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***Receivers' Ninth Report on the State of Affairs of  
OPI Pacific Finance Limited (In Receivership and In Liquidation)***

Company Number: 977908

***November 2013***





#### **IMPORTANT NOTE**

- This report has been prepared in accordance with and for the purpose of Section 24 of the Receiverships Act 1993, for the sole purpose of reporting on the state of affairs with respect to the property in receivership and the conduct of the receivership for the six month period 15 March 2013 to 14 September 2013.
- All information contained in this report is provided in accordance with Sections 26 and 27 of the Receiverships Act 1993.
- This report is subject to the restrictions set out at Appendix A. In particular, in preparing this report we have relied upon and not independently verified or audited information or explanations provided to us.

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# *Table of contents*

1.	<i>Introduction .....</i>	<i>4</i>
2.	<i>Events following appointment.....</i>	<i>4</i>
3.	<i>Particulars of assets and proposal for disposal of property in receivership.....</i>	<i>5</i>
4.	<i>Particulars of debts and liabilities outstanding and requiring to be satisfied from the property in receivership .....</i>	<i>7</i>
5.	<i>Amounts owing to creditors with preferential claims .....</i>	<i>8</i>
6.	<i>Receipts and payments .....</i>	<i>8</i>
7.	<i>Other matters.....</i>	<i>9</i>
	<i>Restrictions .....</i>	<i>10</i>

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## 1. Introduction

Colin McCloy and Maurice Noone were appointed receivers of OPI Pacific Finance Limited (In Receivership and In Liquidation) (“PAC”) by Perpetual Trust Limited (“Perpetual”) on 15 September 2009. The Company had been subject to a moratorium arrangement that was approved by creditors on 19 May 2008; the receivership ended that moratorium arrangement.

We were appointed under the terms of a security agreement giving the secured party a security interest over all of the assets and undertakings of PAC. The property in receivership comprises all of the assets, property and undertakings of PAC.

On 3 November 2011 Aaron Walsh and Andrew McKay of Corporate Finance Limited were appointed liquidators of PAC by the shareholders of PAC, OPI Pacific Limited (In Liquidation) (“OPL”). Justin Bosley replaced Aaron Walsh as liquidator on 6 July 2012. Andrew McKay is also the liquidator of OPL and other related New Zealand companies, along with his colleague John Cregten. This action has been taken in order to facilitate the eventual winding up of all these related companies. Placing PAC into liquidation does not affect the operation of the receivership or the rights of secured debenture holders.

This report provides an update of the receivership, the potential of returns for PAC investors and the receivers’ investigations into the financial affairs of PAC in the period prior to receivership.

## 2. Events following appointment

As you are aware following our appointment as receivers we attended the offices of PAC to secure the books and records and we determined the most appropriate method of realisation of the assets. Our actions have included:

- Securing key assets;
- Contacting all borrowers and guarantors regarding the recovery of loans;
- Developing asset realisation strategies where applicable;
- Investigating potential claims in respect of the loan book and insurance policies;
- Providing updates and communicating with investors and Perpetual;
- Investigating the affairs of PAC;
- Crystallising PAC’s security in respect of its loan to OPI Pacific Investment Pty Limited (“PIC”); and
- Attending various meetings held by the liquidators of Octaviar Limited (Receivers and Managers appointed) (In Liquidation) (“Octaviar”) and Octaviar Administration Pty Limited (In Liquidation) (“OCVA”).

We have also written to investors on 26 November 2009, 4 May 2010, 23 July 2010, 22 December 2010, 8 June 2011 and 18 February 2013.

Copies are available on our website [www.pwc.co.nz/opi-pacific-finance](http://www.pwc.co.nz/opi-pacific-finance).

