

Court File No. CV-22-00685736-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*,
S.O 2020, C.36, SCHED. 7, AS AMENDED**

AND IN THE MATTER OF PACE SAVINGS & CREDIT UNION LIMITED

**APPLICATION OF PACE SAVINGS & CREDIT UNION LIMITED UNDER SECTION
240 OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*, S.O. 2020, C. 36,
SCHED. 7, AS AMENDED**

**FOURTH REPORT OF KPMG INC. in its capacity as
LIQUIDATOR OF PACE SAVINGS & CREDIT UNION LIMITED**

SEPTEMBER 6, 2023

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I. INTRODUCTION

1. On August 24, 2022, PACE Savings & Credit Union Limited (“**PCU**” or the “**Credit Union**”) was ordered to be wound up pursuant to section 240 of the *Credit Unions and Caisses Populaires Act, 2020* (the “**CUCPA**”) by an Order (the “**Liquidation Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), and KPMG Inc. (“**KPMG**”) was appointed as liquidator (in such capacity, the “**Liquidator**”) of all the remaining assets, undertakings and properties of PCU. A copy of the Liquidation Order is attached hereto as **Appendix “A”**.

II. PURPOSE OF REPORT

2. The purpose of this report, which is the Liquidator’s fourth report to the Court (the “**Fourth Report**”), is to provide information to the Court in respect of:
 - a. the Liquidator’s activities since its appointment;
 - b. the Liquidator’s statement of receipts and disbursements for the period from August 24, 2022 to August 31, 2023; and
 - c. the Liquidator’s motion returnable September 22, 2023, for:
 - i. an order substantially in the form attached to the Liquidator’s Notice of Motion (the “**Claims Process Order**”) establishing and approving the Claims Process (defined below); and
 - ii. an order approving the Liquidator’s activities as described in this Fourth Report.

III. TERMS OF REFERENCE

3. In preparing this Fourth Report, the Liquidator has been provided with, and has relied upon, the books and records and other information of PCU, including unaudited financial information and information provided by former management, advisors, and the former administrator of the Credit Union (collectively, the “**Information**”). In accordance with industry practice, except as otherwise described in this Fourth Report, the Liquidator has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Liquidator has not audited or otherwise attempted to

verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards (“GAAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Liquidator expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

4. Future oriented financial information reported or relied on in this Fourth Report is based on assumptions regarding future events; actual results may vary from this forecast and such variations may be material.
5. Copies of the Liquidator's reports and all motion records and Orders in the liquidation proceeding are available on the Liquidator's website at home.kpmg/ca/pacecu.
6. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

IV. ACTIVITIES OF THE LIQUIDATOR

Recovery Litigation

7. Prior to the Liquidator’s appointment, on March 18, 2019, PCU commenced an action bearing Court File No. CV-19-00616388-00CL against the former President and the former Chief Executive Officer of the Credit Union (Larry and Phillip Smith (the “**Smiths**”)), their associated corporations and affiliates, certain of the Credit Union’s former directors (the “**Former Directors**”), and a number of other parties (the “**Claim Against Smiths et al**”).
8. On February 28, 2022, PCU also commenced an action bearing Court File No. CV-22-00677550 against CUMIS General Insurance Company (“**CUMIS**”) in relation to a claim detailed in a proof of loss filed by the Credit Union dated October 16, 2019 under a fidelity insurance coverage bond issued by CUMIS (the “**CUMIS Fidelity Bond**”), in respect of losses incurred by PCU in connection with alleged misconduct by the Smiths (the “**CUMIS Fidelity Bond Claim**”).
9. The above claims of the Credit Union and all related counterclaims, crossclaims and third-party claims are referred to herein collectively as the “**Recovery Litigation**”.

10. The parties to the Recovery Litigation participated in mediation sessions before Larry Banack which ultimately resulted in the settlements as described below.
11. The Liquidator issued its first report to the Court, including a confidential appendix, on January 27, 2023 (the "**First Report**") in conjunction with a motion returnable on February 8, 2023, seeking:
 - a. approval of a settlement agreement dated December 1, 2022, between PCU, by the Liquidator, and the Former Directors (the "**Former Directors Settlement Agreement**");
 - b. approval of a settlement agreement dated December 1, 2022, between PCU, by the Liquidator, and CUMIS in respect of the CUMIS Fidelity Bond Claim (the "**CUMIS Settlement Agreement**"); and
 - c. certain ancillary relief thereto.

A copy of the First Report (without appendices) is attached hereto as **Appendix "B"**.

12. Pursuant to the terms of the Former Directors Settlement Agreement, PCU and the Former Directors entered into a full and final mutual release and agreed to the dismissal of the claims against the Former Directors in exchange for a payment to the Credit Union from CUMIS under the directors and officers' insurance policy.
13. The CUMIS Settlement Agreement provided for the full and final mutual release of the CUMIS Fidelity Bond Claim and a dismissal of the action in relation to the CUMIS Fidelity Bond Claim in exchange for a payment to PCU from CUMIS under the CUMIS Fidelity Bond.
14. On February 8, 2023, the Court granted an Order approving the Former Directors Settlement Agreement and the CUMIS Settlement Agreement and the requested ancillary relief.
15. The Liquidator issued its second report to the Court, including a confidential appendix, on April 21, 2023 (the "**Second Report**") in conjunction with a motion returnable on May 1, 2023, seeking approval of the settlement agreement dated April 3, 2023 between PCU, by the Liquidator, and the remaining parties to the Recovery Litigation, CUMIS and

Goodmans LLP (the “**Final Settlement Agreement**”) and certain ancillary relief thereto. A copy of the Second Report (without appendices) is attached hereto as **Appendix “C”**.

16. The Final Settlement Agreement provided for the full and final mutual release of all remaining claims under the Recovery Litigation in exchange for payments to PCU and other parties, including:
 - a. the Claims Against Smiths et al in exchange for certain payments to PCU and other parties, and the release of any interest in certain funds claimed by the Smiths and related parties; and
 - b. claims against Goodmans LLP.
17. On May 1, 2023, the Court granted an Order approving the Final Settlement Agreement and the requested ancillary relief.
18. The amounts payable to the Credit Union pursuant to the Former Directors Settlement Agreement, the CUMIS Settlement Agreement and the Final Settlement Agreement have been received by the Liquidator and the releases pursuant to those agreements have been exchanged amongst the parties thereto.

Retail Loan Fraud

19. On December 17, 2021, PCU filed a proof of loss under a fidelity insurance coverage bond (the “**BHSI Fidelity Bond**”) issued by Berkshire Hathaway Speciality Insurance (“**BHSI**”), in respect of losses incurred by the Credit Union due to fraudulent acts committed by a former employee of PCU in relation to certain loans in PCU’s then-retail loan portfolio¹ (the “**Retail Loan Fraud**”).
20. Since its appointment, the Liquidator has been working to address inquiries and requests for information from BSHI and its counsel in relation to the Retail Loan Fraud and the proof of loss filed under the BHSI Fidelity Bond. The Liquidator has concerns regarding

¹ PCU’s retail loan portfolio was sold to Alterna (as defined above) as part of the Purchase and Assumption Transaction (as defined below); however, the retail loans that are the subject of the Retail Loan Fraud were excluded from the Purchase and Assumption Transaction.

the approach being taken by BHSI's counsel to date in attempting to resolve this matter consensually.

21. The claim by the Credit Union under the BHSI Fidelity Bond is the only remaining significant potential recovery in the PCU estate and will have a substantial impact on distributions available for stakeholders. Accordingly, while the Liquidator continues to attempt to resolve this matter consensually with BHSI, it may seek the necessary relief from this Court to expedite the handling of this matter in the near future.

Prepaid Card Business

22. As detailed in the First Report, Alterna Savings and Credit Union Limited ("**Alterna**") acquired substantially all of the business and assets and assumed substantially all of the liabilities, member deposits and employees of the Credit Union, except for certain excluded assets and liabilities (the "**Purchase and Assumption Transaction**"). Following the closing of the Purchase and Assumption Transaction, PCU continued to act as the issuer of prepaid cards in respect of prepaid card programs operated by seven program managers (the "**Prepaid Card Business**").
23. Following completion of the Purchase and Assumption Transaction, the Prepaid Card Business continued to be operated by PCU, with the assistance of Alterna employees, who were formerly employees of the Credit Union, through a transition services agreement between PCU and Alterna.
24. Since its appointment, the Liquidator has been working to transition and/or wind down the Prepaid Card Business in an orderly manner, in cooperation with the respective program managers and networks, Visa Inc. and Mastercard Inc.
25. Efforts to transition and wind down the Prepaid Card Business continue but are well advanced, as set out below:
 - a. the prepaid card programs of one program manager have been transitioned to an alternate issuer;

- b. the prepaid card programs of another program manager were partially transitioned to an alternate issuer and partially wound down. The decision to wind down some of these programs was that of the program manager and the program manager will be issuing refunds to cardholders, as necessary;
- c. three program managers chose to wind down their respective prepaid card programs and those wind downs have now been completed. The Liquidator is in the process of issuing refunds to cardholders in relation to two of the prepaid card programs that were wound down and expects this process to be completed in or around November, 2023. The Liquidator has also been responding to hundreds of inquiries from cardholders in relation to the wind down and refund process. For the third program, the program manager will be issuing refunds to cardholders, as necessary; and
- d. the programs of the remaining two program managers are in the process of being transitioned to alternate issuers. The Liquidator expects that one transition will occur in or around mid-September 2023, and hopes that the last transition is complete before the end of 2023. In the interim, these prepaid card programs will continue to operate in the normal course.

Representative Counsel Motion

- 26. The Liquidator issued its third report to the Court (the “**Third Report**”) in conjunction with a motion (the “**Representative Counsel Motion**”) being brought by SMK Law P.C. (“**SMK Law**”) seeking to be appointed as representative counsel for the holders of Class B Investment Shares (as defined below) and Class A Profit Shares (as defined below). The Third Report was served on SMK Law on May 5, 2023. A copy of the Third Report (without appendices) is attached hereto as **Appendix “D”**.
- 27. To date, the Liquidator has not received a response from SMK Law and the Representative Counsel Motion has not proceeded to be scheduled.

Other Activities of the Liquidator

28. Other activities of the Liquidator since its appointment have included:
- a. issuing a letter, including answers to frequently asked questions, to the Credit Union's members regarding the liquidation proceeding;
 - b. attending to various post-closing and transition matters related to the Purchase and Assumption Transaction, in consultation with Alterna;
 - c. progressing efforts in respect of realizing on the remaining assets of PCU, including the loans excluded from the Purchase and Assumption Transaction and the Credit Union's residual interest in certain joint venture investments;
 - d. responding to hundreds of inquiries from members of the Credit Union, including holders of Class B Special Shares (the "**Class B Investment Shares**") and/or Class A Special Shares (the "**Class A Profit Shares**") of PCU;
 - e. liaising with counsel in relation to litigation related to the Prepaid Card Business;
 - f. completing 2022 tax filings for PCU and the Prepaid Card Business;
 - g. responding to requests from the Canada Revenue Agency in respect of tax audits pertaining to prior years' tax filings;
 - h. communicating with the Financial Services Regulatory Authority ("**FSRA**") in relation to various matters pertaining to the liquidation proceeding; and
 - i. formulating the Claims Process
29. The Liquidator respectfully requests that the Court approve the Liquidator's activities as set out above.

