

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

TWELFTH 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*

September 19, 2017

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# ***1. INTRODUCTION AND PURPOSE OF THE TWELFTH REPORT***

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## **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 (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. On February 16, 2016 (the “**Winding-Up Date**”), Regional Senior Justice Morawetz of the Ontario Superior Court of Justice [Commercial List] (the “**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, 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, 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, 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 Jonathan Wigley of the law firm Gardiner Roberts LLP as independent cost counsel (the “**ICC**”) 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 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 (“**myNext**”) and Xceed Mortgage Corporation.
9. On July 25, 2016, the Liquidator filed its Fifth report which provided information regarding three sale transactions by the Liquidator involving certain structured loans associated with the federal 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 sale 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 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 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 which provided information regarding the proposed settlement between the Liquidator and the Bank of Montreal (“**BMO**”) of the liabilities and obligations of each of BMO and Maple Bank arising from a repurchase transaction and the early termination of certain foreign exchange transactions, along with a proposed sale of certain NHA MBS by the Liquidator to BMO.
13. On November 16, 2016, the Liquidator filed its Ninth Report 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 Procedure;
  - iii. Information regarding the Liquidator’s proposed interim distribution to creditors with Proven Claims (the “**Interim Distribution**”);
  - iv. A recommendation that the Liquidator be authorized to implement a hedging or conversion strategy to mitigate the Euro – Canadian dollar foreign exchange risk (the “**FX Risk**”) related to the amounts that would be distributed to the Association of German Banks Deposit Protection Fund and the Compensation Scheme of German Private Banks (collectively, the “**GDPF**”) and the 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 its supplemental report to the Ninth Report (the “**First Supplemental 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 notice to creditors of the Interim Distribution;
  - iii. A Claims bar notice and Claims bar date in respect of Claims that may be asserted against the principal officers of the Toronto Branch ( the “**Principal Officers Claims Bar Notice**” and “**Principal Officers Claims Bar Date**”, respectively);
  - 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 its second supplemental report to the Ninth Report (the “**Second Supplemental Report**”) which provided an update on
  - i) the Liquidator’s activities since the filing of the First Supplemental Report, ii) 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 (as amended);
    - ii. The Principal Officers Claims Bar Date (as amended); 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.
16. On January 25, 2017, the Liquidator filed its Tenth Report which:
  - i. Provided an update to the Court on the status of the protocol developed in conjunction with the GIA and the former principal officer of the Toronto Branch to implement a procedure to identify any Claims which may be asserted against the Principal Officers of the Toronto Branch arising out of the positions that the Principal Officers may have held with a number of Maple Bank affiliated companies (the “**Principal Officers Claims**”



- Procedure**”) in order to ultimately effect a distribution of the estimated surplus (the “**Estimated Surplus**”) in the Toronto Branch to the German Estate;
- ii. Provided an update to the Court on the status of the Proofs of Claim (as defined in the Claims Procedure Order dated June 8, 2016) filed by the former employees of the Toronto Branch (the “**Employee Claims**”) and advised the Court of the Liquidator’s analysis of the Employee Claims and the principles on which the Employee Claims were assessed;
  - iii. Advised the Court of the notices sent by the GIA to the former employees of Toronto Branch in accordance with section 87 of the WURA of the GIA’s objection to certain components of the Employee Claims and sought direction from the Court to determine the resolution of the now disputed Employee Claims; and
  - iv. Updated the Court on the activities of the Liquidator since the filing of the Ninth Report and the First Supplemental Report and the Second Supplemental Report.
17. On January 27, 2017, the Court granted two orders:
- i. The Principal Officers Additional Claims Order dated January 27, 2017 (the “**Principal Officers Additional Claims Order**”), which:
    - a. Set February 28, 2017, as the claims bar date (the “**Principal Officers Claims Bar Date**”) for the filing of any claims against the former Principal Officers of the Toronto Branch; and
    - b. Approved the notice to creditors of the Toronto Branch of the Principal Officers Claims Bar Date that was published in the National Edition of *The Globe and Mail* and the International Edition of *The Wall Street Journal* (the “**Notice of Principal Officers Claims Bar Date**”) on January 31, 2017.

A copy of the Principal Officers Additional Claims Order is attached hereto as **Appendix B**.

- ii. The Representative Counsel Order (the “**Representative Counsel Order**”), which:
  - a. Established a steering committee (the “**Steering Committee**”) to represent the Non-Executive Employees of the Toronto Branch in respect of their claims in the winding-up proceedings of the Toronto Branch; and
  - b. Appointed Paliare Roland LLP as counsel (“**Representative Counsel**”) to advise and represent the Steering Committee in the winding-up proceedings of the Toronto Branch.
  
- 18. On March 10, 2017, the Liquidator filed its Eleventh Report (a copy of which is attached hereto as **Appendix C**) which provided information to the Court in respect of:
  - i. The Liquidator’s statement of receipts and disbursements for the period February 16, 2016 to February 28, 2017, and estimated funds available for distribution to proven creditors;
  - ii. An update on the status of the Claims Procedure implemented pursuant to the Claims Procedure Order Dated June 8, 2016;
  - iii. An update on the Principal Officers Additional Claims Procedure that was approved by the Court pursuant to the Principal Officers Additional Claims Order;
  - iv. The Liquidator’s Estimated Surplus available to satisfy the Claims of Toronto Branch’s stakeholders as well as a request for i) approval of an interim distribution to the German Estate of a portion of the Estimated Surplus (the “**German Estate Interim Distribution**”), and ii) approval, *nunc pro tunc*, of the notice of distribution to creditors of the Toronto Branch that was published on March 3, 2017, in the National Edition of *The Globe and Mail* and the International Edition of *The Wall Street Journal* (the “**March 3 Notice of Distribution**”); and

- v. An update on the Liquidator’s activities since the filing of the Tenth Report and the Liquidator’s request for approval of same.
19. On March 10, 2017, the Court granted the following orders:
- i. The Second Distribution Order which authorized and directed the Liquidator to make a partial distribution in the amount of up to \$660.6 million to the GIA of a portion of the estimated surplus of funds, which were realized by the Liquidator from the liquidation and/or sale of the Assets and the Business of the Toronto Branch. The Second Distribution Order approved: a) the fees of the Liquidator in the amount of \$4,323,352 b) the fees of Gowlings WLG in the amount of \$2,681,417 c) the activities of the ICC and d) the report of ICC dated March 7, 2017 (the “**ICC Report**”); and
  - ii. The Executive Employee Claim Order of Proceedings which authorized the timeline for the determination by the Court of the Executives’ Claims if not settled.

**PURPOSE OF THE TWELFTH REPORT**

20. The purpose of this Twelfth Report (the “**Twelfth Report**”) and the Confidential Supplemental Report to the Twelfth Report (the “**Confidential Supplement to the Twelfth Report**”) is to provide information to the Court in respect of:
- i. The Liquidator’s statement of receipts and disbursements for the period February 16, 2016 to August 31, 2017, and estimated funds available for distribution to proven creditors;
  - ii. An update on the status of the Claims Procedure implemented pursuant to the Claims Procedure Order including seeking approval of:
    - a. the Liquidator’s activities in respect of the settlement of the Global One Financial Inc. (“**Global One**”) Claims;
    - b. the Radius Financial Inc. (and related entities) (“**Radius**”) Settlement Agreement and the Liquidator’s activities in respect of the settlement of the Radius Settlement Agreement;

- c. the Liquidator’s activities in respect of the settlement of the Non-Executives Employees’ claims;
    - d. the Liquidator’s activities in respect of the partial settlement of the Executives Employees’ claims; and
    - e. the sealing of the Employee, Radius and Global One settlement agreements.
  - iii. An update on the Principal Officers Additional Claims Procedure that was approved by the Court pursuant to the Principal Officers Additional Claims Order;
  - iv. The Liquidator’s Estimated Surplus available to satisfy the Claims of Toronto Branch’s creditors as well as a request for i) approval of a second interim distribution to the German Estate of a portion of the Estimated Surplus (the “**Second Interim Distribution**”, and ii) approval, *nunc pro tunc*, of the notice of distribution to creditors of the Toronto Branch that was published on September 15, 2017, in the National Edition of *The Globe and Mail* and the International Edition of *The Wall Street Journal* (the “**September 15 Notice of Distribution**”), a copy of which is attached hereto as **Appendix D**;
  - v. An update on the Liquidator’s activities since the filing of the Eleventh Report and the Liquidator’s request for approval of same; and
  - vi. The Liquidator’s and its counsel’s fees and disbursements since the ICC filed its first reported dated March 6, 2017 (the “**First ICC Report**”) and the Liquidator’s request for approval of same.
21. The Twelfth Report does not include copies of the settlement agreements with the Non-Executive Employees, the Executives, Global One or Radius as these agreements contain confidential information and/or confidentiality provisions. Copies of these agreements are included in the Confidential Supplement to the Twelfth Report.

## TERMS OF REFERENCE AND DISCLAIMER

22. 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.
23. 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.
24. Capitalized terms not defined in the Twelfth Report are as defined in either the Winding-Up Order and/or the First Report through the Eleventh Report. Unless otherwise indicated, all references to monetary amounts herein are denominated in Canadian dollars (“**CAD**”).
25. 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. RECEIPTS, DISBURSEMENTS AND REMAINING ESTIMATED REALIZATIONS***

### **Summary of Receipts and Disbursements**

26. The Liquidator previously reported the receipts and disbursements of the Toronto Branch for the period February 16, 2016 to February 28, 2017, in the Eleventh Report. The table below summarizes the receipts and disbursements for the Toronto Branch for the period February 16, 2016 to August 31, 2017.

**In the matter of the winding-up of Maple Bank GmbH (Toronto Branch)  
Statement of Receipts and Disbursements  
For the period February 16, 2016 to August 31, 2017  
Amounts in \$ millions**

<b>Receipts</b>	<b>CAD Total<sup>(1)</sup></b>
Cash and securities from Toronto Branch accounts	489.6
Structured loan portfolio	357.4
MBS Business asset sales	176.5
Related party intercompany account settlements	84.3
Settlement of brokerage account	64.7
Derivative instruments	59.6
Miscellaneous/other	7.9
<b>Total receipts</b>	<b>1,240.1</b>
<b>Disbursements</b>	
Payroll	2.7
General and administrative	1.9
Occupancy	0.4
Transfer to CMHC	0.3
<b>Total operating disbursements</b>	<b>5.3</b>
Distribution to creditors with Proven Claims, with interest <sup>(2)</sup>	736.4
Interim Distribution to the GIA	658.0
Professional fees	11.4
<b>Net disbursements in excess of receipts</b>	<b>(171.0)</b>
<b>Opening cash balance</b>	<b>315.1</b>
<b>Closing cash and cash equivalents balance</b>	<b>144.1</b>

<sup>(1)</sup> Assets held in USD are converted to CAD at the August 31, 2017 rate.

<sup>(2)</sup> Includes proposed settlement amounts payable in respect of Claim settlements subject to approval by the Court.

## **Analysis of Receipts**

27. Receipts for the period totalled approximately \$1.24 billion and are described below.

### Cash and Securities from Toronto Branch's accounts

28. Cash and securities of approximately \$489.6 million relate primarily to Toronto Branch's cash deposits and the maturation of \$469.3 million of the Toronto Branch's capital equivalency deposit securities. These funds are invested in the Toronto Branch's accounts at RBC Dominion Securities Inc. ("**RBC DS**"). In addition, the Liquidator realized on approximately \$20.3 million of securities held by the Toronto Branch as at the date of the Winding-Up Order.

### Structured Loan Portfolio Realizations

29. Receipts of approximately \$357.4 million relate primarily to the sale of the Receivable Backed Notes as part of the IIP for \$225.1 million, proceeds received from the Lakeview loan facility of \$40.0 million, collection of the Global One Financial Inc. ("**Global One**") loan facility for proceeds of \$80.1 million (including interest) and collections of other structured loan facility obligations.
30. On or about May 4, 2017, the Liquidator realized on the collection of a loan payable by Pacific Mortgage Group Inc. ("**PMGI**"), an assignee of Radius Financial Inc. ("**Radius**") in the amount of approximately \$7.3 million (consisting of outstanding principal of approximately \$7.1 million and unpaid interest of approximately \$0.2 million). The PMGI Loan was a warehouse facility used to finance PMGI's initial funding of mortgages which would in turn be sold to Toronto Branch.

### MBS Business Asset Sale

31. Receipts from the MBS Business primarily relate to the sale of the Toronto Branch Assets as part of the Marketing Process including: (i) proceeds received from an un-pooled mortgage portfolio transaction which was completed in June, 2016; (ii) the sale of the NHA MBS portfolio, which formed part of the Equitable

Transaction; and (iii) payments made to the originators and servicers related to various reserves and holdbacks.

#### Related Party Intercompany Account Settlements

32. Receipts from related party settlements of \$84.3 million primarily relate to the settlement of the intercompany accounts with Maple Securities Canada Limited and the partial unwinding of a repurchase transaction with Maple Securities U.S.A. Inc. in February, 2016.

#### Settlement of Brokerage Account

33. Prior to the Winding-Up Order, the Toronto Branch had three accounts with Interactive Brokers (one each for: (i) CAD; (ii) U.S. dollars; and (iii) Euros). In order to settle and close the accounts the Liquidator was required to fund \$8.1 million into the CAD account which was overdrawn at the time. Funding this overdraft position enabled the Liquidator to retain Euro 49.0 million (equivalent to \$68.9 million) which provided a certain degree of mitigation to the German Estate in respect of its foreign currency exposure. The Euros were subsequently transferred to a Euro denominated account at CIBC. The effect of these transactions was a net \$64.7 million receipt for the Toronto Branch.

#### Derivative Instruments

34. Receipts relate to \$45.6 million from the unwinding of various financial derivative instruments. As at the date of the Winding-Up Order, the Toronto Branch had numerous financial derivative instruments with seven counterparties which were subsequently unwound.
35. The Liquidator also entered into two agreements with BMO on October 31, 2016 as follows:
  - i. A settlement of the liabilities and obligations of each of BMO and Toronto Branch arising from i) a repurchase transaction with respect to NHA MBS with a repurchase date of February 16, 2016 (which transaction did not settle and the Liquidator subsequently determined BMO owned the repurchased



MBS), and ii) the early termination of several hundred financial derivative transactions that Toronto Branch entered into with BMO; and

- ii. The sale by the Liquidator of certain Toronto Branch owned MBS having an original principal balance of approximately \$11 million.
36. The Court subsequently approved these agreements on November 15, 2016, and these transactions closed on December 2, 2016. Additional information regarding the transactions is contained in the Eighth Report.

#### Other and Miscellaneous

37. Receipts relate primarily to interest received on cash and securities balances totalling approximately \$7.9 million.

#### **Analysis of Disbursements**

38. Operating disbursements for the period total approximately \$5.3 million and consist of disbursements on account of payroll, office rent, and general and administrative expenses. In addition, a one-time transfer of approximately \$0.3 million was made to CMHC to return NHA MBS mortgage payments received by the Toronto Branch in error while CMHC was in control of the Toronto Branch MBS business.
39. Distribution to creditors with Proven Claims, with interest, totals approximately \$736.4 million. On or about December 19, 2016, and in accordance with the order of the Court dated November 25, 2016 which authorized the Interim Distribution, the Liquidator distributed \$716.0 million, inclusive of statutory interest, to 29 creditors with Proven Claims. The majority of this distribution was made to the GDPF in the amount of \$715.2 million on account of the 23 Proofs of Claim filed in respect of deposits made by German depositors. In late March 2017, the Liquidator distributed settlement amounts to former employees (the “**Employees**”) to settle in full the Non-Executive Employees’ Claims and partially settle the Executives’ Claims as discussed herein. This disbursement amount also includes proposed settlement amounts payable in respect of claim settlements that are subject to approval by the Court.

40. Distribution to the GIA of approximately \$658.0 million was made on March 14, 2017, in accordance with the Second Distribution Order.
41. Professional fees paid during the period of \$11.4 million, consist primarily of professional fees of the Liquidator, its Canadian independent legal counsel (Gowlings WLG and BLG LLP), U.S. and German independent counsel (Willkie Farr LLP) and the ICC. Professional fees paid through August 31, 2017 relate to fees and expenses incurred through to July 31, 2017. The fees of the Liquidator and its counsel remain subject to review by the ICC and approval by the Court. The Liquidator's and its counsel's fees from the Winding-Up date to November 30, 2016, have been approved by the ICC and the Court.
42. As at August 31, 2017, the Toronto Branch held approximately \$149.3 million of cash and cash equivalents which is comprised of approximately \$26.8 million in Toronto Branch accounts and \$122.5 million in liquid securities in the Toronto Branch's RBC DS accounts.

#### **Remaining Anticipated Realizations**

43. As at the date of the Twelfth Report, the realization process for all of the assets of the Toronto Branch is complete; accordingly, the only remaining anticipated realizations consist of interest income on invested funds.

### 3. CLAIMS PROCEDURE UPDATE

44. The table below summarizes the Proofs of Claim filed in accordance with the Claims Procedure and the status of the Claims as at August 31, 2017, at amounts as filed by the claimants. To-date, the Liquidator has disbursed approximately \$1.4 billion from the proceeds of the Toronto Branch liquidation to satisfy the Proven Claims of all but seven creditors, namely CRA, Radius and the Executives. Since the filing of the Eleventh Report, the Liquidator has resolved the Claims of a vendor, 14 Non-Executive Employees and two contract counterparties (i.e. Global One and Radius). The Liquidator has partially settled the Claims of the Executives. The resolutions in respect of these creditors' claims are described below.

