



Banc Ceannais na hÉireann  
Central Bank of Ireland  
Eurosystem

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**Report of the Resolution Division to the Governor of the  
Central Bank of Ireland in relation to the Proposed Resolution  
of Rush Credit Union Limited**

*October 2016*

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**Resolution Report on the rationale for liquidation and other matters relevant to a petition under the Central Bank and Credit Institutions (Resolution) Act 2011 (the “2011 Act”) for the winding up of Rush Credit Union Limited (“Rush”) under the Companies Act 2014 (the “2014 Act”).**

**To:** The Governor

**From:** The Resolution Division (“RES”) of the Central Bank of Ireland (the “Bank”)

**Date:** 25 October 2016

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**A. INTRODUCTION**

1. This report (the “**Report**”) is prepared in order to assist you in the performance of your functions under the 2011 Act in respect of the matters discussed herein. To the extent that this Report outlines a policy position or suggests a course of action, this is done for consideration and discussion purposes only and does not purport to represent an official policy view or decision of the Bank, whether for the purposes of the 2011 Act or any other purpose, and whether with respect to institutions named in this Report or generally.
2. This Report includes information made available to RES by the Registry of Credit Unions (“**RCU**”). RCU is a division of the Bank and is responsible for the registration, regulation and supervision of credit unions. Credit unions are mutual not for profit organisations whose principal activities are the acceptance of shares and deposits from members and the making of loans to members. They are regulated under the Credit Union Act, 1997 (as amended) (the “**CUA**”).
3. The purpose of this Report is to outline the facts which may assist you to determine: (a) whether liquidation is the appropriate course of action in respect of Rush; and (b) whether the Bank has sufficient grounds on which to seek to have a liquidator appointed to Rush. Finally, the Report provides an overview of the need for the appointment of a provisional liquidator if liquidation is the approach to be taken by the Bank.
4. Throughout this Report RES refers to various documents and correspondence concerning Rush that it has reviewed and considered during the course of its examination of the matters referred to herein. Regulatory directions issued to Rush, pursuant to section 87 of the CUA, are appended to this Report and all other documents that RES considers to be material to the issues considered in this Report are available for your review.

## B. KEY CONSIDERATIONS

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”).
6. Rush is in a distressed financial position. As at 31 August 2016, Rush had regulatory reserves (“reserve(s)”) 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 assets (the “**minimum reserve requirement**”):
  - (a) In the period 2010 to 2016 a number of external third party reviews and inspections were undertaken in Rush. The inspections undertaken by RCU, external third party reviews, and the findings as set out in the audit management letters prepared by Rush’s auditor, demonstrate significant, pervasive and recurring issues in relation to the reserves, governance, internal control framework and lending practices. Addressing these deficiencies would require significant remedial actions by Rush, which have not occurred since 2010, and would involve further impairments to its financial position.
  - (b) 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 of significant levels of alleged misappropriation by Grant Thornton (“GT”), 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).
7. 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%. Rush also breached a previous regulatory direction issued by the Registrar on 16 October 2015 requiring it to restore its reserves to 10%. Despite a letter being sent to Rush on 14 October 2016 emphasising the seriousness of the matter, Rush has failed to restore its reserves to 10%. In these circumstances, it appeared that no alternative solution was available to ameliorate Rush’s financial situation other than to consider resolution options under the 2011 Act, and on 14 October 2016, RCU formally referred Rush to RES as a resolution case.
8. The key views expressed in this Report are that, in the opinion of RES:

- (a) Rush has failed to comply with a direction given by the Registrar under section 87 of the CUA dated 20 September 2016 to comply with the minimum reserve requirement;
- (b) Rush has further failed to comply with an earlier direction given by the Registrar under section 87 of the CUA dated 16 October 2015 to comply with the minimum reserve requirement;
- (c) Rush is balance sheet insolvent and is at increased risk of corporate failure;
- (d) In the circumstances, liquidation is the appropriate course of action to be deployed in respect of Rush;
- (e) The Bank has adequate grounds on which to petition under the 2011 Act for the presentation of a petition for the winding up of Rush and should bring such a petition;
- (f) The Bank should make an application to the High Court (the "**Court**") under the 2011 Act for the appointment of a provisional liquidator to Rush in order to ensure an orderly commencement of the winding up of Rush in the interests of members, creditors and the public.

9. In this Report, RES has set out, for your consideration:

- (a) in **Section C**, summary of the regulatory background of Rush, RCU's engagement with Rush and third party reviews undertaken in the period 2010-2016;
- (b) in **Section D**, a summary of the financial history of Rush;
- (c) in **Section E**, an analysis of Rush's current financial position;
- (d) in **Section F**, RES's assessment of the reasons for Rush's failure;
- (e) in **Section G**, RES's assessment as to why liquidation is the appropriate resolution approach in this case;
- (f) in **Section H**, the grounds for liquidation, together with an analysis as to why, in RES's view, the grounds for liquidation, set out in the 2011 Act, have been satisfied in this case;
- (g) in **Section I**, RES's analysis as to why there is a requirement for a provisional liquidator to be appointed;

- (h) in **Section J**, RES's recommendation on how to proceed given the information set out in the preceding sections; and finally
- (i) in **Section K**, a summary of the next steps to be taken should you decide, having considered this Report, that the grounds for liquidation have been satisfied in respect of Rush and that the Bank should make an application to the Court to have a liquidator appointed to Rush.