### 3. Particulars of assets and proposal for disposal of property in receivership

PAC had negative net assets of NZ\$418m at 31 August 2009, as presented below in the summary of management's unaudited balance sheet:

<b>OPI Pacific Finance Limited (In Receivership) Draft Management Unaudited Balance Sheet As at 31 August 2009</b>	<b>Note</b>	<b>Book value NZ\$'000</b>
<b>Assets</b>		
Cash Assets	A	2,630
Funds Held in Trust	B	1,388
Secured Loans	C	270,632
Provision for Loans	C	(237,354)
		<u>33,278</u>
OPI Pacific Investment Loan	C	184,418
Provision for OPI Pacific Investment Loan	C	(163,566)
		<u>20,852</u>
Contribution under Put Option	D	(24,600)
Miscellaneous Assets	D	541
<b>Total Assets</b>		<b>34,089</b>
<b>Liabilities</b>		
Funding - Debentures NZD		143,412
Funding - Debentures AUD		55,014
Funding - Unsecured Notes NZD		19,689
Funding - Unsecured Notes AUD		37,838
Accrued Interest		45,632
Loan - PIF/MYF		150,279
<b>Total Liabilities</b>		<b>451,864</b>
<b>Net Shareholders Funds</b>		<b>(417,775)</b>

Source: Management information

Note the balance sheet was prepared from PAC's accounting records and information supplied to us by management. It has not been audited by the receivers or any other third parties. Total actual recoveries from the assets will be significantly less than the book value.

#### A Cash assets

Cash held by PAC at the date of our appointment was transferred into receivership bank accounts. As at 14 September 2013, PAC held cash on hand of NZ\$734k. A second interim distribution of NZ\$4.0m to secured debenture holders was made on 18 February 2013. The remaining cash is required to fund certain litigation and disputes.

#### B Funds held in trust

At the date of our appointment, NZ\$1.4m (plus accrued interest) was held in a solicitor trust account pending the resolution of a dispute with a third party. This amount was realised in the six month period ended 14 March 2011.

#### C Loan book

PAC held the following assets at 31 August 2009:

- NZ\$33.3m (net of provision) in respect of the PAC loan book; and
- NZ\$20.9m (net of provision) in respect of the loan to PIC, which is secured over PIC's loan book.

In order to gain control over the PIC loans and secured properties, receivers were appointed to PIC in November 2009.

PAC and PIC hold second or third ranking mortgages.

At the date of receivership, there were loans outstanding to 18 borrowers in respect of the PAC and PIC loan books where property had not yet been sold. The first ranking mortgagees have taken control over all remaining properties and many borrowers are in some form of insolvency or have been deregistered.

The sole property where PAC is the first mortgagee was sold. The net proceeds from this sale were received by PAC in the period ended 14 September 2013.

It is unlikely PAC will recover any further material funds from properties to be sold given the losses the first ranking mortgagees are likely to incur.

Notices of demand have been issued to guarantors and borrowers. The receivers are in the process of taking legal action on a case by case basis to pursue recovery in respect of the loan book. As many borrowers and guarantors have already been placed in some form of insolvency or have been declared bankrupt there are unlikely to be material recoveries.

We are continuing to investigate potential claims PAC may have in respect of valuations obtained for lending purposes and various insurance policies held by PAC.

#### **D Other assets**

##### *Unsecured Claims Against Octaviar and OCVA*

PAC entered into a put option with Octaviar dated 24 July 2006. In May 2008, PAC received part payment of A\$20m (NZ\$24.6m) from Octaviar in respect of its put option liability to PAC. These funds were distributed to secured debenture holders following the approval of the moratorium.

We have lodged a claim in the liquidation of Octaviar for A\$418m in relation to the put option. We have reserved our rights to amend the claim should further amounts become claimable. However, Octaviar currently has no funds to make any distributions.

A claim for A\$418m has also been lodged against OCVA, a subsidiary of Octaviar which was responsible for the management of both the PAC and PIC loans.

