

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

THE HONOURABLE MR.) THURSDAY, THE 6TH DAY
)
JUSTICE HAINEY) AUGUST, 2020.

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

**AND 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
FIRST HAMILTON HOLDINGS INC., FIRST HAMILTON
FINANCIAL SERVICES INC., FIRST HAMILTON CAPITAL INC.,
FIRST HAMILTON GENERAL PARTNER 2 INC.
and FIRST HAMILTON MORTGAGE BROKERS INC.**

Applicants

ORDER

THIS MOTION made by MNP Ltd., in its capacity as court appointed liquidator of First Hamilton Holdings Inc., First Hamilton Financial Services Inc., First Hamilton Capital Inc., First Hamilton General Partner 2 Inc. and First Hamilton Mortgage Brokers Inc. (and together with Ernst & Young Inc., in its capacity as court-appointed liquidator of Pace Securities Corp., Pace Financial Limited, Pace Insurance Brokers Limited and Pace General Partner Limited in Ontario Superior Court of Justice (Commercial List) file No.CV-2000641059-00CL, the “**Court Appointed Liquidators**”), for an order appointing Paliare Roland Rosenberg Rothstein LLP

(“**Paliare Roland**”) as representative counsel for the investors described in Schedule “A” hereto (the “**Investor Claimants**”) in this proceeding was heard this day via videoconference at Toronto, Ontario,

ON READING the Motion Records of the Court Appointed Liquidators, and on hearing the submissions of counsel for the Court Appointed Liquidators, Pace Savings & Credit Union Ltd. (the “**Credit Union**”), Surinder Sawrup, Aman Sawrup, and Saira Ahmad and Laurentian Bank Securities (“**LBS**”), such other counsel as were present; no one else appearing although duly served, as appears from the Affidavit of Service of Anna Miele, sworn August 4, 2020,

1. **THIS COURT ORDERS** that the timing and method of service and filing of this motion is hereby abridged and validated such that the motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that Paliare Roland be and is hereby appointed to represent the Investor Claimants in this proceeding (the “**Representative Counsel**”), in respect of their Investor Claims (as defined in Schedule “A”) provided that the scope of that representation may be amended at the request of Representative Counsel, following consultation with the Court Appointed Liquidators, upon further motion to this Court on notice to the Court Appointed Liquidators, the Credit Union and such others as this Court may direct.
3. **THIS COURT ORDERS** that Representative Counsel shall represent the interests of the Investor Claimants without any obligation to consult with or seek instructions from individual Investor Claimants, provided however, that Representative Counsel, acting in consultation with the Court Appointed Liquidators, shall establish a committee of Investors (the “**Representative**

Committee”) on such terms as may be agreed to by the Court Appointed Liquidators or established by further order of this Court.

4. **THIS COURT ORDERS** that, subject to the exclusive right of the Credit Union to present a settlement proposal as set out in paragraph 14 hereof, Representative Counsel be and is hereby permitted, but not directed, to take and to 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 in these proceedings (“**Representative Counsel Mandate**”) including, without limitation:

- (a) developing a process, in consultation with the Court Appointed Liquidators, for the investigation, identification, advancement and resolution of valid and provable Investor Claims;
- (b) addressing the Investor Claims, as part of these proceedings or in such related or consequential proceedings as may be approved by this Court, including, without limitation, by negotiation, compromise, arrangement, settlement, or litigation;
- (c) reporting to and responding to inquiries from the members of the Representative Committee and individual Investor Claimants; and
- (d) performing such other actions as approved by this Court.

5. **THIS COURT ORDERS** that the Court Appointed Liquidators shall forthwith provide to the Representative Counsel, subject to mutually satisfactory confidentiality arrangements, or by further order of this Court, without charge, the following information, documents and data in their possession (the “**Information**”) to be used only for the purpose of the Representative Counsel Mandate:

- (a) the names, last known addresses and last known telephone numbers and e-mail addresses, and other contact information of the Investor Claimants; and
- (b) upon request of the Representative Counsel, such documents and data as may be reasonably relevant to issues affecting the Investor Claimants, subject to the agreement of the Court Appointed Liquidators or further order of this Court.

