

**MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE  
NEW MEXICO SMALL BUSINESS INVESTMENT CORP.**

**February 25, 2022**

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 [leaving at 9:30 a.m.]  
Mr. Alan Fowler, Vice President  
Mr. Steven E. Morgan, Secretary/Treasurer  
Ms. Heather Benavidez, designee of Hon. Tim Eichenberg, NM State Treasurer  
Ms. Anne Beckett  
Mr. Robert Valdiviez  
Mr. Joshua Smith

**Members Excused**

None.

**Financial Adviser to Board**

Mr. Russell Cummins

**Board Legal Counsel**

Mr. Randy McDonald

**Recording Secretary**

Ms. Charmaine Clair

**Guests Present**

Mr. Brian Fairhurst, Managing Director, Institutional Sales, RBC Global  
Ms. Mindy Frye, Institutional Portfolio Manager, Impact Strategies, RBC Global  
Mr. Brian Svendahl, Senior Portfolio Manager, US Fixed Income, RBC, Global  
Mr. Daniel Slavin, Director of Real Estate Development, Homewise

Mr. Doug Bystry, President/CEO, Clearinghouse CDFI  
Mr. Jay Harrison, Chief Investment Officer, Clearinghouse CDFI

**REVIEW AND ACCEPTANCE OF AGENDA**

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

## **BOARD MINUTES FOR DECEMBER 8, 2021**

**Mr. Morgan moved acceptance of the minutes of the December 8, 2021, meeting, as presented. Ms. Benavidez seconded the motion, which passed unanimously by roll call vote.**

## **FINANCIAL REPORTS AS OF NOVEMBER 30, 2021, DECEMBER 31, 2021, AND JANUARY 31, 2022**

Mr. Cummins stated that available funds were at \$25.8 million as of January 31, 2022, which increased to \$45.6 million with the receipt of \$17.8 million from the Severance Tax Permanent Fund in February. This includes the Lift Fund's reduction of its commitment from \$3 million to \$1 million.

**Mr. Morgan moved to accept the Financial Reports as of November 30, 2021, December 31, 2021, and January 31, 2022. Mr. Valdiviez seconded the motion, which passed unanimously by roll call vote.**

### **RBC GLOBAL ASSET MANAGEMENT, PROPOSED IMPACT FUND INVESTMENT: BRIAN FAIRHURST, MANAGING DIRECTOR, INSTITUTIONAL SALES; MINDY FRY, INSTITUTIONAL PORTFOLIO MANAGER, IMPACT STRATEGIES; AND BRIAN SVENDAHL, SENIOR PORTFOLIO MANAGER, US FIXED INCOME**

Mr. Fairhurst introduced colleagues Brian Svendahl, co-head of RBC and lead portfolio manager, and Mindy Frye, Institutional Portfolio Manager and expert on impact targeting, measurement and reporting.

Ms. Fry and Mr. Svendahl made a slide presentation regarding RBC and its Impact Fund activities.

Ms. Fry noted that that Access Capital was launched in 1998 and Impact Bond in 2009, so they have a very long track record in this space. They just reached \$2 billion in assets under management across their Impact Investing strategies in mutual funds and separate accounts.

[Chairman Badal exited the proceedings.]

Mr. Fairhurst discussed RBC's proposal that the NMSBIC invest \$25 million in an RBC Impact Fund comprised of investments in New Mexico Small Business Administration ("SBA") 7(a) loans as well as other short-term investments while the SBA 7(a) loans are originated and pooled. They would create a custom portfolio comprised solely of handpicked small business loans guaranteed by the US. government for businesses meeting the NMSBIC's criteria in New Mexico. Each of the loans would be sourced by their network of originators, hopefully through some of the New Mexico's CDFIs, but also national CDFIs and other originators. The NMSBIC would know where its loans are based geographically, whom they are lending to, where the businesses are located, the types of services they are providing, and the communities benefiting from those services.

Responding to Mr. Fowler, Mr. Fairhurst said the NMSBIC will see reporting that gives a line item recap of the loans, including the loan number, and what CUSIP each loan trades in.

Mr. Morgan asked if real estate loans might take 25 years before the NMSBIC would see the principal returned. Mr. Cummins responded that there would be a mix of real estate loans with maturities up to 25 years, and loans for equipment, inventory and working capital with maturities up to 10 years. The loans would be amortizing loans, so the NMSBIC would receive scheduled principal and

interest payments. Given the scheduled principal payments, along with prepayments, the NMSBIC would expect to have funds returned to it in less time than the contractual maturities.