<b>Maple Bank GmbH, Toronto Branch</b>						
<b>Status of Claims Summary</b>						
<b>CAD Millions</b>						
<b>As at August 31, 2017</b>						
<b>Creditor</b>	<b>Claim (#)</b>	<b>Claimed</b>	<b>Admitted</b>	<b>Disallowed</b>	<b>Paid<sup>(2)</sup></b>	<b>Unresolved</b>
GIA <sup>(1)</sup>	1	\$ 791.3	\$ -	\$ 791.3	\$ -	\$ -
German Depositors	23	686.1	686.1	-	686.1	-
Canada Revenue Agency	2	11.9	-	-	-	11.9
Vendors	8	0.4	0.4	-	0.4	-
Employees	19	21.1	10.1	2.2	10.1	8.7
Non-vendors (contract counterparties, other)	6	76.1	5.4	70.7	9.9	-
Related Party	1	0.4	0.4	-	0.4	-
<b>Total Claims</b>	<b>60</b>	<b>\$ 1,587.3</b>	<b>\$ 702.3</b>	<b>\$ 864.1</b>	<b>\$ 706.8</b>	<b>\$ 20.6</b>
Interim Distribution to the GIA <sup>(1)</sup>					<b>\$ 658.0</b>	
<b>Total Distributions<sup>(2)</sup></b>					<b>\$ 1,364.8</b>	

**Notes:**

<sup>(1)</sup> In accordance with the Second Distribution Order, dated March 10, 2017, the Liquidator issued a payment of approximately \$658.0 million to the GIA. As described in the Ninth Report, the Liquidator and the GIA reached an agreement whereby the GIA Claim is limited to an amount that results in the Toronto Branch having assets in excess of its liabilities plus interest payable in accordance with the WURA. The amount paid above was an advance of the anticipated surplus, after reserving for unproven claims in the Toronto Branch and was made outside of the Claims procedure.

<sup>(2)</sup> Excludes payment of statutory interest payable pursuant to the WURA.

45. As described in the Ninth Report, the Liquidator reached an agreement with the GIA pursuant to which the Claim filed by the GIA (the "GIA Claim"), to the extent that it is valid, shall be permanently reduced to the extent of any distribution made to the GIA in respect of the GIA Claim. The GIA has further agreed that such corresponding portion of the GIA Claim shall be extinguished and released

by such distribution. In addition, the remaining portion of the GIA Claim, to the extent that it is valid, after taking into account any distributions, shall be capped at an amount (which amount may from time to time increase or decrease) that results in the Toronto Branch having assets in excess of its liabilities. Accordingly, Creditors with existing Proven Claims will receive 100% of their Claim amounts, plus statutory interest to the date of any distributions to those Creditors. This agreement is without prejudice to the GIA's right to receive on behalf of the German Estate the assets of the Toronto Branch that remain after payment of all Proven Claims.

### **Resolved Claims**

#### **Vendor Claims**

46. As reported in the Eleventh Report, Thomson Reuters Canada Ltd. filed a claim on January 18, 2017, in the amount of \$7,221.32 in respect of unpaid invoices issued to Toronto Branch prior to the Wind-Up Date. This claim was admitted by the Liquidator and paid on June 14, 2017.
47. On March 24, 2017, Maple Financial Group Inc. filed a claim in the amount of \$48,639.92 in respect of unpaid legal invoices issued to Toronto Branch prior to the Wind-Up Date. This claim was admitted by the Liquidator and paid on June 14, 2017.

#### **Global One Claim**

48. Prior to the date of the Winding-Up Order, the Toronto Branch was one of five lenders that Global One used to finance life insurance premiums that were ultimately secured by the cash surrender value of the applicable policies. As at the date of the Winding-Up Order, the Toronto Branch had advanced Global One approximately US\$58 million of a US\$75 million credit facility.
49. In accordance with the Claims Procedure, Global One submitted a Proof of Claim dated September 13, 2016, against the Toronto Branch for approximately US\$12.5 million (\$17.3 million) (the "**Global One Claim**").

50. On September 28, 2016, Global One, the Liquidator and KPMG, as escrow agent (the “**Escrow Agent**”), entered into an Escrow Agreement that provided for Global One to make payment to a) the Escrow Agent, in trust, in the amount of US\$14.0 million and b) the Liquidator in the amount due on the credit facility less the US\$14.0 million paid to the Escrow Agent.
51. To assist with the analysis and determination of the Global One Claim, the Liquidator engaged a consultant with extensive knowledge and experience with respect to the financing of life insurance premiums and specifically the Global One credit facility (the “**Global One Consultant**”).
52. Between December 2, 2016 and May 8, 2017, the Liquidator, its counsel and the Global One Consultant sought and reviewed additional information provided by Global One to assist with the assessment of the Global One Claim. During that period:
- i. The Liquidator analyzed the Global One Claim, including the additional information provided by Global One, and on March 24, 2017, issued a notice of disallowance (the “**Global One Notice of Disallowance**”) in accordance with the Claims Procedure Order which disallowed the Global One Claim entirely;
  - ii. Global One filed a dispute notice (the “**Global One Dispute Notice**”) on April 10, 2017, in accordance with the Claims Procedure Order;
  - iii. Global One, through a letter from its counsel dated May 5, 2017, alleged that KPMG was in a conflict of interest in continuing to act as Liquidator in respect of the Global One Claim (the “**Conflict of Interest Allegation**”) and that Global One was contemplating commencing a claim against KPMG (the “**Potential Claim against KPMG**”);
  - iv. The Liquidator through its counsel, issued a denial of the Conflict of Interest Allegation on May 9, 2017; and,
  - v. The Liquidator issued an amended notice of disallowance (the “**Global One Amended Notice of Disallowance**”) on May 9, 2017, to address the

Conflict of Interest Allegation and again disallow the Global One Claim in its entirety.

53. Subsequent to the issuance of the Global One Amended Notice of Disallowance, the Liquidator and Global One focused their efforts on a litigation timetable and process to resolve the Global One Claim. Concurrent with these efforts, counsel to the Liquidator and Global One engaged in settlement discussions to resolve the claim on a commercial basis.
54. On August 3, 2017, Global One, Synovus Financial Corp. (“**Synovus**”), a successor by merger to Global One, and the Liquidator executed a settlement agreement (the “**Global One Settlement Agreement**”) to resolve the Global One Claim, the Conflict of Interest Allegation and the Potential Claim against KPMG (collectively the “**Global One Claims**”). The Liquidator consulted with the GIA throughout the negotiation of the Global One Settlement Agreement and the GIA was supportive of the Liquidator executing the Global One Settlement Agreement.
55. The Global One Settlement Agreement closed on August 4, 2017. The Global One Settlement Agreement contains a confidentiality provision and the Liquidator is seeking the sealing of the Global One Settlement Agreement until further order of the Court. The Global One Settlement is summarized in, and appended to, the Confidential Supplement to the Twelfth Report.
56. The Liquidator is also seeking approval of its activities in settling the Global One Claims and negotiating, entering into and closing the Global One Settlement Agreement.

#### Radius Claim

57. Radius is an originator and servicer of insured residential mortgages that were, in turn, sold to the Toronto Branch. Radius and the Toronto Branch had a business relationship since May, 2011. Radius is also the beneficiary of myNext, an affiliated special purpose vehicle used by Radius and created for the purpose of warehousing its mortgages in advance of their sale on a whole loan basis for the

duration of the mortgage term. Radius and myNext conducted significant volumes of business with Toronto Branch between May, 2011 and the Wind-Up Date.

58. Radius and myNext filed a Proof of Claim with the Liquidator on November 3, 2016 and an amended and restated Claim with the Liquidator on December 7, 2016 (collectively, the “**Amended Radius Claim**”) against the Toronto Branch in an amount of \$32,261,482 on account of warehouse related losses, pipeline related losses, renewal related losses, legal costs and a damages claim. The value of the Amended Radius Claim has previously been reported as \$36,261,482 as counsel to Radius had advised that additional contingent amounts of up to \$4 million may, in Radius’ view, be due to Radius. Counsel to Radius subsequently advised that the Amended Radius Claim is limited to the total amounts as filed. Radius was also a debtor of Toronto Branch in the amount of approximately \$7,336,580 which amount has been repaid as described above.
59. Between November 3, 2016 and September 7, 2017, the Liquidator and its counsel sought and reviewed additional information provided by Radius to assist with the Amended Radius Claim. During that period:
  - i. The Liquidator analyzed the Amended Radius Claim and issued a notice of partial disallowance dated March 2, 2017 (the “**Radius Notice of Disallowance**”), in accordance with the Claims Procedure Order. The Liquidator accepted and admitted \$731,112 of the Amended Radius Claim;
  - ii. PMGI, Radius and myNext, through a letter from their counsel dated March 3, 2017 (but sent on March 7, 2017), alleged that the Liquidator had breached the confidentiality provisions of the Agreements (the “**Breach of Confidentiality Allegation**”) and that the Liquidator was not acting in good faith in respect of the Amended Radius Claim (the “**Bad Faith Allegation**” and collectively with the Amended Radius Claim and the Breach of Confidentiality Allegation, the “**Radius Claim**”);
  - iii. The Liquidator through its counsel, issued a denial of the Breach of Confidentiality and Bad Faith Allegations on March 14, 2017; and

- iv. In response to the Radius Notice of Disallowance, Radius and myNext filed a dispute notice dated March 15, 2017 (the “**Radius Dispute Notice**”), in accordance with the Claims Procedure Order.
60. Subsequently, the Liquidator and Radius focused their efforts on a litigation timetable and process to determine the Radius Claim. Concurrent with these efforts, counsel to the Liquidator and Radius engaged in settlement discussions to resolve the claim on a commercial basis.
61. On September 7, 2017 the Liquidator and Radius, with the consent of the German Insolvency Administrator, executed a settlement agreement (the “**Radius Settlement Agreement**”) to resolve the Radius Claims. The Liquidator consulted with the GIA throughout the negotiation of the Radius Settlement Agreement and the GIA was supportive of the Liquidator executing this agreement.
62. The Radius Settlement Agreement contains a confidentiality provision and the Liquidator is seeking the sealing of the Radius Settlement Agreement until further order of the Court. The Radius Settlement is summarized in, and appended to, the Confidential Supplement to the Twelfth Report.
63. The Liquidator is also seeking approval of its activities in settling the Radius Claim and negotiating, entering into and closing the Radius Settlement Agreement.

#### Employee Claims

64. The Employee Claims were discussed in detail in the Tenth and Eleventh Reports. The Employee Claims consist of claims by former Toronto Branch employees for amounts due to them on account of the termination of their employment pursuant to the Winding-Up Order (e.g. notice period claims for termination and severance pay, benefits, unpaid bonuses, deferred compensation and trailer fees). The Employee Claims were filed by five Executives and 14 Non-Executive Employees.

#### *Non-Executives*

65. Each of the Non-Executive Employees filed a Claim in accordance with the Claims Procedure. On November 29, 2016, the Liquidator prepared and sent



preliminary claim assessments of the Non-Executive Employees' claims to each of the Non-Executive Employees. These preliminary claim assessments applied consistent principles to the Non-Executive Employees' claims in respect of a notice period, benefits and other amounts claimed by the Non-Executive Employees to ensure that these creditors with similar types of claims (though different based on their wage rates or years of service), calculated their claims on a principled and consistent basis. In early December, 2016, the Liquidator reviewed its preliminary assessments with each of the Non-Executive Employees and their counsel (for those that were represented by counsel). In general, the Non-Executive Employees sought amounts greater than proposed in the Liquidator's preliminary assessments.

66. On December 28, 2016, the GIA issued the GIA Employee Claim Objections to each of the Non-Executive Employees.
67. On January 27, 2017, the Court issued an order appointing Representative Counsel to represent the Non-Executive Employees in respect of their Claims and the GIA Employee Claim Objections. Following the appointment of Representative Counsel, the Liquidator had several meetings and/or discussions with Representative Counsel and the GIA to negotiate a settlement of the Non-Executive Employees' Claims.
68. On February 28, 2017, the Liquidator and its counsel presented revised assessments of the Non-Executive Employee Claims to Representative Counsel for consideration by these creditors. The revised assessments were generally based on Canadian employment law (i.e. both statutory and common law awards based on length of service) and represented negotiated settlements of the Non-Executive Employee Claims. The GIA was supportive of these settlement amounts and the form of settlement agreement to be executed by the Non-Executive Employees.
69. The Non-Executive Employees accepted their respective negotiated settlement amounts and executed minutes of settlement in respect of their Claims against Maple Bank and Toronto Branch in late March, 2017. The minutes of settlement

were identical (aside from the settlement amounts) for each of the Non-Executive Employees and include a release of the Maple Bank, Toronto Branch, the Liquidator and the GIA. The amounts payable pursuant to the settlement agreements were paid to the Non-Executive Employees in early April, 2017

70. The aggregate value of the Non-Executive Employee Claims as filed and compared with the aggregate settlement amount is summarized in the Confidential Supplement to the Twelfth Report. The settlement agreements require that the Non-Executive Employees not disclose the nature or contents of the settlement agreements other than to their legal or financial advisors, their spouse, as required by law, a court or government regulators or authorities. In addition, as these claims and their settlement amounts are in respect of the Non-Executive Employees' compensation, the Liquidator is of the view that the specific details of these settlements should remain confidential until further order of the Court. Copies of each of the Non-Executive Employee Settlement Agreements are appended to the Confidential Supplement to the Twelfth Report.

### *Executives*

71. Each of the Executives filed a Claim in accordance with the Claims Procedure. Subsequently, in March, 2017, four of the Executives each filed an amended Claim to include a contingent Claim for contribution, indemnity, reimbursement, costs and other relief arising out of or on account of claims made against the Executive Employee on account of their employment with Maple Bank, Toronto Branch or any of their affiliates (the "**Indemnity Claim**"). The former Principal Officer included an Indemnity Claim in his original claim filed with the Liquidator.
72. Each of the Executives have their own respective counsel, three being represented by one firm, while the remaining two are represented by another firm. The Liquidator did not seek the approval of the Court for the appointment of a single law firm to act as representative counsel to the Executives as they were represented by lawyers they had chosen, their claims included claims that were distinct from the Non-Executive Employees and, as set out in more detail below, the Liquidator disputes those claims.

73. As with the Non-Executive Employees, on November 29, 2016, the Liquidator prepared and sent preliminary claim assessments of the Executives' Claims to each of the Executives. Collectively, the Executives also sought amounts greater than proposed in the Liquidator's preliminary assessments, including i) deferred portions of the 2015, 2016 and notice period bonuses, ii) "phantom" stock units tied to a bankrupt related company, and iii) trailer fee claims (collectively, the "**Executives' Disputed Claim Amounts**").
74. On December 28, 2016, the GIA issued the GIA Employee Claim Objections to each of the Executives.
75. In late February, 2017, the Liquidator provided revised claim assessments to the Executives for their consideration. The Executives' Disputed Claim Amounts remained disputed, however, these revised assessments admitted portions of their Claims in respect of unpaid cash bonuses and claims in respect of their notice period which were generally consistent with Canadian employment law (i.e. both statutory and common law awards based on length of service) or under applicable employment contracts, were settled. As with the Non-Executive Employees, these amounts were not disputed and represented negotiated partial settlements of the Executive Employee Claims. The GIA was supportive of these partial settlement amounts and reviewed the form of partial settlement agreement to be executed by the Executives.
76. In late March, 2017, the Executives accepted the partial settlement of their Claims as it related to the notice period amounts of their claims on the basis that they could continue to advance the Executives' Disputed Claim Amounts and their Indemnity Claims. The Liquidator issued Notices of Disallowance to each of the Executives in late March, 2017, which admitted the non-disputed portions of their claims and disallowed the Executives' Disputed Claim Amounts. The Indemnity Claim was not addressed in these Notices of Disallowance for all Executives other than the former Principal Officer (as his Indemnity Claim had been addressed pursuant to the Principal Officers Additional Claims Order), and on September 15, 2017, the Liquidator issued Amended Notices of Disallowance to all Executives other than

the former Principal Officer which included the disallowance of the Indemnity Claim. The Executives and the Liquidator executed minutes of settlement in late March, 2017, in respect of the non-disputed portions of their claims with the Liquidator making the payment to the Executives in early April, 2017.