V. LIQUIDATOR'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

30. The following table provides a summary of total receipts and disbursements from the date of the Liquidation Order to August 31, 2023 (the "**R&D Period**").

Statement of Receipts and Disbursements	
For the period August 24, 2022 to August 31, 2023	
(in CAD)	
Receipts	
Recovery Litigation settlement payments	\$ 13,645,585.70
Distributions from PACE Securities estate	4,259,765.67
Interest income	1,084,202.55
Prepaid Card Business income	745,385.99
Other receipts	599,985.00
Total receipts	20,334,924.91
Disbursements	
Professional fees	3,145,652.92
Transition services	163,599.93
Mediation services	23,071.84
Miscellaneous disbursements	30,570.49
Total disbursements	3,362,895.18
Net receipts over disbursements	16,972,029.73
Opening cash balance	18,088,978.43
Closing cash balance	\$ 35,061,008.16

31. The total receipts during the R&D Period were approximately \$20.3 million and consist of the following:
- payments of approximately \$13.6 million pursuant to the Former Directors Settlement Agreement, the CUMIS Settlement Agreement and the Final Settlement Agreement;
 - distributions of approximately \$4.3 million from the Pace Securities Corp. (“PSC”) estate²;
 - interest income of approximately \$1.1 million earned on funds held in the Liquidator’s account;
 - income of approximately \$0.7 million earned in relation to the Prepaid Card Business; and

² PCU is the parent company of PSC and the Credit Union made claims in the liquidation estate of PSC.

- e. other receipts of approximately \$0.6 million which include certain amounts previously held in trust for the benefit of a former employee of the Credit Union which were released pursuant to a settlement agreement with the former employee.
32. The total disbursements during the R&D Period were approximately \$3.4 million and consist of the following:
- a. professional fees of approximately \$3.1 million which include the fees of the Liquidator, its independent counsel, Chaitons LLP, Fasken Martineau DuMoulin LLP³, Lax O’Sullivan Lisus Gottlieb LLP⁴ and other legal and professional service firms assisting the Liquidator;
 - b. payments to Alterna of approximately \$163,600 pursuant to a transition services agreement between PCU and Alterna;
 - c. payments of approximately \$23,072 in relation to the mediation before Larry Banack in the Recovery Litigation; and
 - d. miscellaneous disbursements of \$30,570 which include storage fees for books and records of the Credit Union that were not included in the Purchase and Assumption Transaction, a payment to DUCA Financial Services Credit Union in relation to the transaction involving the Credit Union’s wholly owned subsidiary, Continental Currency Exchange, which was discussed in the First Report, and bank charges and fees.

VI. CLAIMS PROCESS⁵

33. The Liquidator is of the view that it is the proper time to commence the claims process described in the Claims Process Order (the “**Claims Process**”).

³ Fasken Martineau DuMoulin LLP has been assisting the Liquidator with matters relating to the Prepaid Card Business and the Purchase and Assumption Transaction.

⁴ Lax O’Sullivan Lisus Gottlieb LLP was the Credit Union’s counsel in respect of the Recovery Litigation.

⁵ All capitalized terms not defined in this section of the Fourth Report are used as defined in the Liquidator’s proposed Claims Process Order.

34. The Liquidator seeks the Court's approval to implement the Claims Process, which if approved, will establish the process for the solicitation, resolution and barring of certain claims against the Credit Union pursuant to the Claims Process Order.

Overview of the Claims Process

35. The Claims Process provides that, as soon as practicable following the issuance of the Claims Process Order, the Liquidator will post the Proof of Claim Document Package on the Liquidator's website at home.kpmg/ca/pacecu. The Liquidator will also arrange for the publication of the Notice to Creditors for one (1) business day in the Globe and Mail (National Edition).
36. Additionally, as soon as practicable following the issuance of the Claims Process Order, the Liquidator will send the Proof of Claim Document Package to all Known Creditors of PCU with a claim greater than \$50 (for which the Liquidator has an address).
37. The Liquidator shall, as soon as reasonably possible following receipt of a request therefor, deliver a copy of the Proof of Claim Document Package to any Person claiming to be a Creditor and requesting such material.
38. Notwithstanding anything contained in the Claims Process Order, the Liquidator shall not be required to send the Proof of Claim Document Package to any holders of Excluded Claims.
39. The Claims Process contemplates a claims bar date of 5:00 p.m. (Eastern Time) on [•] (the "**Claims Bar Date**") for all Creditors to submit a Proof of Claim in respect of their Claims against PCU, failing which such Claims shall be forever extinguished and barred.
40. The Claims Process provides that upon receiving Proofs of Claim by the Claims Bar Date, the Liquidator will review and determine either to allow, partially allow/partially disallow or disallow the Claims. In this regard, where a Claim is revised or disallowed partially or entirely, the Liquidator will provide each Creditor with a Notice of Revision or Disallowance, attaching a form of Dispute Notice, setting out its determination of such Creditor's Claim.

41. Creditors that wish to object to the Notice of Revision or Disallowance are required to deliver a Dispute Notice no later than 5:00 p.m. (Eastern Time) on the day which is fourteen (14) calendar days after the date the Notice of Revision or Disallowance is deemed to be received. If a Creditor does not provide the Liquidator with a Dispute Notice within the timeframe required, it shall be deemed to have agreed with the Notice of Revision or Disallowance.
42. The Claims Process allows the Liquidator to attempt to settle any dispute with a Creditor directly, and if unsuccessful, the Liquidator may either direct the dispute to a Claims Officer (as may be appointed by the Court on application of the Liquidator) or may seek directions from the Court with respect to an appropriate process for the determination of such Claims. A Creditor may also appeal a Claims Officer's determination within ten (10) calendar days of notification of the Claims Officer's determination of the Creditor's Claim, otherwise it shall be deemed to have agreed with the Claims Officer's determination.
43. The Claims Process provides that the amount and status of every Claim as finally determined in accordance with the Claims Process Order, shall be final for all purposes, including for any distributions made to Creditors, provided however, that no Claim may be allowed or may be established as a Proven Claim unless a Proof of Claim with respect to that Claim is filed in accordance with the Claims Process Order.
44. The Liquidator is of the view that the Claims Process provides sufficient notice and time for Creditors to file Proofs of Claim and have their Claims determined, and accordingly, respectfully requests that the Court grant the requested Claims Process Order.

Nature of Claims Against PCU

45. The potential claims against the Credit Union can be categorized as follows:
 - a. claims by unsecured creditors of PCU, excluding Excluded Claims ("**Claims**"); and
 - b. claims not covered by the Claims Process ("**Excluded Claims**"), being:
 - i. claims by holders of Class B Investment Shares, Class A Profit Shares and/or membership shares of PCU; and

- ii. claims by holders of cards issued by the Credit Union in relation to the Prepaid Card Business, other than the BC and Sask Cardholder Claims (defined below).
46. Claims include the following:
- a. claims that are known by the Liquidator based on the books and records of the Credit Union (the “**Known Claims**”); and
 - b. claims that may exist and where the quantum and/or likelihood of those claims is not yet known (the “**Unknown Claims**”).
47. The Known Claims include the following:
- a. amounts owing under a promissory note issued by the Credit Union in the amount of \$25 million to FSRA, as administrator of the Deposit Insurance Reserve Fund, in connection with PSC; and
 - b. deposits of certain members of the Credit Union that were excluded from the Purchase and Assumption Transaction.
48. The Unknown Claims include the following:
- a. residual claims from former PCU employees who did not transfer to Alterna as part of the Purchase and Assumption Transaction;
 - b. claims by FSRA pursuant to the CUCPA;
 - c. claims that may arise as a result of the loss sharing arrangements and indemnity provisions of the Purchase and Assumption Transaction;
 - d. a claim by XTM Inc., a prepaid card program manager, under an action commenced in Ontario in August 2020 alleging (among other things) breaches by PCU of a card program management agreement;
 - e. claims pursuant to class actions commenced in the Supreme Court of British Columbia and the Court of King's Bench for Saskatchewan alleging (among other things) that the expiry dates set, and fees charged by All Trans Financial Services Credit Union Limited (a predecessor of PCU) in relation to its prepaid card programs contravened provincial

- consumer protection legislation (collectively, the “**BC and Sask Cardholder Claims**”); and
- f. other litigation and claims which exist or may in the future exist.
49. The Claims Process specifically contemplates the process for solicitation, resolution, and barring of Claims only and not Excluded Claims. If necessary, the Liquidator will return to Court at a later date to address Excluded Claims.

VII. LIQUIDATOR’S CONCLUSIONS AND RECOMMENDATIONS

50. The Liquidator submits this Fourth Report to the Court in support of the Liquidator's Motion for the relief as set out in its Notice of Motion and recommends that the Court grant such relief.

All of which is respectfully submitted at Toronto, Ontario this 6th day of September, 2023.

**KPMG Inc.,
in its capacity as Liquidator of
Pace Savings & Credit Union Limited
and not in its personal capacity**



Per: _____

Anamika Gadia
Senior Vice President

APPENDIX A

Court File No. CV-22-00685736-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE)	WEDNESDAY, THE 24TH
)	
JUSTICE CONWAY)	DAY OF AUGUST, 2022

IN THE MATTER OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*, S.O. 2020, C. 36, SCHED. 7, AS AMENDED

AND IN THE MATTER OF PACE SAVINGS & CREDIT UNION LIMITED

APPLICATION OF PACE SAVINGS & CREDIT UNION LIMITED UNDER SECTION 240 OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*, S.O. 2020, C. 36, SCHED. 7, AS AMENDED

**ORDER
(WINDING UP & APPOINTING LIQUIDATOR)**

THIS APPLICATION made by the Applicant, PACE Savings & Credit Union Limited (the “**Applicant**” or “**Credit Union**”), by its administrator, Financial Services Regulatory Authority of Ontario (“**FSRA**”), for an Order pursuant to section 240 of the *Credit Unions and Caisses Populaires Act, 2020*, S.O. 2020, c. 36, Sched. 7, as amended (the “**CUCPA**”) winding up the Credit Union and appointing KPMG Inc. (“**KPMG**”) as liquidator (in such capacity, the “**Liquidator**”) without security, of all of the remaining assets, undertakings and properties of the Credit Union was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Mehrdad Rastan sworn August 17, 2022 (the “**Rastan Affidavit**”) and the Exhibits thereto and on hearing the submissions of counsel for FSRA, KPMG, Larry Smith, 1428245 Ontario Ltd., 809755 Ontario Ltd. and Phillip Smith (collectively,

the “**Recovery Litigation Parties**”), Peter Budd, and Frank Klees and on reading the consent of KPMG to act as the Liquidator,

1. THIS COURT ORDERS that the capitalized terms which are not defined herein have the meaning given to them in the Rastan Affidavit.

SERVICE

2. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

WINDING UP

3. THIS COURT ORDERS that the Credit Union be wound up pursuant to section 240 of the CUCPA and in accordance with the terms of this Order.

APPOINTMENT

4. THIS COURT ORDERS that, pursuant to section 240 of the CUCPA, KPMG is hereby appointed Liquidator, without security, of all of the remaining assets, undertakings and properties of the Credit Union, including all proceeds thereof (the “**Property**”).

