurer, which has collateral requirements ranging from 50% to 102%. Given the Board's earlier discussion about accrued interest being covered by insurance, he said perhaps the Board should require 102% to deal with that.

Mr. Goblet said he believed First Community was over-collateralized by about \$500,000 at the end of December in the NMSBIC's Wealth Management account.

Mr. McDonald stated that apparently the structure of whether First Community uses the securities pledge or letter of credit impacts on the amount of money they have available to loan out. He said the letter of credit that they get from FHLB allows them to loan out all of the money, while the pledged securities does not. He said this was relevant in terms of the Board's discussion about supporting local banks.

**Mr. Kulka moved to reinvest the First Community Bank CD for six months with the proviso they provide 102% collateralization.**

Mr. Goblet asked what he should do if First Community refused the 102%.

Ms. Longserre suggested that the Board agree to roll the CD over at 100% but that Mr. Goblet ask First Community if they would agree to 102%.

**Mr. Kulka restated his motion that the NMSBIC reinvest the First Community Bank CD for six months at 100% collateralization with the proviso that Mr. Goblet ask if they would agree to 102%. Mr. Caldwell seconded the motion, which passed by voice vote.**

In discussion on the two CDs maturing in late March at LANB, Mr. Caldwell suggested that Mr. Goblet look at longer term CDs and laddering some of them.

Mr. Goblet reported that the LGIP has now received all but 1.2% of their investment in the Reserve Primary Fund, and \$56,615 was released into the primary account. As directed by the Board, he said that the account balance of approximately \$112,521 would be transferred to the checking account at First Community Bank, leaving a balance in the NMSBIC's restricted account of \$14,069.45. Should the LGIP be unable to recover additional settlements, he said the NMSBIC may direct the accountants to write off the balance as an investment loss.

Mr. Goblet said the NMSBIC has \$2.9 million of uncommitted capital that could have an impact in the state, and the NMSBIC has gotten its "biggest bang for the buck" with its lending partners. He noted that The Loan Fund will appear before the Board in March and probably will request an increase in commitment.

Mr. Goblet suggested the Board begin to think about what, if anything, it would like to do with the \$2.9 million.

Mr. Goblet cited Mr. Cobb's emphasis in past meetings about the need for affordable housing for the state's workforce, and commented that the Mortgage Finance Authority would be an ideal partner for that.

Mr. Cobb said investing in infrastructure might make better sense under that scenario because the NMSBIC would be able to get a faster return on its investment.

Mr. Goblet said the Gap Fund and Kick Start were two other possibilities; additionally, there were a couple of other startup funds that might be considered.

Ms. Longserre commented that the Board is probably looking at another two years of a very sad economic environment with a lot of need. She said the NMSBIC has only \$2.9 million left, which is a relatively very small amount of money.. She also pointed out that the political landscape in New Mexico is about to change rather broadly, and with that could come a change in economic strategy. Furthermore, she said the Board has not really made a decision about what it wants. She suggested that the Board not make any decision about the \$2.9 million right now, because that could be the last bit of funding it sees for a long time.

Board members agreed with Ms. Longserre.

Mr. Cobb said he would be very hesitant about giving any more money to The Loan Fund without more information from them, including how they are categorizing their loans and servicing their loans.

Mr. Goblet reviewed a spreadsheet on the NMSBIC's equity partners.

[Mr. Cobb excused himself from the proceedings.]

## **DISCUSSION AND POSSIBLE VOTE ON EXPENDITURES**

### **Membership in NM Angels**

Mr. Goblet said the NMSBIC has received an invoice for \$900 from New Mexico Angels, which is the annual membership fee. He said the annual fee is split between the Advisor (\$300 for meals) and the NMSBIC (\$600).

### **Participation in TVC Symposium**

Mr. Goblet stated that TVC hosts its annual equity symposium on May 19 and 20. He said he usually represents the NMSBIC at this event, and the NMSBIC receives a slightly reduced rate of about \$400. He recommended that the NMSBIC approve participation in this event.

### **New Mexico Business Weekly**

Mr. Goblet said New Mexico Business Weekly has selected him as a recipient of their annual Who's Who in Technology Award. He said he has informed them that he does not work for the NMSBIC but acts as their financial advisor. He said Kevin Robinson, one of their business reporters, will interview him. He said the award will be presented at a breakfast/lunch event on April 1.

Ms. Longserre congratulated Mr. Goblet on this honor.

Ms. Longserre moved that the Board approve the expenditure of \$600 for the New Mexico Angels and the expenditure of \$400 for Mr. Goblet to attend the TVC Symposium; and to approve expenses for Mr. Goblet and any Board members who want to attend the breakfast/lunch to honor Mr. Goblet. Ms. Garza seconded the motion and it passed by voice vote.

## **PRESENTATION and VOTE ON NEW NSBIC POLICIES**

[Deferred.]

### **EXECUTIVE SESSION [If Necessary]**

None.

**NEXT MEETING**

**Monday, Monday, March 22, 2010, 10:00 A.M.: WESST Enterprise Center**

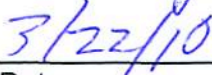
Mr. Goblet said the WESST Enterprise Center is located at Broadway/Lomas.

**ADJOURNMENT**

Its business completed, the NMSBIC Board adjourned the meeting at approximately 1:00 p.m.



\_\_\_\_\_  
Andrew Baca, President



\_\_\_\_\_  
Date



\_\_\_\_\_  
Adam Levine, Secretary



\_\_\_\_\_  
Date