

THE HIGH COURT

Record No. 2016 No.

IN THE MATTER OF RUSH CREDIT UNION LIMITED AND IN THE MATTER OF THE
CENTRAL BANK AND CREDIT INSTITUTIONS (RESOLUTION) ACT 2011 AND IN THE
MATTER OF THE COMPANIES ACT 2014

AFFIDAVIT OF PATRICK CASEY

I, PATRICK CASEY, Head of Resolution, at the Central Bank of Ireland, Dame Street, Dublin 2 aged eighteen years and upwards MAKE OATH and say as follows:-

1. I am the Head of the Resolution Division ("RES") of the Central Bank of Ireland ("the Bank"), which reports directly to the Governor of the Bank ("the Governor") on resolution matters. Among other things, RES undertakes the preparation and implementation of resolution actions contemplated or approved by the Governor. I make this Affidavit on behalf of the Bank, having been duly authorised to do so, from facts within my own knowledge save where so otherwise appears and where so appearing, I believe such facts to be true and accurate.
2. I make this Affidavit for the purposes of verifying the Petition made by the Bank ("the Petition") in which it seeks an Order winding up Rush Credit Union Limited ("Rush") pursuant to the Central Bank and Credit Institutions (Resolution) Act 2011 ("the 2011 Act") and the Companies Act 2014 ("the Companies Act"). I beg to refer to a composite book of exhibits (the "Book") upon which marked "PC1" I have signed my name prior to the swearing hereof. Such of the statements in the Petition intended to be issued herein now produced and shown to me and located at Tab 1 of the Book as relate to the acts and deeds of the said Petitioner are true and such of the statements as relate to the acts and deeds of any other person or persons I believe to be true.
3. I say and believe that Rush has no obligations in relation to a bank asset that has been transferred to the National Asset Management Agency ("NAMA") or a NAMA group entity.
4. I say and believe that the centre of main interests of Rush, for the purpose of Article 3 of Council Regulation (EC) No. 1346/2000 of 29 May 2000, is situated in the State. Rush is incorporated in the State and has its decision making organs in the State and this is known and ascertainable by third parties, including its creditors.

5. Rush is a credit union based in Rush in County Dublin, founded in 1972 with a common bond encompassing the parishes of Rush and Lusk. Rush is an affiliate credit union of the Irish League of Credit Unions (“ILCU”). I beg to refer to a copy of the Registered Rules of Rush located at **Tab 2** of the Book.
6. Rush is in a distressed financial position. As per management accounts at 31 August 2016 provided to the Central Bank by Rush, Rush had regulatory reserves of -8.7% (following adjustments for alleged misappropriation and other issues set out below), meaning that it requires financial support of €4.73 million to meet the minimum reserve requirement of at least 10% of its total assets (the “**minimum reserve requirement**”). Regulation 4 of the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016 (S.I. No. 1 of 2016) (the “**Regulations**”) requires all credit unions to maintain a reserve of not less than 10%. Prior to 01 January 2016, the Credit Union Act 1997 (Section 85) Rules 2009 (the “**Rules**”) required all credit unions to maintain reserves of not less than 10%.
7. In the period 2010 to 2016 a number of external third party reviews and inspections were undertaken in Rush. The inspections undertaken by the Registry of Credit Unions (“**RCU**”), external third party reviews and the findings as set out in audit management letters prepared by Rush’s external auditors demonstrate significant, pervasive and recurring issues in relation to the reserve position, governance, internal control framework, lending practices and valuation of fixed assets. These serious issues have impacted on Rush’s financial position and due to financial impairments arising from its loan portfolio, reductions to the value of its premises and the identification by Grant Thornton (“**GT**”) in the course of conducting a number of external reviews, of significant levels of alleged misappropriation, Rush is reporting an insolvent balance sheet position with total liabilities exceeding total assets by €2.0 million as at 31 August 2016 (following adjustments for alleged misappropriation and other issues set out below).
8. Rush is currently in breach of a recent regulatory direction issued by the Registrar of Credit Unions (“**the Registrar**”) on 20 September 2016 requiring it to restore its reserves to 10% of total assets. Rush also breached a previous regulatory direction issued by the Registrar on 16 October 2015 requiring it to restore its reserves to 10% of total assets. Despite letters being sent to Rush on 14 October 2016 and 25 October 2016 emphasising the seriousness of the matter, Rush has failed to restore its reserves to 10% of total assets. In these circumstances, it appeared to the Bank that no alternative solution is available to ameliorate Rush’s financial situation other than to consider resolution options under the 2011 Act.

9. A Report on Rush dated 25 October 2016 (“the Resolution Report”) was provided to the Governor by RES. I beg to refer to a copy of this Report located at **Tab 3** of the Book.

BACKGROUND

10. The history of the external third party reviews and inspections of Rush is lengthy and has been set out in significant detail in section C of the Resolution Report and is summarised below.

2010 – 2011

11. As set out in paragraphs 11 to 15 of the Resolution Report, three reports were commissioned in relation to Rush, which were completed in 2011, namely a review by its auditors FMB Chartered Accountants (“FMB”) (separate to the annual audit process) referred to in the Resolution Report as the “FMB Provisioning Review” and two reports by GT, being the results of what are referred to in the Resolution Report as the “Limited Inspection” and the “2011 GT Asset Review”. All three of these reports identified matters of concern as set out in the said paragraphs of the Resolution Report.

2012

12. On 6 February 2012 in a meeting with the board of Rush (the “Board”), RCU highlighted its concerns in relation to the findings of the 2011 GT Asset Review. Rush reported a reserve position of 7.9% of total assets in the draft financial statements for the year ended 30 September 2011. In a further meeting on 14 March 2012, RCU outlined its concerns regarding the financial and reserve position of Rush, the value in use calculation (“ViU”) concerning its premises and the possibility of Rush requiring solvency support. At the meeting Rush agreed to engage an independent consultant to carry out a loan book, governance and ViU review. Rush engaged GT to carry out the review of the investments and loan book (the “2012 GT Review”) and O’Donovan Associates Management Consultants (the “O’Donovan Governance Review”) to conduct the governance review. Both the 2012 GT Review and the O’Donovan Governance Review identified a number of issues which are set out at paragraph 19 and 20 of the Resolution Report and made certain recommendations. On 7 August 2012 Rush provided RCU with its response to the 2012 GT Review and the O’Donovan Governance Review and timelines for the implementation of the recommendations. Given the shortfall in its reserves Rush also provided an update in relation to its Saving Protection Scheme (“SPS”) support application to ILCU and on 9 November 2012 Rush confirmed that ILCU had agreed to provide Rush with financial support in the form of an SPS guarantee.

2013 - 2014

13. On 19 April 2013 Rush provided the documentation to RCU in respect of financial support provided by ILCU in the form of an SPS guarantee amounting to circa €0.75 million (the "SPS Guarantee"). The SPS Guarantee was put in place for a period of two years and was to be used by Rush to restore its reserve position to 10% of total assets, as required by the Rules.
14. In the period between November 2013 and November 2014, RCU continued to correspond and monitor the financial position of Rush in relation to the following:-
 - (a) Quarterly prudential returns ("PR") submitted by Rush;
 - (b) Year-end financial statements;
 - (c) Status and draw down of SPS Guarantee; and
 - (d) Board rotation plan which was a condition of the SPS Guarantee.

On 17 November 2014, RCU received an email from Rush notifying it, *inter alia*, that it had not drawn down any of the SPS guarantee to date.

2015

15. On 21 January 2015 Rush submitted its December 2014 PR to RCU, and reported a reserves of 8.14%.
16. On 27 March 2015 the Registrar notified Rush that she was minded to issue a regulatory direction letter (the "March 2015 Minded to Letter"), in which she proposed to direct Rush to repay member savings in excess of €100,000 and prohibit the acceptance of funds from individual members where it would bring the member's savings above €100,000 due to the following concerns:
 - (a) That Rush had not drawn down any of the SPS Guarantee to date;
 - (b) In the December 2014 PR Rush reported a reserve position of 8.14% of total assets and as a result, did not comply with the requirement set out in the Rules to continually maintain reserves of 10% of assets; and
 - (c) Rush had failed to pay adequate attention to the regular assessment of bad debt provisions and further reported in its December 2014 PR gross loans in arrears of greater than 9 weeks at the level of 25.2% of gross loan value.

I beg to refer to a copy of this letter located at Tab 4 of the Book.