**C. REGULATORY BACKGROUND: ENGAGEMENT BY RCU AND THIRD PARTY REVIEWS 2010-2016**

10. In the period 2010 to 2016, at RCU's request, a number of external third party reviews and inspections were undertaken in Rush. The inspections undertaken by RCU, external third party reviews and the findings as set out in the audit management letters prepared by Rush's external auditor, demonstrate significant, pervasive and recurring issues in relation to the reserve position, governance, internal control framework and lending practices. We have set out details of the supervisory interaction between RCU and Rush below, broken down under the particular year in which each of the matters occurred.

**2011**

- 11. On 22 October 2010, RCU informed Rush in writing that RCU was engaging in a programme of limited inspections of credit unions and accordingly GT had been appointed under sections 90 and 91 of the CUA to carry out this work in Rush (the "**Limited Inspection**").
- 12. On 25 March 2011, the findings from the Limited Inspection were communicated to Rush, inter alia:
  - (a) A shortfall in the provision for bad and doubtful debts amounting to circa €0.54 million;
  - (b) Instances of non-compliance with the lending restriction imposed by RCU on 14 July 2009<sup>1</sup> ("July 2009 Restriction"); and
  - (c) The loan recovery policy did not contain detailed procedures in respect of share to loan transfers and provisioning and Rush needed to engage a debt collection agency regarding the collection of loan accounts in arrears.

In light of these findings, RCU requested Rush to engage GT in a full asset review. A copy of the findings was requested to be submitted to RCU by no later than 31 August 2011.

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<sup>1</sup> On 14 July 2009, RCU issued a letter to Rush prohibiting Rush from making loans greater than €20,000, to cease commercial lending and that "All surplus funds should be held in deposit accounts, with maturity dates no greater than 3 months, in credit institutions which are the subject of a statutory guarantee".

13. On 17 May 2011, RCU received an email from Rush, setting out that Rush's external auditors, FMB Chartered Accountants ("**FMB**"), had been instructed to undertake a full review of Rush. In addition, Rush indicated that it would also comply with RCU's request for an asset review to be carried out by GT.
14. On 27 July 2011, RCU received FMB's review of the adequacy of Rush's provision for bad and doubtful debts (the "**FMB Provisioning Review**"). The FMB Provisioning Review identified additional provisions amounting to €0.651 million as at 31 May 2011.
15. On 30 September 2011, RCU received the GT asset review (the "**2011 GT Asset Review**") (as at 30 June 2011). The 2011 GT Asset Review identified the following issues:
  - (a) Shortfall in the provision for bad and doubtful debts amounting to €0.74 million as at 30 June 2011;
  - (b) Instances of non-compliance with section 35 of the CUA;
  - (c) Breach of the July 2009 Restriction;
  - (d) Difference of circa €38,000 (negative) between the carrying value of investments as at 30 June 2011 and the market / indicative / surrender value of investments as per the statements provided; and
  - (e) Rush to complete an impairment review on its fixed assets as at 30 September 2011.

## **2012**

16. On 6 February 2012, in a meeting with Rush, RCU highlighted its concerns in relation to the findings of the 2011 GT Asset Review, the valuation of Rush's premises, governance issues, liquidity position and its future viability. Rush reported a deficit of circa €0.59 million and a reserve position of 7.9%<sup>2</sup> of total assets in the draft financial statements for the year ended 30 September 2011 (the "**2011 Accounts**").

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<sup>2</sup> The reserve position of 7.9% was reflected in the first set of draft financial statements for the year ended 30 September 2011 submitted by Rush. Subsequent updated draft financial statements submitted by Rush to RCU reflected further impairments to the assets of Rush and, as such, the reserve position had fallen to 2.9% as at 30 September 2011. Rush also reported a trading deficit of €2.1 million in this period.

17. On 14 March 2012, RCU, in a meeting with Rush, outlined its concerns regarding the financial and reserve position of Rush, the value in use (“ViU”) calculation 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, a governance and a ViU review.
18. On 4 May 2012, Rush advised RCU in writing that it had engaged GT to carry out the review of the investments and loan book. Rush further advised that O’Donovan Associates Management Consultants had been engaged to conduct the governance review.
19. On 12 June 2012, RCU received a GT loan book and investments review dated 30 April 2012 (the “**2012 GT Review**”). The 2012 GT Review identified a number of issues:
  - (a) An additional provision of circa €0.36 million using the “alternate methodology” and an additional provision of €1.2 million using the “roll rate methodology”;
  - (b) Breach of the July 2009 Restriction;
  - (c) From testing on the top 10 loans at 30 April 2012 it was noted that a credit agreement was not signed by a representative of Rush on one account;
  - (d) From a random sample of 15 members’ loans in excess of €25,000 at 30 April 2012, it was noted that a member’s file was missing during the onsite review; and
  - (e) A net difference of circa €0.13 million (positive) between the carrying value as at 30 April 2012 and the market/indicative/surrender value of investments as per the statements provided.
20. The O’Donovan Associates Management Consultants governance review of Rush dated 15 June 2012 (the “**O’Donovan Governance Review**”) identified a number of issues, including:
  - (a) Issues with the size of the board of Rush (the “**Board**”), composition and levels of participation;
  - (b) Lack of documented job descriptions;
  - (c) Succession planning for the Board and management needed to be implemented;
  - (d) Significant skill gaps at all levels;
  - (e) Lack of on-going evaluation of the Board and the Manager’s performance;

- (f) Existing policies needed to be reviewed and new policies were also required;
- (g) Lending decisions needed to be better informed and more scientific;
- (h) Credit control and debt recovery needed to be more timely and aggressive; and
- (i) Cost reduction and better control of costs was required.