77. The Executives' minutes of settlement are substantially the same as between the Executives (aside from the settlement amounts and their specific claims) and include a release of the Liquidator, Toronto Branch, Maple Bank and the GIA in respect of the Executives' notice period claim, but not their claims related to the Executives' Disputed Claim Amounts or their Indemnity Claims.
78. The aggregate value of the Executive Employee Claims as filed and compared with the aggregate partial settlement amount is summarized in the Confidential Supplement to the Twelfth Report. The settlement agreements require that the Executives not disclose the nature or contents of the settlement agreements other than to their legal or financial advisors, their spouse, as required by law, a court, government regulators or authorities, or as is necessary to pursue the Executives' Disputed Claim Amounts or Indemnity Claim. In addition, as these claims and their settlement amounts are in respect of the Executives' compensation, the Liquidator is of the view that the specific details of these settlements should remain confidential until further order of the Court. Copies of each of the Non-Executive Employee Settlement Agreements are appended to the Confidential Supplement to the Twelfth Report.
79. Further discussion of the unresolved portion of the Executives' Claims is outlined in the Unresolved Claims section of this report.
80. The Liquidator submits that the settlement with the Non-Executive Employees and the partial settlements with the Executives are appropriate and reasonable in the circumstances as:
  - i. The GIA, as the primary economic stakeholder in the liquidation of the Toronto Branch, was consulted throughout the settlement negotiations and is supportive of the settlement terms and amounts;

- ii. The Non-Executive Employee settlements and releases are a full and final settlement of the amounts claimed by these creditors;
  - iii. The Executives partial settlements and releases are a full and final settlement in respect of the settled components of their claims; and
  - iv. Both the Executives and the Non-Executive Employees were represented by experienced employment counsel in the negotiation of the settlement agreements.
81. In the Eleventh Report, the Liquidator advised the Court that if a settlement with the Non-Executive Employees was reached prior to March 10, 2017 that it would file a supplemental report in support of an Order approving the Non-Executive Employee Claims settlement. The Liquidator is not seeking the Court's approval of the settlement agreements with the Executives and Non-Executives as a) they are not conditional on the approval of the Court and b) pursuant to the Claims Procedure Order, the Liquidator has the ability to resolve and settle claims without further order of the Court.
82. Accordingly, the Liquidator is seeking approval of its activities in settling the Non-Executive Employee Claims, partially settling the Executives' Claims, and negotiating, entering into and closing the settlement agreements with the Non-Executive Employees and the partial settlements agreements with the Executives.

**Unresolved Claim**

83. The remaining unproven and unresolved claims are summarized in the table below. CRA filed two claims, with a combined value of approximately \$11.9 million, which remain unproven as of the date of this Twelfth Report. A partial settlement of the Executives' Claims was reached in late March, 2017 with the balance of their claims, which total approximately \$8.7 million, being unresolved as of the date of this Twelfth Report.

Maple Bank GmbH, Toronto Branch Unproven and unresolved Claims summary As at August 31, 2017		
Creditor	Claims	Claimed (\$)
CRA - Corporate Income Taxes	1	\$ 11,674,126
CRA - HST	1	\$ 198,929
CRA Subtotal	2	\$ 11,873,055
Executive Employees	5	\$ 8,740,661
<b>Total</b>	<b>7</b>	<b>\$ 20,613,716</b>

### Canada Revenue Agency (“CRA”)

84. The CRA filed two Claims in respect of: i) unremitted HST totalling \$198,929 for the periods ended September 30, 2015 and June 16, 2016, and ii) unremitted corporate income taxes for the taxation years ended September 30, 2015; September 30, 2014; September 30, 2013; and September 30, 2010 in the total amount of \$11,674,126.
85. The corporate income tax liability relates to the 2015 income tax return (i.e., the return was due after the Wind-Up Date) and prior years’ tax returns pursuant to which the CRA denied various expense deductions claimed by the Toronto Branch in those years. In the case of the disputed expense deductions, the Toronto Branch historically has deducted these expenses as incurred, whereas the CRA’s position is that the accounting treatment should be followed and such expenses should be amortized and deducted over the term of the loans to which they relate. These expenses relate to the Toronto Branch’s lending business as part of which it acquired mortgages and subsequently securitized them.
86. The CRA re-assessed Toronto Branch’s tax returns, resulting in increased income tax liabilities. Toronto Branch paid the reassessed amounts for the 2009, 2011 and 2012 taxation years and objected to those re-assessments relating to the 2011 and 2012 taxation years as the Toronto Branch was of the view that these filings were in compliance with the *Income Tax Act* (“ITA”) and the *Income Tax Regulations* (“ITR”) in respect of the deductibility of expenses related to its lending business. The Liquidator is working with the Toronto Branch’s tax advisor, Ernst & Young LLP (“EY LLP”), and the CRA to expedite the review of the Toronto Branch’s

objections made against the re-assessments and if the Toronto Branch’s objections are successful, the amount claimed by the CRA will decrease accordingly. A summary of the status of each tax year is included below:

<b>In the matter of the wind-up of Maple Bank GmbH (Toronto Branch)</b>					
<b>Summary of Tax Status</b>					
<b>Tax Year</b>	<b>Return Filed <sup>(1)</sup></b>	<b>Return Assessed <sup>(2)</sup></b>	<b>Return Disputed by CRA <sup>(3)</sup></b>	<b>Tax Liability Paid <sup>(4)</sup></b>	<b>Objection outstanding <sup>(5)</sup></b>
2009	yes	yes	yes	yes	no
2010	yes	yes	yes	no	no
2011	yes	yes	yes	yes	yes
2012	yes	yes	yes	yes	yes
2013	yes	yes	yes	no	no
2014	yes	yes	no	no	no
2015	yes	yes	no	no	no
Stub period Oct. 1, 2015 to Feb. 15, 2016	yes	no	no	no	no
Stub period Feb. 16 to Nov. 30, 2016	yes	no	no	no	no

**Notes:**

- <sup>(1)</sup> Return has been submitted to the CRA.
- <sup>(2)</sup> CRA has reviewed the return and provided the Toronto Branch with a summary of its review.
- <sup>(3)</sup> CRA has adjusted or otherwise not accepted the Toronto Branch's filing position taken.
- <sup>(4)</sup> Toronto Branch has paid its assessed/reassessed tax liability in accordance with the CRA's assessment/reassessment.
- <sup>(5)</sup> CRA's reassessment has been objected to the Toronto Branch. Results of the objections are outstanding.

Corporate Income Taxes and Branch Taxes

87. Since the filing of the Eleventh Report, income tax returns for the periods October 1, 2015 to the Wind-Up Date (the “**Stub Period Tax Return**”) and February 16, 2016 to November 30, 2016 (the “**2016 Tax Return**”) have been filed. The Toronto Branch reported a tax liability of approximately \$2,958,315 in the Stub Period Tax Return. The 2016 Tax Return claimed significant losses that can be applied against Pre Wind-Up Date tax liabilities. As a result of the carry back of these losses, the Liquidator anticipates that the combined income tax liability on account of corporate income tax will be less than the amount claimed by the CRA in its Proof of Claim. However, the Liquidator understands, based on advice from EY LLP, that the tax losses that can be carried back to offset taxable income in the

period prior to the Winding-Up Date declines after November 30, 2017 and declines further after November 30, 2018.

88. As noted above, certain lump sum deductions claimed by the Toronto Branch in respect of its tax returns prior to the Wind-Up date were denied as the CRA's position is that such expenses should be amortized over a number of years following the accounting treatment of such loans. Given that the Toronto Branch is in liquidation and is no longer operating a banking business, with all of the underlying loans having been liquidated, all such deferred amounts should have become deductible.
89. The Liquidator believes, based on advice from EY LLP, that the Toronto Branch has a further liability to the Receiver General of approximately \$3.2 million related to the computation of "branch tax" pursuant to the ITA. The ITA requires that branch tax be paid by foreign entities on profits not reinvested in Canada (i.e., to the extent there is an insufficient investment allowance in their Canadian branch operation to offset the profits generated).
90. As such the Liquidator estimates, based on advice from EY LLP, that the total pre and post Winding-Up Date amount owing as income tax and branch tax, could be in the range of \$6.2 million to \$9.1 million (inclusive of an estimate for interest and penalties) as compared to approximately \$11.7 million claimed by the CRA. The lower end of the range assumes that a) the objections are successful (with the objected amounts credited against the Toronto Branch's tax liabilities) and b) none of the Toronto Branch's tax loss carry-forwards would expire un-utilized. The upper end of the range assumes that a) the Toronto Branch's objections are not successful and b) there is a limited ability to carry back post Wind-Up Date tax losses.
91. Notwithstanding that the amount claimed by the CRA could be decreased if a) the Toronto Branch's objections are successful and if b) post Winding-Up Date tax losses can be carried back to pre-Winding-Up Date taxation years, the Liquidator has provided for the full amount of the CRA's corporate income and branch tax claim (\$11.7 million), the HST claim, and the post Winding-Up Date potential



income tax (\$3.0 million) and branch tax (\$3.2 million) in its reserves described below.

92. As described below, the Liquidator is seeking approval for the Second Interim Distribution. The Liquidator understands, based on advice from EY LLP, that no branch tax would be payable on the Second Interim Distribution.

### HST

93. With respect to HST, the CRA has claimed an amount of \$198,929 as set out above. The Liquidator notes that this amount is consistent with the books and records of the Toronto Branch and, as such, will be accepted by the Liquidator in due course. Such amount is for the period related to fiscal 2015 and fiscal 2016 up to the Wind-Up Date.
94. The Toronto Branch is an annual filer with respect to HST. As such, a return has been prepared for the period from February 16, 2016 to November 30, 2016. This return set out a liability in the amount of \$99,068. The Liquidator confirms that this return has been filed but the associated liability has not been paid. Such amounts typically result from the Toronto Branch self-assessing for goods and/or services received from foreign vendors and is not the result of the collection of HST from customers that was not yet remitted to the Receiver General.

### *Executives*

95. Certain portions of the Executives Claims continue to be disputed by the Liquidator, specifically the portions related to the Executives' Disputed Claim Amounts, legal fees and the Indemnity Claims. By Order dated March 10, 2016, the Court approved a litigation timetable to resolve these claims.
96. Following the execution of the Executives' partial settlement agreements and the issuance of the litigation timetable, the Liquidator and its counsel responded to certain of the Executives' information requests. Concurrent with this, the Liquidator also engaged in without prejudice settlement discussions with the Executives and their counsel in an effort to avoid litigation. Notwithstanding that

the settlement discussions reached an advanced stage, the Liquidator and the Executives have reached an impasse with respect to a settlement amount.

97. In the case of the unfilled information requests related to the Toronto Branch, the Liquidator is working with the counterparties to certain of the sale and assumption transactions (i.e. Equitable Bank and CMHC) to obtain their consent for the release to certain of the Executives of specific confidential information related to those transactions. Assuming such consents are obtained, the Liquidator will provide the outstanding information to the Executives and seek their affidavits in accordance with the Executive Employees' Claim Order of Proceedings.
98. The Liquidator will report to the Court on the status of the resolution or litigation of the disputed portions of the Executives claims in due course.

#### ***4. UPDATE ON PRINCIPAL OFFICERS CLAIMS PROCEDURE***

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99. In accordance with the Principal Officers Additional Claims Order, the Liquidator implemented the Principal Officers Claims Procedure on January 27, 2017. The Liquidator published the notice to creditors of the Principal Officers Claims Bar Date on January 31, 2017 in the National Edition of *The Globe and Mail* and the International Edition of *The Wall Street Journal*. This notice was also posted on the Liquidator's website.
100. No Claims against the Principal Officers were filed by the Principal Officers Claims Bar Date deadline (i.e. 4:00 p.m. Eastern Time on February 28, 2017). As described in the Eleventh Report, the Liquidator received a letter after February 28, 2017, that included a copy of the notice to creditors of the Principal Officers Claims Bar Date. The Liquidator attempted to locate the writer of the letter; however a phone number was not provided, the handwriting was unclear, and internet searches of variations of the writer's name and address were unsuccessful. The Liquidator does not consider this letter to be a Claim, and in any event, it was received after the Principal Officers Claims Bar Date.
101. Accordingly, and pursuant to the Principal Officers Additional Claims Order, any persons with such Claims are forever barred from making or enforcing any Claim against any Principal Officers of the Toronto Branch (aside from asserting any Claims based on fraud, intentional misconduct or illegal actions, which Claims are unaffected by the Principal Officers Additional Claims Order and Bar Date).

## ***5. DATA SHARING PROTOCOL***

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102. Maple Bank and Toronto Branch are part of a corporate group that consists of various related entities including Maple Financial Group Inc. (“**MFGI**”) and Maple Securities Canada Limited (“**MSCL**”), many of which operated out of the same office in Toronto. Certain Toronto Branch employees and executives had roles at entities related to Toronto Branch yet only operated with one common “@maplefinancial.com” email address. In addition, and as is common in such situations, the related entities used common IT platforms and the electronic records of the Canadian based related entities were stored on a common server as well as a back-up server maintained at an offsite disaster recovery centre (i.e. Sungard Availability Services, or “**Sungard**”). In the case of the back-up server, various United States based related entities also stored electronic records along with the Canadian Entities. After exiting its office premises, Toronto Branch and the other Maple entities rely solely on the server at Sungard.
103. The Liquidator understands that in the case of the backup server, the data for each entity is not segregated from the data of other entities. Similarly, the emails of certain key employees that held multiple roles in the Maple Bank group are not segregated by entity. Accordingly, it is not practical (and likely not possible) to segregate and secure the information stored on the Maple Bank server at Sungard by a Maple entity. In addition, there are no programs which “track” a party’s access to the server or specific records accessed and/or copied. All of this presents significant challenges in respect of the retrieval of data during the liquidation of Toronto Branch and the winding up of the other Maple Entities as each entity will need to access to its own data in order to respond to and/or support any litigation claims and will most likely be required to comply with different statutory requirements in terms of privacy concerns.
104. The GIA is seeking to obtain the Toronto Branch’s electronic records to meet his own statutory duties under the German Insolvency regime, including to reconcile and assess Maple Bank’s intercompany relationships. However the co-mingling of the electronic records and the volume of such records makes it very difficult

and costly, if it is even practically possible, to segregate Toronto Branch's specific records.

105. The Liquidator, MSCL, and the GIA have discussed a draft data access protocol for the back-up server, which protocol would be intended to apply to all entities that have information stored on the back-up server. However, to-date, there has been no agreement on either the concept of a protocol, or the data access protocol as drafted. The Liquidator will provide an update to the Court on this issue in due course.

## **6. ESTIMATED SURPLUS AND PROPOSED DISTRIBUTION**

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107. As described above, the Toronto Branch now has approximately \$144.1 million available to satisfy outstanding Claims. Seven unproven / disputed Claims remain outstanding with an aggregate Claim value of approximately \$20.6 million.
108. As discussed in the Eleventh Report, in determining the Estimated Surplus that may be available for distribution to the German Estate, the Liquidator developed, in consultation with the GIA, an appropriate reserve (the “**Estimated Reserve**”) to provide for:
- i. Unproven Claims;
  - ii. Possible future Claims (“**Future Potential Claims**”);
  - iii. Interest on Unproven Claims and Future Potential Claims at 5% per annum (in accordance with the WURA) up to and including March 31, 2018, a period where the Liquidator estimates it will have resolved all Claims;
  - iv. The Legal Fees Reserve pursuant to the Principal Officers Additional Claims Order;
  - v. Estimated costs to administer the Toronto Branch Liquidation through to March 31, 2018; and
  - vi. Tax liabilities in respect of the post Winding-Up Date periods.
109. The table below summarizes the Estimated Reserve.

**In the matter of the winding-up of Maple Bank GmbH (Toronto Branch)  
Summary of Estimated Reserve  
As at August 31, 2017  
Amounts in CAD millions**

Unproven Claims <sup>(1)</sup>	\$	20.6
Interest on Unproven Claims <sup>(2)</sup>		2.2
Future Potential Claims (inclusive of interest) <sup>(3)</sup>		15.0
Principal Officers Legal Fee Reserve <sup>(4)</sup>		5.0
Toronto Branch Administration Costs <sup>(5)</sup>		1.9
Post Winding-Up Date tax liability <sup>(6)</sup>		8.0
<b>Total Estimated Reserve</b>	<b>\$</b>	<b>52.7</b>

**Notes:**

- <sup>(1)</sup> Represents unproven or disputed Proofs of Claim as filed, as at August 31, 2017, at amounts as filed by the claimants.
- <sup>(2)</sup> Includes interest at 5% p.a. pursuant to the WURA from the Liquidation Date to March 31, 2018, an assumed date upon which all Unproven Claims and Future Potential Claims are resolved and a final distribution is made.
- <sup>(3)</sup> Reserve to provide for any Claims not yet identified or filed with the Liquidator.
- <sup>(4)</sup> Pursuant to the Principal Officers Additional Claims Order and the Protocol to Address Reserves re: Lishman therein, the reserves are to include an amount not in excess of \$5 million to fund the former Principal Officer's legal fees in respect of any litigation initiated by the GIA against the former Principal Officer.
- <sup>(5)</sup> Represents estimated professional fees and operating disbursements for the Toronto Branch through to March 31, 2018.
- <sup>(6)</sup> Represents gross income tax (\$3.0M) and branch tax (\$3.2M) plus estimated penalties and interest arising from filing of February 15, 2016 and November 30, 2016 income tax returns. These amounts are in addition to CRA's claim (approximately \$11.9M) in respect of tax years ending September 30, 2010 to 2015. These estimates are also before i) potential re-assessments in respect of pre Winding-Up Date taxation year returns filed by Toronto Branch that are under review by the CRA and ii) any potential carry back of tax losses claimed in the post Winding-Up Date period.

110. The Estimated Reserve is designed to protect any further claimants of the Toronto Branch while at the same time allowing for a further interim distribution to the German Estate of the Toronto Branch's estimated surplus.
111. The reserve for Future Potential Claims and associated interest provides for any claims not yet filed with the Liquidator. This particular reserve was decreased in proportion to the total reduction in proven third party Proof of Claims up to a minimum of \$20 million consisting of a) the Future Potential Claim Reserve (i.e. \$15 million, inclusive of statutory WURA interest) and b) the \$5 million Principal Officers Legal Fee Reserve. This combined reserve is designed to adequately

cover the potential universe of exposure to the Toronto Branch while permitting interim distributions to the GIA.

