

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

THIRTEENTH 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*

December 8, 2017

Table of Contents

| | | |
|----|--|----|
| 1. | INTRODUCTION AND PURPOSE OF THE THIRTEENTH REPORT | 2 |
| 2. | RECEIPTS, DISBURSEMENTS AND REMAINING ESTIMATED REALIZATIONS | 13 |
| 3. | CLAIMS PROCEDURE UPDATE..... | 16 |
| 4. | DATA TRANSFER TO THE GIA..... | 20 |
| 5. | ESTIMATED SURPLUS AND PROPOSED DISTRIBUTION | 30 |
| 6. | LIQUIDATOR’S RECOMMENDATIONS..... | 37 |

Listing of Appendices

| | |
|------------|---|
| Appendix A | Winding-Up Order dated February 16, 2016 |
| Appendix B | German Estate Interim Distribution Order dated March 10, 2017 |
| Appendix C | Twelfth Report of the Liquidator dated September 19, 2017 (excluding appendices) |
| Appendix D | Second Interim Distribution Order dated September 26, 2017 |
| Appendix E | Notice of Distribution to Creditors of the Toronto Branch published on December 8, 2017, in the National Edition of <i>The Globe and Mail</i> and the International Edition of <i>The Financial Times</i> |
| Appendix F | Organizational chart showing Maple Bank and those affiliates we understand may have data stored on the SunGard Server |
| Appendix G | The Toronto Branch Computer Network and Internet Usage Policy |
| Appendix H | The Toronto Branch Computer Network and Email Policy |
| Appendix I | Comparison of the protection afforded personal information and the obligations associated with requests for information from government authorities pursuant to PIPEDA and German privacy laws |

1. INTRODUCTION AND PURPOSE OF THE THIRTEENTH REPORT

BACKGROUND

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

- i. An Interim Distribution to creditors with proven Claims that have been allowed in whole or in part to be made as soon as possible, and within two days following December 19, 2016 in the full amount of such Proven Claim;
 - ii. The amended notice to be provided to creditors of the Toronto Branch prior to making the Interim Distribution;
 - iii. A Claims bar notice to creditors of the Toronto Branch, Maple Bank and certain entities related to Maple Bank in respect of Claims that may be asserted against the principal officers of the Toronto Branch and also a director and/or officer of certain related and affiliated entities of Maple Bank, the deadline for filing such claims being January 25, 2017 (the “**Principal Officers Claims Bar Notice**” and “**Principal Officers Claims Bar Date**”, respectively); and
 - iv. The Liquidator’s statement of receipts and disbursements for the period February 16, 2016 to October 31, 2016.
15. 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. 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, and ii) the foreign exchange transactions entered into by the Liquidator to mitigate the FX Risk of the GDPF and the GIA, and sought amended relief to that sought in the Ninth Report and First Supplemental Report, including an order approving:
 - i. The Principal Officers Claims Bar Notice (as amended);
 - ii. That January 9, 2017 to be fixed as 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. A Principal Officers Claims Bar Date of February 20, 2017 was proposed;
 - 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, in accordance with section 87 of the WURA, to the former employees of the Toronto Branch 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. The Liquidator also sought approval to appoint Representative Counsel to advise and represent the non-executive group of employees in respect of the GIA’s objection; 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 March 10, 2017, the Liquidator filed its Eleventh Report 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 status of the Principal Officers Claims Procedure implemented pursuant to the Principal Officers Additional Claims Procedure 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**”), for which an order was granted (the “**German Estate Interim Distribution Order**”) and is attached hereto as **Appendix B**, 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*; 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.
18. On September 19, 2017, the Liquidator filed its Twelfth Report, which is attached hereto as **Appendix C**. The Twelfth Report provided 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 Claims Procedure implemented pursuant to the Claims Procedure Order including seeking approval of:
 - a. the Liquidator’s activities in respect of the settlement of Global One Financial Inc.’s (“Global One”) Claim;

