

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

**IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, R.S.O. 1990, C. B.16, AS
AMENDED**

**AND IN IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C., 1985, C. C-44, AS AMENDED**

**AND IN THE MATTER OF A WINDING UP OF
PACE SECURITIES CORP., PACE FINANCIAL LIMITED, AND
PACE GENERAL PARTNER LIMITED**

Applicants

**SUBMISSIONS OF
FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO**
(In Support of Motion to Approve PSC Settlement, July 30, 2021)

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**FACTUM OF
FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO**
(In Support of Motion to Approve PSC Settlement, July 30, 2021)

I. OVERVIEW

1. The Financial Services Regulatory Authority of Ontario (“**FSRA**” or the “**Regulator**”) files this factum in support of the motion brought by the Representative Counsel (defined below) for an Order approving the settlement (the “**Settlement**”) reached during the court-order mediation regarding the Investor Claims (defined below). FSRA, in its capacity as Administrator of the PACE Savings & Credit Union Limited (“**PACE**” or the “**Credit Union**”) and as the regulator of PACE and the Ontario credit union sector, is of the view that the Settlement is a fair and reasonable settlement of the claims brought by the Investors

(defined below) against the Credit Union, its subsidiary PACE Securities Corporation (“PSC”) and others.

2. FSRA is also of the view that Court approval of the Settlement is an important and necessary step towards the completion of the Credit Union’s administration by FSRA. By eliminating the uncertainty surrounding the Credit Union created by the Investor Claims, the Settlement provides certainty to the Credit Union by crystalizing the exposure of the Credit Union to loss. Moreover, Court approval of the Settlement is in the broader public interest because it will contribute to public confidence in the credit union sector by ensuring that the Investors are fairly compensated, thus protecting the rights and interests of consumers.
3. The settlement will no doubt contribute to the public confidence in, and the stability of, the credit union sector. As the market conduct and prudential regulator of credit unions in Ontario, FSRA is of the view that the proposed Settlement is in the best interest of the consumers of financial services in Ontario, the Credit Union and its members, including those who were Investors, and its community of stakeholders, and therefore is in the public interest.

II. BACKGROUND

A. FSRA – The Regulator

4. FSRA is the regulator of credit unions in Ontario pursuant to the *Credit Unions and Caisses Populaires Act, 1994* (the “Act”) and to the *Financial Services Regulatory Authority of Ontario Act, 2016* (the “FSRA Act”). FSRA is responsible for the prudential and market conduct regulation of credit unions in Ontario. It also administers the DIRF, which insures

the eligible deposits of members of Ontario's credit unions and can, where required, act as the supervisor, administrator and liquidator of credit unions (as those terms are defined by the Act).

5. Effective June 8, 2019, FSRA amalgamated with Deposit Insurance Corporation of Ontario ("DICO"), the entity that formerly carried out the prudential regulation of credit unions in Ontario under the Act. For ease of reference, the regulator shall be referred to as FSRA regardless of whether the event described herein took place before or after June 8, 2019.
6. In carrying out its role as the prudential and market conduct regulator, FSRA's statutory objects include, among other things, contributing to public confidence in the credit union sector in Ontario, protecting the rights and interests of consumers, and promoting and otherwise contributing to the stability of the credit union sector in Ontario. FSRA is required to pursue its statutory objects relating to the credit union sector for the benefit of persons having deposits with credit unions and to do so in a manner that will minimize the exposure of the DIRF to loss.¹

*Financial Services Regulatory Authority of Ontario Act, 2016, S.O. 2016, c. 37,
Sch. 8, sections 3(1) and (4)*

B. The Credit Union

7. PACE is a credit union incorporated under the Act. PACE serving approximately 40,000 members through 17 branches throughout southern Ontario, and has over \$1 billion in

¹ The DIRF is a fund administered by FSRA, which is funded by levies made on credit unions in Ontario. Pursuant to s.276 of the Act, the DIRF may be used to fund deposit insurance, provide financial assistance to credit unions that are in administration or are being wound-up, and for certain other statutorily permitted purposes.

assets under management. PACE undertook substantial growth starting around 2014, including by acquiring a number of other credit unions throughout south western Ontario.

C. The Administration of the Credit Union

8. On September 28, 2018, FSRA issued an Administration Order in respect of the Credit Union. As a result of the Administration Order, FSRA became the Administrator of the Credit Union (the “**Administrator**”) and controls the governance and operations of the Credit Union.
9. Since the Administration Order was issued, PACE has continued to operate in the ordinary course of business under the control of the Administrator. .
10. Further to this end, FSRA, in its capacity as Administrator of the Credit Union, has instituted various legal proceedings in order to recover the losses the Credit Union suffered as a result of matters connected to the events that led to FSRA ordering the Credit Union into administration.