112. The Future Potential Claim Reserve was previously \$50 million plus accrued interest. Given the resolution of significant value of Claims, the passage of time without any new Claims being filed and the notices of distribution issued previously, the Liquidator is comfortable reducing the Future Potential Claim Reserve to \$20 million consisting of a) the Future Potential Claim Reserve (i.e. \$15 million, inclusive of statutory WURA interest) and b) the \$5 million Principal Officers Legal Fee Reserve.
113. The table below summarizes i) the net assets available for distribution, ii) the Estimated Reserve and iii) shows the Estimated Surplus available for the Second Interim Distribution of \$91.4 million as at August 31, 2017.

**In the matter of the winding-up of Maple Bank GmbH (Toronto Branch)  
Estimated Surplus  
As at August 31, 2017  
Amounts in CAD millions**

Assets available for distribution	\$	144.1
Less: Estimated Reserve	\$	52.7
<b>Estimated Surplus</b>	<b>\$</b>	<b>91.4</b>

114. As the Estimated Surplus is held in Canadian and U.S. dollars, the Estimated Surplus available for distribution, if approved by the Court, will fluctuate with changes in the foreign exchange rates.
115. As discussed in the Third and Ninth Reports, one of the primary stated objectives of the GIA is to obtain a distribution of the expected total surplus realized from the Toronto Branch (the “**Surplus**”) as soon as practicable to the German Estate. As stated in the Ninth Report, the Liquidator was and remains supportive of such a distribution. The Liquidator is of the view that the Second Interim Distribution in the amount of \$91.4 million is appropriate for the following reasons:
- i. All of the Assets of the Toronto Branch have been realized upon;



- ii. The universe of potential Claims is now defined with a relative degree of certainty through both the Claims Procedure and the Principal Officers Claims Procedure as:
  - a. The Claims Procedure has been ongoing for almost a full year with only one nominal value Claim received between the filing of the Eleventh Report and the Twelfth Report; and
  - b. The Principal Officers Additional Claims Bar Date has passed with no valid Claims having been filed; accordingly, any such Claims are forever barred;
- iii. In addition to the notice of the Claims Procedure sent to all creditors by the Liquidator on June 14, 2016, creditors of the Toronto Branch have received service of the Liquidator's Ninth Report and supplemental reports thereto and the Tenth Report with the related notice of distribution. All creditors that have filed Claims with the Liquidator will be served a copy of the Twelfth Report;
- iv. Notices of the German Estate Interim Distribution were posted in the National editions of *The Globe and Mail* and International editions of *The Wall Street Journal* on March 3, 2017;
- v. The September 15 Notice of Distribution notifying creditors of the Second Interim Distribution was posted in the National editions of *The Globe and Mail* and International editions of *The Wall Street Journal* on September 15, 2017 (A copy which is attached as **Appendix D**);
- vi. The Liquidator anticipates that certain of the remaining unproven Claims will be litigated and the Liquidator has provided for the full value of these Claims as filed (plus 5% statutory interest pursuant to the WURA through to March 2018, an estimated outside date for the resolution of these Claims) along with estimated further estate costs that are expected to be incurred to litigate these Claims;

- vii. The Estimated Surplus is net of a \$15 million reserve (inclusive of statutory interest) for Future Potential Claims or unforeseen costs to the Toronto Branch;
  - viii. Given the passage of time since the implementation of the Claims Procedure and the nominal value and number of Claims filed since September 19, 2016, being the date that the Court ordered that all creditors with Claims against the Toronto Branch file their Claims, the Liquidator is of the view that the \$15 million Future Potential Claim reserve is sufficient to account for any Future Potential Claims that may be asserted;
  - ix. The GIA has stated that it is supportive both of the specific reserves and of the additional reserve that comprise the Estimated Reserve;
  - x. The Second Interim Distribution to the GIA is essentially a transfer from one insolvency administrator to another insolvency administrator for the benefit of the creditors of the German Estate;
  - xi. The German Estate Interim Distribution to the GIA would permit the creditors of the German Estate to receive an interim distribution in a timely manner. Such distribution will allow the creditors of the German Estate to be treated more consistently with the treatment afforded to creditors of the Toronto Branch;
  - xii. On account of the quantum of the Estimated Reserve, the Second Interim Distribution does not prejudice the interests of the creditors of the Toronto Branch; and
  - xiii. A timely distribution of proceeds to the Toronto Branch stakeholders is the most efficient manner of handling the liquidation of the Toronto Branch.
116. The GIA has expressed a strong desire for the Liquidator to eliminate, as soon as practicable, the exchange rate risk between the Canadian dollar and the Euro as it relates to the Second Interim Distribution given that the GIA will have to distribute such funds to Maple Bank creditors in Euros. The Liquidator has sought advice from its financial advisor, RBC, as to the best method to hedge the CAD/Euro

foreign exchange rate associated with the Second Interim Distribution which advice has been provided to the GIA for its consideration. To-date, the GIA has not directed the Liquidator to implement any strategies to mitigate the CAD/Euro foreign exchange rate risk associated with the proposed Second Interim Distribution.

## ***7. LIQUIDATOR'S ACTIVITIES AND FEES***

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117. The Liquidator's activities since the filing of the Eleventh Report have, in addition to overall administration of the liquidation of the Toronto Branch, primarily focused on resolving the unproven Claims as described herein and in the Confidential Supplement to the Twelfth Report.
118. As noted above, the ICC was appointed to assist the Court with the review of the Liquidator and its counsel's fees and disbursements. The ICC previously reviewed the fees and disbursements of the Liquidator and its counsel for the period from the Winding-Up Date to November 30, 2016 (the "**First Liquidator Fee Period**") and commented on those fees and disbursements in its the First ICC Report. As reported in the First ICC Report, the ICC found that the Liquidator's and its counsel's fees and disbursements in respect of the First Liquidator Fee Period were fair and reasonable in the overall context of the Toronto Branch Liquidation, with one small exception due to duplicate time entries associated with one of its counsel's fees (which were credited on a subsequent invoice). The ICC recommended that those accounts be approved by the Court which approval was granted on March 10, 2017.
119. The Liquidator provided its accounts and those of its counsel to the ICC for the period December 1, 2016 to July 31, 2017 (the "**Second Liquidator Fee Period**") for the ICC's review and comments. The ICC issued its second report on fees and disbursements of the Liquidator and its counsel on September 18, 2017 (the "**Second ICC Report**"). The ICC reported in the Second ICC Report that the Liquidator's and its counsel's fees and disbursements in respect of the Second Liquidator Fee Period were fair and reasonable in the overall context of the Toronto Branch Liquidation and recommended that those accounts be approved by the Court. A copy of the Second ICC Report will be filed with the Court in support of the Liquidator's motion for the approval of its fees and disbursements and those of its counsel.

120. The Second ICC Report provides a summary of the Liquidator’s primary activities in the Second Liquidator Fee Period. The affidavit of Mr. Nick Brearton sworn September 19, 2017 (the “**Brearton Affidavit**”), will be filed with the Court in support of the Liquidator’s motion for approval of its fees and disbursements. The Brearton Affidavit also provides a summary of the Liquidator’s activities during the Second Liquidator Fee Period. The affidavits of Mr. Douglas Smith of BLG LLP (the “**Smith Affidavit**”) and Ms. Lilly Wong of Gowlings WLG (the “**Wong Affidavit**”) will also be filed with the Court in support of the Liquidator’s motion for approval of the fees and disbursements of its counsel.

## ***8. LIQUIDATOR'S RECOMMENDATIONS***

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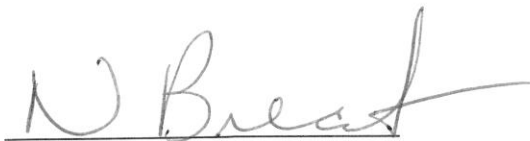
121. The Liquidator submits this Twelfth Report and the Confidential Supplement to the Twelfth Report to the Court in support of the Liquidator's Motion for the relief as set out in the Notice of Motion dated September 19, 2017 and recommends that the Court grant an order(s):
- i. Approving the statement of receipts and disbursements for the Toronto Branch for the period from February 16, 2016 to August 31, 2017;
  - ii. Approving the activities of the Liquidator as described herein, including:
    - a. the Liquidator's activities in respect of the settlement of the Global One Financial Inc. ("**Global One**") Claims;
    - b. the Radius Financial Inc. (and related entities) ("**Radius**") Settlement Agreement and the Liquidator's activities in respect of the settlement of the Radius Settlement Agreement;
    - c. the Liquidator's activities in respect of the settlement of the Non-Executives Employees' claims; and
    - d. the Liquidator's activities in respect of the partial settlement of the Executives Employees' claims;
  - iii. Sealing the Confidential Supplement to the Twelfth Report, including the Non-Executive Employees' Settlement Agreements, the Executives' Partial Settlement Agreements, the Global One Settlement Agreement and the Radius Settlement Agreement until further order of the Court;
  - iv. Approving, *nunc pro tunc*, the September 15 Notice of Distribution attached as **Appendix D**, hereto;
  - v. Authorizing and directing the Liquidator to make the Second Interim Distribution to the German Estate of a portion of the Estimated Surplus in the


amount of \$91.4 million, on, or after September 26, 2017 (the “**Distribution Date**”);

- vi. Approving the Liquidator’s activities since the filing of the Eleventh Report;
- vii. Approving the fees and disbursements of the Liquidator and its counsel as described in the Brearton, Smith and Wong Affidavits and as detailed in the Second ICC Report; and
- viii. Granting such further relief as may be required in the circumstances and which this Court deems as just and equitable.

All of which is respectfully submitted at Toronto, Ontario this 19<sup>th</sup> day of September, 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:   
Nicholas Brearton  
President

  
Jordan Sleeth  
Senior Vice President

**Appendix “A”**

**Winding-Up Order dated February 16, 2016**



Court File No. CV-16 - 11290 - 0002

ONTARIO  
SUPERIOR COURT OF JUSTICE  
*COMMERCIAL LIST*

THE HONOURABLE REGIONAL )  
SENIOR JUSTICE MORAWETZ )  
)

TUESDAY, THE 16<sup>TH</sup>  
DAY OF FEBRUARY, 2016



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

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**WINDING-UP ORDER**

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**THIS APPLICATION** made by the Attorney General of Canada under the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended ("*WURA*"), for the appointment of KPMG Inc. ("KPMG") as liquidator, without security, in respect of the winding up of the business in

Canada (the "Business") of the Respondent, Maple Bank GmbH ("Maple Bank"), and of the assets, as defined in section 618 of the *Bank Act*, S.C. 1991, c. 46, as amended, (the "*Bank Act*") of Maple Bank was heard this day at Toronto, Ontario.

**ON READING** the Notice of Application and Application Record in the within matter, and on hearing submissions of counsel for each of the Attorney General of Canada, and for KPMG as the proposed Liquidator.

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof, including without limitation, the prescribed notice requirements of section 26 of *WURA*.

**WINDING-UP**

2. **THIS COURT DECLARES** that Maple Bank is an authorized foreign bank subject to *WURA*.
3. **THIS COURT ORDERS** that the Business in Canada of Maple Bank be wound up by this Court under the provisions of *WURA*.

**APPOINTMENT**

4. **THIS COURT ORDERS** that KPMG is appointed as liquidator (the "Liquidator") without security, in respect of the winding up of the Business, and of the assets of Maple Bank, as defined in section 618 of the *Bank Act* namely:

- a) any assets of Maple Bank in respect of Maple Bank's Business in Canada, including the assets referred to in subsection 582(1) and section 617 of the Bank Act and assets under its administration; and,
  - b) any other assets in Canada of Maple Bank,
- collectively (the "Assets")
5. **THIS COURT ORDERS** that the giving of security by the Liquidator upon its appointment as liquidator be and is hereby dispensed with.
  6. **THIS COURT ORDERS** that Maple Bank shall cease to carry on its Business in Canada or deal in any way with its Assets, except in so far as is, in the opinion of the Liquidator, required for the beneficial winding-up of its Business in Canada and liquidation of its Assets.

#### **LIQUIDATOR'S POWERS**

7. **THIS COURT ORDERS** that, in addition to the exercise of the Liquidator's duties under sections 33 and 152 of WURA and the performance of its powers under section 35 of WURA, the Liquidator is hereby expressly empowered and authorized to do any of the following where the Liquidator considers it necessary or desirable:
  - a) take possession of and/or exercise control over the Assets or such part thereof as the Liquidator shall determine, and any and all proceeds, receipts and disbursements arising out of or from the Assets;
  - b) manage, operate and carry on the Business in Canada of Maple Bank so far

as it is necessary to the beneficial winding up of Maple Bank's Business in Canada and the liquidation of the Assets, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the Business, or cease to perform or terminate any contracts of Maple Bank in respect of the Assets or Maple Bank's Business;

- c) receive, preserve, and protect the Assets, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Assets to safeguard them, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- d) market any or all of the Assets, including advertising and soliciting offers in respect of the Assets or any part or parts thereof and negotiating such terms and conditions of sale as the Liquidator in its discretion may deem appropriate;
- e) in respect of the Assets or the Business, initiate, prosecute and continue the prosecution of any and all Proceedings and to defend, to the extent not stayed, all Proceedings now pending or hereafter instituted with respect to Maple Bank, in the Liquidator own name as liquidator or in the name or on behalf of Maple Bank, as the case may be. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such Proceeding;
- f) sell, convey, transfer, lease, assign or otherwise realize upon the Assets or any part or parts thereof, by public auction or private contract, and to

transfer the whole thereof to any Person, or sell them in parcels:

- A. without the approval of this Court in respect of any transaction not exceeding \$250,000 provided that the aggregate consideration for all such transactions does not exceed \$1 million; and
  - B. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause.
- 
- g) apply for any approval and vesting order or other orders necessary to convey the Assets or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Assets;
  - h) execute, assign, issue and endorse documents of whatever nature in the name of and on behalf of Maple Bank in respect of the Assets or Maple Bank's Business, and for that purpose use, when necessary, the seal of Maple Bank;
  - i) file any election (tax or otherwise), objection or registration, and any renewals thereof, and file any notices, as may be necessary or desirable in the opinion of the Liquidator in respect of the Assets or Maple Bank's Business;
  - j) draw, accept, make and endorse any bill of exchange or promissory note in the name of and on behalf of Maple Bank in respect of the Assets or Maple Bank's Business in Canada;

- k) mortgage or otherwise encumber the Assets or any part thereof, or give discharges of mortgages and other securities, partial discharges of mortgages and other securities, and pay property taxes and insurance premiums on mortgages and other securities taken in favor of Maple Bank in respect of the Business;
- l) pay such debts of the Maple Bank (whether incurred prior to or after the date of this Order) as may be necessary or desirable to be paid in order to properly preserve and maintain the Assets or to carry on the Business;
- m) surrender possession of any leased premises occupied by the Maple Bank in respect of its Business in Canada and disclaim any leases entered into by Maple Bank in respect of its Business in Canada on not less than 10 calendar days' prior written notice to the lessor affected thereby;
- n) apply for any permits, licenses, approvals or permissions as may be required by any governmental or regulatory authority in respect of the Assets or the Business;
- o) re-direct Maple Bank's mail in respect of the Business;
- p) settle, extend or compromise any indebtedness or contractual or other obligations or liability owing to or by Maple Bank in respect of the Assets or the Business; and
- q) do and execute all such other things as are necessary for or incidental to: (i) the winding-up of the Business or the liquidation of the Assets; and (ii) the

exercise by the Liquidator of its powers hereunder or under any further Order of the Court in the within proceedings or the performance by the Liquidator of any statutory obligations to which it is subject.

**COOPERATION WITH THE GERMAN INSOLVENCY ADMINISTRATOR**

8. **THIS COURT ORDERS** that the Liquidator, in exercise of its powers as enumerated under section 35 of WURA and as set out above:

- (a) shall provide to Dr. Michael C. Frege, as Insolvency Administrator of Maple Bank, as appointed pursuant to the German Insolvency Code (the "German Administrator"), from time to time, such information regarding the Business and Assets of Maple Bank as the German Administrator may reasonably require in order to fulfill his statutory obligations under German law, including, without limitation, information regarding status and location of assets and liabilities, with particulars, including amount, the filing of claims by creditors, valuations and assessments if available, the disposition of Assets and negotiations with counterparties related thereto, the resolution of Liabilities, and reporting for tax and accounting purposes related to the Business and Assets of Maple Bank in Canada;
- (b) shall, within fourteen (14) days of the date hereof, develop in consultation with the German Administrator an Interim Winding-Up Plan with respect to the administration and liquidation of the Business, Assets and liabilities of Maple Bank in Canada during the first sixty (60) days after the date hereof, and shall

obtain the prior approval of the German Administrator thereto, and shall thereafter act in accordance therewith as amended in accordance with the terms hereof;

- (c) shall, within sixty (60) days of the date hereof, develop, in consultation with the German Administrator, a Final Winding-Up Plan with respect to the administration and liquidation of the Business, Assets and liabilities of Maple Bank in Canada and shall obtain the prior approval of the German Administrator thereto, and shall thereafter act in accordance therewith, as amended in accordance with the terms hereof;
- (d) may, after consultation with, and with the prior approval of, the German Administrator, propose changes to the Interim Wind-Up Plan or the Final Wind-up Plan and the Final Wind-Up Plan shall be amended in accordance with any such changes approved by the German Administrator;
- (e) shall consult with, and obtain the prior approval of, the German Administrator in respect of any proposed disposition of Assets or groups of Assets which, individually or collectively, would, or would reasonably be expected to, result in net proceeds in excess of \$10 million; and
- (f) shall consult with, and obtain the approval of, the German Administrator with respect to, any proposed settlement of a claim or liability relating to the Business or Assets of Maple Bank in Canada in excess of \$10 million, any claims process or any distribution to the creditors of Maple Bank in Canada,

provided that, if the German Administrator declines to provide its approval in respect of



any matters contemplated in (b), (c), (d), (e) or (f) above, the Liquidator may, on five (5) days' notice, apply to this Court for such approval, and the approval of this Court (subject to rights of appeal) shall replace any requirement for the approval of the German Administrator.

