

Court File No. CV-16-11290-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF MAPLE BANK GmbH

AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*,
R.S.C. 1985, C.W-11, AS AMENDED

AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GmbH

Respondent

THE

TENTH REPORT OF KPMG INC. IN ITS CAPACITY AS

COURT APPOINTED LIQUIDATOR OF THE BUSINESS IN CANADA OF MAPLE BANK
GMBH AND ITS ASSETS AS DEFINED IN SECTION 618 OF THE *BANK ACT*

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1. INTRODUCTION AND PURPOSE OF THE TENTH REPORT

BACKGROUND

1. Maple Bank GmbH (“**Maple Bank**”) is a Canadian-owned German bank, and an authorized foreign bank in Canada under section 2 and Part XII.1 of the *Bank Act* (an “**Authorized Foreign Bank**”). In Germany, Maple Bank is subject to regulation by the Federal Financial Supervisory Authority (“**BaFin**”). As an Authorized Foreign Bank, Maple Bank was regulated with respect to its business in Canada (the “**Toronto Branch**”) by the Office of the Superintendent of Financial Institutions (“**OSFI**”).
2. As more fully described in the Liquidator’s first report to this Court dated March 2, 2016 (the “**First Report**”), in the period leading up to the commencement of the *Winding Up and Restructuring Act* (“**WURA**”) proceeding, the Toronto Branch had three major lines of business: (i) the origination and securitization of real property mortgages in Canada; (ii) structured secured lending; and (iii) security financing transactions (collectively, the “**Business**”).
3. The emergence of significant German tax claims against Maple Bank and the resulting indebtedness of Maple Bank led to:
 - i. BaFin imposing a moratorium on Maple Bank’s business activities, which caused Maple Bank to cease business and institute insolvency proceedings in Germany (the “**Moratorium**”);
 - ii. The appointment of a German insolvency administrator (the “**GIA**”) over Maple Bank GmbH (the “**German Estate**”);
 - iii. The issuance of default notices and the termination of agreements by financial institutions that were counterparties to financial contracts (primarily swaps and hedging instruments) with the Toronto Branch in respect of their dealings with Maple Bank’s business in Canada;

- iv. Canada Mortgage and Housing Corporation (“**CMHC**”), after the issuance of a default notice to Maple Bank, taking control of the Mortgage Backed Securities (“**MBS**”) business of the Toronto Branch and the corresponding mortgage pools (totaling approximately \$3.5 billion); and
 - v. OSFI issuing orders under section 619 of the *Bank Act* for the taking of control of the assets of Maple Bank in respect of the Business.
4. The events described above prompted OSFI to request that the Attorney General of Canada seek a winding-up order pursuant to section 10.1 of the WURA in respect of the Business in Canada of Maple Bank. On February 16, 2016 (the “**Winding-Up Date**”), this Court granted an order (the “**Winding-Up Order**”) to, among other things, (i) wind-up the Business; and (ii) appoint KPMG Inc. (“**KPMG**”) as liquidator (the “**Liquidator**”) of the Business and of the assets of Maple Bank as defined in section 618 of the *Bank Act* (the “**Assets**”). Attached as **Appendix A** is a copy of the Winding-Up Order.
5. On March 2, 2016, the Liquidator filed its First Report to the Court which, among other things, outlined the protocol that was agreed to between the Liquidator and the GIA regarding the existing Chapter 15 filing under the *United States Bankruptcy Code* made by the GIA with regard to Maple Bank’s non-Toronto Branch assets in the U.S. and the Assets of the Toronto Branch which reside in the U.S.
6. On March 30, 2016, the Liquidator filed its Second Report to the Court which provided: (i) an update on the actions of the Liquidator since the granting of the Winding-Up Order; (ii) an update on the Assets and liabilities of the Toronto Branch; and (iii) details of a proposed marketing process to identify a successor issuer to the Toronto Branch’s MBS program and for the sale of all or a portion of certain other Assets (the “**Marketing Process**”).
7. On June 2, 2016, the Liquidator filed its Third Report to the Court which provided information in respect of: (i) an update on the actions of the Liquidator since the issuance of the Second Report; (ii) an update on the status of the Marketing Process; (iii) a proposed claims procedure (the “**Claims Procedure**”) for use in

these proceedings, including the appointment of a Claims Officer (as defined in the Claims Procedure Order); (iv) the proposed appointment of Independent Cost Counsel (as defined in the Third Report) to review and report to the Court on the fees and disbursements of the Liquidator and its counsel; and (v) the statement of receipts and disbursements of the Toronto Branch for the period February 16 to May 13, 2016.