LIQUIDATOR’S POWERS

5. THIS COURT ORDERS that the Liquidator is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Liquidator is hereby expressly empowered and authorized to do any of the following where the Liquidator considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the relocating of Property to safeguard it and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Credit Union so far as may be necessary for the beneficial winding up of the Credit Union, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Credit Union;
- (d) without limiting the generality of (c), to manage, operate, and carry on the Prepaid Card Business so far as may be necessary for the beneficial winding up or transition of the Prepaid Card Business, including, without limitation, the authority to deal with the Prepaid Cardholder Amounts, which include any amounts held in one or more commercial accounts, at The Toronto-Dominion Bank or elsewhere, in the name of 1961783 Ontario Limited (the “**Prepaid Card Entity**”);
- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the

Liquidator's powers and duties, including without limitation those conferred by this Order;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Credit Union and to exercise all remedies of the Credit Union in collecting such monies, including, without limitation, to enforce any security held by the Credit Union;
- (g) to settle, extend or compromise any indebtedness owing to the Credit Union;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Liquidator's name or in the name and on behalf of the Credit Union, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Credit Union, the Property or the Liquidator, including, without limitation, the Recovery Litigation and Other Ongoing Litigation, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Liquidator in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
- (i) without the approval of this Court in respect of any transaction not exceeding \$250,000.00, provided that the aggregate consideration for all such transactions does not exceed \$750,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required.
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to carry out a claims process for the purpose of identifying and determining claims against the Credit Union and/or its current and former directors and officers, as this Court may direct by further order made on not less than two weeks' notice to the Recovery Litigation Parties and to such other Persons as the Liquidator deems appropriate or this Court may direct;
- (n) to bring a motion for the power to borrow monies it may consider necessary or desirable for the purpose of carrying out its mandate under this Order, if

necessary, on such terms and upon such security over the Property as the Court may determine on such motion, which motion shall be brought on not less than two weeks' notice to the Recovery Litigation Parties and to such other Persons as the Liquidator deems appropriate or this Court may direct;

- (o) to report to, meet with and discuss with such affected Persons (as defined below), including, without limitation, FSRA, as the Liquidator deems appropriate on all matters relating to the Property and the winding up, and to share information with such Persons, subject to such terms as to confidentiality as the Liquidator deems advisable;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Liquidator, in the name of the Credit Union;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Credit Union, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Credit Union;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Credit Union may have, including, without limitation, with respect to the Prepaid Card Entity, as the Liquidator deems necessary or desirable in connection with the Prepaid Card Business;

- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (t) after the monetization or other disposition of the Property, to distribute the proceeds thereof only in accordance with this Order or any subsequent order of this court,

and in each case where the Liquidator takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Credit Union, and without interference from any other Person.

LIQUIDATION NOMINATION AGREEMENT

6. THIS COURT ORDERS that the terms of the Liquidation Nomination Agreement between FSRA and KPMG dated August 17, 2022, appended as Exhibit “K” to the Rastan Affidavit, are hereby approved, and the Liquidator is hereby authorized and directed to perform the obligations thereunder.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE LIQUIDATOR

7. THIS COURT ORDERS that (i) the Credit Union, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Liquidator of the existence of any Property in such Person’s possession or control, shall grant

immediate and continued access to the Property to the Liquidator, and shall deliver all such Property to the Liquidator upon the Liquidator's request.

8. THIS COURT ORDERS that all Persons shall forthwith advise the Liquidator of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Credit Union, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Liquidator or permit the Liquidator to make, retain and take away copies thereof and grant to the Liquidator unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Liquidator due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Liquidator for the purpose of allowing the Liquidator to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Liquidator in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Liquidator. Further, for the

purposes of this paragraph, all Persons shall provide the Liquidator with all such assistance in gaining immediate access to the information in the Records as the Liquidator may in its discretion require including providing the Liquidator with instructions on the use of any computer or other system and providing the Liquidator with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE LIQUIDATOR

10. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Liquidator except with the written consent of the Liquidator or with leave of this Court.

NO PROCEEDINGS AGAINST THE CREDIT UNION OR THE PROPERTY

11. THIS COURT ORDERS, subject to paragraph 12 of this Order, that no Proceeding against or in respect of the Credit Union or the Property shall be commenced or continued (including but not limited to the actions commenced by Ying Jiang against All Trans Financial Services Credit Union Limited in the Court of Queen’s Bench for Saskatchewan in Regina under Court File Q.B.G. 2024/14 and in the Supreme Court of British Columbia in Vancouver under Court File No. S-147229) except with the written consent of the Liquidator or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Credit Union or the Property are hereby stayed and suspended pending further Order of this Court.

12. THIS COURT ORDERS that nothing in this Order shall:

- (a) affect or in any way restrain the continuation of any of the proceedings or claims asserted, or the enforcement of any orders made, in the Recovery Litigation (including, but not limited to, the motions brought by the Recovery Litigation Parties relating to settlement enforcement, stay of the Recovery Litigation, and preservation of claims, which motions are pending in the Recovery Litigation), and any order made in the Recovery Litigation shall be binding on the Liquidator;
or
- (b) affect the Order of this Court dated December 22, 2020 in proceedings bearing court file number CV-20-00651509-00CL between the Applicant (as Applicant) and Arn Reisler, 1428245 Ontario Ltd, Larry Smith, Phillip Smith and Mary Benincasa (as Respondents).

NO EXERCISE OF RIGHTS OR REMEDIES

13. THIS COURT ORDERS that all rights and remedies against the Credit Union, the Liquidator, or affecting the Property, are hereby stayed and suspended except with the written consent of the Liquidator or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Liquidator or the Credit Union to carry on any business which the Credit Union is not lawfully entitled to carry on, (ii) exempt the Liquidator or the Credit Union from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE LIQUIDATOR

14. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Credit Union, without written consent of the Liquidator or leave of this Court.

CONTINUATION OF SERVICES

15. THIS COURT ORDERS that all Persons having oral or written agreements with the Credit Union or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Credit Union are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Liquidator, and that the Liquidator shall be entitled to the continued use of the Credit Union's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Liquidator in accordance with normal payment practices of the Credit Union or such other practices as may be agreed upon by the supplier or service provider and the Liquidator, or as may be ordered by this Court.

LIQUIDATOR TO HOLD FUNDS

16. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Liquidator from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the

Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, may be deposited into existing accounts in the name of the Credit Union, or with respect to the Prepaid Card Business, in the existing accounts at The Toronto-Dominion Bank or elsewhere, or into one or more new accounts to be opened by the Liquidator, all of which shall be held by the Liquidator to be distributed in accordance with the terms of this Order or any further Order of this Court.

PIPEDA

17. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Liquidator shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “Sale”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Liquidator, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Credit Union, and shall return all other personal information to the Liquidator, or ensure that all other personal information is destroyed.

LIMITATION ON THE LIQUIDATOR'S LIABILITY

18. THIS COURT ORDERS that the Liquidator shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Liquidator by any applicable legislation.

LIQUIDATOR'S ACCOUNTS

19. THIS COURT ORDERS that the Liquidator and counsel to the Liquidator shall be paid their reasonable fees and disbursements incurred in relation to the winding up and liquidation of the Credit Union (including in connection with this application), in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Liquidator and counsel to the Liquidator shall be entitled to and are hereby granted a charge (the "**Liquidator's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Liquidator's Charge shall form a charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to validly perfected security interests on the Property existing as of the date of this Order.

20. THIS COURT ORDERS that the Liquidator and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Liquidator and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. THIS COURT ORDERS that prior to the passing of its accounts, the Liquidator shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Liquidator or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

SERVICE AND NOTICE

22. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.home.kpmg/ca/pacecu.

23. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Liquidator is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Credit Union’s creditors or other interested parties at

their respective addresses as last shown on the records of the Credit Union and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

24. THIS COURT ORDERS that the Liquidator may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

25. THIS COURT ORDERS that nothing in this Order shall prevent the Liquidator from acting as a trustee in bankruptcy of the Credit Union.

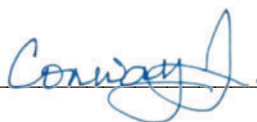
26. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Liquidator and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Liquidator and its agents in carrying out the terms of this Order.

27. THIS COURT ORDERS that the Liquidator, or FSRA on behalf of the Credit Union, be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Liquidator is authorized and

empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

28. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, on a substantial indemnity basis to be paid by the Liquidator from the Credit Union's estate with such priority and at such time as this Court may determine.

29. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Liquidator and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in blue ink, appearing to read "Conway J.", is written over a horizontal line.

IN THE MATTER OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*, S.O. 2020, C. 36, SCHED. 7, AS AMENDED
AND IN THE MATTER OF PACE SAVINGS & CREDIT UNION LIMITED
APPLICATION OF PACE SAVINGS & CREDIT UNION LIMITED UNDER SECTION 240 OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*, S.O. 2020, C. 36, SCHED. 7, AS AMENDED

Court File No. CV-22-00685736-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**Proceeding commenced at
Toronto**

**ORDER
(WINDING UP & APPOINTING LIQUIDATOR)**

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Lawyers for the Administrator of the Applicant

APPENDIX B

Court File No. CV-22-00685736-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*,
S.O 2020, C.36, SCHED. 7, AS AMENDED**

AND IN THE MATTER OF PACE SAVINGS & CREDIT UNION LIMITED

**APPLICATION OF PACE SAVINGS & CREDIT UNION LIMITED UNDER SECTION
240 OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*, S.O. 2020, C. 36,
SCHED. 7, AS AMENDED**

**FIRST REPORT OF KPMG INC. in its capacity as
LIQUIDATOR OF PACE SAVINGS & CREDIT UNION LIMITED**

JANUARY 27, 2023

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- Appendix B - Affidavit of Mehrdad Rastan sworn August 17, 2022
- Appendix C - PCU's Further Amended as Fresh-as-Amended Statement of Claim dated October 18, 2022
- Appendix D - Further Amended Statement of Defence, Counterclaim and Crossclaim of the Larry Parties dated October 26, 2022
- Appendix E - Statement of Defence, Counterclaim and Crossclaim of Phillip Smith dated July 8, 2021
- Appendix F - Phillip Smith's Statement of Claim dated October 7, 2019
- Appendix G - Statement of Defence, Counterclaim and Crossclaim of the Former Directors dated June 10, 2022
- Appendix H - Statement of Defence and Counterclaim of Brian Hogan dated March 25, 2021
- Appendix I - Amended Statement of Defence, Counterclaim and Crossclaim of the Klees Parties dated June 8, 2022
- Appendix J - PCU's Amended Statement of Claim dated August 5, 2022
- Appendix K - Statement of Defence of CUMIS dated October 12, 2022
- Appendix L - Redacted Former Directors Settlement Agreement dated December 1, 2022
- Appendix M - Redacted CUMIS Settlement Agreement dated December 1, 2022

I. INTRODUCTION

1. On August 24, 2022, PACE Savings & Credit Union Limited (“**PCU**” or the “**Credit Union**”) was ordered to be wound up pursuant to section 240 of the *Credit Unions and Caisses Populaires Act, 2020* (the “**CUCPA**”) by an Order (the “**Liquidation Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), and KPMG Inc. (“**KPMG**”) was appointed as liquidator (in such capacity, the “**Liquidator**”) of all the remaining assets, undertakings and properties of PCU. A copy of the Liquidation Order is attached hereto as **Appendix “A”**.
2. Prior to the Liquidator’s appointment, on March 18, 2019, PCU commenced a claim in the Ontario Superior Court of Justice (Commercial List) bearing Court File No. CV-19-00616388-00CL against the former President and the former Chief Executive Officer (“**CEO**”) of the Credit Union (Larry and Phillip Smith), their associated corporations and affiliates, certain of the Credit Union’s former directors, and a number of other parties (the “**Claim Against Smiths et al**”).
3. On February 28, 2022, PCU also commenced an action bearing Court File No. CV-22-00677550 against CUMIS General Insurance Company (“**CUMIS**”) in relation to a claim detailed in a proof of loss filed by the Credit Union dated October 16, 2019 under a fidelity insurance coverage bond issued by CUMIS (the “**CUMIS Fidelity Bond**”), in respect of losses incurred by PCU in connection with various dishonest acts of the former President and CEO of the Credit Union (the “**CUMIS Fidelity Bond Claim**”).
4. The above claims of the Credit Union and all related counterclaims, crossclaims and third-party claims are referred to herein collectively as the “**Recovery Litigation**”.