9. **THIS COURT ORDERS** that: (a) the Liquidator and the German Administrator shall consult and exchange information in respect of the Assets and Business of Maple Bank in Canada and such assets and business of Maple Bank as may be connected thereto, all as may be required for the effective and efficient administration of Maple Bank in Canada and Maple Bank; (b) the German Administrator shall have the right to apply, if it so elects, to be appointed as an Inspector of the estate of Maple Bank in Canada, or, if formed, a member of any committee of creditors, and to exercise the power and rights ordinarily associated with such an appointment; and (c) the Liquidator and the German Administrator (or their respective designees) shall meet at least once in each week, which meeting may be telephonic or in person to exchange information, discuss and coordinate matters related to the administration of the Business, Assets and liabilities of Maple Bank in Canada and such assets and businesses of Maple Bank as relate thereto.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE LIQUIDATOR**

10. **THIS COURT ORDERS** that: (i) Maple Bank; (ii) all of Maple Bank's current and former directors, officers, employees, agents, accountants, actuaries, appointed actuary, legal counsel and shareholders, and all other Persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being

"Persons" and each being a "Person") shall forthwith advise the Liquidator of the existence of any Assets in such Person's possession or control, shall grant immediate and continued access to the Assets to the Liquidator, and shall deliver all such Assets to the Liquidator upon the Liquidator's request.

11. **THIS COURT ORDERS** that all Persons shall forthwith advise the Liquidator of the existence of any books, documents, securities, contracts, orders, corporate, actuarial and accounting records, and any other papers, working papers, records and information of any kind related to the Business, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Book and Records") in that Person's possession or control, and shall provide to the Liquidator or permit the Liquidator to make, retain and take away copies thereof and grant to the Liquidator unfettered access to and use of accounting, actuarial, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 10 or in paragraph 11 of this Order shall require the delivery of Books and Records, or the granting of access to Books and Records, which may not be disclosed or provided to the Liquidator due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.
  
12. **THIS COURT ORDERS** that if any Books and Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Books and Records shall forthwith give unfettered access to the Liquidator for the purpose of allowing the Liquidator to recover and fully copy all of the information

contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Liquidator in its discretion deems expedient, and shall not alter, erase or destroy any Books and Records without the prior written consent of the Liquidator. Further, for the purposes of this paragraph, all Persons shall provide the Liquidator with all such assistance in gaining immediate access to the information in the Books and Records as the Liquidator may in its discretion require, including providing the Liquidator with instructions on the use of any computer or other system and providing the Liquidator with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO INTERFERENCE WITH LIQUIDATOR**

13. **THIS COURT ORDERS** that, subject to subsection 22.1(1.1) of WURA, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favor of or held by Maple Bank in respect of the Assets or the Business, without written consent of the Liquidator or leave of the Court obtained on not less than seven (7) days' notice to the Liquidator.

#### **CONTINUATION OF SERVICES**

14. **THIS COURT ORDERS** that all Persons having oral or written agreements with Maple Bank in respect of the Assets or the Business, or statutory or regulatory mandates for the supply of goods and/or services in respect of the Assets or the Business, including, without limitation, all computer software, hardware, support and data services,

communication services, centralized banking services, payroll services, insurance and reinsurance, transportation services, utility (including the furnishing of oil, gas, heat, electricity, water, telephone service at present telephone numbers used by Maple Bank) or other services to Maple Bank in respect of the Business, are hereby restrained from terminating, accelerating, suspending, modifying or otherwise interfering with such agreements and the supply of such goods and services without the written consent of the Liquidator or leave of this Court, and all such parties shall continue to comply with their obligations under such agreements or otherwise on terms agreed to by the Liquidator in writing; provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Liquidator in accordance with normal payment practices of Maple Bank or such other practices as may be agreed upon by the supplier or service provider and the Liquidator, or as may be ordered by this Court.

**PREMISES**

15. **THIS COURT ORDERS** that all Persons are hereby restrained from disturbing or interfering with the occupation, possession or use by the Liquidator of any premises occupied or leased by Maple Bank in Canada or in respect of the Business as at the date of this Order, except upon further Order of this Court. From and after the date hereof, and for such period of time that the Liquidator occupies any leased premises, the Liquidator shall pay occupation rent to each lessor based upon the regular monthly base rent that was previously paid by the Maple Bank in respect of the premises so occupied or as may hereafter be negotiated by the

Liquidator and the applicable lessor from time to time.

**NO PROCEEDINGS AGAINST THE LIQUIDATOR**

16. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Liquidator except with the written consent of the Liquidator or with leave of this Court having been obtained on at least seven (7) days' notice to the Liquidator.

**NO PROCEEDINGS AGAINST MAPLE BANK OR THE BUSINESS AND THE ASSETS**

17. **THIS COURT ORDERS** that no Proceeding against or in respect of Maple Bank in respect of the Business, or in respect of the Assets shall be commenced or continued except with the written consent of the Liquidator or with leave of this Court having been obtained on at least seven (7) days' notice to the Liquidator, and any and all such Proceedings currently under way are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

18. **THIS COURT ORDERS** that all rights and remedies against Maple Bank in respect of the Business, or against the Liquidator, or affecting the Assets, are hereby stayed and suspended except with the written consent of the Liquidator or leave of this Court obtained on at least seven (7) days' notice to the Liquidator; provided, however, that nothing in this paragraph shall: (i) empower the Liquidator or Maple Bank to carry on any business that Maple Bank is not lawfully entitled to carry on; (ii) exempt the

Liquidator or Maple Bank from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

19. **THIS COURT ORDERS** that, without limiting the foregoing, without the consent of the Liquidator or leave of the Court:

- a) all Claimants (as hereinafter defined) are restrained from exercising any extra judicial remedies against Maple Bank in respect of the Business or the Assets, including the registration or re-registration of any securities owned by Maple Bank, into the name of such persons, firms, corporations or entities or their nominees, the exercise of any voting rights attaching to such securities, the retention of any payments or other distributions made in respect of such securities, the retention of any payments or other distributions made in respect of such securities, any right of distress, repossession, or consolidation of accounts in relation to amounts due or accruing due in respect of or arising from any indebtedness or obligation of Maple Bank in respect of the Business as of the date hereof;
- b) all Persons be and they are hereby restrained from terminating, canceling or otherwise withdrawing any licenses, permits, approvals or consents with respect to or in connection with Maple Bank in respect of the Assets or the Business, as they were on the date hereof;
- c) Any and all Proceedings taken or that may be taken by any person, firm, corporation or entity including without limitation any of the creditors of Maple

Bank, suppliers, contracting parties, depositors, lessors, tenants, co-venturers or partners (herein "Claimants") against or in respect of Maple Bank in respect of the Assets or the Business shall be stayed and suspended;

- d) the right of any Claimant to make demands for payment on or in respect of any guarantee or similar obligation or to make demand or draw down under any orders of credit, bonds or instruments of similar effect, issued by or on behalf of Maple Bank in respect of the Assets or the Business, to take possession of, to foreclose upon or to otherwise deal with any Assets, or to continue any actions or proceedings in respect of the foregoing, is hereby restrained; and
- e) the right of any Claimant to assert, enforce or exercise any right (including, without limitation, any right of dilution, buy-out, divestiture, forced sale, acceleration, termination, suspension, modification or cancellation or right to revoke any qualification or registration), option or remedy available to it including a right, option or remedy arising under or in respect of any agreement in respect of the Assets or the Business is hereby restrained.

### **LIQUIDATOR'S ACCOUNTS**

- 20. **THIS COURT ORDERS** that the Liquidator and counsel to the Liquidator shall be paid their reasonable fees and disbursements, incurred both before and after the making of this Order.
- 21. **THIS COURT ORDERS** that the Liquidator and its legal counsel shall pass its

accounts from time to time, and for this purpose the accounts of the Liquidator and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. **THIS COURT ORDERS** that prior to the passing of its accounts, the Liquidator shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, and such amounts shall constitute advances its remuneration and disbursements, when and as approved by the Court.

#### **CASH MANAGEMENT AND PAYMENTS**

23. **THIS COURT ORDERS** that the Liquidator may deposit all moneys belonging to the Business received by or on behalf of the Liquidator and its agents to and use the bank accounts currently in the name of Maple Bank and may, at its discretion, open accounts in the name of the Liquidator.

#### **EMPLOYEES**

24. **THIS COURT ORDERS** that the employment of each of the employees of the Maple Bank in Canada with respect to the Business is hereby and deemed to be terminated as of the date of this Order. The Liquidator shall be entitled to pay all accrued and unpaid wages and vacation pay of each of such employees, including any remittances relating thereto.
25. **THIS COURT ORDERS** that the Liquidator may retain such employees of Maple Bank in respect of the Business as the Liquidator deems necessary or desirable



to assist the Liquidator in fulfilling the Liquidator's duties on such terms as may be approved by this Court and all reasonable and proper expenses that the Liquidator may incur in so doing shall be costs of liquidation of the Business and Assets. The Liquidator shall not be liable for any employee-related liabilities, including any successor employer liabilities, other than such amounts as the Liquidator may specifically agree in writing to pay.

26. **THIS COURT ORDERS** that the Liquidator may retain, employ or engage such actuaries, accountants, financial advisors, investment dealers, solicitors, attorneys, valuers or other expert or professional persons as the Liquidator deems necessary or desirable to assist the Liquidator in fulfilling the Liquidator's duties, and all reasonable and proper expenses that the Liquidator may incur in so doing shall be costs of liquidation of the Assets of Maple Bank.

#### **PRIVACY MATTERS**

27. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Liquidator shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Assets and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Assets (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Liquidator, or in the alternative destroy all

such information. The purchaser of any Assets shall be entitled to continue to use the personal information provided to it, and related to the Assets purchased, in a manner which is in all material respects identical to the prior use of such information by Maple Bank, and shall return all other personal information to the Liquidator, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

28. **THIS COURT ORDERS** that nothing herein contained shall require the Liquidator to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Assets that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Liquidator from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Liquidator shall not, as a result of this Order or anything done in pursuance of the Liquidator's duties and powers under this Order, be deemed to be in Possession of any of the Assets within the meaning of any Environmental Legislation, unless it is actually in

possession.

**LIMITATION ON THE LIQUIDATOR'S LIABILITY**

29. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Liquidator under *WURA* or as an officer of this Court, the Liquidator shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Liquidator by the *WURA* or any applicable legislation.
30. **THIS COURT ORDERS** that the Liquidator may act on the advice or information obtained from any actuary, accountant, financial advisor, investment dealer, solicitor, attorney, valuer or other expert or professional person, and the Liquidator shall not be responsible for any loss, depreciation or damage occasioned by acting in good faith in reliance thereon.

**CALL FOR CLAIMS**

31. **THIS COURT ORDERS** that the Liquidator shall not be obligated to call for claims or otherwise implement a claims process until a further Order of this Court to this effect is issued.

**SERVICE AND NOTICE**

- f) **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol

(which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'www.kpmg.com/ca/maplebank'.

- g) **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Liquidator is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to Maple Bank's creditors or other interested parties at their respective addresses as last shown on the records of Maple Bank and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

32. **THIS COURT ORDERS AND DIRECTS** that the Liquidator shall publish notice of the Winding-Up Order in respect of the Business and Assets for two (2) consecutive days within five (5) business days of the making of this Order in The Globe and Mail,

National Edition, and shall also send written notice to every depositor, creditor and employee of Maple Bank in respect of the Business within seven (7) business days of making of this Order to the last known mailing address as provided for in the records of Maple Bank.

**RECOGNITION**

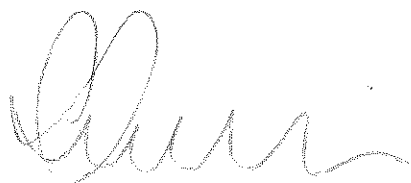
33. **THIS COURT ORDERS** that this Order and any other orders in these proceedings shall have full force and effect in all Provinces and Territories in Canada.
34. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, the Republic of Germany, including the Amtsgericht Frankfurt am Main [Insolvency Court] to give effect to this Order and to assist the Liquidator and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Liquidator in any foreign proceeding, or to assist the Liquidator and their respective agents in carrying out the terms of this Order.
35. **THIS COURT HEREBY REQUESTS** the aid and assistance of the German Administrator to assist the Liquidator and its agents in carrying out the terms of this Order
36. **THIS COURT ORDERS** that the Liquidator be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body,

wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Liquidator is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

37. **THIS COURT ORDERS** that the Attorney General of Canada shall be entitled to the costs of this application, up to and including entry and service of this Order, on a substantial indemnity basis to be paid by the Liquidator from the Business and Assets as costs properly incurred in the winding-up of the Business and Assets.

**ADVICE AND DIRECTIONS**

38. **THIS COURT ORDERS** that Liquidator may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
39. **THIS COURT ORDERS** that interested parties may apply to the Court for advice and directions on at least seven (7) days notice to the Liquidator and to any other party likely to be affected by the Order sought or upon such other notice, if any, as this Court may order.



**C. Irwin  
Registrar**

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

FEB 16 2016



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

Court File No. CV-16-11290-0001

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**WINDING-UP ORDER**

**John J. Lucki**

Department of Justice  
Ontario Regional Office The Exchange Tower  
130 King Street West  
Suite 3400, Box 36  
Toronto, Ontario M5X 1K6

Tel: (416) 973-5402  
Fax: (416) 973-2319  
Law Society No.

Solicitor for the Applicant,  
The Attorney General of Canada

**Appendix "B"**

**Principal Officers Additional Claims Order dated January 27, 2017**



ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE REGIONAL ) THURSDAY, THE 27<sup>th</sup> DAY  
 )  
SENIOR JUSTICE MORAWETZ ) OF JANUARY, 2017

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

**PRINCIPAL OFFICERS ADDITIONAL CLAIMS ORDER**

**THIS MOTION**, made by KPMG Inc. (“KPMG”), in its capacity as the Court-appointed Liquidator (the “**Liquidator**”) pursuant to the *Winding-Up and Restructuring Act*, R.S.C. 1985, c. W-11. as amended (“**WURA**”) of the business in Canada of Maple Bank GmbH and its assets as defined in section 618 of the *Bank Act*, S.C. 1991, C.46, as amended (the “**Bank Act**”) for an order:

- (a) abridging the time for service of the Notice of Motion and the Motion Record, herein, if required, and validating service so that the Motion is properly returnable on the proposed date and dispensing with the requirement for any further service thereof;

- (b) approving the Tenth Report of the Liquidator dated January 25, 2017 (the “**Tenth Report**”) and the activities of the Liquidator set out in the Tenth Report;
- (c) setting February 28, 2017 as the Principal Officers Claims Bar Date (as defined below) for any Claim against any individual who is or has been a Principal Officer (as defined in the Bank Act) of the Toronto Branch (the “**Principal Officer**”) 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. (each, an “**Affiliate**” and collectively the “**Affiliates**”) 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;
- (d) 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, substantially in the form of the notice attached as Schedule “A”, hereto (the “**Principal Officers Claims Bar Notice**”);
- (e) approving the Protocol to Address Reserves Re: Lishman (the “**Protocol**”, substantially in the form of the Protocol attached as Schedule “B” hereto; and
- (f) such further relief as may be required in the circumstances and which this Court deems as just and equitable,

was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Tenth Report and on hearing the submissions of counsel for the Liquidator, counsel for the German Insolvency Administrator on behalf of Maple Bank GmbH (the “**GIA**”) and counsel for Paul Lishman and such other parties as may be in attendance,

1. **THIS COURT ORDERS** that all defined terms used herein, not otherwise defined shall have the meaning attributed to them in the Claims Procedure Order dated June 8, 2016 (the “**Claims Procedure Order**”).
2. **THIS COURT ORDERS**, that the time for service of the Notice of Motion and the Motion Record is validated so that the Motion is properly returnable today and hereby dispenses with further service thereof, including without limitation, any prescribed notice requirements under the WURA.
3. **THIS COURT ORDERS** that the Tenth Report and the activities of the Liquidator set out in the Tenth Report be and are hereby approved;
4. **THIS COURT ORDERS** that the Principal Officers Claims Bar Notice be and is hereby approved.

#### **PRINCIPAL OFFICERS CLAIMS BAR DATE**

5. **THIS COURT ORDERS** that the Principal Officers Claims Bar Notice shall, inter alia, provide notice to all Persons with a Claim against any individual who is or has been a Principal Officer of the Toronto Branch that relate 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 the Affiliates, to the extent that such individual served in such role in his or her capacity as Principal Officer of Toronto Branch, that such Persons shall file a Proof of Claim with the Liquidator by 4:00 p.m. Eastern Time on February 28, 2017 (the “**Principal Officers Claims Bar Date**”).
6. **THIS COURT ORDERS** that, subject to paragraphs 7 and 9, any Person with a Claim, other than a Claim asserted on the basis of fraud, intentional misconduct or illegal actions, against any individual who is or has been a Principal Officer of the Toronto Branch that relate 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 an Affiliate, to the extent that such individual served in such role in his or her capacity as Principal Officer, that does not file a



Proof of Claim with the Liquidator, such that such Proof of Claim is received by the Liquidator on or before the Principal Officers Claims Bar Date, shall be and is hereby forever barred from making or enforcing any Claim against such individual. Any Claim asserted on the basis of fraud, intentional misconduct or illegal actions against a Principal Officer remains unaffected and no Person is barred from making or enforcing any Claim against such individual by this Order.