8. On June 17, 2016, the Liquidator filed its Fourth Report to the Court which provided information regarding the sale by the Liquidator of certain un-pooled insured residential mortgages to the originators of those mortgages; myNext Mortgage Premier Trust and Xceed Mortgage Corporation.
9. On July 25, 2016, the Liquidator filed its Fifth Report to the Court which provided information regarding three sale transactions by the Liquidator involving certain structured loans associated with the Immigrant Investor Program (“**IIP**”), which included receivable backed notes (the “**Receivable Backed Notes**”) issued by PWM Financial Trust, CTI Capital Securities Inc. and KEB Hana Bank Canada (“**KEB**”) respectively and secured by, *inter alia*, notes issued by either Citizenship and Immigration Canada (“**CIC**”) or IQ Immigrants Investisseurs Inc. (“**IQII**”). Following the closing of these sales transactions certain unsold Receivable Backed Notes remained in the possession of the Toronto Branch (the “**Residual Receivable Backed Notes**”).
10. On September 19, 2016, the Liquidator filed its Sixth Report to the Court which provided information regarding the selection by CMHC of Equitable Bank (“**Equitable**”) as the Successor Issuer for the Toronto Branch’s *National Housing Act* (“**NHA**”) MBS Program and the resulting acquisition and assumption by Equitable of all of the Toronto Branch’s rights and obligations under the CMHC NHA MBS Guide and NHA MBS Program with respect to the NHA MBS originally issued by the Toronto Branch thereunder as well as the proposed sale of MBS still owned by the Toronto Branch and certain other Toronto Branch assets to Equitable (the “**Equitable Transaction**”).

11. On October 6, 2016, the Liquidator filed its Seventh Report to the Court which provided information regarding the sale to KEB of the Residual Receivable Backed Notes issued by KEB and secured by, *inter alia*, notes issued by CIC.
12. On November 15, 2016, the Liquidator filed its Eighth Report to the Court which provided information regarding the proposed settlement between the Liquidator and the Bank of Montreal of the liabilities and obligations of each of the Bank of Montreal and Maple Bank arising from the Repo Transaction and the early termination of the ISDA Transactions.
13. On November 16, 2016, the Liquidator filed its Ninth Report to the Court which provided:
 - i. An update on the actions of the Liquidator since the issuance of the Third Report;
 - ii. An update on the status of the Claims Process;
 - iii. Information about a proposed interim distribution to proven creditors (the “**Interim Distribution**”);
 - iv. A recommendation that the Liquidator be authorized to implement a hedging or conversion strategy to mitigate the EUR-CAD foreign exchange risk (the “**FX Risk**”) related to the amounts that would be distributed to the GDPF and GIA as part of the Interim Distribution; and
 - v. The Liquidator’s statement of Receipts and Disbursements for the period from February 16, 2016 to October 31, 2016.
14. On November 24, 2016, the Liquidator filed a supplemental report (the “**First Supplemental Report**”) to the Ninth Report which provided an update on the Liquidator’s activities since November 18, 2016, and sought amended relief to the relief sought in the Ninth Report, including an order approving:
 - i. The Interim Distribution to creditors with proven claims within two days following December 19, 2016;
 - ii. The Amended Distribution Notice;

- iii. A Principal Claims Bar Notice and Principal Claims Bar Date;
 - iv. The Liquidator's statement of Receipts and Disbursements for the period February 16, 2016 to October 31, 2016; and
 - v. The activities of the Liquidator since the filing of the Third Report, up to and including the Ninth Report, including the activities of the Liquidator as described in the Third Report.
15. On December 8, 2016, the Liquidator filed a second supplemental report to the Ninth Report (the "**Second Supplemental Report**") which provided an update on (a) the Liquidator's activities since the filing of the First Supplemental Report, (b) the foreign exchange transactions that occurred in respect of the Toronto Branch regarding the FX risk of the GDPF and the GIA, and sought amended relief to the relief sought in the Ninth Report and First Supplemental Report, including an order approving:
- i. The Principal Officers Claims Bar Notice;
 - ii. The Principal Officers Claims Bar Date; and
 - iii. The activities of the Liquidator since the filing of the Ninth Report as described in the First Supplemental Report and the Second Supplemental Report.

