

**MINUTES OF THE**

**NEW MEXICO SMALL BUSINESS INVESTMENT CORP.**

**April 23, 2021**

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. Guadalupe Garcia, Vice Chair  
Mr. Steven E. Morgan, Secretary/Treasurer  
Ms. Roxanna Meyers [joined at 9:45 a.m.]  
Mr. Alan Fowler

**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

**Guests Present**

None.

**REVIEW AND ACCEPTANCE OF AGENDA**

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

**BOARD MINUTES FOR FEBRUARY 17 AND FEBRUARY 26, 2021**

Mr. Fowler moved acceptance of the minutes of the February 17 and February 26, 2021, meetings, as presented. Mr. Garcia seconded the motion, which passed unanimously by roll call vote.

## **FINANCIAL REPORTS AS OF FEBRUARY 28 AND MARCH 31, 2021**

Mr. Cummins said financial reports are not yet available pending receipt of the quarterly report from The Loan Fund, and recommended tabling action until the next meeting. He anticipates receiving the reports Tuesday of next week, and would email them to the board members.

Mr. Cummins noted that, throughout the pandemic over the past year, even with the zero interest rate on COVID-19 loans and the reduction to 1 percent on traditional loans, NMSBIC has been generating interest that has more than covered operating expenses. He expects loan interest margins to go up over the next couple of months.

Mr. Cummins noted that the NMSBIC has committed all assets available at this time. After June, some funds may be returned to NMSBIC from DreamSpring. Chairman Badal recommended that Mr. Cummins inform the Governor's Office that the NMSBIC is fully committed.

**Mr. Fowler moved to table acceptance of the Financial Reports until the next meeting. Mr. Morgan seconded the motion, which passed unanimously.**

## **EXECUTIVE DIRECTOR/INVESTMENT ADVISOR REPORT**

### **Committed, Outstanding & Remaining Funds**

-- Lending partner commitments and outstanding balances were reviewed. At the time the figures were prepared, The Loan Fund's figures were as of December 31, 2020. Once the table is updated with The Loan Fund's quarterly report as of March 31, 2021, their total commitments approved at the last board meeting would go from \$25 million to \$27.5 million and the total committed funds, including the equity investments, would reach \$95 million. NMSBIC has held back \$700,000 in a cash reserve approved by the board and additional funds for net excess funds that might be owed to the Severance Tax Permanent Fund as of June 30, 2021.

### **DreamSpring**

-- Balance is at \$5.5 million, and their maximum lending limit is \$7.75 million for the traditional lending program. This balance has been dropping because DreamSpring has focused most of their resources on originating PPP loans. They have also suspended origination of the smaller loans in New Mexico of \$5,000 or less. They have drawn all of the \$35 million in NMSBIC funding for PPP loans. During the month of March, they originated about 50 loans under the NMSBIC PPP lending program as well as 167 loans totaling \$3.9 million that were originally funded with NMSBIC and later pledged to the Federal Reserve Bank. Mr. Cummins said spoke with Ray Ziler, DreamSpring's CFO, who said the March totals were low because there are a fair

number of businesses that have applied for a second round of PPP loans, but want to see the first PPP loans forgiven before funding second round loans.

#### Homewise and LiftFund

-- Chairman Badal asked Mr. Cummins to discuss with Homewise, LiftFund and the Mortgage Finance Authority what they project they will need going forward. The NMSBIC has a lot of funds committed to those three entities that they are not close to drawing down.

#### The Loan Fund

-- The commitment was increased by \$2.5 million at the last meeting. Their quarterly report shows that they drew another net of \$1.1 million this quarter. They continue to see net growth.

#### New Mexico Economic Development Department

-- NMSBIC is in the process of getting approval from the Department of Finance and Administration (DFA). Randy McDonald is going to talk to the DFA's attorney regarding preapproval prior to submitted signed documents.

#### Ventana Fund

-- Ventana Fund continues to grow. They are up to \$7.52 million, which is 72 percent of its \$10.5 million NMSBIC line of credit, and they anticipate additional draws within the next few months. For now, it appears Ventana Fund might hit a cap in its growth rate. Given the NMSBIC limits its funding to no more than 50 percent of the property value, Ventana Fund will likely exhaust the available cash it provides for the difference between its loan amount and the 50 percent of value funded by NMSBIC. It plans to pursue grants and unsecured or subordinate funding in order to continue growing.

#### WESST

-- Kim Blueher has retired. Mr. Cummins had a Zoom meeting with Sandro Tonini, their new VP of lending, who is evaluating WESST's lending program to see whether it would make sense to expand beyond the \$375,000 line of credit it has with NMSBIC. Were that to occur, NMSBIC would likely convert the current participation agreement to a revolving line of credit.