17. On 18 April 2015, the SPS Guarantee expired with Rush failing to draw down any of the funding and as a result, Rush's reserves remained below the minimum reserve requirement.
18. On 20 April 2015 RCU received a letter from Rush, dated 16 April 2015, in response to the March 2015 Minded to Letter which noted that *"The board has decided to draw down the €754,133 subject to the agreement of the Irish League of Credit Unions.... With the SPS funding as agreed by yourselves this would bring our reserves up to the required level of over 10%"*. In relation to savings in excess of €100,000 *"the board have sent out letters to comply with the DGS as it applies to all financial institutions"*. It should be noted that Rush subsequently failed to draw down or receive any of the SPS Guarantee. I beg to refer to copy of this located at **Tab 5** of the Book.
19. On 28 April 2015, RCU held a meeting with [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
20. GT produced a draft report under section 90 of the Credit Union Act 1997 (the "CUA"), dated 30 April 2015 (the "April 2015 Section 90 Report"), which was issued to Rush on 6 June 2015. The April 2015 Section 90 Report identified, inter alia, an impairment in the carrying value of Rush's premises by circa €0.63 million to circa €1.6 million, and that €0.12 million of additional bad debt provisions on loans were required by Rush as at 30 September 2014. Further to this, the April 2015 Section 90 Report identified a number of issues relating to the accuracy of the regulatory reporting in Rush's PR, adherence with its loan policy, loans to officers, financial management procedures and controls and management information. If the adjustments identified in the April 2015 Section 90 Report were reflected in Rush's accounts, its reserves would reduce from 7.44% to 4.75% of total assets as at 30 September 2014.
21. On 30 April 2015, the Registrar issued a regulatory direction to Rush pursuant to section 87 of the CUA directing Rush to repay member savings in excess of €100,000 and prohibited Rush from accepting funds from individual members where it would bring the member's savings above €100,000. I beg to refer to a copy of this direction located at **Tab 6** of the Book.
22. Following the April 2015 Section 90 Report [REDACTED]
[REDACTED] RCU conducted a three-day inspection of Rush from 10 to 12 June 2015. This inspection focused on governance risk and credit risk (the "RCU Inspection"). The findings of the RCU Inspection were communicated to Rush by letter dated 16 July 2015 (the "16 July Letter"). The 16

July Letter highlighted a number of significant concerns regarding governance risk and credit risk including, inter alia:

- (a) The Board was not operating as an effective team;
- (b) There was an apparent break down in the relationship between the Board and management team of Rush;
- (c) The Risk and Compliance Officer stated that the Board had failed to address a number of compliance issues highlighted in the following reports, the annual compliance statement, the internal audit report to the Board and the Risk and Compliance Officer reports to the Board;
- (d) There were issues in respect of the treatment of related party loans which were in arrears;
- (e) The Nomination Committee did not have a Board succession plan in place;
- (f) There were a small number of individual Board members, who operated on almost every committee in Rush;
- (g) There were a number of incomplete committee meeting minutes;
- (h) Insufficient level of underwriting; and
- (i) Non-adherence to and robustness of the lending policy.

I beg to refer to a copy of this letter located at Tab 7 of the Book.

23. RCU called a meeting with Rush on 29 July 2015, to discuss the findings of both the April 2015 Section 90 Report and the RCU Inspection. At this meeting RCU outlined its significant concerns relating to the governance and the financial position of Rush including, inter alia:

- (a) Rush's ability to address the issues and concerns identified, as a standalone entity; and
- (b) Concerns regarding the potential impairment on Rush's premises identified by the April 2015 Section 90 Report.

RCU also indicated that consideration was being given to the issuance of a regulatory direction directing Rush to increase its reserves to meet the minimum reserve requirement. RCU added that the Board would be required to address governance and financial concerns, and that the Board must give serious consideration to the strategic future of Rush, either as a part of a transfer of engagements ("ToE") or as a standalone entity.

24. On 13 August 2015, the Registrar notified Rush that she was minded to issue a regulatory direction pursuant to section 87 of the CUA to direct Rush to comply with the minimum reserve requirement

(the "August 2015 Minded to Letter"). On 3 September 2015, RCU received a letter from Rush in response to the August 2015 Minded to Letter. Also enclosed was a letter from ILCU to Rush confirming that the expiry of the SPS Guarantee previously secured by Rush would not affect the claim being processed at that time. On 23 September 2015, RCU received correspondence from Rush, stating that the Board unanimously decided that a ToE process was "*in the best interests of its members.*" I beg to refer to copies of this correspondence located at **Tab 8** of the Book.

25. By letter dated 16 October 2015 (the "October 2015 Direction"), the Registrar issued a regulatory direction pursuant to Section 87 of the CUA, directing Rush to comply with the minimum reserve requirement. At the date of the October 2015 Direction, based on the information reported by Rush in its PR for the financial quarter ended 30 June 2015, Rush reported reserves of 5.6% of total assets. Consequently, the amount of funding required to restore Rush's reserves to 10% of total assets amounted to circa €1.28 million. I beg to refer to a copy of the October 2015 Direction located at **Tab 9** of the Book.

26. On 3 November 2015, ILCU lodged €1.28 million of SPS funding into an NTMA account in the name of Rush. This funding was conditional on the completion of the proposed ToE process. ILCU was the only party mandated to access the funds in the NTMA account and as such Rush was unable to drawdown these funds.

27. Rush commenced a ToE process with [REDACTED] on 16 November 2015. This process was to be completed within a 12-week timeline, due to the financial and governance concerns held by RCU. The ToE process and timeline was agreed by all parties and RCU continued to monitor its progression.

28. On 17 December 2015, [REDACTED] notified RCU of a delay in the ToE process [REDACTED]. On 18 December 2015, RCU sent an email to Rush and [REDACTED] raising its significant concerns over [REDACTED] issue and the delay in the ToE process. RCU also outlined to Rush issues regarding the valuation of the Rush and Lusk premises. I beg to refer to a copy of this email located at **Tab 10** of the Book.

2016

29. On 11 January 2016, RCU called a meeting with Rush and [REDACTED] to address the delay in the ToE process and to express concerns regarding Rush's financial position, as there had been minimal progress made by Rush in relation to same. RCU requested Rush to appoint an independent third

party [REDACTED]. Subsequent to the meeting, Rush notified RCU of the appointment of FMB to carry out the required work.

30. RCU received correspondence from FMB and the secretary of Rush on 14 and 19 of January 2016 respectively, notifying RCU that [REDACTED]. RCU had significant concerns at this point and suspended the ToE process, pending the completion of Rush's [REDACTED]. RCU remained in close correspondence with Rush during this time.
31. Arising from the concerns outlined on 15 February 2016 the Registrar notified Rush that she was minded to issue regulatory directions restricting its business activities and placing a requirement on Rush to maintain an increased liquidity ratio. I beg to refer to a copy of this letter located at Tab 11 of the Book.
32. On the 26 February 2016, FMB notified RCU of a suspected misappropriation of members' funds in Rush. RCU scheduled a meeting with Rush for 29 February 2016. In addition, and at RCU's request, Rush immediately contacted GT to commence a preliminary assessment of the work required regarding the suspected misappropriation of funds.
33. RCU held a meeting with Rush and ILCU representatives to discuss the matter on 29 February 2016 (the "29 February Meeting"). At the 29 February Meeting, Rush's acting Chair informed all parties [REDACTED] of Rush regarding a suspected misappropriation of members' funds. In addition, RCU was advised that there may be a number of instances of misappropriation in Rush further to the initial notification to RCU on 26 February 2016. Rush confirmed the appointment of GT to carry out a forensic review in relation to the suspected misappropriation of members' funds. Rush also agreed to appoint independent legal advisors to advise the Board in relation to this matter.
34. At a meeting on 2 March 2016 between RCU, Rush and ILCU, GT provided an update on the initial stages of its forensic review (the "Forensic Review"). In addition to the suspected misappropriation of members' funds, GT stated that there were serious deficiencies in relation to systems and controls surrounding bank and cash, lending practices and day to day management of Rush. At the meeting RCU requested of Rush that:
 - (a) GT be appointed to carry out a full review of systems and controls with the initial focus on the bank and cash environment;

- (b) GT be appointed as an independent oversight function and to report to the Board on matters that may arise;
 - (c) Rush to source the temporary appointment of an interim office administrator to oversee day to day operations; and
 - (d) Rush to report the liquidity position twice daily to RCU and immediately report any withdrawals in excess of €10,000.
35. In addition, GT advised that additional instances of suspected misappropriation of members' funds had been identified and noted that this may increase upon further investigation.
36. On 3 March 2016, RCU received correspondence from Rush confirming that all action points agreed at the meeting of 2 March 2016 were in place. I beg to refer to a copy of his letter located at **Tab 12** of the Book.
37. On 18 March 2016, RCU notified An Garda Síochána, pursuant to Section 33AK of the Central Bank Act 1942, that the Bank suspected Rush may have breached sections [REDACTED]
38. On 22 March 2016, the Registrar issued a regulatory direction and requirement letter to Rush. The Registrar, pursuant to section 87 of the CUA, prohibited Rush from the following:
- (a) Acceptance of shares where the amount of shares held by any individual member of Rush would exceed €50,000;
 - (b) Issuance of loans in excess of €10,000 to an individual member;
 - (c) Issuance of total loans in excess of €250,000 per month;
 - (d) Acquisition of any further liabilities (excluding operating expenses for necessary services for Rush, a list of which must be provided to the Bank by 31 March 2016) without prior written consent from the Bank; and
 - (e) Making investments other than investments in deposit accounts of the kind set out in Regulation 25(1)(b) of the Regulations i.e. euro dominated investment in accounts in credit institutions. Rush could only make investments in such accounts where the funds are available on demand.

RCU also required, pursuant to section 85 of the CUA, Rush to maintain at all times a minimum liquidity ratio of 40%. Section 85 (1) of the CUA sets out that a credit union shall at all times keep a proportion of its total assets in liquid form being such a proportion and having such a

composition as to enable the credit union to meet its liabilities as they arise. I beg to refer to a copy of this letter located at Tab 13 of the Book.

