LITTLE HOOVER INSTITUTE
Public Hearing
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My name is Suz Mac Cormac and I am a corporate partner at Morrison & Foerster in San Francisco where I have practiced for 24 years. I specialize in late state financings as well as corporate governance and structure. Since 2001, I have devoted the majority of my pro bono time to the creation of corporate structures and vehicles to maximize the "positive net impact" of mainstream capital markets. These vehicles feature shifting fiduciary duties, creating robust measurement and reporting, tailoring incentives to social and environmental goals as well as economic results and blending ROI capital with philanthropic and government funding. As a focus on ESG (environmental, social and governance) and sustainability have entered the mainstream over the past 10 years, I have been increasingly engaged by paying clients, from foundations to family offices to impact investors. I am also an adjunct professor at Berkeley Law School where I teach on the intersection of corporate law and impact.

Climate has been my true north and the focus of my practice since 2001. However, when California's economy was abruptly shuttered as a result of COVID-19, I was far from alone in realizing the impending and catastrophic impact that shelter-in-place would have on small businesses. Many of us had been expecting the economy to face significant disruption at some point soon because of climate change and had anticipated the disproportionate impact that a climate event would have on small and minority-owned businesses. As the economic shut-down extended into April, we also realized that the micro-businesses in our most disadvantaged communities would not benefit sufficiently (if at all) from federal aid packages.

The California Small Enterprise Task Force – or CASE - evolved from a series of conversations with my neighbor, my clients, and other people that I knew primarily from efforts to mitigate climate change. As we built out the task force, we were intentional in selecting people from different age-groups and backgrounds, although admittedly there was a heavy concentration of lawyers. The criteria for membership was relatively simple: (a) sector representation, (b) a valuable skill and willingness to roll up his or her sleeves for free and (c) no ego.

The first CASE meeting was a Zoom call with five of us – Elliott Donnelly (investor/ philanthropist), Jay Banfield (All Home), Adam Werbach (Sierra Club/Saachi & Saachi, Amazon), Kaela Colwell (associate at MoFo) and me. As we agreed on our goals, we reached out into our networks to invite other folks to join the group. By the third week, we had 20 volunteers. Over time, a few people who were less interested dropped out while the vast majority of invitees demonstrated significant commitment, contributing 10-20 hours each week to their designated tasks.

CASE has only one objective – to address the needs of small businesses across the state. As we built out the task force and talked to community lenders, advocates and leaders, we heard two clear messages. Small business owners need access to resources – grants and affordable credit – and tailored advice on how to navigate this period of extreme uncertainty.

We further leveraged our networks (particularly the associate base at MoFo and the team at Berkeley Law School) to develop a set of free resources for the small business community, including a statewide resource guide available in English and Spanish which has been updated weekly since April and free weekly office hours with legal experts; the resource guide has been accessed by more than 200,000 small businesses across the state and close to 1,000 businesses have attended at least one of the office hours sessions. We recruited other law firms to support the office hours – although interest has been waning as the crisis has continued.

Once those resources were up and running, we turned our attention to the capital access gap. We know that the number one reason that businesses have had to shut down permanently during the pandemic is that they did not have sufficient cash to stay open. This is particularly true of businesses in low-income communities that do not have networks or relationships with wealth to fall back on. We also know that Community Development Financial Institutions (CDFIs), started in the 1970s and supported by federal funding since 1994, were designed to help address the crisis for small businesses that we are currently facing. Their mandate is to deliver responsible, affordable lending to low-income, low-wealth and other disadvantaged people and communities. As an aside, the only reason that I know about CDFIs is that I formed Pacific Community Ventures (PCV) pro bono back in 1999. It was the first "hybrid" or new corporate form that I structured – with a non-profit to provide advisory services to micro-businesses in poor communities and a venture fund to invest in those businesses that had the most potential. When I reached out to PCV during the third week of March to offer the free resource guide and let them know about the office hours, I learned that they usually received 30 loan applications in a week but, as a result of the SIP, they were now overwhelmed with 600 each day. PCV confirmed that over 80% of its loans were made to micro-businesses owned by women and entrepreneurs of color. And PCV did not have anywhere close to the funding needed to meet the spike in demand. We contacted the Opportunity Fund which verified the funding gap and confirmed that no parties in California were working to bring the CDFIs together to secure the philanthropic and bank financing that they needed. The lack of interest from banks and philanthropists also prevented CDFIs from being able to fully avail themselves of the state's initial Disaster Relief Loan Guarantee program.