II. PURPOSE OF REPORT

5. The purpose of this report, which is the Liquidator’s first report to the Court (the “**First Report**”) is to provide information to this Honourable Court in respect of:
 - a. Certain background on PCU;
 - b. The history of the Recovery Litigation and related mediation;

- c. Details of settlements that have been entered into by the Liquidator in relation to the Recovery Litigation; and
- d. The Liquidator's motion for orders substantially in the forms attached to the Liquidator's Notice of Motion seeking approval of the aforesaid settlements and ancillary relief.

III. TERMS OF REFERENCE

6. In preparing this First Report, the Liquidator has been provided with, and has relied upon, the books and records and other information of PCU, including unaudited financial information and information provided by former management, advisors, and the former administrator of the Credit Union (collectively, the "**Information**"). In accordance with industry practice, except as otherwise described in this First Report, the Liquidator has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Liquidator has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Liquidator expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
7. Future oriented financial information reported or relied on in this First Report is based on assumptions regarding future events; actual results may vary from this forecast and such variations may be material.
8. Copies of the Liquidator's reports and all motion records and Orders in the liquidation proceedings are available on the Liquidator's website at <http://www.kpmg.com/ca/pacecu>.
9. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

IV. BACKGROUND ON PCU

10. PCU was formerly an operating credit union headquartered in Vaughan, Ontario, which had approximately 34,000 members, 13 branches in the greater Toronto and surrounding area, and approximately \$900 million in assets on its balance sheet. The Credit Union is incorporated under the CUCPA and is regulated by the Financial Services Regulatory Authority of Ontario (“**FSRA**”).
11. Since September 28, 2018, and up until the Liquidator’s appointment, PCU was under administration by FSRA, formerly the Deposit Insurance Corporation of Ontario (“**DICO**”). The administration was initiated by DICO in response to, among other things, certain misconduct and regulatory breaches committed by the Credit Union's former President and CEO. The affidavit of Mehrdad Rastan, Executive Vice-President, Credit Union & Insurance Prudential of FSRA, sworn on August 17, 2022 (the “**Rastan Affidavit**”) in support of the motion brought by FSRA seeking the appointment of KPMG as Liquidator, sets out in further detail the background relating to the administration of the Credit Union. A copy of the Rastan Affidavit (without exhibits) is attached hereto as **Appendix “B”**.
12. As discussed in detail in the Rastan Affidavit, at the outset of the administration, it was DICO’s intent, in its capacity as administrator of the Credit Union (in such capacity, the “**Administrator**”¹), to resolve the governance issues which gave rise to the administration and return the Credit Union to a member-controlled governance in due course. For a number of reasons, including the onset of the COVID-19 pandemic, which are more particularly described in the Rastan Affidavit, the Administrator ultimately determined that the Credit Union’s financial position had deteriorated to such extent that it would not be possible to do so. Accordingly, the Administrator made the decision to pursue a purchase and assumption transaction for the Credit Union and a sale of PCU’s then wholly-owned subsidiary, Continental Currency Exchange (“**CCE**”), through separate but parallel competitive sale processes.

¹ FSRA succeeded DICO as administrator of PCU and accordingly, the defined term ‘Administrator’ also refers to FSRA in its capacity as administrator of the Credit Union.

13. On January 11, 2022, PCU, FSRA and DUCA Credit Union entered into a share purchase agreement in respect of the sale of all of the issued and outstanding share capital of CCE (the “**CCE Transaction**”). The CCE Transaction closed on March 31, 2022.
14. On April 20, 2022, PCU and FSRA entered into a purchase and assumption agreement (the “**Purchase and Assumption Agreement**”) with Alterna Savings and Credit Union Limited (“**Alterna**”). Pursuant to the Purchase and Assumption Agreement, Alterna acquired substantially all of the business and assets and assumed substantially all of the liabilities, member deposits and employees of the Credit Union except for certain excluded assets and liabilities (the “**Purchase and Assumption Transaction**”). The Purchase and Assumption Transaction closed on June 30, 2022. Alterna has agreed to provide certain transition services to PCU for a limited period of time. The services include various finance and accounting services and information technology services for the purposes of facilitating the Credit Union's dealing with its remaining assets and liabilities.
15. Following the completion of the Purchase and Assumption Transaction, PCU no longer had any active business operations (other than a small prepaid card business which is being wound down) and accordingly, for the reasons set out in the Rastan Affidavit, the Administrator sought the appointment of KPMG as Liquidator for purposes of dealing with the Credit Union’s remaining assets and liabilities and ultimately winding down the Credit Union.
16. The remaining assets and liabilities of the Credit Union include, among other things, proceeds from the CCE Transaction, the prepaid card business and related litigation, claims asserted in the Recovery Litigation, certain member deposits and accounts, certain loans, insurance claims or entitlements to proceeds of insurance, certain funds held in trust by the Credit Union for the benefit of former employees, and claims made in the winding-up proceedings of PACE Securities Corporation and its direct and indirect subsidiaries. Further details regarding PCU’s remaining assets and liabilities are provided in the Rastan Affidavit. In addition to the above, the investment, profit, and membership shareholdings of PCU’s approximately 34,000 members remain with the Credit Union.

V. RECOVERY LITIGATION

Background of the Recovery Litigation

Claim Against Smiths et al

17. Attached hereto as **Appendix “C”** is a copy of PCU’s Further Amended Fresh-as-Amended Statement of Claim dated October 18, 2022², commenced against Larry and Phillip Smith (the “**Smiths**”), their associated corporations and affiliates, certain of the Credit Union’s former directors (the “**Former Directors**”) and a number of other parties who PCU alleges received improper benefits from the Credit Union. The Claim Against Smiths et al advances causes of action including breach of fiduciary duty, fraud, conspiracy, breach of contract and employment duties, breach of trust, knowing proceeds of breach of trust, conversion, unjust enrichment and negligence against the Smiths, the Former Directors, and the other parties.
18. Before issuing the claim, PCU sought and obtained an interim *Mareva* injunction against the Smiths. The Credit Union and the Smiths subsequently agreed to the terms of a permanent preservation order which was made on May 7, 2019, and remains in effect.
19. The defendants deny the allegations, and several have commenced counterclaims against PCU. The Smiths have commenced third-party claims against two of the Credit Union’s former directors and Phillip Smith also brought a separate claim for wrongful dismissal against the Credit Union in September 2019. A copy of the Further Amended Statement of Defence, Counterclaim and Crossclaim of Larry Smith, 1428245 Ontario Ltd. and 809755 Ontario Limited (collectively, the “**Larry Parties**”) dated October 26, 2022³, is attached hereto as **Appendix “D”**. A copy of the Statement of Defence, Counterclaim and Crossclaim of Phillip Smith dated July 8, 2021, is attached hereto as **Appendix “E”**. A copy of Phillip Smith’s Statement of Claim dated October 7, 2019, is attached hereto as **Appendix “F”**. A copy of the Statement of Defence, Counterclaim and Crossclaim of the Former Directors dated June 10, 2022, is attached hereto as **Appendix “G”**. A copy of the Statement of Defence and Counterclaim of Brian Hogan dated March 25, 2021, is attached

² PCU’s Further Amended Fresh-as-Amended Statement of Claim dated October 18, 2022, has not yet been filed.

³ The Further Amended Statement of Defence, Counterclaim and Crossclaim of the Larry Parties dated October 26, 2022, has not yet been filed.

hereto as **Appendix “H”**. A copy of the Amended Statement of Defence, Counterclaim and Crossclaim of Frank Klees and Klees & Associated Ltd. (collectively, the “**Klees Parties**”) dated June 8, 2022, is attached hereto as **Appendix “I”**.

20. PCU has a directors and officers insurance policy (the “**D&O Policy**”) which provides coverage to every director or officer of the Credit Union in connection with any loss arising from a claim made against them for which they are not indemnified by PCU, up to a limit of \$15 million. It covers losses arising from “wrongful acts”, a term which includes breach of duty, neglect, and error. The D&O Policy also restricts coverage for claims brought by PCU, except where the claim is, *inter alia*, a derivative claim. The D&O Policy has a diminishing limit given that the defence costs of the directors and officers are covered under the policy.
21. Certain of the Credit Union’s former directors and officers (including the Smiths) sought coverage from CUMIS in respect of PCU’s claims against them for breach of duty and negligence. CUMIS denied defence coverage on the basis that the claim was brought by PCU itself. The directors and officers brought an application for coverage and in an endorsement dated May 18, 2021, the Court found that PACE’s claim was a derivative action, and that CUMIS is therefore obliged to defend the directors and officers. Although CUMIS has not formally conceded any obligation to indemnify under the D&O Policy, PCU has taken the position that CUMIS will be liable to the directors and officers for any damages award against them in favour of PCU in the Recovery Litigation, up to the remaining policy limit.

CUMIS Fidelity Bond Claim

22. The CUMIS Fidelity Bond provides fidelity insurance coverage with an effective date of January 1, 2018, and an expiry date of January 1, 2019. Pursuant to the terms of the CUMIS Fidelity Bond, CUMIS is liable to indemnify PCU for covered losses, which include losses resulting from dishonest or fraudulent acts of any director, employee, or contractor of the Credit Union to a maximum of \$10.025 million.
23. PCU had claimed the maximum amount available under the CUMIS Fidelity Bond pursuant to the CUMIS Fidelity Bond Claim. Prior to the settlement discussed further in this report, CUMIS had made a partial payment to PCU in the amount of approximately \$1

million. PCU commenced an action against CUMIS in relation to the unpaid portion of the CUMIS Fidelity Bond Claim. A copy of PCU's Amended Statement of Claim dated August 5, 2022, is attached hereto as **Appendix "J"**. A copy of CUMIS' Statement of Defence dated October 12, 2022, is attached hereto as **Appendix "K"**.

Status of the Recovery Litigation

24. The Recovery Litigation is currently pending before the Ontario Superior Court of Justice under three separate actions⁴. Pleadings have been exchanged between the parties, but documentary and oral discovery have not yet taken place.
25. The Smiths and the Former Directors brought motions to dismiss or permanently stay PCU's claims against them as an abuse of process on the basis of an alleged failure to immediately disclose settlement agreements that PACE entered into in 2020 and 2021 with other defendants in the Recovery Litigation (the "**Stay Motions**").
26. The Stay Motions were scheduled to be heard on December 19, 2022; however, as a result of scheduling issues, the Court vacated that date. The Stay Motions are now scheduled to be heard on March 20, 2023.