6. **THIS COURT ORDERS** that, within 10 days of the making of this order, Representative Counsel shall provide notice of this order to each of the Investor Claimants through a communication in form and content satisfactory to Representative Counsel, the Court Appointed Liquidators and the Credit Union, or as may be further directed by this Court (the “Notice”), to be delivered in the following manner:

- (a) publication on the website maintained by the Court Appointed Liquidators in connection with these proceedings;
- (b) publication of the Notice in the Globe and Mail within 10 calendar days of the making of this order;
- (c) by regular mail sent to the last known address of each Investor Claimant; and
- (d) where possible, by email sent to the last known email address of the Investor Claimant.

and such Notice shall be deemed to be effective on the later of the date of publication or the date the Notice was sent, as applicable.

7. **THIS COURT ORDERS** that an Investor Claimant who prefers not to take the benefit of Representative Counsel may opt out of such representation by completing the Opt- Out Notice in the form of Schedule B to this order (the “**Opt-Out Notice**”) and delivering it to Representative Counsel by email to the address indicated on the Opt- Out Notice such that it is received by no later than 11:59 p.m. (Eastern Daylight Time) on September 16, 2020, and Representative Counsel shall provide a copy of all Opt- Out Notices that it receives to each of the Court Appointed Liquidators.

8. **THIS COURT ORDERS** that an Investor Claimant who delivers an Opt-Out Notice (a “**Self-Represented Investor Claimant**”) shall not have the benefit of Representative Counsel, and Representative Counsel shall have no obligation to report to, respond to inquiries from, or otherwise take any account of the interests of any Self- Represented Investor Claimant For greater certainty, nothing in this order obliges any party to deal with any Self-Represented Investor Claimant or precludes the compromise of the claims of a Self-Represented Investor Claimant in the ordinary course, by operation of applicable law.

9. **THIS COURT ORDERS** that the fees and expenses of Representative Counsel shall be paid out of the funds recovered for the Investor Claimants (if any) pursuant to or by virtue of this appointment, in accordance with terms to be agreed with the members of the Representative Committee and approved by this Court in the ordinary course, or, in the absence of an agreement, as directed by further order of this Court, having regard to the resources invested, risk assumed and results achieved by Representative Counsel, together with such other considerations as this Court determines to be relevant.

10. **THIS COURT ORDERS** that Representative Counsel and members of the Representative Committee shall not be liable for any act or omission in respect of their appointment or fulfillment

of their duties in respect of the provisions of this Order, other than for gross negligence or wilful misconduct. No action or other proceedings shall be commenced against Representative Counsel or members of the Representative Committee in respect of alleged gross negligence or willful misconduct, except with prior leave of this Court on at least 21 days' notice to Representative Counsel and upon further order in respect of security for costs of the Representative Counsel and the members of the Representative Committee in connection with any such action or proceeding, to be given by the plaintiff on a substantial indemnity basis.

11. **THIS COURT ORDERS** that "**Tolled Claims**" shall mean any and all actions, suits, claims, causes of action, demands, or grievances, whether in Canada or elsewhere, whether known or unknown, which an Investor Claimant may bring against any of the Applicants, or any related persons or entities, including the Credit Union, or against LBS, or any of its related entities, in respect of the Preference Shares (as defined in Schedule A), but shall not include proceedings of the kind described in s. 11.1(2) of the *Companies' Creditors Arrangement Act*.

12. **THIS COURT ORDERS** that until Representative Counsel has completed the Representative Counsel Mandate or until this Court otherwise directs (the "**Stay Period**"), no proceeding or enforcement process in respect of Tolled Claims (each, a "**Proceeding**") shall be commenced or continued in any Court or tribunal against or in respect of the Applicants, or any of their related entities, including the Credit Union, or against or in respect of LBS, or any of its related entities, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or their related entities, including the Credit Union, or against or in respect of LBS, or any of its related entities, are hereby stayed and suspended pending further Order of this Court.

