

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

APPLICATION RECORD
(WINDING UP AND APPOINTING LIQUIDATOR)

August 18, 2022

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Lawyers for the Administrator of the Applicant

TO:

KPMG INC.

Bay Adelaide Centre
333 Bay Street, Suite 4600
Toronto ON M5H 2S5

Anamika Gadia

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Proposed Liquidator

AND TO:

CHAITONS LLP

Barristers and Solicitors
5000 Yonge Street, 10th Floor
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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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TAB 1



Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
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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

NOTICE OF APPLICATION
(WINDING UP AND APPOINTING LIQUIDATOR)

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In writing
- In person
- By telephone conference
- By video conference

at the following location:

Zoom details to be provided by the Court,

on Monday, August 22, 2022 at 11:00 am (Toronto time), or as soon after that time as the application can be heard, before the Honourable Justice Conway.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer,

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serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date August 18, 2022

Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue
Toronto ON M5G 1R7

TO: **KPMG INC.**
Bay Adelaide Centre
333 Bay Street, Suite 4600
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Proposed Liquidator

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Lawyers for the Proposed Liquidator

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APPLICATION

1. PACE Savings & Credit Union Limited (the “**Applicant**” or “**Credit Union**”), which is under the administration of the Financial Services Regulatory Authority of Ontario (“**FSRA**”, or, in such capacity, the “**Administrator**”), makes application for an Order substantially in the form of the Order (Winding Up and Appointing Liquidator) (the “**Winding Up Order**”)¹ located at Tab 2 of the Application Record to be filed on this application, *inter alia*:

- (a) abridging the time for service of the Notice of Application and the Application Record, if necessary, and validating service thereof;
- (b) winding up the Credit Union pursuant to section 240 of the *Credit Unions and Caisses Populaires Act, 2020*, S.O. 2020, c. 36, Sched. 7, as amended (the “**CUCPA**”);
- (c) 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 following completion of the Alterna Sale Transaction;²
- (d) approving the Liquidator Nomination Agreement (defined below) between FSRA and KPMG;
- (e) granting and approving the Liquidator’s Charge (defined below);
- (f) granting and approving the Liquidator’s power to borrow funds;

¹ A comparison of the Winding Up Order against the Commercial List User’s Committee Model Receivership Order is located at Tab 3 of the Application Record to be filed on this application.

² Capitalized terms which are not defined in this Notice of Application have the meaning ascribed to them in the Affidavit of Mehrdad Rastan sworn August 17, 2022 (the “**Rastan Affidavit**”), located at Tab 4 of the Application Record to be filed on this application.

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- (g) granting and approving the Liquidator's Borrowings Charge (defined below); and
- (h) such further and other relief as counsel may advise and this Honourable Court may deem just.

2. The grounds for the application are:

- (a) FSRA is the regulator of credit unions in Ontario under the CUCPA and oversees insured deposit protection for credit unions in Ontario through its administration of the Deposit Insurance Reserve Fund (the "**DIRF**");
- (b) Effective June 8, 2019, FSRA amalgamated with the Deposit Insurance Corporation of Ontario ("**DICO**"), the former entity that carried out the prudential regulation of credit unions in Ontario under the CUCPA and provided deposit insurance through the DIRF;
- (c) The Credit Union has been under administration by FSRA, formerly DICO, since September 28, 2018, which DICO initiated in response to, among other things, certain misconduct and regulatory breaches committed by the Credit Union's former President and former CEO;
- (d) The initial purpose and goal of the administration was to resolve the governance issues which gave rise to the administration, enhance the financial stability of the Credit Union and to return the Credit Union to member-controlled governance in due course;

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- (e) Between September 2018 and April 2020 (i.e., the onset of the COVID-19 pandemic), the Credit Union, under FSRA’s administration, made significant initial progress on the path toward exiting administration and returning to member-controlled governance;
- (f) The consequences of the misconduct and regulatory breaches committed by the Credit Union’s former President and former CEO, combined with those of the COVID-19 pandemic on the Credit Union, and certain other factors, compromised the Credit Union’s financial position to such an extent that the Administrator was forced to explore additional options for the Credit Union rather than just the “recovery option”, including exploring a purchase and assumption transaction for the Credit Union and/or a liquidation and winding up of the Credit Union;
- (g) The Credit Union’s financial position continued to deteriorate throughout 2020 and 2021 due to the foregoing challenges;
- (h) Ultimately, the Administrator determined that potential losses to the Credit Union’s stakeholders could be mitigated more effectively, and FSRA’s regulatory objectives better achieved, by pursuing a purchase and assumption transaction for the Credit Union and a sale of the Credit Union’s subsidiary, CCE, followed by a liquidation and wind-up strategy;
- (i) This determination ultimately led to the Alterna Sale Transaction and CCE Sale Transaction—which closed in June 2022 and March 2022, respectively—and now to this Application;

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- (j) At present, as a result of the Alterna Sale Transaction, the Credit Union has no employees, no member deposits,³ and no branches;
- (k) Further, virtually all of the Credit Union's members have been granted membership in and are being served by another credit union, Alterna;
- (l) All that remains of the Credit Union are certain assets and liabilities which were excluded from the Alterna Sale Transaction;
- (m) Under the provisions of the CUCPA, the Credit Union may apply to this Court for an order winding up the Credit Union where it cannot continue its business and it is advisable to wind the Credit Union up, or where it is just and equitable that the Credit Union should be wound up;
- (n) The Applicant respectfully submits that it satisfies each of these criteria and, therefore, an order granting the winding up and appointment of the Liquidator is appropriate under the CUCPA;
- (o) The Credit Union is no longer operating as a credit union and can no longer carry on the business of a credit union or perform the statutory object of a credit union under the CUCPA;
- (p) In the circumstances of this case, including having regard to the nature and complexity of the remaining assets, operations, and liabilities of the Credit Union, the Administrator is of the view that a court-ordered winding up of the Credit Union

³ With certain limited exceptions, namely the Smith Accounts.

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by a court-appointed liquidator pursuant to the CUCPA is advisable and would be just and equitable;

- (q) Through the course of the administration, FSRA, in its capacity as administrator of the DIRF, has provided certain financial support to the Credit Union and has claims against the Credit Union, both existing and contingent, all of which are in respect of the DIRF;
- (r) These include, without limitation, FSRA's claims against the Credit Union in relation to: (i) FSRA's guarantee of certain post-closing obligations of the Credit Union in connection with the Alterna Sale Transaction, and (b) an unsecured non-interest bearing promissory note issued by the Credit Union in favour of the DIRF in connection with the settlement of certain investors' claims;
- (s) On an application under section 240 of the CUCPA, the court making the winding up order may: (i) appoint one or more persons as liquidator of the estate and effects of the credit union for the purpose of winding up its affairs and distributing its property; (ii) at any time, fix the remuneration of the liquidator and the costs, charges, and expenses of the winding-up; and (iii) make an interim or such other order as it considers appropriate;
- (t) As part of this Application, the Applicant is seeking to have KPMG appointed as Liquidator of the Credit Union;

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- (u) KPMG and FSRA, in its capacity as the Administrator of the Credit Union, have entered into a liquidator nomination agreement (the “**Liquidator Nomination Agreement**”);
- (v) Pursuant to the Liquidator Nomination Agreement, the Administrator agreed to nominate or support the nomination of KPMG, and KPMG agreed to accept such nomination and consent to its appointment, as court-appointed liquidator of the Credit Union in these proceedings on the terms set out therein and in the Winding Up Order;
- (w) KPMG is well-known for its expertise in complex commercial matters and liquidation proceedings and is an appropriate choice to serve in this capacity;
- (x) KPMG, through a previous advisory engagement with FSRA, also has experience with the Credit Union and its assets, undertakings, properties, liabilities, and claims, all of which will benefit the Credit Union, its stakeholders, and the Court if KPMG were appointed as Liquidator;
- (y) The proposed Liquidator has requested a charge on the remaining assets of the Credit Union to secure payment of its reasonable fees and expenses and those of its counsel, in each case at their standard rates and charges unless otherwise ordered by this Court on the passing of accounts (the “**Liquidator’s Charge**”);
- (z) The Liquidator’s Charge is to rank in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person, but

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subordinate in priority to validly perfected security interests existing as of the date of the Winding Up Order;

- (aa) The proposed Liquidator may have to borrow monies for the purpose of funding the exercise of its powers and duties related to the winding-up of the Credit Union;
- (bb) For this reason, the Applicant is seeking an Order (i) empowering the Liquidator to borrow such monies, provided that the outstanding principal amount does not exceed \$3,000,000.00 and (ii) granting a fixed and specific charge on the remaining assets of the Credit Union as security for the payments of the monies borrowed, together with interest and charges thereon (the “**Liquidator’s Borrowings Charge**”);
- (cc) Pursuant to the terms of the Winding Up Order, the Liquidator shall not borrow any monies during the first 15 days following the date of the Order, unless approved by further order of this Court;
- (dd) The Liquidator’s Borrowings Charge is to rank in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person, but subordinate in priority to the Liquidator’s Charge;
- (ee) The Administrator believes that all of the relief requested on this Application is reasonable and appropriate in the circumstances of this case, and is reasonably necessary to ensure the successful and timely winding up of the Credit Union;

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- (ff) The wind up must be completed in a timely manner because the Credit Union no longer has any employees and must rely on transition services and information provided by Alterna, the purchaser in the Alterna Sale Transaction, which services and information will eventually be withdrawn;
 - (gg) The grounds set out in the Rastan Affidavit;
 - (hh) The CUCPA, ss. 23(1), 240(1)(c) and (d), (3), (6), (7), (8), (13), and (18); and
 - (ii) Such further and other grounds as the lawyers may advise.
3. The following documentary evidence will be used at the hearing of the application:
- (a) The Rastan Affidavit; and
 - (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

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August 18, 2022

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Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**Proceeding commenced at
Toronto**

**NOTICE OF APPLICATION
(WINDING UP AND APPOINTING LIQUIDATOR)**

FASKEN MARTINEAU DuMOULIN LLP

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Lawyers for the Administrator of the Applicant

TAB 2

Court File No.

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

THE HONOURABLE)
)
JUSTICE CONWAY)

MONDAY, THE 22ND
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 and KPMG, 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 \$_____, provided that the aggregate consideration for all such transactions does not exceed \$_____ ; 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;
- (n) 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;
- (o) 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;
- (p) 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;

- (q) 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;
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (s) 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 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 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.

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, 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.

FUNDING OF THE WINDING UP

22. THIS COURT ORDERS that the Liquidator be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$3,000,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Liquidator by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Liquidator’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Liquidator’s Charge. Notwithstanding anything contained in this Order, the Liquidator shall not borrow any monies during the first 15 days following the date of this Order, unless approved by further order of this Court.

23. THIS COURT ORDERS that neither the Liquidator’s Borrowings Charge nor any other security granted by the Liquidator in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Liquidator is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Liquidator’s Certificates**”) for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that the monies from time to time borrowed by the Liquidator pursuant to this Order or any further order of this Court and any and all Liquidator’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Liquidator’s Certificates.

SERVICE AND NOTICE

26. 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.

27. 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

28. 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.

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

30. 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.

31. 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.

32. 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.

33. 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.

SCHEDULE "A"

LIQUIDATOR CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KPMG Inc. ("**KPMG**"), the liquidator (the "**Liquidator**") of the Property (as defined in this Order, including all proceeds thereof), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ___ day of _____, 20__ (the "**Order**") made in an action having Court file number __-CL-_____, has received as such Liquidator from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Liquidator is authorized to borrow under and pursuant to the Order.

The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Liquidator pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Liquidator to indemnify itself out of such Property in respect of its remuneration and expenses.

All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Liquidator to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

The charge securing this certificate shall operate so as to permit the Liquidator to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

The Liquidator does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

KPMG INC., solely in its capacity
as Liquidator of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

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.

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

**Proceeding commenced at
Toronto**

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

FASKEN MARTINEAU DuMOULIN LLP

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Lawyers for the Administrator of the Applicant

TAB 3

Court File No. —

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

~~THE HONOURABLE —) WEEKDAY, THE #
JUSTICE —) DAY OF MONTH, 20YR~~

THE HONOURABLE) MONDAY, THE 22ND
) 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

~~PLAINTIFF¹~~

Plaintiff

~~-and-~~

~~DEFENDANT~~

Defendant

¹ ~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

ORDER
(appointing Receiver)
(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*

~~THIS MOTION made by the Plaintiff² for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Populaires Act*, R.2020, S.CO. 19852020, c. B-336, Sched. 7, as amended (the “BIA”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”) appointing [RECEIVER'S NAME] as receiver [and manager] (in such capacities, the “Receiver” “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 [DEBTOR'S NAME] (the “Debtor”) ~~acquired for, or used in relation to a business carried on by the Debtor, the~~

Credit Union was heard this day at 330 University Avenue, Toronto, Ontario.

~~ON READING the affidavit of [NAME] sworn [DATE] and the Exhibits thereto and on hearing the submissions of counsel for [NAMES], no one appearing for [NAME] although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading the consent of [RECEIVER'S NAME] to act as the Receiver,~~

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 and KPMG, and on reading the consent of KPMG to act as the Liquidator,

²Section 243(1) of the BIA provides that the Court may appoint a receiver “on application by a secured creditor”.

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

SERVICE

~~1-2.~~ THIS COURT ORDERS that the time for service of the Notice of ~~Motion~~Application and the ~~Motion~~Application is hereby abridged and validated³ 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

~~2-4.~~ THIS COURT ORDERS that, pursuant to section ~~243(1) of the BIA and section 101 of the CJA, [RECEIVER'S NAME]~~240 of the CUCPA, KPMG is hereby appointed ~~Receiver~~Liquidator, without security, of all of the remaining assets, undertakings and properties of the ~~Debtor acquired for, or used in relation to a business carried on by the Debtor~~Credit Union, including all proceeds thereof (the "Property").

RECEIVER'S LIQUIDATOR'S POWERS

~~3-5.~~ THIS COURT ORDERS that the ~~Receiver~~Liquidator is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way

³~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

limiting the generality of the foregoing, the ~~Receiver~~Liquidator is hereby expressly empowered and authorized to do any of the following where the ~~Receiver~~Liquidator considers it necessary or desirable:

~~(a)~~(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)~~ (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the ~~changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories~~ and the placement of such insurance coverage as may be necessary or desirable;

~~(e)~~ (c) to manage, operate, and carry on the business of the ~~Debtor~~ 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 ~~Debtor~~ 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");

~~(d)~~ (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 ~~Receiver's~~ Liquidator's powers and duties, including without limitation those conferred by this Order;

~~(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;~~

(f) to receive and collect all monies and accounts now owed or hereafter owing to the ~~Debtor~~Credit Union and to exercise all remedies of the ~~Debtor~~Credit Union in collecting such monies, including, without limitation, to enforce any security held by the ~~Debtor~~Credit Union;

- ~~(g)~~ (g) to settle, extend or compromise any indebtedness owing to the ~~Debtor~~Credit Union;
- ~~(h)~~ (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the ~~Receiver's~~Liquidator's name or in the name and on behalf of the ~~Debtor~~Credit Union, for any purpose pursuant to this Order;
- ~~(i)~~ (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 ~~Debtor~~Credit Union, the Property or the ~~Receiver~~Liquidator, including, without limitation, the Recovery Litigation and Other Ongoing Litigation, and to settle or compromise any such proceedings.⁴ 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)~~ (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 ~~Receiver~~Liquidator in its discretion may deem appropriate;
- ~~(k)~~ (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

~~⁴This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

⊕(i) without the approval of this Court in respect of any transaction not exceeding \$, provided that the aggregate consideration for all such transactions does not exceed \$; and

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(ii) (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*, ~~[or section 31 of the Ontario *Mortgages Act*, as the case may be,]⁵ shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.~~

(l) (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;

~~(m)~~ (n) to report to, meet with and discuss with such affected Persons (as defined below), including, without limitation, FSRA, as the ~~Receiver~~ Liquidator deems appropriate on all matters relating to the Property and the ~~receivership~~ winding up, and to share information with such Persons, subject to such terms as to confidentiality as the ~~Receiver~~ Liquidator deems advisable;

~~(n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;~~

⁵ ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

(~~o~~)(o) 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 ~~Receiver~~Liquidator, in the name of the ~~Debtor~~Credit Union;

(~~p~~)(p) to enter into agreements with any trustee in bankruptcy appointed in respect of the ~~Debtor~~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 ~~Debtor~~Credit Union;

~~(q)~~(q) to exercise any shareholder, partnership, joint venture or other rights which the ~~Debtor may have; and~~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;

~~(r)~~(r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations-; and

(s) 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 ~~Receiver~~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 ~~Debtor~~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
~~RECEIVER~~LIQUIDATOR**

4-7. THIS COURT ORDERS that (i) the ~~Debtor~~ 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 ~~Receiver~~Liquidator of the existence of any Property in such ~~Person's~~Person's possession or control, shall grant immediate and continued access to the Property to the ~~Receiver~~Liquidator, and shall deliver all such Property to the ~~Receiver~~Liquidator upon the ~~Receiver's~~Liquidator's request.

~~5.~~8. THIS COURT ORDERS that all Persons shall forthwith advise the ~~Receiver~~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 ~~Debtor~~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~~Person's possession or control, and shall provide to the ~~Receiver~~Liquidator or permit the ~~Receiver~~Liquidator to make, retain and take away copies thereof and grant to the ~~Receiver~~Liquidator unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph ~~5~~8 or in paragraph ~~6~~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 ~~Receiver~~Liquidator due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

~~6.~~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 ~~Receiver~~Liquidator for the purpose of allowing the ~~Receiver~~Liquidator to recover and fully copy all of the information contained therein whether by way of printing the information onto

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paper or making copies of computer disks or such other manner of retrieving and copying the information as the ~~Reeeiver~~Liquidator in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the ~~Reeeiver~~Liquidator. Further, for the purposes of this paragraph, all Persons shall provide the ~~Reeeiver~~Liquidator with all such assistance in gaining immediate access to the information in the Records as the ~~Reeeiver~~Liquidator may in its discretion require including providing the ~~Reeeiver~~Liquidator with instructions on the use of any computer or other system and providing the ~~Reeeiver~~Liquidator with any and all access codes, account names and account numbers that may be required to gain access to the information.

~~7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.~~

NO PROCEEDINGS AGAINST THE ~~RECEIVER~~LIQUIDATOR

~~8-10.~~ THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the ~~Reeeiver~~Liquidator except with the written consent of the ~~Reeeiver~~Liquidator or with leave of this Court.

NO PROCEEDINGS AGAINST THE ~~DEBTOR~~CREDIT UNION OR THE PROPERTY

9-11. THIS COURT ORDERS, subject to paragraph 12 of this Order, that no Proceeding against or in respect of the ~~Debtor~~Credit Union or the Property shall be commenced or continued except with the written consent of the ~~Receiver~~Liquidator or with leave of this Court and any and all Proceedings currently under way against or in respect of the ~~Debtor~~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 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.

NO EXERCISE OF RIGHTS OR REMEDIES

~~10-13.~~ THIS COURT ORDERS that all rights and remedies against the ~~Debtor~~Credit Union, the ~~Receiver~~Liquidator, or affecting the Property, are hereby stayed and suspended except with the written consent of the ~~Receiver~~Liquidator or leave of this Court, provided however that ~~this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that~~ nothing in this paragraph shall (i) empower the ~~Receiver~~Liquidator or the ~~Debtor~~Credit Union to carry on any business which the ~~Debtor~~Credit Union is not lawfully entitled to carry on, (ii) exempt the ~~Receiver~~Liquidator or the ~~Debtor~~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 ~~RECEIVER~~LIQUIDATOR

~~11-14.~~ 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 ~~Debtor~~Credit Union, without written consent of the ~~Receiver~~Liquidator or leave of this Court.

CONTINUATION OF SERVICES

~~12-15.~~ THIS COURT ORDERS that all Persons having oral or written agreements with the ~~Debtor~~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 ~~Debtor~~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 ~~Receiver~~Liquidator, and that the ~~Receiver~~Liquidator shall be entitled to the continued use of the ~~Debtor's~~Credit Union's current telephone numbers, facsimile numbers, internet addresses and domain

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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 ~~Receiver~~Liquidator in accordance with normal payment practices of the ~~Debtor~~Credit Union or such other practices as may be agreed upon by the supplier or service provider and the ~~Receiver~~Liquidator, or as may be ordered by this Court.

~~RECEIVER~~LIQUIDATOR TO HOLD FUNDS

~~13-16.~~ THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the ~~Receiver~~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, ~~shall~~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 ~~Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein,~~Liquidator, all of which shall be held by the ~~Receiver~~Liquidator to be ~~paid~~distributed in accordance with the terms of this Order or any further Order of this Court.

~~EMPLOYEES~~

~~14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the Wage Earner Protection Program Act.~~

PIPEDA

~~15-17.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the ~~Reeeiver~~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 ~~Reeeiver~~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 ~~Debtor~~Credit Union, and shall return all other personal information to the ~~Receiver~~Liquidator, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

~~16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the Canadian Environmental Protection Act, the Ontario Environmental Protection Act, the Ontario Water Resources Act, or the Ontario Occupational Health and Safety Act and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.~~

LIMITATION ON THE RECEIVER'S LIQUIDATOR'S LIABILITY

~~17. 18.~~ THIS COURT ORDERS that the ~~Receiver~~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, ~~or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the Wage Earner Protection Program Act.~~ Nothing in this Order shall derogate from the protections afforded the ~~Receiver by section 14.06 of the BIA or by any other~~Liquidator by any applicable legislation.

RECEIVER'S LIQUIDATOR'S ACCOUNTS

~~18-19.~~ THIS COURT ORDERS that the ~~Receiver~~Liquidator and counsel to the ~~Receiver~~Liquidator shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the ~~Receiver~~Liquidator and counsel to the ~~Receiver~~Liquidator shall be entitled to and are hereby granted a charge (the "~~Receiver's~~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 ~~Receiver's~~Liquidator's Charge shall form a ~~first~~ charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but ~~subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.~~⁶subordinate in priority to validly perfected security interests on the Property existing as of the date of this Order.

~~19-20.~~ THIS COURT ORDERS that the ~~Receiver~~Liquidator and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the ~~Receiver~~Liquidator and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

~~⁶Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

--

~~20-21.~~ THIS COURT ORDERS that prior to the passing of its accounts, the ~~Receiver~~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 ~~Receiver~~Liquidator or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE ~~RECEIVERSHIP~~WINDING UP

~~21-22.~~ THIS COURT ORDERS that the ~~Receiver~~Liquidator be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$ 3,000,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the ~~Receiver~~Liquidator by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the ~~"Receiver's"~~"Liquidator's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the ~~Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.~~Liquidator's Charge. Notwithstanding anything contained in this Order, the Liquidator shall not borrow any monies during the first 15 days following the date of this Order, unless approved by further order of this Court.

~~22-23.~~ THIS COURT ORDERS that neither the ~~Receiver's~~Liquidator's Borrowings Charge nor any other security granted by the ~~Receiver~~Liquidator in connection with its borrowings under this Order shall be enforced without leave of this Court.

~~23-24.~~ THIS COURT ORDERS that the ~~Receiver~~Liquidator is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the ~~"Receiver's"~~"Liquidator's Certificates") for any amount borrowed by it pursuant to this Order.

~~24-25.~~ THIS COURT ORDERS that the monies from time to time borrowed by the ~~Receiver~~Liquidator pursuant to this Order or any further order of this Court and any and all ~~Receiver's~~Liquidator's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued ~~Receiver's~~Liquidator's Certificates.

SERVICE AND NOTICE

~~25-26.~~ 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.

~~26-27.~~ THIS COURT ORDERS that if the service or distribution of documents in

accordance with the Protocol is not practicable, the ~~Receiver~~⁻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

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delivery or facsimile transmission to the ~~Debtor's~~Credit Union's creditors or other interested parties at their respective addresses as last shown on the records of the ~~Debtor~~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

~~27.~~28. THIS COURT ORDERS that the ~~Receiver~~Liquidator may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

~~28.~~29. THIS COURT ORDERS that nothing in this Order shall prevent the ~~Receiver~~Liquidator from acting as a trustee in bankruptcy of the ~~Debtor~~Credit Union.

~~29.~~30. 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 ~~Receiver~~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 ~~Receiver~~Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the ~~Receiver~~Liquidator and its agents in carrying out the terms of this Order.

~~30.~~31. THIS COURT ORDERS that the ~~Receiver~~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 ~~Receiver~~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.

~~31.~~ 32. THIS COURT ORDERS that the ~~Plaintiff~~ Applicant shall have its costs of this motion, up to and including entry and service of this Order, ~~provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then~~ on a substantial indemnity basis to be paid by the ~~Receiver~~ Liquidator from the ~~Debtor's~~ Credit Union's estate with such priority and at such time as this Court may determine.

~~32.~~ 33. 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 ~~Receiver~~ 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.

~~SCHEDULE~~ SCHEDULE "A"

~~RECEIVER~~ LIQUIDATOR CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KPMG Inc. ("KPMG"), the liquidator (the "Liquidator") of ~~1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor~~ the Property (as defined in this Order, including all proceeds

such Liquidator from the holder of this certificate (the "Lender") the principal sum of thereof (~~collectively, the "Property"~~), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____

_____ 20____
(the "Court") in its order appointing KPMG Inc. as Liquidator, has

~~received such Receiver from the holder of this certificate (the "Lender") the principal sum of~~

\$ _____, being part of the total principal sum of \$ _____ which the ReceiverLiquidator is

authorized to borrow under and pursuant to the Order.

~~2.~~ The principal sum evidenced by this certificate is payable on demand by the Lender with interest

thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above

the prime commercial lending rate of Bank of _____ from time to time.

~~3.~~ Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the ReceiverLiquidator pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order ~~and in the Bankruptcy and Insolvency Act~~, and the right of the ReceiverLiquidator to indemnify itself out of such Property in respect of its remuneration and expenses.

~~4.~~ All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the ~~Receiver~~Liquidator to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

~~6.~~ The charge securing this certificate shall operate so as to permit the ~~Receiver~~Liquidator to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

~~7.~~ The ~~Receiver~~Liquidator does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

~~[RECEIVER'S NAME], solely in its capacity
-as Receiver of the Property, and not in its
personal capacity~~

Per: _____

Name:

Title:

KPMG INC., solely in its capacity
as Liquidator of the Property, and not in its
personal capacity

Per:

Name:

Title:

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.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at
Toronto

ORDER
(WINDING UP & APPOINTING LIQUIDATOR)

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Summary report:	
Litera Compare for Word 11.2.0.54 Document comparison done on 18/08/2022 3:15:33 PM	
Style name: Default Style	
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Original filename: receivership-order-EN (3).doc	
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Modified filename: Tab 2 - [DRAFT] Order (Winding Up and Appointing Liquidator).pdf	
Document Author:	
Changes:	
Add	349
Delete	320
Move From	15
Move To	15
Table Insert	0
Table Delete	2
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	701

TAB 4

Court File No.

**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

**AFFIDAVIT OF MEHRDAD RASTAN
(SWORN AUGUST 17, 2022)**

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**AFFIDAVIT OF MEHRDAD RASTAN
(SWORN AUGUST 17, 2022)**

I, Mehrdad Rastan, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Executive Vice President, Credit Union & Insurance Prudential (“**CU&IP**”) of the Financial Services Regulatory Authority of Ontario (“**FSRA**”), the administrator (in such capacity, the “**Administrator**”) of the applicant, PACE Savings & Credit Union Limited (the “**Applicant**” or “**Credit Union**”) appointed pursuant to the Administration Orders (defined below). Prior to assuming my current position with FSRA in January 2022, I was the Head, Relationship and Risk Management for CU&IP of FSRA since December 2019, and in that capacity, have been a key contact at FSRA for the Credit Union. Before joining FSRA, I worked for the Financial Institutions Commission, now the British Columbia Financial Services Authority, as the Executive Director, Regulation which included responsibilities for the regulatory oversight of credit unions in British Columbia.

2. As a result of serving in these capacities, as well as from my discussions with representatives of the Credit Union, including David Finnie, the former Chief Executive Officer, and Benjamin Choi, the former Chief Financial Officer, FSRA’s management team, KPMG Inc. (which acted as financial advisor to FSRA in certain matters involving the Credit Union, as described below), and other advisors, and my review of relevant documents and information, I am generally familiar with the Credit Union’s former business and operations as well as its financial affairs, books, and records. I therefore have personal knowledge of the matters contained in this affidavit, except where such matters are stated to be based upon information and belief, and where so stated, I have identified the source of the information and believe it to be true.

3. I swear this affidavit in support of the application made by the Credit Union, under the direction and authority of the Administrator, 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 following completion of the Alterna Sale Transaction (defined below).

PART 1 - OVERVIEW

4. The Applicant is a credit union incorporated under the CUCPA and regulated by FSRA. The Credit Union has been under administration by FSRA, formerly DICO (defined below), since September 28, 2018, which DICO initiated in response to, among other things, certain misconduct and regulatory breaches committed by the Credit Union’s former President and CEO.

5. The initial purpose and goal of the administration was to resolve the governance issues which gave rise to the administration and to return the Credit Union to member-controlled governance in due course. Between September 2018 and April 2020 (i.e., the onset of the COVID-19 pandemic), the Credit Union, under FSRA’s administration, made significant initial progress on the path toward exiting administration and returning to member-controlled governance.

6. For the reasons set out below, the consequences of the COVID-19 pandemic on the Credit Union, combined with certain other factors, compromised the Credit Union’s financial position to such an extent that the Administrator was forced to explore additional options for the

Credit Union rather than just the “recovery option” which had been the primary goal up until that point. These additional options included exploring a purchase and assumption transaction for the Credit Union and/or a liquidation and winding up of the Credit Union.

7. The Credit Union’s financial position continued to deteriorate throughout 2020 and 2021. Because of these challenging circumstances, the Credit Union’s newly-appointed board of directors and most of the Credit Union’s senior management team resigned in late 2020. In this context, the Administrator determined that potential losses to the Credit Union’s stakeholders could be mitigated more effectively, and the Administrator’s regulatory objectives better served, by pursuing a purchase and assumption transaction for the Credit Union and a sale of the Credit Union’s subsidiary, CCE (defined below), followed by a liquidation and wind-up strategy. This determination ultimately led to the Alterna Sale Transaction (defined below) and CCE Sale Transaction (defined below)—which closed in June 2022 and March 2022, respectively—and, ultimately, to this Application.

8. At present, as a result of the Alterna Sale Transaction, the Credit Union has no employees, no member deposits,¹ and no branches. Further, virtually all of the Credit Union’s members have been granted membership in and are being served by another credit union, Alterna (defined below). As described further below, all that remains of the Credit Union is a collection of certain assets and liabilities which were excluded from the Alterna Sale Transaction.

¹ With certain limited exceptions.

9. Under the provisions of the CUCPA, the Credit Union may apply to this Court for an order winding up the Credit Union where it cannot continue its business and it is advisable to wind the Credit Union up or it is just and equitable that the Credit Union should be wound up.

10. Because of the events described herein, the Credit Union is no longer operating as a credit union and can no longer perform the statutory object of a credit union under the CUCPA. In the circumstances of this case, including having regard to the nature and complexity of the remaining assets, operations, and liabilities of the Credit Union, the Administrator is of the view that a court-ordered winding up of the Credit Union by a court-appointed liquidator pursuant to the CUCPA is advisable and would be just and equitable.

11. As part of this Application, the Credit Union is seeking to have KPMG appointed as Liquidator. KPMG is well-known for its expertise in complex commercial matters and liquidation proceedings and is an appropriate choice to serve in this capacity. KPMG, through a previous advisory engagement, also has experience with the Credit Union and its assets, undertakings, properties, liabilities, and claims, all of which will benefit the Credit Union, its stakeholders, and the Court if KPMG were appointed as Liquidator.

12. The Applicant is also seeking, among other things, the following additional relief: (a) approval of the Liquidator Nomination Agreement (defined below) between FSRA and KPMG; (b) granting and approval of the Liquidator's Charge (defined below); (c) granting and approval of the Liquidator's power to borrow funds; and (d) granting and approval of the Liquidator's Borrowings Charge (defined below).

13. The Administrator believes that all of the relief requested on this Application is reasonable and appropriate in the circumstances of this case, and is reasonably necessary to ensure the successful and timely winding up of the Credit Union.

PART 2 - THE PARTIES

(A) FSRA

14. FSRA is a corporation established without share capital under the *Financial Services Regulatory Authority of Ontario Act, 2016*, S.O. 2016, c. 37, Sched. 8 (the “**FSRA Act**”). Since its launch in June 2019 and its amalgamation with DICO (defined below), FSRA has been the regulator of credit unions in Ontario under the CUCPA.

15. The objects of FSRA, as they pertain to credit unions in Ontario, and as set out in the *FSRA Act*, include, without limitation: providing insurance against the loss of deposits with credit unions; promoting and otherwise contributing to the stability of the credit union sector in Ontario; and pursuing the foregoing for the benefit of persons having deposits with credit unions and in such manner as will minimize the exposure of the DIRF (defined below) to loss (the “**Objects**”).

16. Under the CUCPA, FSRA has three main responsibilities with respect to credit unions in Ontario:

- (a) FSRA oversees insured deposit protection for credit unions in Ontario through its administration of the Deposit Insurance Reserve Fund (the “**DIRF**”), providing coverage of non-registered insurable deposits up to \$250,000 and coverage of deposits in registered accounts (e.g., RRSPs or TFSAs) up to an unlimited amount;

- (b) FSRA is the prudential and market conduct regulator of credit unions in Ontario;
and
- (c) FSRA can act as a “supervisor”, “administrator”, or “liquidator” of credit unions
(as those terms are defined in the CUCPA), in appropriate circumstances.

17. Effective June 8, 2019, FSRA amalgamated with the Deposit Insurance Corporation of Ontario (“DICO”), the former entity that carried out the prudential regulation of credit unions in Ontario under the CUCPA and provided deposit insurance through the DIRF. For ease of reference, the regulator and Administrator of the Credit Union shall sometimes be referred to as FSRA or the Administrator regardless of whether the event described took place before or after June 8, 2019.

(B) The Credit Union

18. The Applicant is a credit union incorporated under the CUCPA and is therefore an entity regulated by FSRA. Before the Alterna Sale Transaction (defined below), the Credit Union had approximately 34,000 members and 13 branches throughout southwestern Ontario and had approximately \$900 million in assets recorded in its financial statements.

PART 3 - RELEVANT BACKGROUND RELATING TO THE ADMINISTRATION OF THE CREDIT UNION

(A) DICO Orders the Credit Union into Administration

19. DICO had issued an administration order on September 28, 2018, pursuant to its authority under section 294(1) of the *Credit Unions and Caisses Populaires Act, 1994*, S.O. 1994,

c. 11 (which legislation was repealed effective March 1, 2022, and replaced with the CUCPA)² ordering that the Credit Union be subject to administration by the Administrator (the “**First Administration Order**”, attached as **Exhibit “A”**).

20. The First Administration Order issued by DICO was supported by written reasons issued on the same day (the “**Reasons**”, attached as **Exhibit “B”**). The Reasons are titled “*Preliminary* Reasons for Issuance of Administration Order” [emphasis added] because they were intended to provide the Credit Union’s then board of directors with an opportunity to file submissions in response to the First Administration Order. The board of directors did not respond to or oppose the First Administration Order, and therefore DICO did not issue any additional or “final” reasons.

21. Broadly speaking, the Reasons identified five prudential findings (i.e., misconduct related to the prudence of actions, conflicts of interest, and breaches of fiduciary duties) and five regulatory findings (i.e., breaches of the CUCPA and the regulations thereunder) which caused DICO to issue the First Administration Order. The prudential findings included:³

- (a) borrowers of the Credit Union and others made payments to employees of the Credit Union, including to its former President (Larry Smith), and others in relation to various off-market loans and investments the Credit Union had made; these payments were incapable of being legally approved by the Credit Union’s board of

² For ease of reference, the 1994 and 2020 Acts are both hereinafter referred to as the CUCPA, regardless of whether the event being described took place before or after March 1, 2022.

³ See the Reasons at paragraph 25. See also Schedule “A” to the Reasons, which contains the details of the transactions of which DICO was aware at the time and on which it relied in issuing the First Administration Order. I note that Schedule “A” is not exhaustive and other unlawful, improper, or imprudent transactions, payments, and conduct were discovered after Schedule “A” was drafted.

directors and were in breach of the relevant conflict of interest provisions under the CUCPA;

- (b) the Credit Union's board of directors approved consulting arrangements which allowed the Credit Union's former President to be compensated by borrowers and partners of the Credit Union for transactions involving the Credit Union without proper disclosure;
- (c) the Credit Union's former President offered or distributed various payments, contracts, positions, and other benefits to his family members and friends for their benefit and to the detriment of the Credit Union, including offering and distributing executive positions, consulting positions, and payments in the nature of secret commissions;
- (d) the making of various off-market loans by the Credit Union, which were not in the best interests of the Credit Union and were imprudent and inconsistent with the Credit Union's minimum risk tolerance and were made without proper due diligence; generally speaking, these loans were made to companies in which the former President of the Credit Union or his associates or relatives held ownership interests and were made for the purpose of self-dealing; and
- (e) other loans and investments which appeared on off-market terms and represented undue risk to the Credit Union.