PURPOSE OF THE TENTH REPORT

16. The purpose of the Tenth Report is to:
- i. Provide an update to the Court on the status of the protocol developed in conjunction with the GIA and the former Principal Officer of Toronto Branch to implement the Principal Officers' Call for Claims in order to effect a distribution of the estimated surplus in the Toronto Branch to the German Estate;
 - ii. Seek approval of the Court for the proposed Notice to Creditors of the Toronto Branch to be published in the National Edition of *The Globe and*

Mail and the International Edition of *The Wall Street Journal* (the “**Notice of Claims**”) which is attached as **Appendix B**;

- iii. Provide an update to the Court on the status of the Proofs of Claim filed by the former employees of the Toronto Branch;
- iv. Advise the Court on the Liquidator’s analysis of the employee claims and the the principles on which the employee claims were assessed;
- v. Advise the Court of the Notices of Objection sent by the GIA (the “**GIA Objection**”) to the former employees of the Toronto Branch in respect of certain components of the Employee Claims;
- vi. Seek the approval of the Court for the appointment of Representative Counsel (as defined herein) to advise and represent the non-executive group of employees in respect of the GIA Objection;
- vii. Seek directions from the Court in order to determine the resolution of the GIA Objection;
- viii. Seek directions from the Court for the hearing of disputed employee claims; and
- ix. Update the Court on the activities of the Liquidator since the filing of the Ninth Report and the Supplemental Reports.

TERMS OF REFERENCE AND DISCLAIMER

17. In preparing this report, the Liquidator has been provided with, and has relied upon, unaudited and other financial information, books and records (collectively, the “**Information**”) prepared by the Toronto Branch and/or its representatives, and discussions with its former management and/or its former representatives. The Liquidator has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided and in consideration of the nature of evidence provided to the Court. However, the Liquidator has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants Canada Handbook

and, accordingly, the Liquidator expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.

18. The information contained in this report is not intended to be relied upon by any prospective purchaser or investor in any transaction with the Liquidator.
19. Capitalized terms not defined in the Tenth Report are as defined in either the Winding-Up Order and/or the First Report through the Second Supplemental to the Ninth Report. Unless otherwise indicated, all references to monetary amounts herein are denominated in Canadian dollars (“CAD”).
20. Copies of the Liquidator’s Court reports and all motion records and Orders in these proceedings are available on the Liquidator’s website at <http://www.kpmg.com/ca/maplebank>.

2. PRINCIPAL OFFICER CLAIM PROTOCOL

Overview

21. The realization process for all of the assets of the Toronto Branch is almost entirely complete. The Liquidator currently maintains \$819.7 million in cash on hand, including cash in connection with realized U.S. Assets of \$90.8 million. The winding-up of the Toronto Branch is also essentially complete, but for distributions to be made to creditors and certain stakeholders of the Toronto Branch.
22. In this regard and for some time, the Liquidator has been working with the various stakeholders of the Toronto Branch in an effort to expeditiously resolve Unproven Claims and provide for a timely distribution to the Creditors and certain other stakeholders of the Toronto Branch. In doing so, the Liquidator aims to protect the interests of creditors of the Toronto Branch, provide the GIA with a timely material interim distribution, and conclude the winding-up of the Toronto Branch within a reasonable period of time.

Proposed Resolution

23. At this time, the Unproven Claims which have been filed with the Liquidator with regard to the Toronto Estate are summarized below:

Maple Bank GmbH, Toronto Branch Claims Filed But Unproven To Date As at January 24, 2017		
Creditor Name	# of Claims Filed	Total Amount of Claim(s)
Canadian Tax Authorities	2	11,873,055
Employee Claims	19	20,891,465
A Commercial Loan Borrower	1	17,349,048
A Mortgage Originator	1	36,261,482
Total Filed but Unproven Claims	23	86,375,050

24. Not provided for in the above table is a Proof of Claim which was submitted by the GIA. The GIA's Proof of Claim was described in the Liquidator's Ninth Report and was filed in the amount of \$791.3 million. As referenced in the Ninth

Report, this Proof of Claim is subject to a capping agreement between the Liquidator and the GIA whereby the GIA has agreed that the GIA's Claim is to be permanently reduced to the extent of any distribution the GIA may receive, and capped at the amount that results in the Toronto Branch having assets in excess of its liabilities. This arrangement was entered into in order to (i) facilitate an orderly and timely distribution to all Toronto Branch Creditors with Proven Claims at the proven amount of such Claims plus accrued interest as prescribed under the WURA, (ii) facilitate a timely distribution to the GIA, and (iii) avoid costs with regard to potentially litigating the GIA Claim.