Therefore, CASE decided to step in and work pro bono to design a loan program for small businesses with mission at its core.

Before I describe the program, I believe that there are three elements of CASE that have contributed to its success. First, we adopted a new governance model. Instead of a board and a clear leader or leaders to set strategy and allocate resources and responsibility, people with specific skills were identified to lead various functions – e.g., fundraising, policy, outreach to CDFIs, education, and communications. One volunteer was asked to take charge of each sub-group and tasks were assigned during a weekly call. Each week, CASE force members would make sure that they completed the tasks before the next check-in. All opinions were welcome and because it was such a low-ego group, we would shift direction based on the consensus of the majority. As a result, instead of the normal months to get organized and confirm a framework for operations, we all immediately started moving the ball forward to support small businesses – which translated into offices hours being up and running by the third week of March, a full resource guide being available by the fourth week of March and a structure for a $1BN loan fund almost fully developed by April 1.

Second, every time someone at CASE learned of another group working to set up a similar loan fund in California, we would reach out to the identified leaders to see if we could either work together or otherwise support each other. This is how we coordinated, and then joined forces, with Laura Tyson and Adair Morse from the University of Berkeley Haas. They had been working on a very similar loan idea with several local cities. Scott Wu, executive director of iBank, was also critical to this effort as he connected us with Calvert Impact Capital who structured and raised the funds for the NY Forward Fund. Quite frankly, we could not have been successful (and will not be successful) in setting up the fund without the efforts of Laura, Adair and Calvert.

Third, the members of the task force were selected because they each had a valuable skill but also a willingness to work hard without taking credit. This allowed us to partner with a large number of other groups and institutions, including the Governor's Task Force. Everyone can claim credit (we hope) for its success.

I structured the Small Business Rebuilding Fund on my back porch in the Presidio during the third week of March. It was designed for speed (it could be up and operational in less than a week), flexibility (it could be adapted to different types of government and philanthropic capital available), cost (extremely low cost limited to the expenses of the non-profits involved) and added protection for small businesses (large lenders would not have access to the small business loans in the event of default). An intentional part of the program's design was to work with public charities throughout the structure and to ensure mission alignment and long-term mission lock. This includes:

- Working with lenders who are designated as CDFIs (with Opportunity Fund and PCV taking the lead) and who have strong, trusted roots in their respective communities;
- Working with a 501(c)(3) fund owner (Kiva Microfunds) and manager who will own the pass-through Public Benefit LLC and administer the two SPVs that will hold the small business loans on behalf of the lenders;
- Working in close coordination with small business advocates, SBDCs, Chambers of Commerce, community foundations, and municipal governments to ensure the program is built in a way that benefits from their experience and broad networks;
- Creating a governance structure that includes diverse voices and ensures that the program is managed and implemented in accordance with its original intent; and
- Establishing an on-lending structure as opposed to bundling and selling the underlying small business loans to provide additional protection to small business.

To succeed we will need the active engagement with the State of California. Specifically, we need the state to serve as a megaphone to accelerate our fundraising efforts and to get the word out to small businesses to generate demand for the loans from our poorest and hardest hit communities. We also need additional funding for guarantees and/or first loss capital because this crisis will not be solved with philanthropic capital alone and the risk profile (expected 30%

default rate) is too high for institutional capital. With the first loss program recently approved by the iBank board, every dollar in state funding can be converted into five to ten dollars of lending capacity; but I will leave the multiplier effect – and the underwriting requirements to ensure maximum impact – for the experts like Adair Morse to describe.

We are setting up the Small Business Rebuilding Fund (although the name may change) as infrastructure that can support the community finance industry across the state now and into the future. We know that this economic recovery is at risk of mirroring the last one – long and extremely uneven – if we are not intentional about how we build inclusive access to credit and resources for small businesses, their owners, their employees, and their communities. We want this to be a lasting model that can serve our state for years to come because, unfortunately, we know this pandemic and economic crisis will not be our last.