

MINUTES OF THE

NEW MEXICO SMALL BUSINESS INVESTMENT CORP.

December 7, 2020

A meeting of the New Mexico Small Business Investment Corporation was called to order on this date at 9:05 a.m. via teleconference. A quorum was established.

Members Present

Mr. Joseph H. Badal, Chair
Ms. Roxanna Meyers, Vice Chair
Mr. Guadalupe Garcia
The Hon. Tim Eichenberg, New Mexico State Treasurer

Members Excused

Mr. Alan Fowler
Mr. Steven E. Morgan, Secretary/Treasurer

Financial Adviser to Board

Mr. Russell Cummins

Board Legal Counsel

Mr. Randy McDonald

Recording Secretary

Ms. Charmaine Clair, for Judith Beatty

Guests Present

Mr. Tom Stephenson, Verge Management
Mr. John Clark, Deputy Director, NM Economic Development Department (EDD)
Ms. Johanna Nelson, Strategic Program Development Coordinator, EDD
Mr. Robert de Pasquale, Pulakos CPAs
Ms. Dee Brescia, Contract CFO

REVIEW AND ACCEPTANCE OF AGENDA

Mr. Eichenberg moved acceptance of the agenda, as published. The motion was seconded by Mr. Garcia and passed unanimously by roll call vote.

BOARD MINUTES FOR OCTOBER 23, 2020

Mr. Garcia moved acceptance of the minutes for October 23, 2020, as presented. Mr. Eichenberg seconded the motion, which passed unanimously by roll call vote.

PROPOSED PURCHASE OF ADDITIONAL CAPITAL CALL IN VERGE I II COMBINED LIMITED PARTNERSHIP: TOM STEPHENSON, MEMBER, VERGE MANAGEMENT

Mr. Cummins presented an update on the transaction in which NMSBIC has agreed to combine its interests in four different Verge funds into Verge I II Combined Fund (Verge I II Combined) and to purchase interests from other limited partners up to a maximum of \$1 million. The estimated amount of the prior fund balance is \$537,144.80, and the estimated discounted purchase price is \$134,286.22. In addition to that, NMSBIC agreed to pay legal fees related to the purchase of the shares, which are estimated to be \$7,163.32. In addition, for the interest NMSBIC will purchase, it will also be responsible for paying the 2.1 percent capital call in Verge I II Combined, estimated to be \$11,280. Therefore, the expected purchase price of interest from the other limited partners will total about \$150,000.

Mr. Cummins said the Verge Funds had calculated they would need about \$790,000 in additional expenses over the life of the fund between now and the end of 2025; however, there were only \$518,000 in subscriptions for the optional capital call for Verge I II Combined, leaving a shortfall of about \$272,000 for the estimated fund expenses. Verge Management is proposing that LPs, including NMSBIC, be allowed to purchase “Additional Capital Call” in Verge I II Combined. Any Additional Capital Call purchased would be entitled to 3x repayment, paid prior to distribution of funds to LPs in general, but without the increase of 10 percent in their capital account.

Mr. Cummins said Mr. Stephenson would like NMSBIC to consider purchasing up to \$272,000 in additional capital call. The amount could be reduced if additional subscriptions come in from LPs or if other LPs are interested in purchasing part of the Additional Capital Call. Because this wouldn't get close to the \$1 million that the board initially approved for purchases of additional Verge interests, the NMSBIC would have room with what it originally committed to purchase additional interests.

Mr. Stephenson said the numbers on the capital call have changed, and they are now short \$230,000 or \$240,000. He added that, while Verge Management generally got a very positive response from the LP group on the reorganization proposal, Verge I did not get enough votes to facilitate the transaction in the streamlined process they proposed. He said they plan to dissolve Verge I. At that point, the NMSBIC along with other interested LPs can choose to contribute their Verge I interest into the new combined fund.