21. 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 a shortfall in its reserves, Rush also provided an update in relation to its Saving Protection Scheme ("**SPS**") support application to ILCU, advising that ILCU was due to meet with the Board on 19 September 2012 to discuss its application.
22. On 9 November 2012, Rush confirmed that ILCU had agreed to provide Rush with financial support in the form of an SPS guarantee.

### **2013**

23. On 19 April 2013, Rush provided the documentation (signed on 18 April 2013) 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 CUA.
24. On 29 April 2013, RCU held a meeting with Rush regarding the SPS Guarantee, governance requirements in relation to a Board rotation plan and the financial performance of Rush.
25. On 5 June 2013, Rush held its annual general meeting ("**AGM**") for the financial years ended 30 September 2011 and 30 September 2012 where, inter alia, the unqualified audit reports included in the financial statements for both years were presented to the membership. The Board did not recommend the payment of a dividend in these financial statements due to deficits incurred. In addition, the Board had carried out a ViU calculation and had "*concluded that no write down in the carrying value of fixed assets is required in the financial statements*".
26. On 10 June 2013 RCU received the audit management letters for the financial years ended 30 September 2011 (the "**2011 Audit Management Letter**") and 30 September 2012 (the "**2012 Audit Management Letter**") from FMB. The 2011 Audit Management Letter and the 2012 Audit Management Letter identified a significant number of weaknesses which included, inter alia:



- (a) The number of circularisation letters issued to members by the supervisory committee<sup>3</sup> during the financial year was not sufficient to meet the required 10% of Rush's membership<sup>4</sup>;
  - (b) Rush did not appear to have a system in place to issue statements to its members on a periodic or annual basis;
  - (c) The supervisory committee identified a number of issues including the use of pre-signed cheques and concerns surrounding the lock-up procedures of Rush's offices; and
  - (d) Of a sample of sixteen share to loan transfer forms reviewed, only seven were identified as being signed as approved by the member.
27. On 18 July 2013, Rush, by email, requested clarification on RCU's position in relation to its Board rotation plan which was required under the SPS Guarantee (the Board rotation plan outlined that all current directors with more than 9 years' service in the last 15 years must rotate off the Board over AGMs 2011, 2012, 2013, 2014 and 2015).
28. On 1 October 2013, RCU sent correspondence to Rush setting out requirements relating to the submission of the draft financial statements for the year ended 30 September 2013.

## 2014

29. 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.
30. On 17 November 2014, RCU received an email from Rush containing details on the SPS Guarantee, as requested on 12 November 2014. This email noted the following:

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<sup>3</sup> The supervisory committee, provided for under section 58 of the CUA was replaced by the board oversight committee by section 27 of the Credit Union and Co-operation with Overseas Regulators Act 2012 (the "CUCORA 2012"), as set out in Part IVA of the CUA with effect from 11 October 2013.

<sup>4</sup> Prior to 11 October 2013, under section 60(c) of the CUA the supervisory committee was required to make or cause to be made, once in the period before the next AGM, a comparison between the pass book and statement of account of a random sample of at least 10% of the members and appropriate records. Section 60 of the CUA was deleted by section 35 and Schedule 1 to the CUCORA 2012, with effect from 11 October 2013.

1. *"We did not draw down any SPS funding to date. The funds remain in the NTMA<sup>5</sup> account in the name of Rush Credit Union.*
2. *There were 23 loans to the value of Euro 754.133.46. [sic] Of these, 8 accounts were written off. Value of Euro 146, 606.37.*
3. *With regard to the reserves, [REDACTED] as [sic] asked that I forward you the management accounts that were given to our auditor on Friday last for our audit that is starting today. This gives the most up to date figures".*

## 2015

31. On 21 January 2015 Rush submitted its December 2014 PR to RCU, and reported reserves of 8.14%.
32. On 27 March 2015 the Registrar notified Rush that she was minded to issue a regulatory direction (the "**March 2015 Minded to Letter**"), which 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 Credit Union Act 1997 (Section 85) Rules 2009 ("**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.
33. 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.
34. 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*

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<sup>5</sup> In general, at that time, as part of the SPS guarantee process, ILCU would lodge funds to an account with the NTMA. The only party mandated to access the funds in this account was ILCU.

*institutions*". It should be noted that Rush subsequently failed to draw down or receive any of the SPS Guarantee.

35. On 28 April 2015, RCU held a meeting with [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
36. GT produced a draft report under section 90 of 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 to the carrying value of Rush's premises of circa €0.63 to circa €1.6 million, and that circa €0.12 million of additional bad debt provisions 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.
37. 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.
38. Following the April 2015 Section 90 Report [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 2015 Letter**"). The 16 July 2015 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.

39. 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.

40. 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**").

41. 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.

42. 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.”*
43. 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 as at 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.
44. 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 draw down these funds.
45. Rush commenced a ToE process with [REDACTED] on 16 November 2015. Due to the financial and governance concerns of RCU, this process was to be completed within a 12-week timeline. The ToE process and timeline was agreed by all parties and RCU continued to monitor its progression.
46. 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] and the delay in the ToE process. RCU also outlined to Rush issues regarding the valuation of the Rush and Lusk premises.