Mr. Morgan said his concern is that the CDFIs that the NMSBIC works with now have a much quicker turnaround than this arrangement would be, even though there are upsides and payouts that could occur. He wondered if the NMSBIC would be on the hook for these dollars for a longer-term period than what is usual for it in the past with other CDFIs it has worked with.

Mr. Cummins referred to table on page 25, showing a blended portfolio of half equipment loans (10-year maturity) and half real estate loans (25-year maturity). With scheduled principal payments and estimated prepayments, the SBA loans are projected to be repaid in about 8 years. This is less than the contractual maturities on the SBA loans, but is longer than the loan turnover of roughly 2 years for some the NMSBIC's existing lending partners.

Mr. Smith asked if the NMSBIC would be required to mark-to-market these securities. Mr. Cummins responded that he would need to verify the accounting treatment. Mr. Smith said his concern is that these are institutional grade quality bonds and the NMSBIC would be buying in at the most expensive time. In a rising rate environment, it will see price pressure on these bonds, and he presumed the NMSBIC would see some losses if they are marked to market. Mr. Cummins noted the SBA pools are variable rate investments with rates adjusting quarterly, therefore any changes in market value should be minimal in rising or falling rate environments.

Mr. Svendahl said they could require the securities to be floating rate, as the bulk of the market is floating rate. There is price movement, but it is not because these are interest rate driven, but because these are small pools where the price vendors quote can move around a little bit.

[The RBC team exited the proceedings.]

Mr. Cummins noted that Chairman Badal had requested a legal opinion from Mr. McDonald on whether the RBC's proposal complies with the NMSBIC's cooperative agreement requirement and also qualifies as a debt investment. He suggested that the matter be tabled until the next meeting.

Mr. McDonald said this is an interesting opportunity and investment for the NMSBIC organization. His initial reaction is that it could be structured such that it could meet the legal requirements. He suggested board members forward any questions to Mr. Cummins so they could be addressed during his legal review.

Mr. Cummins noted he is discussing with RBC the ability for the NMSBIC to fund the \$25 million commitment in smaller increments over time.

**HOMEWISER PROPOSED MODIFICATIONS FOR CHARTER SCHOOL CONSTRUCTION LENDING PROGRAM: DANIEL SLAVIN, DIRECTOR OF REAL ESTATE DEVELOPMENT**

Mr. Slavin presented an overview of the Homewise program, which recently received a \$1.8 million grant from the Daniel's Fund to help with the acquisition, construction, and rehabilitation of charter schools in New Mexico. He said Homewise has a real estate development department that works with charter schools. Homewise would use the proposed NMSBIC funds for construction of charter school

facilities, and would access other longer-term sources of funds such as other CDFIs for permanent financing.

Mr. Cummins said proposed changes to Homewise's existing line of credit are:

- \$3 million in additional NMSBIC funding, increasing the NMSBIC line of credit from \$4 million to \$7 million, and
- An increase in the maximum loan amount from \$1 million to \$5 million, provided that the NMSBIC's exposure would be capped at \$1 million invested in any single construction or rehabilitation project.

Vice Chair Fowler asked how long these loans would be on the books. Mr. Slavin responded that, based on Homewise's last charter school project in Albuquerque, phase one was a smaller facility of 20,000 square feet and that took 18 months, which was followed by phase two. He said two phases would take about five years.

Mr. Smith noted that House Bill 43 (Charter School Facility Improvements), which recently passed in the legislature, could potentially provide another source of funding for charter schools. Mr. Slavin said he was unaware of this and would review HB 43 to see how it might affect Homewise.

[Mr. Slavin exited the proceedings.]

Mr. Cummins recommended approval of the changes requested by Homewise.

**Mr. Smith moved, seconded by Mr. Morgan, that the NMSBIC board of directors approve modifications to the Homewise revolving line of credit to:**

- **Increase the maximum funding amount from \$4 million to \$7 million, and**
- **Increase the maximum loan amount to \$5 million, provided that the NMSBIC's exposure would be capped at \$1 million in any single loan, and**
- **Subject to review and approval of the loan modification documents by the NMSBIC executive director/investment advisor and legal counsel, that Joseph Badal or Alan Fowler be authorized to execute any and all documents related to the modification.**

**The motion passed unanimously by roll call vote.**

#### RBC proposal questions

Mr. Morgan asked if RBC would be packaging loans that the NMSBIC would otherwise lend on, and if there would be a benefit from it. Vice Chair Fowler said that, because of RBC's networks, they would present opportunities to source new small business loans that the NMSBIC wouldn't otherwise find. Mr. Cummins concurred with Mr. Fowler.