39. RCU called a meeting on 22 March 2016 with Rush and GT to discuss the current status of the Forensic Review and issues identified. GT provided a detailed update on a wide range of issues encountered from its reviews, which included:

[REDACTED]

- (b) Lack of systems and controls;
- (c) Lack of management structure;
- (d) Questionable operation of certain committees;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (h) [REDACTED] and

- (i) Inconsistent treatment of certain loans in arrears throughout the credit control process.

40. Following GT's update of the issues encountered, RCU requested and Rush agreed to undertake a number of further reviews, inter alia, to appoint GT to undertake a review and analysis of all payments in respect of remuneration, travel and other expenses, including claims for subsistence paid to management, staff (part-time and full-time) external consultants and members of the Board and Board Oversight Committee by Rush in the five-year period ended 31 March 2016 (the "Expenditure Review Report").

41. On 20 April 2016, RCU called a meeting with a number of Board members ("the Liaison Committee") and GT, to discuss the high level interim findings of the Forensic Review and related work streams. [REDACTED]

[REDACTED]

42. On 4 May 2016, RCU held a meeting with the Board, ILCU and GT. GT provided an update on the Forensic Review and related work streams. Discussions were also held regarding preparations for a member circularisation, which was required to verify the balances on member accounts. As part

of this process RCU also insisted that Rush draw up a plan in conjunction with ILCU to manage the liquidity position in Rush.

43. On 27 May 2016, RCU received an email from Rush containing draft financial statements as at 30 April 2016 indicating an excess of total liabilities over total assets of €662,609. This was the first instance where Rush had reported balance sheet insolvency. I beg to refer to a copy of this email located at **Tab 14** of the Book.
44. On 8 June 2016, the Bank issued a Notice of Suspension and a Notice of Commencement of a Fitness and Probity investigation to [REDACTED] pursuant to Part 3 of the Central Bank Reform Act 2010 (as amended) (the "2010 Act"). On the same date, a "Minded to Commence" letter was sent by the Bank to another member of staff of Rush ("Employee A") relating to a potential fitness and probity investigation into Employee A pursuant to Section 25 of the 2010 Act.
45. On 15 June 2016 the Registrar issued Rush with a further regulatory direction, restricting its business activities by prohibiting Rush from the following:
 - (a) Acceptance of shares where the amount of shares held by any individual member of Rush would exceed €10,000;
 - (b) Issuance of loans in excess of €3,000 to an individual member;
 - (c) Issuance of total loans in excess of €30,000 per month;
 - (d) Acquisition of any further liabilities (excluding operating expenses for necessary services for Rush), without prior written consent from the Bank; and
 - (e) Making investments other than investments in deposit accounts of the kind set out in Regulation 25(1)(b) of the Regulations i.e. euro dominated investment in accounts in credit institutions. Rush can only make investments in such accounts where it is available on demand, with 100% access.

I beg to refer to a copy of this Regulatory Direction located at **Tab 15** of the Book.

46. On 16 June 2016, the Bank issued a Notice of Confirmation of the Suspension Notice to [REDACTED] pursuant to Section 29(1) of the 2010 Act, confirming that the Suspension Notice would last for a period of three months.

47. Rush operated a car draw (the "Car Draw") which was available to all members. This draw gave each member an opportunity to enter a draw to win a car by deducting the cost of entry from his/her share account. From an initial review by RCU, it appeared that there was no detailed database of previous winners available and no income and expenditure account was maintained in relation to this. It was also noted that prior to October 2012, not all members gave written consent to be included in the Car Draw and that Rush made deductions from member accounts where written consent had not been obtained. Post 1 October 2012, new members had to complete authorisation forms to be included in the Car Draw however, it was also noted that there were instances where some members, on turning age sixteen, were entered into the Car Draw without their written consent. As part of its Forensic Review, GT undertook a high level review of the Car Draw. It was noted, in the "Independent investigation and forensic review carried out by Grant Thornton on behalf of the Board of Rush" (the "Forensic Review Report"), that no reconciliations or income and expenditure accounts were prepared in relation to funds received from members regarding the Car Draw. On 18 July 2016, following instruction by RCU, Rush submitted a report on the operation the Car Draw and a proposed redress scheme to members. This report had a recommendation to repay c. €9,000 to members.
48. On 19 July 2016, RCU received a report from GT entitled "Review of Payments Made to Contractors by Rush" dated 10 June 2016 (the "Contractors Review"). The Contractors Review identified a potential tax liability in relation to payments made by Rush to two individuals in contractor/consultancy roles in 2015 and 2016.
49. On 2 August 2016, the Bank issued a Notice of Commencement of a Fitness and Probity investigation into Employee A pursuant to Section 25 of the 2010 Act.
50. On 5 August 2016, RCU notified the Office of the Revenue Commissioners ("Revenue") that the Bank suspected Rush to have breached various provisions of the Taxes Consolidation Act, 1997.
51. On 5 August 2016, RCU also informed both An Garda Síochána and Revenue under separate cover, pursuant to Section 63(4) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended by the Criminal Justice Act 2013, of the Bank's suspicion of money laundering activity by Rush.
52. On 16 August 2016, RCU received the Forensic Review Report dated 15 August 2016. The time period covered by the Forensic Review Report was 1 March 2011 to 29 February 2016 (the "five-year review period").

53. The Forensic Review Report identified the level of known unauthorised transactions amounting to [REDACTED] within the five-year review period, as set out below:

GT Forensic Review Report - Details of Unauthorised Transactions:

Details of Unauthorised Transactions						
Year Ended	Cheque Payments	Share Accounts	Deposit Accounts	Loan Accounts	Car Draw Accounts	Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: GT Forensic Review Report

54. The Forensic Review Report identified [REDACTED] held at Rush. GT stated that it had been unable to [REDACTED]. In addition, GT was unable [REDACTED] in relation to the financial years ended 30 September 2012, 2013 and 2014.

55. Furthermore, GT identified that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

58. GT as part of the Forensic Review, issued a circularisation to all members of Rush during May 2016 detailing their share balances and loan balances (the "Member Circularisation"). As part of this process members were issued with the following:

- (a) Copy of the member's statement(s);
- (b) Covering letter requiring agreement/disagreement with the balance; and
- (c) Postage paid reply envelope for use by the member in responding to the circularisation received.

In total 11,302 members of Rush were issued with statements and letters, as at 7 July 2016 - of which 28% (3,126) responded to the Member Circularisation. 9% (1,007) were not delivered due to unknown and/or incorrect addresses. Of those who responded, 92% (2,882) agreed with the balance indicated. For the 8% (244) of members who did not agree with the balance indicated, the following issues/concerns were identified:

- (a) Disagreement with deductions for the Car Draw;
- (b) [REDACTED] and
- (c) Several provided no indication of agreement/disagreement (i.e. no response box ticked).

59. As set out above GT undertook a high level review of the Car Draw as part of the Forensic Review. The table below illustrates the payment transactions in relation to the purchase of cars for the Car Draw. However, GT have been unable to locate details of winners of previous Car Draws as no

information is recorded or published on Rush's website. The Forensic Review Report also identified that in February 2015 [REDACTED]

GT Forensic Review Report - Cars Expensed as Costs of the Car Draw:

Car Draw Outlay Expenses			
Quantity and price of car	Supplier	Quantity	Cost €
12 motor cars @ €14,500	Nearys Lusk	12	174,000
2 motor cars @ €14,250	Nearys Lusk	2	28,500
1 motor car @ €18,000	RB Motors (re Nearys Lusk)	1	18,000
Miscellaneous expenses	Refunds, etc.		360
Total between 1 November 2012 and 30 April 2016		15	220,860

Source: GT Forensic Review Report

60. The Forensic Review Report was shared with the Board at a meeting on 15 August 2016. In correspondence dated 16 August 2016, Rush confirmed that the Forensic Review Report was accepted by the Board. I beg to refer to a copy of this correspondence located at Tab 16 of the Book. The Forensic Review Report identified [REDACTED] in Rush in the five-year review period. [REDACTED]

[REDACTED] "[i]t is unlikely the quantum of loss identified in this Report through the use of unauthorised transactions and subsequent loss experienced by Rush Credit Union Ltd would decrease, but such a loss may increase."

61. The Forensic Review Report set out recommendations for the Board to undertake as soon as possible to address the issues identified, which were as follows:

- [REDACTED]
- [REDACTED]
- (b) Undertake a review of the Car Draw, given the limited information on prize winners;
 - (c) Confirm members' contact details, given issues identified with the Member Circularisation;

- [REDACTED]
- (e) Provide a copy of the Forensic Review Report to the Bank;

- (f) Provide a copy of the Forensic Review Report to Rush's insurers;
- (g) Provide an executive summary of the Forensic Review Report to An Garda Síochána; and

[REDACTED]

62. On 25 August 2016, RCU called a meeting with the Board to discuss the recommendations contained in the Forensic Review Report. Following this, on 26 August 2016 RCU set out in an email to Rush actions which the Board had agreed to undertake, covering:

- (a) Recommendations 1 and 4 - Members Deposits and Savings

[REDACTED]

- (b) Recommendation 2 - The Car Draw

- The Board was requested to confirm to RCU its decision regarding the total number of members and total amount that is to be refunded in relation to the Car Draw and to submit to RCU a plan of how the Board intends to refund members.

- (c) Recommendation 3 - [REDACTED]

- The Board was to submit an "action and resourcing plan", detailing how Rush is going to rectify the matters identified.