Efforts to Settle the Recovery Litigation and the Recent Mediation

27. The main parties to the Recovery Litigation agreed to participate in a mediation session before Larry Banack in an effort to try and settle all claims. The mediation took place on November 28 and 29 and December 1, 2022.
28. While a global settlement was not reached, the mediation did result in two settlements which are discussed further in this report. Larry Banack continues to have discussions with the non-settling parties regarding a potential global settlement.

VI. SETTLEMENTS IN THE RECOVERY LITIGATION

29. The mediation before Larry Banack resulted in a partial settlement of the Claim Against Smiths et al and a settlement of the CUMIS Fidelity Bond Claim as follows:

⁴ The main action bears Court File No. CV-19-00616388-00CL, the action against CUMIS bears Court File No. CV-22-00677550 and Phillip Smith's wrongful dismissal action bears Court File No. CV-19-00628710.

- a. A settlement agreement dated December 1, 2022, between PCU, by the Liquidator, and the Former Directors (the “**Former Directors Settlement Agreement**”). A copy of the Former Director Settlement Agreement (redacted to remove the settlement amount) is attached hereto as **Appendix “L”**; and
- b. A settlement agreement dated December 1, 2022, between PCU, by the Liquidator, and CUMIS in respect of the CUMIS Fidelity Bond Claim (the “**CUMIS Settlement Agreement**”, and together with the Former Directors Settlement Agreement, the “**Settlement Agreements**”). A copy of the CUMIS Settlement Agreement (redacted to remove the settlement amount) is attached hereto as **Appendix “M”**.

The Former Directors Settlement Agreement

30. The Former Directors Settlement Agreement contains the following key terms⁵:
 - a. The Former Directors shall cause CUMIS to pay the Settlement Funds within 30 days following the effective date of the Former Directors Settlement Agreement;
 - b. On the effective date, the parties will enter into a full and final mutual release of the claims against the Former Directors which shall be held in escrow until PCU’s receipt of the Settlement Funds;
 - c. PCU will amend the Statement of Claim in the Recovery Litigation to remove the claims against the Former Directors and to clarify that any damages it is seeking from the Non-Settling Defendants do not include any amount apportionable to the fault or negligence of the Former Directors;
 - d. PCU will obtain orders dismissing the Recovery Litigation as against the Former Directors. The Former Directors will consent to dismissal of their counterclaim against PCU;
 - e. If requested by PCU, the Former Directors shall cooperate with counsel for PCU and/or the Liquidator in the prosecution of the Recovery Litigation against the Non-Settling Defendants, including by appearing and giving sworn evidence as witnesses at the trial of the Recovery Litigation as against the Non-Settling Defendants. PCU will pay the

⁵ Capitalized terms not defined herein have the meaning defined in the Former Directors Settlement Agreement.

- reasonable legal fees incurred by the Former Directors in connection with such cooperation;
- f. CUMIS will not rely on the inclusion of an obligation to provide evidence in paragraph 5 of the Former Directors Settlement Agreement to allege that it constitutes a basis for denial of coverage. Should PCU exercise any rights to obtain such evidence, CUMIS may allege that it constitutes a basis for denial of coverage and PCU will be free to allege it does not constitute such a breach;
 - g. The Liquidator will seek an order from the Court approving the terms of the Former Directors Settlement Agreement on notice to all of the parties to the Recovery Litigation and CUMIS. The Former Directors and CUMIS will consent to the order; and
 - h. PCU will disclose the existence and terms of the Former Directors Settlement Agreement to the Non-Settling Defendants as required by law and as necessary to obtain the Approval Order. The parties shall otherwise keep the existence and terms of the Former Directors Settlement Agreement confidential and shall not reveal its existence and terms except to their respective legal and financial advisors and insurers, or as otherwise required by law.

The CUMIS Settlement Agreement

31. The CUMIS Settlement Agreement contains the following key terms⁶:
- a. CUMIS shall pay the Settlement Funds from the CUMIS Fidelity Bond within 30 days following the effective date of the CUMIS Settlement Agreement;
 - b. On the effective date, the parties will enter into a full and final mutual release of the CUMIS Fidelity Bond Claim and any claims under the EPL Policy which shall be held in escrow until PCU's receipt of the Settlement Funds;
 - c. CUMIS agrees that it has waived or will waive any subrogation and/or recovery rights which arose or may otherwise arise under the terms of the CUMIS Fidelity Bond or the EPL Policy;

⁶ Capitalized terms not defined herein have the meaning defined in the CUMIS Settlement Agreement.

- d. PCU will obtain an order dismissing the action in relation to the Fidelity Bond Claim on a with-prejudice and without-costs basis; and
- e. PCU will seek an order from the Court approving the terms of the CUMIS Settlement Agreement. CUMIS will consent to the order.

Status of the Settlements

- 32. PCU's counsel in the Recovery Litigation, Lax O'Sullivan Lisus Gottlieb LLP, provided written notice of the Settlement Agreements, including a redacted copy of the Former Directors Settlement Agreement, to all defendants in the Recovery Litigation on December 1, 2022.
- 33. The Settlement Funds under the Settlement Agreements were paid by CUMIS to the Liquidator on December 22, 2022.
- 34. All releases under the Settlement Agreements have been exchanged.

Court Approval of the Settlement Agreements

- 35. The Liquidator is seeking Court approval of the Settlement Agreements pursuant to their terms.
- 36. Attached hereto as **Confidential Appendix "A"** is a summary of relevant information pertaining to the Liquidator's decision to enter into the Settlement Agreements.
- 37. In the view of the Liquidator, the terms of the Settlement Agreements are fair and reasonable, they provide substantial benefits to the Credit Union's stakeholders, and they are consistent with the purpose and spirit of the winding up provisions of the CUCPA.
- 38. The quantum of the Settlement Funds and other information contained in Confidential Appendix "A" are not being publicly disclosed. The Liquidator respectfully requests an order sealing Confidential Appendix "A" until further order of the Court to maintain its confidentiality during the pendency of the Claim Against Smiths et al. It contains commercially sensitive information, public disclosure of which would be materially prejudicial to the interests of PCU and its stakeholders, which have an interest in maximizing recoveries from those defendants who have not settled. There is no alternative

measure available to protect this information, and no party is materially prejudiced by the sealing of this information.

VII. LIQUIDATOR'S CONCLUSIONS AND RECOMMENDATIONS

39. The Liquidator submits this First Report to the Court in support of the Liquidator's Motion for the relief as set out in the Notice of Motion and recommends that the Court grant such relief.

All of which is respectfully submitted at Toronto, Ontario this 27th day of January 2023.

**KPMG Inc.,
in its capacity as Liquidator of
Pace Savings & Credit Union Limited
and not in its personal capacity**



Per: _____

Anamika Gadia
Senior Vice President

APPENDIX C

Court File No. CV-22-00685736-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*,
S.O 2020, C.36, SCHED. 7, AS AMENDED**

AND IN THE MATTER OF PACE SAVINGS & CREDIT UNION LIMITED

**APPLICATION OF PACE SAVINGS & CREDIT UNION LIMITED UNDER SECTION
240 OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*, S.O. 2020, C. 36,
SCHED. 7, AS AMENDED**

**SECOND REPORT OF KPMG INC. in its capacity as
LIQUIDATOR OF PACE SAVINGS & CREDIT UNION LIMITED**

APRIL 21, 2023

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LIST OF APPENDICES

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- Appendix B - First Report (without appendices) dated January 27, 2023
- Appendix C - First Settlement Approval Order dated February 8, 2023
- Appendix D - Redacted Final Settlement Agreement dated April 3, 2023

I. INTRODUCTION

1. On August 24, 2022, PACE Savings & Credit Union Limited (“**PCU**” or the “**Credit Union**”) was ordered to be wound up pursuant to section 240 of the *Credit Unions and Caisses Populaires Act, 2020* (the “**CUCPA**”) by an Order (the “**Liquidation Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), and KPMG Inc. (“**KPMG**”) was appointed as liquidator (in such capacity, the “**Liquidator**”) of all the remaining assets, undertakings and properties of PCU. A copy of the Liquidation Order is attached hereto as **Appendix “A”**.
2. Prior to the Liquidator’s appointment, on March 18, 2019, PCU commenced an action bearing Court File No. CV-19-00616388-00CL against the former President and the former Chief Executive Officer of the Credit Union (Larry and Phillip Smith (the “**Smiths**”)), their associated corporations and affiliates, certain of the Credit Union’s former directors (the “**Former Directors**”), and a number of other parties (the “**Claim Against Smiths et al**”).
3. On February 28, 2022, PCU also commenced an action bearing Court File No. CV-22-00677550 against CUMIS General Insurance Company (“**CUMIS**”) in relation to a claim detailed in a proof of loss filed by the Credit Union dated October 16, 2019 under a fidelity insurance coverage bond issued by CUMIS (the “**CUMIS Fidelity Bond**”), in respect of losses incurred by PCU in connection with alleged misconduct by the Smiths (the “**CUMIS Fidelity Bond Claim**”).
4. The above claims of the Credit Union and all related counterclaims, crossclaims and third-party claims are referred to herein collectively as the “**Recovery Litigation**”.
5. The Liquidator issued its first report to the Court, including a confidential appendix, on January 27, 2023 (the “**First Report**”) in conjunction with a motion returnable on February 8, 2023, seeking:
 - a. Approval of a settlement agreement dated December 1, 2022, between PCU, by the Liquidator, and the Former Directors (the “**Former Directors Settlement Agreement**”);

- b. Approval of a settlement agreement dated December 1, 2022, between PCU, by the Liquidator, and CUMIS in respect of the CUMIS Fidelity Bond Claim (the "**CUMIS Settlement Agreement**"); and
- c. Certain ancillary relief thereto.

A copy of the First Report (without appendices) is attached hereto as **Appendix "B"**.

- 6. On February 8, 2023, the Court granted an Order (the "**First Settlement Approval Order**") approving the Former Directors Settlement Agreement and the CUMIS Settlement Agreement and certain ancillary relief thereto. A copy of the First Settlement Approval Order is attached hereto as **Appendix "C"**.

II. PURPOSE OF REPORT

- 7. The purpose of this report, which is the Liquidator's second report to the Court (the "**Second Report**"), is to provide information in respect of:
 - a. The status of the Recovery Litigation and related mediation;
 - b. Details of a further settlement that has been entered into by the Liquidator in relation to the Recovery Litigation; and
 - c. The Liquidator's motion returnable May 1, 2023, for an order substantially in the form attached to the Liquidator's Notice of Motion seeking approval of the further settlement and ancillary relief.