22. The regulatory findings included: (a) failure to disclose the true beneficial ownership of the Credit Union's borrowers, investees, and subsidiaries; (b) properties being

improperly held by the Credit Union; (c) repeated establishment and operation of subsidiaries (including CCE and PSC, as defined and discussed below) without DICO's approval and with awareness of contraventions of the CUCPA; (d) breach of the investment limit in an existing subsidiary; and (e) inaccurate disclosure of total annual compensation on audited financial statements.⁴

23. DICO concluded it had reasonable grounds to believe that the Credit Union was conducting its affairs in a way that might be expected to harm the interests of members, depositors, or shareholders, or that would tend to increase the risk of claims by depositors against DICO, and that it was therefore appropriate to issue the First Administration Order to effect certain, necessary changes.⁵

24. Further administration orders were issued in respect of the Credit Union on February 19, 2020, April 28, 2020, and March 26, 2021 (the "**Second, Third, and Fourth Administration Orders**", respectively, attached as **Exhibits "C", "D", and "E"**). Together, the First, Second, Third, and Fourth Administration Orders, and any other administration orders which may be issued in respect of the Credit Union, are hereinafter referred to, collectively, as the "**Administration Orders**".

25. FSRA has published the Administration Orders and other documents related to its administration of the Credit Union on its website at <https://www.fsrao.ca/enforcement-and-monitoring/pace-credit-union-administration>.

⁴ See the Reasons at paragraph 27.

⁵ See the Reasons at paragraph 29.

(B) Unanticipated Circumstances Ultimately Caused the Administrator to Implement a Resolution Strategy for the Credit Union

(i) Steps Taken In Furtherance of Initial Recovery Strategy

26. In the First Administration Order, issued September 28, 2018, the Administrator suspended the powers of the Credit Union's board of directors (with certain limited exceptions) and assumed the powers of the board of directors, thereby effectively taking control of the Credit Union. At this time, the purpose and goal of the administration was to resolve the governance issues which gave rise to the First Administration Order and to return the Credit Union to member-controlled governance in due course. To that end, an Interim CEO was hired by the Administrator, effective January 7, 2019, who was responsible for the day-to-day management of the Credit Union under the supervision of the Administrator. The Interim CEO was to remain in place for approximately one year and assist the Administrator with the recovery (i.e., recover financial strength) of the Credit Union.

27. With a view toward that goal, the Administrator had initially determined that the Credit Union could be removed from administration after a new board of directors had been elected and that board had hired a new management team. The Credit Union members elected a new board of directors at a special membership meeting held on January 27, 2020. The Administrator then issued the Second Administration Order on February 19, 2020, which appointed the new board members and granted them the authority to, among other things, take certain actions to orient themselves with the business and affairs of the Credit Union and recruit and appoint a new management team.

28. The new board of directors proceeded to hire a new Chief Executive Officer (CEO), Chief Financial Officer (CFO), and Chief Risk Officer (CRO) in early April 2020. The Administrator then issued the Third Administration Order on April 28, 2020, which granted the Credit Union's new board of directors and management team the authority to, among other things, carry on the management and conduct the operations of the Credit Union, subject to, among other things, the Administrator retaining the authority to: (a) order the Credit Union not to exercise powers granted to it under the Third Administration Order, (b) manage the Recovery Litigation (defined below) and certain other legal proceedings that had been commenced or would be commenced by the Administrator in relation to the events giving rise to the First Administration Order and (c) respond to claims, counterclaims, and cross-claims that had been or may yet still be filed in response to actions taken during the administration proceedings.

29. With a new board of directors and management team in place, the Credit Union continued to make significant initial progress on the path toward exiting administration and returning to member-controlled governance, as was initially intended by the Administrator.

(ii) The COVID-19 Pandemic and Other Circumstances Prevented the Credit Union from Exiting Administration

30. At the time of the Third Administration Order, Canada was more than one month into the COVID-19 pandemic. The economic impact of the pandemic and the related Investor Claims (defined below) represented unanticipated events which ultimately forced the Administrator to conclude that a recovery strategy was not possible and to consider other options, such as a purchase and assumption transaction and/or a wind-up and liquidation strategy. The

various impacts of the pandemic and the Investor Claims on the Credit Union and their significance are described below in this section.

The Failure of CCE

31. Continental Currency Exchange (“CCE”) was a wholly-owned subsidiary of the Credit Union engaged in the business of a retail currency exchange that had been acquired by the Credit Union under its former management in contravention of the CUCPA and which was one of the bases for the First Administration Order. The pandemic had a drastic impact on the business of CCE, and it sustained significant operating losses in the 2020 financial year. After determining that a recovery of the Credit Union was not likely, the Administrator ultimately caused the Credit Union to sell CCE as part of the CCE Sale Transaction (defined and described in more detail below).

The Failure of PSC and the Related Investor Claims

32. PACE Securities Corporation (“PSC”) was a wholly-owned subsidiary of the Credit Union engaged in the business of a securities dealer. Among other things, PSC distributed preferred shares of its subsidiary, Pace Financial Limited (“PFL”) and preferred shares of First Hamilton Holdings (“FHH”), an unaffiliated entity under the control of persons managing PSC or related to such persons. On March 21, 2020, PSC notified the Administrator of certain developments caused by the pandemic, which, taken together, presented a significant solvency challenge for PSC and its direct and indirect subsidiaries. A copy of the Credit Union’s organizational chart showing the Credit Union’s relationship to the above entities is attached as **Exhibit “F”**.

33. Ultimately, the Credit Union, as sole shareholder of PSC, applied to the Ontario Superior Court of Justice to have PSC and its direct and indirect subsidiaries, including PFL, wound up, which order was granted on May 14, 2020. The same Court ordered that FHH be wound up on May 21, 2020.

34. The court-ordered wind up of PSC, PFL, and FHH crystallized substantial losses by investors in the preferred shares of PFL and FHH and gave rise to complaints from Credit Union members and the investors in the preferred shares of PFL and FHH. The Administrator identified misconduct by and potential claims against the Credit Union and its former officers and directors in relation to the business of PSC and the sale of the preferred shares of PFL and FHH that was not known in 2018 when the Credit Union was first placed under administration by DICO.

35. In early August 2020, the Ontario Superior Court of Justice appointed Paliare Roland Rosenberg Rothstein LLP as representative counsel (“**Representative Counsel**”) in the wind-up proceedings for the investors in the preferred shares of PFL and FHH. Ultimately, after an expedited court-ordered mediation process, the claims of these investors (the “**Investor Claims**”) were settled in June 2021 for \$40 million, with a significant portion to be paid by the Credit Union (the “**Investor Settlement**”). The Investor Settlement received court approval on July 30, 2021. In connection with the Investor Settlement, FSRA, as administrator of the DIRF, provided an assurance that if the Credit Union was unable to fund its contribution towards the settlement for any reason, FSRA would ensure payment in full of the Credit Union’s contribution. This assurance gave rise to an unsecured non-interest bearing promissory note in the amount of \$25 million issued by the Credit Union in favour of the DIRF, dated October 27, 2021 (the “**FSRA Promissory Note**”).

Resignation of the Directors and Senior Management of the Credit Union and the Fourth Administration Order

36. In late 2020, the Credit Union was still in the midst of the pandemic and dealing with the Recovery Litigation (defined below) and the various claims asserted therein as well as the continued operating losses at CCE and the failure of PSC and related Investor Claims. The Credit Union was also facing regulatory capital shortfalls which would require regulatory forbearance and an aggressive plan to restore capital adequacy. In this context, in late 2020, all of the directors of the Credit Union and its CEO and CRO resigned from their positions. This left the Credit Union without a functioning Board of Directors and with only one member of senior management, its CFO.

37. In response to these events, and following the appointment of a new CEO of the Credit Union on December 21, 2020, the Administrator issued the Fourth Administration Order on March 26, 2021, granting the Credit Union's newly-appointed CEO and other members of the Credit Union's senior management team, including the CFO, the authority to, among other things, carry on the ordinary management and conduct the operations of the Credit Union and its subsidiaries subject to, among other things, the Administrator's authority to (a) exercise the powers of the Credit Union for matters outside the ordinary course of business, and of the directors, officers, and committees, (b) manage the Recovery Litigation (defined below) and certain other legal proceedings that had been commenced or would be commenced by the Administrator in relation to the events giving rise to the First Administration Order, and (c) respond to claims, counterclaims, and cross-claims that had been or may yet still be filed in response to actions taken during the administration.

Administrator's Decision to Pursue a Purchase and Assumption Transaction and Wind-Up and Liquidation Strategy

38. Following the issuance of the Fourth Administration Order, the Credit Union's long-term viability remained uncertain in light of the ongoing pandemic, and the Credit Union's financial condition continued to deteriorate throughout 2021. Indeed, in or around early 2021, the Credit Union was required to seek a variance from the CEO of FSRA regarding its regulatory capital requirements. A copy of a letter from the CEO of FSRA to the Credit Union's members describing the capital variance decision is attached as **Exhibit "G"**.

39. In light of the foregoing circumstances, the Administrator ultimately determined that the long-term operation of the Credit Union's business was not reasonably likely to minimize the losses to the Credit Union's depositors and other creditors and ultimately to the DIRF. The Administrator further determined that these losses would be mitigated more effectively, and the Objects would be better served, by pursuing a purchase and assumption transaction for the Credit Union and a sale of CCE followed by a liquidation and wind-up strategy. This strategy was initiated by the Administrator in late May 2021 with the commencement of the CCE Sale Process (defined below), and the commencement of the Alterna Sale Process (defined below) in June 2021.

40. Following the completion of the CCE Sale Process and the Alterna Sale Process, the Administrator publicly announced that there would be a liquidation of the remaining assets and liabilities of the Credit Union by press release dated July 6, 2022, attached as **Exhibit "H"**.

(C) Alterna’s Acquisition of Substantially all of the Credit Union’s Assets and Operations

(i) The Alterna Sale Transaction

41. On April 20, 2022, following a careful assessment of the various options available to the Credit Union and the completion of a formal competitive sale process conducted in consultation with the proposed liquidator, KPMG⁶ (the “**Alterna Sale Process**”), the Credit Union and FSRA entered into a purchase and assumption agreement (the “**Alterna Sale Agreement**”) with Alterna Savings and Credit Union Limited (“**Alterna**”). Pursuant to the Alterna Sale Agreement, Alterna would acquire and assume substantially all of the assets and liabilities of the Credit Union except for certain excluded assets and liabilities and would continue the Credit Union’s normal course business operations as part of Alterna (the “**Alterna Sale Transaction**”). On closing, Alterna acquired and assumed substantially all of the member deposits, both insured and uninsured, and substantially all retail and commercial loans. As part of the Alterna Sale Transaction, Alterna offered employment to substantially all of the Credit Union’s employees, assumed all of the Credit Union’s existing branches and agreed to keep them open for a period of time following the Alterna Closing Date, and provided substantially all of the Credit Union’s existing members with membership in Alterna. The Alterna Sale Agreement contains a confidentiality provision; accordingly, I am not attaching the agreement as an exhibit.

42. FSRA, as Administrator of the Credit Union and according to the Objects, determined that the Alterna Sale Transaction was in the best interests of the members of the Credit Union whose accounts would be seamlessly transferred to Alterna and would continue to be served

⁶ At the time, KPMG was acting solely as a financial advisor and was not proposed to be the liquidator in these proceedings.

as members of Alterna, and the Credit Union's employees who would be hired by Alterna. The transaction was also consistent with the Objects, including to ensure that losses to the DIRF were minimized and the credit union sector continued to be stable. KPMG served as financial advisor to the Administrator in connection with the Alterna Sale Process and Alterna Sale Transaction. The Alterna Sale Transaction closed on June 30, 2022 (the "**Alterna Closing Date**").

43. A critical aspect of the Alterna Sale Transaction was continuity for members of the Credit Union: on the Alterna Closing Date, the Credit Union's existing members became Alterna members served by the Credit Union's former employees and branches, both of which were also assumed by Alterna. The membership of the Credit Union was not changed by the Alterna Sale Transaction; those individuals who were members of the Credit Union prior to the closing retained their membership in the Credit Union after closing and also (with very few exceptions) became members of Alterna.

44. Under the Alterna Sale Transaction, the Credit Union has certain potential post-closing liabilities, which may or may not result in certain payments to Alterna. This exposure is guaranteed by FSRA, subject to a monetary cap. The guarantee provides certain subrogation rights to FSRA.

45. In addition, Alterna has agreed to provide certain transition services to the Credit Union for a limited period of time. The services include various finance and accounting services and information technology services for the purpose of facilitating the Credit Union's dealing with its remaining assets and liabilities.

(ii) *Assets and Liabilities Remaining in the Credit Union Subsequent to the Alterna Sale Transaction*

46. Subsequent to the Alterna Sale Transaction, the Credit Union retained certain assets and liabilities which relate to, among other things, the CCE Sale Transaction (defined below), the Prepaid Card Business (defined below), claims asserted in the Recovery Litigation (defined below), the FSRA Promissory Note, certain member deposits and accounts, certain loans, certain insurance claims or entitlements to proceeds of insurance, certain funds held in trust by the Credit Union for the benefit of former employees, and certain severance obligations which may be owed by the Credit Union to former employees. The remaining assets and liabilities of the Credit Union are described in more detail below in Part 4 of this affidavit.

(D) The CCE Sale Transaction

47. As indicated above, CCE is a retail currency exchange business which, until March 31, 2022, was a wholly-owned subsidiary of the Credit Union. The acquisition of CCE by the Credit Union was one of several transactions that led to the Credit Union being placed under administration. According to the Reasons, the former President and CEO caused the Credit Union to acquire a controlling interest in CCE, without the necessary regulatory approvals, using a corporation controlled by them.

48. On January 11, 2022, following a careful assessment of the various options available to the Credit Union and including the completion of a formal competitive sale process conducted in consultation with KPMG which served as financial advisor to the Administrator in connection with the sale of all of the shares of CCE held by the Credit Union (the “**CCE Sale Process**”), which was run in parallel to the Alterna Sale Process, the Credit Union, FSRA, and the

successful bidder, DUCA Credit Union (“DUCA”), entered into a share purchase agreement (the “CCE Sale Agreement”) in respect of the sale of all of the issued and outstanding shares in the capital of CCE (the “CCE Sale Transaction”). The CCE Sale Transaction closed on March 31, 2022 and resulted in a loss to the Credit Union which further eroded its already diminished financial capacity. The CCE Sale Agreement contains a confidentiality provision; accordingly, I am not attaching that agreement as an exhibit.

PART 4 - REMAINING ASSETS, OPERATIONS, AND LIABILITIES OF THE CREDIT UNION REQUIRING RESOLUTION BY THE LIQUIDATOR

49. In my current and former role at FSRA, I worked closely with KPMG, the financial advisor to the Administrator in connection with the Alterna Sale Transaction and the proposed Liquidator in these proceedings. Based on the analysis and information provided to me by KPMG, certain assets and liabilities remained with the Credit Union following the closing of the Alterna Sale Transaction, which assets and liabilities are described below in this Part of the affidavit.

(A) The Recovery Litigation

50. On April 17, 2019, the Credit Union commenced a claim in the Ontario Superior Court of Justice (Commercial List) against the former CEO and former President of the Credit Union (Phillip Smith and Larry Smith), their affiliates, certain of the Credit Union’s former directors, and a number of other parties who received improper benefits from the Credit Union. The Credit Union through its Administrator is represented by the law firm of Lax O’Sullivan Lisus Gottlieb LLP in this claim.

51. The Credit Union’s claim advances causes of actions including breach of fiduciary duty, fraud, conspiracy, breach of contract and employment duties, breach of trust, knowing receipt

of proceeds of breach of trust, conversion, unjust enrichment, and negligence against the Smiths.

The grounds for these claims include the following alleged misconduct:

- (a) the Smiths intentionally or recklessly underreported the income they received directly or indirectly from the Credit Union, contrary to their obligations under the CUCPA and its associated regulation; this under-reporting amounted to millions of dollars; the Smiths also took steps to conceal monies they had misappropriated from the Credit Union;
- (b) the Smiths caused the Credit Union to purchase the entirety of CCE, contrary to regulatory limits which prohibit a credit union from acquiring more than 30% of any other corporation without FSRA's permission; they did so surreptitiously to avoid these regulatory limits, and received secret payments in connection with the transaction; the purchase of CCE caused significant risk of loss to the Credit Union, which came to pass when CCE suffered a downturn in its operations in 2020 and 2021 as a result of the COVID-19 pandemic;
- (c) the Smiths, along with other former directors of the Credit Union, failed to properly supervise the business of PSC, which led to its failure and winding-up, and consequent claims against the Credit Union by a number of investors in PSC;
- (d) the Smiths directed the Credit Union to make improvident loans, advance funds, and make other payments to parties connected to them, including corporations they controlled, friends, and relatives; these payments were not *bona fide* and/or were contrary to the Credit Union's best interests; and

- (e) the Smiths overstated the value of loans on the Credit Union's books and records, thereby misrepresenting the Credit Union's financial position and performance.

52. The defendants to the Credit Union's claim deny the allegations and several have commenced counterclaims against the Credit Union. Phillip and Larry Smith have commenced third party claims against two of the Credit Union's former directors. Phillip Smith also brought a separate claim for wrongful dismissal against the Credit Union in September 2019. The Credit Union's claim, the Smiths' third party claims, Phillip Smith's claim, and all related counterclaims and crossclaims against the Credit Union are referred to herein collectively as the "**Recovery Litigation**".⁷

53. The Smiths' counterclaims, and Phillip Smith's separate claim, allege that the Credit Union breached their employment contracts by terminating them for cause following the issuance of the First Administration Order, that they have suffered damages as a result of the *Mareva* order (described below) and the freezing of their accounts at the Credit Union, that the Credit Union has defamed them, and that the Administrator has committed the torts of malfeasance in public office and regulatory negligence during the course of the administration. Two other defendants, Brian Hogan and Frank Klees, have also counterclaimed against the Credit Union for defamation and infliction of emotional distress (Hogan) and breach of contract (Klees).

⁷ The Credit Union's claim bears the Court File No. CV-19-00616388-00CL. Phillip Smith's third party claim bears the Court File No. CV-19-00616388-CLA2, and his wrongful dismissal claim bears the Court File No. CV-19-00628710-0000.

54. The Recovery Litigation is currently pending before the Ontario Superior Court of Justice (Commercial List), where it is being case managed by Justice Gilmore. Pleadings have been exchanged, but documentary and oral discovery have not yet taken place.

55. Before issuing its claim, the Credit Union brought a motion for a *Mareva* injunction against Larry and Phillip Smith, which was heard on March 19, 2019. Following the hearing, Justice Hainey made an interim *Mareva* order against the Smiths. The Credit Union and the Smiths subsequently agreed to the terms of a permanent preservation order, which was made by Justice Conway on May 7, 2019. Justice Conway's preservation order remains in effect to this date.

56. Beginning in May 2019, the Credit Union collapsed certain accounts held by Larry Smith at the Credit Union (the "**Smith Accounts**") pursuant to its right of set off against him. In December 2019, Mr. Smith commenced an application, seeking an order that the amounts in the Smith Accounts be paid out to him or paid into court. The application was heard on August 5, 2020. On October 26, 2020, Justice Koehnen issued an endorsement finding that, while Mr. Smith had no right to demand the return of the funds held in the Smith Accounts, the Credit Union was not entitled to collapse the accounts. Justice Koehnen directed the Credit Union to reconstitute the Smith Accounts and to preserve the status quo with respect to them. The Credit Union continues to maintain the Smith Accounts on its financial statements as a liability, consistent with the endorsement of Justice Koehnen. The total value of the Smith Accounts is approximately \$5 million. A copy of Justice Koehnen's endorsement is attached as **Exhibit "I"**.

57. On July 19, 2022, Larry and Phillip Smith brought a motion in the Recovery Litigation seeking another order requiring the Credit Union to pay funds in the Smith Accounts to

them or into trust, and to set aside a fund to satisfy a future judgment and/or costs award in favour of the Smiths, as well as security for costs. On July 25, 2022, Justice Gilmore ordered the Credit Union to maintain the status quo pending the return of the Smiths' motion. She also ordered that, in the event the Credit Union seeks to take additional steps, including "further dissipation of assets", it may do so on the consent of the parties or order of the Court. A copy of Justice Gilmore's endorsement is attached as **Exhibit "J"**.

58. Should this Application be granted, the Applicant expects that the Liquidator will continue to prosecute the claims, and defend the counterclaims, made in the Recovery Litigation, subject to the terms of the Liquidator Nomination Agreement (defined below). Accordingly, the Applicant is not seeking to stay the Recovery Litigation, and that proceeding will be expressly excluded from the stay provision in the Winding Up Order.

(B) Default Loans and Liabilities

59. The Credit Union has retained certain loans and accounts that are in default, having a face value of more than \$8 million in Credit Union assets. A Credit Union member associated with most of these loans and accounts commenced a claim against the Credit Union in January 2022, which remains outstanding.

(C) Proceeds of CCE Sale Transaction

60. As indicated above, the Credit Union completed the sale of all of the issued and outstanding shares of CCE to DUCA on March 31, 2022. As of May 31, 2022, the Credit Union held net proceeds from the CCE Sale Transaction in the amount of approximately \$16.3 million.

(D) The CUMIS Bond Claim

61. The Credit Union has a claim against CUMIS General Insurance Company (“CUMIS”) in relation to a proof of loss filed on October 16, 2019 under the fidelity insurance coverage bearing Policy Number 01501254 and with an Effective Date of January 1, 2018, and an Expiry Date of January 1, 2019 (the “CUMIS Bond”), contained in the contract of insurance issued by CUMIS (the “CUMIS Policy”), in respect of losses incurred by the Credit Union in connection with the various dishonest acts of former employees and directors of the Credit Union, including its former President and CEO (the “CUMIS Bond Claim”). In the proof of loss, the Administrator calculated the Credit Union’s losses to be approximately \$23,579,078.00.

62. Pursuant to the terms of the CUMIS Bond, CUMIS is liable to indemnify the Credit Union for covered losses, which includes losses resulting from dishonest or fraudulent acts of any director, employee, or contractor, to a maximum of \$10,000,000.00. The Credit Union, by its Administrator, FSRA, has claimed the maximum amount available under the CUMIS Bond. To date, CUMIS has only made partial payment to the Credit Union in the amount of approximately \$1.0 million. The balance of the CUMIS Bond Claim remains outstanding.

63. The Credit Union has commenced an action bearing Court File No. CV-22-00677550-0000 against CUMIS in relation to the unpaid portion of the CUMIS Bond Claim. An amended statement of claim was served on CUMIS on August 9, 2022. The relief sought in the claim includes a demand for payment under the CUMIS Bond as well as damages against CUMIS for breach of the CUMIS Bond and the duty of good faith. The claim has not yet been defended and the period for delivering a statement of defence has not yet expired.

(E) The Berkshire Bond Claim

64. The Credit Union also has a claim against National Liability & Fire Insurance Company, carrying on business as Berkshire Hathaway Specialty Insurance (“**Berkshire**”) in relation to a proof of loss filed on December 17, 2021 under Financial Institution Bond for Banking Institutions Bond Number 43-EPF-306798-03 (the “**Berkshire Bond**”) issued in connection with insurance policies bearing Asset Manager Protection Policy Number 43-EPF-306800-03 and any relevant predecessor and successor policies (collectively, the “**Berkshire Policies**”), in respect of losses incurred by the Credit Union in connection with dishonest or fraudulent acts of the Credit Union’s former Manager Retail Loans, acting alone or in collusion with other individuals or entities, and certain litigation arising therefrom (the “**Berkshire Bond Claim**”). In the proof of loss, the Administrator calculated the Credit Union’s losses to be approximately \$9,445,000.00.

65. Pursuant to the terms of the Berkshire Bond, Berkshire is liable to indemnify the Credit Union for covered losses, which includes losses resulting from dishonest or fraudulent acts of any director, employee, or contractor, to a maximum of \$10,000,000.00. The Credit Union, by its Administrator has claimed the \$9,445,000.00 under the Berkshire Bond, which amount has not been paid by Berkshire as of the date of the swearing of this affidavit.

(F) Prepaid Card Business

66. The Credit Union acts as the issuer of prepaid cards (the “**Prepaid Cards**”) pursuant to various prepaid card programs transacting on the Mastercard and Visa networks and operated in conjunction with several program managers (the “**Prepaid Card Business**”). The Credit Union has the power to issue prepaid cards in all Canadian jurisdictions, and prepaid cards have been issued across Canada.

67. All amounts loaded by consumers (“**Prepaid Cardholders**”) on the Prepaid Cards (the “**Prepaid Cardholder Amounts**”) are held separate and apart for the benefit of cardholders in a commercial account at The Toronto-Dominion Bank in the name of a subsidiary of the Credit Union, 1961783 Ontario Limited (the “**Prepaid Card Entity**”). The sole function and activity of the Prepaid Card Entity is to receive and hold the Prepaid Cardholder Amounts for the benefit of the Prepaid Card Holders and ultimately to disburse the Prepaid Cardholder Amounts on behalf of the Prepaid Card Holders for the benefit of merchants.

68. Pursuant to the cardholder agreements entered into with consumers, the amounts loaded by consumers onto their Prepaid Cards are not considered deposits and the amounts are not insured by the Canada Deposit Insurance Corporation or the DIRF.

69. The Credit Union is in the process of transitioning or winding-down the Prepaid Card Business. This process of transition and wind-down is expected to take a period of months to complete and while that is occurring, the Prepaid Card Business will continue to operate in the normal course.

(G) Expected Distributions from the Wind Up of PACE Securities Corporation and Its Subsidiaries

70. In connection with the court-ordered wind-up of the Credit Union’s wholly-owned subsidiary, PSC and its direct and indirect subsidiaries, including PFL and PACE Capital Partners LP (“**PCP**”), the Credit Union expects to receive certain interim distributions both as creditor and sole shareholder of PSC.

71. Ernst & Young Inc. (“**EY**”) is the court-appointed liquidator of PSC, PFL, and Pace General Partner Limited, the general partner of PCP. On November 1, 2021, on the application of

the Credit Union, the Ontario Superior Court of Justice in Bankruptcy made a bankruptcy order in respect of PSC and appointed EY trustee in bankruptcy of PSC.⁸

72. On November 20, 2021, the Credit Union filed a proof of claim in the bankruptcy proceeding of PSC stating an unsecured claim against PSC in the total amount of approximately \$4.7 million. I am advised by EY that the Credit Union can expect to receive interim distributions which would satisfy most, if not all, of the Credit Union's claims against PSC sometime in late 2022, but that the timing of any such distribution remains subject to the receipt of comfort letters from Canada Revenue Agency and approvals of the Court.

(H) BC Class Action

73. The Credit Union and others are named defendants in a certified class action in the British Columbia Supreme Court, BCSC Action No. S-147229, Vancouver Registry (the "**BC Class Action**"), in which the plaintiff, on behalf of the class, alleges, among other things, that the defendants (which includes the Credit Union) breached provisions of the *British Columbia Business Practices and Consumer Protection Act* by selling prepaid credit cards that allegedly have an expiry date and contain fees for the purchase and use of such cards. The BC Class Action remains in the documentary discovery phase. The Credit Union's potential exposure in the BC Class Action, if any, cannot be determined with reasonable precision at this time.

74. The Applicant is seeking a stay of the BC Class Action in order to see if a consensual resolution can be achieved.

⁸ Court File No. BK-21-208520-OT31; Estate No. 32-2780716

(I) Potential Claims by FSRA

75. The Credit Union remains subject to certain potential claims by FSRA in its capacities as both the administrator of the DIRF and the statutory Administrator of the Credit Union. These include a potential claim relating to FSRA's guarantee of certain post-closing obligations owed by the Credit Union in connection with the Alterna Sale Transaction, which may or may not ultimately result in payments to Alterna.

(J) Other Excluded Assets, Liabilities, and Obligations

76. The Credit Union's other excluded assets and liabilities include the following:

- (a) a relatively small asset reflecting the Credit Union's remaining investments in certain completed joint venture projects;
- (b) an accrued dividend and capital payments in connection with certain Class A profit and Class B investment shares it issued;
- (c) a deferred tax asset in the form of an accrued credit for past losses; and
- (d) other ordinary course litigation and claims, which exist or may in the future exist.

PART 5 - THE LIQUIDATOR NOMINATION AGREEMENT

77. Given all of the circumstance described herein—including, without limitation, that FSRA has certain claims against the Credit Union, both existing and contingent, all of which are in respect of the DIRF—KPMG and FSRA, in its capacity as the Administrator of the Credit Union, have entered into a liquidator nomination agreement (the “**Liquidator Nomination Agreement**”), attached as **Exhibit “K”**. Pursuant to the Liquidator Nomination Agreement, the

Administrator agreed to nominate or support the nomination of KPMG, and KPMG agreed to accept such nomination and consent to its appointment, as court-appointed liquidator of the Credit Union in these proceedings on the terms set out therein and in the form of the winding-up order sought on this application.

78. In connection with the appointment of the proposed Liquidator, the Applicant is seeking the Court's approval of the Liquidator Nomination Agreement. The appropriateness of KPMG as proposed Liquidator is addressed below in Part 6 of this affidavit.

PART 6 - APPLICATION TO WIND UP THE CREDIT UNION

(A) A Court-Ordered Wind Up of the Credit Union is Appropriate

79. The Administrator is of the view that: (a) having completed the Alterna Sale Transaction, the Credit Union no longer has member deposits, employees or branches and therefore can no longer fulfil its statutory object under section 23(1) of the CUCPA "to provide on a co-operative basis financial services primarily for its members"; (b) an orderly wind-up of the Credit Union is appropriate; and (c) in the circumstances, including having regard to the nature and complexity of the remaining assets, operations, and liabilities of the Credit Union, a court-ordered winding up of the Credit Union by a court-appointed liquidator pursuant to the CUCPA would be appropriate.

80. In particular, as a result of the sale of substantially all of its assets to Alterna and the departure of all of its employees, the substratum of the Credit Union's business no longer exists. The Credit Union is left with miscellaneous assets to administer and significant litigation to be prosecuted or defended. The Credit Union, by reason of the sale of its business and the liabilities being asserted against it, cannot continue its business and it is advisable to wind it up. In

addition, in view of all the circumstances herein, including the absence of any employees to deal with the Credit Union's remaining assets, operations, and liabilities, it is just and equitable that the Credit Union be wound up.

81. If appointed, the Liquidator will monetize or dispose of the remaining assets of the Credit Union, identify and determine claims against the Credit Union and/or its current and former directors and officers, defend or resolve the outstanding litigation described herein, and seek directions from the Court regarding any proposed distribution.

(B) Standing and Jurisdiction

82. The Chief Executive Officer of FSRA ordered that the Credit Union be subject to administration pursuant to the provisions of the CUCPA. Pursuant to the Administration Orders, the Administrator was granted and has retained the authority to, among other things, exercise the powers of the Credit Union for matters outside of the ordinary course of business, and of the directors, officers, and committees. Under the provisions of the CUCPA, the Credit Union may apply to the Ontario Superior Court of Justice (Commercial List) (the "Court") for an order winding up the Credit Union where it cannot continue its business and it is advisable to wind it up or it is just and equitable that it should be wound up. Those circumstances exist in this case. Accordingly, the Administrator may cause the Credit Union to bring an application to the Court seeking an order winding-up the Credit Union under the provisions of the CUCPA.

83. There is some urgency in commencing the winding up process as it will be beneficial for the Liquidator to have access to the transition services and information available from Alterna, as referred to in paragraph 45 above.

(C) Appointment of KPMG as Liquidator

84. Under the provisions of the CUCPA, the Court may appoint one or more persons as liquidator of the estate and effects of the Credit Union for the purpose of winding up its affairs and distributing its property.

85. The Administrator nominates KPMG to serve as the court-appointed liquidator of the Credit Union in these proceedings. KPMG is well-known for its expertise in complex commercial matters and liquidation proceedings and is an appropriate choice to serve in this capacity. FSRA believes that KPMG's engagement in respect of the Alterna Sale Process, Alterna Sale Transaction, CCE Sale Process, and CCE Sale Transaction and the background and experience gained in its financial advisory role regarding the Credit Union, its assets, undertakings, properties, liabilities, and claims will benefit the Credit Union, its stakeholders, and the Court if KPMG were appointed as Liquidator.

86. The proposed Liquidator has requested a charge on the remaining assets of the Credit Union to secure payment of its reasonable fees and expenses and those of its counsel, in each case at their standard rates and charges unless otherwise ordered by this Court on the passing of accounts (the "**Liquidator's Charge**"). The Administrator believes that the Liquidator's Charge is reasonable and appropriate in the circumstances of this case.

87. The proposed Liquidator may have to borrow monies for the purpose of funding the exercise of its powers and duties related to the winding-up of the Credit Union. For this reason, the Applicant is seeking an Order (a) empowering the Liquidator to borrow such monies, provided that the outstanding principal amount does not exceed \$3,000,000.00 and (b) granting a fixed and

specific charge on the remaining assets of the Credit Union as security for the payments of the monies borrowed, together with interest and charges thereon (the “**Liquidator’s Borrowings Charge**”). The Administrator believes that the Liquidator’s Borrowings Charge is reasonable and appropriate in the circumstances of this case.

PART 7 - CONCLUSION

88. For the reasons stated herein, the Administrator believes that the relief requested by the Applicant on this Application is reasonable and appropriate in the circumstances of this case, and is reasonably necessary to ensure the successful and timely winding up of the Credit Union.

SWORN by Mehrdad Rastan of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on August 17, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Mitch Stephenson
8A6E4EF09DF34D5...

Commissioner for Taking Affidavits
(or as may be)

MITCH STEPHENSON

DocuSigned by:
Mehrdad Rastan
33C59F46E89F4F3...

MEHRDAD RASTAN

This is Exhibit "A" referred to in the Affidavit of Mehrdad Rastan sworn by Mehrdad Rastan at the City of Toronto, in the Province of Ontario, before me on August 17, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Mitch Stephenson

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Ontario

**Deposit Insurance Corporation
of Ontario**

**Société ontarienne
d'assurance-dépôts**

**IN THE MATTER OF THE
CREDIT UNIONS AND CAISSES POPULAIRES ACT, 1994,
S.O. 1994, c. 11, AS AMENDED (the "ACT")**

**AND IN THE MATTER OF
PACE SAVINGS & CREDIT UNION LIMITED**

**AND IN THE MATTER OF AN
ORDER OF DEPOSIT INSURANCE CORPORATION OF ONTARIO
PURSUANT TO SECTION 294(1) OF THE ACT**

**ADMINISTRATION ORDER
(September 28, 2018)**

WHEREAS section 294(1)(1) of the *Credit Unions and Caisses Populaires Act, 1994*, S.O. 1994, c.11, as amended (the "**Act**") provides that Deposit Insurance Corporation of Ontario ("**DICO**") may order a credit union subject to administration by DICO if, on reasonable grounds, it believes that a credit union is conducting its affairs in a way that might be expected to harm the interests of members or depositors or that tends to increase the risk of claims by depositors against the DICO but that a supervision order under section 279(1) of the Act, in the circumstances, would not be appropriate;

AND WHEREAS DICO believes, on reasonable grounds, that PACE Savings & Credit Union Limited (the "**Credit Union**") is conducting its affairs in a way that might be expected to harm the interests of members or depositors or that tends to increase the risk of claims by depositors against DICO;

AND WHEREAS DICO believes that a supervision order under section 279(1) of the Act would, in the circumstances, not be appropriate;

AND WHEREAS DICO may, pursuant to section 240.1(7) of the Act, order a credit union subject to administration by DICO without giving notice or allowing the credit union to make submissions if DICO is of the opinion that the interests of the members, depositors or shareholders of any credit union may be prejudiced or adversely affected by a delay in making the order;

AND WHEREAS DICO is of the opinion that any delay in making an order under section 279(1) of the Act in respect of the Credit Union may, in the circumstances, prejudice or adversely affect the interests of the Credit Union's members, depositors or shareholders;

AND WHEREAS section 240.1(8) of the Act provides that where DICO makes an order pursuant to section 240.1(7) of the Act the person subject to such order or any person affected by the order may request an opportunity to make written submissions to DICO by giving notice of such request to DICO within fifteen (15) days after the person subject to the order receives the order;

DEPOSIT INSURANCE CORPORATION OF ONTARIO HEREBY ORDERS THAT:

1. PACE Savings and Credit Union Limited is hereby placed under administration by DICO pursuant to section 294(1) of the Act effective at 12:01 a.m. on Friday, September 28, 2018, until such time as DICO orders otherwise.
2. All powers and authority of the board of directors of the Credit Union (the "**Board**") are hereby suspended except as expressly provided herein.
3. Notwithstanding paragraph 2 above, the Board may, on behalf of the Credit Union:
 - (a) formally request to make submissions to DICO regarding the issuance of this Order pursuant to section 240.1(8)(1) of the Act ("**Submissions**"), and in the event Submissions are made, DICO will issue a further Order pursuant to section 240.1(8)(3) of the Act following its consideration of the Submissions advising whether it will confirm, vary or revoke this Order;
 - (b) appeal this Order pursuant to section 294(3);
 - (c) with respect to the making of any decisions or taking any actions in connection with the filing of submissions or appealing an Order as permitted by paragraphs 3(a) and (b) above, the Board shall continue to operate according to its current policies and procedures for the conduct of meetings, establishing quorum, establishing committees and passing resolutions (which resolutions, for greater certainty, may only be with respect to the filing of Submissions and the appeal); and

- (d) nothing in paragraphs 3(a), (b) or (c) above permits the Board to approve, by resolution or otherwise, the expenditure of any funds by the Credit Union; in the event the Board wishes to request funding from the Credit Union for the payment of the professional fees and disbursements directly associated with the filing of Submissions or the bringing of an appeal as authorized by paragraphs 3(a) and (b) above, the Board may make a request for such funding in writing to DICO, which written request must contain a copy of the resolution of the Board authorizing such request.
4. The Board shall have until 5:00 p.m. Monday, October 15, 2018, to provide DICO with written notice pursuant to section 240.1(8)(1) that it requests an opportunity to file Submissions with DICO. In the event that the Board requests to file Submissions, the Submissions must be delivered to DICO by no later than 5:00 p.m. on Monday, October 22, 2018, or such other time as DICO may agree to in writing.
5. Pursuant to section 240.1(8)(2) of the Act, notwithstanding the filing of any Submissions or the commencement of any appeals, this Order shall remain in full force and effect unless DICO issues an Order otherwise.