25. Notwithstanding this arrangement, the Liquidator disallowed the GIA Claim on December 21, 2016 and on January 4, 2017 the GIA filed a Notice of Dispute to the Disallowance of the GIA Claim by the Liquidator. To date no further steps have been taken by either the Liquidator or the GIA with regard to litigating or resolving the GIA Claim as both parties have focused on resolving the terms of the Protocol (as defined herein) and the Principal Officers Claims Order (as defined herein). As noted in the chart above, there are very few Unproven Claims remaining in the Toronto Branch. Notice of the Claims Procedure Order, and the the Interim Distribution, has been previously provided in these proceedings. The Liquidator is not aware of any further potential Claims, at this time. These proceedings have been ongoing since since February 16, 2016, the Claims Procedure was approved on June 2, 2016 and the Interim Distribution was made on December 19 2016.

26. Several stakeholders have expressed their views to the Liquidator as to how the funds currently held by the Liquidator should be distributed:

- a. The GIA would prefer to receive a timely distribution of a material amount of the estimated surplus from the Toronto Branch;
- b. Lishman has communciated that he requires certain protections to be afforded to him on account of certain contingent claims as set out in the Lishman Claim and is not prepared to agree to a distribution to the GIA until he has received the protections, including, without

limitation: (i) some form of bar order for potential Claims that may be made against him, and (ii) that his potential legal fees, which may be incurred, in the event he is sued by the GIA are covered; and

- c. Certain other Creditors are opposed to any funds being paid to the GIA until the Proven Claims of all Toronto Branch Creditors have been paid, in full, with interest in accordance with the WURA.

27. Over the past several months the Liquidator has discussed these issues with the Creditors and certain other stakeholders of the Toronto Branch. Further to those discussions and in connection with the Liquidator's ongoing winding-up of the Toronto Branch, the Liquidator has:

- a. Continued to work with Creditors of the Toronto Branch in order to resolve all Toronto Branch Proofs of Claim as quickly as possible;
- b. Negotiated with the GIA and Lishman the updated proposed Protocol to Address Reserves Re: Lishman (which is attached as **Appendix C**) (the "**Protocol**"), which includes:
 - i. The Principal Officers' Additional Claims Order (the "**Principal Officers Claims Order**") for the Principal Officers of the Toronto Branch, in order to address any Claims which may be asserted against the Principal Officers, arising out of the positions that the Principal Officers may have held with a number of Maple Bank affiliated companies, with a proposed bar date of February 28, 2017;
 - ii. Clarity regarding Lishman's right of indemnity, in respect of certain contingent claims as set out in the Lishman Claim;
 - iii. Clarity as to the reserves the Liquidator may establish in connection with the future payout of remaining Toronto Branch Creditor Claims plus interest as accrued under the WURA; and

- iv. Clarity as to the reserves for legal fees, which may be available to Lishman in order to defend against certain claims which may be asserted against him;
 - c. The Liquidator has updated the reserve estimates and has thereby estimated an amount of excess cash currently held by the Liquidator, which could be distributed to the GIA in the future in a timely manner.
28. The Liquidator's updated current estimate of the surplus in the Toronto Branch, which includes the Liquidator's updated creditor Claim reserve estimate (the "Reserve"), is set forth below:

In the matter of the winding up of Maple Bank GmbH (Toronto Branch) Estimated Toronto Branch Surplus and Reserves As at January 24, 2017		\$CAD
Total Cash and Securities as at January 24, 2017		819.7
Less: U.S. Assets		(90.8)
Total Canadian Assets		729.0
Less:		
Estimated future Toronto Branch administration costs		(9.5)
Unproven Canadian Claims ⁽¹⁾		(86.4)
Interest on Unproven Canadian Claims ⁽²⁾		(8.6)
Unknown Potential Claims		(50.0)
Interest on Unknown Potential Claims ⁽²⁾		(5.0)
Total Reserve		(159.5)
Total Canadian Funds Available for Distribution		569.5
Add: U.S. Assets		90.8
Less: U.S. Assets Reserved ⁽³⁾		(18.4)
Total Funds Available for Distribution		641.8

⁽¹⁾ The total of all remaining Claims, at their filed amounts.