7. **THIS COURT ORDERS** that the Protocol attached as Schedule "B" hereto is hereby approved and the parties named therein are directed to comply with its terms.

#### **GENERAL**

8. **THIS COURT ORDERS THAT** nothing in this Order or in the Claims Procedure Order shall prejudice the position of either an individual who is or has been a Principal Officer to assert or the position of the GIA, or any other Person to dispute whether such Principal Officer is entitled to be indemnified by Maple Bank GmbH (including Toronto Branch) in respect of any Claim asserted against such Principal Officer.

9. **THIS COURT ORDERS THAT** the GIA shall not be obligated or required to file a Proof of Claim with the Liquidator for Maple Bank GmbH - Toronto Branch in respect of any claims it may assert against any Principal Officer, and the failure of the GIA to file such a Proof of Claim shall not result in the GIA being barred from asserting any Claim against an individual who is or has been a Principal Officer, including, without limitation, whether in acting as an officer or director of an Affiliate, such individual was acting in his or her capacity as Principal Officer.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, the Republic of Germany, including the assistance of the Amtsgericht Frankfurt am Main [Insolvency Court] to give effect to this Order and to assist the Liquidator and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Liquidator, as an officer of

this Court, as may be necessary or desirable to give effect to this Order or to assist the Liquidator and its agents in carrying out the terms of this Order.

  
\_\_\_\_\_

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ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JAN 27 2017

PER / PAR:



Schedule "A"

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**NOTICE TO CREDITORS  
of PRINCIPAL OFFICERS OF MAPLE BANK GmbH, TORONTO BRANCH**

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**RE: NOTICE OF PRINCIPAL OFFICERS CLAIMS BAR DATE IN RESPECT OF CLAIMS ASSERTED AGAINST PRINCIPAL OFFICERS OF MAPLE BANK GmbH, TORONTO BRANCH ("Maple Bank")**

**PLEASE TAKE NOTICE** that this notice is being published pursuant to an Order of the Superior Court of Justice of Ontario [Commercial List] made January 27, 2017 (the "**Claims Bar Order**"). The Claims Bar Order provides that Proofs of Claim must be submitted to the Liquidator **by 4:00p.m. Eastern Time on February 28, 2017** (the "**Principal Officers Claims Bar Date**") for any Claim against the individuals who are or have been Principal Officers of Maple Bank and that relate 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.** (each, an "Affiliate" and collectively the "Affiliates"), to the extent that such individual served in such role in his or her capacity as Principal Officer of Toronto Branch, and that arose prior to the Winding Up Date. Creditors can obtain the Claims Bar Order and a Proof of Claim package from the website of the Liquidator (<http://www.kpmg.com/ca/maplebank>) or by contacting the Liquidator by telephone (416) 777-8415, by fax (416) 777-3364 or by email ([pjreynolds@kpmg.ca](mailto:pjreynolds@kpmg.ca)).

**TAKE NOTE THAT CLAIMS, EXCEPT ANY CLAIMS ASSERTED ON THE BASIS OF FRAUD, INTENTIONAL MISCONDUCT OR ILLEGAL ACTIONS OR AS ASSERTED BY THE GIA OTHERWISE IN RESPECT OF THE PRINCIPAL OFFICERS (AS OUTLINED ABOVE) WHICH ARE NOT RECEIVED BY THE PRINCIPAL OFFICERS CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.**

**Completed Proofs of Claim in respect of Claims against the Principal Officers (as outlined above) must be received by the Liquidator by 4:00 p.m. (Eastern Time) on FEBRUARY 28, 2017. It is your responsibility to ensure that the Liquidator receives your Proof of Claim by the above-noted time and date.**

**DATED** at Toronto this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

KPMG Inc. in its capacity as Court-appointed  
Liquidator of Maple Bank GmbH, (Toronto Branch)  
Bay Adelaide Centre  
333 Bay Street, Suite 4600  
Toronto, ON M5H 2S5, Canada

Attention: Phillip J. Reynolds: [pjreynolds@kpmg.ca](mailto:pjreynolds@kpmg.ca)

Fax: (416) 777-3364  
Phone: (416) 777-8415



## Schedule "B"

### PROTOCOL TO ADDRESS RESERVES RE: LISHMAN

1. The Liquidator has conducted a claims process pursuant to the terms and conditions of a claims procedure order dated June 8, 2016 (the "**Claims Procedure Order**") which included a call for claims against Maple Bank GmbH – Toronto Branch ("**Toronto Branch**") or the Principals (as defined in the Claims Procedure Order) of Toronto Branch. The Claims Procedure Order called for the filing of claims by September 19, 2016. No claims have been filed with the Liquidator with respect to the Principals as of the date hereof. Capitalized terms used in this Protocol that are not defined in it have the meanings given to them in the **Claims Procedure Order**.
2. Paul Lishman ("**Lishman**") filed a claim against Toronto Branch on or before September 19, 2016 (the "**Lishman Claim**"). The Lishman Claim asserts (i) a claim against Toronto Branch for notice and severance pay and (ii) a contingent claim against Toronto Branch for contribution, indemnity, reimbursement, costs and other relief arising out of or on account of any claims made against Lishman due to or connected with his roles as Principal Officer (as such term is used in the *Bank Act*) of the Toronto Branch or, in his capacity as a director and/or officer 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, Maple Partners America Inc. and Maple Financial US Holdings Inc. (each, an "**Affiliate**" and collectively the "**Affiliates**"), known or not known, that arose prior to the Winding-Up Date, all as more particularly set out in the Lishman Claim (the contingent portion of the Lishman Claim is referred to herein as the "**Lishman Contingent Claim**").
3. The Liquidator obtained the approval of the Court to make a distribution on or about December 19, 2016 in favour of creditors of Toronto Branch who then had Proven Claims and has made such distribution.
4. The Liquidator is in the process of reviewing and determining further claims against Toronto Branch filed under the Claims Procedure Order, including the Lishman Claim, with a view to efficiently (i) making further distributions to the creditors of Toronto Branch with



Proven Claims; (ii) making distributions or releases of surplus assets to the German Insolvency Administrator on behalf of the Maple Bank GmbH (“**Maple Bank**”) (the “**GIA**”) and (iii) effecting a release of the Liquidator’s interest in other assets jointly held by the Liquidator (the “**Other Assets**”) in favour of the GIA.

5. To address or quantify any Lishman Contingent Claims, and to facilitate a distribution of the surplus assets and a release of the Other Assets to the GIA, the Liquidator has brought a motion seeking an Additional Claims Order (the “**Additional Claims Order**”), which calls for any claims against the Principal Officers (as defined in the *Bank Act*) of the Toronto Branch and establishes a bar date for the filing of such claims of February 28, 2017 (the “**Principal Officers Claims Bar Date**”). The Additional Claims Order does not provide for a bar in respect of (i) claims asserted against Lishman on the basis of fraud, intentional misconduct or illegal actions or (ii) claims asserted against Lishman by the GIA.

6. Following the Principal Officers Claims Bar Date, the Liquidator will promptly advise Lishman and the GIA of any claims against Lishman filed in accordance with the Additional Claims Order as of the Principal Officers Claims Bar Date (if any, the “**Filed Lishman Claims**”). The Liquidator shall also, from time to time, promptly advise Lishman and the GIA of any claims against Lishman that are filed in accordance with the Additional Claims Order after the Principal Officer Claims Bar Date (if any, the “**Late Filed Lishman Claims**”). Any claim which has been or may be made against Lishman by the GIA shall not constitute, for purposes of this Protocol, either a Filed Lishman Claim or a Late Filed Lishman Claim.

7. Any right of a Principal Officer to be indemnified by Toronto Branch (if and to the extent established) in respect of a claim by the GIA against such Principal Officer would operate, in the case of a right to full indemnification, as a defence to such claim, or, in the case of right to partial indemnification, to reduce dollar for dollar (based on the amount of the partial indemnification) the amount of such claim. A claim against a Principal Officer which is not indemnifiable by Toronto Branch whether on the basis of fraud, intentional misconduct or illegal actions, or for any other reason, would not be subject to such a defence.

8. The Liquidator will, in order to allow further distributions, from time to time, to the creditors and other stakeholders of the Toronto Branch (including to the GIA) from proceeds

then held by the Liquidator, including a release of the Liquidator's interest in the Other Assets, establish, maintain or adjust, from time to time, reserves from proceeds then held by the Liquidator (the "Reserves"). In determining the amount of the Reserves from time to time, the Liquidator will take into account any Lishman Contingent Claim as follows:

- (a) No amount shall be included in the Reserves in respect of any Lishman Contingent Claims, except as provided for under paragraphs 8(c) and 8(e). For greater certainty, no amount shall be included in the Reserves in respect of any Lishman Contingent Claims in relation to a claim against Lishman which has not been filed.
- (b) Notwithstanding any other provision of this Protocol or the Additional Claims Order, no amount (other than the Legal Fees Reserve (as defined below)) shall be included in the Reserves in respect of any Lishman Contingent Claim which has arisen or may arise in relation to a claim which has been or may be made against Lishman by the GIA.
- (c) If any Filed Lishman Claims or Late Filed Lishman Claims are filed and remain undischarged, undetermined, non-rejected and unsettled, the Liquidator shall at that time establish Reserves (to the extent of amounts then available to do so), in a reasonable and appropriate amount, and consistent with its duties and responsibilities (i) in respect of any Lishman Contingent Claim related to Filed Lishman Claims and the Lishman Late Filed Claims, which are quantified, in an amount not in excess of the filed amount of such Claims, including any interest accruing on such amounts at the rate prescribed pursuant to the Winding-Up and Restructuring Act (Canada) to March 17 2018 and (ii) in respect of any Lishman Contingent Claim related to Filed Lishman Claims and the Late Filed Lishman Claims, which are not quantified, an amount determined by the Liquidator acting reasonably. If any such Filed Lishman Claim or Late Filed Lishman Claim is discharged, settled, rejected or determined (and, in the case of a rejection or a determination, all applicable appeal periods have expired) the amount held in the Reserves in respect of any Lishman Contingent Claim related to such Filed Lishman Claim or Late Filed Lishman Claim shall be adjusted to reflect the amount so settled or determined, or remaining outstanding, in respect of such Filed Lishman Claim or Late Filed Lishman Claim, and such adjusted amount shall be held in the Reserves until any Lishman Contingent Claim related to such Filed Lishman Claim or Late Filed Lishman Claim has been finally determined in accordance with 8(d) below. The amount of any reduction in the amount required to be held in the Reserves in accordance with this paragraph 8(c) shall immediately be available for distribution to the creditors with Proven Claims and other stakeholders of the Toronto Branch, including the GIA, subject to the terms of any applicable distribution order.
- (d) Once a Lishman Contingent Claim related to a Filed Lishman Claim or a Late Filed Lishman Claim has been finally discharged, settled, rejected or determined and the amounts, if any, required to be paid in respect of such Lishman



Contingent Claim have been paid by the Liquidator to Lishman, the amount held in the Reserves will no longer need to take account of any such Lishman Contingent Claim. The amount of any reduction in the amount required to be held in the Reserves in accordance with this paragraph 8(d) shall immediately be available for distribution to the creditors with Proven Claims and other stakeholders of the Toronto Branch, including the GIA, subject to the terms of any applicable distribution order.

(e) The Reserves shall include the Legal Fees Reserve (as defined below).

9. The Reserves will include an amount not in excess of \$5 million dollar (the “**Legal Fees Reserve**”), to be available, if Lishman establishes his entitlement to be indemnified for such costs, to fund Lishman’s legal fees in respect of any litigation initiated by the GIA, subject to the following: Any right of a Principal Officer to recover any legal fees from the Legal Fees Reserve (either in the course of a proceeding or at the end of one) and the quantum of such fees would be determined on application to the court, supported by proper invoices, at the time a Principal Officer makes a request to recover such legal fees, and Maple Bank has reserved its right to contest any such recovery of legal fees.

10. Subject to the immediately following sentence, all Reserves established by the Liquidator, including, but not limited to, the Reserves as provided for herein, shall be released on March 31, 2018, except to the extent of filed claims and a reasonable amount on account of administrative costs, and subject to the requirements imposed by any subsequent order of the Court. The Liquidator will continue to hold the Legal Fees Reserve (and will only make payments therefrom in accordance with a court determination as contemplated in Section 9 above) until the earlier of the following: (i) if the GIA has not then asserted any claims against Lishman, the date of receipt by the Liquidator of the GIA’s written confirmation that it does not intend to assert any claims against Lishman; (ii) if the GIA has asserted claims against Lishman, the later of the date of final determination of such claims and the date of receipt by the Liquidator of the GIA’s written confirmation that it does not intend to assert any further claims against Lishman; and (iii) provided that the GIA has not assigned its actual or potential claims against Lishman, immediately prior to the termination of Maple Bank’s German insolvency proceeding.

11. Lishman will not file any claim against Toronto Branch in addition to the claims already asserted in the Lishman Claim.

12. Nothing in the Additional Claims Order or in this Protocol shall prejudice or affect the rights or position of any Person with respect to the existence, nature and extent of any Lishman Contingent Claim or any other right of Lishman to recover any amount from the Toronto Branch (whether by way of indemnification, contribution or otherwise) in respect of any claim now or at any time asserted against Lishman, including in respect of any Filed Lishman Claims or Late Filed Lishman Claims. Each of the GIA and Lishman have reserved their rights with respect to any claim which may be asserted by the GIA against Lishman.

13. Prior to the conclusion of these liquidation proceedings, the Liquidator will work with Lishman and the GIA to establish a document retention protocol to ensure the maintenance of all records of the Toronto Branch that may be relevant if any claim is asserted against Lishman by the GIA or as Filed Lishman Claims or Late Filed Lishman Claims.

14. Promptly following the Principal Officer Claims Bar Date, the Liquidator shall apply to the Court for a distribution order distributing all of the remaining assets after the establishment of the Reserves as provided for herein and, to the extent required to implement any such distribution order, the Liquidator shall do all acts reasonably required to have the Other Assets transferred to Maple Bank.

15. Upon the occurrence of the Principal Officer Claims Bar Date, and provided the Reserves contemplated herein are established, any objection against a distribution to the GIA, filed by a Principal Officer, is deemed to be withdrawn and the Principal Officer shall withdraw any such objection and shall not file any objection in the future.

16. The foregoing shall bind any successor or assignee of the Liquidator, Lishman and the GIA.

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

**ONTARIO**

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

PROCEEDING COMMENCED AT TORONTO

**PRINCIPAL OFFICERS ADDITIONAL  
CLAIMS ORDER**

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business in Canada of Maple Bank GmbH and its assets

**Appendix “C”**

**Eleventh Report of the Liquidator dated March 10, 2017 (excluding appendices)**

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

ELEVENTH 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 ELEVENTH REPORT***

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## **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 (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. On February 16, 2016 (the “**Winding-Up Date**”), Regional Senior Justice Morawetz of the Ontario Superior Court of Justice [Commercial List] (the “**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 (the “**First Report**”), 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 (the “**Second Report**”), 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 (the “**Third Report**”), 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 (“**myNext**”) 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 federal 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 (the “**Eighth Report**”) to the Court which provided information regarding the proposed settlement between the Liquidator and the Bank of Montreal (“**BMO**”) of the liabilities and obligations of each of BMO and Maple Bank arising from a repurchase transaction and the early termination of certain foreign exchange transactions, along with a proposed sale of certain NHA MBS by the Liquidator to BMO.
13. On November 16, 2016, the Liquidator filed its Ninth Report (the “**Ninth Report**”) to the Court (a copy of which is attached hereto as **Appendix B**) 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 Procedure;
  - iii. Information regarding the Liquidator’s 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 Euro – Canadian dollar foreign exchange risk (the “**FX Risk**”) related to the amounts that would be distributed to the Association of German Banks’ Deposit Protection Fund and the Compensation Scheme of German Private Banks (collectively, 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 its supplemental report to the Ninth Report (the “**First Supplemental 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 notice to creditors of the Interim Distribution;
  - iii. A Claims bar notice and Claims bar date in respect of Claims that may be asserted against the Principal Officers of the Toronto Branch ( the "**Principal Officers Claims Bar Notice**" and "**Principal Officers Claims Bar Date**", respectively);
  - 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 its second supplemental report to the Ninth Report (the "**Second Supplemental Report**") which provided an update on i) the Liquidator's activities since the filing of the First Supplemental Report, ii) 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.
16. On January 25, 2017, the Liquidator filed the Tenth Report (the "**Tenth Report**") (a copy of which is attached hereto without appendices as **Appendix C**) which:

- i. Provided an update to the Court on the status of the protocol developed in conjunction with the GIA and the former Principal Officer of the Toronto Branch to implement a procedure to identify any Claims which may be asserted against the Principal Officers of the Toronto Branch arising out of the positions that the Principal Officers may have held with a number of Maple Bank affiliated companies (the “**Principal Officers Claims Procedure**”) in order to ultimately effect a distribution of the estimated surplus (the “**Estimated Surplus**”) in the Toronto Branch to the German Estate;
  - ii. Provided an update to the Court on the status of the Proofs of Claim (as defined in the Claims Procedure Order dated June 8, 2016) filed by the former employees of the Toronto Branch (the “**Employee Claims**”) and advised the Court of the Liquidator’s analysis of the Employee Claims and the principles on which the Employee Claims were assessed;
  - iii. Advised the Court of the notices sent by the GIA to the former employees of Toronto Branch in accordance with section 87 of the WURA of the GIA’s objection to certain components of the Employee Claims (the “**GIA Employee Claim Objections**”) and sought direction from the Court to determine the resolution of the now disputed Employee Claims; and
  - iv. Updated the Court on the activities of the Liquidator since the filing of the Ninth Report and the First Supplemental Report and the Second Supplemental Report.
17. On January 27, 2017, the Court granted two orders:
  - i. The Principal Officers Additional Claims Order dated January 27, 2017 (the “**Principal Officers Additional Claims Order**”), which:
    - a. Set February 28, 2017, as the claims bar date (the “**Principal Officers Claims Bar Date**”) for the filing of any claims against the former Principal Officers of the Toronto Branch; and

- b. Approved the notice to creditors of the Toronto Branch of the Principal Officers Claims Bar Date that was published in the National Edition of *The Globe and Mail* and the International Edition of *The Wall Street Journal* (the “**Notice of Principal Officers Claims Bar Date**”) on January 31, 2017.