#### Flywheel Ventures, NM Gap Fund

-- The NMSBIC board approved moving forward with the purchase of two convertible notes, and the purchase of minority interests of the other partners at a discounted price of 25 percent of net asset value. NMSBIC has come to agreements with all of the parties on the

consent agreements for transferring the notes, and is in the process of working on final documentation. The closing is tentatively scheduled for next week.

#### NM Mezzanine Partners (NMMP)

-- Mike Doolittle, NMMP managing partner, has provided updated information regarding two outstanding notes. For the first note, the borrower is having discussions with a local lender to refinance its loan and pay off NMMP. For the second note, the borrower has experienced setbacks and is working to repurpose its operation to start generating revenues.

#### Verge I II Combined; Verge II and II.5 Unrealized Gains

-- At the last NMSBIC board meeting, the board approved purchasing additional capital call in Verge I II Combined up to \$233,000. Tom Stephenson, member of Verge Management, is in the process of offering the additional capital call to other Verge limited partners before determining the amount of NMSBIC's additional capital call.

-- For the quarter ended December 31, 2020, Verge II and II.5 reported significant unrealized gains related to a portfolio company. The company received a commitment for follow-on financing at pricing substantially higher than previous valuations for the company. The fair value for NMSBIC's investments in Verge II and II.5 increased by \$2.6 million and \$774,000, respectively. The unrealized gains had no impact on NMSBIC's recorded investments in the two equity funds given that NMSBIC's investments are reported using the cost method.

#### Short-term Investments

-- NMSBIC has about \$10 million in the SIC Core Plus Bond Pool. The yield through for the eight months ended February 2021 has been about 5.78 percent, about half of which is interest yield and about half is market gain. A market loss in March of about \$150,000 has not been recorded yet because posting is delayed one month given the timing of when we receive reports from the SIC.

-- The LGIP annualized net yield in March was 0.08 percent on an average balance of \$11.4 million.

#### Appointment of New NMSBIC Board Members

-- In follow-up to the January 11 Zoom meeting he and Chairman Badal held with Matthew Garcia, the Governor's Chief of Staff, and Dan Schlegel, the Governor's small business advisor, requesting that the Governor consider appointing new NMSBIC board members on a staggered basis, Mr. Cummins again reached out on April 15 and asked for an update on this request. He was notified that the matter was referred to Melissa Salazar, Director of Boards and Commissions. He will continue to follow up.

## Severance Tax Permanent Fund Activity Report

-- Balance of the STPF as of February 28 has gone up to about \$5.8 billion, a \$350 million increase in the value of the fund from the previous high water mark in at June 30, 2019. The increase times the NMSBIC's 2 percent allocation might result in just over \$7 million in funds due to NMSBIC. The numbers could change, however, between now and June 30.

## PULAKOS CPAS PROPOSED AUDIT ENGAGEMENT LETTER

Mr. Cummins stated that Pulakos CPAs was proposing a small increase in audit services fees from \$24,050 to \$25,250, for FY2021. The total cost would increase from \$27,950 to \$29,150, including tax preparation fees.. They have indicated that NMSBIC's assets and number of lending partners have grown.

Mr. Cummins noted that NMSBIC is not required to follow the state's rules regarding mandatory rotation of external auditors, and the American Institute of Certified Public Accountants does not recommend the practice. The Securities and Exchange Commission does not require rotation of external audit firms either, but does require rotation of the audit partner every seven years. In 2015, the NMSBIC board decided to rotate its audit partner, at which time Brad Steward was replaced with Jake Dopson as audit partner. Assuming the NMSBIC continues with a rotation of the audit partner every seven years, the NMSBIC would consider another audit partner rotation for the year ended June 30, 2022. Mr. Cummins discussed a possible change in audit partner with Mr. Dopson, and Mr. Dopson responded he will be ready to address this issue next year.

Mr. Cummins recommended approval of the proposed Engagement Letter from Pulakos CPA for the year ending June 30, 2021, and that Steve Morgan, Secretary/Treasurer, be authorized to execute the Engagement Letter.

**Ms. Meyers so moved. Mr. Garcia seconded the motion, which passed unanimously.**

## VENTANA FUND NOTICE OF LOAN POLICY CHANGES

Mr. Cummins stated that Ventana Fund is providing NMSBIC with proposed changes to their lending policy. He added that several of the changes to the loan policy were done to be in compliance with the NMSBIC's requirements, e.g., placing a 5-year cap on the maturity date of all of their loans and requiring loans only be made to New Mexico businesses. Ventana Fund can only use NMSBIC funds for their Gateway, Threshold, and LIHTC (Low Income Housing Tax Credit) lending programs.

Mr. Cummins reviewed the changes to the Threshold term sheet and program, as summarized by Ventana in their April 8 memorandum (pages 53-54). There were no changes to

the Gateway or LIHTC programs. He said he had no concerns with the changes and recommended accepting them so they could go into effect immediately.