In relation to recommendation 2, RCU expressed significant concerns regarding the number of issues identified and the proposed redress to members recommended therein. RCU subsequently received correspondence from Rush on 9 September 2016 stating: *"The Board of Rush Credit Union have decided to refund all members with the amount deducted from their accounts regarding the Car Draw from the period of 2009 to 2016. The Car Draw has been stopped."* The proposed redress would amount to circa €0.45 million. I beg to refer to a copy of this email located at **Tab 17** of the Book.

63. Furthermore, at the meeting with Rush on 25 August 2016, RCU notified Rush that the Registrar was minded to direct Rush (the "**August 2016 Minded to**") to:

- (a) restore its reserve position to 10% of total assets;

- (b) to raise and maintain an additional reserve of 5% of total assets which must have the characteristics set out in Regulation 3 of the Regulations; and
 - (c) to raise such financial resources as may be required, for example by way of a third party guarantee, to ensure it is in a position to discharge any potential contingent liabilities that may arise.
64. On 9 September 2016, RCU received correspondence from Rush in response to the August 2016 Minded to, which stated, inter alia, "We have written to the Irish League of Credit Unions requesting funding to bring our reserves up to your required level, and are currently awaiting a response regarding same". I beg to refer to copies of these letters located at **Tab 18** of the Book.
65. On 16 September 2016, RCU received the Expenditure Review Report from GT, which identified a number of non-business related transactions carried out on Rush credit cards [REDACTED]
[REDACTED]
[REDACTED]
66. On 20 September 2016, the Registrar issued a regulatory direction letter (the "September 2016 Direction") in the following terms:
1. *"The Credit Union must raise its regulatory reserve requirement (as set out in the Regulations) to a minimum of 10% of the total assets as at 31 August 2016 and in order to do so must raise an amount of €4.73m in solvency support. This support must be provided in cash form only and lodged to a bank account in the name of the Credit Union.*
 2. *The Credit Union must raise and maintain a minimum additional reserve of 5% of the total assets of the Credit Union and in order to do so must raise an amount of €1.2m in solvency support. This support must be provided in cash form only and lodged to a bank account in the name of the Credit Union. All reserves that are held as additional reserves must have the characteristics, set out in regulation 3 of the 2016 Regulations.*
 3. *The Credit Union must raise such financial resources as may reasonably be required, including for example by way of a third party guarantee, to ensure it is in a position to discharge the following contingent liabilities without there being an impairment of the Credit Union's reserve position:*
 - a) [REDACTED] *not identified in the Forensic Review Report;*
 - b) *Further potential claims of misappropriation not identified in the Forensic Review Report;*
 - c) *Potential member claims against unauthorised Car Draw deductions; and*
 - d) *Any other potential contingent liabilities*

The directions at 1-3 above must be complied with on or before 4pm on 11 October 2016".

I beg to refer to a copy of this Regulatory Direction located at **Tab 19** of the Book.

67. On 22 September 2016, a "minded to" letter was issued to [REDACTED] in respect of a potential investigation into the [REDACTED] fitness and probity, pursuant to Section 25 of the 2010 Act.
68. On 6 October 2016, RCU were notified by the Rush Board Oversight Committee ("BOC") of the resignation of the Acting Chair, Vice Chair and Secretary of Rush.
69. On 6 October 2016, RCU met with the BOC and a number of directors to discuss the resignations from the Board and steps going forward to safeguard members' savings.
70. On 11 October 2016, RCU received an email from the BOC confirming that the Vice Chair had withdrawn her resignation from the Board.
71. On 11 October 2016, RCU received a letter from Rush which stated: *"We wish to inform you that as of yet we have not been in a position to meet the requirements as laid out in your letter...We can confirm that we have sought assistance from the Irish League of Credit Unions ("ILCU") and they have advised us that they are still considering their response"*.

I beg to refer to a copy of this letter located at **Tab 20** of the Book.

72. On 14 October 2016, RCU issued a letter to Rush stating: *"It is noted that the Credit Union has not complied with the October Direction and the September Direction and is not in a position to do so.*

From the 11 October Response, the Credit Union states that it "can confirm that we have sought assistance from the Irish League of Credit Unions ("ILCU") and they have advised us that they are still considering their response" and have not yet received a response.

In view of the above and the serious nature of the issues identified in a number of different reports as outlined in our letter dated 25 August 2016, discussed at meetings with the Credit Union and highlighted by the breach of the October and September Directions, I must impress upon the Credit Union the urgency of the situation as the deficit in the regulatory reserves is likely to further increase.

In this regard, the Credit Union should seek a response from ILCU within a timeframe no later than 21 October 2016 or seek an alternative means of complying with the September Direction.

The Central Bank maintains, at all times, the right to take such action as it considers appropriate to address the extremely serious situation in the Credit Union, which continues to persist”.

I beg to refer to a copy of this letter located at **Tab 21** of the Book.

73. On 24 October 2016, RCU received a letter from Rush in response to its letter of 14 October 2016 advising that “*the Committee was still considering the reports which they received on Friday 14 October 2016. ... the Committee could not commit to a date for final decision.*” The letter further stated “*[w]e fully appreciate the serious nature and the urgency of this matter and we assure you that we are actively engaging with the ILCU on an ongoing basis, with a view to complying with the regulatory directions referred to the above.*”

I beg to refer to a copy of this letter located at **Tab 22** of the Book.

74. On 25 October 2016 RCU replied to Rush and noted that despite being given ample opportunity to do so it was clear from the letter of 24 October 2016 that Rush has not secured funding to comply with the September 2016 Direction. This was so despite a period of over two months having elapsed since Rush was notified of the intention to issue the September 2016 Direction and despite Rush being aware that it was in breach of the requirement to maintain its minimum reserve prior to the September 2016 Direction being issued. The letter advised that the Bank would consider any submission that Rush might make in relation to its position but that the Bank maintained the right to take such action as it considers appropriate to address the extremely serious situation of Rush which continues to persist. I beg to refer to a copy of this letter located at **Tab 23** of the Book.
75. No response from Rush has been received to the letter of 25 October 2016 as of the date of the swearing hereof. Rush therefore remains in breach of the September 2016 Direction.

CURRENT FINANCIAL POSITION OF RUSH

76. The history of the financial position of Rush is set out in at Section D of the Resolution Report. The monthly management accounts submitted to the Bank by Rush for the period ended 31 August 2016 demonstrate the current weak financial position of Rush. The 31 August 2016 monthly management accounts are summarised below.

Rush Credit Union - Balance Sheet Summary as at 31 August 2016:

Total Assets	22,731
Total Liabilities ⁽¹⁾	23,892
Excess of Total Liabilities over Total Assets ⁽²⁾	(1,161)
Provision for bad & doubtful debts	1,355
Total Loans Amount	9,040
Total Savings Amount	23,096
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Total Reserves [REDACTED]	(1,982)
Financial support required to restore reserves to 10% of Total Assets	4,730
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Source: Rush Management Accounts for the period ended 31 August 2016, as provided by Rush to RCU.

77. The 31 August 2016 management accounts reflected the costs of refunding deductions taken from member accounts relating to the Car Draw of €0.45 million. [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

78. As per the 31 August 2016 management accounts Rush's liabilities exceed its assets by €1.2 million.
 [REDACTED]
 [REDACTED], Rush's excess of liabilities over assets would increase to €2.0 million.

BANK'S ASSESSMENT OF REASONS FOR RUSH'S FAILURE

79. I believe it is important in the context of the Petition for the winding up of Rush to outline to the Court what the Bank believes are the underlying causes of Rush's difficulties which ultimately led to the deterioration in its financial position. These difficulties were identified through supervisory/regulatory interactions, together with the number of reviews and inspections which

have been set out in some detail in the Resolution Report (exhibited at Tab 3 of the Book) and summarised above.

80. The inspections by RCU and independent third party reviews identified significant and pervasive weaknesses in the areas of governance, lending practices, credit control, internal control environment (including in the financial reporting and control area), asset valuation, capital and reserves and lending practices.
81. The common issues and concerns identified by RCU in the course of its inspections and by independent third parties are as follows:

1. Governance Issues:

Governance at Board level:

- Inadequate governance and risk oversight, reporting and management systems, particularly in relation to credit, operational and strategic risks;
- Lack of a management structure;
- Issues with Board size, composition and levels of participation;
- Lack of documented job descriptions;
- Deficiency in skills gaps at all levels including insufficient managerial expertise;
- Concentration of Board committee participation in a small number of Board members;
- Lack of on-going evaluation of the Board;
- Conflict of interest issues;
- No Board rotation or succession planning;
- Inadequate and unreliable management information;
- Weak performance management including undeveloped reporting systems;
- Insufficient policies across a range of areas; and
- Incomplete Board committee meeting minutes.

2. Internal Control Weaknesses:

General Weaknesses and Operational Issues:

- Inadequate segregation of roles and responsibilities;
- Lack of a records management policy;
- Concerns over security of information systems;
- Insufficient and unsustainable management oversight;
- Deficient and ineffective information systems;
- Inadequate security of information systems;
- Inadequate anti-money laundering procedures;

- o Absence of a robust operational risk management framework; and
- o Absence of a documented operational risk register.

