

**DECISION OF THE CHIEF EXECUTIVE OFFICER OF THE FINANCIAL
SERVICES REGULATORY AUTHORITY OF ONTARIO FOR VARIATION OF
CAPITAL REQUIREMENTS**

(April 5, 2021)

IN THE MATTER OF the *Credit Unions and Caisses Populaires Act*, 1994, S.O. 1994, c. 11 (the “**Act**”) and, in particular, section 87(3);

AND IN THE MATTER OF Pace Savings & Credit Union Limited (“**PACE**”);

AND IN THE MATTER OF a capital variation decision of the Chief Executive Officer (the “**CEO**”) of the Financial Services Regulatory Authority of Ontario (“**FSRA**”) pursuant to section 87 of the Act;

AND WHEREAS PACE is a credit union incorporated pursuant to the provisions of the Act;

AND WHEREAS the Deposit Insurance Corporation of Ontario (“**DICO**”) is the predecessor to FSRA and was the regulator of PACE under the Act until DICO’s amalgamation with FSRA on June 8, 2019;

AND WHEREAS on September 28, 2018, DICO by order (the “**Administration Order**”) placed PACE under Administration pursuant to section 294 of the Act;

AND WHEREAS section 84(1) of the Act and section 15(3) of the General Regulation 237/09 made pursuant to the Act, require a credit union to have regulatory capital, expressed as a percentage of its total assets, (the “**Leverage Ratio**”) of at least 4% , and to have regulatory capital, expressed as a percentage of its risk weighted assets, (the “**Risk Weighted Ratio**”) of at least 8% (collectively, the “**Capital Requirements**”);

AND WHEREAS the Chief Executive Officer and Chief Financial Officer of PACE (“**PACE Management**”) have advised FSRA that, based upon PACE’s financial statements for the year ended December 31, 2020 (which are in the process of being finalized with PACE’s auditors and will be provided to FSRA and to PACE’s members as required under the Act with an unqualified audit opinion) (the “**PACE 2020 Financials**”), that PACE’s regulatory capital is, as at December 31, 2020, expected to be 2.82% for the Leverage Ratio and 6.51% for the Risk Weighted Ratio (the difference between the Capital Requirements and such levels of capital at December 31,2020 being the “**Capital Deficiency**”);

AND WHEREAS PACE’s Management has advised FSRA that PACE’s 2020 Financials contain adequate provision for all present liabilities and obligations (actual or contingent) for any past event;

AND WHEREAS section 87(1) of the Act permits a credit union to apply to the CEO for a variation of the Capital Requirements;

AND WHEREAS PACE Management has applied to the CEO under section 87 of the Act to vary the Capital Requirements for PACE;

AND WHEREAS the application meets the criteria for approval set out in FSRA's Variation Guidance (**Guidance Number** CU0044ORG);

AND WHEREAS PACE Management has provided FSRA a 2021 budget and capital recovery plan dated January 29th 2021 (the "**2021 Budget and Capital Recovery Plan**") which indicates that PACE can continue to operate and to serve the needs of its members and depositors, and which contemplates that PACE's regulatory capital will not at any time fall below 2% for the Leverage Ratio or below 4% for the Risk Weighted Ratio under normal business operating conditions;

AND WHEREAS it is anticipated that PACE, in the recovery action which has been brought on PACE's behalf by its administrator, against various parties, including the former CEO and former President of PACE at the time the Administration Order was made, in the Ontario Superior Court of Justice (Commercial List) under Court File No. CV-19-00616388-00CL, for matters that resulted in DICO placing PACE under Administration (the "**Recovery Action**"), will result in a settlement or judgment to PACE;

AND WHEREAS proceeds from the Recovery Action are expected to resolve the Capital Deficiency but cannot be recognized as an asset of PACE until such litigation is concluded and there is certainty that such proceeds will be received;

AND WHEREAS the CEO has been advised that the 2021 Budget and Capital Recovery Plan is reasonable and achievable within a reasonable time, having regard to PACE's business and other means of capital recovery, and is a prudent and reasonable plan to assist the Credit Union to eventually be released from Administration;

