

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,
PACE INSURANCE BROKERS LIMITED AND
PACE GENERAL PARTNER LIMITED

Applicants

FOURTH REPORT OF THE LIQUIDATOR

JULY 26, 2021

INTRODUCTION

1. This fourth report of the Liquidator (the “**Fourth Report**”) is filed by Ernst & Young Inc. (“**EYI**” or the “**Liquidator**”) in its capacity as Liquidator of the estate and effects of the Applicants, Pace Securities Corp. (“**PSC**”), Pace Financial Limited (“**PFL**”), Pace Insurance Brokers Limited (“**PIB**”) and Pace General Partner Limited (“**PGPL**”) (collectively the “**Companies**”) appointed pursuant to the Order of the Honourable Mr. Justice Hailey dated May 14, 2020 (the “**Appointment Order**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. The purpose of this Fourth Report is to provide the Court with information regarding the motion brought by Paliare Roland Rosenberg Rothstein LLP as representative counsel (“**Representative Counsel**”), returnable July 30, 2021, seeking an order (the “**Settlement**”).

Approval Order”) to approve and implement a settlement of the claims of the preferred shareholders of PFL and FHH.

TERMS OF REFERENCE

3. In preparing this Fourth Report and making the comments herein, the Liquidator has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the Companies’ books and records, discussions with the management of the Companies and information from other third-party sources (collectively, the **“Information”**). Future oriented financial information relied upon in this Fourth Report is based on assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.
4. The Liquidator has not audited, reviewed or otherwise verified the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Professional Accountants Handbook and, accordingly, the Liquidator expresses no opinion or other form of assurance in respect of the Information.
5. The Liquidator will make a copy of this Fourth Report, and related documents, available on the Liquidator’s website at www.ey.com/ca/pacesecurities.
6. Unless otherwise stated all monetary amounts contained herein are expressed in Canadian Dollars.

OVERVIEW

7. PSC and PFL are each corporations incorporated under the *Business Corporations Act* (Ontario). Their registered and head office is located at 50 Burnhamthorpe Road West, Suite 600, Mississauga, Ontario L5B 3C2. Joe Thomson was the CEO and was a director of PSC and PFL.
8. PSC is an investment dealer regulated by The Investment Industry Regulatory Organization of Canada (**“IIROC”**) and an investment fund manager regulated by the Ontario Securities Commission (**“OSC”**).

9. PSC did not hold its customers' cash and securities itself. Rather, pursuant to the IIROC rules, PSC was an introducing broker that was a party to an Introducing Type 2 Arrangement and, as such, PSC's client accounts were held with its carrying broker, Laurentian Bank Securities Limited ("LBS").
10. PFL carried on business as an investment vehicle for accredited investors to earn fixed dividends from an investment in a basket of high-yield bonds. PFL raised capital by selling preference shares. PFL used those proceeds to purchase high-yield bonds on "margin"¹ through its accounts at PSC. The interest and any trading profits earned on the bonds net of management costs from PSC and other expenses were to be used to fund regular dividend payments to the preference shareholders.
11. Almost all of PFL's investors are retail investors, and many of its investors also have accounts with PSC. PSC provided brokerage, investment and business management services to PFL.
12. Like PFL, First Hamilton Holdings Inc. ("FHH")² sold preference shares, accompanied by warrants for one series of shares, to investors and used the proceeds from those shares to invest in a basket of high-yield bonds, the interest and gains on which were intended to be used to pay management fees to PSC and dividends to holders of the preference shares, as well as to fund other business ventures. As at the date of the Appointment Order, FHH was indebted to LBS in the approximate amount of \$2.8 million on account of margin provided by LBS to FHH.
13. PGPL is a corporation incorporated under the *Canada Business Corporations Act* and is a holding company that owns 100% of the common shares of PFL. PGPL also acts as the general partner for Pace Capital Partners L.P. ("PCP").
14. PCP is a limited partnership. PCP raised money from accredited investors and invested the proceeds in high-yield bonds on margin through LBS. The majority of investors that

¹ Margin is a form of loan whereby the broker loans money to its client to allow the client to purchase more securities than could otherwise be purchased with the amount of money the client has available in the account. The interest-bearing loan in the account is collateralized by the securities and cash in the account. Because LBS is PSC's carrying broker, any margin loans provided through a PSC account were in fact provided by LBS.

² Joe Thomson was the CEO and is a director of FHH.

subscribed for units of PCP have since redeemed their units. There are five remaining investors in, and limited securities owned by PCP. PCP is indebted to LBS in the approximate amount of \$42,000 on account of margin provided by LBS to PCP. PSC provided brokerage, investment and business management services to PCP.