## **2016**

47. 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.
48. RCU received correspondence from FMB and the secretary of Rush on 14 and 19 of January 2016 respectively, notifying RCU that [REDACTED]

[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.

49. Arising from the concerns outlined above, 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.
50. 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.
51. 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 that [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 (Arthur Cox were appointed legal advisors by Rush on 3 March 2016).

52. 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 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.
53. 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.
54. 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.
55. 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] of the Companies Act 2014.
56. On 22 March 2016, the Registrar issued a regulatory direction and requirement letter to Rush, pursuant to section 87 of the CUA, which 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 was to 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 S.I. No. 1/2016 Credit Union Act 1997 (Regulatory Requirements) Regulations 2016 (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<sup>6</sup> ratio of 40%.

57. 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]

[REDACTED]

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

58. 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**").

59. On 7 April 2016, a meeting was held between RCU and GT to discuss the high level findings of the on-going reviews. The main concerns identified by GT related to the potential misappropriation of

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<sup>6</sup> 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.



members' funds, expenses incurred by officers of Rush, its credit control practices and the overall systems and controls.

60. 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]
61. 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.
62. On 27 May 2016, RCU received an email from Rush containing draft financial statements as at 30 April 2016. This noted a negative reserve of €662,609 as at 30 April 2016. This is the first instance where Rush had reported balance sheet insolvency.
63. 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.
64. 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.
65. 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.
66. On 18 July 2016, following instruction by RCU, Rush submitted a report on the operation of its car draw (the “**Car Draw**”), and a proposed redress scheme to members. This report had a recommendation to redress circa €9,000 to members.
67. 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.
68. 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.
69. 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.
70. 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.
71. On 16 August 2016, RCU received the “Independent investigation and forensic review carried out by Grant Thornton on behalf of the Board of Rush” (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**”).

72. 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

73. 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.

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

[REDACTED]

75. As mentioned, GT, as part of the Forensic Review, issued a circularisation to 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).

76. GT undertook a high level review of the Car Draw as part of the Forensic Review. It was noted in the Forensic Review Report that [REDACTED] were prepared in relation to funds received from members regarding the Car Draw. 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:**

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
<b>Total between 1 November 2012 and 30 April 2016</b>		<b>15</b>	<b>220,860</b>

Source: GT Forensic Review Report

77. The Forensic Review Report was communicated to the Board. In correspondence dated 16 August 2016, Rush confirmed that the Forensic Review Report was accepted by the Board. The Forensic Review Report identified [REDACTED] in Rush in the five-year review period. [REDACTED]

[REDACTED] "It 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."

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

[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]

79. 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 above, 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.

80. 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 reserves 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.

81. 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"*.

82. 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]

83. 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”.*

- 84. On 22 September 2016, a “minded to issue” letter was sent to [REDACTED] in respect of a potential investigation into the [REDACTED] fitness and probity, pursuant to Section 25 of the 2010 Act.
- 85. 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.
- 86. 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.
- 87. On 11 October 2016, RCU received an email from the BOC confirming that the Vice Chair had withdrawn her resignation from the Board.
- 88. 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”.*
- 89. 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”.*

90. 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.*

*We 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.”*

91. On 25 October 2016 RCU replied to Rush stating: *“I refer to the above Regulatory Directions, to previous correspondence and to your undated letter received on 24 October 2016.*

*It is noted that the Credit Union has not complied with the September Direction and the October Direction. The Central Bank has provided the Credit Union with an extensive timeframe within which to comply with the Regulatory Directions.*

*Prior to the September Direction being issued the Credit Union was in breach of a legislative requirement to maintain its reserves at 10%. The Credit Union was aware that it was in breach of this requirement and failed to present any plan to the Central Bank to indicate how it would secure compliance with this requirement.*

*I have set out the timeline in relation to the most recent direction, the September Direction below:*

- *Minded to issue a Regulatory Direction letter issued on 25 August 2016 in the terms of the September Direction.*
- *The Credit Union was given until 8 September 2016 (2 Weeks) submit a response to the Central Bank.*
- *In its response received by this on 9 September 2016 the Credit Union stated that “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.”*

- *The September Direction was issued on 20 September 2016 and the Credit Union was given until the 11 October 2016 (3 weeks) to comply with the direction. The Credit Union failed to comply with the September Direction within this time period.*
- *On 11 October 2016, I received a letter from the Credit Union stating that “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.”.*
- *On 14 October 2016 I wrote to the Credit Union emphasising the seriousness of the situation and suggesting that the Credit Union should seek a response from ILCU no later than 21 October 2016 or seek an alternative means of complying with the September Direction.*

*Despite being given ample opportunity to do so, it is clear from your letter received on 24 October 2016 that the Credit Union has not secured funding to comply with the September Direction. This is despite a period of over two months having elapsed since the Credit Union was notified of my intention to issue the September Direction, and despite the Credit Union being aware that it was in breach of the requirement to maintain its regulatory reserve ratio at 10% prior to the September Direction being issued.*

*The Central Bank will consider any submission that the Credit Union may make regarding its position. However, it should be noted that the Central Bank maintains, at all times, the right to take such action as it considers appropriate to address the extremely serious situation of the Credit Union, which continues to persist”.*

Given the foregoing, it is clear that Rush is in breach of the September 2016 Direction.