⁽²⁾ Assumes a March 1, 2018 distribution date.

⁽³⁾ An amount reserved in connection with a Proof of Claim, on mutually agreed terms.

29. The Liquidator is of the view that it is now appropriate for the Liquidator to plan for a future distribution to the GIA, for the following reasons:

- a. The Reserve has been set at a level to protect the interests of the Toronto Branch creditors, at the full amount of the creditor-filed Proofs of Claim, plus an additional contingency for future Claims of \$50 million, plus interest calculated to March 31, 2018 on the aforementioned two reserve amounts, plus the estimated administration costs which would be incurred by the Liquidator and its legal counsel in finally winding-up the Toronto Branch;
- b. The Protocol, has been negotiated by the Liquidator the GIA and Lishman and is acceptable to both Lishman and the GIA;
- c. Aside from the Lishman Claim, there are no other filed contingent claims that have not been adequately provided for by the Liquidator in the Reserve:
- d. There has been satisfactory notice of these proceedings to potential claimants, as well as a prior notice of the Interim Distribution; and
- e. There will be further notice provided to potential Claimants pursuant to the Principal Officers Claims Order and the proposed Notice.

3. UPDATE ON EMPLOYEE CLAIMS

Background

30. Toronto Branch had 19 employees that can be classified into two groups:
- i. Five executive and revenue producing employees (the “**Executives**” and their claims, the “**Executive Claims**”); and
 - ii. 14 business support and administrative employees (the “**Non-Executive Employees**” and their claims the “**Non-Executive Employee Claims**”, and together with the Executive Claims, the “**Employee Claims**”).
31. In accordance with the Claims Process, the employees filed claims with the Liquidator on account of the termination of their employment with Toronto Branch pursuant to the Winding-Up Order. The aggregate value of the Employee Claims is approximately \$20.9 million and consist of amounts in respect of the notice period due to terminated employees (i.e. termination notice and severance pay) (the “**Notice Period**”), benefits during the Notice Period, unpaid bonuses, deferred compensation, trailer fees and reimbursements of certain out of pocket amounts (e.g. legal fees, unpaid employment expenses). The Employee Claims were generally calculated by the employees based on Canadian employment “common law” principles applicable to termination payments and all employee claims are all in excess of the statutory minimums that would be due to them under the Canada Labour Code (which is applicable to banks).
32. The Notice Period portion of the Employee Claims as filed consists of a period of notice (generally claimed as one month per year of service with a range of six to 26 months) at the total compensation rate of the employee which includes base salary, annual bonus and annual benefits.
33. The unpaid bonus claims of the employees are generally in respect of bonus amounts accrued by the Toronto Branch in respect of the fiscal year ended September 30, 2015 (“**Fiscal 2015**”) and the period from October 1, 2015 to the Winding-Up Date (the “**Stub Year**”). The Executives’ bonus claims also include

deferred compensation amounts as portions of their annual bonuses have been deferred since 2012.

Liquidator Analysis of Employee Claims

34. The Liquidator reviewed the Employee Claims as filed and, with the assistance of employment counsel, developed an approach to determine the Employee Claims and the amounts that would be admissible. The Liquidator's approach in determining the admissible components of the employee claims is summarized below.
- i. **Notice Period** – Two employees had employment contracts that specified their Notice Period entitlement and those contract provisions were used to determine their Notice Period entitlement. For the remaining employees, the Liquidator provided one month per completed year of service with a minimum of three months and a maximum of 24 months. Compensation for the Notice Period was based on total annual compensation and included base pay, bonus amounts (i.e. three year historical average or based on most recent year) and benefits. ;
 - ii. **Benefits** – The Liquidator calculated the monthly employer portion paid by Toronto Branch for employee benefits (i.e. health and dental, fitness reimbursements, professional designation and education reimbursements and RRSP matching) and multiplied this by the number of months in the Notice Period;
 - iii. **Unpaid Bonuses** – Amounts recorded as declared bonuses payable to Staff in the 2015 records of the Toronto Branch were assessed as admissible. For the 2016 bonus, the Liquidator converted the 2015 bonus to a monthly amount and assessed four months (i.e. October 1, 2015 to January 31, 2016) equivalent as admissible. For Executives that participated in the deferred compensation arrangements, the Liquidator assessed the cash portion of their unpaid 2015 and 2016 bonuses (i.e. any deferred portion was not admitted by the Liquidator) as admissible;