**Mr. Garcia moved that:**

- **Provided Ventana Fund is required to provide the NMSBIC with 90 days' advance written notice of any amendment, change, or modification of Borrower's Lending Policies, its Gateway Program, or its Threshold Program; and**
- **Ventana Fund provided NMSBIC with such advance written notice on March 25, 2021;**
- **The NMSBIC board of directors approves the changes to Ventana Fund's Loan Policy and Threshold Program effectively immediately.**

**Mr. Fowler seconded the motion, which passed unanimously.**

#### **NEW MEXICO COMMUNITY DEVELOPMENT LOAN FUND, PROPOSED MODIFICATION TO LINE OF CREDIT**

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Mr. Cummins stated that the NMSBIC and The Loan Fund have a Deposit Account Control Agreement in place with US Bank covering the deposit account where funds to the NMSBIC are held for: 1) funds advanced by NMSBIC to The Loan Fund for pipeline loans expected to close in the next 60 days; and 2) principal payments The Loan Fund receives from its borrowers on NMSBIC loans, which will be remitted to the NMSBIC by The Loan Fund after the end of each calendar quarter.

Mr. Cummins said The Loan Fund is planning to move its deposit account relationship to Enterprise Bank and is requesting the NMSBIC to approve a modification to the loan agreement and related documents to allow for that. He and Mr. McDonald have reviewed the proposed Deposit Account Control Agreement with Enterprise Bank. Mr. McDonald requested changes to the agreement, which were agreed to by Enterprise Bank and The Loan Fund.

Mr. Cummins proposed the following motion:

**I move the NMSBIC approve a modification to the Loan Agreement and related documents with the New Mexico Community Development Loan Fund as follows:**

- **The depository financial institution in the Deposit Account Control Agreement be changed from US Bank to Enterprise Bank; and**
- **Joseph Badal be authorized to sign any and all documents related to the transaction, subject to review and approval by the Executive Director/Investment Advisor and NMSBIC's legal counsel.**

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

### **NMSBIC BUSINESS CONTINUITY PLANNING**

Mr. Cummins said Chairman Badal asked him to give consideration to certain business continuity planning changes a few months ago. Given the growth in the NMSBIC's assets, now close to \$100 million, along with a lot more activity, it would be prudent to plan for how the organization would respond were something happen to Mr. Cummins. Mr. Cummins said he consulted with Randy McDonald and Dee Brescia, and appreciated their input on this. He presented a summary of recommended actions and changes:

1. Accept the NMSBIC Business Continuity Plan, including backup responsibilities that would primarily be fulfilled by Randy McDonald and Dee Brescia.
2. For the NMSBIC's electronic files that are stored in the cloud in a Microsoft OneDrive account, move the files from RDC Advisor's LLC OneDrive account to an NMSBIC OneDrive account. There would be no additional cost given the NMSBIC has an existing available OneDrive account related to the NMSBIC's Office 365 email hosting account.
3. Add Dee Brescia as a user to the NMSBIC's Office 365 account with administrative rights, and with full access to (i) the NMSBIC's electronic files, and (ii) the NMSBIC's email. The cost to add each additional Office 365 user is \$5.00 per month/per user plus tax.
4. Provide Randy McDonald with a spare key to the NMSBIC's PO Box.
5. Mr. Cummins be authorized to open a bank safe deposit account to store the NMSBIC's original promissory notes, which are negotiable instruments and currently maintained by Randy McDonald. Russell Cummins and Randall McDonald will have access to the safe deposit box.

Mr. Cummins reviewed the proposed Business Continuity Plan.

Mr. Cummins said Mr. McDonald had recommended considering whether the NMSBIC should have its own computer equipment. Mr. Cummins felt it made sense to focus on having everything in the cloud and having backups to the cloud, but not focusing on specific hardware.

Noting Mr. Cummins' comments that he saw no need for additional staff, Mr. Fowler said he felt it would take two people to replace Mr. Cummins given his years of experience with the NMSBIC, his background, and his expertise. Mr. Cummins responded a replacement might need an administrative assistant.

Mr. Cummins said Chairman Badal had suggested the NMSBIC consider acquiring a key man life insurance policy for Mr. Cummins that would offset additional costs related to a transition to a new executive director/investment advisor. Assuming additional billings from Ms. Brescia and Mr. McDonald might total roughly \$15,000 per month, and a transition to a new executive director/investment advisor might take six months, the total additional cost might be roughly \$90,000. Based on his age, he said a \$100,000 key man life insurance monthly premium would be approximately \$50 per month.

Chairman Badal said the continuity plan should be tested during the annual audit, and that it should be discussed with Pulakos CPAs to make this part of the audit.