Mr. Cummins said one of his questions is whether there is \$25 million of small business loans in New Mexico that would meet NMSBIC criteria and be available to include in SBA pools. He said there was about \$200 million of SBA 7(a) loan production in New Mexico over the previous 12-month period, which is good production, but many of these loans were originated by traditional banks in New Mexico, which are keeping the SBA loans in their portfolio and not selling them into SBA pools. RBC has noted, however, that they have a network of national CDFIs that, if there were a dedicated buyer, would be willing to originate SBA 7(a) loans in low income areas and to minority owned businesses, women-owned businesses, etc. These would be new loans, so the NMSBIC would be funding new SBA loan production in New Mexico.

As noted earlier in the meeting, Chairman Badal requested a written legal opinion indicating the RBC investment would meet the NMSBIC's legislative requirements regarding cooperative agreements and debt investments. The agenda item was tabled.

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

Mr. Cummins noted that total committed funds are currently at \$68 million, with outstanding balances at \$49 million.

DreamSpring: Funds committed to DreamSpring total \$11.3 million, down from a high of \$42.75 million. In January 2022, the last loan under the Prior Lending Program was paid off, and the program has ended. PPP balance is down to \$3.5 million from a high of \$35 million.

Homewise: Their outstanding balance is \$1.77 million or 44 percent of its committed amount. They are projecting good growth on their small business loans and expect to deploy the \$4 million in NMSBIC committed funds within the next two years. NMSBIC is having discussions about funding their real estate development program. Under one possible scenario, Homewise would create a Special Purpose Entity, with the NMSBIC issuing a letter of credit to the City of Santa Fe. The NMSBIC's funds might also be used to fund real estate development using New Market Tax Credits. Both of these ideas are being researched.

NM Mortgage Finance Authority: Mr. Cummins and Chairman Badal spoke by phone yesterday with Jeff Payne and George Maestas at the MFA. They discussed a discontinued HUD program in which HUD funded MFA buying abandoned homes, rehabilitating them, and selling them to low-income borrowers. MFA is thinking about reviving this concept and having NMSBIC help with the funding. They would first have to find a group of partners to go in and do the rehabilitation work.

Verge Fund: Page 104 in the Board Book includes updates on Verge activities.

SIC Core Plus Bond Pool: There was a \$263,000 negative market value adjustment in the month of January. This is not in the January financials because reports from the SIC are received after the NMSBIC closes its books.

Local Government Investment Pool: Balances are at \$53.8 million, which includes the \$17 million received last week from the Severance Tax Permanent Fund.

**CLEARINGHOUSE CDFI, PROPOSED NEW NMSBIC LENDING PARTNER:  
JAY HARRISON, CHIEF INVESTMENT OFFICER  
DOUG BYSTRY, PRESIDENT/CEO**

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Mr. Bystry discussed the background of Clearinghouse CDFI, which is one of about six or seven for-profit CDFIs in the U.S. They started from a nonprofit organization, when he brokered community development loans to financial institutions. He said it was very difficult to get banks to make loans to low income communities and communities of color, and he decided to incorporate as a for-profit based on his belief that it is possible to do community development impactful lending and be profitable. He said a key difference between Clearinghouse CDFI and the nonprofit CDFIs is that Clearinghouse CDFI pays taxes.

Mr. Bystry said their service area includes the entire United States, with a focus on western states including New Mexico. While the emphasis of their lending is on real estate secured type projects, they will consider any credit request that has a tangible community benefit. He said they are excited about their potential relationship with the NMSBIC.

Mr. Harrison said they are rapidly growing with about \$640 million in total assets, and have been profitable for 22 consecutive years. They very carefully underwrite each and every deal, even though the borrowers they lend to don't generally qualify for conventional debt from conventional lenders, so they have an interesting niche in the world. They have been in New Mexico for about four years, and currently have about 22 loans totaling over \$34 million. They have also done two New Market Tax Credit deals in New Mexico totaling \$22.3 million. One was a transaction with the Pueblo of Laguna and the other was La Castaneda in Las Vegas. He added that he is a native New Mexican, so was very excited about this potential relationship.

Vice Chair Fowler asked how borrowers find Clearinghouse CDFI. Mr. Harrison responded that it included some advertising and some marketing, but most of their business comes through word of mouth. Mr. Bystry added that they have a business development officer in New Mexico, who works out of his home and actively seeks out projects for them.

Mr. Bystry said their sweet spot is \$2.5 million to \$10 million, but there is no loan too small that they won't consider. They have done loans as large as \$16 million, so they have a very wide range. Since most of their deals are real estate based, they tend to be a little larger. Their portfolio on average is about \$3 million per loan.