DATED at Toronto, this 28th day of September, 2018.

DEPOSIT INSURANCE CORPORATION OF ONTARIO



Guy Hubert
President and Chief Executive Officer
Deposit Insurance Corporation of Ontario

This is Exhibit “B” referred to in the Affidavit of Mehrdad Rastan sworn by Mehrdad Rastan at the City of Toronto, in the Province of Ontario, before me on August 17, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Mitch Stephenson

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Commissioner for Taking Affidavits (or as may be)

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Ontario

Deposit Insurance Corporation
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d'assurance-dépôts

**IN THE MATTER OF THE
CREDIT UNIONS AND CAISSES POPULAIRES ACT, 1994,
S.O. 1994, c. 11, AS AMENDED (the "ACT")**

**AND IN THE MATTER OF
PACE SAVINGS & CREDIT UNION LIMITED**

**AND IN THE MATTER OF AN
ORDER OF DEPOSIT INSURANCE CORPORATION OF ONTARIO
PURSUANT TO SECTION 294(1) OF THE ACT**

**PRELIMINARY REASONS FOR ISSUANCE OF
ADMINISTRATION ORDER
(issued September 28, 2018)**

I. INTRODUCTION TO THE PRELIMINARY REASONS

1. On September 28, 2018, Deposit Insurance Corporation of Ontario ("**DICO**") issued an Administration Order (the "**Administration Order**") pursuant to sections 294(1) and 240.1(7) of the *Credit Unions and Caisses Populaires Act, 1994*, S.O. 1994, c. 11, as amended (the "**Act**") in respect of PACE Savings and Credit Union Limited ("**PACE**" or the "**Credit Union**"). These Preliminary Reasons summarize the reasons for DICO's decision to issue the Administration Order and are provided in order to provide the Credit Union, through its Board of Directors (the "**Board**"), an opportunity to respond to the Administration Order.
2. As is explained below and in the Administration Order, PACE's Board has the opportunity pursuant to section 240.1(8) of the Act to ask DICO to respond to the Administration Order by filing responding submissions and asking DICO to reconsider its decision to issue the order. If the Board files responding submissions for DICO's

consideration, DICO will consider such submissions and then decide whether or not to confirm, vary or revoke the Administration Order. Following the consideration of such responding submissions or the passing of the deadline to file such submissions, DICO will file its final reasons.

3. Following the issuance of the Administration Order, counsel to DICO held without prejudice discussions with the Fasken Martineau Demoulin LLP ("**Faskens**") who had been retained by the special committee of the Board prior to the issuance of the Administration Order. Those discussions centered on the process to be followed to provide the Board an opportunity to respond to the Administration Order, and a process was considered whereby the Board would respond to the substance of the allegations before any formal reasons were released by DICO. On Friday, October 5, 2018, DICO was advised, through a letter from Ian Goodfellow, chair of the Board, that Faskens was declining to act any further in the matter. Accordingly, in the absence of an agreement between DICO and the Board regarding the process to be followed for the Board to consider whether or not to file responding submissions and for DICO to consider the same, DICO is releasing these Preliminary Reasons so the Board can consider its position.
4. These Preliminary Reasons describe DICO's reasons for issuing the Administration Order based on the information that it was able to consider as of September 27, 2018 (the day immediately before the order took effect). DICO's final reasons may be supplemented by its consideration of any responding submissions filed by the Board and its continuing investigation including, but not limited to, interviews with senior officers and directors.

II. OVERVIEW

A. The Parties

5. DICO is a corporation continued under the Act. DICO is one of the regulators of credit unions in Ontario. DICO's objects, as set out in section 261 of the Act, include:
 - (a) providing insurance against the loss of part or all of the deposits with credit unions;

- (b) promoting or otherwise contributing to the stability of the credit union sector in Ontario with due regard to the need to allow credit unions to compete effectively while taking reasonable risks; and
 - (c) pursuing the objects set out in paragraphs 3(a) to (b) above for the benefit of persons having deposits with credit unions in such manner as will minimize the exposure of DICO to loss.
6. PACE is a credit union incorporated under the Act. PACE is headquartered in Vaughan, Ontario, and has seventeen branches throughout south-western Ontario.

B. DICO's Investigation

7. In DICO's most recent routine examination of the Credit Union taken in 2017, adverse findings were made against the Credit Union in Commercial Lending, Internal Audit and Governance of the Board. DICO was in the process of addressing these findings when it received an anonymous letter in October 2017 (the "**First Whistleblower Letter**"). The First Whistleblower Letter contained allegations of self-dealing, secret commissions and excessive risk-taking.
8. On receipt of the First Whistleblower Letter, DICO initiated an investigation which commenced with an information gathering program. A further five whistleblower letters arrived between then and April 2018 from the same individual or group (together, the "**Original Whistleblower Letters**"). From the details provided in those letters, it appeared that the whistleblower was an insider of the Credit Union.
9. As a result of the preliminary information gathered by DICO from the Credit Union by that time, a Letter of Concern was issued to PACE's management on March 21, 2018 (the "**Letter of Concern**"), and PACE was placed on DICO's Watchlist on April 3, 2018.
10. On April 19, 2018, DICO met with, among others, the President of PACE (Larry Smith ("**Larry**")), the CEO of PACE (Phil Smith ("**Phil**")), the Chair of the Board (Ian Goodfellow ("**Goodfellow**")) and the Chair of the Audit Committee (Deborah Baker ("**Baker**")), to allow PACE an opportunity to respond in person to DICO's concerns set out in the Letter of Concern. During the meeting, PACE provided verbal explanations about the rationale

for some of the transactions of concern, but much of the information was found to be incomplete or inaccurate. The follow-up documentation provided by the Credit Union following that meeting was also insufficient to address DICO's concerns.

11. By the end of April 2018, by which time DICO had received all of the Original Whistleblower Letters, DICO received two unsolicited phone calls from two different directors requesting to share their concerns regarding the management and governance of the Credit Union on a confidential basis. Some of the concerns expressed during these phone calls were similar to the concerns expressed in the Original Whistleblower Letters. DICO has recently been advised by the two directors who called DICO on a confidential basis that they are not the author of the Original Whistleblower Letters. As a result, DICO concluded that it had received three separate reports from insiders by the end of April 2018 expressing concerns regarding the propriety of various transactions and conduct at the Credit Union.
12. In May 2018, DICO engaged KSV Advisory Inc. ("**KSV**") as special auditor and examiner ("**Special Auditor**") to assist DICO by undertaking a special audit and examination pursuant to the Act (the "**Special Audit**", and together with DICO's investigation, the "**Investigation**"). DICO met with the Board on May 10, 2018, in a closed Board meeting to advise them of the nature of the allegations raised and inform them that KSV would be performing the Special Audit immediately thereafter.
13. DICO learned through its Investigation that instead of cooperating with the Special Audit, the Board and management proceeded to undertake steps to discover the identity of the whistleblower(s) and to dissuade any Board members from expressing their concerns to DICO. Furthermore, in response to DICO's request at the beginning of August 2018 that the Board provide DICO with an explanation of the President's compensation arrangements and the supporting documents, the Board failed to respond any response to DICO before the issuance of the Administration Order (almost two months).
14. DICO's Investigation uncovered evidence of numerous actions and transactions that appear to be contrary to the Act, DICO's By-laws 5 and 6 and the fiduciary duties of the most senior executives and the Board, with some of the impugned actions of the senior management appearing to amount to civil fraud against the Credit Union. The evidence

suggests that the incidents uncovered were not a coincidental series of one-time events, but rather an entrenched campaign by the most senior executives to use the Credit Union's business and assets to directly or indirectly enrich themselves and others close to them at the expense of the Credit Union and its depositors, members and shareholders. Additionally, these incidents demonstrate an on-going systemic disregard for reasonably prudent policies and risk tolerances of the Credit Union as required by the Act.

15. Furthermore, the Investigation disclosed various and on-going breaches or breakdowns of basic governance practices and duties, including practices required by DICO By-law 5. The failures of the Board were such that it was not independent and did not provide the necessary minimum oversight of management. Rather, the Credit Union's documents and information provided by Credit Union's directors demonstrated that the Board was beholden to management, failed to exercise any independent judgment or oversight of the Credit Union's affairs as required by the Act, permitted a number of arrangements and transactions that were not commercially reasonable or in the best interests of the Credit Union for the personal benefit of certain senior executives, and failed to provide proper and effective oversight and thereby facilitated the systemic wrongdoing of the senior management. Demonstrative of the Board's failure was the difficulty that DICO had in arranging a board-only meeting with the Board as the Chair repeatedly suggested that senior management attend such meeting despite being aware of the concept that the Board should be holding regular board-sessions during board meetings.
16. DICO's investigation also disclosed evidence that the Board appears to have approved financial statements that have been presented to the Credit Union's members that contain information which the Board ought to have known was false and misleading.
17. As further evidence of the Board's inability to manage its own affairs in accordance with the Act, DICO has determined that one of the directors who had recently been appointed was disqualified from acting as a director and was acting in contravention of the Act's conflict of interest regime given that the fact that the director was being paid by the Credit Union for a number of years prior to his appointment to act as a vice-president of

the Credit Union and was continuing to do so after being appointed to the Board (and in fact received more money per month after being appointed to the Board).

18. The information that DICO received before the issuance of the Administration Order (and since) included concerns that once a thorough review of the various questionable transactions is properly undertaken in compliance with sound valuation principles and DICO's By-law #6, that a restatement of the Credit Union's financial statements might be required as the value of the Credit Union's assets are likely to be overstated (although it is not clear to what extent that is the case).
19. The information provided in the Original Whistleblower Letters, while not accurate in all respects, was substantially accurate having regard to the nature of the evidence of improper actions and transactions that the Investigation uncovered.
20. Although DICO's Investigation was initiated following receipt of the First Whistleblower Letters, DICO does not rely on any of the Original Whistleblower Letters themselves (or any that followed thereafter) as a reason for the granting of the Administration Order. (However, as detailed below, subsequent letters from the Whistleblower in September 2018 factored into DICO's decision regarding the timing of the issuance of the Administration Order).

III. SUMMARY OF FINDINGS

21. The findings of DICO following the Investigation fall into two categories: (a) prudential; and (b) regulatory compliance. Prudential findings relate to the prudence of the actions of the individuals involved and the extent to which the individuals acted in accordance with their fiduciary duties as it relates to the risks to the Credit Union and members/depositors. Regulatory compliance findings capture any identified breaches to the Regulatory regime.
22. The following is a summary of DICO's findings. The details of the transactions that DICO was aware of as of the date of the Administration Order and were relied upon by DICO in issuing the Administration Order are set out in Schedule "A" hereto. The evidence referenced in Schedule "A" is contained in documents and information obtained from the Credit Union unless expressly noted otherwise.

23. DICO further notes that additional apparent unlawful, improper or imprudent transactions, payments and conduct that are not detailed in Schedule "A" have come to light since the Administration Order.

A. Prudential Findings

24. Based on the information available, DICO has preliminarily concluded that Larry and Phil have breached their fiduciary duties and the conflicts of interest provisions under the Act, by engaging in self-dealing and receiving secret or improper commissions for various loans and investments that have been made by the Credit Union, or in facilitating, acquiescing in or approving such payments. The culture of systematic self-dealing and secret commissions found by DICO was facilitated by Board negligence, poor judgement and complicity.
25. An overview of the Prudential Issues is provided below:
- (a) Payments to Larry and others connected to him, and employees of the Credit Union, in relation to various off-market loans and investments the Credit Union has made. Payments were identified as being made by borrowers of the Credit Union and/or through numbered companies owned by Larry or his associates/relatives. While some, but possibly not all, of these payments were purportedly approved by the Board, these types of payments were not capable of being legally approved and such approval was not in compliance with the conflicts of interest provisions under the Act or DICO By-law 5.
 - (b) Board approved consulting arrangements allowing Larry to be compensated by borrowers and partners of the Credit Union for transactions involving the Credit Union, many appearing to be done without the Board having specific information regarding the nature of the conflicts or the benefits being conferred on the President in contravention of the Act.
 - (c) Nepotism for the benefit of parties related to Larry. Several of Larry's family members and friends work in executive positions within the Credit Union or in companies linked to the Credit Union or in "consulting" positions with the Credit

Union, and received irregular payments in the nature of secret commissions or self-dealing.

- (d) Provision of numerous off-market loans, which were not in the best interests of the Credit Union and were imprudent and inconsistent with the Credit Union's minimum risk tolerance, to companies in which Larry and/or his associates/relatives have ownership interests or from whom they engaged in self-dealing, many of which were granted without proper due diligence (e.g., without obtaining the necessary appraisals or opinions from independent qualified professionals); and
 - (e) Other loans and investments which appear on off-market terms and represent undue risk to the Credit Union and beyond the Credit Union's minimum risk tolerance.
26. Evidence of the above activities has been found in numerous transaction records and documents of the Credit Union. The evidence reflects that these activities have been occurring on a systematic basis, often with the purported approval of the Board. The following is a brief description of some of these transactions.
- (a) Documents of the Credit Union indicate that the Board approved arrangements whereby Larry would receive consulting fees through two numbered companies in addition to his employment salary. However, it is not clear whether the Board was aware of all the ancillary payments that flowed to Larry over the years. Specifically, the Board (or the executive committee or audit committee) may have purported to approve consulting arrangements between the Credit Union and Larry, through his holding companies 809755 Ontario ("809") and 1428245 Ontario ("142"),¹ which are directly or indirectly wholly-owned by Larry and, further, permitted Larry to be paid by partners and borrowers of PACE for consulting services related to the provision of funding by the Credit Union, but without knowledge of what those payments would entail or be based on. The full extent of these payments does not appear to have been disclosed in the Credit Union's financial statements or to the members in breach of section 140(5) of the

Act and section 28(1) of the regulations promulgated thereunder (*General Regulation*, O. Reg. 237/09 (the “**Regulations**”)).

- (b) The arrangements also appear to provide Larry with pre-funded termination pay for consulting fees estimated between \$1.5 million and \$3.5 million (the “**Termination Payment**”) based on 75 monthly consulting fees to be released regardless of whether he resigns or is terminated for cause. These funds are purportedly held in trust by Arn Reisler (“**Reisler**”), a personal lawyer to Larry who is also apparently the Credit Union’s counsel and appeared to be an in-house counsel at a waste management company. Notably, the accounts in question contain at least \$7 million and it is unclear whether this is all intended for Larry or not.
- (c) The investigation identified a lack of verification controls by the Board on the amounts/purposes of the payments or sufficient rationale to address the apparent conflict of interest. Many payments appear to have been post-approved on an omnibus basis by all or part of the Audit Committee without disclosure to the Board. The evidence indicates that in at least one case (Continental Currency Exchange or “**CCE**”) certain other employees of the Credit Union received payments, either directly or through relatives or associated companies, and the transaction was structured to avoid the limits prescribed by the Act and the Regulations.
- (d) Baker, the Chair of the Audit Committee, advised the Special Auditor that she was not aware of payments being received by Larry in connection with the Credit Union’s business other than the payments he received in connection with the CCE transactions (discussed below). A similar comment was made by another director (discussed below). However, there is clear evidence of such payments being made to Larry, Phil and others on numerous occasions.
- (e) Generally, the improper payments were associated with investments made by the Credit Union or off-market loans that are poorly underwritten and lack the appropriate structure, collateral and returns for the risk being undertaken by the

¹ DICO understands that Phil Smith and Arn Reisler are the directors of those companies and that they may also hold

Credit Union. Moreover, these loans appear to be contrary to any reasonably established risk tolerance and represent a current and material financial risk to PACE.

- (f) DICO also observed various loans in which disproportionately large arrangement fees were paid directly or indirectly to an individual named Ron Williamson (“**Williamson**”) or his companies. Employees identified Williamson, who was living in Florida, as a broker/agent. As discussed further below, evidence was identified in two transactions (SusGlobal and 1934811 Ontario Limited) where both Larry, his family and Williamson shared the arrangement fee paid by the borrower. DICO did not identify any evidence that the fees to Larry were disclosed to or approved by the Board; the information from the Audit Committee Chair suggests that these fees were not disclosed.

B. Regulatory Compliance Findings

- 27. DICO has made a number of findings regarding regulatory compliance failures. These include:
 - (a) Failure to disclosure true beneficial ownership of PACE’s borrowers, investees and subsidiaries;
 - (b) Properties being improperly held by the Credit Union;
 - (c) Repeated establishment of subsidiaries without DICO’s approval in contravention of the Act;
 - (d) Breach of investment limit in existing subsidiary; and
 - (e) Inaccurate disclosure of total annual compensation on audited financial statements.

the shares of those companies in trust for Larry.

IV. DICO'S DECISION

28. Based on the foregoing, DICO had reasonable grounds to believe that the President, CEO and certain other employees, and possibly certain directors of PACE, have used their influence for their own personal benefit, without due regard to their fiduciary duty or the risk to the Credit Union and its members. Furthermore, a lack of oversight by the Board over management's actions, combined with negligence and poor judgement by the Board, has facilitated a culture of acceptance where material conflicts of interests are not recognized or appropriately resolved. Weak corporate governance, supported by weak internal audit and control structures, has allowed these, as well as several other regulatory non-compliances and imprudent practices, to perpetuate throughout the organization.
29. For these reasons, DICO has formed the belief, on reasonable grounds, that: the Credit Union was conducting its affairs in a way that might be expected to harm the interests of members, depositors or shareholders; supervision under section 279(1) of the Act, in the circumstances, would not be appropriate since the Board appeared to not be capable of effecting change or working with DICO to effect the change needed; and accordingly, it was appropriate to issue an Administration Order pursuant to section 294(1) of the Act.

B. Issuance of Administration Order Pursuant to Section 240.1(7) of the Act

30. Section 240.1 of the Act provides that, in the normal course, DICO will provide a credit union with notice of its intention to make an order and to provide the credit union with an opportunity to respond before the order is made. However, section 240.1(7) of the Act provides that where DICO is of the opinion that the interest of the members, depositors or shareholders may be prejudiced or adversely affected by a delay in making the order, DICO may issue the order without notice, and that the Credit Union shall thereafter be given an opportunity to respond to the order, after which DICO is to decide whether to confirm, vary or revoke the order.
31. DICO formed the opinion that any delay in granting the Administration Order might prejudice or adversely affect the interest of the members, depositors or shareholders:

- (a) Any delay to effect notice pursuant to section 240.1 would likely result in the triggering of the immediate loss of \$1.5 million or more to the Credit Union in termination payments to Larry;
 - (b) On September 11, 2018, there was a threat from the Whistleblower to make the allegations of wrongdoing public by the end of September and, in fact, the Whistleblower demonstrated his/her/their resolve to do so by disclosing the allegations to others by letter delivered to a number of individuals outside of DICO on September 24, 2018. Premature disclosure of the allegations raised risked causing a crisis of confidence in the solvency or liquidity of the Credit Union and a consequent run of the institution that could cause its collapse (such risk was material given the Credit Union's higher than normal liquidity concentration risk);
 - (c) DICO obtained further information from the Whistleblowers that the Board remains beholden to management such that it could not count on the Board to act as a partner in addressing the immediate and pressing issues; and
 - (d) Information DICO received from the Whistleblower and a director that the pace of questionable and high risk transactions had accelerated, while at the same time it appeared that the Credit Union was using riskier and more costly sources of assets to support the new commercial loan transactions (which suggests that the Board had failed to undertake, or may be incapable of undertaking, more active oversight of the affairs of the Credit Union despite having been advised in May 2018 of the nature of the allegations and concerns about the most senior management of the Credit Union).
32. As DICO has issued the Administration Order pursuant to its authority under section 240.1(7), DICO has further ordered the following:
- (a) DICO, as the Administrator, will make the arrangements reasonably required to allow the Board to make responding submissions pursuant to section 240.1(8) of the Act by October 22, 2018;

- (b) If responding submissions are filed, DICO will consider the submissions and thereafter decide to confirm, vary or revoke the Administration Order;
 - (c) The Administrator will allow individuals implicated in the wrongful conduct to respond to the allegations, and DICO will consider whether or not the Administration Order needs to be confirmed, varied or revoked in light of such responses; and
 - (d) The Administrator will make the arrangements reasonably required to allow the Board to file an appeal pursuant to section 294(3) of the Act.
33. Following the delivery of the Administration Order, DICO engaged in discussions with Faskens described above. As the Board is in the process of obtaining new counsel, DICO will provide the Board until October 22, 2018 to advise that it wishes to file responding submissions and, further, that such submissions must be provided by a date to be determined by DICO.

DEPOSIT INSURANCE CORPORATION OF ONTARIO

Guy Hubert
President and Chief Executive Officer
Deposit Insurance Corporation of Ontario

6868641

SCHEDULE "A"
*Summary of Issues and Concerns Referred to in Preliminary Reasons
As of September 28th, 2018*

Prudential Issues

1. Self-Dealing Payments

During the course of the Deposit Insurance Corporation of Ontario's ("DICO") investigation into the activities of PACE Savings & Credit Union Limited ("PACE" or the "Credit Union"), DICO became aware of various self-dealing payments to PACE's President ("Larry Smith" or "Larry"), as well as to other employees and Directors of the Credit Union, in relation to various off-market loans and investments the Credit Union has made. The details of transactions are described below.

These payments often flowed through numbered companies owned by the President or his associates/relatives. Please see Appendix A for an overview of the relevant parties and transactions.

2. SusGlobal Energy Corp. et all ("SusGlobal" or "SUS")

SusGlobal was provided a total of \$5.5 million in loans from the Credit Union in 2017. The evidence gathered suggests that Larry and Ron Williamson ("Williamson") each received a cash payment of US\$150K (US\$300K in the aggregate) from the borrowers and 810,000 shares each from the initial advance of \$1.6 million. The loan appears to be granted on off-market terms and neither DICO nor the special auditor engaged by DICO to assist in DICO's investigation of the Credit Union, KSV Advisory Inc. (the "Special Auditor"), has seen any evidence that such payments were approved by the PACE's board of directors ("PACE's Board" or the "Board").

The chart below provides an overview of DICO's understanding of the transaction.

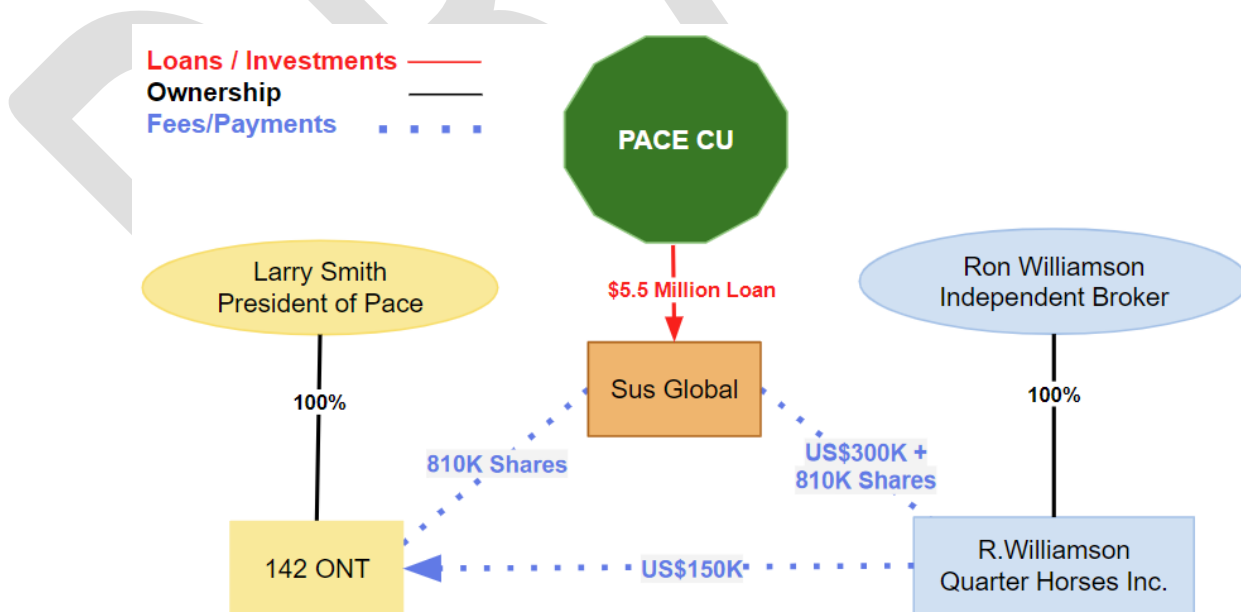


Figure 1: SusGlobal persons and entities involved in the transaction

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Details of the transaction:

- In January 2017, PACE provided \$1.6 million in credit facilities to SusGlobal. At the time, SusGlobal had no operations and its only contracts had been cancelled before the loan was advanced. Subsequently, in September 2017, PACE advanced an additional \$3.9 million to SusGlobal to purchase assets of a company in receivership, for a combined total exposure of \$5.5 million.
- Of the first tranche of \$1.6 million, PACE records show that SusGlobal paid a broker fee of US\$300K to a US company by the name of Ron Williamson Quarter Horses Inc. ("Quarter Horses"). Please see Appendix D.
- A copy of an engagement letter ("SUS Engagement Letter") in SUS's 10-K filing with the SEC in the U.S., indicated the US\$300K payment was in fact two separate payments of US\$150K each, one to Quarter Horses and the other to 1428245 Ontario Limited ("142"), a holding company owned 100% by Larry. Additionally, both Quarter Horses and 142 each received 810,000 common shares of SusGlobal. A copy of a bank draft provided by the Credit Union however indicates a single payment of \$300k to Quarter Horses.
- The letter in the SEC filing identified 142's address as Naples, Florida, the same as Quarter Horses', and the letter was signed by Williamson on behalf of both entities, 142 and Quarter Horses. The SUS Engagement Letter is dated January 30, 2017, one week after SUS executed the credit agreement with PACE (January 24, 2017).
- The SUS Engagement Letter was not located in the credit file and DICO did not locate any evidence in any of the other documents provided by the Credit Union of the alleged payment to Larry's numbered company being disclosed to the Board. It is therefore not clear whether the Board or Audit Committee knew of this payment to Larry or if it was approved by the Board.
- When asked by DICO about the payments to Williamson, Larry did not disclose receipt of the alleged payment. When asked by the Special Auditor if he was a shareholder in SUS, Larry indicated he was not a shareholder. When asked if any other commissions were paid on the loan other than to Williamson, Larry only indicated that Williamson may have received shares.
- On June 12, 2018, Deborah Baker ("Baker"), Audit Committee Chair, advised the Special Auditor that she had reviewed her notes "dating back to December 2016 and up until April 30, 2018 and, to the best of my knowledge, the CCE transaction was the only transaction in which the Board considered and approved the payment of a management fee to a restricted party. I was unable to find any references to other transactions that involved the payment of management/advisory fees in my notes". Accordingly, this payment to Larry's holding company appears to have not been disclosed to or authorized by the Board.

The following analysis illustrates why DICO believes the investment and loan were undertaken without the usual and customary due diligence that would be completed for similar transactions, and confirms the loan was underwritten on off-market or friendly terms, namely:

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- The economic entity being funded had minimal assets, no income and was in a negative equity position (technically bankrupt or insolvent), all of which was gleaned from the public SEC filings (<http://susglobalenergy.com/investors/sec-filings/>).
- As indicated in PACE's loan files, some of the critical security was not taken at the appropriate time, i.e. at inception, nor is there sufficient information to ascertain its appropriateness or value in support of the loans.
- The first tranche was advanced on an interest-only basis and the second tranche with a 5-year repayment; however, in the summer of 2018, the loan was re-structured to be amortized over 20 years.
- Finally, the owner and key principal of SusGlobal, Mr. Marc Hazout, had a criminal conviction for kidnapping and extortion from 1996. In a meeting with DICO, Larry indicated he was aware of this.

3. Continental Currency Exchange ("CCE")

In 2017, CCE, a currency exchange company, was operated and owned 100% by the Penfound family ("Penfound"). In early 2017, the Credit Union purchased a 30% interest in CCE and at the same time lent \$15 million to a separate company (2340938 Ontario, "2340") to purchase 45% of CCE. Larry, Phil Smith, PACE's CEO ("Phil" or the "CEO"), Mary Barbieri ("Barbieri"), Executive Assistant to Larry, Mary Benincasa ("Benincasa"), PACE's Chief Operating Officer and Ernie Eves ("Eves"), former Chair of PACE Securities each received a Board approved payment from 2340 for their role in the transaction. 2340 is not believed to have had any other assets other than the proceeds of the loan from which it could have made these payments. It is not known therefore why the Board would approve such payments knowing that such payments were coming from the proceeds of the loan, particularly where 2340 is only a passive investor in CCE and has no other identifiable source of income.

Moreover, quarterly cash dividends of \$450K are being paid by CCE to 2340; however, the Credit Union and Penfound have deferred its dividends.

A summary of the transaction and associated issues is provided below, along with a graphical representation of the persons and entities involved in the transaction.

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Exposure to 2340 / CCE ~\$24.5 Million

Loans / Investments ————

Ownership —————

Fees/Payments

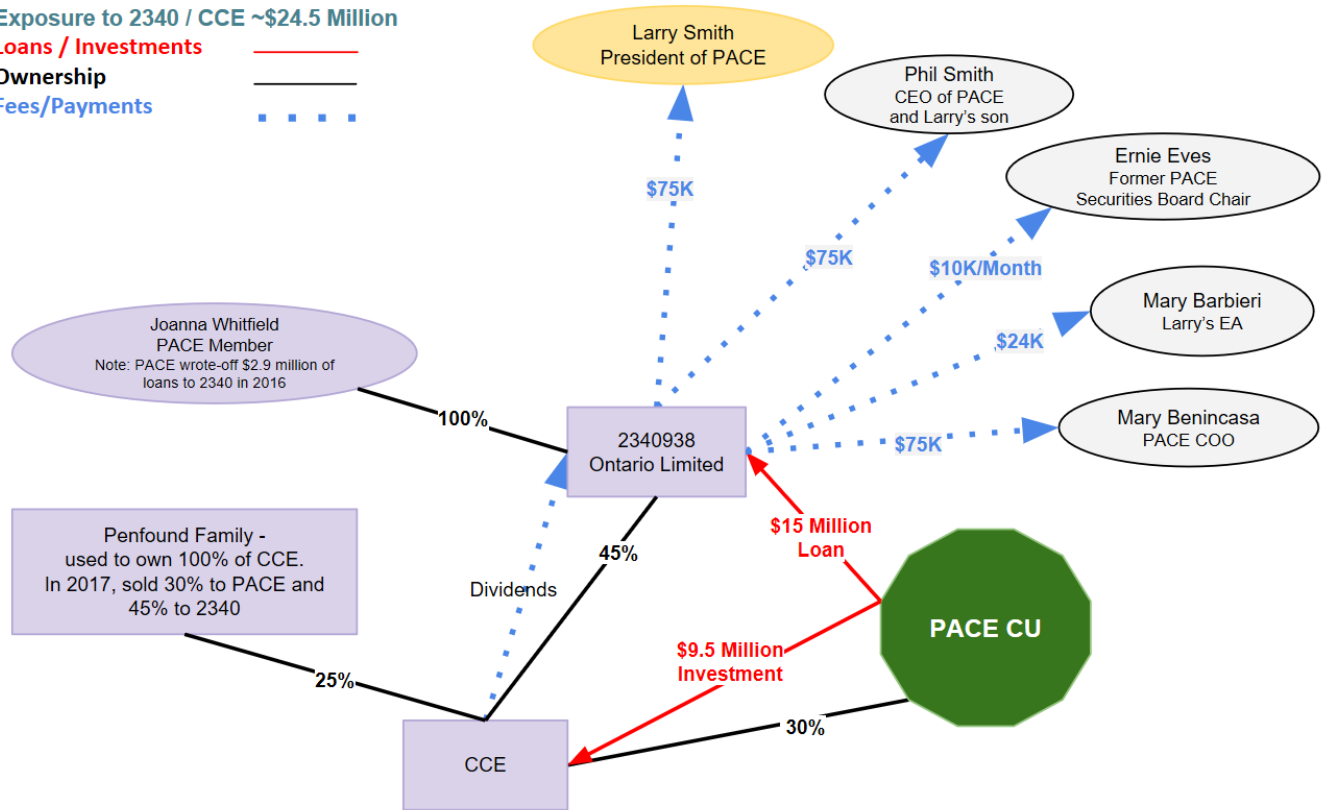


Figure 2: CCE Transaction

- In February 2017, the Credit Union paid \$9.5 million to purchase a 30% interest in CCE, a GTA-based network of currency exchange branches. Under the *Credit Unions and Caisses Populaires Act, 1994* (the "Act"), 30% is the maximum investment a Credit Union can have in another company without creating a subsidiary, which would require DICO approval.
- At or around the same time, the Credit Union lent \$15 million to 2340, which it used to purchase a 45% interest in CCE. The owner and key principal of 2340, Ms. Joanna Whitfield ("Whitfield"), is a real estate agent by trade, has no prior experience, to DICO's knowledge, of currency exchange operations and was the owner of 2340 when it operated a poultry company which defaulted on a \$2.9 million loan to PACE in 2016. The credit file from the Credit Union indicates that PACE did not have a personal guarantee from Ms. Whitfield on the prior loan nor on the CCE loan.
- Per Board approval, 2340 pays annual management fees of up to \$300K in aggregate to the Smiths, Benincasa, Barbieri, Whitfield and Eves, a former Premier of Ontario and an advisor to 2340 in connection with the CCE transaction. The fees were disclosed to and approved by the Audit Committee ("Disclosure").
- Benincasa advised the Special Auditor that Larry negotiated the fee arrangement with 2340 for services rendered up to the date of the transaction and that she received \$50K

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from participation on approximately 10 telephone calls with Whitfield. This conflicts with information received from Baker to the Special Auditor that suggests that Benincasa received \$75K. Benincasa further advised that, for tax purposes, this payment was made to a landscaping company owned by her husband. Barbieri advised that the fees of \$24K paid to her¹ were in respect of certain accounting entries she posted for 2340, however, she refused to disclose who instructed her to perform this activity.

- Baker advised the Special Auditor that “there have been various management/advisory fees paid on other business transactions”. Baker subsequently clarified that from time-to-time the Credit Union pays consultants and advisors for assisting with transactions and that “the CCE transaction was the only transaction in which the Board considered and approved the payment of a management fee to a restricted party”.
- However, based on DICO’s investigation to date (September 2018), there is evidence of commissions/consultant fees, approved by the Audit Committee, paid to restricted parties on at least two other occasions:
 - \$275K from a PACE borrower to Larry’s alleged girlfriend’s, Alison Golanski’s (“Golanski”), holding company in April 2016 (Appendix B)
 - \$180K from PACE to Larry’s son’s, Malek Smith’s (“Malek”), holding company in January 2017 (Appendix E)

The investment and loan were undertaken without the usual and customary diligence that would be considered normal for similar transactions, and the loan was underwritten on off-market terms, namely:

- Funding in excess of 100% of the purchase price was provided to 2340 by the Credit Union. i.e. 2340 did not inject any equity to acquire its 45% stake in CCE.
- The loan is interest-only for an unspecified period, i.e. a non-amortizing.
- Absence of third-party quality of earnings report to validate earnings before interest, tax, depreciation and amortization (“EBITDA”) or multiples of EBITDA in similar recent transactions.
- The historical financial statements of CCE were prepared on a Notice to Reader basis (transactions of this nature typically have statements prepared on an audited basis).
- Both PACE and Penfound deferred their dividends from CCE in favour of 2340. Notwithstanding the lack of any equity investment by 2340 and the apparent absence of prior expertise by Whitfield, the annual dividend payment of \$1.8 million to 2340 leaves excess free cash of \$600K after payment of annual fees to Eves and the interest-only payments on the loan. The purpose of the excess is unknown.
- The Unanimous Shareholder Agreement (“USA”) between PACE, 2340, Continental Currency Exchange Canada Inc. (“Penfound Holdco”) and CCE includes a put and call provision between PACE and Penfound Holdco. Depending on the circumstances, the provision provides PACE with an option or requires it to purchase Penfound Holdco’s remaining 25% interest in CCE after March 31, 2019.

¹ The cheques were issued to Amanda Barbieri, Mary Barbieri’s daughter.

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- The USA also sets out Benincasa as 2340's approved nominee director of CCE. Benincasa advised the Special Auditor that she had never seen the USA and was not aware of her nomination as a director of CCE.
- Larry indicated to the Special Auditor that PACE has a verbal understanding with 2340 to acquire 2340's 45% interest in CCE on terms to be negotiated in the future. Larry did not provide any details on this arrangement.
- The structure of the loan and investment, combined with the option for PACE to buy the remaining 25% stake and the omission of a clear provision in the USA setting out the terms of PACE's rights to acquire 2340's interest in CCE, suggest this transaction was engineered to provide PACE the opportunity to purchase all of CCE in the future, despite the fact that PACE has neither sought nor received the approval necessary from DICO for such a transaction. Such was confirmed by Larry to the Special Auditor.

4. Geranium Corporation ("Geranium")

Over the course of many years, PACE has lent to and invested in several real estate development projects with Geranium. PACE currently has total exposure of approximately \$50 million to Geranium. Through his numbered companies, Larry receives payments related to these projects from both the Credit Union and from companies related to Geranium. Based on DICO's review of various documents and contracts (relating to consulting fee arrangements between PACE and Larry, along with his holding companies 142 and 809755 Ontario Limited ("809")), such payments appear to have been approved by PACE's Audit Committee.