15. On May 14, 2020, EYI was appointed as Liquidator of the estate and effects of the Companies. Pursuant to the Appointment Order, all of the Companies' employees were terminated.
16. On May 21, 2020, a Hearing Panel of IIROC issued an order, among other things, suspending PSC's membership in IIROC and ordering that PSC immediately cease dealing with the public.
17. Also, on May 21, 2020, MNP Ltd. ("**MNP**") was appointed, pursuant to an order of this Court, as liquidator of the estate and effects of, among other entities, FHH (the "**FHH Liquidator**").³
18. On June 5, 2020 the OSC suspended PSC's investment fund manager registration.

APPOINTMENT OF REPRESENTATIVE COUNSEL.

19. As initially discussed in the Second Report of the Liquidator dated July 31, 2020 (the "**Second Report**"), EYI had been made aware of claims and/or potential claims by holders of PFL and FHH preference shares and warrants (collectively referred to herein as the "**Investor Claimants**") against various parties including the Companies, FHH, Pace Credit Union, and their respective directors and officers (collectively, the "**Potential Defendants**").
20. On August 6, 2020, Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**") was appointed by Order of Justice Hainey (the "**Representative Counsel Order**") as Representative Counsel to, among other things, advance the interests of the Investor Claimants in this proceeding and the liquidation proceeding in respect of FHH.

³ This proceeding and the FHH liquidation proceeding are referred to herein collectively as the "**Liquidation Proceedings**". The Liquidator and the FHH Liquidator are referred to herein collectively as the "**Court Appointed Liquidators**".

21. The Representative Counsel Order also granted Pace Credit Union the exclusive authority, until October 15, 2020, to seek, design and present a settlement and/or settlement package in respect of direct and indirect certain claims against Pace Credit Union, to Representative Counsel and the Court Appointed Liquidators (the “**Exclusivity Period**”). By the consent of Representative Counsel and the Court Appointed Liquidators, the Exclusivity Period was extended until October 30, 2020.

PREFERRED SHAREHOLDER CLAIMS PROCESS

22. As of the end of the Exclusivity Period, no settlement offer or package was delivered to Representative Counsel and the Court Appointed Liquidators.
23. On or about November 20, 2020, FSRA announced that as a result of the resignation of several directors and officers of Pace Credit Union, FSRA was resuming oversight of the day-to-day operations of Pace Credit Union pursuant to a previously issued administration order.
24. During and after the Exclusivity Period, communications continued between Representative Counsel, counsel for Pace Credit Union, FSRA, EYI, and the FHH Liquidator with respect to, among other things, a process for the resolution of the Investor Claimants’ claims.
25. By Orders of the Court dated March 2, 2021 in each of the Liquidation Proceedings on motions by Representative Counsel (the “**Claim Procedure Orders**”), a process was established for resolving the claims of the Investor Claimants in respect of their purchase of PFL and FHH preference shares and warrants, (together, with the claims of 7903197 Canada Inc. in respect of its purchase of Pace Capital Partners Series A Limited Partnership Units, the “**Preferred Shareholder Claims**”).
26. The Claim Procedure Orders provided the framework for a process for resolving the Preferred Shareholder Claims. This process provided for a start date triggered by the delivery of a Claims Brief⁴ by Representative Counsel detailing the Investor Claimants’ claims (various Interested Parties subsequently delivered Responding Briefs) followed by

⁴ All capitalized terms not defined in this Report are used as defined in the Claim Procedure Orders.

two distinct phases;

- a) a Mediation Process (as described further below); and
- b) if necessary, a Claims Adjudication Process⁵ to deal with the adjudication of any unsettled claims.

MEDIATION PROCESS

27. Pursuant to the Claim Procedure Orders, Joel Wiesenfeld was appointed as Mediator (the “**Mediator**”) to attempt to facilitate the resolution of the Preferred Shareholder Claims and any Related Claims. The Mediator’s primary objective was to achieve a comprehensive settlement of all Preferred Shareholder Claims and Related Claims, but where the Mediator was satisfied that attainment of that objective was not possible, the Mediator may seek to facilitate partial settlements, and/or seek to obtain agreement with respect to the Claims Adjudication Process.
28. The Mediator was to consult with each of Representative Counsel, the Court Appointed Liquidators, Pace Credit Union and every other Interested Party, and shall thereafter establish and implement the Mediation Process.
29. The Court Appointed Liquidators were to have a facilitative role to play in respect of preparation of the Claims Brief, the Mediation Process, and Claims Adjudication Process, including, without limitation, through the production of non-privileged documents and other relevant information to Representative Counsel, to Pace Credit Union, and to Interested Parties for those purposes.
30. A Document Production Protocol with respect to documents in the possession of the Court Appointed Liquidators was negotiated and agreed upon among the parties to the Mediation

⁵ The Claims Adjudication Process means the expedited and simplified process to be determined by the Court following the Claims Adjudication Start Date after hearing submissions from the Court Appointed Liquidators and Interested Parties and receiving any recommendation from the Mediator, which process would feature fixed trial dates and which was intended to result in the adjudication of any outstanding Preferred Shareholder Claims and Related Claims by no later than 6 months after the Claims Adjudication Start Date.