Mr. Cummins noted that, based on the 22 loans they currently have in New Mexico totaling \$34 million, that would average out to about \$1.5 million. He said he would suspect their average loan size in New Mexico, as opposed to California, would be a little smaller. Mr. Bystry agreed.

Mr. Cummins commented that the NMSBIC wants to see loans within the Albuquerque Metro, but asks its lending partners to make their best efforts to originate loans throughout the entire state. He added that the two deals cited by Clearinghouse today, one in Las Vegas, New Mexico and the other with the Pueblo of Laguna, speaks to their ability to get loans deployed throughout the state.

Responding to Vice Chair Fowler, Mr. Cummins said the proposed funding agreement with Clearinghouse would limit loans-to-one-borrower to the NMSBIC's statutory limit of 10 percent of the

NMSBIC's net assets, which results in a loan-to-one-borrower limit of about \$10 million. He feels this is reasonable based on their financial strength as well as their experience in originating larger loans.

Vice Chair Fowler asked Clearinghouse CDFI what terms they look for when doing a typical deal. Mr. Harrison responded that they are exclusively a fixed rate lender to avoid cash flow shocks with changing rates. He said the rate is custom-structured around the borrower's needs. Often, for cash flow reasons, they want long-term amortization, which Clearinghouse CDFI can provide. On the other end, they do construction lending, and that might be a 24-month term. From a rate point of view, they try to achieve a 3 percent margin over their cost of funds, which can range from 2 percent to 3.5 percent.

Mr. Bystry added that sometimes they deviate from that based on risk, or if the borrower needs additional help. They typically charge a 1.5 percent origination fee, but that is negotiable and sometimes they waive it depending on whether it is a nonprofit or not. He commented that their flexibility has served them well.

Mr. Smith said he understands Clearinghouse is one of the few CDFI's that will do construction lending in New Mexico. He feels this is a compelling reason to support this proposal.

Ms. Beckett asked if there is any appetite for the entrepreneur who doesn't have a two-year track record. Mr. Harrison responded that Clearinghouse is probably not the best CDFI for this, and would probably refer them to another CDFI that does microlending or more venture capital type lending.

[Clearinghouse Representatives exited the proceedings.]

**Mr. Smith moved, seconded by Ms. Benavidez, that the NMSBIC board of directors approve a revolving line of credit to Clearinghouse CDFI as follows:**

- **\$5 million maximum loan amount, with terms and conditions set forth in the Discussion Term Sheet including in the board package, and**
- **Subject to review and approval of the loan documents by the NMSBIC executive director/investment advisor and legal counsel, that Joseph Badal and Alan Fowler be authorized to execute any and all documents related to the revolving line of credit.**

Vice Chair Fowler asked Mr. Cummins if he feels there are potential loans out there for Clearinghouse, and is \$5 million is enough or too much.

Mr. Cummins responded that they currently have 22 loans totaling \$34 million in New Mexico. If they wanted to deliver existing loans, they could fill up the NMSBIC \$5 million line of credit immediately. Mr. Harrison said he projects they can originate \$15 million in loans in New Mexico in the next 18-24 months. Mr. Cummins said in his discussions with Clearinghouse CDFI, he suggested starting with \$5 million and consider growing the maximum loan amount as needed.

Vice Chair Fowler suggested starting with a \$5 million line of credit and setting \$5 million aside if they ask for it.

Following discussion, Mr. Smith agreed with Mr. Cummins' recommendation that the board let the motion stand as presented, and that he (Mr. Cummins) have a verbal discussion with Clearinghouse about monitoring demand and considering increasing the line of credit in the future.

Responding to concerns expressed by Mr. Valdiviez, Mr. Cummins noted that the NMSBIC's standard rate for lending partners has been 2% for several years, and the NMSBIC's lending partners have not made significant changes to rates they charge their borrowers over several years. Should interest rates go up significantly, this could be revisited.

**The motion passed unanimously by roll call vote.**

#### **LOAN ACQUIRED FROM NEW MEXICO GAP FUND, REQUESTED EXTENSION FOR AUDITED FINANCIAL STATEMENTS**

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Mr. Cummins stated that, in 2021, the NMSBIC purchased the partnerships remaining investment assets, comprised of two convertible notes. For one of the companies (Company A), a Consent Agreement agreed to by the NMSBIC required the company to complete an independent audit as of December 31, 2021, and to provide the NMSBIC with an audit report by May 31, 2021.