Mr. Cummins proposed the following motion:

- **The NMSBIC board of directors approves an amendment to the Verge I II Combined Limited Partnership Agreement to allow Limited Partners to purchase additional capital call.**

Ms. Meyers so moved. Mr. Garcia seconded the motion, which passed unanimously by roll call vote.

Mr. Cummins proposed the following motion:

The NMSBIC board of directors approves:

- **The purchase of up to \$272,000 in Additional Capital Call in Verge I II Combined, for which the NMSBIC will be entitled to a 3x repayment on the Additional Capital Call prior to the distribution of funds to Verge I II Combined limited partners in general; and**
- **That Joseph Badal be authorized to sign any and all documents related to this transaction, subject to review and approval by Randall McDonald and Russell Cummins.**

Mr. Eichenberg moved to defer this motion to the next meeting.

Mr. Eichenberg said he would prefer to wait and see what happens. He expressed concern about approving additional money when there is a risk the NMSBIC could lose all of it.

Ms. Meyers seconded the motion.

Chairman Badal asked Mr. Stephenson if there was a need to close on this before the end of the year. Mr. Stephenson responded that there was not. He said the additional piece of the capital call could be done in 2021.

Chairman Badal noted that the \$150,000 initial investment, plus the additional \$272,000, which would have a 3x preference on payback and preference in the distribution payout sequence, is well below the \$1 million the NMSBIC had initially committed to invest. He said the proposed \$272,000 is on a preference basis, so is actually better than if the NMSBIC had put that amount in with the initial investment of \$150,000.

Mr. Cummins responded that there are benefits to both transactions, so he wasn't sure that one would necessarily be better than the other. The NMSBIC is buying out the other limited partners at a deep discount of 25 percent of the prior fund balance, so there is a benefit to that, as well, although those interests will be lower in any distribution sequence.

Ms. Meyers pointed out that the \$272,000 is to fund future expenses and not to buy out shares, however. She asked if any of the expenses are for Verge management fees.

Mr. Cummins said there are some prior fund expenses included that are actually cash payments that Verge Management has paid out, and there is a small stipend to be paid to Mr. Stephenson, but there is not a large amount of management fee paid to Verge Management. He asked Mr. Stephenson to clarify that.

Mr. Stephenson responded that there is no management fee per se. There are the operating expenses of the fund for the next five years, which includes organizational expenses, wind-down expenses in 2025, D&O insurance, tax and audit work, and the operational costs for Verge Management, which includes \$3,000-\$4,000 a month for him and for paid staff and the finance director. He said the total added up to \$790,000.

The motion to defer this item to the next board meeting passed by roll call vote, with Mr. Garcia, Mr. Eichenberg and Ms. Meyers voting in favor, and Chairman Badal voting against the motion.

FINANCIAL REPORTS AS OF OCTOBER 31, 2020

Mr. Cummins reported that total interest income is ahead of budget, primarily because the interest on the NMSBIC's bonds and loan balances is ahead of budget. Approximately \$8.8 million is available for investments and operations.

Mr. Eichenberg moved to approve the Financial Reports, as presented. Ms. Meyers seconded the motion, which passed unanimously by roll call vote.

EXECUTIVE DIRECTOR/INVESTMENT ADVISOR REPORT

Mr. Cummins presented highlights from his report.

DreamSpring Loans & Charge Offs by Size

Mr. Cummins said updated information regarding loans and charge offs by loan size is included in the board package. He also noted that DreamSpring has made 799 PPP loans totaling \$30 million with an average balance of \$37,000, which is significantly lower than the average balance for PPP loans from traditional banks. This reflects that DreamSpring did in fact help smaller businesses with their PPP program.

The Loan Fund

Mr. Cummins reported that he recently attended one of The Loan Fund's board meetings, at which they reviewed their forecast and budget for next year. At the meeting, Leroy Pacheco mentioned that The Loan Fund is very grateful that the NMSBIC reduced the interest rate on traditional loans from 2 percent to 1 percent, and that it created the COVID-19 lending program. In looking at their budget for next year, they anticipate continued need for COVID-19

loans to assist businesses impacted by the COVID-19 crisis. . Mr. Pacheco said it would be helpful if the NMSBIC board can extend these programs through 2021.