In late 2011 the liquidators of OCVA announced an interim dividend for creditors. Unfortunately the liquidators have not finished adjudicating PAC's claim and accordingly have not made any payment to PAC. We have been discussing PAC's claim with the liquidators and have provided further information to support PAC's claim. We are now in the process of finalising a further supplement to the submitted proof of debt against OCVA.

We note that in addition to the claims submitted by PAC, both Octaviar and OCVA have debts outstanding to other creditors, and the assets in these companies appear to be insufficient to meet all liabilities in full at this stage.

The PAC balance sheet does not include the claims against Octaviar and OCVA as recovery from the liquidations remains uncertain at this stage.

##### *Loan Mortgage Insurance Claims*

We have filed a claim on behalf of PAC and PIC against the insurers which provided loan mortgage insurance.

We are pleased to advise that we successfully came to a settlement with insurers in December 2012 which has enabled us to make a further distribution to the secured debenture holders in February 2013.

##### *Unsecured Claim Against Michael King*

One of the directors of PAC, Michael King, has entered into a personal insolvency agreement with his creditors. We have lodged a claim for over NZ\$400m against Michael King with the trustee of his personal insolvency agreement in Australia.

We have received a distribution of A\$35k from the trustee administering the personal insolvency agreement. The recovery was low due to a number of other creditors who were entitled to a distribution and the limited funds realised through this insolvency process.

##### *Claim Against the Auditors*

We advise that we have issued proceedings against PAC's auditors (Sherwin Chan & Walshe) in relation to the audit for the year ended 31 March 2007. The

proceedings are at an early stage and the precise matters at issue are still being determined. We will provide further updates as the matter progresses.

#### *Other Claims*

Miscellaneous assets for PAC at 31 August 2009 are set out in the table below:

#### **OPI Pacific Finance Limited (In Receivership and In Liquidation)**

<b>Miscellaneous Assets As at 31 August 2009</b>	<b>NZ\$'000</b>
Professional Fees Prepaid	451
Investments	75
GST receivable	15
<b>Total</b>	<b>541</b>

*Source: Management information*

All these assets have been recovered.

## **4. Particulars of debts and liabilities outstanding and requiring to be satisfied from the property in receivership**

At the date of the receivership, PAC's records indicated it had the following amounts outstanding to investors:

#### **OPI Pacific Finance Limited (In Receivership and In Liquidation)**

<b>Investor Category</b>	<b>Number of Investors</b>	<b>NZ\$'000</b>
NZD Debenture Stock	7,361	143,400
AUD Debenture Stock	2,514	55,000
NZD Unsecured Notes	821	19,700
AUD Unsecured Notes	173	37,800
<b>Total</b>	<b>10,869</b>	<b>255,900</b>

*Source: Management information*

In summary, PAC owed NZ\$198.4m to secured debenture holders and NZ\$57.5m to unsecured note holders, who are predominately located in New Zealand and Australia.

During the receivership there has been a first interim distribution to the secured debenture holders of NZ\$4.3m on 22 December 2010 and a second interim distribution of NZ\$4.0m on 18 February 2013. These distributions equate to 3.25 cents in the dollar, based on the balances owed at the start of the moratorium in 2008, and brought total distributions since the start of the moratorium up to 25.44 cents<sup>1</sup>.

<sup>1</sup> During the moratorium, from 19 May 2008 to 14 September 2009, secured debenture holders received four payments amounting to an equivalent of 22.19 cents in the dollar based on the balances owing at the start of the moratorium.

Due to the complexity of the receivership, the various claims being pursued and the investigations being carried out by the receivers, it is extremely difficult to estimate the return to secured debenture holders from the receivership of PAC, though we expect there will be at least one further distribution based on current funds and assets that are reasonably expected to be recovered in the near future. Providing an estimated return to secured debenture holders may also jeopardise any actions currently being exercised by the receivers. Accordingly, an estimate of future dividends or the timing of dividends to secured debenture holders cannot be provided at this time.