Copies of the Principal Officers Additional Claims Order and the Notice of Principal Officers Claims Bar Date are attached hereto as **Appendices D** and **E**, respectively.

- ii. The Representative Counsel Order dated January 27, 2017 (the “**Representative Counsel Order**”), which:
  - a. Established a steering committee (the “**Steering Committee**”) to represent the non-executive employees of the Toronto Branch in respect of their claims in the winding-up proceedings of the Toronto Branch; and
  - b. Appointed Paliare Roland LLP as counsel (“**Representative Counsel**”) to advise and represent the Steering Committee in the winding-up proceedings of the Toronto Branch.

A copy of the Representative Counsel Order is attached hereto as **Appendix F**.

## **PURPOSE OF THE ELEVENTH REPORT**

- 18. The purpose of this Eleventh Report (the “**Eleventh Report**”) is to provide information to the Court in respect of:
  - i. The Liquidator’s statement of receipts and disbursements for the period February 16, 2016 to February 28, 2017, and estimated funds available for distribution to proven creditors;
  - ii. An update on the status of the Claims Procedure implemented pursuant to the Claims Procedure Order Dated June 8, 2016;



- iii. An update on the Principal Officers Additional Claims Procedure that was approved by the Court pursuant to the Principal Officers Additional Claims Order;
- iv. The Liquidator's Estimated Surplus available to satisfy the Claims of Toronto Branch's stakeholders as well as a request for i) approval of an interim distribution to the German Estate of a portion of the Estimated Surplus (the "**German Estate Interim Distribution**"), and ii) approval, *nunc pro tunc*, of the notice of distribution to creditors of the Toronto Branch that was published on March 3, 2017, in the National Edition of *The Globe and Mail* and the International Edition of *The Wall Street Journal* (the "**March 3 Notice of Distribution**"), a copy of which is attached hereto as **Appendix G**; and
- v. An update on the Liquidator's activities since the filing of the Tenth Report and the Liquidator's request for approval of same.

#### **TERMS OF REFERENCE AND DISCLAIMER**

- 19. 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.
- 20. 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.

21. Capitalized terms not defined in the Eleventh Report are as defined in either the Winding-Up Order and/or the First Report through the Tenth Report. Unless otherwise indicated, all references to monetary amounts herein are denominated in Canadian dollars (“**CAD**”).
22. 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. RECEIPTS, DISBURSEMENTS AND REMAINING ESTIMATED REALIZATIONS***

### **Summary of Receipts and Disbursements**

23. The Liquidator previously reported the receipts and disbursements of the Toronto Branch for the period February 16, 2016 to October 31, 2016, in the Ninth Report. The table below summarizes the receipts and disbursements for the Toronto Branch for the period February 16, 2016 to February 28, 2017.

<b>In the matter of the winding up of Maple Bank GmbH (Toronto Branch) Statement of Receipts and Disbursements For the period February 16, 2016 to February 28, 2017 Amounts in CAD millions</b>	
<b>Receipts</b>	<b>CAD Total<sup>(1)</sup></b>
Cash and Securities from Toronto Branch accounts	490.5
Structured Loan Portfolio	354.6
MBS Business Asset Sales	176.5
Related Party Intercompany Account Settlements	85.1
Settlement of Brokerage Accounts	60.7
Derivative Instruments	60.6
Miscellaneous/Other	3.5
<b>Total Receipts</b>	<b>1,231.5</b>
<b>Disbursements</b>	
Payroll	2.6
General and Administrative	1.5
Occupancy	0.4
Transfer to CMHC	0.3
<b>Total Operating Disbursements</b>	<b>4.8</b>
Distribution to Proven Creditors, with Interest	716.0
Professional Fees	7.6
<b>Net Receipts in excess of Disbursements</b>	<b>503.2</b>
<b>Opening Cash Balance</b>	<b>317.0</b>
<b>Closing Cash and Cash Equivalents Balance</b>	<b>820.1</b>
<b>Total Cash<sup>(2)</sup></b>	<b>171.8</b>
Liquid Securities held with RBC	648.2
<b>Total Cash and Cash Equivalents</b>	<b>820.1</b>

<sup>(1)</sup> Assets held in USD and EUR are converted to CAD at the February 28, 2017 spot rates.

<sup>(2)</sup> Consists of cash held in a number of the Liquidator's operating accounts including approximately US\$68.9 million in a USD accounts that is subject to the protocol agreed to between the Liquidator and the GIA for administering the Toronto Branch's Assets which reside in the U.S. and approximately EUR 49.0 million in a EUR denominated account at CIBC.

## **Analysis of Receipts**

24. Receipts for the period totalled approximately \$1.231 billion and are described below.

### Cash and Securities from Toronto Branch's accounts

25. Cash and securities of approximately \$490.5 million relate primarily to Toronto Branch's cash deposits and the liquidation and maturation of \$469.3 million of the Toronto Branch's capital equivalency deposit securities. These funds are invested in the Toronto Branch's accounts at RBC Dominion Securities Inc. ("**RBC DS**"). In addition, the Liquidator realized on approximately \$21.2 million of additional securities held by the Toronto Branch as at the date of the Winding-Up Order.

### Structured Loan Portfolio Realizations

26. Receipts of approximately \$354.6 million primarily relate to the sale of the Receivable Backed Notes as part of the IIP for \$225.1 million, proceeds received from the Lakeview Loan facility of \$40.0 million, collection of the Global One Financial Inc. ("**Global One**") loan facility for proceeds of \$80.1 million (including interest) and collections of other structured loan facility obligations.

### MBS Business Asset Sale

27. Receipts from the MBS Business primarily relate to the sale of the Toronto Branch Assets as part of the Marketing Process including: (i) proceeds received from an un-pooled mortgage portfolio transaction which was completed in June 2016; (ii) the sale of the NHA MBS portfolio, which formed part of the Equitable Transaction; and (iii) payments made to the originators and servicers as it relates to various reserves and holdbacks.

### Related Party Intercompany Account Settlements

28. Receipts from related party settlements of \$85.1 million, primarily relate to the settlement of the intercompany accounts with Maple Securities Canada Limited and the partial unwinding of a repurchase transaction with Maple Securities U.S.A. Inc. ("**MSUSA**") in February 2016.

### Settlement of Brokerage Account

29. Prior to the Winding-Up Order, the Toronto Branch had three accounts (one each for: (i) CAD; (ii) U.S. dollars; and (iii) Euros), each with Interactive Brokers. In order to settle and close the accounts the Liquidator was required to fund \$8.1 million into the CAD account which was overdrawn at the time. Funding this overdraft position enabled the Liquidator to retain Euro 49.0 million (equivalent to \$68.9 million) which provided some mitigation to the German Estate of its foreign currency exposure. The Euros were subsequently transferred to a Euro denominated account at CIBC. The effect of these transactions was a net \$60.7 million receipt for the Toronto Branch.

### Derivative Instruments

30. Represents receipts of \$45.6 million from the unwinding of various financial derivative instruments. As at the date of the Winding-Up Order, the Toronto Branch had numerous financial derivative instruments with seven counterparties, which were subsequently unwound.
31. The Liquidator also entered into two agreements with BMO on October 31, 2016 as follows:
- i. A settlement of the liabilities and obligations of each of BMO and Toronto Branch arising from i) a repurchase transaction with respect to National Housing Association MBS with a repurchase date of February 16, 2016 (which transaction did not settle and the Liquidator subsequently determined BMO owned the repurchased MBS), and ii) the early termination of several hundred financial derivative transactions that Toronto Branch entered into with BMO; and
  - ii. The proposed sale by the Liquidator of certain Toronto Branch owned MBS having an original principal balance of approximately \$11 million.
32. The Court subsequently approved these agreements on November 15, 2016, and these transactions closed on December 2, 2016. Additional information regarding the transactions is contained in the Eighth Report.

### Other and Miscellaneous

33. Relates to interest received on cash and securities balances totalling approximately \$3.5 million.

### **Analysis of Disbursements**

34. Operating disbursements for the period total approximately \$4.8 million and consist of disbursements on account of payroll, office rent, and general and administrative expenses. In addition, a one-time transfer of approximately \$0.3 million was made to CMHC to return NHA MBS mortgage payments received by the Toronto Branch in error while CMHC was in control of the Toronto Branch MBS business.
35. On or about December 19, 2016 and in accordance with the order of the Court dated November 25, 2016 authorizing the Interim Distribution, the Liquidator distributed \$716.0 million, inclusive of statutory interest, to 29 creditors with proven claims. The majority of this distribution was made to the GDPF in the amount of \$715.2 million on account of the 23 Proofs of Claim filed in respect of deposits made by German depositors. The balance was paid to five third party creditors and one related party.
36. Professional fees paid during the period of \$7.6 million, consist primarily of professional fees of the Liquidator, its Canadian independent legal counsel (Gowlings BLG) and U.S. and German independent counsel (Willkie Farr LLP). Professional fees paid as at February 28, 2017 relate to fees and expenses incurred through to September 30, 2016. The fees of the Liquidator and its counsel remain subject to review by the Independent Cost Counsel (i.e. Mr. Jonathan Wigley of Gardiner Roberts LLP) and approval by the Court. The Liquidator anticipates receiving the first report of Independent Cost Counsel in the near term and depending on the timing of the receipt of that report may file a supplemental report in advance of the March 10, 2017, hearing to seek approval of the Liquidator and its counsel's fees and disbursements to November 30, 2016.

37. As at February 28, 2017, the Toronto Branch held approximately \$820.1 million of cash and cash equivalents which is comprised of approximately \$171.9 million in various cash accounts and \$648.2 million in liquid securities in the Toronto Branch's RBC DS accounts as summarized in the table below.

**In the matter of the winding up of Maple Bank GmbH (Toronto Branch)  
Summary of Assets available for distribution to stakeholders  
As at February 28, 2017  
Amounts in CAD millions**

Cash <sup>(1)</sup>	\$ 80.5
Net U.S. Asset Realizations <sup>(2)</sup>	91.4
Liquid Securities <sup>(3)</sup>	648.2
<b>Total Assets available for distribution</b>	<b>\$ 820.1</b>

**Notes:**

<sup>(1)</sup> Represents cash held at Toronto Branch accounts and includes Euro 49 million (CAD\$68.9 million) held in a Euro denominated account at CIBC.

<sup>(2)</sup> Consists of approximately US\$69.0 million in a USD Escrow account that is subject to a protocol agreed to between the Liquidator and the GIA for administering the Toronto Branch's Assets which reside in the U.S.

<sup>(3)</sup> Consists of liquid securities held at RBC DS with various rates of return and maturity dates.

**Remaining Estimated Realizations**

38. At the date of the Eleventh Report, the realization process for all of the assets of the Toronto Branch is almost entirely complete. The Toronto Branch assets that remain to be realized are limited to the collection of a loan payable by Pacific Mortgage Group Inc. ("PMGI"), an assignee of Radius Financial Inc. ("Radius") to Toronto Branch, in the amount of \$7,335,701 (consisting of outstanding principal of \$7,126,931 and unpaid interest of \$208,770) (the "PMGI Loan"). The PMGI Loan was a warehouse facility used to finance PMGI's initial funding of mortgages which would in turn be sold to Toronto Branch.

### 3. CLAIMS PROCEDURE UPDATE

39. The table below summarizes the Proofs of Claim filed in accordance with the Claims Procedure and the status of the Claims as at February 28, 2017, at amounts as filed by the claimants.

Maple Bank GmbH, Toronto Branch								
Filed Proofs of Claims <sup>(1)</sup>								
As at February 28, 2017								
Creditor	Claim						Unresolved Claims	
	#	Value	Admitted	Disallowed	Paid <sup>(2)</sup>	#	Value	
GIA	1	\$ 791.3	\$ -	\$ 791.3	\$ -	-	\$ -	
GDPF	23	686.1	686.1	-	686.1	-	-	
Vendors and Canada Revenue Agency	8	12.2	0.3	-	0.3	3	11.9	
Employees	19	20.9	-	-	-	19	20.9	
Non-vendors (contract counter parties, other)	6	76.1	-	26.4	-	2	49.6	
Related Party	1	0.4	0.4	-	0.4	-	-	
<b>Total Claims</b>	<b>58</b>	<b>\$ 1,587.0</b>	<b>\$ 686.8</b>	<b>\$ 817.8</b>	<b>\$ 686.8</b>	<b>24</b>	<b>\$ 82.4</b>	

**Notes:**

<sup>(1)</sup> Amounts are in millions of Canadian dollars.

<sup>(2)</sup> Excludes payment of statutory interest in accordance with the WURA.

40. As noted above, 29 Claims, including those of the GDPF, with a total value of approximately \$686.8 million were paid on or about December 19, 2016. The Liquidator disallowed four Claims filed by counter parties to MBS business contracts as these contracts were assumed in accordance with the Equitable Transaction.

41. As described in the Ninth Report, the Liquidator reached an agreement with the GIA pursuant to which the Claim filed by the GIA (the “GIA Claim”), to the extent that it is valid, shall be permanently reduced to the extent of any distribution made to the GIA in respect of the GIA Claim. The GIA has further agreed that such corresponding portion of the GIA Claim shall be extinguished and released by such distribution. In addition, the remaining portion of the GIA Claim, to the extent that it is valid, after taking into account any distributions, shall be capped at an amount (which amount may from time to time increase or decrease) that results in the Toronto Branch having assets in excess of its liabilities. Accordingly, Creditors with existing proven Claims will receive 100% of their Claim amounts, plus interest to the date of any distributions to those Creditors. This agreement is



without prejudice to the GIA’s right to receive for the German Estate the assets of the Toronto Branch that remain after payment of all proven Claims.

42. There remain 24 unproven Claims (the “**Unproven Claims**”) with an aggregate value of \$82.4 million that fall into five categories as described below.

<b>Maple Bank GmbH, Toronto Branch Unproven Claims Listing As at February 28, 2017</b>			
<b>Creditor Type</b>	<b># of Claims Filed</b>	<b>Total value of Claims Filed</b>	
Canada Revenue Agency	2	\$	11,873,055
Vendor Claims	1		7,221
Employee Claims	19		20,891,465
Global One	1		17,349,048
Radius	1		32,261,482
<b>Total Unproven Claims</b>	<b>24</b>	<b>\$</b>	<b>82,382,271</b>

Canada Revenue Agency

43. The Canada Revenue Agency (“**CRA**”) filed two Claims in respect of i) unremitted HST (\$198,929) and ii) unremitted corporate income taxes in respect of the fiscal years ended September 30, 2015, 2014, 2013 and 2010 totalling \$11,674,126. The corporate income tax liability results from re-assessments issued by CRA where CRA denied various deductions claimed by Toronto Branch. The re-assessments were appealed by Toronto Branch prior to the Wind-Up Date. The Liquidator is working with CRA to expedite the review of Toronto Branch’s appeals of the re-assessed tax returns.
44. The Toronto Branch filed HST and corporate tax returns in respect of the period October 1, 2015 to February 15, 2016, which the CRA is reviewing. The Liquidator arranged for the preparation of the corporate tax return for the period February 16, 2016 to November 30, 2016 (the “**2016 Tax Return**”), which return will be filed in the near term. The Liquidator understands that the 2016 Tax Return will claim significant losses that can be applied against prior taxes paid and/or owing and that the ultimate liability payable to CRA on account of corporate income tax is expected be less than the amount claimed by CRA in its Proof of Claim.

### Vendor Claims

45. On or about December 19, 2016, the Liquidator issued payment to all creditors with proven Claims, including five third party vendors. On January 18, 2017, Thomson Reuters Canada Ltd. filed a Claim in the amount of \$7,221.32 in respect of unpaid invoices issued to Toronto Branch prior to the Wind-Up Date. The Liquidator is reviewing this Claim and will admit or disallow it in due course.