Chairman Badal suggested that, if the NMSBIC brings on someone to help Mr. Cummins, at that point the NMSBIC would need an office. He said it would be helpful, however, to know how long Mr. Cummins plans to continue in his position with the NMSBIC. He said there would be no transition period, were Mr. Cummins to bring in an apprentice to work under him as part of planned his departure as opposed to him leaving unexpectedly. He commented that he would rather pay the cost of hiring somebody that would allow them learn as much as they possibly could from Mr. Cummins.

Chairman Badal said he would like to see a key man life insurance policy taken out on Mr. Cummins.

**Ms. Meyers moved that the NMSBIC board of directors accept the NMSBIC Business Continuity Plan dated April 16, 2021, including adding Dee Brescia to the NMSBIC's Office 365 user, authorizing Mr. Cummins to open a safe deposit box to be accessed by Mr. Cummins or Mr. McDonald, and including key man life insurance on the Executive Director in the amount of \$100,000, and that the other recommendations in the plan be implemented. Mr. Fowler seconded the motion, which passed unanimously.**

Chairman Badal commented to Mr. Cummins that the business continuity plan he had prepared was exactly what he was looking for, and more. Mr. Morgan added that this could be a model for other businesses. Chairman Badal concurred.

Mr. Cummins added that, at this point, he would put his anticipated timeframe to continue serving as Executive Director/Investment Advisor at "five years plus." He agreed that it would certainly change the discussion in terms of working on an orderly transition to his replacement should his timeframe change.

Chairman Badal recommended adding what an ideal resume would look like for Mr. Cummins' replacement.

Ms. Meyers suggested that if the NMSBIC engages in a search for a new Executive Director/Investment Advisor, it might look into Kolbe.com for its "Conative screening" assessment tests.



## **DIRECTORS AND OFFICERS INSURANCE POLICY RENEWAL**

Mr. Cummins recommended renewal of the Directors and Officers life insurance policy, which provides \$1 million in coverage with a \$10,000 deductible. He received the quote, which Mr. McDonald has reviewed, and it is very close to the \$4,228 that the NMSBIC paid last year. Assuming there is no significant change to the annual premium, he recommended approval to renew the policy, so long as the annual premium is less than \$4,500.

**Mr. Garcia so moved. Mr. Fowler seconded the motion, which passed unanimously.**

## **EXECUTIVE DIRECTOR/INVESTMENT ADVISOR, EXPANDED SERVICES REPORT AND COMPENSATION**

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Mr. Cummins summarized the highlights in his report [pp. 91-100.]

[Mr. Cummins exited the meeting.]

Chairman Badal said the board has previously talked about coming up with a bonus program relating to Mr. Cummins' management, primarily with the changes in the equity deals.

Mr. Garcia said the NMSBIC has experienced phenomenal growth, largely coordinated by Mr. Cummins. He agreed that the board would have to look very hard to find someone to replace him. He said a good organization cannot be run without a good leader.

Mr. Morgan commented on the large number of loan modifications Mr. Cummins has had to make with existing agreements, along with bringing in new lending partners in the middle of a pandemic. He said it was amazing that the NMSBIC was able to pull this off.

Ms. Meyers said Mr. Cummins is a rare find. She suggested giving him a one-time bonus.

Mr. Fowler stated that the extra work taken on by Mr. Cummins has increased dramatically over what he was doing four or five years ago.

Chairman Badal stated that, while putting more time in should be noted, what is noteworthy is the quality of what Mr. Cummins brings to the NMSBIC. His manner is impressive, he is honest and ethical, and he is smart. He said the NMSBIC couldn't have anticipated COVID and all of the equity deals that Mr. Cummins has had to deal with. He suggested giving Mr. Cummins a onetime bonus of \$25,000.

Mr. McDonald said \$25,000 was reasonable and justifiable based on all the factors outlined in Mr. Cummins' memo.

**Ms. Meyers moved to approve a onetime bonus for Mr. Cummins of \$25,000, plus New Mexico gross receipts tax. Mr. Fowler seconded the motion, which passed unanimously.**

[Mr. Cummins joined the meeting.]

Chairman Badal complimented Mr. Cummins on all he has done in a very stressful time, and said the board has granted him a one-time bonus of \$25,000, plus New Mexico gross receipts tax. He said the board appreciates everything he has brought to the NMSBIC.

**BOARD CONTINUING EDUCATION**


Mr. Cummins noted said the *New Mexico Economic Databook* from the Federal Reserve Bank of Kansas City was included in the board package.

**CHAIRMAN'S COMMENTS**

Chairman Badal said he appreciated all that the board does. He was honored to work with the members. All it has done over the last year has truly made a difference.


**ADJOURNMENT**

The meeting was adjourned at 11:00 a.m.



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Joseph Badal, Chairman



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Date