- 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;
 - e. the sealing of the Employee, Radius and Global One settlement agreements;
 - f. an update on the Principal Officers Additional Claims Procedure implemented pursuant to the Principal Officers Additional Claims Order;
 - g. 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 in the amount of up to \$91.4 million to the German Estate (the “**Second Interim Distribution**”) and ii) approval, *nunc pro tunc*, of the September 15 Notice of Distribution;
- iii. An update on the Liquidator’s activities since the filing of the Eleventh Report and the Liquidator’s request for approval of same; and;
 - iv. The Liquidator’s and its counsel’s fees and disbursements since the ICC filed its First ICC Report and the Liquidator’s request for approval of same.
19. On September 26, 2017, the Court issued an order:
- i. Authorizing the Second Interim Distribution (the “**Second Interim Distribution Order**”), a copy of which is attached hereto as **Appendix D**.
 - ii. The Second Interim Distribution Order also approved:
 - a. the activities of the Liquidator as set out in the Twelfth Report and the Confidential Supplement to the Twelfth Report;
 - b. the September 15 Notice of Distribution;

- c. the Radius Settlement Agreement;
- d. the Liquidator's statement of receipts and disbursements for the Toronto Branch for the period from February 28, 2017 to August 31, 2017;
- e. the fees of the Liquidator, Borden Ladner Gervais LLP and Gowlings WLG in the amount of \$1,275,152, \$709,735, and \$44,296, respectively;
- f. the activities of the ICC and the second report of the ICC dated September 18, 2017; and
- g. the sealing from the public record of the Confidential Supplement to the Twelfth Report until the earlier of a final resolution of the Executives Disputed Claims and the Claims of CRA, or further order of the Court, as the Confidential Supplement to the Twelfth Report contains certain commercially-sensitive and confidential information and documents.

PURPOSE OF THE THIRTEENTH REPORT

20. The purpose of this Thirteenth Report (the “**Thirteenth Report**”) and the Confidential Supplemental Report to the Thirteenth Report (the “**Confidential Supplement to the Thirteenth 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 October 31, 2017, and estimated funds available for distribution to proven creditors and thereafter the GIA;
 - ii. An update on the status of the Claims Procedures implemented pursuant to the Claims Procedure Order including seeking approval of:
 - a. the Liquidator's activities in respect of the final settlement of the Executives' claims; and
 - b. the sealing of the Executives' settlement agreements.

- iii. The Liquidator's Estimated Surplus available to satisfy the Claims of Toronto Branch's creditors as well as a request for:
 - a. approval of a third interim distribution to the German Estate (the "**Third Interim Distribution**") consisting of i) Euro 3,792,160.04 (CAD 5,550,812.18) associated with the settlement of various Credit Suisse foreign exchange forward contracts (the "Credit Suisse FX Forwards"), which settlement amounts were previously paid by Credit Suisse directly to Maple Bank GmbH and retained by the GIA, and ii) a portion of the Estimated Surplus in the amount of \$5.0 million, on or after December 19, 2017, and;
 - b. approval, *nunc pro tunc*, of the notice of distribution to creditors of the Toronto Branch that will be published on December 8, 2017, in the National Edition of *The Globe and Mail* and the International Edition of *The Financial Times* (the "**December 8 Notice of Distribution**"), a copy of which is attached hereto as **Appendix E**.
 - iv. An update on the Liquidator's activities since the filing of the Twelfth Report and the Liquidator's request for approval of same.
21. The Thirteenth Report does not include copies of the settlement agreements with the Executives, as these agreements contain confidential information and/or confidentiality provisions. Copies of these agreements are included in the Confidential Supplement to the Thirteenth 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 Thirteenth Report are as defined in either the Winding-Up Order and/or the First Report through the Twelfth 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 August 31, 2017, in the Twelfth Report. The table below summarizes the receipts and disbursements for the Toronto Branch for the period February 16, 2016 to October 31, 2017 with significant changes since the Twelfth Report summarized below.