Bank and Cash and Deposits:

- o Weaknesses in the systems and controls regarding bank accounts and cash;
- o Weaknesses in the segregation of duties and the authorisation of payments and transactions;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- o The use of pre-signed cheques; and
- o No appropriate system in place to issue periodic/annual statement to members.

Remuneration Travel and Other Expenses

- o Lack of proper procedures, policy, records and documentation in respect of the operation and management of credit card usage and expenditure;
- o Non-business expenses classified as business expenses;
- o Lack of control over expenses incurred by Rush [REDACTED]
- o Lack of supporting documentation in relation to credit card expenditure incurred; and
- o Potential taxation issues arising from the payment of personal/non-business expense items.

3. Lending practices:

- o Insufficient level of underwriting of loans;
- o Inadequately documented credit assessment of borrower ability to repay;
- o Credit concentration risk - high level of lending to a low quantum of borrowers;
- o Lending to members in arrears;
- o Irregular practices concerning loans to officers, particularly in relation to loan approval;
- o Inadequate provisioning practices for non-performing loans;
- o Inadequate security in place in respect of loans;
- o Inadequate loan policy and compliance with same;
- o Inadequate documentation of policies and procedures in relation to the capitalisation/recognition, measurement and disclosure of loan interest income with respect to loans in arrears, loans written off and loans not performing;
- o Inadequate policies and procedures in respect of share to loan transfers;

- Non-compliance with lending restrictions; and
- Inadequate credit control and inadequate and inconsistent debt recovery procedures.

4. Asset Valuation:

- Investment assets not recorded at fair value; and
- Fixed assets/premises not recorded at realisable value.

82. In light of the issues above, the Bank is of the view that there are a number of reasons for Rush's failure which were manifested over an extended period of time. The Board and management of Rush have failed to address very significant recurring issues concerning its governance, internal controls, lending practices (both in credit provision and control) and valuation of its premises, as articulated by RCU and independent third parties through various reviews, reports and inspections. These reviews, reports and inspections provided key recommendations to be addressed by Rush to enhance its governance and internal control environment. Whilst Rush informed RCU that the issues raised would be addressed on a number of occasions, it is clear that key governance and internal control inadequacies have continued to prevail and as a consequence have led to the failure of Rush. The full history and detail of these interactions is set out in the Resolution Report.

83. The following matters illustrate how the areas of lending practices, valuation of its premises, governance and internal control deficiencies have led to the failure of Rush:

- (a) successive reports identified issues regarding credit and credit control resulting in recommendations to enhance practices in the areas of lending and recoveries. Rush's continued failure to address serious issues repeatedly highlighted by third parties concerning its lending practices resulted in significant loan write offs net of recoveries (totalling €3.8 million for the financial years ended 30 September 2011 to 2015), which was a key contributing factor to its failure;
- (b) it is clear that in the financial years ended 30 September 2011 to 2014, the Board was reluctant to adequately impair the balance sheet carrying value of its premises, resulting in a significant impairment in the financial year ended 30 September 2015. . Rush's continued failure to adequately assess and record the value of its premises as repeatedly highlighted by RCU and third parties, led to a €1.24 million impairment of its premises in the financial year ended 30 September 2015, which was a second key contributing factor to its failure;
- (c) the absence of adequate governance and internal controls at Rush with an appropriate segregation of duties - in particular permitting a concentration of authority in key

individuals at Board and management level - facilitated an environment in which very significant alleged misappropriation of members' funds and Rush's own funds started to occur;

(d) despite auditors FMB in annual management letters for the years ended 30 September 2011 and 2012 clearly setting out key possible risks, consequences and recommended remedies concerning specific systems and controls (risks which subsequently materialised and led to allegations of significant misappropriations of member and own funds as noted above), the Board failed to address FMB's feedback in full:

(i) In respect of the requirement for a circularisation of members to confirm their share account balances in line with Section 60(1)(c) of CUA, FMB recommended that Rush: *"should ensure that sufficient circularisations are issued to the credit union membership to confirm that their balances are correct, to comply with legal requirements"*;

(ii) In respect of the absence of an appropriate system to issue statements to members on a periodic or annual basis, FMB recommended that Rush should: *"consider its policy on issuing of statements and determine whether it is appropriate to issue statements to members on at least an annual basis"*;

(iii) In respect of early signs of weaknesses regarding procedures covering the management of cash within Rush and use of pre-signed cheques, FMB recommended to Rush to: *"ensure that procedures are put in place to reduce risks to the operation and security of the credit union's assets and member resources"*. Also in relation to the management of cash, FMB noted: *"Overall cash maintenance and security procedures should also be reviewed and documented procedures put in place to reduce any risks identified"*;

(iv) [REDACTED]
[REDACTED]
[REDACTED]; and finally

Regarding lending practices and Rush's failure to assess borrower repayment capability, FMB noted: *"Potential that loans may have been issued to members without the determination of the members' ability to repay"*.

(e) the prolonged failure of the Board to [REDACTED] (including issuance of statements to members periodically) facilitated the significant alleged misappropriations concerning members' funds and Rush's own funds to continue without

discovery over an extended period of time, including not preventing the following alleged actions from taking place:

[REDACTED]

[REDACTED]

- (iii) the unauthorised deductions from members' share balances for the purpose of funding the Car Draw without their knowledge or consent;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In relation to paragraphs (c), (d) and (e), Rush's continued failure to address its governance and internal control weaknesses and to [REDACTED] as repeatedly highlighted by RCU and third parties, enabled significant alleged misappropriation of member and own funds to develop without being discovered over an extended period. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] a

cost of €0.45 million to reinstate members for Car Draw deductions. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (f) A lack of internal controls has resulted in the alleged misuse of credit cards [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

GROUNDS FOR LIQUIDATION

84. The assessment by the Bank as to the reasons why liquidation was considered by the Bank to be the appropriate resolution approach in respect of Rush is set out at Section G of the Resolution Report.
85. Under the 2011 Act, the Bank may present a petition for the winding up of a credit institution (including a credit union) under any of five grounds. These grounds, which are set out in Section 77 of the 2011 Act, are as follows:
- (a) *that in the opinion of the Bank, the winding up of that credit institution would be in the public interest;*
 - (b) *that that credit institution is, or in the opinion of the Bank may be, unable to meet its obligations to its creditors;*
 - (c) *that that credit institution has failed to comply with a direction of the Bank –*
 - (i) *in the case of the holder of a licence under section 9 of the Central Bank Act 1971, under section 21 of that Act, or*
 - (ii) *in the case of a building society, under section 40 (2) of the Building Societies Act 1989, or*
 - (iii) *in the case of a credit union, under section 87 of the Credit Union Act 1997;*
 - (d) *that that credit institution's licence or authorisation (as applicable) has been revoked and (in the case of the holder of a licence under section 9 of the Act of 1971) that it has ceased to carry on banking business;*
 - (e) *that the Bank considers that it is in the interest of persons having deposits (including deposits on current accounts) with that credit institution that it be wound up.*

86. In the Petition the Bank relies on the grounds set out at section 77(a), (b), (c) and (e)

Unable To Meet Its Obligations to Its Creditors:

87. Section 77(b) of the 2011 Act provides that the Bank may present a petition for winding up if the credit institution is, or in the opinion of the Bank may be, unable to meet its obligations to its creditors. Although it does not appear that Rush is currently unable to meet its obligations to its creditors, the Bank believes, for the reasons set out in more detail below that Rush is at a material risk of such circumstances arising.

88. Rush's management accounts as at 31 August 2016, show that total liabilities exceed total assets by €1.2 million. It should be noted that these figures do not take into account the adjustments arising from the Forensic Review carried out by GT save for the Car Draw adjustment of circa €0.45 million and [REDACTED]. [REDACTED]. When the impact of the alleged misappropriation identified by GT is taken into account, Rush has an excess of total liabilities over total assets of €2.0 million.
89. The financial position and performance of Rush has deteriorated over the last five years:

Financial Performance

- (a) Its loan interest income has fallen from €1.74 million in the financial year ended 30 September 2011 to €1.31 million in the financial year ended 30 September 2015;
- (b) Its total income has fallen from €2.06 million in the financial year ended 30 September 2011 to €1.39 million in the financial year ended 30 September 2015; and
- (c) Its cost to income ratio (excluding exceptional items) has risen from 57% in the financial year ended 30 September 2012 to 91% in the financial year ended 30 September 2015.

Financial position

- (d) Its total assets declined from €27.2 million in the financial year ended 30 September 2011 to €25.6 million in the financial year ended 30 September 2015; and
 - (e) Its gross loans declined from €17.5 million in the financial year ended 30 September 2011 to €11.7 million in the financial year ended 30 September 2015.
90. Due to financial impairments arising from the deterioration in loan carrying values, reductions to the value of its premises and the impact of the remediation of the Car Draw, Rush is reporting a balance sheet insolvent position. In addition, when the impact of the alleged misappropriation as set out in the Forensic Review Report is included, the financial position of Rush deteriorates further to a balance sheet insolvent position with an excess of total liabilities over total assets of €2.0 million.
91. Credit unions are heavily dependent on loans as income generating assets (with cash and investments currently yielding low returns). In light of the issues identified by third party reviews regarding inadequate provisions on loans and given the continued decline in the loans to assets ratio as noted previously (indicating a lack of new lending to drive income), it is unlikely that Rush could address its financial difficulties by trading its way back to a solvent position.