#### **D. FINANCIAL HISTORY OF RUSH**

92. The core underlying business model of a credit union is the acceptance of members’ savings and the granting of loans to members, with surplus resources invested. The income earned from such activities is expected to cover the cost of operating the credit union, facilitate the payment of a distribution to members and ensure that adequate reserves are maintained within the credit union to comply with regulatory requirements.

93. The AGMs for the financial years ended 30 September 2013, 30 September 2014 and 30 September 2015 were not held due to significant supervisory concerns, in relation to systems and controls, its financial position and the level of impairments to be reflected in the financial statements.
94. Rush has not paid a dividend to its members since the financial year ended 30 September 2008 and the most recent AGM was held on 5 June 2013 in respect of the financial years ended 30 September 2011 and 30 September 2012.
95. The historic financial position of Rush as per the financial statements is set out in the table below:

**Rush – Historic Financial Position:**

Historic Financial Information	Sep-11 Financial Statements €,000	Sep-12 Financial Statements €,000	Sep-13 Financial Statements €,000	Sep-14 Financial Statements €,000	Sep-15 Financial Statements €,000
Balance Sheet					
Total assets	27,151	26,213	25,692	26,420	25,580
Total liabilities	26,296	24,513	24,132	24,454	24,726
Net worth	855	1,700	1,560	1,966	854
Provisions for bad and doubtful debts	(3,420)	(3,273)	(3,281)	(2,706)	(2,061)
Total loans amount	17,518	16,514	15,072	12,948	11,694
Total savings amount	26,004	24,324	23,892	24,255	24,605
Total reserves	2.9%	6.1%	6.1%	7.4%	3.3%
Dividend	0.0%	0.0%	0.0%	0.0%	0.0%
Financial support required to restore reserves to 10% of Total Assets	2,135	1,115	1,113	744	1,883

Source: Rush Financial Statements for the years ended 30 September 2011 – 30 September 2015, as provided by Rush to RCU.

96. From the table above, it is noted that Rush has been unable to maintain a viable business model and, given its reserves shortfall, has not been in compliance with the minimum reserve requirement in the period.
97. A credit union's loan book is a key driver of its income. Rush's loan to assets ratio has been contracting from 64.5% as per the financial statements at 30 September 2011 to 45.7% at 30 September 2015. While total assets have remained relatively stable, reducing marginally from €27.15 million as at 30 September 2011 to €25.6 million as at 30 September 2015, the loan book of Rush has decreased markedly from €17.5 million as at 30 September 2011 to €11.7 million as at 30 September 2015. This reduction in loans has resulted in reduced interest income for the Rush.
98. An increasing cost to income ratio (excluding fixed asset impairments), which rose from 57% for the year end 30 September 2012 to 91% as at 30 September 2015, reflects a largely static cost base which Rush has been unable to reduce to offset falling income.

99. As outlined above, successive loan reviews undertaken by independent third parties at the request of RCU have recommended that Rush increase the level of provisions held in respect of its bad and doubtful debts. In addition, Rush has written off loans in financial years ended 30 September 2011 to September 2015 totalling €4.29 million, with marginal recovery on written off loans in the amount of €0.511 million. As set out in the table below, the total provisions against loans have reduced from €3.4 million at 30 September 2011 to €2.1 million at 30 September 2015. This reduction appears to arise as a result of loans which were provided for being subsequently written off.

**Rush Credit Union – Non-Performing Loans Analysis:**

Non performing loans	Sep-11	Sep-12	Sep-13	Sep-14	Sep-15	Total
	Financial	Financial	Financial	Financial	Financial	
	Statements	Statements	Statements	Statements	Statements	
	€,000	€,000	€,000	€,000	€,000	€,000
Written off loans	1,664	149	792	752	934	4,290
Recovered loans previously written off	(60)	(71)	(57)	(130)	(194)	(511)
Net loans written off	1,604	78	735	622	740	3,779
Provisions for bad and doubtful debts	1,352	(147)	8	(575)	(646)	(7)
Income & expenditure impact	2,956	(69)	743	47	95	3,773

Source: Rush Financial Statements for the years ended 30 September 2011 – 30 September 2015, as provided by Rush to RCU.

100. Rush operates from two premises, one in the town of Rush and a smaller unit in the town of Lusk. The carrying value of the premises recorded in Rush’s financial statements has been identified as an issue in various third party reports. The carrying value of the premises in the financial statements for the year ended 30 September 2012 was €2.32 million. The financial statements state that: *“an independent valuation of the credit union’s premises was carried out by Robert B. Day & Son, Ltd, on 30 January 2012. In accordance with Financial Reporting Standard 11 ‘Impairment of Fixed Assets’ the directors carried out a value-in-use calculation at year end, applying a discount factor of 5.83%”*.
101. The April 2015 Section 90 Report identified, inter alia, that an impairment to the carrying value of Rush’s premises of €0.63 million was required. In December 2015, Lisney was engaged to carry out a valuation of both properties, it confirmed a market valuation for both premises totalling €0.9 million.
102. The draft financial statements for the year ended 30 September 2015 state the following: *“An independent valuation of the credit union’s two premises in Rush and Lusk respectively was carried out by Lisney on 10 December 2015. In accordance with Financial Reporting Standard 11 “Impairment of Fixed Assets” the directors have carried out an impairment review and consider that it is appropriate to recognise a full impairment of the carrying value of the two credit union premises to their respective market valuations”*. The notes to the relevant draft financial statements detail an

impairment of €1.24 million against the carrying value of the premises, resulting in the value of premises being written down to a carrying value of €0.9 million.