| In the matter of the winding up of Maple Bank GmbH (Toronto Branch) | | | |
|--|----------------------------------|-----------------------------------|---------------|
| Statement of Receipts and Disbursements ⁽¹⁾ | | | |
| Amounts in \$CAD millions | Up to August 31, 2017 | Up to October 31, 2017 | Change |
| Receipts ⁽²⁾ | Total ⁽¹⁾ | Total ⁽¹⁾ | |
| Structured Loan Portfolio | 357.4 | 357.4 | - |
| Derivative Instruments | 59.6 | 59.6 | - |
| Settlement of Brokerage Account | 64.7 | 64.7 | - |
| MBS Business | 176.5 | 176.5 | - |
| Related Party Settlements | 84.3 | 84.3 | - |
| CED and Securities | 489.6 | 489.6 | - |
| Miscellaneous/Other | 7.9 | 7.9 | - |
| Total Receipts | 1,240.1 | 1,240.1 | - |
| Disbursements | | | |
| Payroll | 2.7 | 2.7 | |
| General and Administrative | 1.9 | 2.1 | 0.2 |
| Occupancy | 0.4 | 0.4 | - |
| Transfer to CMHC | 0.3 | 0.3 | - |
| Total Operating Disbursements | 5.3 | 5.5 | 0.2 |
| Distribution to Proven Creditors, with interest | 736.4 | 739.6 | 3.2 |
| GIA Distribution | 658.0 | 749.3 | 91.3 |
| Professional Fees | 11.4 | 11.8 | 0.4 |
| Net Disbursements in excess of Receipts | (171.0) | (266.2) | (95.1) |
| Opening Cash Balance | 315.1 | 316.1 | 1.0 |
| Closing Cash and Cash Equivalents Balance | 144.1 | 49.9 | (94.2) |

⁽¹⁾ Some of the totals may not balance due to the rounding of the underlying numbers.

⁽²⁾ Excludes receipt of the funds associated with the settlement of the Credit Suisse FX Forwards, in the amount of Euro 3,792,160.04 (CAD 5,550,812.18), which were settled directly to Maple Bank's account.

ANALYSIS OF RECEIPTS

27. Since the Winding-Up Date, receipts totalled approximately \$1.24 billion. It should be noted that the funds associated with the settlement of the Credit Suisse FX Forwards, in the amount of Euro 3,792,160.04 (CAD 5,550,812.18) and which form part of the proposed Third Interim Distribution, are not included in the receipts total above. Receipts from August 31, 2017 to October 31, 2017 are described below.
28. Miscellaneous/Other Receipts remain unchanged as the nominal amount of interest earned and market appreciation in the securities balances was offset by unrealized foreign exchange losses on U.S. dollar denominated assets.

ANALYSIS OF DISBURSEMENTS

29. Operating disbursements for the period since August 31, 2017 total approximately \$0.2 million and relate primarily to consulting fees paid to the former CFO and other general and administrative expenses.
30. As described in more detail herein, since August 31, 2017, the Liquidator has distributed approximately \$5.1 million to the Executives pursuant to the settlement agreements executed in late October, 2017. The total distributions to Proven Creditors, with interest, totals approximately \$741.5 million since the Winding-Up Date.
31. A distribution to the GIA of approximately \$91.4 million was made on September 27, 2017, in accordance with the Second Interim Distribution Order. Approximately \$749.3 million has been distributed to the GIA since the Winding-Up Date.
32. Professional fees paid during the period since August 31, 2017, of \$0.3 million, consist primarily of professional fees of the Liquidator, its Canadian independent legal counsel (BLG LLP), U.S. and German independent counsel (Willkie Farr LLP), the ICC and EY LLP, Toronto Branch's tax advisor.
33. As at August 31, 2017, the Toronto Branch held approximately \$48.0 million of cash and cash equivalents which was comprised of approximately \$16.7 million

in Toronto Branch accounts and \$31.3 million in liquid securities in the Toronto Branch's RBC DS account.