- iv. **Deferred Compensation / Phantom Shares** – Under the 2014 Compensation Plan and the 2012 and 2014 Amending Agreements to the Employment Agreements issued to the Executives, certain Executives deferred a portion of their annual bonus (40%-50%) and received “Phantom Shares” that “vested” such that the deferred portion of the bonus was paid over a three year period. The deferred portion was converted into a number of Phantom Shares of Maple Financial Group Inc. (“**MFGI**”) based on the book value of MFGI. The Phantom Shares behave like equity as recipients are able to benefit from the increase in the book value of MFGI and are also at risk of suffering a total loss if the book value declines to \$0. Thus an Executive could ultimately receive more than the deferred portion of their bonus if, over the three year vesting period, the book value of MFGI increased. Conversely, they could also receive less than their deferred bonus if the book value of MFGI decreased over the vesting period. The equity value of MFGI is \$0 as it filed an Assignment in bankruptcy on August 4, 2016.

The Liquidator’s view is that the Phantom Shares provided both the upside benefit and downside risk associated with an equity instrument and were designed to ensure that holders of Phantom Stock are treated analogously to actual shareholders. The Executives claim that they have protection against the tax issues that have troubled Maple Bank GmbH (and therefore MFGI) as their employment contracts provide mechanisms to adjust the book value of the MFGI shares for the effect of the tax issues (i.e. such liabilities are added back to the book value). The Liquidator is not convinced by this claim and has assessed these claims as inadmissible;

- v. **Trailer Fees** – Certain Executives’s have provisions in their employment agreements for trailer fees to be paid to them if their book of business is liquidated or sold. The trailer fees are calculated based on the value realized on the disposition of their book of business. The Liquidator does not consider the trailer fee claims as admissible.

- vi. **Other Claims** – In addition to the items noted above, certain employees have made claims for vacation pay, legal fees, reputational damage and lost income which the Liquidator has assessed as inadmissible.
35. In November, 2016, the Liquidator spoke with the employees to further understand their claims and on November 29, 2016, sent via email the Liquidator’s preliminary assessment of the Employee Claims to the individual employees for their review and consideration. The majority of employees subsequently provided feedback on the preliminary claim assessments as well as additional information to the Liquidator to further support their claims. The Liquidator is considering this feedback and may modify its approach to determining the Employee Claims based on this feedback.
36. The Liquidator intends to issue notices of allowance and/or disallowance in accordance with the Claims Procedure following the appointment of Representative Counsel (as defined herein).

GIA Notice of Objection

37. In accordance with paragraph 8(f) of the Winding-Up Order, the Liquidator sought to consult with the GIA in respect of the Employee Claims and seek approval for the Liquidator’s recommended approach to admit and settle the Employee Claims. On November 28, 2016 and December 7, 2016, the Liquidator provided memorandums to the GIA that set out its recommended approach to the Employee Claims and requested the GIA’s input on the Employee Claims.
38. On December 19, 2016, the GIA proposed a meeting with the Liquidator to review the Employee Claims. On December 21, 2016, the Liquidator met with the GIA and reviewed:
- i. The Employee Claims as filed;
 - ii. The Liquidator’s approach to-date in reviewing and assessing the Employee Claims; and
 - iii. The amounts that the Liquidator recommended be admitted to settle the majority of the Employee Claims.

39. The Liquidator sought the GIA's approval for the Liquidator's recommended approach to assessing and admitting the Employee Claims. The GIA advised that given the cancellation of any bonus compensation imposed by BaFin in Germany, it was unable to approve the acceptance of any Employee Claims that included amounts on account of bonuses.
40. As noted above, the Employee Claims included amounts in respect of bonuses, both in the total compensation used to calculate their Notice Period claim and in respect of unpaid bonus amounts due to them. Based on the advice of its employment counsel, the Liquidator's assessment of the Employee Claims is that amounts in respect of historical bonuses in the employees' total compensation as well as accrued but unpaid bonuses in respect of Fiscal 2015 and the Stub Year are admissible. The Liquidator advised the GIA that it would proceed to issue notices of allowance and/or disallowance to employees early in January 2017 and thereafter proceed to issue payment of any employee claim amounts that were not disputed. The GIA has not advised the Liquidator that it has any opposition to the Liquidator's plan (aside from its inability to approve any bonus inclusion in the Employee Claims given the BaFin restriction noted above) and, as set out below, based on its objection on payment of bonuses.
41. On December 28, 2016, without notice to or consultation with the Liquidator, the GIA issued Notices of Objection (the "**GIA Objection**") pursuant to section 87 of the WURA directly to the employees. The GIA Objection advises that the GIA objects to the claims of the employees "in respect of any amounts attributable to historical, current or future bonuses (variable remuneration or similar components) payable to the Claimant due to, particularly, the cancellation of any such compensation imposed by Bundesanstalt für Finanzdienstleistungsaufsicht (the "German Federal Financial Supervisory Authority" (i.e. BaFin)). A copy of one of the issued GIA Objections (redacted for personal information) is attached hereto at **Appendix D**. Each GIA Objection are in substantially the same form as the GIA Objection attached as Appendix D.