92. If the Board was to decide voluntarily to realise the value of Rush's assets in service of meeting its liabilities to its creditors, it is reasonable to assume that the excess of its total liabilities over its total assets would exceed €2.0 million (which represents the excess of Rush's total liabilities over its total assets as at 31 August 2016 following the adjustment for possible misappropriation issues previously noted). Even if Rush was able to realise the full carrying value of its total assets which amounted to €22.73 million as at 31 August 2016, at a minimum it is likely that some third party expenses relating to the asset disposal would be incurred. On that basis, it is reasonable to expect that an increased excess of total liabilities over total assets (in excess of €2.0 million) would materialise under such a scenario.
93. On 20 September 2016 the Registrar issued a letter to Rush in which Rush was directed to raise its reserves to 10% of its total assets. In a reply to RCU dated 11 October 2016, the Board stated that: *"we have not yet been in a position to meet the requirements as laid out in your letter"*. The letter further states: *"We can confirm that we have sought assistance from the Irish League of Credit Unions ("ILCU") and they have advised us that they are still considering their response"*. As noted above at paragraphs 66, 71, 72, 73, 74 and 75 this issue remains unresolved. This correspondence is exhibited at Tab 20 of the Book.
94. On balance, factoring in Rush's recent financial performance and its constrained capacity to ameliorate its distressed financial position, the Bank believes that:
- (a) Rush is currently balance sheet insolvent (which is clearly identified in the August management accounts), although it is able to meet its obligations to its creditors on a day-to-day basis;
 - (b) there is a substantial risk that Rush's balance sheet position could deteriorate further in particular if evidence of further possible unauthorised transactions were to emerge; and
 - (c) some of the corporate governance and other issues faced by Rush are currently publicly known, and unless they are addressed urgently, the nature of those problems could lead to a disorderly collapse of its business, with the consequence that Rush would be unable to meet its obligations to its creditors.
95. Accordingly, although the Bank is of the view that Rush is currently able to meet its obligations to its creditors, the Bank is nonetheless of the view that it has reasonable grounds to form the opinion that Rush is at material risk of being unable to meet its obligations to its creditors. The Bank is also mindful of the fact that Rush remains in clear breach of its 10% minimum reserve requirement and has been in breach of the same for some considerable time and has demonstrated no capacity to rectify this serious non-compliance.

Breach of Directions:

96. Section 77(c) of the 2011 Act provides that the Bank may petition for the winding up of a credit union where it has failed to comply with a regulatory direction of the Bank made pursuant to section 87 of the CUA.
97. As explained above, on foot of regulatory concerns, the Registrar issued a series of regulatory directions to Rush to address certain key issues. RCU has identified breaches by Rush of two directions, which were issued pursuant to section 87 of the CUA.

Current Direction Breaches (Direction Dated 20 September 2016)

98. On 20 September 2016, the Registrar issued the September 2016 Direction in which Rush was directed as follows:
- (a) *“The Credit Union must raise its regulatory reserve requirement (as set out in the Regulations) to at least 10% of the total assets as at 31 August 2016 and in order to do so must raise an amount of €4.3m in solvency support. This support must be provided in cash form only and lodged to a bank account in the name of the Credit Union.*
 - (b) *The Credit Union must raise and maintain a minimum additional reserve of 5% of the total assets of the Credit Union and in order to do so must raise an amount of €1.2m in solvency support. This support must be provided in cash form only and lodged to a bank account in the name of the Credit Union. All reserves that are held as additional reserves must have the characteristics, set out in regulation 3 of the 2016 Regulations.*
 - (c) *The Credit Union must raise such financial resources as may reasonably be required, including for example by way of a third party guarantee, to ensure it is in a position to discharge the following contingent liabilities without there being an impairment of the Credit Union’s reserve position.*
 - (i) *[REDACTED] not identified in the Forensic Review Report;*
 - (ii) *Further potential claims of misappropriation not identified in the Forensic Review Report*
 - (iii) *Potential member claims against unauthorised car draw deductions; and*
 - (iv) *Any other potential contingent liabilities”*
99. Rush was required to comply with the September 2016 Direction by 4 pm on 11 October 2016. I have outlined above the correspondence between Rush and the Bank in relation to the September

2016 Direction at paragraphs 71, 72, 73, 74 and 75. Rush remains in breach of the September 2016 Direction as it has failed to secure the necessary funding to enable it to comply with it.

Previous Direction Breaches (*Direction Dated 16 October 2015*)

100. On 16 October 2015, the Registrar issued a direction letter to Rush (exhibited at **Tab 9** of the Book) as follows:

- (a) *“The Credit Union must raise its RRR (as defined in the Rules) to a minimum of 10% of total assets as at 30 June 2015 and in order to do so must raise an amount of €1.28m in solvency support. This solvency support must be in place no later than 4pm on 3 November 2015 and this support must be provided in cash form only and lodged to a bank account in the name of the Credit Union.*
- (b) *The Credit Union is required to provide to the Central Bank a statement in writing setting out the steps it will take to ensure continued compliance with this obligation to maintain its RRR (as defined in the Rules) at a minimum of 10% of total assets. This statement must be provided to the Central Bank on or before 3 November 2015.”*

101. On 3 November 2015, ILCU lodged €1.28 million of funding from the SPS operated by ILCU into an account with the NTMA in the name of Rush. This funding was conditional on the completion of the proposed ToE with [REDACTED]. ILCU was the only party able to access the funds in the NTMA account and as such Rush was unable to draw down this money. The €1.28 million of SPS funding was never accessed by Rush and therefore Rush did not raise its reserves to the minimum reserve requirement as required by the October 2015 Direction.

102. Given the foregoing, it is clear that Rush breached the October 2015 Direction.

Liquidation is in Interest of Persons Having Deposits:

103. Section 77(e) of the 2011 Act provides that the Bank may present a petition for the winding up of credit institution if winding up is in the interests of persons having deposits in that credit institution. The Bank is of the view that it is in the interests of persons having deposits in Rush that Rush is liquidated.

Members are not aware of the full extent of current circumstances of Rush

104. GT as part of its review into potential unauthorised transactions, undertook the Member Circularisation on 27 May 2016 and requested that the members of Rush confirm that their share account balances were correct and up to date as at 30 April 2016. While this process was on-going, an article was published in the Irish Independent on 2 June 2016 in relation to the Member Circularisation and the on-going issues in Rush. Further press coverage of the financial and

governance issues in Rush occurred on 24 August 2016 and in connection with the Bank's application to the Court regarding the extension of the Suspension Notice of [REDACTED] on 9 September 2016.

105. Notwithstanding this press coverage regarding the GT review into allegations of unauthorised transactions and the on-going financial and governance issues, all of which are further compounded by the identification by GT of substantial levels of alleged misappropriation, the members of Rush have no real understanding of Rush's current or recent financial position, and have no knowledge of the impact of loan and fixed asset impairments or the possible misappropriation and Car Draw issues, which have further eroded its regulatory capital base resulting in a significant balance sheet shortfall. Furthermore, members have no understanding of Rush's weak governance and management and the lack of adequate systems and controls which represent the root causes of its problems.
106. Given its severely weakened financial position, and to prevent the potential destabilising consequences that might arise were its financial position to be made public, Rush has been unable to hold an Annual General Meeting ("AGM") since 2013.
107. Rush's members have not received a dividend since the financial year ended 30 September 2008, dividends being, in the case of credit unions, the equivalent of interest payments received by depositors in banks and other credit institutions. As a result, Rush members are indirectly out of pocket, and indeed they may be able to benefit from a higher rate of return by putting their money into another credit institution paying dividends or deposit interest, especially where there is no realistic possibility of Rush providing a dividend to its members in the near future.
108. Rush attempted to complete a voluntary ToE to [REDACTED] however due to the issues which led to the commencement of GT's Forensic Review into possible unauthorised transactions and the quantification of the alleged misappropriation, this voluntary transfer process did not complete. The members of Rush are not aware that a voluntary transfer had been unsuccessfully pursued or that no viable alternative to liquidation is available. On 21 October 2016 RCU received correspondence from [REDACTED] indicating that it does not want to proceed with a voluntary ToE with Rush.
109. There is no reasonable prospect that Rush will either be able to pay a dividend or hold an AGM in the foreseeable future because in order to hold an AGM, it will be necessary for Rush to disclose the full extent of its financially precarious position to its members which could result in the rapid destabilisation of Rush and potentially lead to a run on savings and deposits.

A pay-out permits depositors to obtain alternative retail financial services

110. It is not possible to identify the number of members of Rush with alternative banking relationships with other credit institutions. However, it is likely that a portion of the members of Rush do not have access to other bank accounts. As such, the liquidation of Rush is likely to lead to some members of Rush not having access to alternative retail financial services in the short term. However, it is important to note that members of Rush may be able to avail of alternative retail financial services locally, given that there is a Post Office in the town of Rush where members can avail of banking services. In addition, retail banking services are available in the town of Skerries, with both an AIB and Bank of Ireland branch present, which is approximately 6km from the town of Rush. This means that once members have been paid out through the Deposit Guarantee Schemes (“DGS”) they have the potential to avail locally of retail financial services.