Mr. Cummins said he has observer rights at the company's board meetings, which he has been attending. The company has engaged CliftonLarsonAllen (CLA) to complete the independent audit of its financial statements as of December 31, 2021. In planning for the audit, the company and CLA are working on an audit plan and timing. This is the company's first independent audit, and complexities have been noted including international revenues and royalty streams. As a result of the audit planning, the company is requesting the deadline for providing the NMSBIC with its December 31, 2021, audit report be extended to August 31, 2022.

Mr. Cummins recommended approval of this request.

**Mr. Morgan moved, seconded by Mr. Valdiviez, that the NMSBIC board of directors approve:**

- **An extension to August 31, 2022, for delivery of audited financial statements as of December 31, 2021, from a borrower under a convertible note acquired from the New Mexico Gap Fund I in 2021, and that**
- **Joseph Badal or Alan Fowler be authored to sign a letter to the borrower approving the extension.**

**The motion passed unanimously by roll call vote.**

#### **LEGISLATIVE UPDATE**

Mr. Cummins said he has been tracking three bills introduced in the 2022 legislative session. While no proposed legislation directly impacts the NMSBIC, they are of interest:

Venture Capital Act: Proposes that \$50 million be appropriated and provided to the New Mexico Finance Authority to create a venture capital program for early stage venture capital. He spoke with Charles Wollmann at the SIC, who noted that the SIC didn't oppose the legislation, but he had heard discussion from people who felt the SIC's equity program, which includes venture capital investments, isn't aggressive enough in making early-stage investments. He commented that the Fiscal Impact Report (FIR) states that the SIC has return requirements for the different funds they manage, and that the risk/reward made it difficult to for the SIC to make risky early-stage investments. The FIR also included



information from the NMSBIC's annual report, where it states that the NMSBIC has committed over \$32 million in venture capital investments with life-to-date losses of \$15 million. This has passed the House and Senate, and it appears likely the Governor will sign it.

Public Banking Act: The proposed Act would create a state-owned bank in New Mexico. [Tabled by the HCEDEC.]

Interest Rates for Certain Loans: This has passed the House and Senate. HB 132 amends the New Mexico Bank Installment Act of 1959 and the New Mexico Small Loan Act of 1955. The New Mexico Small Loan Act of 1959 includes a provision that prohibits lenders from charging fees on loans of \$5,000 or less, including small business loans. Key provisions include:

- The amount for impacted loans is increased from \$5,000 to \$10,000.
- The maximum annual percentage rate is reduced from 175% to 36%, provided that if the Prime Rate exceeds 10% then the maximum rate shall increase by each percentage point that the Prime Rate exceeds 10%.
- A fee of \$500 is now allowed so long as the fee does not exceed 4% of the total principal of the loan and shall not be imposed more than one time per 12-month period.

#### **NEW MEXICO MORTGAGE FINANCE AUTHORITY, PROPOSED EXPANSION OF NMSBIC RELATIONSHIP**

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Mr. Cummins said the MFA proposal was for NMSBIC funds to be used to make loans to individuals, which the NMSBIC cannot do. He recommended canceling this as an agenda item.

#### **APPOINTMENT OF NEW NMSBIC BOARD MEMBERS, UPDATE**

Mr. Cummins said the NMSBIC board members received appointment letters on January 13. There were issues with the initial letters, and the Governor's Office issued new letters dated January 26, which stated that they were recess appointments. Mr. McDonald's reading of the New Mexico Constitution is that the Governor's Office cannot make recess appointments while the legislature is in session. Mr. Cummins contacted the Governor's Office noting that legal counsel had a question about this, and asked that they reissue the letters. The Governor's Office called him earlier this week, indicated they agreed with Mr. McDonald's analysis, and are in the process of redoing the appointment letters for the NMSBIC's board members.

Mr. Cummins asked board members to provide him with a scanned copy of their appointment letter. He would review them with Mr. McDonald. He noted that there is no end to the terms of board members.

#### **BOARD CONTINUING EDUCATION, BBER ECONOMIC SNAPSHOT**

Mr. Cummins said this information is provided in the board package.

#### **CHAIRMAN'S COMMENTS**

Vice Chair Fowler said he is excited to be part of the board with the new members. He thanked Mr. Cummins for continuing to be the keel for the board, as he is the driver of this organization's success.

**NEXT BOARD MEETING: Friday, April 29, 2022, 9:00 – 12:00 noon.**

Vice Chair Fowler said the meetings would continue to be in a hybrid format.

**ADJOURNMENT: 12:12 p.m.**

  
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Joseph Badal, Chairman

5/5/22  
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Date