## 5. Amounts owing to creditors with preferential claims

PAC had no employees at the date of our appointment and accordingly there are no preferential claims in respect of employee entitlements.

We have written to the Inland Revenue Department (“IRD”) requesting written confirmation of any preferential claims. The IRD has verbally confirmed it has no preferential claims against PAC.

We are not aware of any other preferential claims.

## 6. Receipts and payments

The table below sets out the receipts and payments for PAC for the six month period from 15 March 2013 to 14 September 2013.

<b>OPI Pacific Finance Limited (In Receivership and In Liquidation)</b>	
<b>Receipts and payments (including GST)</b>	
<b>For the period 15 March 2013 to 14 September 2013</b>	<b>NZ\$</b>
<b>Balance carried forward at 15 March 2013</b>	<b>532,011</b>
<b>Receipts</b>	
GST refund	56,323
Loan book (PAC and PIC)	508,854
Interest received	5,700
<b>Total Receipts</b>	<b>570,877</b>
<b>Payments</b>	
Legal fees	(135,382)
Trustee fees	(18,538)
Receivers fees and disbursements	(109,610)
Computershare registry fees	(55,556)
Bank fees	(535)
<b>Total Payments</b>	<b>(319,621)</b>
Loss on translation of the Australian dollar accounts	(48,926)
<b>Balance at 14 September 2013</b>	<b>734,340</b>

In addition to these funds held by PAC, the receivers of PIC are holding approximately A\$153k.



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## 7. Other matters

We carried out an initial investigation into the activities of PAC, its directors and third parties. We reported our findings to the following Government Authorities:

- The former Securities Commission of New Zealand;
- The Serious Fraud Office; and
- The Ministry of Economic Development.

We have also assisted the Financial Markets Authority (“FMA”) with its investigation into the affairs of PAC and directors, and also provided assistance with other related cases that the FMA is investigating.

In November 2013 FMA laid charges against four directors of PAC. The charges have been laid under section 58 of the Securities Act and carry a five year maximum term of imprisonment or a \$300,000 fine. The directors of PAC, Mark Lacy, Jason Maywald, David Anderson and Craig White, are due to appear in the District Court on 3 December 2013.

Due to the nature of the investigations and likely legal consequences, we are unable to provide further details regarding issues identified during the course of our investigations. Doing so could prejudice any proceedings that may be taken by the receivers and/or any Government Authority in New Zealand and/or Australia.

Should stakeholders have any queries arising from this report, please contact us via our website, telephone, facsimile, or private bag address, as follows:

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Dated: 19 November 2013



Colin McCloy  
Receiver

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# Appendix A

## Restrictions

- All information contained in this report is provided in accordance with Sections 26 and 27 of the Receiverships Act 1993.
- The statements and opinions expressed herein have been made in good faith, and on the basis that all information relied upon is true and accurate in all material respects, and not misleading by reason of omission or otherwise.
- We have not independently verified the accuracy of information provided to us, and have not conducted any form of audit in respect of the Company. Accordingly, we express no opinion on the reliability, accuracy, or completeness of the information provided to us and upon which we have relied. Whilst all care and attention has been taken in compiling this report, we do not accept any liability whatsoever arising from this report.
- The statements and opinions expressed in this report are based on information available as at the date of the report.
- We reserve the right, but will be under no obligation, to review or amend our Report, if any additional information, which was in existence on the date of this Report was not brought to our attention, or subsequently comes to light.
- We have relied on forecasts and assumptions prepared by the Company about future events which, by their nature, are not able to be independently verified. Inevitably, some assumptions may not materialise and unanticipated events and circumstances are likely to occur. Therefore, actual results in the future will vary from the forecasts upon which we have relied. These variations may be material.
- In addition the following should be noted:
  - Certain numbers included in tables throughout this report have been rounded and therefore do not add exactly.
  - Unless otherwise stated all amounts are stated in New Zealand dollars.