AND WHEREAS FSRA has agreed to enter into a committed loan facility with PACE in the amount of \$500 million, secured by a charge over all of the assets of PACE, to ensure that PACE has ample financial resources to continue to conduct its operations, including to meet its obligations to insured and uninsured depositors, and FSRA is in the process of documenting such a loan facility;

AND WHEREAS the CEO, in his capacity as administrator of PACE, has, on March 26, 2021, amended the Administration Order to provide PACE Management and its other employees with a framework to support the ongoing operations of PACE;

AND WHEREAS PACE Management has confirmed their intent to operate PACE in accordance with the terms of this Capital Variation Decision and otherwise in a manner that will protect and serve the interests of PACE's members, depositors, customers and creditors;

THE CEO DETERMINES AS FOLLOWS:

1. Subject to the terms and conditions set forth in this Decision, until the Recovery Action is concluded, or until the CEO determines that sufficient proceeds to restore

PACE's regulatory capital to the Capital Requirements are not reasonably likely to be received by PACE, the Capital Requirements under the Act are hereby varied for PACE, and PACE shall be permitted to continue to operate as a credit union, with regulatory capital that is not less than 2% for the Leverage Ratio and is not less than 4% for the Risk Weighted Ratio.

2. As conditions of the variance granted by this Decision, PACE (including its subsidiaries where applicable) shall, until the CEO confirms in writing that he is satisfied that PACE has met the Capital Requirements:
 - a) Provide notice of this Decision to its members within 30 days, and to any person who proposes to become a member of PACE in advance of becoming a member.
 - b) Within 30 days of this Decision, identify all deposits which are not insured through the Deposit Insurance Reserve Fund ("**DIRF**"), provide notice of this Decision to all uninsured depositors and, for any demand uninsured deposit or other uninsured deposit which is at any time due, offer immediate repayment of such uninsured deposit.
 - c) Use all reasonable efforts to avoid taking any deposits which are not insured through the DIRF and to monitor whether any such uninsured deposits are made, and, if such uninsured deposits are made, use all reasonable efforts to inform each such depositor of the terms of this Decision and arrange for such deposits to be repaid at the earliest possible time.
 - d) Cease issuing or paying dividends, coupons or other payments or distributions of any kind on any investment shares, profit shares, member shares, member contributions or any other equity or liability arrangement forming part of PACE's regulatory capital ("**Equity Capital**").
 - e) Cease the redemption or repayment of any Equity Capital to any member or other person, except for redemptions made which are required under the RRSP/RRIF provisions of the Income Tax Act of Canada and which are made after providing at least 30 days prior written notice to FSRA.
 - f) Ensure that all trade creditors of PACE or any of its subsidiaries are paid in accordance with agreed payment terms.
 - g) Not enter into any material obligation (being any obligation greater than \$150,000), or any transaction out of the ordinary course of business without FSRA's prior written consent, including but not limited to any agreement that is not terminable on 30 days notice without penalty or involving an obligation of more than \$150,000.
 - h) Not sell any assets, including, without limitation, a subsidiary or part thereof, or an interest in a joint venture, without FSRA's prior written consent if such sale is: (i) of assets which will be sold for less than their net book value; (ii) not contemplated in the 2021 Budget and Capital Recovery Plan; or (iii) contemplated in the 2021 Budget and Capital Recovery Plan, but the sale price is in an amount in excess of \$1 million.

- i) Not declare or pay any bonuses or variable or extraordinary incentives or compensation to management or employees of PACE or its subsidiaries without FSRA's prior written consent.
 - j) Comply with the terms of the 2021 Budget and Capital Recovery Plan and immediately notify FSRA if, at any time during the term of such plans, PACE is not in compliance with such plans.
 - k) Seek FSRA approval for business plans and budgets for subsequent years, comply with the terms of such plans and budgets, and notify FSRA if, at any time during the term of such plans and budgets, PACE, including its subsidiaries, will not be in compliance.
3. The CEO may, by written notice to PACE Management, rescind or vary the terms of this Decision if the CEO, in his discretion, determines such action is necessary or desirable to protect PACE's depositors or the DIRF from loss or to foster the stability of the credit union sector.

DATED at Toronto, this 5th day of April, 2021.

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES REGULATORY
AUTHORITY OF ONTARIO**



Mark E. White
Chief Executive Officer
Financial Services Regulatory Authority of Ontario