DICO's concerns on transactions with Geranium are a) that the Credit Union has exceeded its single name exposure limit, b) the Credit Union's capital is being put to undue risk for transactions that are benefitting Larry personally, and c) the Audit Committee has not exercised sound judgement in approving the payments to Larry.

A summary of the loans and investments is provided below, along with a graphical representation of the persons and entities involved in the transactions.

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Total exposure to Geranium ~\$50 Million

Loans / Investments ——— (Red line)
Ownership ——— (Black line)
Fees/Payments (Blue dotted line)

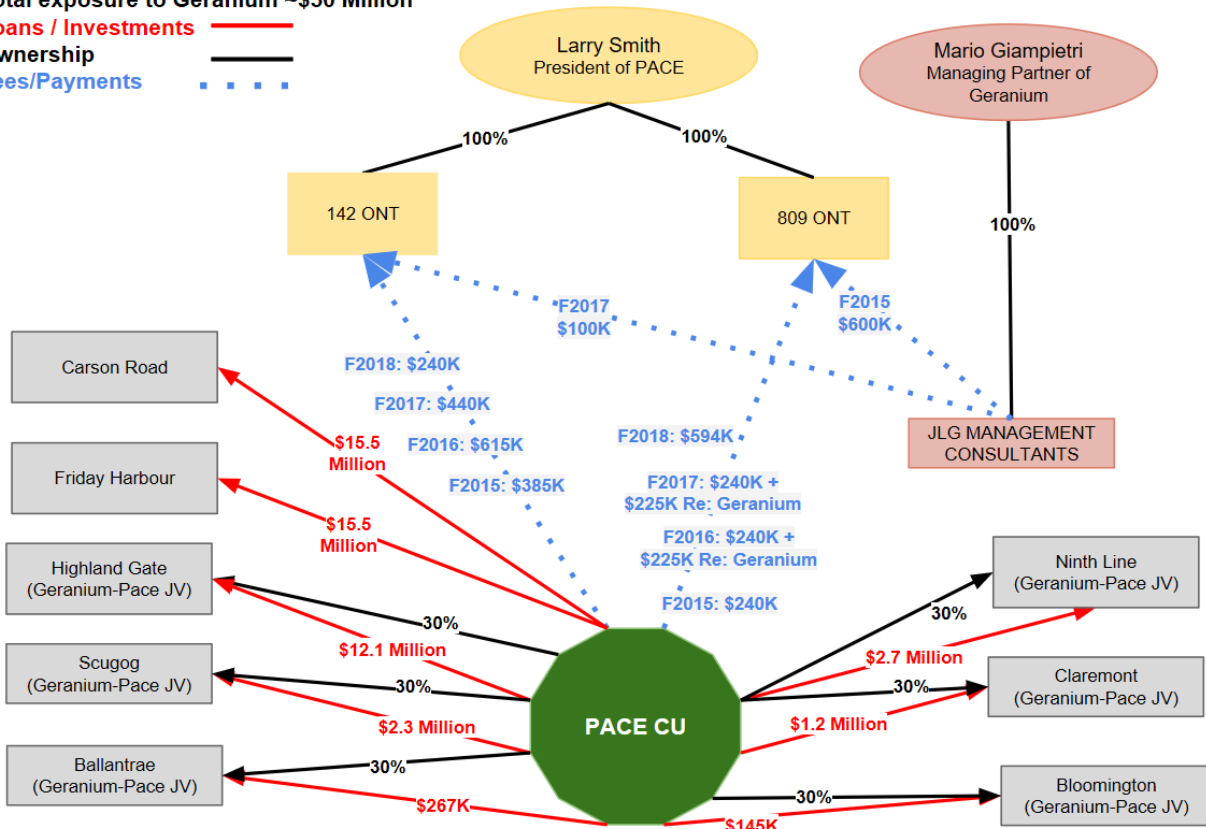


Figure 3: Geranium Corporation connections

Based on the information gathered to date (September 2018), it is DICO's understanding that PACE has a total of eight different investments/loans with Geranium et al. The figures in blue represent payments to 142 and 809 as obtained from account activity records of the Credit Union for the years 2015 - 2017² it is not known whether other payments were made to Larry prior to this. From the information available, DICO was unable to verify if all payments were exclusively related to Geranium. Certain invoices from 142 and 809 to PACE that are clearly attributed to Geranium projects are provided in Appendix F.

The investigation could not determine the rationale for JLG Management Consultants ("JLG") payments to Larry's holding companies which totaled \$700K as was discovered by reviewing bank statements of each respective holding company. Notwithstanding, DICO notes that both the nature and quantum of these payments seems highly irregular as there would be no reasonable explanation for the principal behind Geranium to be paying material sums to Larry directly (via their respective holding companies).

² DICO understands that these companies also have bank accounts at Toronto Dominion Bank ("TD"). At the time of writing, statements from the TD accounts were not made available and therefore have not been reviewed.

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The sub-sections below provide details on the transactions, along with commentary to highlight the off-market nature of the transactions and/or violations of the Act and Regulations.

3.1. Carson Road Development Inc. ("Carson Road")

In 2008, PACE set-up a \$6.6 million line of credit to assist Geranium in buying lands located north-west of Barrie.

- The facility was set-up as interest only with no amortization planned, and the security was a second charge on the lands, behind vendor-take-back mortgages ("VTBs"). Typically, lenders do not finance raw land as it is viewed as seed capital of the developer. In the rare case lenders do fund development lands, they would typically take a first charge, and only if the debt-servicing was confirmed from secondary sources, which in turn would be supported by guarantees and first-ranked general security agreements from such sources. In this loan, no such support is evident. DICO notes that the credit file talks about certain lands where PACE now has a first ranking collateral charge, DICO has not been able to determine the value of each respective land parcel as we have not reviewed the appraisal.
- As of July 2018, almost ten years after the loan was first advanced, the records of the Credit Union indicate that the loan continues to be on an interest-only basis, and PACE's total exposure is at \$15.5 million. The credit file notes that the lands are worth \$66 million on an "as is" basis, i.e. loan-to-value is approximately 41% (which includes the VTB amounts).
- PACE has also been funding the operational expenses of the venture over the years, including the interest expense of the VTBs and the on-going servicing and consulting expenses of the venture. As noted in the March 2017 credit file, \$5.1 million of the total facility was "to assist with further site requirements/improvements, professional fees and interest on vendor take-back mortgages".
- It is noted that the records of the Credit Union indicate that there is a similarly structured loan to another borrower, Midhurst Development Doran Road Inc. ("Midhurst"). This loan has not been included in this analysis because the loan file did not contain sufficient information to link it to Geranium. However, the key principal of Midhurst, Mr. Alon Szpindel, owns 25% of the Carson Road venture, and the loan to Midhurst is very similar to the Carson Road loan i.e. started in 2008, security is second position behind VTB's, lands being secured are in the same vicinity, each development is mentioned in the other's annual loan review at the Credit Union, total exposure at the time of writing is \$15.5 million, and the Midhurst development appears on the Geranium website.

3.2. Friday Harbour Golf Inc. ("Friday Harbour")

In 2015, PACE set-up a \$12.75 million line of credit to assist Geranium in developing a golf course, which is located in Innisfil, Ontario. The facility was set-up as interest only, with no amortization planned, and no confirmed sources of debt-repayment.

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- As of July 2018, there appears to be no scheduled payments, and the facility has increased to \$15.5 million.
- A comment in a recent annual review of the loan by the Credit Union notes that an appraisal was not provided at time of original funding. However, a recently completed appraisal in May 2018 notes the current value of the property as \$18.4 million. Another document in the loan file notes owner's equity at \$1.7 million. As such, current LTV would be in the 84% to 90% range.

3.3. Additional commentary on Carson Road and Friday Harbour

The financing structures for Carson Road and Friday Harbour are similar to an ownership-like funding model, where PACE bears the bulk of the risk and puts up the bulk of the capital.

- On November 25, 2015, the Audit Committee approved a document/contract noting

"Whereas 809755 and 1428245 may receive payments from time to time from the partners of PACE, namely Geranium, Prime R Investments, and JLG management consulting which payments are disclosed, acknowledged, and approved by the Executive and Audit Committees of Pace..."

Please see Appendix C for a full version of the document.

- Based on the structure of these transactions, DICO's concerns are that:
 - The off-market loans are being orchestrated by Larry, as the President of the Credit Union, because he is personally benefitting from such transactions (as Figure 7 above shows, Larry is being paid by both PACE and JLG), and
 - The Audit Committee has not exercised sound judgement by approving payments to Larry's holding companies from partners of PACE, i.e. effectively allowing Larry to be paid by both parties to a transaction.

3.4. Highland Gate Joint Venture ("Highland Gate")

In December 2014, PACE entered into a joint venture ("JV") with Geranium to develop lands in Aurora, Ontario. Under the agreement, PACE owns 30% of the JV, however, it is entitled to 50% of the profits and is responsible for 100% of the equity injections.

- As per the FYE2017 financial statements of Highland Gate, the only equity in the venture is from PACE in the amount of \$12.1 million.

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- A review of certain emails and associated documents³ suggests that Highland Gate applied for and obtained credit facilities of \$131 million from TD to finance the project and the facilities were partially guaranteed by PACE and Larry (in his personal capacity). The review suggests that Larry may partially own Highland Gate, and that the Board is aware of it⁴. The guarantees of the \$131 million facility were limited to 11.83% for PACE and 13.17% for Larry.
- At the time of writing (September 2018) DICO has not been able to independently verify the full beneficial ownership structure and multiple efforts to obtain this from the Credit Union have been unsuccessful.
- The structure of the transaction above suggest other motives for this deal and the evidence (particularly the provision of the personal guarantee) suggests that Larry is personally benefitting from this transaction at the expense of the Credit Union as it is exposed to this off-market risk. Appendix F shows an invoice, approved by the Audit Committee, for \$225K dated December 2016 from 809 to PACE where the description reads:

*"To: Consulting and Professional Fees
 For the period JANUARY 1st, 2016 to DECEMBER 31st, 2016
 Including commissions on extraordinary revenue as agreed/approve by Board
 Commission on Extraordinary Revenue as agreed/approved by Board
 Re: Highland Gate"*

3.5. Summary details on other PACE-Geranium joint ventures

Below is a list of other PACE-Geranium joint ventures

JV Name	Date of JV	Property Location	PACE Ownership	PACE Profit	PACE Capital
Ballantrae	July 2010	Stouffville, Ontario	30%	33.34%	56.67%
Ninth Line	July 2010	Stouffville, Ontario	30%	50%	85%
Bloomington	February 2014	Stouffville, Ontario	30%	50%	85%
Claremont	April 2015	Pickering, Ontario	30%	50%	85%
Scugog	September 2015	Post Perry, Ontario	30%	50%	100%

- Given that PACE is officially declared as a 30% owner of the five JV's noted above, but is entitled to a higher percentage of the profits (50% in most cases), and is responsible

³ Email from Larry to Barbieri dated July 23, 2017 and December 13, 2017

⁴ Email from Larry to Barbieri July 23, 2017 saying "Need to print a copy of this for the Board approval file. thanks Larry". "this" possibly refers to an attachment to the email which shows Larry's signature on behalf of PACE and then on his own behalf.

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for the majority, if not all of the capital, it is DICO's suspicion that PACE's true "beneficial" ownership is as high as the profit participation level (50%), and not the officially declared ownership. Therefore, DICO has reasonable grounds to believe these JV transactions have been structured in such a way as to deliberately circumvent the Act and Regulations which would otherwise require PACE to obtain DICO approval for any entities in which it owns greater than 30%.

- Additionally, DICO is of the opinion that these JV's put the Credit Union's capital at undue risk, given that in various cases, the LTV is 85% or greater. Typically, capital injections of this nature are taken on by either private equity pools or wealthy developers that are self-funded. As such, DICO is concerned that this excessive risk-taking by the Credit Union is being facilitated by Larry in order to allow him to benefit financially from transactions in which he takes minimal risk. By facilitating these investments, Larry is able to justify charging additional consulting fees to PACE, receive monies from JLG, which could potentially be commissions, and possibly own portions of certain ventures (Highland Gate being one possible example).
- It is highly irregular and suspicious that the Managing Partner of Geranium (through his holding company) paid \$700,000 to Larry's holding companies. The rationale for such payments is not clear to DICO at the time of writing.

5. Larry Dunn et al, ("Dunn et al")

PACE has a total exposure of approximately \$53 million to entities related to Larry Dunn, a financier and land developer in the Wasaga and Georgian Bay region.

DICO's concerns with transactions related to Larry Dunn are noted as follows: a) the records of the Credit Union indicate that a payment, related to one particular transaction with The Lora Bay Corporation, was made to a numbered company owned by Malek, Larry's son; b) a number of the loans to Dunn et al appear to represent an ongoing material risk to the Credit Union; and c) the combined exposure is in excess of the single name exposure limit in the Act.

The picture below provides a graphical representation of the exposure and the relationships.

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Total Exposure to Dunn et al ~\$53 Million
 Exposure to Dunn and family adjusted for % of ownership ~\$35 Million

Loans / Investments █
 Ownership █
 Fees/Payments ⋯

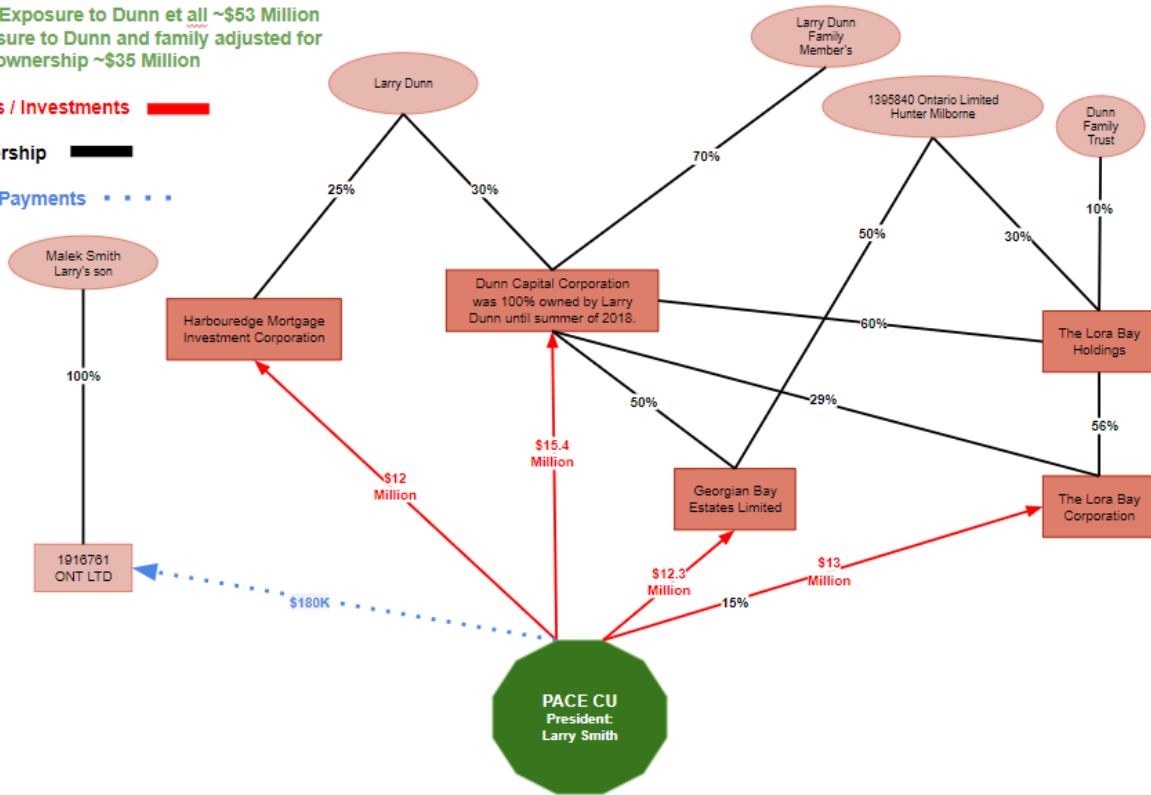


Figure 8: Larry Dunn connections

Corporate Profile Reports for the four entities indicate Larry Dunn as the key Director/Executive of each entity, and therefore DICO is of the opinion that the four entities are connected. Accordingly, the Credit Union is in excess of its single name exposure limit under the Act and Regulations.

The table below summarizes Larry Dunn's position within each entity.

	Ownership Dunn and Family	Director	President	Secretary	Treasurer	Chairman
The Lora Bay Corporation	68%	Larry Dunn	Larry Dunn	Larry Dunn	Larry Dunn	Larry Dunn
Harbouredge Mortgage Corporation	25%	Larry Dunn	-	Larry Dunn	-	Larry Dunn
Georgian Bay Estates	50%	Larry Dunn	Larry Dunn	Larry Dunn	Larry Dunn	-
Dunn Capital Corporation	100%	Larry Dunn	Larry Dunn	Larry Dunn	Larry Dunn	-

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Additionally, the table below, found in the Credit Union's loan files, lists the four entities as connected, indicating the Credit Union was aware of the breach however did not disclose it to DICO.

LARRY DUNN CONNECTED EXPOSURE AS AT SEPTEMBER 2017					
Georgian Bay Estates Limited Partnership - General Partner			JDMH 33.33%	Landex 33.33%	1395840 Ontario Limited 33.33%
Georgian Bay Estates Limited Partnership	Loan 41048	3,885,000.00	Larry Dunn 100%	Larry Dunn 100%	Hunter Milborne 100%
Georgian Bay Estates Limited Partnership	Loan 41049	2,512,500.00			
Georgian Bay Estates Limited Partnership	Loan 41050	2,060,000.00			
Georgian Bay Estates Limited Partnership	LOC #87599	3,200,000.00			
	Sub Total	11,657,500.00			
Dunn Capital Corporation			Larry Dunn 45%		
Dunn Capital Corporation	Loan 31284	2,092,573.00	Larry Dunn 45%		
Dunn Capital Corporation	LOC 15358	750,000.00	Connor Dunn 55%		
Dunn Capital Corporation	LOC 86067 (Letter of Credit)	163,676.25			
	Sub Total	3,006,249.25			
The Lora Bay Corporation			Lora Bay Holdings, Inc. 71%	Dunn Capital Corporation 29%	Larry Dunn 45%
The Lora Bay Corporation	Loan 33100	5,606,451.00	Dunn Capital 60%	N/A	Connor Dunn 55%
Hunter Milborne (cash secured)	GTE to GB Estates (\$250,000)	-	1395840 Ontario Limited 30%		
The Lora Bay Corporation	Loan 45595	357,000.00	Dunn Family Trust 10%		
	Sub Total	5,963,451.00			
HARBOUREDGE MORTGAGE INVESTMENT CORP			Larry Dunn 25%	>>>>>	Larry Dunn 25%
HarbourEdge Mortgage Investment Corp	LOC 25342	12,000,000.00	Timothy Dwyer 25%	N/A	N/A
			Robert Turbitt 25%		
			Christopher Harrop 9%		
			Steve Prest 9%		
			Fred Thomson 7%		
HBE Capital Corporation	Guarantor \$12,000,000				Larry Dunn 80%
					Tim Dwyer 25%
					C Harrop 15%
	Sub Total	12,000,000.00			

Details on the individual borrowers are provided below.

4.1. The Lora Bay Corporation ("Lora Bay")

In January 2017, PACE invested \$6 million to acquire a 15% interest in Lora Bay. Based on DICO's review of the Credit Union's files on this transaction, there was no evidence that management or the Board obtained the benefit of outside advisors or counsel to complete the transaction, i.e. to ensure PACE's investment had the necessary market value to justify the investment or that PACE's security was valid and enforceable. As such, DICO has a concern that in the event of default, PACE may have to take a write-down on the investment, which could negatively impact its capital.

- In addition to the \$6 million investment, PACE has \$7 million in loans to Lora Bay, bringing the total exposure to \$13 million.
- A review of the account activity for 1916761 Ontario Limited ("1916") indicated the Credit Union paid \$180K in January 2017 to Malek's holding company for "Consulting and referral fees for the placement of the Lora Bay Corporation Debenture as approved by the Board of Directors of Pace \$6,000,000 @ 3%" (please see Appendix E). The payment was approved by the Audit Committee. The Credit Union's files do not document any rationale as to why Malek's holding company was paid this amount or if Malek had specific expertise that warranted such a payment or whether any of these funds subsequently flowed to Larry Smith.

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- Given the weak structuring and minimal due diligence on the transaction, DICO is concerned that this represents self-dealing for the benefit of Malek and perhaps Larry while posing undue risk to the Credit Union.
- At the time of writing DICO was not able to determine if any other payments were made by any of the Dunn et al companies to Larry or Malek.

4.2. Harbouredge Mortgage Investment Corporation ("Harbouredge")

Harbouredge is a mortgage investment corporation to which PACE first approved a \$1 million line of credit back in 2007. The facility has increased over the years and now stands at \$12 million. DICO's concern, based on a review of various loan files of Harbouredge, is that Harbouredge is effectively a sub-prime lender and that the loan may be under-collateralized. This loan appears to represent material risk to the Credit Union. We provide some details of the loan transaction below:

- The value of PACE's collateral security could not be verified because, based on DICO's understanding from the various loan files, the collateral for the credit facility is an assignment of the borrower's mortgage interest in the properties financed by the borrower, i.e. PACE is a lender to a lender and its collateral security is an assignment of the borrower's collateral security.
- As per PACE's 2017 annual review of the credit facility, the borrower does not confirm the value of the properties it holds as security (which in itself is indirect security, i.e. line of sight is blurred) and does not hold appraisals on file (it relies on the borrower's listings); Per Harbouredge's FYE2016 audited financial statements:
 - Harbouredge had real estate assets of \$223 million, after taking a \$34.6 million (13%) write down.
 - Of the \$223 million of real estate assets, \$69 million, or 31% were held on the books as settlement of debts.
 - An additional \$49 million, or 22%, were past due on their repayments.
- Given the 13% write-down, the 31% being held as settlement of debts, and the 22% being past due, DICO is of the opinion that Harbouredge is a sub-prime lender.

4.3. Georgian Bay Estates ("Georgian Bay")

PACE first lent \$3.3 million to Georgian Bay in June 2009 to help develop approximately 10 acres of land surrounding the Georgian Bay Club. DICO's main concern on this file is that in case of default, the Credit Union appears to have insufficient collateral. Therefore, this loan appears to represent material undue risk to the Credit Union. While DICO does not have copies of the loan documents on file at the time of writing, the details below provide some additional context on the credit facilities based on the said review.

- The original loan was on an interest-only basis, and the 2016 loan annual review completed by PACE, as well as updated credit agreements, suggest that the loan still remains as an interest-only loan.
- The original funding was not supported by a valid appraisal (the appraisal did not have an "as-is" value) and as such, the value of PACE collateral security cannot be determined.

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- The loans do not appear to have any financial covenants in place and the ability to service debt payments is not evident.
- PACE increased its total exposure to \$12.3 million in 2016 based on a 2009 appraisal valuing the property at \$7 million resulting in a calculated LTV of 176%, which is off-market.
- Despite the increased credit facilities, weak credit structure, and no documentation on the value of the collateral, the Credit Union released Larry Dunn's personal guarantee in November 2017.

4.4. Dunn Capital Corporation ("Dunn Capital")

Dunn Capital is a real estate development and holding company operating in the Collingwood, Ontario area. In May 2018, PACE increased its exposure to Dunn Capital from \$3 million to \$15.4 million, mainly on account of providing additional loans backed by various real estate properties. Additionally, the reported ownership structure of the corporation changed from Larry Dunn (100%) to Larry Dunn (30%) and his two children Connor Dunn and Cullen Dunn at 35% each (there is conflicting information in the Credit Union's files because per the entity's shareholder register dated August 2018, Larry Dunn is still 100% owner).

DICO's concern is that despite Dunn Capital's demonstrated inability to meet its debt obligations in F2015 and F2016 (this per commentary in PACE's loan files dated Feb. 2017), PACE increased its exposure to the entity by an incremental \$12.4 million, without having personal guarantees, valid property appraisals, or the company's FYE2017 financial statements on file. Therefore, this loan appears to represent material undue risk to the Credit Union now. We provide some details of the credit facility below:

- The facility is a line of credit where the supporting collateral is comprised of eleven properties and a VTB. The values of the properties and the VTB cannot be determined because PACE has used opinions of value (provided by a Remax agent) rather than the industry accepted standard practice of using AACI appraisals.
- Therefore, the LTV, which is stated as 63% in the credit file, cannot truly be determined accurately.
- The facility is non-amortizing and repayments are on an interest-only basis.
- The facility is not supported by personal or corporate guarantees. Although Dunn Capital's FYE is December, a significant increase from \$3 million to \$15.4 million was approved in May 2018, based on FYE2016 financial statements.
- Per PACE's February 2017 annual review:
 - Dunn Capital's FYE2015 EBITDA was \$821K and total third-party (non-related) debt was \$13.7 million.
 - Based on PACE's calculation at the time, the borrower was not able to service the debt. The debt service coverage ratio, which measures the borrower's ability to repay the debt, was 0.86x. Moreover, the calculation appears faulty because it does not account for payments required by contract on related party loans of \$5.2 million (interest ranges from 8% to 10%).
- Per PACE's May 2018 credit submission, which recommends an increase of \$12.4 million in debt:

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- Dunn Capital's FYE2016 EBITDA was \$762K and total third-party (non-related) debt was \$14.3 million (i.e. EBITDA was lower than previous fiscal year end and debt was higher than previous fiscal year end)
- DICO could not locate any discussion of the debt service coverage ratio in the 2018 credit submission

5. 1934811 Ontario Limited ("1934") and John Duivenvoorden

1934 is a real estate holding company owned by John Duivenvoorden. In February 2016, PACE approved credit facilities of \$10 million to 1934 to help finance 170 acres of land in Barrie. An invoice discovered through the course of the investigation indicates that 1724725 Ontario Limited ("172"), a company owned by Golanski, alleged girlfriend of Larry (see Appendix B), received a payment of \$275K from 1934 shortly after the loan was granted. Also, it was observed that Williamson received payment of \$300K at approximately the same time. A copy of the invoice is provided in Appendix B, along with a Direction to Pay from R. Williamson Consultants Inc, which appears to be approved by PACE's Audit Committee.

DICO's concerns are that: 1) a family member of Larry, who is also a contract employee of PACE, is benefitting from a loan transaction funded by PACE, and this arrangement appears to be a conflict of interest; and 2) the Audit Committee does not appear to be fulfilling its fiduciary duty of reviewing and resolving such conflicts.

The diagram below provides an understanding of the persons and entities involved in the transaction. This diagram is followed by additional details of the transaction.

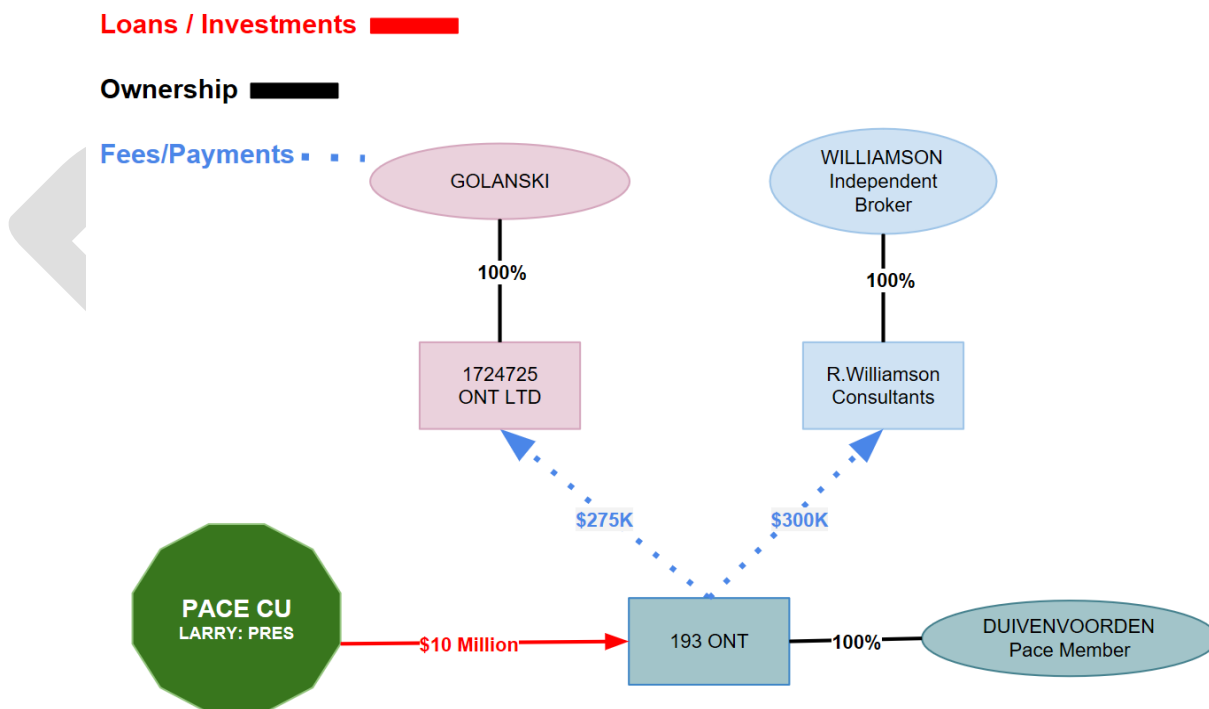


Figure 9: 1934 transaction

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- PACE credit application documents show the land was purchased for \$9 million and of the \$10 million in approved credit facilities only \$8,725K was drawn at the time of writing.
- Also, according to the documentation, a \$600K consultant fee was to be paid to R. Williamson Ltd. (DICO notes the inconsistency in the name of Williamson's company here as was transposed from the Credit Unions files, but believes it to refer to the same entities previously referred to as "R. Williamson Consultants Inc" and "R Williamson Consultants Ltd")
- Based on DICO's review of an email⁷ and 1934's bank account (excerpt in Appendix B), along with supporting information received from PACE, DICO believes the \$8,725K amount was disbursed as below:
 - \$7.3 million to fund the land purchase
 - \$150K for PACE's commitment fee
 - \$600K disbursed per instructions from R. Williamson Consultants Inc (approved by PACE Audit Committee) as follows:
 - \$300K to R. Williamson Consultants
 - \$12.5K each to Shawna Dudding and Cheryl Shindruk (both senior employees of Geranium, which is another PACE borrower and partner as detailed in this report above), and
 - \$275K to 172
 - \$675K for "interest capitalization", i.e. a PACE line of credit was set-up to pay interest on a PACE loan
- DICO has not been able to ascertain why PACE would need a direction from R. Williamson Consultants Inc. to collect its commitment fee, or the rationale for payments to Dudding, Shindruk, or 172.
- DICO could not confirm whether any of the \$275K paid to 172 on April 1st, 2016 subsequently flowed to Larry or his holdcos, however a transfer of \$500K was observed from 172 to 809, Larry's holdco, on June 9th, 2016.
- Cumulatively, the \$8,725K amount outstanding represents a loan-to-value of 97%, which is unusually high and represents undue risk to the Credit Union.
- The loan was also structured such that 1934 wasn't expected to repay any amounts until the lands were sold, i.e. no principal repayments and no scheduled amortization.

6. 2340938 Ontario Limited ("2340" as previously defined), in relation to the purchase of assets of Trayco Processing Inc. ("Trayco")

As noted above, 2340 is the company which PACE provided a loan to in 2017 to purchase a 45% interest in Continental Currency Exchange ("CCE" as previously defined) in 2017. Based on a review of several loan files, DICO's understanding is that 2340, operating formerly as Premier Poultry Products, purchased certain assets of Trayco from PACE, which had received those assets as part payment on a \$3.5 million loan to Trayco, which had defaulted. DICO found

⁷ Email from Brian Hogan to Larry and Barbieri dated Oct 24, 2017

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email evidence⁸ to suggest that Golanski, Larry's alleged girlfriend, may have been the true beneficial owner of Trayco, notwithstanding references in many internal PACE documents and correspondence to Arn Reisler in Trust as the owner (details in Appendix G).

By way of context, Arn Reisler appears to represent Larry and the Credit Union separately on a number of transactions and is the trustee on a \$7.2 million trust fund held at BMO, which DICO believes is being held for Larry's benefit as part of his termination/retirement compensation. Also, Arn Reisler is a Director in one of Larry's main holding companies, 142. 142 owns significant assets (including an interest in Mass Insurance – (details provided later), and the company had net income of over \$1 million in each of the past two fiscal years (F2017 and F2016).

If Trayco was indeed owned by Golanski through her holding company, then DICO's concern is that Golanski's ownership of a company, which defaulted on a significant loan from the Credit Union, may have been deliberately hidden from the Credit Union's Board and DICO.

Additionally, this would be a material example of credit facilities advanced to Larry et al, where due diligence was lacking, terms and conditions were friendly and off-market, and personal guarantees of Larry and family members were missing. So, if/when the borrower is successful, Larry and family benefit, but when the borrower fails, the Credit Union takes the loss.

Appendix G provides a full history of the transactions related to Trayco in chronological order to illustrate how PACE ended up taking a loss of approximately \$3.7 million on loans related to Larry et al.

The graphical representation below illustrates the entities involved in the transactions:

⁸ Various emails from Larry Smith to "Teddy Bear" ted@platinumpoultry.com, "Jim Dean" jim@platinumpoultry.com, "Alison Golanski" agolanski@pacecu.com, "Jane Doe" o1724725ontltd@ymail.com (which is also Alison Golanski's email address), "Arn Reisler" areisler@wastecogroup.com, and "Suzanne Hyde" shyde@pacecu.com. The emails are dated from Dec. 13, 2007 to Feb. 27, 2009.

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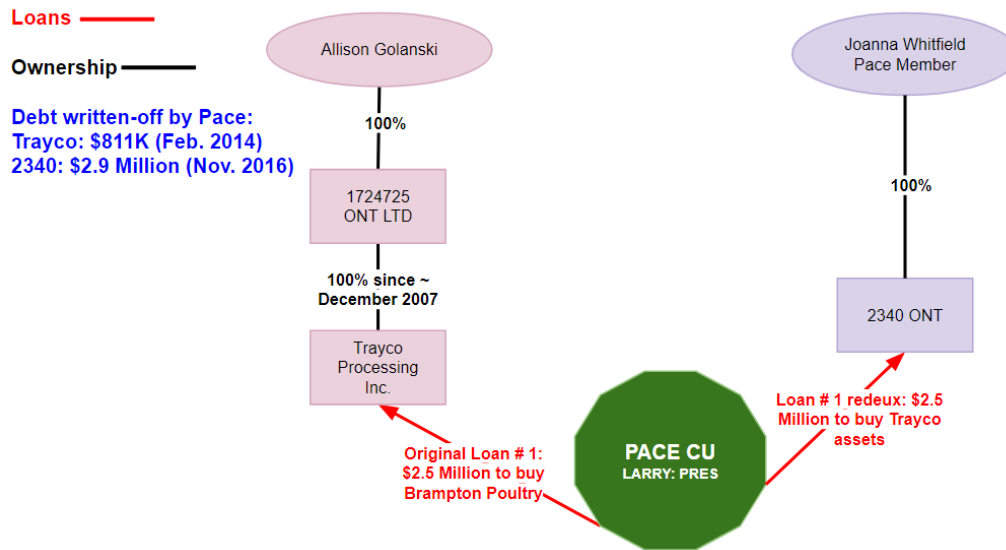


Figure 10: Trayco transaction

7. Minas et al

PACE approved and advanced two commercial mortgages for Minas et al during the first half of 2018 for a total exposure of \$11.8 million. Based on DICO's investigation, the loans appear to be off-market and put the Credit Union's capital at undue risk. Additionally, a consultant's fee of \$480K, or 4% of the total exposure, was paid to Table Rock Holdings Inc. ("Table Rock"). The fee appears to be high and off-market. A review of Table Rock's corporate profile report revealed Williamson to be the only Director and Executive of the corporation. While DICO does not have any evidence that portions of the fee benefitted Larry or his family members, DICO considers this payment to be suspicious.

The sub-section below provides some details about the loans.

Victor and Janet Minas \$6.85 million loan on a personal residential property:

- PACE files note that the borrower's professional denturist corporation had declining revenues for the last two years and had historically reported net losses.
- DICO did not find evidence of the borrower's ability to service the loans and PACE documents noted that of the funds approved, \$480K was for interest capitalization.

Minas Holdings \$4.95 million commercial mortgage:

- PACE files indicate a loan to value of 88%. The commitment letter does not stipulate any financial covenants and requires the borrower to provide Notice to Reader financial statements. Such a structure appears to be off-market.
- Based on the FYE 2016 and FYE 2017 financial statements, the debt service coverage ratio was 0.41x and 0.62x, which is not enough to repay the loan. DICO did not find evidence of the borrower's ability to service the loans and PACE documents noted that of the funds approved, \$346K was for interest capitalization.
- DICO has not found evidence that any portion of the consultant fee was paid to Larry et al, however, based on the pattern observed in SusGlobal and 1934, where a consultant

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fee was supposedly paid to Williamson but then a large portion of the fee was later found to be paid to Larry or his family members, and given that the fee in this instance is unusually high, at 4% of the loan amount, DICO has suspicions that Larry et al may have benefitted personally in this transaction.

8. Noble House Development Corporation et al ("Noble House")

PACE approved and advanced a line of credit of \$5.5 million for Noble House during late 2017/early 2018. Based on DICO's investigation, the credit facility appears to be off-market and puts the Credit Union's capital at undue risk. Additionally, PACE records show that a consultant's fee of \$400K, or 7.3% of the total exposure, was paid to R. Williamson Consultants Limited. The fee appears to be high and off-market. While DICO does not have any evidence that portions of the fee benefitted Larry or his family members (like in the case of SusGlobal and 1934, where Williamson was paid along with Larry and his alleged girlfriend's holding company, respectively), DICO considers this payment to be suspicious.