III. TERMS OF REFERENCE

- 8. In preparing this Second Report, the Liquidator has been provided with, and has relied upon, the books and records and other information of PCU, including unaudited financial information and information provided by former management, advisors, and the former administrator of the Credit Union (collectively, the "**Information**"). In accordance with industry practice, except as otherwise described in this Second Report, the Liquidator has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Liquidator has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the

Chartered Professional Accountants of Canada Handbook and, accordingly, the Liquidator expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

9. Future oriented financial information reported or relied on in this Second Report is based on assumptions regarding future events; actual results may vary from this forecast and such variations may be material.
10. Copies of the Liquidator's reports and all motion records and Orders in the liquidation proceedings are available on the Liquidator's website at home.kpmg/ca/pacecu.
11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

IV. STATUS OF RECOVERY LITIGATION AND MEDIATION

12. The First Report provided background on the Recovery Litigation including details of PCU's claims, being the Claim Against Smiths et al and the CUMIS Fidelity Bond Claim, as well as details of the various counterclaims, crossclaims and third-party claims advanced by other parties to the Recovery Litigation.
13. As discussed in the First Report, the main parties to the Recovery Litigation agreed to participate in a mediation session before Larry Banack on November 28 and 29 and December 1, 2022, in an effort to try and settle all claims. Those mediation efforts resulted in the Former Directors Settlement Agreement, which partially resolved the Claim Against Smiths et al, and the CUMIS Settlement Agreement, which fully resolved the CUMIS Fidelity Bond Claim.
14. Pursuant to the terms of the Former Directors Settlement Agreement, PCU and the Former Directors entered into a full and final mutual release and agreed to the dismissal of the claims against the Former Directors in exchange for a payment to the Credit Union from CUMIS under the directors and officers insurance policy (the "**D&O Policy**") which was maintained by PCU and provides coverage to every director or officer of the Credit Union in connection with any loss arising from a claim made against them for which they are not indemnified by PCU, up to a limit of \$15 million. The D&O Policy covers losses arising from "wrongful acts", a term which includes breach of duty, neglect, and error. The D&O

Policy has a diminishing limit given that the defence costs of the directors and officers are covered under the policy.

15. The CUMIS Settlement Agreement provided for the full and final mutual release of the CUMIS Fidelity Bond Claim and a dismissal of the action in relation to the CUMIS Fidelity Bond Claim in exchange for a payment to PCU from CUMIS under the CUMIS Fidelity Bond.
16. Subsequent to the Court approval of the Former Directors Settlement Agreement and the CUMIS Settlement Agreement on February 8, 2023, settlement discussions continued amongst the remaining parties to the Recovery Litigation through Larry Banack in an effort to reach a settlement of the remaining claims against the Smith and other parties. In early March, a settlement in principle was reached, and the remaining parties to the Recovery Litigation moved towards preparing and finalizing minutes of settlement. Accordingly, the Court was informed in mid-March that the hearing scheduled for March 20, 2023, in relation to the motions brought by the Smiths and other parties to dismiss or permanently stay PCU's claims against them (the "**Stay Motions**") as an abuse of process would no longer be required.

V. FINAL SETTLEMENT IN THE RECOVERY LITIGATION

Terms of the Final Settlement

17. PCU, by the Liquidator, the remaining parties to the Recovery Litigation, and the non-parties CUMIS and Goodmans LLP ("**Goodmans**") entered into a settlement agreement dated April 3, 2023 (the "**Final Settlement Agreement**"). A redacted version of the Final Settlement Agreement is attached hereto as **Appendix "D"**. CUMIS is a party to the Final Settlement Agreement as the insurer under the D&O Policy, and Goodmans is a party as the Credit Union's former counsel.

18. The Final Settlement Agreement contains the following key terms¹:
- a. In exchange for certain payments to PCU and other parties and the release of any interest in certain funds claimed by the Smiths and related parties, the parties to the Claim Against Smiths et al will enter into a full and final mutual release of the Claims;
 - b. The Credit Union and the Financial Services Regulatory Authority of Ontario, in its former capacity as PCU's Administrator, will enter into a full and final release with Goodmans;
 - c. Nothing in the Final Settlement Agreement or Mutual Release shall affect or derogate from any obligations to cooperate with the Liquidator in accordance with the terms of the Liquidation Order;
 - d. PCU will obtain orders dismissing the Recovery Action, including all associated counterclaims, crossclaims and/or third-party claims, and the 2340 Action², on a with-prejudice and without-costs basis;
 - e. PCU will consent to an order vacating the Order of the Honourable Justice Conway dated May 19, 2019, in the Claim Against Smiths et al made in connection with PCU's motion to extend the Preservation Order issued by the Honourable Justice Hailey on March 19, 2019;
 - f. The applicants and plaintiffs in proceedings bearing Court File Numbers CV-19-00616388-00CL, CV-21-00658241-00CL, CV-21-00658643-00CL, CV-21-00655599-00CL, CV-21-00656590-00CL, CV-21-00655627-00CL and CV-22-00679927-0000 shall obtain orders dismissing such proceedings without costs and deliver copies of such Orders to all other Parties and all such other Parties shall consent to such orders;
 - g. Philip Smith will obtain an order dismissing the Wrongful Dismissal Action³ on a with-prejudice, without-costs basis;

¹ Capitalized terms not defined herein have the meaning defined in the Final Settlement Agreement.

² Action commenced by PCU against Larry Smith, Phillip Smith, Joanna Whitfield and 2340938 Ontario Inc. bearing the Court File Number CV-18-00610186-000.

³ Action commenced by Phillip Smith bearing Court File Number CV-19-00628710-0000.

- h. The Liquidator will seek an order from the Court approving the terms of the Final Settlement Agreement (the “**Approval Order**”) and the other Parties will consent to the Approval Order;
- i. All of the settlement funds and the Mutual Release shall be held in escrow pending the receipt by all parties of the Mutual Release and the Approval Order;
- j. The Liquidator will disclose the existence and terms of the Final Settlement as required by law and as necessary to obtain the Approval Order. The Parties shall otherwise keep the existence and terms of the Final Settlement Agreement confidential, and shall not reveal its existence and terms except to their respective legal and financial advisors, or as otherwise required by law; and
- k. The Parties agree that they will not at any time publicly make any statement or comment relating to the matters addressed in the Final Settlement Agreement of a negative nature or which could reasonably be considered to have an adverse impact on their respective business or reputations.

Status of the Final Settlement

- 19. The majority of the parties have executed the Final Settlement Agreement and exchanged the releases under the Final Settlement Agreement which are being held in escrow. The Liquidator expects that the remaining parties will have executed the Final Settlement Agreement and provided their releases prior to the motion returnable on May 1, 2023.
- 20. The settlement funds payable to the Credit Union pursuant to the Final Settlement Agreement have been received and are being held in escrow by PCU’s counsel in the Recovery Litigation, Lax O’Sullivan Lisus Gottlieb LLP.

Court Approval of the Settlement Agreements

- 21. The Liquidator is seeking Court approval of the Final Settlement Agreement pursuant to its terms.

22. Attached hereto as **Confidential Appendix “A”** is a summary of relevant information pertaining to the Liquidator’s decision to enter into the Final Settlement Agreement.
23. In the view of the Liquidator, the terms of the Final Settlement Agreement are fair and reasonable, they provide substantial benefits to the Credit Union’s stakeholders, and they are consistent with the purpose and spirit of the winding up provisions of the CUCPA.
24. The quantum of the settlement funds and other information contained in Confidential Appendix “A” are not being publicly disclosed. The Liquidator respectfully requests an order sealing Confidential Appendix “A” until completion of the settlement contemplated by the Final Settlement Agreement. It contains commercially sensitive information, public disclosure of which would be materially prejudicial to the interests of PCU, and its stakeholders should the settlement contemplated by the Final Settlement Agreement not be completed for some reason. There is no alternative measure available to protect this information, and no party is materially prejudiced by the sealing of this information.
25. The Liquidator notes that the First Settlement Approval Order contains a sealing provision in respect of the confidential appendix attached to the First Report. The sealing of that confidential appendix and Confidential Appendix “A” to this report can be lifted upon completion of the settlement under the Final Settlement Agreement. The Liquidator proposes to file a certificate with the Court upon completion of that settlement.
26. Upon approval of the Final Settlement Agreement, the other court orders referenced in paragraph 18 above will also be sought, preferably in writing in order to minimize costs and multiple court attendances.

VII. LIQUIDATOR’S CONCLUSIONS AND RECOMMENDATIONS

27. The Liquidator submits this Second Report to the Court in support of the Liquidator’s Motion for the relief as set out in its Notice of Motion and recommends that the Court grant such relief.

All of which is respectfully submitted at Toronto, Ontario this 21st day of April, 2023.

**KPMG Inc.,
in its capacity as Liquidator of
Pace Savings & Credit Union Limited
and not in its personal capacity**



Per: _____

Anamika Gadia
Senior Vice President

APPENDIX D

Court File No. CV-22-00685736-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*,
S.O 2020, C.36, SCHED. 7, AS AMENDED**

AND IN THE MATTER OF PACE SAVINGS & CREDIT UNION LIMITED

**APPLICATION OF PACE SAVINGS & CREDIT UNION LIMITED UNDER SECTION
240 OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*, S.O. 2020, C. 36,
SCHED. 7, AS AMENDED**

**THIRD REPORT OF KPMG INC. in its capacity as
LIQUIDATOR OF PACE SAVINGS & CREDIT UNION LIMITED**

MAY 5, 2023

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- Appendix D - Markham-Stouffville CU offering statement dated September 15, 1995
- Appendix E - Uxbridge CU offering statement dated December 29, 1996
- Appendix F - GTA CU offering statement dated December 29, 2002
- Appendix G - People's CU offering statement dated July 29, 2009
- Appendix H - PCU Bylaws dated September 12, 2012
- Appendix I - Listing of Investment and Profit Shareholders (no names basis)
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I. INTRODUCTION

1. On August 24, 2022, PACE Savings & Credit Union Limited (“**PCU**” or the “**Credit Union**”) was ordered to be wound up pursuant to section 240 of the *Credit Unions and Caisses Populaires Act, 2020* (the “**CUCPA**”) by an Order (the “**Liquidation Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), and KPMG Inc. (“**KPMG**”) was appointed as liquidator (in such capacity, the “**Liquidator**”) of all the remaining assets, undertakings and properties of PCU. A copy of the Liquidation Order is attached hereto as **Appendix “A”**.
2. Prior to the Liquidator’s appointment, on March 18, 2019, PCU commenced an action bearing Court File No. CV-19-00616388-00CL against the former President and the former Chief Executive Officer of the Credit Union (Larry and Phillip Smith (the “**Smiths**”)), their associated corporations and affiliates, certain of the Credit Union’s former directors (the “**Former Directors**”), and a number of other parties (the “**Claim Against Smiths et al**”).
3. On February 28, 2022, PCU also commenced an action bearing Court File No. CV-22-00677550 against CUMIS General Insurance Company (“**CUMIS**”) in relation to a claim detailed in a proof of loss filed by the Credit Union dated October 16, 2019 under a fidelity insurance coverage bond issued by CUMIS (the “**CUMIS Fidelity Bond**”), in respect of losses incurred by PCU in connection with alleged misconduct by the Smiths (the “**CUMIS Fidelity Bond Claim**”).
4. The above claims of the Credit Union and all related counterclaims, crossclaims and third-party claims are referred to herein collectively as the “**Recovery Litigation**”.
5. The Liquidator issued its first report to the Court, including a confidential appendix, on January 27, 2023 (the “**First Report**”) in conjunction with a motion returnable on February 8, 2023, seeking:
 - a. Approval of a settlement agreement dated December 1, 2022, between PCU, by the Liquidator, and the Former Directors (the “**Former Directors Settlement Agreement**”);

- b. Approval of a settlement agreement dated December 1, 2022, between PCU, by the Liquidator, and CUMIS in respect of the CUMIS Fidelity Bond Claim (the "**CUMIS Settlement Agreement**"); and
- c. Certain ancillary relief thereto.