John Bingaman resignation

Mr. Cummins said Mr. Bingaman has resigned as the Governor's Chief of Staff and has been replaced by Matt Garcia. He and Chairman Badal are working to schedule a Zoom meeting with Mr. Garcia.

NMSBIC FORM 990, IRS NON-PROFIT TAX RETURN: ROBERT DE PASQUALE, TAX PARTNER, PULAKOS CPAS

[Dee Brescia joined the meeting for this item.]

Mr. Cummins highlighted key changes to NMSBIC responses on the IRS Form 990 that were approved by the board last year to apply to this and future tax years:

1. Part VI, Section B, Policies. The box (15a) regarding review of compensation for the Executive Director/Investment Advisor has been changed to "yes."
2. Schedule O includes a new explanation related to box 15a above.

Mr. De Pasquale reviewed the Form 990.

Ms. Meyers moved to accept the NMSBIC Form 990, as presented. Mr. Eichenberg seconded the motion, which passed unanimously by roll call vote.

NEW MEXICO GAP FUND, PURCHASE OF CONVERTIBLE NOTES, PROPOSED NOTE MODIFICATIONS

Mr. Cummins noted that supplemental information on this item was sent out to board members yesterday, which included proposed changes to one of the notes held by the NM Gap Fund. As noted in the supplemental information, he had a videoconference with Trevor Loy of NM GAP Fund and one of their companies last Tuesday. The NMSBIC has approved purchasing interests of three minority shareholders at a deep discount in order to facilitate closing NM Gap Fund. NM Gap Fund I provided the NMSBIC with a draft purchase agreement and draft consent agreements. For the two borrowers with convertible notes, the first has approved the consent agreement and the second has requested modifications to the terms of their note. The second Borrower has indicated it has been trying to raise additional capital in order to scale up their operations. It appears it has an opportunity to scale up its operation and achieve an exit in the next 18 months, but needs additional funding to do that, and is looking at a third party source for that. It indicated that having NM Gap Fund in first position is an obstacle to obtaining additional funding. The Borrower indicated that it is not trying to be obstructive regarding consent to transfer its convertible note to the NMSBIC, but the note came at a time when it is having a big challenge raising additional capital because of that.

Referring to options included in the supplemental information, Mr. Cummins said the first option (Option A) is for the NMSBIC to subordinate to new proposed debt, to allow the Borrower to obtain additional funding needed to scale up operations. Mr. Cummins said he does not recommend approval of this request because it would result in a significant increase in the NMSBIC's risk. He said the Borrower asked him to present the option to the board, feeling that this would be the fastest and least costly way to proceed.

Mr. Cummins noted that he has had discussions with Mr. Loy, the Borrower, Randy McDonald, and Chairman Badal, and has received very good input from all of them in coming up with a Discussion Term Sheet included in the supplement information, and a proposed motion.

Mr. Cummins said the Borrower offered two additional options. Both have been incorporated into a proposed motion, allowing the Borrower to select either one. He said the proposed motion is subject to changes from the NMSBIC board of directors and summarizes an approval to modify a convertible note between the NM Gap Fund and its Borrower, to include details set forth in the Discussion Term Sheet. The form of the proposed motion is set out below:

RESOLVED, that the NMSBIC board of directors approve the following modifications to a convertible note (the "Borrower's Note") between the New Mexico Gap Fund I Limited Partnership ("NM Gap Fund") and its borrower under the convertible note (the "Borrower"), for which the NMSBIC has previously approved a purchase and assignment of the Borrower's Note from the NM Gap Fund. Details provided in a Discussion Term Sheet dated December 5, 2020, and included in and part of the motion. A summary of the proposed changes is as follows:

1. The modifications may be done by NM Gap Fund prior to assignment of the Borrower's Note to the NMSBIC, or by the NMSBIC after assignment of the Borrower's Note.
2. The Borrower's Note may be converted to a pari passu security position, with the NMSBIC having the right, but not the obligation, to receive the same terms as the new lender.
3. Alternatively, the Borrower's Note may be converted to two notes, comprised of (1) a senior secured note that includes the original principal balance plus accrued interest under the Borrower's Note, and (2) a subordinated note that includes a 5x Acquisition Premium under the Borrower's Note, subordinate only to principal and interest related to Qualified Debt from a new lender, but not subordinate to any other compensation related to Qualified Debt from a new lender that includes but is not limited to stock warrants or equity conversion rights.
4. The Borrower's Note may be extended from the current maturity date of February 1,

2021, to February 1, 2022.

5. The NMSBIC agrees to waive its on-site inspection rights under Section 7.b. of the Borrower's Note for a period of 24 months, provided that the Borrower agrees to have an independent audit of its financial statements performed for the years ending December 31, 2021, and December 31, 2022.
6. The NMSBIC agrees to remove the requirement for the borrower to report use of proceeds to the note holder, given all loan proceeds have been disbursed.
7. The NMSBIC agrees to initially allow Other Debt up to \$2 million. Additional Other Debt will be allowed at a level where the total Other Debt is no greater than 1.5x trailing 12 month revenue, based on audited financial statements to be provided by the Borrower, up to a maximum of \$3 million in total Other Debt.
8. The NMSBIC agrees to update the purchase price to be paid to the NM Gap Fund I for the convertible notes to include accrued interest through December 31, 2020, at the same 25% purchase price as previously approved, resulting in an increase in the net purchase price from \$37,902.21 to \$40,806.40 (the updated purchase price is subject to change after Mr. Loy confirms the accrued interest calculation).
9. Joseph Badal, NMSBIC President and Board Chairman, is authorized to execute any and all documents related to the transaction, upon review and approval by the NMSBIC's legal counsel and the NMSBIC Executive Director/Investment Advisor.

Chairman Badal commented that, based on his discussions with Mr. Cummins, this is a business with tremendous potential. The Borrower's revenues are going up, as is their customer base, so it sounds like an opportunity for the NMSBIC.

Mr. Eichenberg said this is a company that the NMSBIC has assisted and helped, and he is excited to see their success.

Mr. Garcia moved to approve the nine points in Mr. Cummins' memorandum. Ms. Meyers seconded the motion, which passed by roll call vote, with Ms. Meyers, Mr. Garcia and Chairman Badal voting in favor, and Mr. Eichenberg voting against.

BOARD MEETING SCHEDULE FOR 2021

Chairman Badal said the board has reviewed the schedule before, and he did not believe there were any issues.

JOSEPH BADAL'S NOVEMBER 2, 2020 LETTER TO GOVERNOR LUJAN GRISHAM AND SENATOR JOHN ARTHUR SMITH, CHAIRMAN OF THE LEGISLATIVE FINANCE COMMITTEE

Chairman Badal said he drafted this letter with Mr. Cummins' assistance and sent it to the Governor. He thought it would be helpful to write this letter given the Governor's interest in the NMSBIC and because of the additional funding provided by the legislature. Copies were sent to Sen. John Arthur Smith and SIC Director Steven Moise. Mr. Cummins will send a copy to the Governor's new Chief of Staff.

NEW MEXICO STATE AUDITOR'S OFFICE, EMAIL CORRESPONDENCE

Mr. Cummins said the State Auditor's Office sent an inquiry asking if the NMSBIC was a state agency. Mr. McDonald provided a proposed response, which he (Mr. Cummins) sent to the State Auditor's office advising them that the NMSBIC is not a state agency.

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT, PROPOSED COLLATERAL ASSISTANCE PROGRAM JOINT POWERS AGREEMENT WITH NMSBIC

Mr. Cummins welcomed Jon Clark, Deputy Director of the New Mexico Economic Development Department (NMEDD) and Johanna Nelson, Strategic Program Development Coordinator for NMEDD.