The sub-section below provides some details about the credit facility.

- The purpose of the credit was to re-finance some commercial property in Huntsville, Ontario.
- The facility was approved as a line of credit, i.e. no amortization. Typically, monies lent against commercial real estate have an amortization period in the 15 to 25-year range.
- Loan to value at time of funding, per PACE loan file, was 102%. DICO did not find evidence of the borrower's ability to service the loan and PACE loan file shows that of the \$5.5 million total approved, \$250K was set aside as "interest capitalization", i.e. PACE loans the money to the borrower so it can be paid interest due to itself.
- DICO has not found evidence that any portion of the consultant fee was paid to Larry et al, however, based on the pattern observed in SusGlobal and 1934, where a consultant fee was supposedly paid to Williamson but then a large portion of the fee was later found to be paid to Larry or his family members, and given that the fee in this instance is unusually high, at 7.3% of the loan amount, DICO suspects that Larry et al may have benefitted personally in this transaction.

9. Newmarket Mainstreet Holdings Inc. ("Newmarket")

Larry and PACE's former VP Credit, Brian Hogan ("Hogan"), who retired in early 2018, jointly owned Newmarket, which received a loan of \$3.6 million from the Credit Union in 2017. From the information available at this time, DICO is concerned that the loan to a restricted party was made on off-market terms at undue risk to the Credit Union and that Larry and Hogan's interest (80%/20% respectively) in the company was not disclosed at the appropriate time to the Board of the Credit Union or on the credit files. The shareholder's register shows Larry and Hogan owned the entity from Dec 2016 until April 2018.

Larry's personal connection to Newmarket also became apparent based on DICO's review of the bank accounts of Larry's holding company 142 and Golanski's holding company 172. The following payment transfers from/to Newmarket were observed:

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- December 6, 2016: Newmarket received \$25K from 142.
- April 11, 2017: Newmarket paid \$30K to 172.

Additional details about the loan and transaction are provided below:

- The loan documents misrepresented the owner as one Mr. Ross Jones (who owned just the liquor license for a bar on site).
- The loans had the following elements that suggest it was made on off-market terms:
 - The loan was amortized over 30 years, which is unusually long, with the market convention typically being of 20 years or maximum 25 years in very limited/special circumstances; and
 - The loan was approved for \$3.6 million in Jan 2017 based on an appraisal completed in Dec. 2016 which valued the property at \$3.05 million, i.e. PACE provided a loan for 18% more than the appraised value of the property. More typical for this scenario is 65% LTV or 75% under special circumstances.
- The credit submission from the Credit Union indicates that the borrower could not service the debt.
- DICO could not locate personal guarantees for the debt.
- The credit submission of Jan 2017 was reviewed by Hogan, VP Commercial Credit, while he owned 20% of the property. Hogan was also a signing member to the Credit Committee that approved the loan.
- An attachment to the credit submission is an Equifax credit report that shows four different statements of claims against the tenant of the property totaling over \$7 million. There is no discussion of the claims in the credit submission or approval.
- As per Credit Union loan documents, Larry and Hogan purportedly sold their interest to a PACE borrower, Elisa Soscia, in April 2018; however, as per review of email traffic, Larry and Hogan appear to have sold in November 2017. PACE funded the purchaser, despite the fact that the tenant had material claims against it.
- The June 2018 credit submission notes the change in ownership from Ross Jones to Elisa Soscia, and for the first time includes a conflicting reference to Larry and Hogan as the former owners.

10. Larry and Associates' Interest in Other Entities

From the information gathered, DICO has observed several other instances in which Larry, his family members and/or associates are involved in transactions with the Credit Union. The charts below illustrate the connections for which DICO has information at the time of writing.

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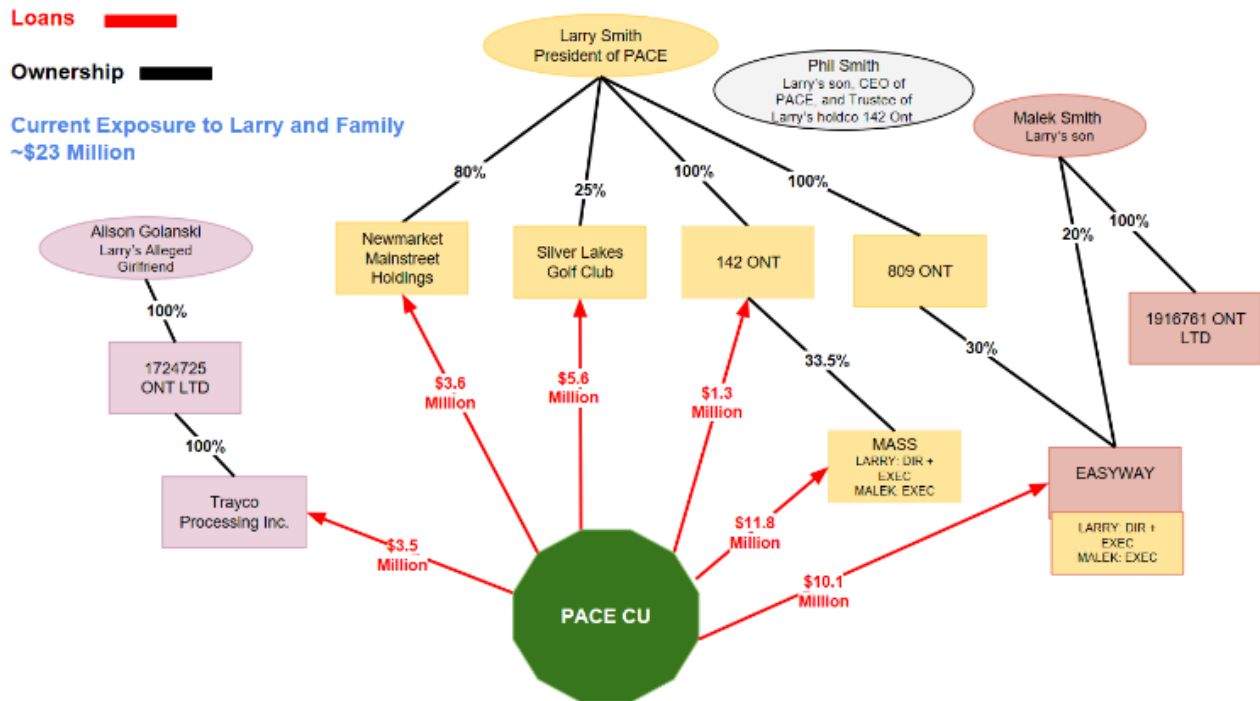


Figure 11: PACE loans to Larry and family members (note: Current Exposure does not include (a) Newmarket or Silver Lakes, both of which have been sold in the last 12 – 18 months or (b) Trayco, which has been written-off in previous years.

Entity	Amount	Ownership	Roles	Comments
Newmarket	\$3.6 million	Larry 80% Hogan 20%	Not known to DICO at this time	Entity has since been sold
Silver Lakes	\$5.6 million	Larry 25%	Not known to DICO at this time	Entity has since been sold
142	\$1.3 million	Larry 100%	Larry: Director, President Arn Reisler: Director Phil: Secretary	Owens 33.5% of Mass
809	None known	Larry 100%	Larry: Director, President, Secretary	Owens 30% of Easyway
Easyway	\$10 million	809 (Larry) 30% 191 (Malek) 20%	Larry: Director, Secretary, Treasurer Malek: Executive	
Mass	\$11.8 million	142 (Larry) 33.5%	Larry: Director, Secretary, Treasurer Malek: Executive	
Trayco	\$3.5 million	172 (Golanski) ¹ 100%	Arn Reisler: Secretary	PACE wrote-off \$3.7 ² million in bad debt

¹DICO believes the owner could be 172, Golanski's holding company, based on review of emails (as discussed in this report above)

²The amount includes \$2.9 million written-off on 2340 (details in this report above)

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- All entities have Larry and/or another Smith family member as a key owner, director and/or executive in the corporation.
- Generally, the loans are materially off-market with lax reporting requirements, stretched repayment terms, generous LTV's (100% in some instances, i.e. nil owner's equity), and deficient collateral or security. Appendix I provides further information on the terms of certain credit arrangements.
- Pricing appears to be friendly and not appropriate for the underlying risk to the Credit Union.

11. Disclosure of PACE's contingent liability and other issues in FYE2017 audited financial statements

In the context of the Highland Gate Joint Venture (see above) the loan documents & resolutions suggest that PACE provided TD Bank with a substantial guarantee (\$15.5 million approximately, i.e. 11.83% of \$131 million).

This material guarantee, which is close to the Credit Union's lending limit at the time (25% of Regulatory Capital) is absent and undisclosed in the Credit Union's audited financial statement for year ended Dec 31, 2017, both consolidated and unconsolidated. DICO would have expected such disclosure to be included, at a minimum, in the "contingent liability" note disclosure to the statements.

This and other concerns noted in this document potentially impacting the FYE2017 financial statements were also communicated to the Auditors (Deloitte LLP) but, as yet, DICO has not received any response from them.

DICO also observed that Note 11 in the audited financial statements discloses Commercial Loans of \$394 million as "Unsecured". This notwithstanding that the Note also states that loans are secured by various types of collateral, including charges on property.

The above issues call to question the accuracy/integrity of the FYE2017 audited financial statements.

12. PACE's consulting contract with Klees & Associates Ltd. and Frank Klees ("Klees")

DICO believes that the consulting contract (Appendix J) between PACE and Klees, a current director of the Credit Union, is in contravention of the Act, which provides that a director, or a partnership or corporation from which he/she receives compensation, shall not act, for compensation, in a profession capacity in respect of business matters related to the credit union. Moreover, DICO believes this arrangement put Klees at a conflict and potentially impairs his ability to perform his fiduciary duty.

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The contract appoints Klees as "Vice President/Senior Advisor Strategic Development and Community Relations" and is signed by Larry Smith in his capacity as President and CEO at that time (December 2012) and provides for the following compensation to Klees.

- Provides Klees with a retainer of \$5K per month from December 2013 to December 2014 and thereafter \$10K in aggregate until December 2018. The retainer being a draw against other compensation as provided for separately under the agreement.
- Provides for "other Compensation and/or Commissions and Bonus" as determined at the sole discretion of the President of the Credit Union (Larry), or in his absence the CEO (Phil). Such compensation defined as 0.25% of the "loan value of a transaction" or 25% of the commitment fees and 2% of the Combined Pro-forma Profit Estimate for joint Venture/Development Projects.

Based on DICO's analysis of certain ledger entries of PACE, Klees' monthly retainer/compensation appears to have increased starting May 2018 to \$12.5K. The timing appears to coincide with Mr. Klees being appointed to PACE's board in April 2018.

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Regulatory Compliance Issues

13. Disclosure of true beneficial ownership of PACE's Borrowers, Investees and Subsidiaries

In many cases the true beneficial ownership of the borrowers, investees, and subsidiaries has been very difficult to ascertain from the records of the Credit Union. In this regard, the extent of misleading information and omission of relevant information in key loan files and investment documents is sufficient for DICO to be concerned that there is a deliberate effort underway to obscure the identity of certain beneficial owners. Below is a list of some of the practices which have made the identification of beneficial ownership very challenging:

- Recording ownership in a nominee's name, i.e. using a lawyer or another corporation as a trustee - example: Trayco Processing Inc. ownership showed Arn Reisler in trust while Golanski's holding company appears to have been the 100% beneficial owner. Golanski has a consulting/compensation contract with PACE where she is paid commissions on new deals, renewals of deals she has sourced in the past, and other ad hoc fees/commissions. As such, Golanski would be a restricted party and thus subject to disclosure to the Board; however, DICO could not find evidence of appropriate disclosure for Golanski's activities.
- Recording ownership incorrectly in the loan documents, for example in the case of Newmarket Mainstreet Holdings, of which Larry owned 80% and Hogan owned 20%, the loan documents showed a third-party, a Mr. Ross Jones, as the 100% owner. Such an omission, intentional or otherwise, would have the effect of removing the requirement for Board approval of a restricted party transaction, which is even more egregious given the high risk of the loan for the Credit Union.
- Engineering ownership to avoid be "connected" party exposure limits under Act and Regulations. For example, the case of Dunn Capital where originally Larry Dunn was the 100% owner but recently (May 2018) reduced his stake to 30% with the remainder 70% split evenly between his family members. The possible objective being to have the investment limit of 25% of Regulatory Capital (from the Act) apply to each loan individually rather than the aggregate "connected" exposure, thus allowing much greater exposure to the connected parties. Nevertheless, since Dunn's interests were purportedly divested to his family members, they may still be connected within the meaning of the applicable regulatory regime.

14. Properties being held for sale

PACE currently holds five properties for sale, all of which were the result of non-performing loans. Some of these have been held for over two years which requires DICO approval under the Act/Regs. At the time of writing, PACE has not requested or obtained DICO approval for such.

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DICO is concerned that PACE is holding the properties on its books to avoid recognizing losses that it is required to recognize pursuant to DICO By-Law No.6, which in turn raises the following concerns:

- PACE has been writing loans at very high LTV's, as identified on various other files reviewed;
- PACE may not be taking adequate allowances on its commercial portfolio which could mean the Credit Union's financial position is weaker than reported; and
- Some of the properties, which are wholly unrelated to the business of a credit union, are being managed by PACE staff on an operational basis.
- DICO is unclear about the rationale for PACE to continue to hold these properties other than possibly to avoid recognizing losses on bad loans.

15. Establishment of various subsidiaries without prior DICO approval.

PACE Financial Ltd., PACE General Partners Ltd., PACE Capital Partners LP, and PACE International LLC were all established under an existing subsidiary, PACE Securities, without DICO approval, despite the Credit Union having been previously censured by DICO for exactly this behaviour when they established PACE Insurance in 2014 without seeking DICO's prior approval.

Rather than take punitive actions that could have had caused financial harm to the Credit Union, DICO required the Credit Union to retroactively apply for the subsidiaries. While PACE has made application for approval of the subsidiaries, the applications lacked the appropriate disclosure and dismissed DICO's authority over the subsidiaries. The process has taken several months because of the incomplete and inconsistent responses from the Credit Union despite repeated efforts by DICO to communicate the deficiencies and provide opportunities for correction the deficiencies. As of the time of writing, the applications remain deficient.

16. Breach of investment limit in an existing subsidiary

The Credit Union invested \$1.7 million in PACE Capital Partners LP, which is an unauthorized subsidiary of PACE Securities, bringing the total direct and indirect investment by the Credit Union in PACE Securities, to \$6.4 million, in contravention of a DICO limit of \$5.5 million communicated in the approval conditions for PACE Securities.

17. Potentially inaccurate Disclosure of total annual compensation on audited financial statements

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DICO's calculation of the aggregate payments to Larry in 2017 does not reconcile with the number reported in the 2017 financial statements of the Credit Union. The Special Committee failed to respond to requests from DICO's legal counsel for information regarding Larry's compensation, therefore insufficient information was made available to DICO to reconcile the difference.

Given the information available, DICO performed the following limited review of Larry's compensation.

- A review of the break-down of Larry's total annual compensation as reported on the FYE2017 financial statements, as provided by the credit union;
- A review of the bank statements of Larry's two holding companies, 142 and 809, and supplemental correspondence and documentation provided by the credit union (mainly payments received from PACE on account of invoices submitted by the two respective holding companies and/or pre-arranged contractual arrangements between PACE and the respective holding companies);
- A tally of payments to Larry or his number companies that DICO has evidence of.

To the best of DICO's knowledge, Larry and his holding companies received a total of \$1.861 million in 2017 (including his base salary which DICO believes to be \$300k), \$1.486 million from PACE to the holding companies, and \$375K from borrowers, partners, brokers, subsidiaries, co-investors etc. to Larry's holding companies (Note, \$75K of this was direct to Larry related the CCE transaction). Accordingly, Larry's direct and indirect 2017 compensation as calculated by DICO was approximately \$1.17 million more than the amount reported on PACE's financial statement.

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Appendices

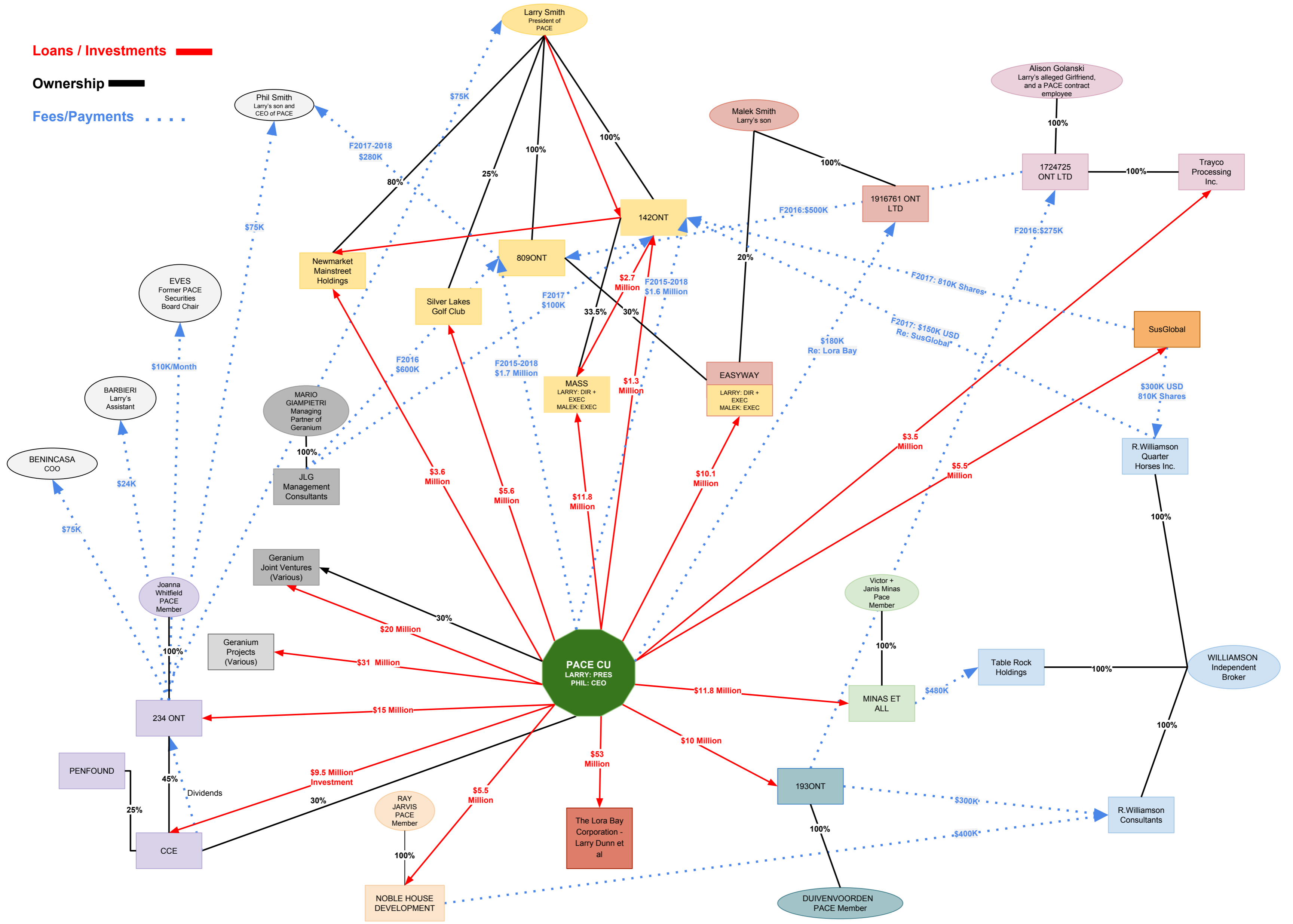
Appendix A	Overview of Relevant Parties and Transactions
Appendix B	Documentation to prove relationship and payments between Alison Golanski (1934) and Larry Smith (172)
Appendix C	Contracts related to consulting fee arrangements between PACE and Larry's holding companies (142 and 809) and copies of the BMO trust accounts.
Appendix D	Letter from Ron Williamson Quarter Horses Inc. confirming Larry's holding company 142 received payments from a PACE borrower, SusGlobal.
Appendix E	Invoice, approved by PACE's Audit Committee, from 1916761 (Malek's holding company) to PACE re: Lora Bay consulting / referral fee of \$180K
Appendix F	Invoices from 809 and 142 to PACE re: Highland Gate, approved by Audit Committee.
Appendix G	Chronology of Trayco
Appendix H	Letter from Arn Reisler to PACE noting that beneficial ownership of Trayco will be advised in due course
Appendix I	Restricted Party Transactions
Appendix J	Frank Klees consulting contract

Appendix A – Overview of relevant parties and transactions attached.

Loans / Investments █

Ownership █

Fees/Payments ⋯



Appendix B: Evidence of Golanski being related to Larry, and Golanski's holdco 172 receiving payments from a PACE borrower, 193.

From: Mary Benincasa <mbenincasa@pacecu.com>
Sent: Wednesday, August 1, 2018 8:00 AM
To: Alex AL. Lalonde <alalonde@dico.com>
Subject: RE: 1724725 Ontario Inc.

Sorry Alex just saw your email – Alison Golanski is Larry's girlfriend.

Thank you for choosing PACE,

Mary



Mary Benincasa
Chief Operating Officer
8111 Jane St. Unit 1
Vaughan, ON, L4K 4L7
T: 905 660 2848
F: 905 738 8265
mbenincasa@pacecu.com
www.pacecu.ca



Tue 2017-10-24 10:44 AM

Brian Hogan <IMCEAEX-_O=EXCHANGELABS_OU=EXCHANGE+20ADMINISTRATIVE+20GROUP+20+28FYDIBOHF23SPDLT+
FW: 1934811 Ontario Ltd (Duivenvoorden)>

To Smith, Larry

Cc 'Mary Barbieri'

 This message was sent with High importance.



Hi Larry:

This matter was escalated to me on Friday due to the filing requirements by BDO.

On April 1, 2016 we charged 1934811 Ontario (Duivenvoorden) \$600,000 for consulting fees and \$150,000 for a PACE commitment fee.

The consulting fee broke down as follows:

\$12,500.00	Shawna Dudding
\$12,500.00	Cheryl Shindruk
\$275,000.00	1724725 Ontario
\$300,000.00	R. Williamson Consulting

1724725 Ontario Limited

c/o
8111 Jane Street, Unit 1,
Ontario, Canada L4K 4K7

Q *Lee*

INVOICE

DATE April 1 2017
INVOICE # 001-16
CUSTOMER ID n/a
DUE DATE 30/04/2017

BILL TO

1934811 Ontario Limited
3425 9th Line
Innisfil, Ontario
L9S 3Z6

DESCRIPTION	TAXED	AMOUNT
To consulting and management fees re Real Estate Development, financing and Historical Matters on direction from R. Williamson Consultants		275,000.00

Paid Dec 11

86007 7189 RT 0001

1. Total payment due in 30 days
2. Please include the invoice number on your check

Paid May 30

Subtotal 275,000.00
Taxable 0.00
Tax rate 13.000%
Tax due 35,750.00
Other
TOTAL \$ 310,750.00

Make all checks payable to
1724725 Ontario Limited

Thank You For Your Business!

PACE Corporate Head Office

8111 Jane St.
Unit 1 & 2 Vaughan, ON
L4K4L7
905 738 8900

MEMBER INTERIM STATEMENT

1934811 ONTARIO LIMITED 3425 9TH LINE, INNISFIL, ON L9S 3Z6	Statement Period		
	November 1, 2015 - August 2, 2018		
	Account No.	Cheques Written	Page
	88968	0	1

comm Internal Acct

ACCOUNT TRANSACTIONS				
Description	Withdrawals	Deposits	Date	Balance
Previous Statement Balance			31 Oct 2015	0.00
LNS PYMT 0041361		8,050,000.00	30 Mar 2016	8,050,000.00
Canadian Wire	7,299,825.00		30 Mar 2016	750,175.00
TSF To 88015	175.00		30 Mar 2016	750,000.00
Commitment Fee	150,000.00		1 Apr 2016	600,000.00
* Official Cheque 203770 -	12,500.00		1 Apr 2016	587,500.00
* Official Cheque 203772 -	12,500.00		1 Apr 2016	575,000.00
* TSF To 21856 - <i>1724725 Ontario Limited</i>	275,000.00		1 Apr 2016	300,000.00
Misc		7.00	1 Apr 2016	300,007.00
* Canadian Wire - <i>Surv. Statement</i>	300,007.00		1 Apr 2016	0.00
LNS PYMT 0041361		508.50	12 Apr 2016	508.50

April 1st, 2016

DIRECTION TO – Pace Savings and Credit Union Limited

FROM – R. Williamson Consultants Inc.

Re: 1934811 Ontario Limited – proceeds of Loan payable to R. Williamson Consultants Inc.

As per the attached authorization from 1923811 Ontario Limited (and John Duivenvoorden), consider this as your good and sufficient authority to distribute the funds due to R. Williamson Consultants Inc. as follows:

1. A wire transfer to R. Williamson Consultants, PO Box 820, Nobelton Ontario to Royal Bank of Canada Bloor and Yonge Branch @ 2 Bloor Street E Toronto
The amount is \$300,000. Route and transit is 06702-003 account number is 1408715
2. A transfer to Pace Savings and Credit Union for commitment fees in the amount of \$150,000
3. 2 Cheques – one to Shawna Dudding and the other to Cheryl Shindruk each for \$12,500 – re fees from Williamson/Pace re Ardaugh project payable for consulting fees
4. A transfer to account 21856 – re fees paid from Williamson Consultants to 1724725 – in the amount of \$275,000.

Dated at Toronto, Ontario this 1st day of April 2016



R. Williamson Consultants Inc

per R. Williamson – President.



Appendix C – Contracts related to consulting fee arrangements between PACE and Larry's holding companies (142 and 809) and copies of the BMO trust accounts attached.

November 7th, 2012

Pace Savings and Credit Union
Limited and 1428245 Ontario Limited

**November 7th, 2012 – Agreement to Amend the Consulting
Agreement dated July 1st, 2007**

July 1st, 2007 – Consulting agreement

THIS AMENDING AGREEMENT
Being the Second Amending Agreement
is made in duplicate this 14th day of December, 2017

BETWEEN:

PACE SAVINGS & CREDIT UNION LIMITED
(hereinafter called the "Credit Union")

-and-

1428245 Ontario Limited
(hereinafter called the "Consultant")

WHEREAS the Credit Union the Consultant are parties to an Agreement dated the 7th day of July 1st, 2007, ("the Agreement") as amended by the first amending agreement dated November 7th, 2012

AND WHEREAS the parties have agreed that certain changes to the Agreement are necessary in order to reflect the operational changes within the Credit Union and to recognize the complexities of the consultants responsibilities in particular reference to the addition of CCE, the expansion of the business of Pace Securities Corporation and Pace Insurance Brokers Pace property development responsibilities and the directorships and/or advisory roles related thereto

AND WHEREAS the parties are desirous of extending the contract of the consultant for the purposes of long term continuity of the services provided by the consultant and to clarify that the payments referred to in Paragraph 5. v) and 6. i) are separate and in addition to one other.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants contained herein and other valuable consideration the parties agree as follows:

Paragraph 3 of the Agreement is hereby amended by adding the words as follows;

Under this agreement the Consultant shall have the option of accepting director or advisor appointments to boards and/or operating entities associated directly or indirectly with the Credit Union provided that such appointments and the compensation related thereto are consistent with the business of the Credit Union and the appointments and compensation related thereto are disclosed to the Board of Directors and/or Executive Committee of the Board of Directors of the Credit Union on a regular basis.

Such compensation may be in addition to the compensation provided in this Agreement but same shall not be restricted to the activities or objects of the Credit Union .

Agreement to Amend the consulting agreement between 1428245 Ontario Limited and Pace Savings and Credit Union Limited dated the 1th day of July 2007 as amended by the first amending agreement dated the 7th, day of November , 2012



"Paragraph 5(v) of the Agreement is hereby amended by replacing July 31, 2015 with July 31st, 2025."

"Paragraph 6 (i) of the Agreement is hereby amended by adding the words following the words referred to in **"Paragraph v) of"** the contract to the termination date (**"being July 31st, 2025"**) and upon further payment of the proceeds of the Termination payment **"referred to in Paragraph 5. vii)** as adjusted from

The consultant hereby confirms the acceptance of the extensions and the terms and conditions contained in this Amending Agreement.

APPROVAL


The foregoing appointment and the entering into of this amending agreement by the consultant and the Credit Union has been duly authorized by the directors of the Credit Union such agreement was approved by the Board of Directors of the Credit Union by way of resolution on December 14th, 2017 . The Board Chair and Secretary or their designate are duly authorized by the Board of Directors to execute this agreement on its behalf.

BINDING ON SUCCESSORS

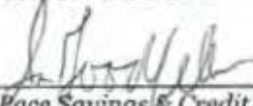
This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

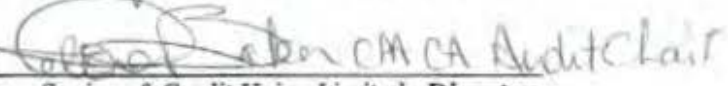
DATED at Vaughan, Ontario this 14th day of December, 2017.

1428245 Ontario Limited



PACE SAVINGS & CREDIT UNION LIMITED


_____ *Pace Savings & Credit Union Limited - Director*


_____ *Pace Savings & Credit Union Limited - Director*

I/We have the authority to bind the Corporation

I ACCEPT THE APPOINTMENT AS TRUSTEE OF THE SEVERANCE TRUST FUND ON THE TERMS STATED ABOVE.

Date: Dec 20/17


_____ *Signature (Trustee)*

Arn C.J. Reisler
_____ *Print Name*



THIS AMENDING AGREEMENT
is made in duplicate this 7th day of November, 2012

BETWEEN:

PACE SAVINGS & CREDIT UNION LIMITED
(hereinafter called the "Credit Union")

-and-

1428245 Ontario Limited
(hereinafter called the "Consultant")

WHEREAS the Credit Union the Consultant ar parties to an Agreement dated the 7th day of July 1st, 2007, ("the Agreement")

AND WHEREAS the Credit Union and Peoples Credit Union Limited entered into an amalgamation agreement effective January 1st, 2013 wherein the Credit Union will continue to carry on business as Pace Savings and Credit Union Limited

AND WHEREAS the parties have agreed that certain changes to the AGREEMENT are necessary in order to reflect the organizational changes within the Credit Union and to provide for severance funds agreed and committed to by the Credit Union in the former President's contract that were never funded as part of the severance arrangement specified in Paragraph E6 of the President's contract dated August 1st, 2010.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants contained herein and other valuable consideration the parties agree as follows:

"Paragraph 5(v) of the Agreement is hereby amended by replacing July 31, 2015 with July 31st, 2020."

"Paragraph 5(vii) of the Agreement is hereby amended by replacing 56 months consulting fees with "75 (seventy-five) months consulting fees"

"Paragraph 7 of the Agreement is hereby amended by replacing fifty-six (56) months with seventy-five (75) months "

The consultant hereby confirms the acceptance of the appointment on the terms and conditions contained in this Amending Agreement.

APPROVAL

The foregoing appointment and the entering into of this amending agreement by the consultant and the Credit Union has been duly authorized by the directors of the Credit Union such agreement was approved by the Board of Directors of the Credit Union by way of resolution on October 30th, 2012 . The Board Chair and Secretary or their designate are duly authorized by the Board of Directors to execute this agreement on its behalf.

INSPECTED / APPROVED
DEC 11 2012
PACE Savings &
Credit Union Limited
AUDIT COMMITTEE

[Handwritten Signature]
[Handwritten Signature]

Agreement to Amend the consulting agreement between 1428245 Ontario Limited and Pace Savings and Credit Union Limited dated the 1st day of July 2007,

Page 2.

BINDING ON SUCCESSORS

5. This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

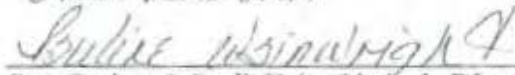
DATED at Vaughan, Ontario this 7th day of November, 2012.

1428245 Ontario Limited

PACE SAVINGS & CREDIT UNION LIMITED





Pace Savings & Credit Union Limited - Director
C. Rubin, Board Chair


Pace Savings & Credit Union Limited - Director
Pauline Wainwright, Board Secretary

I ACCEPT THE APPOINTMENT AS TRUSTEE OF THE SEVERANCE TRUST FUND ON THE TERMS STATED ABOVE.

Date: November 7, 2012


Signature (Trustee)

Arn C.J. Reisler
Print Name



THIS AGREEMENT is made in duplicate this 1st day of July, 2007

BETWEEN:

PACE SAVINGS & CREDIT UNION LIMITED

(hereinafter called the "Credit Union")

-and-

1428245 ONTARIO LIMITED

(hereinafter called the "Consultant")

RECITALS

WHEREAS the Credit Union has retained the Consultant for the purposes of performing certain management, data processing and other services for the Credit Union.

AND WHEREAS the Credit Union and Consultant wish to confirm the terms of their Agreement for the Consulting services;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants contained herein and other valuable consideration the parties agree as follows:

RESPONSIBILITIES

1. The Consultant will report to the Board of Directors and will discharge such duties as assigned by the Board. These duties may include but are not limited to:
 - Public Relations – Which can include representing the Credit Union with external organizations associated with the Credit Union or the Credit Union movement;
 - Marketing
 - Management and/or Data Processing Services;
 - Investigation and analysis of merger and acquisition opportunities;
 - Other duties as mutually agreed by the Consultant and the Board.
 - Mergers & Acquisitions
 - Amalgamations
 - Trust Fund Administration

APPOINTMENT

2. The Credit Union hereby confirms the appointment of the Consultant, to hold such appointment until otherwise terminated in accordance with the terms of this Agreement.
3. The Consultant hereby confirms the acceptance of the appointment on the terms and conditions contained in this Agreement.

APPROVAL

- 4 The foregoing appointment and the entering into of this Agreement by the Consultant and the Credit Union has been duly authorized by the directors of the Credit Union pursuant to the authority conferred upon the executive committee and such agreement was originally approved by the Executive Committee on October 28th, 2002.

COMPENSATION

- 5 In consideration of the Consultant's services described herein and the entering into of this agreement the company agrees to pay to the Consultant the compensation described below:

- i) A fee of \$275,000.00 for the period August 1st, 2003 to July 31st, 2004;
- ii) A fee of \$180,000.00 for the period August 1st, 2004 to July 31st, 2005;
- iii) A fee of \$320,000.00 for the period August 1, 2005 to July 31st, 2006;
- iv) A fee of \$320,000.00 for the period August 1st, 2006 to July 31st, 2007; *fees, as well as*
- v) A minimum fee of \$20,000.00 per month for the period August 1st, 2007 to July 31st, 2018²⁰ adjusted from time to time per invoices and/or declared bonuses as approved from time to time by the Board of Directors of Pace;
- vi) Out of pocket expenses as invoiced;
- vii) A Termination Payment equal to 56 months consulting fees as described in paragraph 7;
- viii) ~~All fees are inclusive of GST.~~

TERMINATION

FEES DO NOT INCLUDE HST

- 6 This agreement will terminate upon the happening of any of the following events:
 - i) After the expiry of 6 months' written notice of intention to terminate this Agreement given by the Credit Union or the Consultant and upon payment of the compensation referred to in the contract to the termination date and upon further payment of the proceeds of the Termination Payment as adjusted from time to time, net of advances, borrowing or drawdowns by the Consultant;
 - ii) Upon the death of Larry Smith, the principal of the Consultant;
 - iii) At the option of the Consultant, one minute before the effective date and time of an administration order made pursuant to subsection 294 (1) of the Credit Unions and Caisses Populaires Act (the "Act") or the appointment pursuant to the Act of a Liquidator of the Credit Union's assets.

F) TRUST FUND

- 7 In order to secure the Termination Payment due to the Consultant in accordance with the terms of this Agreement the Credit Union has agreed to place in trust a sum equal to fifty-six (56) months of consulting fees at the rate specified in subparagraph 5(v) to be administered by the Trustee named herein upon the following trusts:

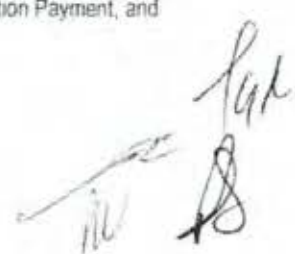
- i) The Trust Fund shall be maintained in the name of the Trustee, in trust for PACE Savings & Credit Union Limited, at a financial institution as chosen by the Trustee, together with the trust fund, now in existence, for the benefit of senior employees of the Credit Union to be jointly administered by the Trustee and the senior employees and the Consultant who are beneficiaries of the trust, and in the event of disagreement, the decision of the Trustee shall be final;
- ii) The Credit Union shall adjust the Trust Fund from time to time as may be required to ensure that the principal monies deposited by the Credit Union to secure the agreed upon Termination Payment will be at all times equal to the Termination Payment due to the Consultant;
- iii) Interest or other monies earned by the Trust Fund shall accrue to the benefit of and be the property of the Consultant;
- iv) The Consultant confirms and hereby acknowledges that any payment of interest and/or partial draws against the Trust Fund or the full payment of Trust Funds to the Consultant reduces the liability of the Credit Union to the Consultant for Termination Payment in an equal amount to the amounts of principal so paid or drawn by the Consultant;
- v) The Trust Funds may be invested in such instruments, funds or investments as the Consultant, the Credit Union and Trustee so determine provided that such investment shall comply with the Credit Union's investment policies and further provided that should the principal of the Trust Fund fall below the sum required to be maintained pursuant to this Agreement as a result of investment losses then it shall be the Consultant's responsibility to pay to the Trust Fund such sum as may be required to reduce the shortfall so that the principal balance of the Trust Fund always equals the sum required to be maintained pursuant to this Agreement.