**E. CURRENT FINANCIAL POSITION OF RUSH**

103. The financial position of Rush has continued to deteriorate from 30 September 2015 and has culminated in the current weak financial position of Rush as per monthly management accounts submitted for the period ended 31 August 2016, as summarised below.

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

Total Assets	22,731
Total Liabilities <sup>1,2</sup>	23,892
Excess of Total Liabilities over Total Assets <sup>1,2</sup>	(1,161)
Provision for bad & doubtful debts	1,355
Total Loans Amount	9,040
Total Savings Amount	23,096
[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.

104. 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]

105. As per 31 August 2016 management accounts Rush's liabilities exceed its assets by €1.2 million. [REDACTED]

[REDACTED]

██████ Rush's excess of liabilities over assets increases to €2.0 million. As a result, Rush is not in compliance with the requirement set out in Regulation 4(1) of the Regulations to continually maintain reserves of at least 10% of total assets.

**F. RES'S ASSESSMENT OF THE REASONS FOR RUSH'S FAILURE**

106. We believe it is important to understand the underlying cause of Rush's difficulties which have 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 were summarised in a previous section of this Report.
107. The abovementioned RCU inspections 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.
108. 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;
- Absence of a robust operational risk management framework; and
- Absence of a documented operational risk register.

### *Bank and Cash and Deposits:*

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

### *Remuneration Travel and Other Expenses*

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

## **3. Lending practices:**

- Insufficient level of underwriting of loans;
- Inadequately documented credit assessment of borrower ability to repay;
- Credit concentration risk – high level of lending to a low quantum of borrowers;

- Lending to members in arrears;
- Irregular practices concerning loans to officers, particularly in relation to loan approval;
- Inadequate provisioning practices for non-performing loans;
- Inadequate security in place in respect of loans;
- Inadequate loan policy and compliance with same;
- 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;
- 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.

109. In light of the issues above, RES is of the view that there are a number of reasons for Rush's failure which 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.

110. We would highlight the following matters as an illustration of 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;

*In relation to paragraph (a), 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;

*In relation to paragraph (b), 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"*;

[REDACTED]

(v) 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 the failure to issue statements to members annually/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]

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

[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] 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]

**G. RES'S ASSESSMENT AS TO WHY LIQUIDATION IS THE APPROPRIATE APPROACH**

111. The reasons articulated above which have caused Rush to fail, including how RES is of the view that the Board has not governed and overseen the credit union in a prudential manner in the interests of its members, confirm that it is necessary, having considered the circumstances set out above, for the Bank to intervene to resolve matters using its 2011 Act powers. In considering the most appropriate approach in this regard, RES has considered the following issues:

- (a) Rush is balance sheet insolvent with total liabilities exceeding total assets (following adjustments noted above) of €2.0 million as at 31 August 2016 with no reasonable prospect of Rush being able to recover its financial position without external financial support;
- (b) Rush has a history of requiring external financial support from ILCU, which over time has increased considerably:
  - (i) On 18 April 2013 Rush signed the SPS Guarantee in the amount of circa €0.75 million. This SPS Guarantee was never drawn down by Rush;
  - (ii) On 3 November 2015, ILCU lodged €1.28 million of SPS funding support into an NTMA account in the name of Rush, conditional on a ToE to a third party credit union. This SPS funding was never drawn down by Rush; and
  - (iii) Following the Registrar's September 2016 Direction, Rush sought SPS support from ILCU amounting to €5.9 million by a required deadline of 11 October 2016. To date, ILCU has not confirmed to the Board whether this support requirement will be provided to Rush and Rush remains in breach of the September 2016 Direction.

- (c) Without the availability of the required financial support from ILCU there is no reasonable prospect of Rush being in a position to comply with its minimum reserve requirement;
- (d) The Board indicated in a letter to RCU dated 22 September 2015, that it unanimously decided that a ToE process was *"in the best interests of its members"*. This suggests that the Board recognised that prior to all of the alleged misappropriation issues emerging subsequently in 2016, the Board already believed there was no reasonable prospect of Rush remaining as a standalone credit union undertaking into the long term;
- (e) Following the initiation of discussions with [REDACTED] over twelve months ago in September 2015 which led to the commencement of a ToE process (involving prospective transferee due diligence), transfer discussions were suspended through the intervention of RCU given the concerns in relation to the internal control environment in Rush. Progressive confirmed in a letter dated 21 October 2016 that they are no longer interested in pursuing a voluntary ToE with Rush. On this basis, RES is of the view that there is no reasonable prospect of a transfer solution being available to Rush to address its financial distress;
- (f) Under Part 6 of the 2011 Act, the Bank can seek to appoint a Special Manager to a failed or failing credit institution in order to take over the functions of the Board and management of the entity concerned. Whilst a Special Manager would be able to examine any other issues of alleged misappropriation not reviewed fully by GT, in the absence of any plan from the Board to address its financial distress, it is reasonable to suggest that the Special Manager would not be able to address and rectify the distressed financial position of Rush. On that basis, this resolution approach is not viewed as credible; and
- (g) Under Part 4 of the 2011 Act, the Bank retains the power to establish a bridge bank into which Rush's assets and liabilities could be transferred on a temporary basis with a view to a transfer to a third party transferee as soon as is practicable. Given there is no reasonable prospect of a transfer of Rush to a third party as noted above, a bridge bank solution is not considered to be credible in the current circumstances.