Process. The Liquidator produced documents to requesting parties throughout the mediation process in accordance with that protocol.

31. The Mediator communicated formally with the parties to the Mediation Process beginning on March 31, 2021 and throughout the Mediation Process. The Liquidator assisted the Mediator as requested with respect to, among other things, communications and production of information and documents.
32. Commencing on May 31, 2021, the Mediator began canvassing individual parties as to their settlement positions through separate meetings.
33. More formal mediation sessions took place during the weeks of June 14 and 21, 2021 with the stated goal of reaching a full or partial resolution by the end of June 2021, such that the matter would proceed thereafter before the Court for settlement approval or approval of the Claims Adjudication Process, as the case may be. If applicable, July 2, 2021 was designated as the 'Start Date' of the Claims Adjudication Process (as per paragraph 2(b) of the Claim Procedure Orders).

PROPOSED SETTLEMENT

34. The Mediation Process resulted in a settlement of the Preferred Shareholder Claims (the "**Settlement**"), subject to Court approval, pursuant to a Settlement Term Sheet dated as of June 24, 2021 (the "**Term Sheet**"), a redacted copy of which is attached as Appendix "C" to the Second Report of Representative Counsel filed in connection with the motion seeking approval of the Settlement.
35. The material terms of the Settlement are summarized as follows:
 - a) Monetary compensation totaling \$40 million (the "**Settlement Amount**") is to be paid to the Investor Claimants in exchange for the release of claims against the Settling Parties.
 - b) The Settling Parties are Pace Credit Union, AIG Insurance Company of Canada, in its capacity as the insurer for PSC, FHH and PFL (the "**Insured Organizations**") and certain of their directors and officers (the "**Individual Insureds**"), the Insured

Organizations, the Individual Insureds, and various investment advisors formerly employed by PSC represented by their insurers AXIS Reinsurance Company (Canadian Branch) and Liberty Mutual (the “**Investment Advisors**”). It is a term of the Settlement that the precise contribution made by each of the Settling Parties will remain confidential, subject to communications with legal or financial advisors and/or legal and financial disclosure obligations.

- c) The Settlement Amount will be paid to Representative Counsel, in trust, within 60 days of the final approval of the Settlement by the Court, for further distribution to Investor Claimants in accordance with a scheme of distribution to be approved by the Court on future motion by Representative Counsel.
 - d) Pace Credit Union has agreed to limit any damages, costs, taxes or disbursements sought in the Credit Union Action (defined in the Term Sheet) to the damages attributable to the several liability of the existing parties in that action that may be proved at trial.
 - e) AIG, the Individual Insureds, the Court Appointed Liquidators on behalf of the Insured Organizations, the Investment Advisors, and the Investment Advisors’ insurers (AXIS Reinsurance Company (Canadian Branch) and Liberty Mutual) have agreed to exchange consents and releases.
 - f) In recognition of ongoing regulatory matters pertaining to certain Settling Parties, the Investor Claimants have agreed to provide written support for the resolution of any and all regulatory matters associated with the purchase, sale, and distribution of the Preferred Shares, upon receipt of a request for such support.
36. The Liquidator supports approval of the Settlement by the Court for the following principal reasons:
- a) The relevant parties appear to have participated in the Mediation Process in good faith.
 - b) The Settlement was arrived at expeditiously.
 - c) The magnitude of the payment amount under the Settlement is significant.

- d) As reported by Representative Counsel, many of the Investor Claimants are near or at retirement age, such that they need compensation on a timely basis and will not benefit from protracted litigation.
- e) The alternative to the Settlement is protracted and expensive litigation of factually and legally complex claims by the Investor Claimants.
- f) Approval of the Settlement will allow the Court Appointed Liquidators to proceed with completion of the administration of the winding-up proceedings.

RECOMMENDATIONS

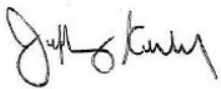
37. For the reasons enumerated above, the Liquidator recommends the approval of the Settlement, as set out in the Settlement Approval Order submitted by Representative Counsel.

All of which is respectfully submitted this 26th day of July, 2021.

ERNST & YOUNG INC.,

Solely in its capacity as Liquidator of
Pace Securities Corp., Pace Financial Limited,
Pace Insurance Brokers Limited, and Pace General Partner Limited
and not in its personal or corporate capacity

Per:



Jeffrey D. Kerbel
Senior Vice-President