A copy of the First Report (without appendices) is attached hereto as **Appendix "B"**.

6. On February 8, 2023, the Court granted an Order approving the Former Directors Settlement Agreement and the CUMIS Settlement Agreement and certain ancillary relief thereto.
7. The Liquidator issued its second report to the Court, including a confidential appendix, on April 21, 2023 (the "**Second Report**") in conjunction with a motion returnable on May 1, 2023, seeking approval of the settlement agreement dated April 3, 2023 between PCU, by the liquidator, and the remaining parties to the Recovery Litigation, CUMIS and Goodmans LLP (the "**Final Settlement Agreement**") and certain ancillary relief thereto.
8. On May 1, 2023, the Court granted an Order approving the Final Settlement Agreement and certain ancillary relief thereto.

II. PURPOSE OF REPORT

9. The purpose of this report, which is the Liquidator's third report to the Court (the "**Third Report**"), is to provide information for the purpose of the motion (the "**Representative Counsel Motion**") being brought by SMK Law P.C. ("**SMK Law**") seeking to be appointed as representative counsel for the holders of Class B Investment Shares (as defined below) and Class A Profit Shares (as defined below) (the "**Investment and Profit Shareholders**"), including:
 - a. Certain background on the Credit Union's Class B Investment Shares and Class A Profit Shares;
 - b. The amounts owing to the Investment and Profit Shareholders and the manner in which the shares were acquired; and
 - c. The Liquidator's position on the Representative Counsel Motion.

10. The Liquidator is also providing information in this Third Report in support of its request for an order sealing the confidential appendix to this Third Report.

III. TERMS OF REFERENCE

11. In preparing this Third Report, the Liquidator has been provided with, and has relied upon, the books and records and other information of PCU, including unaudited financial information and information provided by former management, advisors, and the former administrator of the Credit Union (collectively, the “**Information**”). In accordance with industry practice, except as otherwise described in this Third Report, the Liquidator has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Liquidator has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards (“**GAAS**”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Liquidator expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
12. Future oriented financial information reported or relied on in this Third Report is based on assumptions regarding future events; actual results may vary from this forecast and such variations may be material.
13. The information contained in this Third Report has been prepared based on the Liquidator and its counsel’s review of the CUCPA, the Offering Statements (as defined below), the Articles of Amalgamation (as defined below), PCU’s Bylaws (as defined below) and the Credit Union’s books and records, including documents in the member files¹ of the Investment and Profit Shareholders related to the Class B Investment Shares and Class A Profit Shares, where available. The Liquidator notes that, in some cases, the Investment

¹The Liquidator requested from Alterna Savings and Credit Union Limited documents related to the Class B Investment Shares and Class A Profit Shares contained in the member files of the Investment and Profit Shareholders. The Liquidator was provided with member files for 508 Investment and Profit Shareholders. The member files for the remaining 134 Investment and Profit Shareholders could not be located or do not exist. Furthermore, in some cases, the member files do not contain documents for some or all of the share accounts under the associated member’s name or customer identification number.

and Profit Shareholder member files do not contain documents related to these shares. The Liquidator has commented further in paragraph 33 below on the contents of those files.

14. Copies of the Liquidator's reports and all motion records and Orders in the liquidation proceedings are available on the Liquidator's website at home.kpmg/ca/pacecu.
15. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

IV. PCU SHARE STRUCTURE

History of Amalgamations

16. Share issuances at Markham-Stouffville Community Credit Union Limited (“**Markham-Stouffville CU**”), Uxbridge Credit Union Limited (“**Uxbridge CU**”), Greater Toronto Area (GTA) Savings & Credit Union Limited (“**GTA CU**”) and People's Credit Union Limited (“**People’s CU**”) became Authorized Capital (as defined below) of PCU upon the amalgamations of each credit union. The following sets out the amalgamation dates:
 - a. Markham-Stouffville CU: Amalgamated with Uxbridge CU effective October 1, 1997 to form GTA CU;
 - b. Uxbridge CU: Amalgamated with Markham-Stouffville CU effective October 1, 1997 to form GTA CU;
 - c. GTA CU: Amalgamated with PCU effective April 1, 2003; and
 - d. People’s CU: Amalgamated with PCU effective January 1, 2013.

Authorized Capital

17. Pursuant to the Articles of Amalgamation of PCU dated September 12, 2012 (the “**Articles of Amalgamation**”), the authorized capital (the “**Authorized Capital**”) of the Credit Union consists of:
 - a. An unlimited number of Class B Special Shares (the “**Class B Investment Shares**”), issuable in series;
 - b. An unlimited number of Class A Special Shares (the “**Class A Profit Shares**”), issuable in series; and

c. An unlimited number of membership shares (the “**Membership Shares**”).

A copy of the Articles of Amalgamation is attached hereto as **Appendix “C”**.

18. As discussed in the First Report, pursuant to a purchase and assumption transaction which closed on June 30, 2022, Alterna Savings and Credit Union Limited acquired substantially all of the business and assets and assumed substantially all of the liabilities, deposits, and employees of the Credit Union except for certain excluded assets and liabilities and the Authorized Capital of PCU.
19. Class B Investment Shares are non-cumulative, non-voting and non-participating shares. These shares were offered for sale to individual members at \$1.00 per share through five separate share offerings by predecessor credit unions that ultimately amalgamated into PCU as set out in paragraph 16 above.
20. The Class B Investment Shares were issued pursuant to the following share offerings:
 - a. Class B Series 1 shares were offered for sale on September 15, 1995 and originated with Markham-Stouffville CU. A copy of the Markham-Stouffville CU offering statement is attached hereto as **Appendix “D”**;
 - b. Class B Series 2 shares were offered for sale on December 29, 1996 and originated with Uxbridge CU. A copy of the Uxbridge CU offering statement is attached hereto as **Appendix “E”**;
 - c. Class B Series 3 shares were offered for sale December 29, 2002 and originated with GTA CU. A copy of the GTA CU offering statement is attached hereto as **Appendix “F”**; and
 - d. Class B Series 4 and Class B Series 5 shares were offered for sale on July 29, 2009 and originated with People’s CU. A copy of the People’s CU offering statement is attached hereto as **Appendix “G”**.

The above-noted offering statements are referred to herein collectively as the “**Offering Statements**”.

21. Class A Profit Shares were created to reward members for their patronage. Class A Profit Shares have a value of \$1.00 per share, are non-cumulative and are generally non-voting and non-participating.
22. Class A Profit Shares were issued to members as a patronage reward or as dividends on previously issued Class A Profit Shares or Class B Investment Shares at the discretion of management and the board of directors of PCU and/or the predecessor credit unions at various instances in the history of PCU and/or the predecessor credit unions.

Payment Priority

23. The Articles of Amalgamation set out the rights, privileges, restrictions, and conditions attaching to the Authorized Capital of PCU, including the payment priorities of various holders of Authorized Capital, summarized as follows:
 - a. First, prior to any distribution to the holders of the Class A Profit Shares or the Membership Shares, the holders of the Class B Investment Shares are entitled to be paid the Redemption Amount (as defined below) of such shares (and no more), with the holders of all series of such shares participating rateably with one another;
 - b. Second, prior to any distribution to the holders of the Membership Shares, the holders of the Class A Profit Shares are entitled to be paid the Redemption Amount of such shares (and no more), with the holders of all series of such shares participating rateably with one another; and
 - c. Third, after payment of all debts and liabilities, including any dividends declared and not paid, and the purchase for cancellation or redemption of all outstanding shares, the remaining property of the Credit Union shall be distributed or disposed of among the members at the time of dissolution equally, irrespective of the length of time each member has been a member.

When used above, “**Redemption Amount**” means the Redemption Price (as defined below), plus all declared and unpaid dividends. “**Redemption Price**” means an amount for each share equal to the amount paid up thereon.

Relevant Rights Pursuant to the Offering Statements, the CUCPA and the Articles of Amalgamation

24. Pursuant to the Offering Statements and section 67(1) of the CUCPA, Class B Investment Shares can only be transferred to another member of the Credit Union, or to a person prescribed by the CUCPA and accompanying regulations. Furthermore, the Offering Statements set out that transfers are subject to the approval of the board of directors and are to be transferred to other members at a price equal to the current Redemption Amount. No member, through transfers of Class B Investment Shares from other members, will be allowed to hold more Class B Investment Shares than the member would otherwise have been able to subscribe for in the initial offering. The share terms for the Class B Investment Shares under the Articles of Amalgamation generally mirror the transfer limitation to other members and also include a requirement for board of directors' approval. The bylaws of PCU dated September 12, 2012 (the "**PCU Bylaws**") further hold that any transfer of shares must be accompanied by the actual endorsed certificate. A copy of the PCU Bylaws is attached hereto as **Appendix "H"**.
25. The CUCPA prohibits the redemption of shares of a credit union if the board of directors of the credit union has reasonable grounds to believe that the credit union is, or the payment would cause it to be, in contravention of prescribed liquidity and capital adequacy tests for credit unions. All redemptions are limited in any fiscal year to 10% of the respective balances of such shares outstanding at the beginning of that fiscal year.
26. The Offering Statements state that, given the above, holders of Class B Investment Shares may not be able sell or redeem their shares when they wish to do so.
27. Pursuant to section 45(3) of the CUCPA, the holders of patronage shares cannot transfer an interest in those shares to a person other than the credit union or another credit union and any transaction that purports to make such a transfer is void. Given that certain of the Class A Profit Shares were issued as patronage shares, those shares are not transferrable amongst members. The Class A Profit Shares that were issued as dividends on existing Class A Profit Shares or Class B Investment Shares hold the same transfer rights pursuant to the Offering Statements, the CUCPA and the Articles of Amalgamation as the Class B Investment Shares.

V. STATUS OF THE INVESTMENT AND PROFIT SHARES

Amounts Outstanding

28. There are 642 members of the Credit Union that hold Class B Investment Shares and/or Class A Profit Shares. A listing of the Investment and Profit Shareholders, on a no names basis, is attached hereto as **Appendix “I”**.
29. The Redemption Amounts of the Class B Investment Shares and the Class A Profit Shares are \$12,324,758 and \$5,634,853 respectively, for a total of \$17,959,611. The amounts attributable to each series of shares is as follows:

Share Series	Amount (\$)	Offering Date
<u>Class B Investment Shares</u>		
Series 1	1,244,760	9/15/1995
Series 2 ⁽¹⁾	652,301	12/29/1996
Series 3	7,090,677	12/29/2002
Series 4 ⁽¹⁾	2,658,806	7/29/2009
Series 5 ⁽¹⁾	678,213	7/29/2009
Class B Investment Shares	12,324,758	
Class A Profit Shares ⁽¹⁾	5,634,853	N/A
Total	17,959,611	

⁽¹⁾ Based on the PCU books and records, there exist sub-series of these shares denoted as the "2010" series. The Liquidator understands that dividends declared in and after 2010 were recorded in these sub-series. Accordingly, the nature of the shares held in the sub-series is the same as the primary series and consequently the balances have been combined in the above table.