42. The GIA waived the six-day period provided in the WURA for the employees to respond to the GIA Objection until a reasonable time that can be agreed by the GIA and the Liquidator. The Liquidator and the GIA have not yet agreed on a timeframe for the employees to respond to the GIA Objection.

Representative Counsel

43. Each of the Executives have retained experienced employment counsel to assist with the preparation of their claims and negotiation of those claims with the Liquidator. Four Executives are represented by two firms and one Executive has his own counsel. The value of the Executive Claims is materially greater than those of the Non-Executive Employee Claims, both individually and in aggregate. While these differences are due to their positions and rate of pay, their claims also contain complicated components specific to the Executives and in particular in respect of their bonus entitlements (e.g. deferred compensation, trailer fees). Accordingly, it is the Liquidator's view that it is appropriate for these creditors to retain counsel in the circumstances.
44. While certain of the Non-Executive Employees have retained employment counsel to assist with the preparation of their claims and negotiation of those claims with the Liquidator, the majority of these creditors have not retained counsel. The Non-Executive Employee Claims generally consist of the same claim components and the calculation of their claims is generally less complex than the Executive Claims. Accordingly, it is the Liquidator's expectation that in most cases the Non-Executive Employees would not necessarily require counsel to assist with their claims.
45. However, given the filing of the GIA Objection, the Liquidator is of the view that it is appropriate for the employees to be represented and advised by counsel ("**Representative Counsel**") in respect of their claims, and specifically to respond to the GIA Objection. In particular, the un-represented Non-Executive Employees should be advised by employment counsel with insolvency/liquidation experience as to the form and content of their response to the GIA Objection. Further, the

Liquidator is of the view that the present circumstances warrant the appointment of Representative Counsel as:

- i. The Non-Executive Employee Claims are substantially similar that one common counsel can advise them efficiently;
 - ii. The majority of Non-Executive Employees are not currently represented and will require legal representation in order to respond to the GIA Objection; and
 - iii. The GIA Objection is limited to the inclusion of amounts related to historical, current or future bonus payments which issue is common across all Non-Executive Employees (and the Executives as well) and as such, appointing Representative Counsel provides efficiency of information to the Non-Executive Employees as well as to the Court as one counsel will represent the majority of the employees on the GIA Objection.
46. As the Executives are currently represented by experienced employment counsel, the Liquidator is of the view that the Executives should continue to be represented by their existing counsel.
47. The Liquidator has advised the Non-Executive Employees, as well as the Executives, of its support for the retention of Representative Counsel. The Liquidator hosted a meeting of the Toronto Branch employees on January 4, 2017, to: (i) review the GIA Objection; (ii) advise of the Liquidator's intention to seek direction from the Court in respect of the GIA Objection; and (iii) provide the names of experienced law firms that have experience as Representative Counsel in Canadian insolvency cases.
48. The Non-Executive Employees appointed a stewardship group to interview Representative Counsel candidates. The Non-Executive Employees met on January 11, 2017, at the Liquidator's office to consider the stewardship group's recommendation and determine which Representative Counsel to retain (such retention and the fees to be subject to the approval of the Court).

49. The Non-Executive Employees seek to retain Paliare Roland Rosenberg Rothstein LLP (“**Paliare Roland**”) as Representative Counsel to (i) respond to and settle the GIA Objection, and (ii) to take instructions from the representatives of the Non-Executive Employees to act on behalf of all or any of the Non-Executive Employees with respect to the interests of the Non-Executive Employees in these proceedings or in any proceedings incidental to these proceedings. The Liquidator is supportive of the retention of Representative Counsel and recommends that the Court approve the appointment of Paliare Roland as Representative Counsel. The Liquidator further recommends that the activities and fees of Representative Counsel be subject to review and approval by the Court.