112. GT has articulated in the Forensic Review Report that it was not in a position to quantify with certainty the level of unauthorised transaction activity undertaken within Rush. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *"it is unlikely the quantum of*

*loss identified in this Report that has been suffered by Rush Credit Union Ltd would decrease, but such loss may increase”.*

113. Given the significant and pervasive governance and internal control weaknesses articulated above and the distressed financial position of Rush with no reasonable prospect of rectification, it is the view of RES that the liquidation of Rush is the appropriate course of action in the circumstances. In our view the liquidation of Rush will safeguard members’ funds through the pay-out of eligible savings and deposits under the Irish Deposit Guarantee Scheme<sup>7</sup> (the “DGS”). In addition, the appointment of a liquidator will permit the completion of the investigation of any further allegation of misappropriations of members’ or Rush’s own resources, including the identification of any further unknown allegations of unauthorised transactions, and the restitution of any associated alleged misappropriated funds, if duly verified.
114. In summary, RES is of the view that the appointment of a liquidator is the most appropriate action to be taken arising from the serious matters identified in Rush. RES is of the view that the appointment of a liquidator is both in the interests of Rush’s members and in the public interest.

#### **H. GROUNDS FOR LIQUIDATION**

115. 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

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<sup>7</sup> 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 a Deposit Guarantee Scheme (DGS) which is administered by the Central Bank of Ireland. 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 € 1m.

- (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 CUA;
  - (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 Central Bank Act 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.
116. In the opinion of RES, four of the above grounds are relevant to the Bank's consideration as to whether it has grounds to petition for the winding up of Rush, namely 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;
  - (c) it is in the interests of persons having deposits with Rush that it is wound up; and
  - (d) a winding up of Rush would be in the public interest.
117. RES's analysis as to each of these grounds is set out in detail below.

#### **Unable To Meet Its Obligations to Its Creditors**

118. As set out above, one of the grounds for liquidation is that the credit institution is, or in the opinion of the Bank may be, unable to meet its obligations to its creditors. RES has set out below why it is of the view that, on balance, Rush is or may be unable to meet its obligations to its creditors.
119. 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 findings of the Forensic Review save for the Car Draw adjustment of circa €0.45 million and [REDACTED]. When the remaining adjustments were taken into account, Rush has an excess of total liabilities over total assets of €2.0 million.
120. 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 financial year ended 30 September 2012 to 91% in the financial year ended 30 September 2015.

### ***Financial position***

- (a) 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
- (b) 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.

121. 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.
122. 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.
123. 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, at a minimum, that

an increased excess of total liabilities over total assets (in excess of €2.0 million) would materialise under such a scenario.

124. As noted above, on 20 September 2016 RCU 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”*.
125. On balance, factoring in Rush’s recent financial performance and its constrained capacity to ameliorate its distressed financial position, RES believes that:
- (a) Rush is currently balance sheet insolvent (which is clearly identified in the 31 August 2016 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.
126. Accordingly, although RES is of the view that Rush is currently able to meet its obligations to its creditors, RES is nonetheless of the view that the Bank has reasonable grounds to form the opinion that Rush is at material risk of being unable to meet its obligations to its creditors. RES 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**

127. As set out above, one of the grounds for liquidation is that the credit institution failed to comply with a direction of the Bank made pursuant to section 87 of the CUA. RES has set out below the reasons why it is of the view that Rush has failed to comply with a direction of the Bank made pursuant to section 87 of the CUA.



128. 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)***

129. 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 €4.73m 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.*
- (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) *████████████████████ 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”*

130. Rush was required to comply with the September 2016 Direction by 4pm on 11 October 2016.

131. In a letter to RCU dated 11 October 2016 the Board stated: *“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”.*

132. On 14 October 2016, RCU in a letter to Rush, requested that: *“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”.* Rush has still not received confirmation that ILCU will provide it with the required financial support.
133. Given the foregoing, it is clear that Rush is in breach of the September 2016 Direction.

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

134. On 16 October 2015, RCU issued a regulatory direction to Rush 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.”*
135. 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.
136. Given the foregoing, it is clear that Rush breached the October 2015 Direction.

#### **Interest of Persons Having Deposits**

137. As set out above, one of the grounds for liquidation set out in section 77 of the 2011 Act is that it is in the interests of persons having deposits in the credit institution. RES has set out below why it is of

the view that, on balance, 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***

138. 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, as well as the Bank's application to the Court regarding the extension of the Suspension Notice of [REDACTED] on 9 September 2016.
139. 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 possible 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 premises 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.
140. 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 AGM since 2013.
141. 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 could 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.
142. Rush attempted to complete a voluntary ToE to [REDACTED] however due to the issues which led to the commencement of the Forensic Review into possible unauthorised transactions and the quantification of the alleged misappropriation that took place, 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 did not want to proceed with a voluntary ToE with Rush.

143. 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***

144. 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 DGS they have the potential to avail locally of retail financial services.