Mr. Cummins said the NMSBIC began discussions with NMEDD in March 2020 about the NMSBIC providing a line of credit to NMEDD. At the time, it was determined that NMEDD was not able to borrow from the NMSBIC. He said it does appear possible (subject to review and approval by the Department of Finance and Administration) for the NMSBIC and NMEDD to enter into a joint powers agreement (JPA) that would allow the NMSBIC to provide funding to the NMEDD to continue to grow and expand the Collateral Assistance Program (CAP).

Mr. Cummins stated that, in the analysis the NMSBIC has done, it is showing that the funding for this CAP program came from a federal grant that was initially provided to the New Mexico Finance Authority, which started the CAP program. In 2018, the program, along with \$4.3 million in funds, was transferred to NMEDD, which has been administering the program since then, from which it has deployed about \$1.7 million to companies that support 294 jobs in the state. In March 2020, Governor Lujan Grisham announced a business loan recovery program, at which time about \$1.77 million of the CAP funding was allocated to the Business Loan Guarantee (BLG) program to provide loan guarantees to small businesses impacted by COVID-19. This reduced the CAP funding from about \$4.3 million to about \$2.5 million. There have been some funds returned, and the current balance is at about \$2.6 million in the CAP program. He said \$1.5 million of that is deployed, and about \$1.1 million is available.

Mr. Cummins reviewed four different loan examples where CAP funding has been provided. He noted that NMEDD is also having discussions with DreamSpring about providing collateral assistance for DreamSpring loans of \$10,000 and less. Given that these would be riskier loans,

and NMSBIC is proposing that the amount of these smaller loans with more risk would have a \$500,000 cap. Of the \$2.6 million in remaining CAP funds, the \$500,000 could be allocated to a program to smaller loans with higher risk.

Mr. Cummins said what is being proposed is that the NMSBIC would provide \$1.5 million in additional funding to NMEDD under a JPA. The NMSBIC would receive any interest on the CDs for funds that are deployed, and that the federal funding (SSBCI CAP funds) of \$2.6 million would be in first loss position. NMEDD would have to have \$2.6 million in defaults before the NMSBIC incurred any losses. In addition, SSBCI funding in the CAP program would at all times be equal to or greater than the amount of funding committed by the NMSBIC. If total CAP funds fall below the amount of NMSBIC funding, the NMSBIC funding would be reduced accordingly.

Mr. Cummins said the NMSBIC funding is intended to be temporary for the CAP program and NMEDD would work to obtain a source of additional permanent funding for the program. The JPA would be terminated on the date that is the earlier of five years or when NMEDD acquires the additional permanent funding.

Ms. Nelson said she appreciated the NMSBIC exploring this program.

Mr. Cummins said any approval of this program would include all of the items as presented here today and documented in the Discussion Term Sheet, and that Chairman Badal be authorized to sign any and all documents related to the transaction, subject to review by himself and Randy McDonald.

Responding to Ms. Meyers, Ms. Nelson said NMEDD views this as an emergency source of funding, and they are hopeful that another source of permanent funding will become available.

Mr. Eichenberg moved to approve the program, as presented. Mr. Garcia seconded the motion, which passed unanimously by roll call vote.

BOARD CONTINUING EDUCATION


Mr. Cummins noted the Bureau of Business and Economic Research (BBER) Economic Snapshot for the fourth quarter of 2020 is included in the board package.

CHAIRMAN'S COMMENTS

Chairman Badal thanked Mr. Cummins for doing an incredible amount of work since the last board meeting. He commented that this is another feather in the NMSBIC's cap to preserve many of the previous investments, enhance them, and open up new programs. He thanked the board for doing good work.

ADJOURNMENT

The meeting adjourned at 11:55 a.m.



Joseph Badal, Chairman

2/26/21

Date