4. RESOLVING THE GIA OBJECTION

50. The GIA Objection is based on the cancellation of bonus compensation imposed by BaFin on Maple Bank GmbH. The Toronto Branch employees' claims as filed, and assessed, on a preliminary basis, by the Liquidator are based on their termination entitlements under Canadian employment law.
51. The Liquidator understands that the Toronto Branch employees' response to the GIA Objection will include, *inter alia*, an argument that the termination claims of Canadian domiciled employees of a Canadian branch of an authorized foreign bank in Canada under section 2 and Part XII.1 of the *Bank Act* should be calculated in accordance with Canadian employment law.
52. The Liquidator is of the view that the Court is the appropriate forum to adjudicate the GIA Objection as the amounts at issue are material, both individually to the employees and in aggregate. In addition, resolution of the GIA Objection will likely require a determination of the jurisdiction of BaFin and German Insolvency Law, which determination can only be made by the Court.
53. Accordingly, the Liquidator is seeking the Court's direction as to how the GIA Objection should be adjudicated.

5. RESOLVING THE EMPLOYEE CLAIMS

54. As noted above, the Liquidator has assessed certain components of the Employee Claims as inadmissible and such components relate primarily to the Executive Claims. These components are material individually and in aggregate.
55. The Liquidator anticipates, particularly given the materiality of the components of these claims, that their disallowance will be appealed in accordance with the Claims Process. Notwithstanding that the Claims Process provides for creditors to appeal their claims to a Claims Officer, the Liquidator is of the view that it is appropriate to revise the Claims Process such that employee creditors can appeal disallowances of their claims directly to the Court. This will improve the efficiency of the Claims Process as the Liquidator anticipates that given the materiality of the disallowances that are likely to be issued, the decision of a Claims Officer will likely be appealed by either the Liquidator or employee creditors.

6. LIQUIDATOR'S RECOMMENDATIONS

56. The Liquidator submits this Tenth Report to the Court in support of the Liquidator's Motion for the Further Relief as set out in the Notice of Motion dated January 25, 2017 and recommends that the Court:

i. Grant an Order (the "**Principal Officers Additional Claims and Protocol Approval Order**"):

a. Setting February 28, 2017 as the Principal Officers Claims Bar Date (as defined in the Principal Officers Additional Claims and Protocol Approval Order) for any Claim against any individual who is or has been a Principal Officer (as defined in the *Bank Act*) of the Toronto Branch that relates to amounts for which such individual may in law be liable to pay in his or her capacity as Principal Officer and that arose prior to the Winding-Up Date including, without limitation, any Claims arising in such individual's capacity as an officer and/or director of Maple Financial Group Inc., Maple Futures Corp., Maple Holdings Canada Limited, Maple Securities Canada Limited, Maple Trade Finance Inc., Maple Securities U.S.A. Inc., Maple Arbitrage Inc., Maple Trade Finance Corp, Maple Commercial Finance Corp, and Maple Partners America Inc. that arose prior to the Winding-Up Date, to the extent that such individual served in such role in his or her capacity as Principal Officer;

b. Approving the notice to creditors of the Toronto Branch to be published in The National Edition of *The Globe and Mail* and the International Edition of *The Wall Street Journal* giving notice of the Principal Officers Claims Bar Date;

c. Approving the Protocol to Address Reserves Re: Lishman (the "**Protocol**"), substantially in the form of the Protocol attached as

Schedule "B" to the Principal Officers Additional Claims and Protocol Approval Order; and

d. Approving the Tenth Report and the activities of the Liquidator set out in the Tenth Report.

ii. Grant an Order (the "**Representative Counsel Order**"):

a. Appointing Graham Dyke, Linda Lai, Mary-Ann Noronha and Sofia Petrossian as representatives of certain former Canadian employees of Maple Bank identified in Schedule A of the Representative Counsel Order; and

b. Appointing Paliare Roland Rosenberg Rothstein LLP as representative counsel.

i.

All of which is respectfully submitted at Toronto, Ontario this 25th day of January, 2017.

KPMG Inc., in its capacity as Court Appointed Liquidator of the Business in Canada of Maple Bank GmbH and its Assets as defined in Section 618 of the *Bank Act*



Per:

Philip Reynolds
Senior Vice President



Jordan Sleeth
Senior Vice President