Manner in which the Investment and Profit Shares were Acquired

30. The Liquidator reviewed all available member files related to Investment and Profit Shareholders in order to determine the quantum of shares currently outstanding that were issued as part of the initial offerings versus the quantum of shares that were transferred and acquired subsequent to the initial offerings. A share subscription form was utilized to issue shares to individual members as part of the initial offerings (the “**Share Subscription Form**”). In the cases where there was a transfer of shares from one member to another, the Credit Union utilized a share transfer form (the “**Share Transfer Form**”).
31. The Share Subscription Form includes the particulars of the shareholder, the share subscription amount, the series of shares being issued, and an acknowledgement that the shareholder had received and read a copy of the offering statement related to that series of shares and understood the risk factors associated with the offering. A copy of a sample Share Subscription Form is attached hereto as **Appendix “J”**.

32. The Share Transfer Form includes the particulars of the shareholder acquiring the shares, the account that the shares are to be transferred to, the share series and the share amount being transferred. The Share Transfer Forms include signature lines for the shareholder transferee and the secretary of the Credit Union's board of directors. The Share Transfer Form does not include an acknowledgement by the transferee of the risks associated with the shares being transferred. A copy of a sample Share Transfer Form is attached hereto as **Appendix "K"**.
33. As set out in the table below, it appears that at least \$1,385,135 of Class B Investment Shares were issued to members pursuant to Share Subscription Forms. Furthermore, it appears that at least \$6,641,431 of Class B Investment Shares and \$2,560,989 of Class A Profit Shares were transferred to members pursuant to Share Transfer Forms. The books and records of PCU do not disclose whether the Class A Profit Shares that were transferred are patronage shares. The Liquidator noted that, with respect to a small amount of shares, specifically \$66,589 of Class B Investment Shares, the member files include both a Share Subscription Form and a Share Transfer Form. Member files relating to \$72,156 of Class B Investment Shares and \$200,584 of Class A Profit Shares do not include either a Share Subscription Form or a Share Transfer Form but include other documentation, primarily share certificates. Lastly, documentation for \$4,159,446 of Class B Investment Shares and \$2,873,280 of Class A Profit Shares could not be located and as a result, the Liquidator is not able to ascertain the manner in which these shares were acquired by holders of those shares.

Share Series	Subscription Form	Share Transfer Form	Both ⁽¹⁾	Other	No Documents	Total
Class B Investment Shares						
Series 1	348,583	635,567	26,550	40,000	194,060	1,244,760
Series 2	-	171,351	-	15,156	465,794	652,301
Series 3	1,036,553	4,384,209	40,039	17,000	1,612,877	7,090,677
Series 4	-	1,291,383	-	-	1,367,423	2,658,806
Series 5	-	158,921	-	-	519,292	678,213
Class B Investment Shares	1,385,135	6,641,431	66,589	72,156	4,159,446	12,324,758
Class A Profit Shares	-	2,560,989	-	200,584	2,873,280	5,634,853
Total	1,385,135	9,202,420	66,589	272,740	7,032,726	17,959,611

⁽¹⁾ For certain shareholdings, there is a Share Subscription Form and a Share Transfer Form which in aggregate total the shareholding amount in the account. In other cases, both forms contained the same shareholding amounts, and accordingly, the manner in which the shares were acquired cannot be ascertained from the members' files.

Share Transfers During PCU's Administration

34. As discussed in the First Report, between September 28, 2018, and the date of the Liquidator's appointment, PCU was under administration by the Financial Services Regulatory Authority of Ontario ("FSRA"), formerly the Deposit Insurance Corporation of Ontario.
35. PCU's books and records indicate that, of the shares determined to have been transferred by means of a Share Transfer Form, there were \$2,061,071 Class B Investment Shares and \$940,520 Class A Profit Shares transferred during the period of administration. Conversely, there were \$4,580,360 of Class B Investment Shares and \$1,620,469 of Class A Profit Shares transferred prior to the administration pursuant to a Share Transfer Form. The details of these share transfers are as follows:

Share Type	Before Administration Order (\$) ⁽¹⁾	After Administration Order (\$) ⁽¹⁾	Total (\$)
<u>Class B Investment Shares</u>			
Series 1	424,171	211,397	635,567
Series 2	84,523	86,828	171,351
Series 3	3,014,463	1,369,746	4,384,209
Series 4	939,535	351,847	1,291,383
Series 5	117,668	41,253	158,921
Class B Investment Shares	4,580,360	2,061,071	6,641,431
Class A Profit Shares	1,620,469	940,520	2,560,989
Total	6,200,828	3,001,592	9,202,420

⁽¹⁾ In order to determine the dollar value of shares transferred prior to and during the administration, the Liquidator used the date on which the Share Transfer Form was signed. In the cases of an unsigned Share Transfer Form, the Liquidator used the 'Issue Date' set out in the PCU books and records in relation to these shares.

VI. THE REPRESENTATIVE COUNSEL MOTION

36. In support of the Representative Counsel Motion, the only evidence submitted is an affidavit sworn by Soheil Karkhanechi, the principal lawyer at SMK Law (the "**SK Affidavit**").
37. According to the SK Affidavit, SMK Law has been retained only by Virginia Conrads, and Mr. Karkhanechi deposes that he was advised by Ms. Conrads, among other things, that:
- On June 16, 2020, Ms. Conrads purchased 45,803.33 units of Class B Series 4 investment shares in exchange for \$45,803.33 pursuant to a "Share Transfer Form";
 - Ms. Conrads was also "transferred an additional 10,000 investment shares on a similar form as a return on her investment"; and

- c. Ms. Conrads did not receive an offering statement relating to the securities she purchased.
38. The Liquidator makes the following observations which in its view are relevant for the Court to consider for the purpose of the Representative Counsel Motion:
- a. The recoveries to the Investment and Profit Shareholders are not currently known.**
- i. At this stage in the liquidation proceeding, the Liquidator cannot accurately determine total recoveries that might be available to the Investment and Profit Shareholders. While the Liquidator has settled the Recovery Litigation, there are other recoveries being pursued by the Liquidator. In addition, the quantum of creditor claims against the Credit Union will not be known until the Liquidator undertakes a call for claims, which has not yet been done. Accordingly, it is unknown at this time whether the recoveries to Investment and Profit Shareholders will be impaired, and if so, to what extent. Attached hereto as **Confidential Appendix “A”** is information on potential recoveries in the liquidation proceeding.
- b. The relief sought on the Representative Counsel Motion would add unwarranted costs to the liquidation proceeding.**
- i. The mandate proposed by SMK Law is defined very broadly as *“all matters pertaining to any recovery, compromise of rights and claims in these proceedings (the “Purpose”)*”. Apart from its appointment as representative counsel, SMK Law also seeks court orders:
- A. Requiring that the Liquidator provide to SMK Law contact and other information for every Investment and Profit Shareholder;
- B. Authorizing it to retain such financial advisors and other advisors and assistance as may be necessary in connection with its duties as representative counsel in relation to the Purpose;
- C. Requiring payment of all reasonable professional fees and disbursements that may be incurred by it and any advisors or assistants

retained by it, whether incurred prior to or after the date of the order sought, to be paid by the Credit Union's estate, on a monthly basis; and

- D. Imposing a charge on all of the assets, property, and undertakings of PCU for an aggregate amount of \$125,000 as security for its fees and disbursements, having the same priority as the Liquidator's Charge (as defined in the Liquidation Order).
- ii. The Liquidator has a duty to all stakeholders of PCU, including the Investment and Profit Shareholders, and is working diligently to maximize recoveries and minimize third-party claims against the Credit Union. In the Liquidator's view, the relief sought by SMK Law provides no benefit to the Credit Union's stakeholders as a whole, and it is not appropriate for the stakeholders to have to bear the fees and costs described above.

c. The Liquidator has undertaken a review of the PCU books and records.

- i. SMK Law has indicated that it wishes to investigate "the circumstances of holders of profit and investment shares in the Credit Union".
- ii. The Liquidator is of the view that any such investigation falls within its mandate under the terms of the Liquidation Order.
- iii. Furthermore, the Liquidator has undertaken a review of the Credit Union's books and records for all available information and documents related to the Class B Investment Shares and Class A Profit Shares, as described above in this Third Report.
- iv. Accordingly, the Liquidator does not support the investigation proposed by SMK Law being conducted at the expense of the PCU estate.

d. The Liquidator can effectively communicate with the shareholders.

- i. The Liquidator has the contact information for the Investment and Profit Shareholders. The Liquidator sent a letter to all members of the Credit Union following its appointment via email, where available, and via regular mail, to those members for whom it does not have email addresses and has the ability to communicate further with Investment and Profit Shareholders (who are members of the Credit Union and would have received the Liquidator's letter) via those same channels.
- ii. Following its appointment, the Liquidator established a website, email address and telephone number via which the Credit Union's stakeholders and other interested parties may obtain information on the liquidation proceeding. Since its appointment, the Liquidator has responded to hundreds of calls and emails from Investment and Profit Shareholders regarding the status of their shares and the liquidation proceeding. The Liquidator will continue to respond to any such inquiries and post relevant updates to its website.
- iii. The draft order submitted by SMK Law for its Representative Counsel Motion seeks the assistance of the Liquidator for notice to the Investment and Profit Shareholders and requires the Liquidator to provide their personal information and "such additional documents and information as may be relevant" to SMK Law without their consent.
- iv. It doesn't appear that having SMK Law appointed as representative counsel will achieve anything to streamline or improve the efficiency of communications with the Investment and Profit Shareholders.

e. The interests of SMK Law's only client are not the same as all other Investment and Profit Shareholders.

- i. The SK Affidavit deposes that SMK Law's only client, Virginia Conrads, acquired her Class B Investment Shares by way of transfer in or around June of 2020, which was during the period that the Credit Union was under administration. As discussed above, only some Investment and Profit Shareholders acquired their shares by way

of transfer, and only a small minority of the Investment and Profit Shareholders acquired their shares during the period of administration.

- ii. The SK Affidavit deposes that all of Ms. Conrads' shares are Class B Investment Shares, which is consistent with PCU's books and records. As discussed above, the rights and entitlements of holders of Class B Investment Shares differ from those of Class A Profit Shares.
- iii. Furthermore, no evidence has been adduced that the various representations alleged by Mr. Karkhanechi (on information from Ms. Conrads) to have been made to Ms. Conrads by unnamed PCU representatives were made to any other shareholders. The nature of such representations, if any, would likely differ as between shareholders, in which case the benefits that a representation order may otherwise yield would be negated in this case.

f. Qualifications of SMK Law.

- i. The SK Affidavit does not provide adequate information on the qualifications and/or relevant experience of SMK Law to be appointed as representative counsel for its proposed mandate.
- ii. Although the Liquidator generally opposes the appointment of representative counsel in this case, it is of the view that, based on the limited information provided by SMK Law to date, there is no basis for the Court to conclude that SMK Law is qualified to be appointed as representative counsel for its proposed mandate.

VII. REQUEST FOR SEALING ORDER

39. The Liquidator respectfully requests an order sealing Confidential Appendix "A" until further order of the Court to maintain its confidentiality while the Liquidator continues to pursue recoveries on behalf of the Credit Union's stakeholders. It contains commercially sensitive information, public disclosure of which would be materially prejudicial to the interests of PCU and its stakeholders, which have an interest in maximizing recoveries. There is no alternative measure available to protect this information, and no party is materially prejudiced by the sealing of this information.

All of which is respectfully submitted at Toronto, Ontario this 5th day of May, 2023.

**KPMG Inc.,
in its capacity as Liquidator of
Pace Savings & Credit Union Limited
and not in its personal capacity**

Anamika Gadia

Per: _____

Anamika Gadia
Senior Vice President