G) APPOINTMENT OF TRUSTEE

- 8 The Credit Union and the Consultant hereby appoint Arn C.J. Reisler, Barrister and Solicitor, Trustee of the Trust Fund in accordance with the terms of this agreement.
- 9 The Credit Union agrees to pay to the Trustee his fees for the services provided herein. In addition, the Trustee shall be reimbursed by the Credit Union for any reasonable expenses or disbursements including, but not limited to the actual costs paid to any solicitor who the Trustee deems it necessary to retain.
- 10 Each of the Credit Union and the Consultant hereby agree to and do hereby release and indemnify and save harmless the Trustee from and against all claims, suits, demands, costs damages and expenses which the Trustee may suffer by reason of the compliance in good faith by the Trustee with the terms of this Agreement.
- 11 The Trustee may consult with and obtain the advice of legal counsel in the event of any question as to the provisions of this Agreement or his duties hereunder and shall be fully protected in acting in good faith in accordance with the opinion or instructions of such counsel.

H) IRREVOCABLE DIRECTION

- 12 Upon receipt of a copy of the Notice referred to in subparagraph 6(i), the death of Larry Smith, or the happening of an event described in subparagraph 6(iii) the Credit Union and the Consultant hereby irrevocably authorize and direct the Trustee to forthwith pay to the Consultant the Termination Payment, and for so doing this shall be the Trustee's good sufficient and authority for so doing.



Handwritten signatures of the Consultant and the Credit Union.

1) **BINDING ON SUCCESSORS**

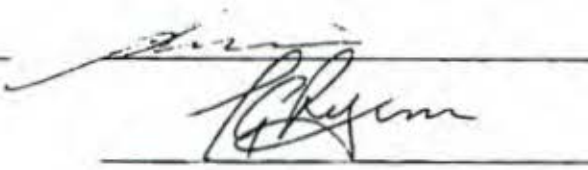
13. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

DATED at Vaughan, Ontario this 1 day of July, 2007.

1428245 **ONTARIO LIMITED**

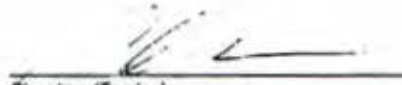
PACE SAVINGS & CREDIT UNION LIMITED





I ACCEPT THE APPOINTMENT AS TRUSTEE OF THE TRUST FUND ON THE TERMS STATED ABOVE.

Date: July 2, 07



Signature (Trustee)

Arn C.J. Reisler

Print Name


M.S.

March 27th, 2015

Pace Savings and Credit Union and
809755 Ontario Limited – consulting
agreement of even date
Acknowledgement and Resolution

And approval of amendments thereto

Ratified by the Board of Directors November 25th, 2015

THIS AGREEMENT is made in duplicate this 27th day of March, 2015

BETWEEN:

PACE SAVINGS & CREDIT UNION LIMITED

(hereinafter called the "**Credit Union**")

-and-

809755 Ontario Limited

(hereinafter called the "**Consultant**")

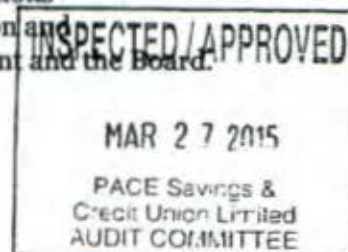
WHEREAS the Credit Union is desirous of retaining the Consultant for the purposes of performing property development, data processing and other services to the Credit Union and

WHEREAS the Consultant is at its discretion hereby authorized to use the services of individuals employed by 809755 Ontario Limited

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants contained herein and other valuable consideration the parties agree as follows:

RESPONSIBILITIES

1. The Consultant will report to the Board of Directors and will discharge such duties as assigned by the Board.
2. The Consultants primary responsibilities shall be the day to day operation and management of the Credit Union's property development division. This will include but not be limited to land acquisition, approval of development budgets, interaction with development partners and the approval of financing (subject to the limits of the Credit Unions policy and the Act), as required in order to complete such projects in a timely and risk effective and profitable manner .
3. These duties may further include:
 - Public Relations – Which can include representing the Credit Union with external organizations associated the Credit Union or the Credit Union movement;
 - Project Management Services and Partnership transactions
 - Management of the Pace Property Development function and the Board.
 - Other related duties as mutually agreed by the consultant and the Board.



APPOINTMENT

2. The Credit Union hereby confirms the appointment of the Consultant, to hold such appointment from year to year until otherwise terminated in accordance with the terms of this agreement.

3. The consultant hereby confirms the acceptance of the appointment on the terms and conditions contained in this Agreement.

APPROVAL

4. The foregoing appointment and the entering into of this agreement by the consultant and the Credit Union has been duly authorized by the directors of the Credit Union pursuant to the authority conferred upon the executive committee and such agreement was originally approved by the executive committee on June 26th, 2006. The consultant and the Credit Union hereby agree that this agreement replaces any and all previous agreements between 809755 Ontario Limited and the Credit Union and that this agreement is effective as of April 1st, 2015.

COMPENSATION

5. In consideration of the consultant serving the company and entering into this agreement, the company agrees to pay to the consultant the compensation package described below:

- i) A fee of \$ 180,000. for the period April 1st, 2015 to December 31st, 2015
- ii) A fee of \$240,000. per annum effective January 1st, 2016 and continuing thereafter until terminated in accordance with the terms of this agreement
- iii) Annual bonus payments as determined from time to time and approved by the Board and/or Executive Committee
- iv) Occasional and additional profit sharing disbursements from development partners provided that the Consultant shall disclose the amounts of such payments and same shall be available for review by the Board and/or Executive Committee.

TERMINATION

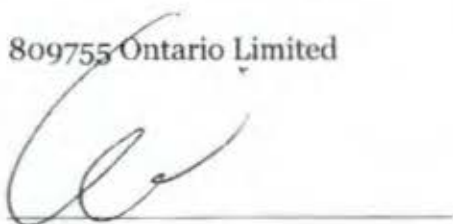
6. This agreement will terminate upon the happening of any of the following events:
- i) After the expiry of 6 months' written notice of intention to terminate this agreement given by the Credit Union to the consultant and upon payment of the compensation referred to in the contract to the termination date.
 - ii) After the expiry of 6 months' written notice of intention to terminate this agreement given by the Consultant to the Credit Union.
 - iii) Upon the death of the consultant.

BINDING ON SUCCESSORS

7. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

DATED at Toronto, Ontario this 27th day of March, 2015.

809755 Ontario Limited



Director

PACE Savings & Credit Union Limited



Pace Savings & Credit Union Limited - Director



Pace Savings & Credit Union Limited - Director

INSPECTED / APPROVED
MAR 27 2015
PACE SAVINGS & CREDIT UNION LIMITED
AUDIT COMMITTEE

RAFFIER / [Signature]
MAR 25 2015
PACE Savings & Credit Union Limited
AUDIT COMMITTEE

May 27th, 2015

Pace Savings and Credit Union
Directors acknowledgement wrt to
809755/1428245 agreements and
the allocation of such costs to specific
projects

Acknowledgement and Resolution

Ratified by the Board of Directors
November 25th, 2015

May 27th, 2015

PACE Savings and Credit Union Limited

Acknowledgement – by the Board of Directors/Executive Committee – Pace Savings and Credit Union Limited

Whereas the Credit Union and Larry Smith and the personal services corporations owned by Smith, being 809755 Ontario Limited and 1428245 Ontario Limited – the shares of which are held in trust for Larry Smith by Phillip Smith (“Smith”) are parties to compensation agreements for various consulting and management services dated March 27th, 2015 for 809755 and November 7th, 2012 for 1428245 (“the Consulting Agreement”) and

Whereas 809755 and 1428245 may receive payments from time to time from the partners of Pace, namely Geranium, Prime R Investments and JLG management consulting which payments are disclosed, acknowledged and approved by the Executive and Audit Committees of Pace and

Whereas the Credit Union and Smith parties to an employment agreement employing Smith as its President effective May 1st, 2015 pursuant to a resolution approved by the Board of Directors of Pace on or about April 15th, 2015 and

Whereas the Credit Union and Smith wish to clarify that the services of 809755 and 1428245 to Pace more specifically relate to various development projects and joint venture projects the costs of which are more appropriately charged and /or capitalized and/or allocated to the specific projects with costs being recovered at a later date from future revenues

Be it therefore **RESOLVED**

THAT effective January 1st, 2015, the Credit Union confirms that the ~~services~~ agreements of 809755 and 1428245 are specifically project related and such costs be allocated on a project by project basis or expensed to operations by Pace in and at its sole discretion .

Confirmed and Approved by the Board of Directors this 27th, May 2015.


Director


Director



May 27th, 2015

PACE Savings and Credit Union Limited

Acknowledgement – by the Board of Directors/Executive Committee – Pace Savings and Credit Union Limited

Whereas the Credit Union and Larry Smith and the personal services corporations owned by Smith, being 809755 Ontario Limited and 1428245 Ontario Limited – the shares of which are held in trust for Larry Smith by Phillip Smith (“Smith”) are parties to compensation agreements for various consulting and management services dated March 27th, 2015 for 809755 and November 7th, 2012 for 1428245 (“the Consulting Agreement”) and

Whereas 809755 and 1428245 may receive payments from time to time from the partners of Pace, namely Geranium, Prime R Investments and JLG management consulting which payments are disclosed, acknowledged and approved by the Executive and Audit Committees of Pace and

Whereas the Credit Union and Smith parties to an employment agreement employing Smith as its President effective May 1st, 2015 pursuant to a resolution approved by the Board of Directors of Pace on or about April 15th, 2015 and

Whereas the Credit Union and Smith wish to clarify that the services of 809755 and 1428245 to Pace more specifically relate to various development projects and joint venture projects the costs of which are more appropriately charged and for capitalized and/or allocated to the specific projects with costs being recovered at a later date from future revenues


Review
INSPECTED / APPROVED
- NOV 25 2015
PACE Savings & Credit Union Limited
AUDIT COMMITTEE

Be it therefore **RESOLVED**

THAT effective January 1st, 2015, the Credit Union confirms that the services agreements of 809755 and 1428245 are specifically project related and such costs be allocated on a project by project basis or expensed to operations by Pace in and at its sole discretion .

Confirmed and Approved by the Board of Directors this 27th, May 2015.


Director


Director

INSPECTED / APPROVED
MAY 27 2015
PACE Savings & Credit Union Limited
AUDIT COMMITTEE

Your Investment Report

BMO  Wealth Management
BMO Nesbitt Burns

JTA2146723 E.D

11872

ARN REISLER ITF PACE SAVINGS &
CREDIT UNION
161 BRIDGELAND AVE
TORONTO ON M6A 1Z1



Non-registered account #370-12026-10

December 31, 2017

Your Investment Report



► Account Summary

This table provides an overview of your account, including the opening and closing balance for the reporting period.

Your Investments	Opening Value Dec 1, 2017	Closing Value Dec 31, 2017	Balance on Dec 31, 2017 (CAD\$)
Canadian Dollar Investments			
Cash Account	4,035,328.45	4,030,103.68	4,030,103.68
	4,035,328.45	4,030,103.68	4,030,103.68
U.S. Dollar Investments			
Cash Account	17,457.82	17,464.99	21,899.35
1 USD = 1.2539 CAD	17,457.82	17,464.99	21,899.35
Grand Total (CAD\$)			4,052,003.03
		Last Statement Nov 30, 2017	4,057,852.53

You can access your up-to-date account information online through BMO Nesbitt Burns Gateway at:
<https://gateway.bmonesbittburns.com>.
If you have not yet registered for Gateway access, please contact your Investment Advisor.

► We're here to help

Our team is dedicated to helping you succeed in meeting all of your wealth management goals. Please call any member of the team referenced below if you have questions about Your Investment Report. Visit bmo.com/nesbittburns for the latest information on investing and wealth planning.

MICHAEL MCPHILLIPS
Investment Advisor
416-359-4364

CHRISTOPHER CLARK
Branch Manager
416-359-4600

1 First Canadian Place, P.O. Box 150, 39th Floor, Toronto, ON M5X 1H3

BMO Nesbitt Burns Inc. is a Member - Canadian Investor Protection Fund.
Member of the Investment Industry Regulatory Organization of Canada.

Your Investment Report

BMO  Wealth Management
BMO Nesbitt Burns

JTA2148780 E D

04727

ARN REISLER IN TRUST FOR
PACE SAVINGS & CREDIT UNION
161 BRIDGELAND AVENUE
NORTH YORK ON M6A 1Z1



Meridian

Non-registered account #658-01343-17

December 31, 2017

Your Investment Report

Account Summary

This table provides an overview of your account, including the opening and closing balance for the reporting period.

Your Investments	Opening Value Dec 1, 2017	Closing Value Dec 31, 2017	Balance on Dec 31, 2017 (CAD\$)
Canadian Dollar Investments			
Cash Account	3,006,089.23	3,007,845.70	3,007,845.70
	3,006,089.23	3,007,845.70	3,007,845.70
U.S. Dollar Investments			
Cash Account	119,384.42	121,362.42	152,176.34
1 USD = 1.2539 CAD	119,384.42	121,362.42	152,176.34
Grand Total (CAD\$)			3,160,022.04

Last Statement
Nov 30, 2017

3,160,119.01

You can access your up-to-date account information online through BMO Nesbitt Burns Gateway at:

<https://gateway.bmonesbittburns.com>.

If you have not yet registered for Gateway access, please contact your Investment Advisor.

We're here to help

Our team is dedicated to helping you succeed in meeting all of your wealth management goals. Please call any member of the team referenced below if you have questions about Your Investment Report. Visit bmo.com/nesbittburns for the latest information on investing and wealth planning.

MICHAEL MCPHILLIPS
Investment Advisor
416-359-4364

CHRISTOPHER CLARK
Branch Manager
416-359-4600

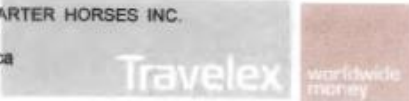
1 First Canadian Place, P.O. Box 150, 39th Floor, Toronto, ON M5X 1H3

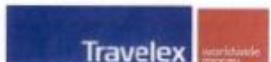
BMO Nesbitt Burns Inc. is a Member - Canadian Investor Protection Fund.
Member of the Investment Industry Regulatory Organization of Canada.

Appendix D: Copy of Cheque for US\$300K to Quarter Horses and letter from Ron Williamson Quarter Horses Inc. confirming Larry's holding company 142 received payments from a PACE borrower, SusGlobal.


Custom House Financial (UK) Limited #402, 266-15 CDN
CLIENT COPY **458046**
 Date: **15 Feb 2017**

In Settlement of:
 Client: PACE Savings and Credit Union Ltd
 Transaction Date: 15 Feb 2017
 Transaction No: 16251416
USD300,000.00
 Amount

Payee: **RON WILLIAMSON QUARTER HORSES INC.**
 United States of America



Custom House Financial (UK) Limited
PAYEE COPY **458046**
 Date: **15 Feb 2017**

In Settlement of:
 Client: PACE Savings and Credit Union Ltd
 Transaction Date: 15 Feb 2017
 Transaction No: 16251416
USD300,000.00
 Amount

Payee: **RON WILLIAMSON QUARTER HORSES INC.**
 United States of America
 For Inquiries Call WUBS
 1 800 897 6333, Option 3

RECEIPT ONLY

(Please Detach Top Portion - Payment Below)


BNY Mellon
 New York, NY

458046 1-1/210
 Date: **Feb 15, 2017**

Pay: **RON WILLIAMSON QUARTER HORSES INC.******* U.S. Dollar
 Sum of: **THREE HUNDRED THOUSAND AND 00/100 Dollar** *****300,000.00

RON WILLIAMSON QUARTER HORSES INC.
 United States of America
 Per 
 Per 

⑆458046⑆ ⑆02⑆0000⑆8⑆ ⑆890⑆259780⑆

DETACH BEFORE CASHING

**Ron Williamson Quarter Horses Inc.
1428245 Ontario Limited
2761 Medallist Lane
Naples, Florida, United States
34109**

PRIVATE AND CONFIDENTIAL

January 30, 2017

Mr. Marc Hazout
SusGlobal Energy Corp.
200 Davenport Road
Toronto, ON, M5R 1J2

Dear Mr. Hazout:

PACE CREDIT UNION- Corporate Line Of Credit CDN \$5,500,000

This Agreement sets out the basis of engagement of Ron Williamson Quarter Horses Inc. and 1428245 Ontario Limited (or the "Agents") to act as Agents with respect to raising capital for SusGlobal Energy Corp. (or the "Company") for proceeds of \$5,500,000 CDN (the "Financing").

1. Services

The Agents' services to the Company will commence upon the execution of this Agreement and will include the following in connection with the Financing:

Capital Raising

As agents the following services will be provided:

- (a) Advise the Company in developing the terms of the Financing, including suitable pricing, timing, and related structural issues;
- (b) Assist in closing the Financing, as directed by the Company; and
- (c) Perform such other services as agreed upon between the Agent and the Company.

If the Agent is requested to provide any other services in addition to those described above, the terms and conditions relating to such services will be outlined in a separate letter of agreement and the fees for such services will be negotiated separately and in good faith and will be consistent with fees paid to investment bankers in Canada for similar services.

2. **Information**

The Company will make available or cause to be made available to the Agent on a timely basis, all information (financial or otherwise), data, documents, opinions, appraisals, valuations or other information and materials of whatsoever nature or kind respecting the Company, and its subsidiaries and affiliates as the Agent may reasonably require or consider appropriate in carrying out its services hereunder. The Company also agrees to provide the Agent with timely access to the directors, officers, employees, independent auditors, consultants and financial, legal and other professional advisors of the Company and its subsidiaries and affiliates as the Agent may reasonably require or consider appropriate in performing its services hereunder.

3. **Commission, Options & Expenses**

For its services hereunder, the Company agrees to pay to each of the Agents Ron Williamson Quarter Horses Inc. and 1428245 Ontario Limited the following fees:

USDS150,000 paid in cash each and **810,000** common shares each of the Company due and payable on the first Funding Date.

4. **Confidentiality**

In connection with the Financing, the Agent acknowledges that the Company has and will provide it with confidential information ("Confidential Information") with respect to the Company, and each of its associated and related corporations (as such terms are defined in the Income Tax Act (Canada) (each herein referred to as a "Related Person"). Confidential Information will include information with respect to products, marketing, means of doing business, trade secrets, marketing programs, plans, strategies, proposed future products, services, advertising promotions and selling methods, financial information (including financial statements of the Company or of a Related Person and financial forecasts) and other information with respect to the Company or any Related Person which are not public information. In consideration of the Company entering into this agreement with the Agent and disclosing Confidential Information to it in connection with the Financing, the Agent covenants and agrees to maintain in confidence and to not (except in accordance with specific written instruction from the Company) disclose to any person, firm or corporation whatsoever, any Confidential Information, except to the extent that: (i) such information is, or becomes, public knowledge; (ii) the Agent is required to disclose such information by any applicable law or regulation or any competent governmental, judicial or other authority having jurisdiction; or (iii) such information is included in a Prospectus or in any other offering materials, the contents of which have been approved by the Company.

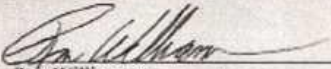
The Agent's obligations to not disclose Confidential Information will continue for 12 months and will remain in full force and effect whether or not the Financing is completed.

[Remainder of page intentionally left blank]

5. Acceptance


This Agreement accurately reflects the terms of the agreement between Ron Williamson Quarter Horses Inc. and 1428245 Ontario Limited and the Company, and all parties agree to be legally bound thereby by executing this Agreement

Ron Williamson Quarter Horses Inc. and 1428245 Ontario Limited

Per: 
Ron Williamson

Agreed to and Accepted as of this 30th day of January 2017.

**SusGlobal Energy Corp.
(and/or its predecessors or affiliates)**

Per: 
Marc Hazout

(with authority to bind the Company)

Agreed to and Accepted as of this 31st day of January 2017

Appendix E – Invoice, approved by PACE’s Audit Committee, from 1916761 (Malek’s holding company) to PACE re: Lora Bay consulting / referral fee of \$180K

1916761 Ontario Limited

605-59 East Liberty Street
 Toronto, Ontario
 Canada M6K 3R3

INVOICE

DATE Jan 17th, 2017
 INVOICE # 2017-1
 CUSTOMER ID 79972
 DUE DATE 18/01/2017

INVOICE TO:

PACE SAVINGS AND CREDIT UNION LIMITED
 8111 Jane Street, Unit 1
 Vaughan, Ontario
 Canada
 L4K 4L7

DESCRIPTION	TAXED	AMOUNT
To : Consulting and Referrals fees For the placement of the Lora Bay Corporation Debenture as approved by the Board of Directors of Pace \$6,000,000 @ 3%		180,000.00



Subtotal	180,000.00
Taxable	-
Tax rate	0.000%
Tax due	-
Other	-
TOTAL	\$ 180,000.00

OTHER COMMENTS

- Total payment due in 30 days - In Canadian currency
- Please include the invoice number on your check
- HST # 80085 2436 RT0001
- Credit 79972 - \$180,000 including HST

Make all checks payable to
See Items 4

If you have any questions about this invoice, please contact
 [Name, Phone #, E-mail]

Thank You For Your Business!

Appendix F – Invoices from 809 and 142 to PACE re: Highland Gate, approved by Audit Committee.

809755 Ontario Limited

INVOICE

53 Treegrove Circle,
Aurora, Ontario
Canada L4G 6M2

DATE	Dec 15th, 2016
INVOICE #	2016-3
CUSTOMER ID	2455
DUE DATE	01/01/2017

INVOICE TO:
PACE SAVINGS AND CREDIT UNION LIMITED
8111 Jane Street, Unit 1
Vaughan, Ontario
Canada
L4K 4L7

DESCRIPTION	TAXED	AMOUNT
To : Consulting and Professional fees For the period JANUARY 1st, 2016 to DECEMBER 31st, 2016 Including commissions on extraordinary revenue as agreed/approved by Board Commission on Extraordinary Revenue as agreed/approved by the Board <i>Re: Highland Gate</i>		225,000.00



Subtotal	225,000.00
Taxable	225,000.00
Tax rate	13.000%
Tax due	29,250.00
Other	-
TOTAL	\$ 254,250.00

OTHER COMMENTS

- Total payment due in 30 days - In Canadian currency
- Please include the invoice number on your check
- HST # 88279 6840 RT0001**
- Credit 2455 - \$56,500 including HST -- re ERCant
- OFC payable to 809755 Ontario Inc. - 197,750

Make all checks payable to
See Items 4 and 5

If you have any questions about this invoice, please contact
[Name, Phone #, E-mail]

Thank You For Your Business!

1400002

li give the OFC to me 4.

809755 Ontario Limited

INVOICE

53 Treegrove Circle,
Aurora, Ontario
Canada L4G 6M2

DATE	Feb 15 2018
INVOICE #	2018-2
CUSTOMER ID	2455-PCU
DUE DATE	02-28-18

INVOICE TO:
PACE SAVINGS AND CREDIT UNION LIMITED
8111 Jane Street, Unit 1
Vaughan, Ontario
Canada
L4K 4L7

For 2017

DESCRIPTION	TAXED	AMOUNT
To : Consulting and Professional fees For the period JANUARY 1st, 2017 to DECEMBER 31st, 2017 Including commissions on extraordinary revenue as agreed/approved by Board Commission on Extraordinary Revenue as agreed/approved by the Board - Re H-Gate /PS approved supplemental		225,000.00
Subtotal		225,000.00
Taxable		225,000.00
Tax rate		13.000%
Tax due		29,250.00
Other		
TOTAL		\$ 254,250.00

OTHER COMMENTS

- Total payment due in 30 days - In Canadian currency
- Please include the invoice number on your check
- HST # 88279 6840 RT0001**
- Credit 2455 - \$56,500 including HST -- re ERCant
- OFC payable to 809755 Ontario Inc. - 197,750

Make all checks payable to
See Items 4 and 5

If you have any questions about this invoice, please contact
[Name, Phone #, E-mail]

Thank You For Your Business!

*Approved by
Korubshi*

1428245 Ontario Limited

Invoice

To: Pace Savings and Credit Union Limited

Advanced payment of commissions associated with profit of Aurora (Highland Gate) JV as per agreement

		FEE	HST	TOTAL
January	2018			
February		20000	2600	22600
March		20000	2600	22600
April		20000	2600	22600
May		20000	2600	22600
June		20000	2600	22600
July		20000	2600	22600
August		20000	2600	22600
September		20000	2600	22600
October		20000	2600	22600
November		20000	2600	22600
December		20000	2600	22600
		20000	2600	22600
		20000	2600	22600
		20000	2600	22600
		20000	2600	22600
		20000	2600	22600
		20000	2600	22600



Appendix G – Chronology of Trayco loan and snapshot of email from Larry noting Trayco would be owned by Golanski.

- 2003 December – Trayco is incorporated
- 2004 January – Arn Reisler, lawyer, provides a letter to PACE stating:

“As previously discussed with you in our telephone conversations this is to confirm that I am the sole Shareholder of TrayCo Processing Inc. in trust for the beneficial owners. As I advised you, all of the beneficial owners are not yet known to me. Pace Savings & Credit Union Limited has extended certain credit facilities to TrayCo specifically upon my undertaking to deliver written guarantees of such indebtedness from the beneficial owners once I have final instructions and they are finally determined.”

Please see Appendix H for a full copy of the letter.

- 2007 February – 1724725 Ontario Limited (“172”) is incorporated. A recent Corporate Profile Report obtained by DICO (dated July 2018) shows Golanski as the sole Director, President, and Secretary of 172. This information is consistent with signing authority documents provided by PACE (dated March 2007). We note that the Corporate Profile Report shows the entity’s registered address as 8111 Jane Street, Vaughan Ontario, which is the same address as PACE’s head office.
- 2007 December - Per DICO’s review of certain emails¹, Larry sent an email on 13th December 2007 stating:

“Alison's Company 1724725 Ontario Limited will own 100% of the shares of TrayCo. set up as a "from inception" basis. Alison will be designated 1724's director/officer and be recorded as the Pres. & Sec. of TrayCO.”

and

“1724725 and Alison will "not" guarantee the financing on this transaction.”

Please see below for a copy of the full email.

- 2008 March - PACE loan files show the ownership as Arn Reisler 50% and Derrick Neely as 50%. The file also shows PACE’s exposure was \$700K at its peak in Jan 2005 but had since reduced to \$162K.
- 2008 October – the loan files show ownership as Arn Reisler in Trust. A comment in the file states “while some of the shareholders of Trayco have been identified, no formal agreement is yet in place”. PACE’s exposure increases to \$380K. Larry and Phil both signed off as members of the Credit Committee (lending approval).

¹ Various emails from Larry Smith to “Teddy Bear” ted@platinumpoultry.com, “Jim Dean” jim@platinumpoultry.com, “Alison Golanski” agolanski@pacecu.com, “Jane Doe” o1724725ontltd@ymail.com (which is also Alison Golanski’s email address), “Arn Reisler” areisler@wastecogroup.com, and “Suzanne Hyde” shyde@pacecu.com. The emails are dated from Dec. 13, 2007 to Feb. 27, 2009.

- 2009 February – in its review of certain emails, DICO found a letter from Foreign Affairs and International Trade Canada that was addressed to Alison Golanski, Trayco Processing Inc. This letter suggests Ms. Golanski’s involvement in Trayco’s operations.
- 2009 October – PACE files continue to show ownership as Arn Reisler in Trust 100% common shares. PACE’s exposure increases to \$650K, of which \$250K was to purchase Brampton Poultry Pride Ltd. (DICO believes these are the assets that were eventually sold off to 2340 which was operating as Premier Poultry – please continue reading for details on the transaction just mentioned). Larry and Phil both signed off as members of the Credit Committee (lending approval).
- 2010 August - PACE’s exposure increases to \$2.1 million. Loan commentary indicates ongoing losses.
- 2010 September - PACE’s exposure increases to \$2.5 million.
- 2012 April – PACE files continue to show ownership as Arn Reisler in Trust 100% common shares. PACE’s exposure increases to \$3.5 million. At time of credit submission, amounts owing from Trayco were \$3.2 million.
- 2012 July 17th
 - PACE issued demand letters for \$3.3 million to Trayco, attention of a Mr. James Dean and another Mr. Thomas Dean, who DICO understands were both part of the management team and also owners and guarantors for another commercial borrower of PACE. There is a relationship between the Deans and Trayco where apparently both James and Thomas Dean had been involved with the operations of Trayco in a management capacity.
 - A separate letter was also issued for \$200K to Bernice Dean and Murray Dean who provided limited personal guarantees of \$200K for the debts of Trayco.
 - Another letter was issued for \$700K to Anthony Leone who provided limited personal guarantees of \$700K for the debts of Trayco.
- 2012 July 17th- Trayco transfers and assigns its rights and title to some of its equipment to PACE.
- 2012 August - 2340, operating as Premier Poultry Products, is newly incorporated. PACE records show Ms. Joanna Whitfield as 100% owner.
- 2012 September - A review of certain PACE emails² found a third-party appraisal valuing the Trayco equipment at \$284K.
- 2012 October – PACE approves new credit facilities for 2340 totaling \$2.5 million to purchase the assets of Trayco, i.e. the equipment. Based on the appraised value of the equipment, the loan-to-value would be 880%. The credit facilities were not supported by a personal guarantee. We note that the loans were approved by the credit committee and the signatories were Phil, Benincasa, Colacicco, Dan Coldwell (VP Business Development), and Heather Lee (Operations Manager)
- 2012 November – 2340 buys the Trayco equipment from PACE for \$2.2 million and PACE uses the same amount to reduce its exposure to Trayco.
- 2013 July – PACE’s exposure to 2340 increases to \$2.9 million. The credit submission notes that the borrower has been struggling over the last 6 months.

² Email from Benaco Sales LTD providing appraised value of equipment and fixtures

- 2013 July – PACE places Trayco on watchlist. PACE's exposure is noted as \$811K. Apparently a demand letter was sent to the Guarantors but there were no payments received.
- 2014 February – PACE writes-off \$811K owing from Trayco
- 2016 November – PACE writes off \$2.9 million owing from 2340

Note: 2017 February – PACE increases exposure to 2340 to \$15 million on account of CCE DICO also notes that despite the original Trayco loans having had various personal guarantees, DICO has not found any evidence of PACE having collected on any of those guarantees.



Thu 2007-12-13 1:17 PM

Larry Smith <IMCEAEX-_O=MICROSOFTONLINE_OU=EXCHANGE+20ADMINISTRATIVE+20GROUP+20+2 re TrayCo

To TEDDY BEAR; JIM DEAN

Cc Alison Golanski; Suzanne Hyde

Just a follow-up note re the restructuring of TrayCo..

Alison's Company 1724725 Ontario Limited will own 100% of the shares of TrayCo. set up as a "from inception" basis.

Alison will be designated 1724's director/officer and be recorded as the Pres. & Sec. of TrayCO.

The assets of Trayco will include the current and annual permit values.. say approx. \$110,000. per annum .. plus the equipment used for packaging and processing and any other relevant assets.

TED/JIM.. we NEED asap the original invoices for the OSSID equipment and the additional equipment purchased by Platinum... stackers?...etc?
Pace needs this today !!. Please follow-up with Suzanne.

The financing transaction will continue as agreed....with Platinum and Ted and Jim and Tony Leone and TrayCO being the guarantors on the financing.
Platinum will continue to manage the business with Ted and Jim or their designates as signing officers.

1724725 and Alison will "not" guarantee the financing on this transaction.
1724 will make an agreement with Platinum in respect of buyback of the shares and management fees.

PLatinum Jim and Ted will indemnify 1724 and Alison for any and all issues relating to Trayco esp relating to any taxation issues and/or outstanding unreported liabilities.

Thanks..

Please contact Suzanne ASAP re the equipment.. the loan transfers are on hold.
Ted ..do you need anything in respect of the permit application executed by Alison?

thanks.
Larry

Dear Sir,

At your request, I have examined the assets of the above company, located at 190 Wilkinson Rd., Brampton, Ontario. - The equipment & fixtures used in this processing plant, as detailed in Schedule "A", are not typical, and are sold in the used market on a infrequent basis. I have based my evaluation on the sale of similar equipment sold by both public auction, and/or private liquidation in the last 90 days. In accordance with your instructions, I am providing you with an estimated value for these assets on a going concern in place basis including all leasehold improvements setups & installations .

The Going Concern Value of "Trayco Processing Inc." would be as follows; Total Appraised Value - In Place \$ 263,800.00 - \$ 283,800.00 –
September 7, 2012
Brian Hogan

Pace Credit Union 8111 Jane St. Unit 1, Vaughan, Ontario L4K 4L7 905-660-2841 TEL: 905-738-8283 FAX:

RE: Trayco Processing Inc. O/A Brampton Poultry Pride bhogan@pacecu.com EMAIL: 12:26:16
PMAUCTIONEERS, LIQUIDATORS, APPRAISERS, & INSURANCE SALVORS 100 ASHWARREN RD., NORTH YORK, ON M3J 2S6 TEL: (416) 667-0712 FAX: (416) 667-8261 www.benacosales.com
contact@benacosales.com

The values stated in this appraisal are in Canadian dollars -Neither the appraiser, nor any officer or agent of Benaco Sales Ltd. has any financial interest in this company, or the assets being appraised. - This appraisal is based on asset value only, & does not rely on any financial information from the company. -The fee for this appraisal is not contingent upon the values reported. -The values stated are valid for 30 days from the date of this appraisal. Values beyond the time frame indicated should be reviewed & updated. - Appraiser is a member in good standing of the Canadian Personal Property Appraiser Group.

Should you require any additional information, please do not hesitate to contact the undersigned,

Sincerely, Jason Herring (CPPA) -2September 7, 2012 Tri Axle,

Appendix H: Letter from Arn Reisler to PACE noting that beneficial ownership of Trayco will be advised in due course.

LAW
OFFICES

ARN C.J. REISLER, B.A., LL.B.

Barrister & Solicitor

161 Bridgeland Avenue
North York, Ontario
M1A 1Z1

Tel: (416) 781-4002
Fax: (416) 781-7797

January 14th, 2004

Pace Savings & Credit Union Limited
8111 Jane Street
Unit 1
Vaughan, Ontario
L4K 4L7

Attention: Rene Laffree

Dear Rene:

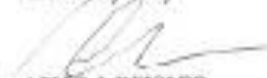
Re: TrayCo Processing Inc. Borrowings from Pace Savings
& Credit Union Limited

As previously discussed with you in our telephone conversations this is to confirm that I am the sole Shareholder of TrayCo Processing Inc. in trust for the beneficial owners. As I advised you, all of the beneficial owners are not yet known to me. Pace Savings & Credit Union Limited has extended certain credit facilities to TrayCo specifically upon my undertaking to deliver written guarantees of such indebtedness from the beneficial owners once I have final instructions and they are finally determined.

This letter is therefore my written undertaking to deliver to Pace Savings & Credit Union Limited the Guarantees aforementioned from the beneficial owners of TrayCo Processing Inc. of the indebtedness of TrayCo Processing Inc. to Pace Savings & Credit Union Limited once they are finally determined.

If you require anything further please do not hesitate to contact the undersigned.

Yours very truly



ARN C.J. REISLER
ACJR:je

Appendix I: Restricted Party Transactions.

Silver Lakes Golf and Country Club / 1814420 Ontario Limited

Pace credit facilities:	\$5,650M
Restricted Party:	Larry owned 25% from March 2012 to September 2017. Bought it for \$6.2 million using mostly CU money, held it for approximately 5 years, paid very little principal payments during the 5 years (approximately \$200K for the 5 years), sold it for \$8.2 million.
Repayment terms:	Interest only, with annual principal payments totaling \$75,000 per year.
Amortization:	71 years
Security:	Collateral charge over real estate and limited personal guarantees obtained from the three other owners but not from Larry.
LTV:	91% at time of original funding in 2012 (term loan \$5,500K plus a line of credit of \$150M = \$5,650M total, on a purchase price of \$6,217K.
Appraisal:	Dated September 2008 while funding was April 2012.
Environmental:	No third-party environmental site inspection reports on file.
Pricing:	5.05%, appears to be below market given 91% LTV and 71-year amortization.

Easyway Insurance Brokers Inc.

Pace credit facilities:	\$10,300M
Restricted Party:	Larry owns 30% and Malek owns 20%.
Loan details:	Easyway has several loans at PACE which have been advanced over the years for various reasons. For the purpose of this document, we provide details on just the most recent loan, which provides insight into underwriting standards. In October 2017, Easyway acquired insurance assets of another insurance company, Henry Equestrian Insurance Brokers, for \$5MM using the CU's capital of \$5MM, i.e. the transaction did not involve any capital injection by Larry, Malek, or from any of the other 2 owners that own the remainder 50% (both the other owners are related to the McGlynn family).
Amortization:	15 years, which is off-market. <ul style="list-style-type: none">- Market norm is 5-year amortization on cash-flow loans, which this loan is, i.e., there is no collateral for the deal.- In exceptional circumstances, the market does go up by an additional 2 years, i.e. a 7-year amortization, but it is rare, and sometimes seen in smaller deals and/or those involving medical professionals.- Regardless of the amortization, such loans are generally rare (because they are riskier given nil collateral), and when they do happen, they are almost always based on additional factors like:

- 2 to 3 financial covenants (which this loan doesn't have – it has only one).
- monthly & quarterly reporting (not apparent per the credit application).
- monthly or quarterly monitoring of financial covenants (not apparent per the credit application).