Access of members of Rush to their deposits

111. Pursuant to the European Union (Deposit Guarantee Schemes) Regulations 2015 (S.I. No. 516 of 2015) (“the DGS Regulations”) and the Financial Services (Deposit Guarantee Scheme) Act 2009, as amended, the State maintains the DGS, which is administered by the Bank. In the event of an authorised credit institution being unable to repay deposits, the DGS compensates eligible deposits up to €100,000 per depositor. In addition, under limited circumstances, certain deposits known as temporary high balances are protected up to €1,000,000. In liquidation, all eligible deposits (as defined in the DGS Regulations) in the form of member’s savings and deposits would be covered up to €100,000 per depositor. Any members’ savings or deposits not covered by the DGS would only be repaid by a liquidator to the extent that liquidation resources are sufficient to repay such savings or deposits, ranking on a *pari passu* basis alongside general creditors in the liquidation.

112. Following liquidation, a compensation payment would be made to a member in respect of that member’s duly verified eligible deposits by means of a crossed cheque (i.e., a cheque that, in general, could only be lodged to an account, not cashed) posted to that member’s address within 20 working days. Possible consequences associated with this course of action include the period during which savings may not be accessed, which may cause difficulties for some members. However, the DGS aims to issue compensation to duly verified eligible depositors, as early as possible, in advance of the statutory deadline. For members who do not have access to an alternative bank account, lodging cheques in order to access their cash may also cause inconvenience.

113. RCU issued a regulatory direction on 30 April 2015 instructing Rush to repay savings in excess of €100,000. If any members of Rush are deemed to be ineligible under the DGS, they will rank as

general creditors of Rush in liquidation. Whether or not there are members that are ineligible will be determined following a formal invocation of the DGS in accordance with the DGS Regulations.

114. As mentioned above, the Forensic Review Report identified [REDACTED]
[REDACTED]
[REDACTED]. It should be noted that notwithstanding the Member Circularisation and the recent media coverage, [REDACTED]
[REDACTED]. This may have an impact on the capacity of the DGS to pay-out all savers and depositors within the 20-day statutory limit.

115. On balance, however, and notwithstanding the concerns outlined in the preceding paragraphs, the Bank is of the opinion that it is in the interests of depositors that Rush is liquidated and in particular for the following reasons:

- (a) The liquidation of Rush will ensure that all members with DGS eligible deposits have access to their savings;
- (b) The DGS pay-out allows members to deposit their savings with other institutions that are governed and managed in a more prudent basis than Rush, in particular, with regard to appropriate governance and internal control arrangements and the maintenance of proper books and records;
- (c) The DGS pay-out allows members to deposit their savings with other institutions that may result in the members of Rush receiving a return on their savings either by means of a dividend or interest payment, in entities that have annual financial accounts approved by their members or shareholders;
- (d) The appointment of the liquidator will facilitate a further forensic investigation which may identify additional possible unauthorised transactions; and
- (e) [REDACTED]
[REDACTED], their savings and deposits will be duly verified and the liquidator will facilitate a DGS pay-out, if applicable.

Winding up of Rush is in Public Interest:

116. Section 77(a) of the 2011 Act provides that a petition for winding up may be presented on the grounds that in the opinion of the Bank, the winding up of a credit institution would be in the

public interest. The Bank is of the view that a liquidation of Rush is in the public interest for the reasons set out below.

The indirect consequences of liquidation

117. There may be a direct cost to liquidation should the assets realise less resources than the cost of the liquidation process (including the payment to members under the DGS). The Bank considers that there may also be unquantifiable but very real costs that would arise as a result of the liquidation of an authorised credit institution in the State, with the potential of knock on consequences for other credit unions, for the financial sector generally and the State.
118. The Bank has received legal advice that it will not be possible for Rush to be immediately liquidated on the date that the Bank files a petition for the winding up of Rush because the Companies Act requires, inter alia, that the petitioner places advertisements with respect to the winding up at least seven days prior to the date of the winding up hearing.
119. In light of this requirement under the Companies Act, in order to ensure that the liquidation of Rush is commenced in an orderly manner, the Bank is seeking the appointment of a provisional liquidator to Rush, who will have full control over the assets and operations of Rush pending the hearing of the winding up petition. The Bank believes it is necessary for a provisional liquidator to be in place during the period between the date of the filing and the hearing of the petition, to avoid a disorderly cessation of the business of Rush and to enable payments to eligible deposit holders to occur as quickly as possible.
120. The orderly nature of the DGS pay-out process will help to ensure that the potential negative consequences in terms of knock on impacts are limited to the greatest extent possible (although there remains a risk that such consequences could still occur).

The orderly liquidation of a credit institution reflects properly functioning market post crisis

121. The liquidation of a failed or failing entity is part of the normal functioning of a market economy. However, it is not always possible to liquidate a failed entity without creating serious consequences for the broader economy. It is necessary to judge each situation carefully on an individual basis. During the financial crisis, significant amounts of taxpayers' money were used to support banks which might otherwise have had to be liquidated, due to a fear of systemic consequences for the economy should they be allowed to fail. The liquidation of the global investment bank Lehman Brothers in the United States in 2008 showed that significant externalities for the wider financial system and economy could arise from the disorderly failure of a credit institution.

122. Since the onset of the financial crisis, governments around the world (including in Ireland) have adopted a range of policy measures designed to limit the systemic impact of the failure of financial institutions, and to protect their customers in circumstances where they do fail.
123. Rush is a failing credit institution with poor governance and systems and controls issues that it has failed to resolve over many years, despite extensive supervisory engagement with RCU. In addition, there was a substantial purported misappropriation and issues regarding the management of the Car Draw which had a further detrimental impact.
124. The Bank has already carried out three directed transfers under the 2011 Act in the credit union sector: Newbridge Credit Union Limited was transferred to Permanent TSB, Howth Sutton Credit Union Limited was transferred to Progressive Credit Union Limited and Killorglin Credit Union Limited was transferred to Tralee Credit Union Limited. Furthermore, the Bank successfully petitioned for the liquidation of Berehaven Credit Union Limited in July 2014. It is important to note that there was no contagion in the wider credit union sector arising from the exercise by the Bank of its powers under the 2011 Act in those cases. The Bank believes that an orderly liquidation involving the prompt pay-out of eligible depositors by DGS is likely to limit the prospect of contagion in that regard (albeit there can be no guarantee that there will not be contagion arising from a liquidation of Rush).

An orderly winding up of a credit union serves the interest of the credit union sector and the State

125. There exists a general public expectation that the State would intervene rather than let any credit union fail. This is coupled with the public perception that individual credit unions are financially linked to each other. In this regard, the Minister for Finance (“the Minister”) has, on a number of occasions over the years, expressed his support for the credit union sector, and in particular, during the course of 2013 in the context of the Transfer Order under the 2011 Act that was made by the Court in relation to Newbridge Credit Union Limited. In terms of the provision of support for the credit union sector which underpins that perception, the Minister has provided €250 million to support the resolution of credit unions. Of the €250 million provided to the Credit Institutions Resolution Fund (“the Fund”), some of that money has been expended in effecting the directed transfers of other credit unions, as noted above.
126. The DGS represents one of the tools of the State to protect depositors and prevent systemic contagion from the failure of a credit institution. The Bank believes that the public interest is served by an orderly winding up of an entity such as Rush, with a prompt DGS pay-out reducing potential damage to the wider economy and reducing the need to use taxpayers’ funds.

127. The Bank is of the opinion that it would be wholly inappropriate to have public funds utilised to support credit unions which are failing or failed due to significant lapses in corporate governance and internal controls and misappropriation. This would be likely to lead to moral hazard if the Boards of credit unions thought that they could provide insufficient governance and oversight to the functioning of their credit union, on the understanding that the State would step in to bail it out in full if there were any negative financial consequences from their actions.
128. The Oireachtas has provided for a number of options in the 2011 Act, including directed transfer and liquidation. In order to secure the directed transfer of a credit institution, the Bank must demonstrate that the intervention conditions are met (which is a relatively high threshold) and that such a transfer is necessary in the circumstances. In contrast, the grounds for applying for the winding up of a credit institution under the 2011 Act are more readily met. It is only in situations where an approach other than liquidation is “necessary in all the circumstances” that the alternative approach can be utilised. The Bank has already carried out three directed transfers as noted above, but it is important that all resolution mechanisms represent viable options.
129. Liquidation in this case may have the public interest benefit of spurring further voluntary credit union sector restructuring. In addition, liquidation in the case of Rush may also encourage enhanced regulatory compliance across the credit union movement, to the benefit of the sector, its members and the wider public.

Summary of Grounds for Liquidation

130. The assessment by the Bank as to the reasons why liquidation was considered by the Bank to be the appropriate resolution approach in respect of Rush is set out at Section G of the Resolution Report. In summary, having regard to the significant and pervasive governance and internal control weaknesses which were identified in the inspections and reviews referred to above and having regard to the distressed financial position of Rush with no reasonable prospect of rectification, the Bank’s view is that the liquidation of Rush is the most appropriate course of action in all the circumstances.
131. As set out above at paragraph 9, the Governor was provided with the Resolution Report dated 25 October 2016. I say that having considered the Resolution Report the Governor replied by letter stating that he is of the opinion that, it is appropriate for the Bank to proceed to present the within Petition to this Honourable Court for the winding up of Rush on the grounds that:-

- (a) Rush is, or in the opinion of the Bank may be, unable to meet its obligations to its creditors;
- (b) Rush has failed to comply with a direction of the Bank under section 87 of the CUA.