### Employee Claims

46. The Employee Claims were discussed in detail in the Tenth Report. The Employee Claims consist of Claims by former Toronto Branch employees for amounts due to them on account of the termination of their employment pursuant to the Winding-Up Order (e.g. notice period Claims for termination and severance pay, benefits, unpaid bonuses, deferred compensation and trailer fees). The Employee Claims were filed by five Executives and 14 Non-Executive Employees.
47. On December 28, 2016, the GIA issued the GIA Employee Claim Objections pursuant to section 87 of the WURA directly to each former employee.
48. On January 27, 2017, the Court issued an order appointing Representative Counsel to represent the Non-Executive Employees in respect of their Claims and the GIA Employee Claim Objections. The Liquidator met with Representative Counsel on January 31, 2017, to review the Claims filed by the Non-Executive Employees and the Liquidator's initial assessment of those Claims. Subsequently, Representative Counsel suggested several amendments to the Liquidator's assessment of the Non-Executive Employee Claims, which amendments were considered by the Liquidator.
49. The Liquidator also met with the GIA and its counsel to determine if a negotiated resolution to the GIA Employee Claim Objections could be reached without the assistance of the Court.
50. On February 28, 2017, the Liquidator and its counsel met with Representative Counsel to present revised assessments of the Non-Executive Employee Claims for consideration by these creditors. The revised assessments are based on

Canadian employment law (both statutory and common law awards) and represent negotiated settlements of the Non-Executive Employee Claims. Representative Counsel and the Non-Executive Employees are considering the revised assessments and if acceptable, the Liquidator will enter into minutes of settlement with these creditors and seek approval of their Claims from the Court. If a settlement is reached prior to the March 10, 2017, hearing date the Liquidator will file a supplemental report in support of an Order approving the Non-Executive Employee Claims settlement.

51. The five Executive employees each have their own respective counsel. To date, the Liquidator has been unable to reach a commercially reasonable settlement with the Executives in respect of their Claims. In addition, some of the disputed Executive Claim amounts are also the subject of the GIA Employee Claim Objections. As noted in the Tenth Report, the Liquidator is of the view that it is appropriate for the Executive Claims to be adjudicated by the Court if the Liquidator is unable to resolve those claims through negotiations with the Executives.

#### Global One Claim

52. In accordance with the Claims Procedure, Global One and Global One Funding VII, LLC (collectively, “**Global One**”) submitted a Proof of Claim against the Toronto Branch for approximately US\$12.5 million (\$17.3 million) (the “**Global One Claim**”).
53. Prior to the date of the Winding-Up Order, the Toronto Branch was one of five lenders that Global One used to finance life insurance premiums that were ultimately secured by the cash surrender value of the applicable policies. As at the date of the Winding-Up Order, the Toronto Branch had advanced Global One approximately US\$58 million of a US\$75 million credit facility.
54. The Liquidator engaged a consultant with extensive knowledge and experience with respect to the financing of life insurance premiums and specifically the Global One credit facility (the “**Global One Consultant**”).

55. On December 2, 2016 the Liquidator formally requested additional information from Global One to assist the Liquidator in reviewing and understanding the Global One Claim. Global One provided the Liquidator with additional information that addressed certain, but not all of the Liquidator's inquiries on January 11, 2017.
56. After review of the additional information with the Global One Consultant, the Liquidator and Global One, including their respective counsel, met in Toronto on February 8, 2017, to discuss the Global One Claim, the supporting information provided and additional questions of the Liquidator in respect of the Global One Claim.
57. On February 14, 2017, the Liquidator provided Global One with a further list of queries and a request for additional information based primarily on the discussions held on February 8, 2017.
58. As at the date of this report, the Liquidator has not received any of the additional information or responses to its queries formally requested on February 14, 2017. Counsel to Global One has advised that certain but not all of the information requested will be provided in the near term.
59. Upon receiving the additional information, the Liquidator will make a final determination on the Global One Claim and advise the Court in due course.

#### Radius Claim

60. Radius is an originator and servicer of insured residential mortgages that were, in turn sold to the Toronto Branch. Radius and the Toronto Branch had a business relationship since May 2011. Radius is also the beneficiary of myNext, an affiliated special purpose vehicle used by Radius and created for the purpose of warehousing its mortgages in advance of their sale on a whole loan basis for the duration of the mortgage term. Radius and myNext conducted significant volumes of business with Toronto Branch between May 2011 and the Wind-Up Date.
61. Radius and myNext filed a Proof of Claim with the Liquidator on November 3, 2016, and filed an amended and restated Claim with the Liquidator on December

7, 2016 (collectively, the “**Amended Radius Claim**”) against the Toronto Branch in the amount of \$32,261,482 on account of warehouse related losses, pipeline related losses, and renewal related losses, legal costs and a damages Claim. The value of the Amended Radius Claim has previously been reported as \$36,261,482 as counsel to Radius had advised that additional contingent amounts of up to \$4 million may be due to Radius. Counsel to Radius has since confirmed that the Amended Radius Claim is limited to the total amounts as filed. Radius is also a debtor of Toronto Branch in the amount of approximately \$7,335,701 as described above.

62. The Liquidator has reviewed the Amended Radius Claim as filed in detail, sought additional supporting documentation from Radius and met with Radius on several occasions to understand and further assess the Amended Radius Claim.
63. On February 23, 2017, the Liquidator wrote to counsel for Radius to advise that the Liquidator had made a determination with respect to the merits of the Amended Radius Claim and provided Radius with a summary of the proposed partial allowance by the Liquidator of the Amended Radius Claim. In the summary, the Liquidator explained that it intended to disallow the Amended Radius Claim in its entirety, except for a claim arising from damages suffered by Radius in the amount of \$731,112.00 as a result of Radius not having access to ongoing financing under the Warehouse Line once the Moratorium was issued by BaFin.
64. On February 27, 2017, counsel to Radius responded to the Liquidator’s letter of February 23, 2017, and, among other things, advised the Liquidator that Radius was reserving its rights to further amend its Amended Proof of Claim to include a direct claim against the officers and directors of the Toronto Branch who may have contributed to the alleged losses or damages suffered by Radius. However, this would not increase amount of the Amended Radius Claim against the Toronto Branch.
65. On March 2, 2017, the Liquidator issued a Notice of Disallowance to Radius disallowing all but \$731,112 of its Claim as filed. The admitted portion of the Radius Claim is in respect of its liquidated Interim Period Claim (i.e. Claims

against Maple Bank arising from the termination or repudiation of contracts or leases after the Winding-Up Date to June 8, 2016) related to warehouse, pipeline and renewal related losses that were incurred over a five month period from the Wind-Up Date to July 16, 2016, which period corresponds with the contractual notice period that Toronto Branch was obligated to provide to Radius under the warehouse facility. The unliquidated damages portion of the Radius Claim was denied in full. The Liquidator anticipates that Radius will seek to litigate its Claim.

#### ***4. UPDATE ON PRINCIPAL OFFICERS CLAIMS PROCEDURE***

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66. In accordance with the Principal Officers Additional Claims Order, the Liquidator implemented the Principal Officers Claims Procedure on January 27, 2017. The Liquidator posted the notice to creditors of the Principal Officers Claims Bar Date on January 31, 2017 in the National Edition of *The Globe and Mail* and the International Edition of *The Wall Street Journal*. This notice was also posted on the Liquidator's website.
67. On March 1, 2017, the Liquidator received a letter from a resident of Ohio, USA, which included US\$3 and a copy of the Notice to Creditor of the Principal Officers Claims Bar Date that was published in *The Wall Street Journal*. The letter does not appear to be a Claim, and in any event, was received after the Principal Officer Claims Bar Date deadline. The Liquidator does not consider this letter to be a valid Claim against the Principal Officers.
68. Other than the letter described above, no Claims against the Principal Officers were filed by the Principal Officers Claims Bar Date deadline (i.e. 4:00 p.m. Eastern Time on February 28, 2017). Accordingly, and pursuant to the Principal Officers Additional Claims Order, any persons with such Claims are forever barred from making or enforcing any Claim against any Principal Officers of the Toronto Branch (aside from asserting any Claims based on fraud, intentional misconduct or illegal actions, which Claims are unaffected by the Principal Officers Additional Claims Order and Bar Date).

## ***5. ESTIMATED SURPLUS AND PROPOSED DISTRIBUTION***

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69. As described above, the Toronto Branch now has approximately \$820.1 million available to satisfy outstanding Claims. Twenty-four Unproven Claims remain outstanding with an aggregate value of approximately \$82.4 million.
70. As discussed in the Ninth Report, in determining the Estimated Surplus that may be available for distribution to the German Estate, the Liquidator developed, in consultation with the GIA, an appropriate reserve (the “**Estimated Reserve**”) to provide for:
- i. The Unproven Claims;
  - ii. Possible future Claims (“**Future Potential Claims**”);
  - iii. Interest on Unproven Claims and Future Potential Claims at 5% per annum up to and including March 31, 2018, a period where the Liquidator estimates it will have resolved all Claims; and
  - iv. Estimated costs to administer the Toronto Branch Liquidation through to March 31, 2018.
71. The table below summarizes the Estimated Reserve.



**In the matter of the winding up of Maple Bank GmbH (Toronto Branch)**  
**Summary of Estimated Reserve**  
**As at February 28, 2017**  
**Amounts in CAD millions**

Unproven Claims <sup>(1)</sup>	\$	82.4
Interest on Unproven Claims <sup>(2)</sup>		8.2
Future Potential Claims <sup>(3)</sup>		50.0
Interest on Future Potential Claims <sup>(2)</sup>		5.0
Toronto Branch Administration Costs <sup>(4)</sup>		13.8
<b>Total Estimated Reserve</b>	<b>\$</b>	<b>159.4</b>

**Notes:**

- <sup>(1)</sup> Represents unproven third party Proofs of Claim as filed, as at February 28, 2017, at amounts as filed by the claimants.
- <sup>(2)</sup> Includes interest at 5% p.a. pursuant to the WURA from the Liquidation Date to March 31, 2018, a conservatively assumed date upon which all Unproven Claims and Future Potential Claims are resolved and a final distribution is made.
- <sup>(3)</sup> Reserve to provide for any Claims not yet identified or filed with the Liquidator.
- <sup>(4)</sup> Represents estimated professional fees for the Liquidator and its counsel to complete the administration of the Toronto Branch Liquidation through to an estimated outside date of March 31, 2018, fees for Representative Counsel and counsel to the Executives and includes estimated costs to litigate any unproven Claims.

72. The Estimated Reserve is designed to protect any further claimants of the Toronto Branch while at the same time allowing for i) a timely distribution to claimants as Claims are proven, and ii) the German Estate Interim Distribution
73. The table below summarizes i) the net Assets available for distribution, ii) the Estimated Reserve and shows the Estimated Surplus available for the German Estate Interim Distribution of approximately \$660.6 million as at February 28, 2017.

**In the matter of the winding up of Maple Bank GmbH (Toronto Branch)**  
**Estimated Surplus**  
**As at February 28, 2017**  
**Amounts in CAD millions**

Assets available for distribution	\$	820.1
Estimated Reserve	\$	159.4
<b>Estimated Surplus</b>	<b>\$</b>	<b>660.6</b>

74. As the Estimated Surplus is held in Euros, Canadian and U.S. dollars, the Estimated Surplus available for distribution, if approved by the Court, will fluctuate with changes in the foreign exchange rates. Accordingly, the actual amount of the Estimated Surplus that will ultimately be distributed will be more or less than \$660.6 million depending on the foreign exchange rate changes between February 28, 2017, and the date the funds are distributed.
75. As discussed in the Third and Ninth Reports, one of the primary stated objectives of the GIA is to obtain a distribution of the expected total surplus realized from the Toronto Branch (the “**Surplus**”) as soon as practicable to the German Estate. A copy of a letter dated March 2, 2017, sent on behalf of the GIA to the Liquidator requesting such a distribution is attached hereto as **Appendix H**. As stated in the Ninth Report, the Liquidator was and remains supportive of such a distribution. The Liquidator is of the view that the German Estate Interim Distribution of the Estimated Surplus of approximately \$660.6 million to the German Estate is appropriate under the circumstances and should be made for the following reasons:
- i. Virtually all of the Assets of the Toronto Branch have been realized upon;
  - ii. The universe of potential Claims is now defined with a relative degree of certainty through both the Claims Procedure and the Principal Officers Claims Procedure as:
    - a. The Claims Procedure has been ongoing for over 260 days with only one nominal value Claim received between the filing of the Ninth Report and the Eleventh Report; and
    - b. The Principal Officers Additional Claims Bar Date has passed with no valid Claims filed; accordingly, any such Claims are forever barred;
  - iii. In addition to the notice of the Claims Procedure sent to all creditors by the Liquidator on June 14, 2016, creditors of the Toronto Branch have received service of the Liquidator’s Ninth Report and supplemental reports thereto, the Tenth Report and this Eleventh Report and related distribution motion. In addition, notices of the proposed distributions were posted in the National

editions of *The Globe and Mail* and International editions of *The Wall Street Journal* on November 25, 2016 and March 3, 2017;

- iv. The Liquidator anticipates that certain of the remaining Unproven Claims will be litigated and the Liquidator has provided for the full value of these Claims as filed (plus 5% statutory interest pursuant to the WURA through to March 2018, an outside date for the resolution of these Claims) along with estimated further estate costs that are expected to be incurred to litigate these Claims;
- v. The Estimated Surplus includes a \$50 million reserve (plus statutory interest through to March 2018) for Future Potential Claims or unforeseen costs to the Toronto Branch;
- vi. Given the passage of time since the implementation of the Claims Procedure and the nominal value and number of Claims filed since September 19, 2016, being the date that the Court ordered that all creditors with Claims against the Toronto Branch file their Claims, the Liquidator is of the view that the \$50 million reserve is sufficient to account for any Future Potential Claims that may be asserted;
- vii. The GIA has stated that it is supportive both of the specific reserves and of the additional reserve that comprise the Estimated Reserve;
- viii. The German Estate Interim Distribution to the GIA is essentially a transfer from one insolvency administrator to another insolvency administrator in the interest of the creditors of the German Estate;
- ix. The German Estate Interim Distribution to the GIA would permit the creditors of the German Estate to receive an interim distribution in a timely manner. Such distribution will allow the creditors of the German Estate to be treated more consistently with the treatment afforded to creditors of the Toronto Branch;
- x. On account of the quantum of the Estimated Reserve, the German Estate Interim Distribution does not prejudice the interests of the creditors of the Toronto Branch; and

- xi. A timely distribution of proceeds to the Toronto Branch stakeholders is the most efficient manner of handling the liquidation of the Toronto Branch.
76. If the German Estate Interim Distribution is approved by the Court, the Liquidator intends to distribute the Estimated Surplus by:
- i. Releasing its interest in the Net U.S. Assets, net of a reserve in U.S. dollars for the Global One Claim, in accordance with the protocol described in the First Report that was agreed to between the GIA and the Liquidator with regard to Toronto Branch's Assets which reside in the U.S.; and
  - ii. Converting approximately \$568.2 million, plus the Canadian dollar equivalent of the Global One Claim, to Euros as soon as practicable following issuance of an order authorizing the German Estate Interim Distribution and transferring these funds to the German Estate.

## ***6. LIQUIDATOR'S RECOMMENDATIONS***

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77. The Liquidator submits this Eleventh Report to the Court in support of the Liquidator's Motion for the relief as set out in the Notice of Motion dated March 2, 2017 and recommends that the Court grant the German Estate Interim Distribution Order:
- i. Authorizing and directing the Liquidator to make the German Estate Interim Distribution to the German Estate of a portion of the Estimated Surplus in the amount of approximately \$660.6 million, on, or after March 10, 2017 (the "**Distribution Date**");
  - ii. Approving, *nunc pro tunc*, the March 3 Notice of Distribution substantially in the form of the notice attached as Schedule "A", hereto;
  - iii. Approving the statement of receipts and disbursements for the Toronto Branch for the period from February 16, 2016 to February 28, 2017;
  - iv. Approving the activities of the Liquidator as described herein; and
  - v. Such further relief as may be required in the circumstances and which this Court deems as just and equitable.

All of which is respectfully submitted at Toronto, Ontario this 2<sup>nd</sup> day of March, 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

**Appendix “D”**

**Notice of Distribution to Creditors of the Toronto Branch published on September 15, 2017, in the National Edition of *The Globe and Mail* and the International Edition of *The Wall Street Journal***

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**NOTICE TO CREDITORS**  
**of MAPLE BANK GmbH, TORONTO BRANCH**  
**(also known as Maple Bank – Toronto Branch )**  
**(hereinafter referred to as “Maple Bank”)**

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**RE: NOTICE OF DISTRIBUTION FOR MAPLE BANK PURSUANT TO THE  
*WINDING-UP AND RESTRUCTURING ACT* (the “WURA”)**

**PLEASE TAKE NOTICE** that this notice is being published in order to give notice that on September 26, 2017, KPMG Inc., in its capacity as a court appointed liquidator (the “**Liquidator**”) of the business in Canada of Maple Bank and its related assets, will be requesting an order from the Ontario Superior Court of Justice (Commercial List) to approve a distribution by the Liquidator to the German Insolvency Administrator on or after September 26, 2017, in respect of a portion of the estimated surplus of funds, which have been realized from the liquidation and/or sale of the assets and the business in Canada of Maple Bank by the Liquidator.

**DATED** at Toronto this 15<sup>th</sup> day of September, 2017.

KPMG Inc., in its capacity as Court-appointed  
Liquidator of the business in Canada of  
Maple Bank GmbH, (Toronto Branch)  
and its related assets  
Bay Adelaide Centre  
333 Bay Street, Suite 4600  
Toronto, ON M5H 2S5, Canada

Attention: Nick Brearton  
email: nbrearton@kpmg.ca  
Fax: (416) 777-3364