***Access of members of Rush to their deposits***

145. In liquidation, all eligible deposits (in the form of members' savings and deposits) would be covered under the DGS up to €100,000 per depositor.<sup>8</sup> 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.
146. 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

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<sup>8</sup> The DGS Regulations address who is to be identified as the person to be compensated in respect of certain types of deposit (e.g. those to which more than one person is entitled and those where the named depositor is not absolutely entitled to the deposit). See footnote 7 as regards the possibility of temporary increases to the €100,000 cap.

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.

147. RCU issued a regulatory direction on 30 April 2015 instructing Rush to repay savings in excess of €100k. 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.

148. As mentioned above, the Forensic Review Report identified [REDACTED]. It should be noted that notwithstanding the Member Circularisation and the recent media coverage, [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.

149. On balance, however, and notwithstanding the concerns outlined in the preceding paragraphs, RES 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.

### **Public Interest**

150. As set out above, one of the grounds for liquidation is that in the opinion of the Bank, the winding up of the credit institution would be in the public interest. RES is of the view that, on balance, a liquidation of Rush is in the public interest for the reasons set out below.

#### ***The indirect consequences of liquidation***

151. 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). RES 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.
152. 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 2014 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.
153. In light of this requirement under the 2014 Act, in order to ensure that the liquidation of Rush is commenced in an orderly manner, RES recommends that the Bank should make an application to the Court to appoint 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. 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.
154. 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***

155. 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.
156. 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.
157. Rush is a failing institution with poor governance and systems and control 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.
158. As you are aware, 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. More significant is the liquidation of Berehaven Credit Union Limited in July 2014. Although the circumstances differ in many respects there are similarities in relation to the necessity to liquidate and in this regard a precedent is available.
159. 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. RES 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***

160. 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.

161. The DGS represents one of the tools of the State to protect depositors and prevent systemic contagion from the failure of a credit institution. In the opinion of RES, 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.
162. RES 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.
163. 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.
164. 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 as to Recommendation for Liquidation***

165. As outlined above Rush is a failed credit institution, not only in relation to its solvency but also as a result of poor governance, despite regulatory intervention over a prolonged period, serious allegations of misappropriation of funds and [REDACTED]. The interests of prudent regulation require that the moral hazard outlined above should be avoided and the consequences of failed governance should not be borne by State funds. Furthermore, [REDACTED] of Rush means that utilising any other resolution mechanism is likely to be problematical.
166. RES recommends the liquidation of Rush as the appropriate method of resolution to:
- (a) invoke the DGS with an orderly investigation and verification of savings and deposit balances [REDACTED];
  - (b) facilitate the making of a claim under Rush's insurance policy;
  - (c) facilitate the pursuit of other remedies for the recovery of any misappropriated funds under the 2014 Act;
  - (d) invoke procedures for review of the conduct of the Board under the 2014 Act; and
  - (e) provide an orderly procedure for realisation of the assets of Rush, to facilitate the repayment of available funds to the DGS and other creditors of Rush.

#### **I. REQUIREMENT FOR PROVISIONAL LIQUIDATOR**

167. RES believes that it is necessary in all the circumstances for a provisional liquidator to be appointed to Rush. The main function of a provisional liquidator is to ensure that the winding up of a corporate entity commences in an orderly fashion and that the assets are protected pending the hearing of the winding up petition.

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

168. 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 Oifigiúil 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, RES 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.

169. 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.
170. 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 given the weaknesses identified with the Board, would be very difficult to control and would create significant uncertainty about the consequences for members' savings in the period before the liquidation petition was heard.
171. 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**

172. 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.
173. RES is of the view that an important reason for the appointment of provisional liquidator would be to liaise with DGS 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. RES 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.

174. 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**

175. 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.
176. 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.
177. This risk would be substantially mitigated by the appointment of a provisional liquidator to manage and control the closure and DGS pay-out.

#### **J. RECOMMENDATION**

178. RES believes that for all of the reasons set out above, it is necessary that Rush should be liquidated in an orderly fashion, thereby avoiding the substantial uncertainty, delays in DGS pay-outs, consequent loss of confidence in other credit unions, and damage to the credibility of the DGS, which would follow from a disorderly closure. In order to avoid the real risk of an unplanned closure or damaging run on deposits once the filing of the winding up petition becomes known, RES recommends that an application for the appointment of a provisional liquidator should be made on the day of filing the winding up petition.

#### **K. NEXT STEPS**

179. RES believes that for all of the reasons set out above, it is necessary that Rush should be liquidated in an orderly fashion, thereby avoiding the substantial uncertainty, delays in DGS pay-outs, consequent loss of confidence in other credit unions, and damage to the credibility of the DGS, which would follow from a disorderly closure. In order to avoid the real risk of an unplanned closure or damaging run on deposits once the filing of the winding up petition becomes known, RES

recommends that an application for the appointment of a provisional liquidator should be made on the day of filing the winding up petition.

180. In advance of issuing the petition in the Central Office of the High Court the Bank will meet with the Board and inform them of the Bank's decision to liquidate Rush.

## APPENDIX

<b>No.</b>	<b>Regulatory Direction</b>	<b>Date issued</b>
<b>1</b>	Capital Direction	20 September 2016
<b>2</b>	Business Direction	15 June 2016
<b>3</b>	Business Direction	22 March 2016
<b>4</b>	Capital Direction	16 October 2015
<b>5</b>	Direction to repay savings over €100K	30 April 2015