D. PSC and its Liquidation

11. PSC was a subsidiary of the Credit Union. It was incorporated in 2013 as part of the Credit Union’s plans to create and operate a securities broker dealer and investment fund manager. PSC was the first and only broker dealer which was established in the Ontario credit union sector following amendments to the Act to permit credit unions to own securities broker dealers. It provided stock brokerage, corporate finance and investment management services to its clients, and also traded its own inventory of securities. It was regulated by the Investment Industry Regulatory Organization of Canada (“**IIROC**”) and the Ontario Securities Commission (“**OSC**”).

12. As a result of a number of events, which were detailed in the report of the Representative Counsel, PSC did not have sufficient liquidity and capital to withstand adverse market developments in early 2020 caused by the COVID-19 pandemic and was unable to continue business operations. Accordingly, on May 14, 2020, the Court granted a winding-up order placing PSC and certain of its subsidiaries into liquidation.
13. Following the issuance of the liquidation order in May 2020, Paliare Roland Rosenberg Rothstein LLP (“**Representative Counsel**”) was appointed as the representative counsel of investors (the “**Investors**”) of preference shares of PACE Financial Ltd. (“**PFL**”) (an indirect wholly-owned subsidiary of PACE and direct subsidiary of PSC) and First Hamilton Holdings Ltd. (“**FHH**”) in connection with their proposed claims against PACE, PSC, PFL FHH and others (the “**Investor Claims**”).
14. FSRA worked with Representative Counsel and the parties to create a process to resolve the Investor Claims through the Claims Procedure Orders which provided for a confidential early stage mediation (the “**Mediation**”). The Mediation resulted in the Settlement which is now before the Court for approval. Pursuant to the Claims Procedure Orders, FSRA was entitled but not required to participate in the Mediation for the purpose of observing and facilitating the mediation process.
15. Given the nature and magnitude of the Investor Claims, unresolved, they posed a material and serious risk to the continuing viability of the Credit Union. The losses sustained by the Investors also raised concerns about the need to protect the rights and interests of consumers given the manner in which the preferred shares were distributed, particularly in respect of the Investors who were Credit Union members and, in some cases, who purchased such preferred shares from the Credit Union.

III. PROPOSED SETTLEMENT SHOULD BE APPROVED

A. FSRA's Role At The Mediation

16. Pursuant to the Claims Procedure Orders, FSRA participated in the Mediation for the purpose of observing and facilitating it.

17. Given ongoing and publicly disclosed concerns about the financial position of the Credit Union, Representative Counsel required assurance from FSRA that if the Credit Union were unable to fund its contribution towards the settlement for any reason, FSRA would ensure payment in full of the Credit Union's contribution. FSRA provided such confirmation to Representative Counsel.

B. FSRA Supports the Proposed Settlement as Being in the Public Interest

18. FSRA supports the proposed Settlement for the following reasons:
 - (a) If the Credit Union were found liable at trial to at least some of the Investor, even in a limited proportion, there was a risk that the Credit Union would have to pay for a disproportionate amount of any judgment due to the limited amount of available assets from the other proposed defendants;
 - (b) It is questionable as to whether the Credit Union currently would have the financial capital to satisfy a claim against it for tens of millions of dollars independent of a thoughtfully implemented settlement, such as the proposed Settlement;
 - (c) The continued uncertainty regarding the unresolved Investor Claims has the potential to impede the successful resolution of Credit Union. Such uncertainty could materially prejudice PACE's efforts to continue to serve its members needs,

either by emerging from administration and continuing operations, or by merging with another credit union. Further, while such uncertainty continues, it exposes the PACE depositors and the DIRF to additional loss; and

- (d) The Settlement resolves fairly and equitably the Investor Claims. It thus protects the rights and interests of consumers, thereby promoting confidence in the credit union sector. Further, crystalizing the Credit Union's exposure to loss will contribute to the resolution of the administration of PACE, which will also contribute to greater confidence and the stability in the credit union sector..
19. Finally, and as noted above, FSRA has provided confirmation to the Representative Counsel that FSRA will, to the extent necessary, provide financial support to the Credit Union, as permitted under the Act, to ensure that the Credit Union is able to meet its obligations under the Settlement.
20. The approval is an important step towards decreasing the uncertainty that exists regarding the Credit Union's future, thus serving its members and minimizing the exposure of PACE depositors and the DIRF to loss. FSRA is therefore of the view that it is in the public interest that the Settlement be accepted and approved by the Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

July 27, 2021



GOODMANS LLP
Counsel to Financial Services Regulatory
Authority of Ontario

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