Security:

GSA only; no collateral, no personal guarantees.

- This security package is off-market and weak given the overall lending profile. If the borrower fails, the credit union has nil recourse.

LTV:

100%

Reporting requirements:

Quality of externally prepared financial statements is not prescribed, which is off-market. Typically, for cash flow deals on total exposure of over \$10MM, audited FS would be required.

Pricing:

4.25%. Appears to be below market given:

- no collateral.
- 100% LTV.
- 15-year amortization, and
- weak financial / reporting covenants.

Appendix J – Frank Klees consulting contract attached.

THIS SERVICE AGREEMENT IS MADE IN DUPLICATE
THIS 1st, DAY OF December, 2012

- between -

PACE SAVINGS & CREDIT UNION LIMITED
(hereinafter called the "Credit Union")

-and-

Klees & Associates Ltd. and
Frank Klees of the Town of Aurora, in the Province of Ontario
(hereinafter called "the Consultant")

RECITALS

WHEREAS the Credit Union and the Consultant are desirous of entering into an agreement for the provision of certain services to the Credit Union, and outlining the terms and conditions under which the Consultant will provide certain services to the Credit Union,

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants contained herein and other valuable consideration the parties agree as follows:

A) APPOINTMENT

- i) The Credit Union hereby confirms the appointment of the Consultant as Vice President/Senior Advisor Strategic Development and Community Relations with such position reporting to the President of the Credit Union and to be held until terminated in accordance with the terms of this Agreement.
- ii) The Consultant hereby confirms acceptance of such appointment according to the terms and conditions contained in this agreement, and agrees to perform the duties and responsibilities commensurate with that position faithfully and to the best of his abilities in the best interest of the Credit Union. For further clarification, a description of the position requirements is attached as schedule "A" to the agreement.

B) COMPENSATION

In consideration of the consultant accepting the appointment and entering into this agreement, the Credit Union agrees to remunerate the consultant as outlined in schedule "B" to this agreement.

D) TERMINATION

This Agreement will terminate upon the occurrence of any of the following events;

- i) After the expiry of 30 days written notice of intention to terminate this Agreement given by the consultant to the Credit Union; or
- ii) At any time, without written notice of the Credit Unions intent to terminate this Agreement given by the Credit Union to the consultant; or
- iii) Upon the insolvency or bankruptcy of the consultant at the Credit Unions discretion, or
- iv) Upon the death of the consultant, or
- v) Upon the revocation of any of the consultant's licenses as applicable to the business of Pace Credit Union in the Province of Ontario or any other regulatory body of competent jurisdiction.
- vi) On **December 31st, 2018** unless otherwise renewed prior to that date by mutual agreement.

E) SEVERANCE

- i) In the event of the termination of this agreement by the Consultant pursuant to subparagraph D) i), severance shall be limited to remuneration earned by the Consultant to the date of termination according to schedule "B" attached.
- ii) In the event of termination of this agreement by the Credit Union pursuant to subparagraph D) ii) the amount payable is the balance owing under this agreement from the date of notice of termination plus any outstanding fees (if any)
- ii) In the event of termination of this agreement pursuant to subparagraphs iii), iv), v), no amount is due and/or payable.

F) EXCLUSIVITY

The Consultant agrees and acknowledges that all retail or wholesale transactions to which the Consultant is a party will be transacted under this agreement and any ongoing actions reported to the President and/or CEO of the Credit Union. It is expressly understood that the transactions generated or renewed in whole and/or in part become the exclusive property of the Credit Union and that no subsequent fees or royalties are payable to the Consultant except as approved by the President and/or Chief Executive Officer and/or the Board of Directors of the Credit Union in their sole discretion

G) BINDING ON SUCCESSORS

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

H) ENTIRE AGREEMENT

The Credit Union and the Consultant acknowledge that this agreement and the schedules attached hereto constitute the entire agreement between them, and no other agreements will be binding unless agreed to in writing by both parties.

I) CONTRAVENTION OF STATUTES

The Credit Union and the Consultant acknowledge that if any component of the agreement contravenes any existing or future statute, law or regulation of sufficient authority to super-cede this agreement, that component and only that component will be amended to comply with the applicable law, statute or regulation and all other components of this agreement shall remain in full force and effect.

J) PRIVACY ACT

The Consultant acknowledges that pursuant to the Personal Information Protection and Electronic Documents Act, he will not have direct access to the Credit Unions membership data base.

K) BONDING

The Consultant acknowledges that it is a fundamental condition of this agreement that the Consultant and/or its representatives be bonded and that any act which renders the Consultant or any of its representatives "not bondable" is grounds for termination of this contract at the sole discretion of the Credit Union.

DATED AT VAUGHAN, Ontario this 10th day of November, 2012.

PACE SAVINGS & CREDIT UNION LIMITED

Larry Smith
Pres. & CEO.

_____ for the Credit Union

Klees & Associates Ltd.

By its representative

 Frank Klees

Frank Klees

APPROVED by the Board of Directors November, _____, 2013

Per - Director

Schedule "B"
As amended February 1st, 2015
To the Service Agreement
Between
Klees and Associates
and
Pace Savings and Credit Union Limited

Service Fees

Base retainer \$5,000. per month plus GST for the period
 Commencing December 1st, 2013 to December 31,
 2014
 and \$10,000. plus HST for the period February 1st,
 2015 to December 31st, 2018.

Benefits no benefits are included in this agreement.

Other Compensation and/or Commissions and Bonus are to be determined on a transaction by transaction basis and on which the Consultant is deemed to be a party with the base retainer being considered a draw against any such commissions and bonuses as payable under this schedule.

Qualifying transactions are to be determined at the **sole discretion** of the President of Pace and/or in his absence the Chief Executive Officer of Pace.

In general such amount shall be the equivalent of ¼ of 1% of the loan value of the transaction or 25% of the application or commitment fees normally charged to the client by Pace (whichever is less) for transactions to which the consultant is deemed to be a party.

Joint Venture/Development Projects

(hereinafter referred to as the "JVDP")

In the case where a particular project is deemed to be a "qualifying transaction" the fees for same shall be determined on a project by project basis but shall generally be set at 2% of the Combined Pro-forma Profit Estimate as adjusted from time to time by the project management committee and/or the developer and approved by the President.

Subject to the approval of the President and/or Chief Executive Officer and/or the Board of Directors of Pace and/or the "JVDP" Management Committee, Pace may make, in its discretion, advances against commission to fund invoices from Klees and Associates.

It is expressly understood that any such advances shall be advances against the entire profits of the "JVDP" and that any and all such advances/charges are an expense of the "JVDP" and are to be charged against the final profits of the "JVDP" and adjusted accordingly upon completion of the final accounting of the project.

Advances for commissions due are tied directly to the profits of the specific "JVDP" and shall be subject to "claw back" in the event that same are in excess of 2% of the final adjusted combined profit of the project.

This is Exhibit "C" referred to in the Affidavit of Mehrdad Rastan sworn by Mehrdad Rastan at the City of Toronto, in the Province of Ontario, before me on August 17, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Mitch Stephenson

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Commissioner for Taking Affidavits (or as may be)

MITCH STEPHENSON

Financial Services Regulatory
Authority of Ontario

Office ontarien de réglementation
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**IN THE MATTER OF THE
CREDIT UNIONS AND CAISSES POPULAIRES ACT, 1994,
S.O. 1994, c. 11, AS AMENDED (the "ACT")**

**AND IN THE MATTER OF
PACE SAVINGS & CREDIT UNION LIMITED**

**AND IN THE MATTER OF
AN
ORDER OF DEPOSIT INSURANCE CORPORATION OF
ONTARIO PURSUANT TO SECTION 294(1) OF THE ACT**

**ADMINISTRATION ORDER
NO. 2**

(February 19th, 2020)

WHEREAS the Deposit Insurance Corporation of Ontario ("**DICO**" or the "**Administrator**") issued an Administration Order on September 28, 2018, pursuant to section 294(1) of the *Credit Unions and Caisses Populaires Act, 1994*, S.O. 1994, c.11, as amended (the "**Act**"), ordering that PACE Savings & Credit Union Limited (the "**Credit Union**") be subject to the administration of the Administrator (the "**Administration Order**");

AND WHEREAS the Administration Order suspended powers of the then directors of the Credit Union (the "**Directors**") except for specific limited purposes, which purposes were exhausted and spent as of December 2018;

AND WHEREAS DICO amalgamated with Financial Services Regulatory Authority of Ontario ("**FSRA**"), which amalgamation was effective as of June 8th, 2019;

AND WHEREAS the Administrator commenced legal proceedings against certain of the Directors and others as a result of the events giving rise to the Administration Order;

AND WHEREAS FSRA has commenced an initial process by which the Credit Union may be released from Administration pursuant to section 295(4) of the *Act*;

AND WHEREAS FSRA has determined that, as part of the process for releasing the Credit Union from Administration, enhanced governance and oversight is required at the Credit Union;

AND WHEREAS the Administrator has the power under Section 295 of the *Act* to appoint new directors of the Credit Union but instead adopted an approach of identifying the skill sets required for enhanced governance and oversight of the Credit Union to inform the search for new directors of the Credit Union who could then be considered for election by the Credit Union's members to a newly formed Board of Directors of the Credit Union (the "**Board**");

AND WHEREAS the Administrator carried out a process for the search and recruitment of a slate of candidates to be appointed as new directors of the Credit Union, which process included the engagement of a professional services recruitment advisor, and as a result of that process, the Administrator identified a slate of candidates (together, the "**Proposed Directors**"), including a proposed Board Chair, that it submitted to the Credit Union members to elect as directors as part of the process to begin releasing the Credit Union from Administration;

AND WHEREAS the Administrator convened a special members' meeting on January 27, 2020, at which time a majority of the members present and voting at the meeting voted in favour of the appointment of the Proposed Directors submitted by the Administrator, along with certain by-law amendments to the Credit Union's by-laws;

AND WHEREAS the Administrator wishes to provide for a period of transition (the "**Transition Period**") to allow the Proposed Directors ample time to be able to properly orient themselves with the Credit Union's business and affairs and ensuring that appropriate governance and management structures are in place before devolving full authority under the *Act* to the Proposed Directors by releasing the Credit Union from Administration; and

AND WHEREAS during the Transition Period, the Administrator wishes to provide the Proposed Directors with the authority under the *Act* to act as the Credit Union's Board of Directors for the purposes specified herein, to, *inter alia*, conduct a search for a new senior management team, including (but not limited to) a chief executive officer, a chief financial officer, a chief risk officer and internal auditor, formulating a coordinated and workable plan to have the Credit Union released from Administration and placed into Supervision, and submitting it to the Administrator for review and approval;

NOW THEREFORE, THE ADMINISTRATOR HEREBY ORDERS THAT:

1. Subject to paragraphs 4 and 5 herein, the following individuals (the "**New Directors**") are hereby appointed as the directors of the Credit Union for a period expiring upon the election of directors at the Credit Union's 2023 Annual General Meeting, and are hereby authorized to exercise the powers of the directors and the Board as provided herein, which powers may be altered by the Administrator from time to time:
 - (a) George Cooke, who shall be hereby appointed as the Chair of the Board;
 - (b) Karen Hacker;
 - (c) Cliff Jenkins;
 - (d) Ross Lamont;

- (e) Marissa Lauder;
 - (f) Allison Mendes;
 - (g) Mary Ann Mooney;
 - (h) Shelly Rae; and
 - (i) Philippe Sarfati.
2. Provided that he or she meets the necessary qualification requirements under the Credit Union's by-laws and the *Act*, each of the New Directors may stand for re-election at the Credit Union's 2023 Annual General Meeting.
 3. The New Directors shall conduct meetings of the Board, and committees of the Board in accordance with the Credit Union's by-laws and policies, as may be amended from time to time, and to that end, the Administrator hereby appoints the law firm of Blake Cassels & Graydon LLP, or any officer or employee of the Administrator, as determined by the Board, to act as corporate secretary, subject to paragraph 4(a) of this Order.
 4. During the Transition Period, subject to any further order of the Administrator, the Board may exercise the following powers and make the following decisions subject to the approval of the Administrator where expressly required herein:
 - (a) Elect, from among the New Directors, a vice-chair, and appoint a corporate secretary to replace the corporate secretary appointed by the Administrator under paragraph 3 of this Order if they so desire;
 - (b) Establish committees of the Board and assign members from the New Directors to those committees, including, but not limited to, an audit committee;
 - (c) In the case of the Chair of the Board, set the target number of directors to a number other than nine (9) directors, or in the case of the Board, appoint any other qualified individual under the Credit Union's by-laws and the *Act*, as a director of the Credit Union to fill a vacancy in the Board until the next annual general meeting of the Credit Union;
 - (d) Direct the Credit Union to provide the Board with information and documentation for the purposes of (i) orientating the New Directors with the business and affairs of the Credit Union and the credit union sector generally; and (ii) carrying out their powers as set out herein as they considered necessary or desirable;
 - (e) Approve any training for the Board, or any of the individual New Directors, as they consider necessary or desirable;
 - (f) Formally request advice and assistance from the Administrator as they consider necessary or desirable;

- (g) Consider and/or decide any other matter the Administrator may request, in writing, that the Board consider and/or decide;
 - (h) Carry out a recruitment process and appoint a new management team, consisting of a chief executive officer (CEO), chief financial officer (CFO) and chief risk officer (CRO) and any other senior officers for the Credit Union (collectively the "**Management Team**"), as they considered advisable or desirable, provided, however, the appointment of the CEO, CRO and the CFO must be approved in writing by the Administrator prior to being appointed by the Board;
 - (i) Carry out a recruitment process and appoint a new internal auditor as they considered advisable or desirable, provided, however, the appointment of the internal auditor must be approved in writing by the Administrator prior to being appointed by the Board;
 - (j) Review the Credit Union's existing policies and procedures, insurance program and strategic plan, and make recommendations to the Administrator with respect to any changes or additions to those policies, procedures or plan, including but not limited to, the placement of insurance coverage for the Credit Union or for the New Directors;
 - (k) Work collaboratively the Management Team to formulate a coordinated and workable plan to have the Credit Union released from Administration and placed into Supervision and submit that plan for review and approval by the Administrator; and
 - (l) Consider and advise on any other matter the Administrator requests, in writing, that the Board consider and provide advice.
5. For greater certainty, notwithstanding the appointment of the New Directors, the Administrator continues to exercise all powers of the directors and management of the Credit Union not expressly set out in paragraph 4 herein.
6. This Administration Order No. 2 shall remain in full force and effect until the Administrator orders otherwise.

DATED at Toronto, this 19th day of February, 2020.

FINANCIAL SERVICES AUTHORITY OF ONTARIO



Mark White
Chief Executive Officer
Financial Services Authority of Ontario

This is Exhibit “D” referred to in the Affidavit of Mehrdad Rastan sworn by Mehrdad Rastan at the City of Toronto, in the Province of Ontario, before me on August 17, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Mitch Stephenson

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Commissioner for Taking Affidavits (or as may be)

MITCH STEPHENSON

Financial Services Regulatory
Authority of Ontario

Office ontarien de réglementation
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**IN THE MATTER OF THE
CREDIT UNIONS AND CA/SSES POPULAIRES ACT, 1994,
S.O. 1994, c. 11, AS AMENDED (the "ACT")**

**AND IN THE MATTER OF
PACE SAVINGS & CREDIT UNION LIMITED**

**AND IN THE MATTER OF
AN
ORDER OF THE CHIEF EXECUTIVE OFFICER ("CEO")
FINANCIAL SERVICES REGULATORY AUTHORITY
OF ONTARIO TO SECTION 294(1) OF THE ACT**

**ADMINISTRATION ORDER
NO. 3**

(April 28, 2020)

WHEREAS the Deposit Insurance Corporation of Ontario ("**DICO**" or the "**Administrator**") issued an Administration Order on September 28, 2018, pursuant to section 294(1) of the *Credit Unions and Caisses Populaires Act, 1994*, S.O. 1994, c.11, as amended (the "**Act**"), ordering that PACE Savings & Credit Union Limited (the "**Credit Union**") be subject to the administration of the Administrator (the "**First Administration Order**");

AND WHEREAS the First Administration Order suspended the powers of the then directors of the Credit Union (the "**Former Directors**") except for specific limited purposes, which purposes were exhausted and spent as of December 2018;

AND WHEREAS the DICO amalgamated with Financial Services Regulatory Authority of Ontario ("**FSRA**"), which amalgamation was effective as of June 8, 2019;

AND WHEREAS following the issuance of the First Administration Order, the Administrator commenced legal proceedings under Court File No. CV-19-00616388-00CL in the Ontario Superior Court of Justice (Commercial List) against certain of the Former Directors and others, including the former CEO and former President of the Credit Union, as a result of the events giving rise to the Administration Order (the "**Administrator's Action**"), and certain other legal proceedings that have

been commenced or will be commenced by the Administrator in relation to the events giving rise to the Administration Order and responding to claims, counterclaims and cross-claims that have been or may be filed in response to actions taken during the Administration proceedings (collectively, the “**Litigation**”);

AND WHEREAS in or about January 2020, FSRA had commenced an initial process by which the Credit Union could be released from Administration pursuant to section 295(4) of the *Act*;

AND WHEREAS FSRA had determined that, as part of the process for releasing the Credit Union from Administration, enhanced governance and oversight was required at the Credit Union;

AND WHEREAS the Administrator has the power under Section 295 of the *Act* to appoint new directors of the Credit Union but adopted an approach of identifying the skill sets required for enhanced governance and oversight of the Credit Union to assist with the search for new directors for the Credit Union who could then be considered for election by the Credit Union’s members;

AND WHEREAS the Administrator carried out a process for the search and recruitment of a slate of candidates to be appointed as directors of the Credit Union, which process included the engagement of a professional services recruitment advisor, and as a result of that process, the Administrator identified a slate of candidates (together, the “**New Directors**”), including a proposed Chair of the Board, that it submitted to the Credit Union members to elect as directors as part of the process to begin releasing the Credit Union from Administration;

AND WHEREAS the Administrator held a special members’ meeting on January 27, 2020, at which time a majority of the members present and voting at the meeting, voted in favour of the appointment of the New Directors as proposed by the Administrator, along with certain by-law amendments to the Credit Union’s by-laws;

AND WHEREAS the Administrator wished to provide for a period of transition (the “**Transition Period**”) to allow the New Directors ample time to be able to properly orient themselves with the Credit Union’s business and affairs before devolving additional authority under the *Act* to the New Directors;

AND WHEREAS the Administrator issued a second Administration order dated February 19, 2020 (the “**Second Administration Order**”), which, *inter alia*, granted the New Directors the authority to conduct meetings of the Board, and committees of the Board, in accordance with the Credit Union’s by-laws and policies and to exercise certain powers and make certain decisions subject to the approval of the Administrator where expressly required;

AND WHEREAS pursuant to the Second Administration Order, and during the Transition Period, the Administrator provided the New Directors with the authority under the *Act* to commence a search for and hire a new chief executive officer (“**CEO**”), chief financial officer (“**CFO**”), chief risk officer (“**CRO**”), and internal auditor (“**IA**”);

AND WHEREAS in accordance with the Second Administration Order, and during the Transition Period, the New Directors have now hired a new CEO, CFO and CRO (collectively, “**New Management**”) with the approval of the Administrator, and the Administrator is now prepared to

allow the Credit Union, through the New Directors and New Management, to exercise additional powers under the *Act* while the Credit Union continues to remain under Administration; and

AND WHEREAS with the hiring of the New Management, and the New Directors having had the benefit of the Transition Period to properly orient themselves with the Credit Union's business and affairs, the Administrator is now prepared to allow the Credit Union, through the New Directors and New Management, to exercise additional powers under the *Act* before the Administration is transitioned to supervision, including the power to carry on, manage and conduct operations of the Credit Union, to preserve, maintain, realize, dispose of and add to the property of the Credit Union, to receive the income and revenue of the Credit Union, to exercise the powers of the Credit Union and of the directors, officers and committees, subject to the Administrator retaining full power and authority to continue to manage the Administrator's Action and the Litigation;

NOW THEREFORE, THE ADMINISTRATOR HEREBY ORDERS THAT:

1. Subject to paragraph 2. herein, and subject to the provisions of the *Act*, the Administrator hereby grants the New Directors the power to manage or supervise the management of the business and affairs of the Credit Union, and further grants the New Directors and New Management the power to:
 - (a) carry on the management and conduct operations of the Credit Union;
 - (b) preserve, maintain, realize, dispose of and add to the property of the Credit Union;
 - (c) receive the income and revenue of the Credit Union;
 - (d) exercise the powers of the Credit Union and of the directors, officers and committees; and
 - (e) require the Credit Union to enter into an amalgamation agreement, dispose of its assets and liabilities or be wound-up.

2. Notwithstanding paragraph 1 herein, the Administrator shall retain the full power and authority to manage the Administrator's Action and the Litigation unless and until the Credit Union is fully released from Administration by the Administrator. In addition, the Administrator shall continue to retain the power to:
 - (a) Order the Credit Union to correct any practices that the CEO feels contributed to the problem or situation that caused the Credit Union to be placed under Administration;
 - (b) Order the Credit Union and the New Directors, committee members, officers and employees to not exercise any powers of the Credit Union or of its directors, committee members, officers and employees;
 - (c) Establish guidelines for the operations of the Credit Union;
 - (d) Order the Credit Union not to declare or pay a dividend or to restrict the amount of a dividend to be paid to a rate or amount set by the CEO;

- (e) Attend any meetings of the Credit Unions board or any of the board's committee meetings;
 - (f) Propose by-laws for the Credit Union and amendments to its articles of incorporation; and
 - (g) Approve in writing any by-law, policy or resolution relating to the business, affairs or management of the Credit Union passed or made by the board during the time the Credit Union is subject to this Administration Order.
3. This Administration Order No. 3 shall remain in full force and effect until the Administrator orders otherwise which can include, but is not limited to, ordering that the Credit Union be placed under supervision pursuant to Section 279(1) of the *Act*.

DATED at Toronto, this 28th day of April, 2020.

FINANCIAL SERVICES AUTHORITY OF ONTARIO

A handwritten signature in black ink, appearing to read 'Mark White', with a long horizontal stroke extending to the right.

Mark White
President and Chief Executive Officer
Financial Services Authority of Ontario

This is Exhibit "E" referred to in the Affidavit of Mehrdad Rastan sworn by Mehrdad Rastan at the City of Toronto, in the Province of Ontario, before me on August 17, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Mitch Stephenson

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Commissioner for Taking Affidavits (or as may be)

MITCH STEPHENSON

Financial Services Regulatory
Authority of Ontario

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**IN THE MATTER OF THE
CREDIT UNIONS AND CA/SSES POPULAIRES ACT, 1994,
S.O. 1994, c. 11, AS AMENDED (the "ACT")**

**AND IN THE MATTER OF
PACE SAVINGS & CREDIT UNION LIMITED**

**AND IN THE MATTER OF
AN
ORDER OF THE CHIEF EXECUTIVE OFFICER
FINANCIAL SERVICES REGULATORY AUTHORITY
OF ONTARIO PURSUANT TO SECTION 294(1) OF THE
ACT**

**FOURTH ADMINISTRATION
ORDER**

(March 26, 2021)

WHEREAS the Deposit Insurance Corporation of Ontario ("**DICO**" or the "**Administrator**") issued an Administration Order on September 28, 2018, pursuant to section 294(1) of the *Credit Unions and Caisses Populaires Act, 1994*, S.O. 1994, c.11, as amended (the "**Act**"), ordering that PACE Savings & Credit Union Limited and its subsidiaries (the "**Credit Union**") be subject to the administration of the Administrator (the "**First Administration Order**");

AND WHEREAS the First Administration Order suspended the powers of the then directors of the Credit Union except for specific limited purposes, which purposes were exhausted and spent as of December 2018;

AND WHEREAS the DICO amalgamated with the Financial Services Regulatory Authority of Ontario ("**FSRA**"), effective as of June 8, 2019, and FSRA became the Administrator;

AND WHEREAS following the issuance of the First Administration Order, the Administrator commenced legal proceedings under Court File No. CV-19-00616388-00CL in the Ontario Superior Court of Justice (Commercial List) against certain of the former directors of the Credit Union and others, including the former CEO and former President of the Credit Union, as a result of the events

giving rise to the Administration Order, and certain other legal proceedings have been or will be commenced by the Administrator in relation to the events giving rise to the Administration Order and responding to related claims, counterclaims and cross-claims (collectively, the “**Recovery Litigation**”);

AND WHEREAS in or about January 2020, FSRA commenced a process by which the Credit Union could be released from Administration pursuant to section 295(4) of the *Act*;

AND WHEREAS FSRA had determined that, as part of the process for releasing the Credit Union from Administration, enhanced governance and oversight was required at the Credit Union;

AND WHEREAS the Administrator held a special members’ meeting on January 27, 2020, at which time a majority of the members present and voting at the meeting, voted in favour of the appointment of a slate of candidates proposed by the Administrator as directors of the Credit Union (the “**2020 Directors**”), along with certain by-law amendments;

AND WHEREAS the Administrator wished to provide for a period of transition to allow the 2020 Directors ample time to be able to properly orient themselves with the Credit Union’s business and affairs before permitting the 2020 Directors to exercise additional control over the Credit Union’s operations while the Credit Union remained under Administration;

AND WHEREAS the Administrator issued a second Administration order dated February 19, 2020 (the “**Second Administration Order**”), which, *inter alia*, granted the 2020 Directors the authority to conduct meetings of the Board of Directors for the Credit Union (the “**2020 Board**”), and committees of the Board, in accordance with the Credit Union’s by-laws and policies and to exercise certain powers and make certain decisions subject to the approval of the Administrator where expressly required, including hiring a new management team (“**2020 Management Team**”) consisting of a chief executive officer (“**CEO**”), a chief financial officer (“**CFO**”), and a chief risk officer (“**CRO**”);

AND WHEREAS the 2020 Directors recruited and hired the 2020 Management Team with the approval of the Administrator;

AND WHEREAS the Administrator issued a third Administration order dated April 28, 2020 (the “**Third Administration Order**”) that permitted the Credit Union, through the 2020 Directors and the 2020 Management Team, to exercise additional powers under the *Act* while the Credit Union remained under Administration;

AND WHEREAS on May 14, 2020, the Credit Union executed a resolution, as sole shareholder of PACE Securities Corporation (“**PSC**”) to effect the winding up of PSC and its direct and indirect subsidiaries including Pace Financial Limited (“**PFL**”);

AND WHEREAS on May 14, 2020, PSC and PFL applied for and were granted a Winding-Up Order appointing Ernst & Young to oversee their liquidation;

AND WHEREAS in the context of the winding-up of PSC and PFL, the Ontario Superior Court of Justice issued an Order on August 6, 2020, (the “**Appointment Order**”) appointing “Representative Counsel” to represent “Investor Claimants” (as those terms are defined in the Appointment Order), who may have suffered losses related to their purchase of investment shares in PFL and First

Hamilton Holdings Inc. and to take and perform for and on behalf of the Investor Claimants, all steps and all acts necessary or desirable to represent the interests of the Investor Claimants, including by negotiation, compromise, arrangement, settlement or litigation (the “**Investor Litigation**”);

AND WHEREAS on November 18, 2020, the Chair of the Board of the Credit Union resigned from the 2020 Board, effective immediately, and thereafter, between November 18, 2020 and January 2021, the remaining members of the 2020 Board tendered their resignation such that the Credit Union no longer has any directors, no functioning Board and has not had quorum since November 20, 2020;

AND WHEREAS on November 20, 2020, the CEO and CRO who had been hired by the 2020 Board on behalf of the Credit Union resigned from their offices with the Credit Union;

AND WHEREAS effective December 21, 2020, the Administrator appointed a new CEO for the Credit Union (the “**New CEO**”) who, together with the other members of the Credit Union’s senior management, including the CFO, have been managing the daily operations of the Credit Union; and

AND WHEREAS with the appointment of the New CEO, who has now had the opportunity to orient himself with the Credit Union’s business and affairs, the Administrator is now prepared to allow the Credit Union, through the New CEO, to exercise additional powers under the Act.

NOW THEREFORE, THE ADMINISTRATOR HEREBY ORDERS THAT:

1. The Administrator hereby grants the New CEO and the Credit Union’s senior management, the power to manage the ordinary business and affairs of the Credit Union, as described more fully in paragraph 2 and as limited by paragraph 3 herein.
2. The Administrator hereby grants the New CEO and the Credit Union’s senior management the power to:
 - (a) Carry on the ordinary management and conduct operations of the Credit Union and its subsidiaries in accordance with the by-laws, articles, policies and guidelines of the Credit Union and the Act;
 - (b) Preserve, maintain, realize, dispose of and add to the property of the Credit Union, other than such property as is referred to in paragraph 3(b) and 3(c) herein; and
 - (c) Receive the income and revenue of the Credit Union.
3. The Administrator shall continue to retain the authority to:
 - (a) Exercise the powers of the Credit Union for matters outside the ordinary course of business, and of the directors, officers and committees;
 - (b) Require or permit the Credit Union to enter into an amalgamation agreement, dispose of its core assets, and liabilities or be wound up;

- (c) Approve or refuse to approve the disposition of core assets, divestiture of subsidiaries, and redemption of investment shares of the Credit Union;
 - (d) Order the Credit Union, the New CEO and the Credit Union's senior management, including its officers and employees, to not exercise any powers granted to them in paragraphs 1 and 2 of this Order or under the Act;
 - (e) Establish, approve or, with reasons, refuse to approve guidelines for the operations of the Credit Union, including how the New CEO and management will work with the Administrator on matters outside of the ordinary course of business and/or which would normally be subject to Board or committee oversight, review or approval;
 - (f) Order the Credit Union not to declare or pay a dividend or to restrict the amount of a dividend to be paid;
 - (g) Propose by-laws for the Credit Union and amendments to its articles of incorporation;
 - (h) Approve in writing any by-law, policy or resolution relating to the business, affairs or management of the Credit Union; and
 - (i) Manage the Recovery Litigation and the Investor Litigation, including making any decisions regarding the conduct or settlement of those matters.
4. This Fourth Administration Order shall supersede the Second and Third Administration Orders and shall remain in full force and effect until the Administrator orders otherwise, which can include, but is not limited to, ordering that the Credit Union be placed under supervision pursuant to section 279(1) of the Act.

DATED at Toronto, this 26th day of March, 2021.

FINANCIAL SERVICES AUTHORITY OF ONTARIO



Mark White
President and Chief Executive Officer
Financial Services Authority of Ontario

This is Exhibit "F" referred to in the Affidavit of Mehrdad Rastan sworn by Mehrdad Rastan at the City of Toronto, in the Province of Ontario, before me on August 17, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

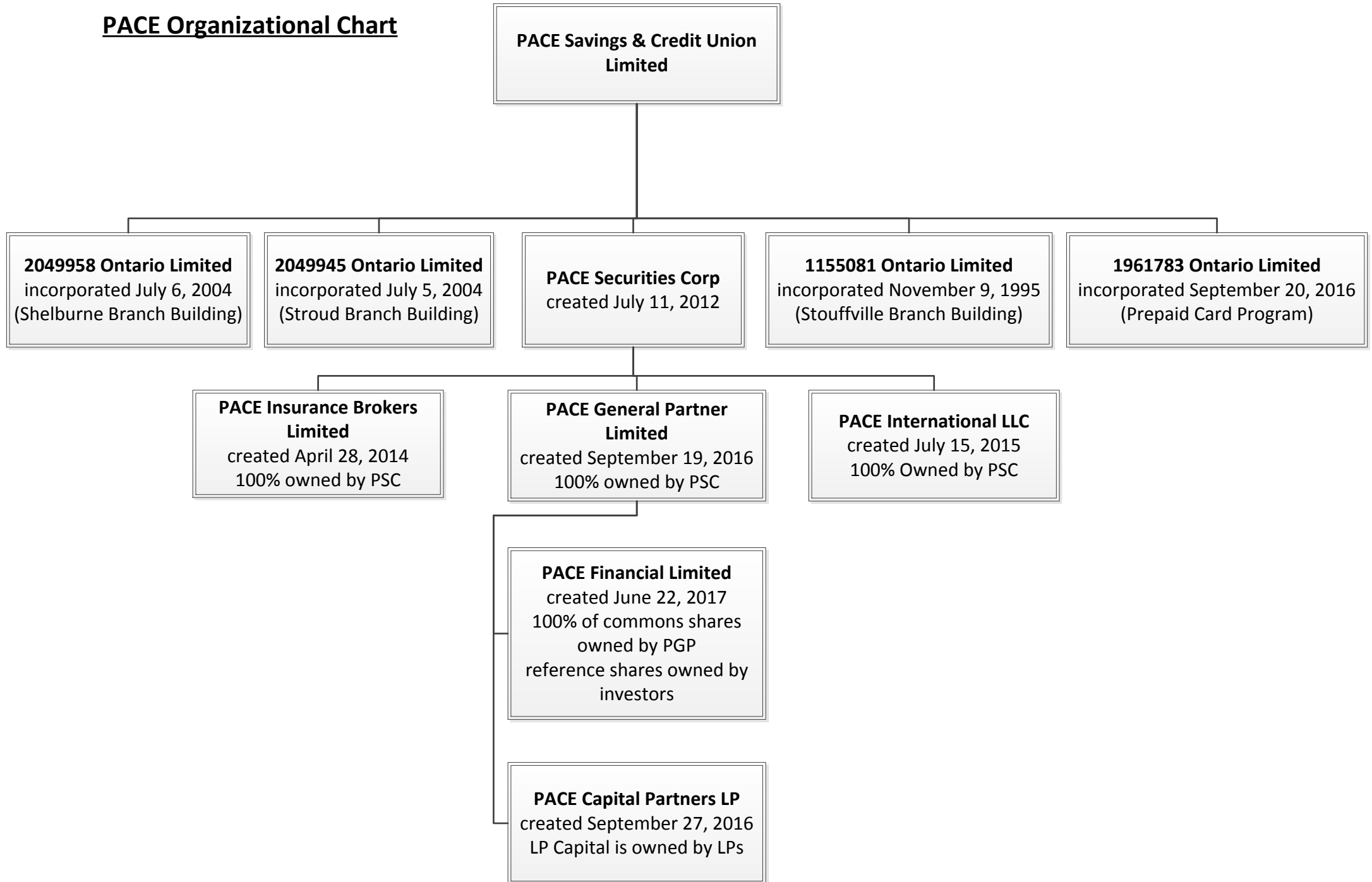
Mitch Stephenson

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Commissioner for Taking Affidavits (or as may be)

MITCH STEPHENSON

PACE Organizational Chart



This is Exhibit “G” referred to in the Affidavit of Mehrdad Rastan sworn by Mehrdad Rastan at the City of Toronto, in the Province of Ontario, before me on August 17, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Mitch Stephenson

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Commissioner for Taking Affidavits (or as may be)

MITCH STEPHENSON

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Suite 100
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April 12, 2021

Dear Members of PACE Credit Union:

**Re: Update from PACE's regulator
The Financial Services Regulatory Authority of Ontario (FSRA)**

I am writing to you to let you know of regulatory decisions we have made to protect you as a member of PACE Credit Union (PACE), and to ensure that PACE continues to be a member-focused community-based credit union serving your needs.

These decisions have been made with PACE's new CEO and management team to implement a stabilization plan that:

- Provides members with confidence that PACE has financial resources to continue operations without interruption, including a committed credit facility from FSRA for \$500 million which PACE can use to repay its deposits without disruption or delay;
- Protects PACE members by ensuring that all member deposits that can be insured, are fully insured;
- Hired a new CEO, and provides him and the PACE management team with increased authority to lead a successful recovery of PACE and to better meet its members needs;
- Allows PACE to temporarily operate with a reduced capital requirement during the recovery period; and
- Requires management to implement better governance, controls and training to ensure members are treated well when PACE sells them financial products.

I want to assure you that your insurable deposits are well protected, and PACE continues to operate to serve your needs.

Why was PACE placed in administration?

FSRA is the regulator for all credit unions in Ontario.

As the regulator, our mandate is to promote high standards of business conduct and provide deposit insurance for members through the Deposit Insurance Reserve Fund (DIRF). We also protect depositors and the DIRF from loss and promote the stability of the credit union sector. We want members to have confidence in our credit unions and a strong credit union sector.

FSRA administers a deposit insurance program that uses the DIRF to protect insurable deposits held with Ontario credit unions. Deposit insurance is part of a comprehensive regulatory program that protects the safety and soundness of credit unions. Learn more about deposit insurance from PACE directly, or go to our [website \(https://www.fsrao.ca/dirf\)](https://www.fsrao.ca/dirf).

In September 2018, to protect PACE's members from failed board governance and misconduct by certain executives, the credit union was placed into Administration by our predecessor, the Deposit Insurance Corporation of Ontario. This gave the regulator control of PACE.

Since June 2019, FSRA has been responsible for supervising PACE's financial safety and soundness (prudential regulation) and its business conduct. In the absence of a board, we provide oversight for the executives managing the day-to-day operations of PACE.

New Regulatory Decisions

Today, we want to inform you of the following decisions:

1. Administration Order #4¹

FSRA appointed David Finnie as PACE's Chief Executive Officer in late 2020. FSRA has full confidence in Mr. Finnie and the current PACE management team. I have signed a new Administration Order which gives Mr. Finnie and his team more authority over the operations of PACE. This will allow PACE to better serve its members.

2. PACE Securities Corporation (PSC) and Preferred Shares

FSRA acknowledges that several hundred PACE members have suffered significant losses on their investments in the preferred shares of PACE Financial Limited (PFL) and First Hamilton Holdings Inc. These preferred shares were distributed by PSC, a PACE subsidiary and the owner of PFL.