13. **THIS COURT ORDERS** that to the extent that any statute of limitations or other notice or limitation period (or any other time period of similar effect) whether statutory, equitable, contractual or otherwise, under Canadian law, or any other applicable law, (a “**Limitation Period**”) in connection with a Tolloed Claim expires on or after the date of this Order (the “**Effective Date**”) such Limitation Period shall be and is hereby tolloed such that it ceases to continue running as of the Effective Date and, for greater certainty, that all time elapsing on or after the Effective Date shall not be counted in determining any such Limitation Period.

14. **THIS COURT ORDERS** that until October 15, 2020 or such later date as may be agreed by Representative Counsel and the Court Appointed Liquidators or ordered by this Court (the “**Exclusivity Period**”), the Credit Union shall have the exclusive authority to seek, design and present a settlement and/or settlement package in respect of direct and indirect Investor Claims (including Claims Over and Third Party Claims) against the Credit Union and/or its officers and directors in respect of the Preference Shares, for consideration by Representative Counsel and the Court Appointed Liquidators.

15. **THIS COURT ORDERS** that Representative Counsel may move before this Court to terminate their appointment, or for advice and directions in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, and notice of such motion shall be given to the Applicants, the Court Appointed Liquidators, and other interested persons, provided that this court retains its jurisdiction to dispense with such notice where appropriate.



SCHEDULE "A"

DEFINITION OF INVESTOR CLAIMANTS

"Investor Claimants" means all individuals (including their respective successors, heirs, assigns, litigation guardians and designated representatives under applicable provincial family law legislation) who assert or may be entitled to assert a claim or cause of action as against one or more of the Applicants and any related persons or organizations (collectively **"Defendants"**) in respect of:

- (i) the purchase PACE Financial Limited's Series A 5% Cumulative Redeemable Retractable Non-voting Term Preference Shares; and
- (ii) the purchase of equivalent investments in FHH as well as FHH warrants (collectively, with (i) the **"Preference Shares"**)

in Canada, or anywhere else in the world, including without limitation claims for contribution or indemnity, personal injury or tort damage, restitutionary recovery, non-pecuniary damages, pure economic loss, or claims for recovery grounded in Ontario Securities legislation (the **"Investor Claims"**).

The Investor Claimants shall exclude all Defendants, insiders or securities brokers involved in the sale of the Preference Shares.

SCHEDULE "B"
OPT-OUT LETTER

TO: PaceInvestorClaimantOptOut@paliareroland.com

**RE: CLAIMS AGAINST PACE SECURITIES CORP.,
PACE FINANCIAL LIMITED, FIRST HAMILTON HOLDINGS INC., et al.**

My Name is: _____

My Telephone Number is: _____

My email address is: _____

I am an Investor Claimant as defined in the Representation Order of Mr. Justice Hainey dated August 6, 2020 (the "**Order**").

In accordance with paragraph _____ of the Order, I am hereby notifying you that I prefer not to take the benefit of Representative Counsel as defined in the Order.

I acknowledge that as a result of my having delivered this notice, Representative Counsel shall have no obligation to report to me, to respond to inquiries from me, or otherwise take any account of my interests.

I also acknowledge that nothing in the Order: (a) obliges any party to deal with me or my claims by virtue of my having delivered this notice; or, (b) precludes the compromise of my claims in the ordinary course, by operation of applicable law.

Date: _____

Signature of Witness
Name:
Address:
Telephone Number:

Signature of Investor Claimant

**IN THE MATTER OF A WINDING UP OF FIRST HAMILTON HOLDINGS INC.,
FIRST HAMILTON FINANCIAL SERVICES INC., FIRST HAMILTON CAPITAL
INC., FIRST HAMILTON GENERAL PARTNER 2 INC. and FIRST HAMILTON
MORTGAGE BROKERS INC.**

Court File No. CV-20-00641372-00CL

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

PROCEEDING COMMENCED AT TORONTO

ORDER

(Appointment of Representative Counsel)

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Lawyers for the Applicants, MNP Ltd., in its capacity as
Court-Appointed Liquidator of
First Hamilton Holdings Inc.,
First Hamilton Financial Services.,
First Hamilton Capital Inc.,
First Hamilton General Partner 2 Inc., and
First Hamilton Mortgage Brokers Inc.