- (c) In the opinion of the Bank, the winding up of Rush is in the interests of persons having deposits in Rush;
- (d) In the opinion of the Bank, the winding up of Rush would be in the public interest.

I beg to refer to a copy of said letter from the Governor, dated 27 October 2016 located at Tab 24 of the Book.

APPLICATION FOR APPOINTMENT OF A PROVISIONAL LIQUIDATOR

132. The Bank seeks the appointment of a provisional liquidator to Rush pending the hearing of the Petition. The Bank believes that it is essential in all the circumstances for a provisional liquidator to be appointed to Rush in order to ensure the winding up of Rush occurs in an orderly fashion and that there is an orderly realisation and subsequent distribution of the entity's assets. I say and believe that if a provisional liquidator is not appointed there is a real risk of serious adverse consequences for savers and deposit holders of Rush and the credit union sector generally.

Possibility of a run or forced closure, if provisional liquidator is not appointed

133. A petition for the liquidation of Rush would quickly become public knowledge, in particular, following its advertisement in at least two daily newspapers and Iris Oifigúil seven clear days before the hearing of the petition (in accordance with the Rules of the Superior Courts). If a provisional liquidator were not appointed, the Bank is of the view that the liquidation petition - and the imminent prospect of an interruption in members' access to savings - would be very likely to result in a "run" on Rush, and the widespread attempted withdrawal of savings and deposits by members of Rush. This would cause serious financial damage to Rush and could result in the unplanned closure of Rush in a disorderly manner.

134. The risk of a run is heightened by a number of factors. First, Rush's members are not aware of the true financial position of Rush. Rush's last AGM was held on 5 June 2013, and Rush's last set of published financial statements were for the financial year ended 30 September 2012. As outlined above, Rush's financial position has deteriorated significantly since then. A liquidation petition would bring this financial distress to the attention of members, and would probably cause many to seek to withdraw their savings.

135. At present the only person in a senior management position in Rush is a temporary consultant hired in the light of the [REDACTED] in the circumstances of the allegations set out above and set out more fully in the Resolution Report. [REDACTED]
[REDACTED] Accordingly, in addition to the risk of a run on Rush and given the weaknesses identified with the Board and the fact that all

Board members are in non-executive positions, there would exist a risk, which would be very difficult to control, that other creditors and employees might take action in relation to the physical assets of Rush (which are spread between the two premises) with a view to protecting or enhancing their position in the liquidation. In the absence of a provisional liquidator it would be likely that the Bank would be forced to direct Rush to close for business, pending the liquidation hearing. The consequences of a forced closure would be unpredictable and would create significant uncertainty about the consequences for members' savings in the period before the liquidation petition was heard.

136. The appointment of a provisional liquidator would substantially avert this risk of a damaging run or uncontrolled closure. Rush would close for business in a planned and controlled manner, and members would immediately be informed that eligible deposits would be repaid by the DGS within the prescribed period, typically 20 working days.

Role of provisional liquidator in facilitating timely DGS pay-out

137. The appointment of a provisional liquidator to a credit institution commences the period within which DGS compensation payments are required to be made in respect of eligible deposits held within that credit institution.
138. The Bank is of the view that an important reason for the appointment of provisional liquidator would be to liaise on DGS matters and to provide the necessary information to DGS to enable payments to be made under the DGS to members of Rush as quickly and efficiently as possible. The Bank is of the view that if Rush were directed to cease business, that this could constitute an event which triggers the obligations to make compensation payments under DGS. Were this the case, DGS would be required, subject to limited exceptions, to make a compensation payment to duly verified eligible depositors within 20 days. In order to make such a payment DGS would require a list of all of the eligible savers and depositors in Rush and the amounts that they are due under DGS.
139. There is a risk, in particular in light of the deficiencies in internal controls and governance identified above, that Rush would not be able to carry out the work necessary to facilitate this process in the extremely short time-frame required. If a provisional liquidator were not in place, it is difficult to see how the DGS pay-out could be completed within the 20 days as required under Irish and EU law. Any delay in payments would create substantial uncertainty, and cause undue hardship for Rush members.

Consequences for the credit union sector generally of a disorderly collapse in Rush

140. In addition to the potentially damaging consequences of a disorderly collapse of Rush and its members, such an event could also have negative consequences for the credit union sector as a whole. Members of other credit unions might become concerned about the prospect of a run, unplanned closure and delayed DGS pay-outs in their own credit unions.
141. Any uncertainty or delays over the timing of DGS pay-outs to eligible depositors would also risk undermining public confidence in the DGS, which is essential to the stability of credit unions and deposit-taking institutions generally.
142. This risk would be substantially mitigated by the appointment of a provisional liquidator to manage and control the closure and DGS pay-out.

Required Powers of the Provisional Liquidator

143. I say and believe that if this Honourable Court decides to appoint provisional liquidators over Rush, in order to be able to carry out their duties properly, the provisional liquidators would need to be able to exercise the following powers in relation to Rush:-
- (a) to take possession forthwith of the assets of Rush;
 - (b) to immediately open a bank account in the name of Rush;
 - (c) to retain the existing bank accounts of Rush;
 - (d) to retain a firm of solicitors to advise them;
 - (e) to take all steps as are necessary to deal with claims under the DGS;
 - (f) to retain and dismiss staff as they consider necessary;
 - (g) to retain security personnel to protect the assets of Rush; if necessary;
 - (h) to insure Rush's assets;
 - (i) liberty to act severally; and
 - (j) liberty to apply to this Honourable Court should the need arise.
144. If the Court appoints Provisional Liquidators, the Bank further seeks an order that upon appointment of the Provisional Liquidators the powers of the Board of Directors of Rush shall be suspended pending the hearing of the Petition.

PROPOSED LIQUIDATORS

145. I say that Jim Luby of McStay Luby and Tom Rogers have indicated that they are willing to act as Joint Liquidators and also as Joint Provisional Liquidators if the Court sees fit to appoint them. I beg to refer to Affidavits of Jim Luby and Tom Rogers in which they, *inter alia*, respectively confirm their willingness to act as Joint Liquidators and also Joint Provisional Liquidators when produced.

NOTICE OF PRESENTATION TO BOARD OF RUSH

146. I say that I will meet with the Board in order to inform them that the Bank intends to present a petition for winding up of Rush and apply for the appointment of Provisional Liquidators after I have sworn the affidavit herein. I say that it is intended that I will swear a supplemental affidavit in order to apprise this Honourable Court of what takes place at that meeting.

CONFIDENTIALITY

147. While the Bank is not seeking that this application be heard otherwise than in public, the Bank respectfully requests that the paragraphs, or parts of paragraphs, which have been highlighted in yellow in the Petition, this affidavit, and the exhibits located at Tabs 3, 7, 10, 11, 13, 14, 16, 18 and 19 be kept confidential to the Court in all circumstances and not be disclosed in open court or published or reported pursuant to Section 99 of the 2011 Act and/or the inherent jurisdiction of the Court, on the grounds that they contain information which might prejudice a potential criminal investigation into an indictable offence, including information which might identify certain officers and/or employees of Rush potentially the subject of such investigations and/or that they are commercially sensitive. In this regard I refer to paragraphs 55 and 70 of the Resolution Report which set out particulars of the reports made by the Bank to An Garda Síochána in respect of possible offences.

148. Subject to the approval of the Honourable Court, material has been redacted which might identify any individual, who may at present or in the future be the subject of a criminal investigation.

149. In relation to commercially sensitive information:

- (a) Detail as to the lack of books and records relating to loans and deposits has been redacted for the protection of the creditors of Rush. If this becomes known it might be possible for a person to take unscrupulous advantage of the situation.

- (b) Information which identifies a potential bidder for a transfer of Rush has been redacted as the publication of such is likely to discourage such a party expressing a commercial interest in future transactions of a similar type.
- (c) Details of a whistle blower have also been redacted in order to avoid possible identification of such a person, which might discourage any other person from acting as a whistle blower in future.

CONCLUSION

150. For all of the reasons set out, I therefore pray this Honourable Court for the reliefs set out in the Petition and ex parte docket herein.

SWORN by the said **PATRICK CASEY**

[who is personally known to me]

[who is identified to me by _____ who is personally known to me]

[whose identity has been established to me before the taking of this affidavit by the production to me of a relevant document within the meaning of section 2 of the Statutory Declaration Act, 1938 (as amended) being a _____ and containing a photograph of the deponent]

on _____ November 2016 at

in the City of Dublin before me a Practising Solicitor / Commissioner for Oaths

Practising Solicitor / Commissioner for Oaths

Print Name of Practising Solicitor/ Commissioner for Oaths

Filed this _____ day of _____ 2016 by McCann FitzGerald, Solicitors, Riverside One, Sir John Rogerson's Quay, Dublin 2.

THE HIGH COURT

Record No. 2016 No. COS

**IN THE MATTER OF RUSH CREDIT UNION LIMITED AND IN THE MATTER OF THE
CENTRAL BANK AND CREDIT INSTITUTIONS (RESOLUTION) ACT 2011 AND IN THE
MATTER OF THE COMPANIES ACT 2014**

AFFIDAVIT OF PATRICK CASEY

**McCann FitzGerald
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