We have worked with PACE to create a mediation process ordered by the Court to fairly address the claims of preferred share investors.

The law of Ontario governing credit unions (referred to as the Credit Union and Caisses Populaires Act, or CUCPA) permitted PACE to refer its members to PSC, but not to sell securities directly. FSRA has determined that a small number of PACE Credit Union employees directly sold preferred shares to PACE members in breach of the CUCPA.

¹ FSRA website: [Administration Order 4 – March 26, 2021](#) or you can go to www.pacecu.ca

Working with Mr. Finnie and his team, we have identified measures to ensure that this won't happen again. PACE management will be required to take decisive action to reinforce all regulatory requirements, including those related to sales of financial products. This includes implementing better governance, controls and training of PACE employees.

FSRA and PACE are committed to working in good faith through the mediation process set up by the court to achieve fair treatment for all parties.

3. Capital Variance Decision²

PACE management has advised FSRA that, based on PACE's 2020 financial results, PACE's regulatory capital at December 31, 2020 does not meet regulatory (CUCPA) requirements.

FSRA has decided to vary the CUCPA capital requirements for PACE so that it can continue to operate and serve its members. We can grant this variance because of PACE's proposed business and capital recovery plans, our confidence in PACE management and the anticipated proceeds from the recovery litigation against the former CEO and President of PACE and certain former directors³.

To protect the interests of members, PACE will operate under conditions, including proactively contacting uninsured depositors. During this time, PACE must avoid taking deposits which are not insured and arrange for uninsured deposits to be repaid on a timely basis.

PACE will also protect its capital by ceasing dividend payments and restricting investment share redemptions and employee bonuses.

At PACE's April 28th Annual General Meeting (AGM), you will learn more about PACE's 2020 financial statements and business plan. You will have the opportunity to review materials and ask questions of PACE's management.

4. Liquidity Facility

PACE has strong liquid financial resources. However, to provide members with confidence that PACE has more than adequate financial resources to continue operations without interruption, and to pay its deposits without disruption or delay, we have agreed to provide a \$500 million credit facility and are in the process of finalizing its documentation.

As we live in unprecedented and uncertain times, this will protect PACE depositors against unexpected adverse events.

We want PACE members to know they can continue to rely on their credit union without concerns about the safety or availability of their insured deposits.

² FSRA website: [Variance Letter](#) or you can go to www.pacecu.ca

³ Shortly after PACE was placed in administration, FSRA, as Administrator, commenced legal proceedings under Court File No. CV-19-00616388-OOCL in the Ontario Superior Court of Justice (Commercial List) against the former CEO and President of PACE and certain former directors.

Looking Forward

I understand that the Administration of PACE and the recovery litigation are taking longer to complete than you may have expected. Unfortunately, COVID-19 and other unexpected developments have impacted PACE's financial strength. This has caused FSRA, despite the hard work of the former PACE Board elected in January 2020, to step-back from the return to member-controlled governance. FSRA remains committed to working through this adversity to protect the interests of PACE and its members.

I also acknowledge the impact on certain PACE members due to the failure of PSC, and the significant loss of value in their preferred share investments. FSRA will continue to work with PACE and its counsel to seek a fair resolution of all claims through the mediation process, and to advocate for PACE's interests against those who caused the harm. Unfortunately, the timeline for resolving these matters is beyond FSRA's or PACE's control, and continuing patience and perseverance will be required as such matters involve significant uncertainty. Because of court orders in the pending legal proceedings, FSRA cannot comment further on these issues.

PACE and its members have faced much adversity since 2018. PACE's employees have also been through a difficult time, and I would like to thank them for their efforts to continue to serve you, the PACE members.

FSRA has full confidence in PACE's CEO and management team - and, with the arrangements discussed above, we believe you, the PACE members, can continue to rely on PACE as your financial partner.

PACE's members have embodied the spirit and the strength of the co-operative movement, and I thank you for that continuing support.

We have appended some Questions and Answers for your information. If you have any additional questions, you can contact the FSRA Contact Centre at 416-250-7250 or 1-800-668-0128. You can also send us an email at contactcentre@fsrao.ca

I look forward to seeing you at PACE's April 28 AGM.

Yours truly,



Mark White
Chief Executive Officer,
Financial Services Regulatory Authority of Ontario

cc. David Finnie, CEO, PACE Credit Union

Questions and Answers for PACE members

1. What does this mean for me?

- PACE remains open for business to continue serving your financial needs.
- Insurable deposits are protected and therefore such money is safe and will continue to be safe.
- PACE is making sure your deposits that can be insured, are insured.
- PACE will contact you by May 6, 2021 if you have uninsured deposits. They will help you find way to re-organize your deposits so that they can become insured and provide for additional coverage, or to discuss repayment of uninsured deposits.
- If you are unsure about your deposits, please call PACE at **1 877 588 7223**.

2. Should I continue with PACE?

- Yes, given the measures put in place to protect PACE's members, you can continue to work with PACE as your financial partner with confidence.
- PACE members can continue to rely on the credit union without concerns about the safety or availability of your insured deposits.
- PACE's new CEO and his team have the experience and knowledge to ensure that the credit union continues to operate and to serve your needs.
- Insured deposits continue to be insured, and PACE will contact you by May 6, 2021 to discuss options for uninsured deposits, such as re-organizing your deposits so that they can become insured and provide for additional coverage, or to discuss repayment of such uninsured deposits.
- We have put additional measures in place to protect you. For example, PACE must avoid taking new deposits that are not insured.

3. Is my money safe? Should I move my money?

- Your insured deposits are safe, and will continue to be safe.
- In Ontario, the moment you become a credit union member and make a deposit, your insurable deposits are protected. Deposits in registered accounts (such as your RRSP, RRIF and TFSA) have unlimited coverage. Non-registered insurable deposits held at an Ontario credit union – in Canadian funds, payable in Canada – have a maximum coverage amount of \$250,000. PACE will contact members with uninsured deposits by May 6, 2021 and work with them to re-organize those deposits in order to insure them if possible, or to discuss repayment of such uninsured deposits.
- PACE must avoid taking any deposits which are not insured and to arrange for such deposits to be repaid on a timely basis.
- We want to make sure that you fully understand what is covered by deposit insurance and what is not. Please contact your local PACE Branch or <https://www.fsrao.ca/dirf>

4. Is my retirement money safe?

- All insurable deposits in the following registered accounts have unlimited deposit insurance coverage: Locked-in retirement account (LIRA); Life income fund (LIF); Registered retirement savings plan (RRSP); Registered retirement income fund (RRIF); Registered disability savings plan (RDSP) and Tax-free savings account (TFSA).

5. I thought that all my money/savings was covered by insurance – is that not the case?

- FSRA has a deposit insurance program that protects insurable deposits held with Ontario credit unions.
 - Deposits in registered accounts have unlimited coverage.
 - Non-registered insurable deposits held at an Ontario credit union – in Canadian funds, payable in Canada – have a maximum coverage amount of \$250,000.
 - PACE will contact members with uninsured deposits by May 6, 2021 and work with them to re-organize those deposits in order to insure them if possible, or to discuss repayment of such uninsured deposits.
- Learn more about insured and uninsured deposits: <https://www.fsrao.ca/dirf>

6. Can I see PACE's 2020 financial results?

- Financial statements are part of the AGM package. They will be posted online by April 15th (www.pacecu.ca) or you can request a hard copy from your local branch (1 877 588 7223).
- The financial statements will be presented at the April 28th AGM. You will be able to ask questions of PACE Credit Union management on the financial statements at that time.

7. What is the status of the preferred share investor claims?

- FSRA acknowledges that many PACE members have suffered losses on their investments in the preferred shares of PACE Financial Limited and First Hamilton Holdings Inc. These preferred shares were distributed by PACE Securities Corp. (PSC), a PACE subsidiary.
- FSRA has worked with PACE to create a mediation process to work towards settling all preferred share investor claims. FSRA and PACE are committed to working in good faith through the mediation process set up by the court to achieve fair treatment for all parties.

8. Is there a plan for PACE's return to normal operations and member-controlled governance?

- FSRA has a comprehensive stabilization plan that it is implementing with PACE management to protect and serve PACE members.

The stabilization plan:

- Provides members with confidence that PACE has financial resources to continue operations without interruption, including a committed credit facility from FSRA for \$500 million which PACE can use to repay its deposits without disruption or delay;
- Protects PACE members by ensuring that all member deposits that can be insured, are fully insured;

- Provides PACE's new CEO, and the PACE management team, with increased authority to lead a successful recovery of PACE and to better meet its members needs;
 - Allows PACE to temporarily operate with a reduced capital requirement during the recovery period; and
 - Requires management to implement better governance, controls and training to ensure members are treated well when PACE sells them financial products.
- PACE's return to member controlled governance is dependent on PACE's management team meeting your needs and returning it to profitability, and on managing through the recovery litigation started in 2018 (against the former president and CEO of PACE and certain former directors), and the claims of investors in the preferred shares.
 - As we work through this adversity, FSRA has confidence in PACE's new CEO and management team, and with the regulatory decisions we have made, members can continue to rely on PACE as their financial partner.

9. Why does PACE have low regulatory capital and what does it mean to me?

- Regulatory capital is a buffer against financial loss and other adversity – it protects deposits from loss.
- COVID-19 and other unexpected developments caused losses in PACE's operations, loans and other investments - this reduced PACE's financial strength.
- FSRA's stabilization plan for PACE helps protect depositors from the increased risk due to unusually low capital.
- Anticipated proceeds from the recovery litigation (against the 2018 CEO and President of PACE, and certain directors from 2018) can restore PACE's capital.

This is Exhibit “H” referred to in the Affidavit of Mehrdad Rastan sworn by Mehrdad Rastan at the City of Toronto, in the Province of Ontario, before me on August 17, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Mitch Stephenson

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Commissioner for Taking Affidavits (or as may be)

MITCH STEPHENSON



[Home](#) › [News](#) › Transaction between Alterna and PACE successfully completed

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July 6, 2022

Transaction between Alterna and PACE successfully completed

The Financial Services Regulatory Authority of Ontario is pleased to report that the transaction between PACE Savings and Credit Union Ltd., and Alterna Savings and Credit Union Limited (Alterna Savings) has been successfully completed.

This transaction provides PACE members with enhanced stability, access to expanded banking services and a more certain future as part of Alterna. As PACE's Administrator, we believe this represents the best possible outcome for PACE members in the circumstances.

What remains of the PACE (legal entity) will be subject to a court-supervised liquidation. We will continue to provide updates to the members on this process. If members have questions about administration, liquidation (wind-up) and investment, profit or membership shares, they should contact FSRA's Contact Centre at 1-800-668-0128 or by email at contactcentre@fsrao.ca.

FSRA would like to thank PACE employees and leadership for their hard work and dedication during this transition.

Learn more:

FSRA continues to work on behalf of all stakeholders, including consumers, to ensure financial safety, fairness, and choice for everyone.

Learn more at www.fsrao.ca.

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Announcements

© Financial Services Regulatory Authority of Ontario

This is Exhibit "I" referred to in the Affidavit of Mehrdad Rastan sworn by Mehrdad Rastan at the City of Toronto, in the Province of Ontario, before me on August 17, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Mitch Stephenson

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Commissioner for Taking Affidavits (or as may be)

MITCH STEPHENSON

CITATION: Smith v. Pace Savings & Credit Union Limited
2020 ONSC 6496
COURT FILE NO.: CV-19-00633165-00CL
DATE: 20201026

SUPERIOR COURT OF JUSTICE – ONTARIO

(Commercial List)

RE: LARRY SMITH, 1428245 ONTARIO LIMITED
and 809755 ONTARIO LIMITED

Applicants

AND

PACE SAVINGS & CREDIT UNION LIMITED,
by its administrator, FINANCIAL SERVICES REGULATORY AUTHORITY

Respondent

BEFORE: Koehnen J.

COUNSEL: *Alistair Crawley, Clarke Tedesco, Jonathan C. Preece* Counsel, for the
Applicants

Jason Wadden, Michael Wilson Counsel, for the Respondent

HEARD: August 5, 2020

ENDORSEMENT

[1] The applicants seek an Order requiring the respondent to pay the amount of approximately \$5,000,000 formerly held in the applicants' accounts at Pace Savings & Credit Union Limited to the applicants forthwith. In the alternative, the applicants seek an order directing Pace to pay the amounts formerly held in the applicants' accounts into court pending the resolution of Court File No. CV-19-00616388-00CL.

- [2] Pace resists on the grounds that it has the right to set off the amounts in the accounts against amounts that it asserts the applicants owe Pace.
- [3] Larry Smith is the former CEO of Pace. The applicants 1428245 Ontario Limited and 809755 Ontario Limited are Ontario corporations of which Mr. Smith is the principal shareholder and directing mind.
- [4] The respondent Financial Services Regulatory Authority (“FSRA”) is the regulator of Pace pursuant to the *Credit Unions and Caisses Populaires Act, 1994*; SO 1994, c 11 (the “Act”). After investigating the affairs of Pace, FSRA issued an Administration Order pursuant to section 298 of the Act, took over control of Pace and terminated Mr. Smith’s employment.
- [5] On September 28, 2018, FSRA blocked Mr. Smith’s accounts at Pace.
- [6] After assuming control of the credit union, FSRA commenced, among other things, an action in this court bearing Court File No. CV-19-00616388-00CL. That action seeks damages against the applicants for, among other things fraud and breach of fiduciary duty.
- [7] On March 19, 2019 FSRA obtained a Mareva injunction against Mr. Smith and the two numbered companies.
- [8] On May 7, 2019, the Mareva injunction was replaced by the Preservation Order granted on consent by Justice Conway (the “Preservation Order”). Its effect is similar to the Mareva injunction but allows Mr. Smith access to certain assets and imposes limits on his expenditures.
- [9] It appears that beginning on May 6, 2019 FSRA began making accounting entries internally at Pace which had the effect of collapsing the term deposits in Mr. Smith’s accounts and reducing the balance in the accounts from approximately \$5,000,000 to zero.
- [10] FSRA made corresponding credit entries on the books of Pace in an account called “Special Recovery GL”. It appears that at least some of the funds taken from Mr. Smith’s account were used to pay administration fees, taxes and legal costs associated with the administration. While the precise journal entries are unclear on the record before me, the financial statements of Pace dated June 25, 2019 describe the collapse of the accounts holding over \$5,000,000 as follows:

The court froze the bank accounts owned by the individuals at the Credit Union. Subsequently, the funds were released to the Credit Union in accordance with the Credit Union Act. The recovery amount was \$3.8 million after netting the administration fees, taxes, and legal cost. The recovered amount was recorded as the Credit Union’s incomes or expenses in 2019. It would have increased the capital ratio from 8.32% to 8.87% and leverage ratio from 5.07% to 5.41% as at December 31, 2018.

- [11] It appears from this note that FSRA took the funds from the applicants' accounts and recorded them as income or used to pay expenses. This had the advantageous effect of increasing Pace's leverage ratio which in turn allowed it to lend more funds than it otherwise would have because the amounts in Mr. Smith's account were no longer recorded as a liability of Pace but were recorded as part of Pace's regulatory capital.
- [12] Pace advances three basic arguments to resist this application.
- [13] First, it argues that the application is a collateral attack on the Preservation Order granted by Justice Conway on May 7, 2019. I disagree. The Preservation Order was granted on consent to replace the Mareva injunction. Mr. Smith had no way of knowing when he agreed to the Preservation Order on May 7 that Pace had begun making accounting entries to collapse his term deposits and cash deposits at the credit union the day before. Moreover, Mr. Smith's does not attack the Preservation Order. He will continue to be bound by it.
- [14] Second, FSRA submits that it has the right to set off against the accounts of any depositor, any amount in respect of which the depositor is indebted to the credit union. It bases this right on section 44 (1) of the *Credit Unions and Caisse Populaires Act*, 1994 (the "CUCPA") which provides:
- 44 (1) A credit union has a lien on the deposits and membership shares of a member for any liability to it by the member, and may set off any sum standing to the credit of the member on the books of the credit union towards the payment of the liability.
- [15] While I agree that this section gives Pace a lien on the amounts in Mr. Smith's accounts with the credit union, I do not necessarily agree that it gives the Pace the right to appropriate those amounts for itself. Allowing Pace to apply funds in a depositor's account to delinquent liquidated debts that are easily evidenced, such as indebtedness on a loan, may make good sense and causes little prejudice to an account holder. Expanding that right to include claims for unliquidated damages for causes of action as amorphous as breach of fiduciary duty creates an entirely different balance of equities between the parties.
- [16] If FSRA's argument is correct, then any party who had a right of lien or set off would be able to appropriate funds for itself simply by issuing a statement of claim, alleging any type of unliquidated damage claim and appropriate funds for itself.
- [17] Whether Mr. Smith actually owes the money to the credit union will depend on a judicial determination of the issue. I do not believe the legislature intended to displace the role of courts in adjudicating issues like breach of contract, breach of fiduciary duty or fraud simply by giving the credit union a lien or a right of set off. That would require far more express language than section 44 contains.
- [18] In this regard I note that set off is ultimately a defence, which if disputed, must be determined by a court, not by the party itself. Section 111 of the *Courts of Justice Act*,

RSO 1990, c C.43 establishes set off as a defence to a claim. Jurisprudence is to the same effect. See for example *Holt v. Telford*, [1987] S.C.R. 193 para. 23 and following. A party does not have the right determine set off unilaterally without judicial supervision.

- [19] FSRA's third argument to resist the relief sought is the proposition that once an account holder deposits money into a credit union, the funds deposited become the property of the credit union and the account holder has only a debt claim for the return of the deposit if the credit union does not return it willingly. See for example: Bradley Crawford, *The Law of Banking and Payment in Canada* (Toronto: Canada Law Book, 2015), (loose-leaf revision 13) p. 9-118.4 – 9-118.5; *Royal Bank v. Rastogi*, 2010 ONSC 3981 at paras. 9-10, aff'd 2011 ONCA 47.
- [20] FSRA relies heavily on *Rastogi*, and argues that it is factually similar because it involves a former bank employee whom the bank deprived of access to his accounts because it claimed a right of set off based on an unliquidated damages claim.
- [21] I do not take issue with *Rastogi* or the general proposition that funds on deposit with the bank are not funds that the bank is holding in trust but are funds that belong to the bank and reflect a liability that the bank owes to the customer. This proposition simply means that a depositing institution is entitled to use funds on deposit for its own purposes such as lending to others. Mr. Smith does not take issue with Pace's ability to do so.
- [22] That general proposition does not, however, mean that the depositing institution can reverse the accounting entries that record the debt to the account holder. Nor does it mean that the depositing institution can unilaterally collapse investments such as term deposits and thereby seek to avoid liability for the return on the deposit holder's investment.
- [23] *Rastogi*, is of no help to the credit union in this regard. In *Rastogi*, the bank did not collapse investments or bank accounts, it merely froze Mr. Rastogi's accounts.
- [24] In my view that is the far more preferable way of proceeding here.
- [25] There is clearly a heated dispute between the parties. The effect of the Preservation Order is, as the name of the order suggests, to preserve things as they are pending resolution of the litigation. Its effect is not to change the status quo unless so provided for in the order. Mareva injunctions have a similar effect. What the credit union did went well beyond that. It did not preserve any status quo but assumed that judgment had been granted in its favour and seized the applicants' deposits for its own benefit.
- [26] The preferable way of proceeding in situations like this is simply to preserve the status quo and not allow either party to jockey for position by collapsing accounts or by removing deposits from the credit union.
- [27] As a result of the foregoing I order the respondent to restore the applicants' accounts to the state they were in on May 6, 2019 and to compensate the applicants for any loss of interest suffered between May 6 and the date on which the accounts are restored. To the extent that the accounts were invested in term deposits, they should be reinvested in term deposits

of a similar nature. If the parties cannot agree on the specific investment, they may approach me to resolve the issue.

- [28] I note that this action was commenced in 2019 and has not yet been defended. One of the fundamental purposes of the Commercial List is to provide real-time litigation where required. This strikes me as a situation that requires a significantly speedier resolution than the one for which the parties appear to be headed. To the extent that either party wishes to advance the litigation so that the status quo does not remain in place indefinitely, they can seek a case conference before that me or any other judge of the Commercial List to do so.
- [29] Any party seeking costs as a result of these reasons may provide written submissions within 14 days of receipt of the reasons. Responding submissions are to be delivered seven days later with any reply being delivered five days after that.

Koehnen J.

Date: October 26, 2020

This is Exhibit “J” referred to in the Affidavit of Mehrdad Rastan sworn by Mehrdad Rastan at the City of Toronto, in the Province of Ontario, before me on August 17, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Mitch Stephenson

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Commissioner for Taking Affidavits (or as may be)

MITCH STEPHENSON



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV 19 616388 CL DATE: 25 July 2022

NO. ON LIST: _____

TITLE OF PROCEEDING: Pace Savings v Smith etal

BEFORE JUSTICE: Gilmore

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
A. Winton	App	awinton@lolg.ca
D. Ionis	App	

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
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D. Stewart	Director	Douglas.stewart@dentons.com
P. Corney S. Weisz	Phil Smith	pcorney@reconllp.com
J. Waxman		jwaxman@lawrences.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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V. Vandergust		vic@vandergustlaw.com
B. DiCarlo		carlod@stockwoods.ca

ENDORSEMENT OF JUSTICE GILMORE:

The Smith parties requested this scheduling conference. They allege that the parties reached a settlement of the issues for the Alterna Transaction Motion scheduled for August 8, 2022 and that FSRA/PACE has resiled from that settlement. The Smith parties therefore seek to enforce the settlement and served a lengthy motion record on the evening of July 20, 2022 returnable on August 8, 2022, the date originally scheduled for the Alterna Transaction Motion. The Smith parties submit there is sufficient time for PACE to file responding material and that the matter is urgent. They seek an Order from this Court that the status quo remain in place pending the motion.

PACE opposes the enforcement motion proceeding on August 8, 2022. The affidavits in support filed by the Smith parties were from counsel given that the issues relate to settlement and settlement privilege. PACE submits it will have to also file a responding affidavit from counsel which will necessitate having outside counsel argue the motion. It is simply not possible to draft responding material, do cross-examinations and engage outside counsel within two weeks. It took the Smith parties from July 5th to July 20th to prepare their materials, PACE should be permitted at least that amount of time.

PACE opposes any order preserving the status quo. PACE submits that such an Order is akin to an interim injunction and therefore cannot be made on a conference and without a full record. If necessary, the Smith and Larry parties should request an expedited motion for that purpose.

The parties generally agree that the Alterna Transaction motion should be heard after the enforcement motion as the motion may be moot depending on the result.

The Smith parties seek to schedule their stay motion. The parties agree that a full day should be set aside for that motion.

Analysis and Ruling

I agree with Mr. Winton that it is not feasible for his client to respond to the enforcement motion within two weeks given the issues at stake and the nature of the motion. All parties and outside counsel are available on September 16, 2022 which is the earliest next available date to the Court for a three hour motion.

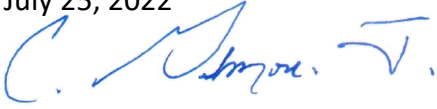
As for the status quo issue, the Smith parties have been requesting information from PACE since the Alterna transaction first became known. They seek assurances that no steps will be taken to dissipate assets from PACE pending the September motion. I am aware of the Smith parties' requests which have gone unanswered. I see no prejudice to PACE in requiring a status quo arrangement pending the motion so long as there are reasonable terms.

Given all of the above, I make the following Orders:

- 1. The enforcement motion will proceed on September 16, 2022 at 11:00 for three hours.**
- PACE will serve its responding material on both the enforcement and the stay motion by August 8, 2022.
- The status quo to be maintained by PACE pending the enforcement motion. In the event that PACE seeks to take steps such as any further dissipation of assets, PACE may do so on the consent of the parties or Order of this Court.
- PACE is required to provide details of the Alterna transaction and its current financial position in its responding material to the enforcement and/or stay motion.
- 5. The stay motion is scheduled for December 19, 2022 at 10:00 for a full day.**

6. **The Alterna Transaction Motion originally scheduled for August 8, 2022 is hereby vacated.** That motion may need to be rescheduled depending on the results of the enforcement motion.
7. The motion materials for the enforcement motion contain confidential and privileged materials. Those materials shall be subject to a sealing order until the hearing of the motion on September 16, 2022.

July 25, 2022



Justice C. Gilmore

This is Exhibit “K” referred to in the Affidavit of Mehrdad Rastan sworn by Mehrdad Rastan at the City of Toronto, in the Province of Ontario, before me on August 17, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Mitch Stephenson

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Commissioner for Taking Affidavits (or as may be)

MITCH STEPHENSON



Financial Services Regulatory
Authority of Ontario



Ontario



Autorité ontarienne de réglementation
des services financiers

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Bureau 100
Toronto (Ontario)
M2N 6S6

Téléphone : 416 250 7250
Sans frais : 1 800 668 0128

August 17, 2022

VIA EMAIL

KPMG Inc.
Bay Adelaide Centre
333 Bay Street, Suite 4600
Toronto, ON M5H 2S5

Attention: Anamika Gadia, Senior Vice-President

Re: Nomination as liquidator of PACE Savings & Credit Union Limited (the “Credit Union”)

As you know, and as detailed below, the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (“We” or “FSRA”) ordered that the Credit Union be subject to administration pursuant to the provisions of the predecessor legislation to the *Credit Unions and Caisses Populaires Act, 2020* (Ontario) (the “CUCPA”). The Administrator may cause the Credit Union to bring an application to the Ontario Superior Court of Justice (Commercial List) (the “Court”) seeking an order winding-up the Credit Union under the provisions of the CUCPA. In that application the Credit Union would seek the appointment by the Court of a liquidator (the “CUCPA Proceedings”). This letter agreement confirms the Administrator’s intention to nominate or support the nomination of KPMG Inc. (“You” or the “Nominee”) as court-appointed liquidator of the Credit Union in such proceedings, and sets out the terms on which We and You agree to such nomination.

Background

FSRA is an independent regulatory agency established pursuant to the *Financial Services Regulatory Authority of Ontario Act, 2016* (the “*FSRA Act*”). The objects of FSRA, as they pertain to credit unions in Ontario and as set out in the *FSRA Act*, include to provide insurance against the loss of deposits with credit unions, promote and otherwise contribute to the stability of the credit union sector in Ontario, and to pursue the foregoing for the benefit of persons having deposits with credit unions and in such manner as will minimize the exposure of the Deposit Insurance Reserve Fund (the “DIRF”) to loss (the “Objects”).

The Chief Executive Officer of the Deposit Insurance Corporation of Ontario (“DICO”, a predecessor agency which amalgamated with FSRA effective June 8, 2019, and continued as

FSRA) issued an Administration Order on September 28, 2018, pursuant to section 294(1) of the *Credit Unions and Caisses Populaires Act, 1994* (which legislation was repealed effective March 1, 2022, and replaced with the CUCPA), ordering that the Credit Union be subject to the administration of the Administrator (the “First Administration Order”). Further Administration Orders were issued in respect of the Credit Union dated February 19, 2020, April 28, 2020 and March 26, 2021 (collectively, and together with the First Administration Order and any other Administration Orders as may be issued in respect of the Credit Union, the “Administration Orders”).

Following the issuance of the First Administration Order, the Administrator commenced legal proceedings under Court File No. CV-19-00616388-00CL in the Ontario Superior Court of Justice (Commercial List) against certain of the former directors of the Credit Union and others, including the former CEO and the former President of the Credit Union, and which includes related claims, counterclaims and cross-claims asserted therein or in connection therewith, as a result of the events giving rise to the Administration Order (collectively, the “Recovery Litigation”). Also a result of the events giving rise to the First Administration Order, the Administrator filed (i) a proof of loss under a fidelity insurance bond bearing Policy Number 01501254 issued by CUMIS General Insurance Company to the Credit Union with an Effective Date of January 1, 2018, and an Expiry Date of January 1, 2010 (the “CUMIS Bond Claim”), and (ii) a proof of loss under Financial Institution Bond for Banking Institutions Bond Number 43-EPF-306798-03 issued by National Liability & Fire Insurance Company, carrying on business as Berkshire Hathaway Specialty Insurance (the “Berkshire Bond Claim”).

Pursuant to the Administration Orders, the Administrator was granted and has retained the authority to, *inter alia*, (i) exercise the powers of the Credit Union for matters outside of the ordinary course of business, and of the directors, officers and committees, and (ii) manage the Recovery Litigation, the CUMIS Bond Claim, the Berkshire Bond Claim, and certain “Investor Litigation”, including making decisions regarding the conduct and settlement of those matters.

On June 30, 2022, and following a formal process (the “Sale Process”) whereby legal and financial advisors were engaged by the Administrator, the Administrator completed a transaction (the “Sale Transaction”) pursuant to which Alterna Savings and Credit Union Limited (the “Purchaser”) acquired and assumed, *inter alia*, substantially all of the assets, member deposits and retail and commercial loan portfolio of the Credit Union.

The Nominee has been engaged by FSRA since April 1, 2021, as (among other things) financial advisor to the Administrator for the purposes of the Sale Process which included the sale of a wholly owned subsidiary of the Credit Union, Continental Currency Exchange (“CCE”) and the sale of substantially all of the assets and liabilities of the Credit Union (the “Prior KPMG Engagement”). FSRA believes that the background, understanding and experience in respect of the Credit Union, its assets, undertakings, properties, liabilities and claims gained by the Nominee in the Prior KPMG Engagement will benefit the Credit Union, its stakeholders and the Court if the Nominee were appointed as liquidator for the purposes of the CUCPA Proceedings.

In connection with the closing of the Sale Transaction, the Purchaser also offered employment to substantially all of the Credit Union’s employees, took over the Credit Union’s branches, and provided substantially all of the Credit Union’s members with membership in the Purchaser.

Following closing of the Sale Transaction, the Credit Union continues to hold and/or be subject to (directly or through affiliated entities) remaining proceeds from the sale transaction in respect of CCE, a partial recovery from the CUMIS Bond Claim, and certain assets and liabilities that were excluded from the Sale Transaction, including assets and liabilities under or relating to the Recovery Litigation and the business operated by the Credit Union as issuer of Visa and Mastercard prepaid cards (collectively the “Remaining Assets”). The Credit Union is also a party as a defendant to other ongoing litigation in Ontario and British Columbia (the “Other Ongoing Litigation”).

The Administrator is of the view that, having completed the Sale Transaction, the Credit Union can no longer fulfil its statutory object of “providing on a co-operative basis financial services primarily for its members”, an orderly wind-up of the Credit Union is appropriate, and that in the circumstances (including having regard to the nature and complexity of the Remaining Assets), a court-ordered winding up of the Credit Union by a court-appointed liquidator pursuant to the CUCPA would be appropriate (such winding-up proceedings being the “CUCPA Proceedings”).

Nomination

The Administrator hereby agrees to nominate or support the nomination of Nominee, and the Nominee hereby agrees to accept such nomination and consent to its appointment, as court-appointed liquidator of the Credit Union in CUCPA Proceedings on the terms set out herein and in the form of Winding-up Order attached hereto as Schedule “A” (the “Winding-up Order”).

Cooperation

In addition to its regulatory mandate and its current role as Administrator, FSRA is the administrator of the DIRF and a creditor of the Credit Union pursuant to an unsecured promissory note dated October 27, 2021.

In recognition of the aforesaid mandate and roles of FSRA, the Nominee agrees that upon and following its appointment as Liquidator it will keep FSRA fully apprised of its activities and all material issues which may arise in or in connection with the liquidation and winding-up. The Liquidator will oversee FSRA’s continued management of the Recovery Action, the CUMIS Bond Claim, and the Berkshire Bond Claim. The Liquidator and FSRA will consult and cooperate with one another in connection with the liquidation and winding-up of the Credit Union including, without limitation, in connection with the Recovery Action, the CUMIS Bond Claim, the Berkshire Bond Claim, the Remaining Assets and the Other Ongoing Litigation.

If the Nominee determines, following its appointment as Liquidator, that it is necessary or desirable to borrow funds pursuant to Liquidator’s Certificates (as defined in the Winding-up Order), it will request such funding first from FSRA as Administrator of the DIRF (which request will be made not less than **10** days before funding of the requested advance is required) and will not request funding from a third party unless FSRA has declined to make the requested advance and/or FSRA has consented in writing, acting reasonably, to borrowing from such third party.

FSRA (in its individual capacity and as Administrator) hereby waives any conflict of interest which may exist as a result of the Prior KPMG Engagement.

FSRA acknowledges that the obligations of the Nominee under this Agreement may be subject to limitations or requirements imposed by the CUCPA or other applicable laws or by the Court (including any advice or directions of the Court or any order delineating the powers, authority or responsibilities of the Liquidator) or by virtue of the Liquidator's status as an officer of the Court. In the event of a difference of opinion or duty between the Liquidator and FSRA which cannot be reconciled or resolved to the satisfaction of the Liquidator and FSRA, each acting reasonably, FSRA acknowledges that the Liquidator may bring a motion for advice and direction of the Court in the CUCPA Proceedings.

Fees of the Liquidator

The Nominee agrees to charge such fees, disbursements and travel expenses as set out in Schedule "B" attached hereto, which fees, disbursements and travel expenses shall be subject to approval by the Court in the CUCPA Proceedings from time to time and shall be paid from the proceeds of the winding-up. The Nominee hereby acknowledges and confirms that FSRA shall not be responsible for the payment or reimbursement of any remuneration payable to the Nominee or any of its agents or the indemnification of the Nominee in its capacity as liquidator of the Credit Union or any of its agents. No later than two weeks prior to any motion to the Court to approve its accounts, the Liquidator shall provide to FSRA, for its review and approval, copies of all invoices issued by the Liquidator and its legal counsel for services rendered in connection with the CUCPA Proceedings during the relevant period, which accounts shall be rendered monthly.

Miscellaneous

The Nominee and, once appointed, the Liquidator agrees to cooperate with FSRA and provide such assistance as may be reasonably required in the event that privacy notices must be communicated to depositors or similar actions may be required in accordance with FSRA's obligations under the *Freedom of Information and Protection of Privacy Act* (Ontario). Each of the Nominee and, once appointed, the Liquidator and FSRA hereby acknowledge and confirm that certain information collected, used and disclosed to the other party pursuant to this letter agreement may constitute personal information pursuant to the *Freedom of Information and Protection of Privacy Act* (Ontario), the *Personal Information Protection and Electronic Documents Act* (Canada), as amended, and may be regulated by such Acts and other applicable law. Each of the Nominee and, once appointed, the Liquidator and FSRA hereby agree that such information will be collected, used, disposed and disclosed in accordance with applicable law.

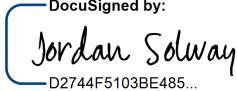
Upon acceptance by the Nominee and its appointment as Liquidator by the Court, this letter agreement will constitute a binding agreement between FSRA and the Nominee (and their respective successors and permitted assigns), governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. This letter agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, supersedes all prior agreements, understandings and discussions between the parties, and shall not be amended except in writing signed by FSRA and the Nominee. Neither party may assign this letter agreement except with the prior written consent of the other party.

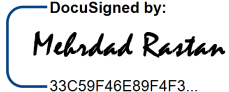
This letter agreement may be executed in counterparts, each of which may be executed and delivered by digital means and deemed an original, and all of which taken together will constitute one agreement.

Please indicate your acceptance by signing in the space provided below.

Yours truly,

**FINANCIAL SERVICES REGULATORY
AUTHORITY OF ONTARIO as
ADMINISTRATOR OF PACE SAVINGS &
CREDIT UNION LTD.**

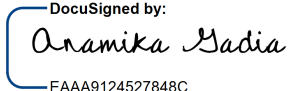
By:  _____
Name: Jordan S. Solway
Title: EVP Legal & Enforcement

By:  _____
Name: Mehrdad Rastan
Title: EVP Credit Unions & Insurance
Prudential

We/I have authority to bind the
Administrator.

Accepted this 17th day of August, 2022:

KPMG INC.

By:  _____
Name: Anamika Gadia
Title: Senior Vice President

SCHEDULE “A”

FORM OF WINDING-UP ORDER

Court File No.

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

THE HONOURABLE
JUSTICE CONWAY

)
)
)

MONDAY, THE 22ND
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 and KPMG, 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 \$_____, provided that the aggregate consideration for all such transactions does not exceed \$_____ ; 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;
- (n) 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;
- (o) 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;
- (p) 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;

- (q) 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;
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (s) 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 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 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.

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, 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.

FUNDING OF THE WINDING UP

22. THIS COURT ORDERS that the Liquidator be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$3,000,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Liquidator by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Liquidator’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Liquidator’s Charge. Notwithstanding anything contained in this Order, the Liquidator shall not borrow any monies during the first 15 days following the date of this Order, unless approved by further order of this Court.

23. THIS COURT ORDERS that neither the Liquidator’s Borrowings Charge nor any other security granted by the Liquidator in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Liquidator is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Liquidator’s Certificates**”) for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that the monies from time to time borrowed by the Liquidator pursuant to this Order or any further order of this Court and any and all Liquidator’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Liquidator’s Certificates.

SERVICE AND NOTICE

26. 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.

27. 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

28. 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.

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

30. 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.

31. 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.

32. 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.

33. 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.

SCHEDULE "B"

FEEES

Partners - \$700-\$795/HR

Senior Managers - \$600-\$650/HR

Managers - \$450/HR

Senior Consultants- \$350/HR

Technicians - \$300/HR

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.

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

**Proceeding commenced at
Toronto**

**AFFIDAVIT OF MEHRDAD RASTAN
(SWORN AUGUST 17, 2022)**

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Lawyers for the Administrator of the Applicant

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**APPLICATION RECORD
(WINDING UP AND APPOINTING LIQUIDATOR)**

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