3. CLAIMS PROCEDURE UPDATE

34. The table below summarizes the Proofs of Claim filed in accordance with the Claims Procedure and the status of the Claims as at October 31, 2017, at amounts as filed by the claimants. To-date, the Liquidator has disbursed approximately \$1.46 billion from the proceeds of the Toronto Branch liquidation to satisfy the Proven Claims of all proven creditors except the CRA. Since the filing of the Twelfth Report, the Liquidator has resolved the Claims of the Executives as described below.

| Maple Bank GmbH, Toronto Branch | | | | | | |
|---|------------------|-------------------|-----------------|-------------------|---------------------------|-------------------|
| Status of Claims Summary | | | | | | |
| CAD Millions | | | | | | |
| As at October 31, 2017 | | | | | | |
| Creditor | Claim (#) | Claimed | Admitted | Disallowed | Paid⁽²⁾ | Unresolved |
| GIA ⁽¹⁾ | 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 | 14.7 | 6.4 | 14.7 | - |
| Non-vendors (contract counterparties, other) | 6 | 76.1 | 5.4 | 70.7 | 9.9 | - |
| Related Party | 1 | 0.4 | 0.4 | - | 0.4 | - |
| Total Claims | 59 | \$ 1,587.2 | \$ 707.0 | \$ 868.4 | \$ 711.4 | \$ 11.9 |
| Interim Distribution to the GIA ⁽¹⁾ | | | | | \$ 749.3 | |
| Total Distributions ⁽²⁾ | | | | | \$ 1,460.7 | |

Notes:

⁽¹⁾ In accordance with a Order approving the German Estate Interim Distribution dated March 10, 2017, the Liquidator issued a payment of approximately \$658.0 million to the GIA. In accordance with the Second Interim Distribution Order dated September 26, 2017, the Liquidator issued a second payment of approximately \$91.4 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 amounts paid above were an advance of the anticipated surplus, after reserving for unproven claims in the Toronto Branch, and was made outside of the Claims Procedure.

⁽²⁾ Excludes payment of statutory interest payable pursuant to the WURA.

35. 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.

36. In accordance with the Second Interim Distribution Order issued on September 26, 2017, the Liquidator issued a second distribution to the GIA of approximately \$91.4 million, bringing the total distribution to the GIA to approximately \$749.3 million.

RESOLVED CLAIMS

37. The resolution of the Employee Claims, which consist of the claims of five Executives and 14 Non-Executives were discussed in detail in the Tenth through Twelfth Reports. As reported in the Twelfth Report, portions of the Executives' claims remained unresolved at that time on account of the Executives' Disputed Claim Amounts, as defined in the Twelfth Report, legal fees and Indemnity Claims, as defined in the Twelfth Report.
38. Subsequent to the filing of the Twelfth Report, the Liquidator continued to negotiate a resolution of the disputed portions of the Executives' claims. In late October, 2017, the Liquidator executed minutes of settlement with each of the Executives (the "**Executives' Final MOS**") to resolve the disputed portions of the Executives' claims and the Liquidator issued payments pursuant to the Executives' Final MOS to the Executives on October 31, 2017.
39. The Executives' Final MOS 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' Disputed Claim Amounts and legal fees. The Executives, with the exception of the former Principal Officer, abandoned their Indemnity Claims. In the case of the former Principal Officer, his respective Executives' Final MOS is

without prejudice to the Principal Officer's Legal Fee Reserve as discussed further in Section 5 of this report.

40. The aggregate value of the Executives' Disputed Claims Amounts as filed and compared with the aggregate final settlement amount is summarized in the Confidential Supplement to the Thirteenth Report. The Executives' Final MOS requires 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, and/or government regulators or authorities. 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 Executive's Final MOS are appended to the Confidential Supplement to the Thirteenth Report.
41. The Liquidator submits that the Executives' Final MOS 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, given the particularities applicable in Canada;
 - ii. The Executives' Final MOS and releases are a full and final settlement in respect of the Executives' claims and bring finality to all outstanding employee claims; and
 - iii. The Executives were represented by experienced employment counsel in the negotiation of the settlement agreements.
42. The Liquidator is not seeking the Court's approval of the Executives' Final MOS 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.

43. Accordingly, the Liquidator is seeking approval of its activities in settling the Executives' Disputed Claim Amounts and negotiating, entering into and closing the Executives' Final MOS. The Liquidator is also seeking the Court's approval to seal the Executives' Final MOS until the earlier of a final resolution of the Claims of the CRA, or further order of the Court.

UNRESOLVED CLAIMS

44. The only remaining unproven and unresolved claims are those of the CRA, which 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 Thirteenth Report. These claims were described in detail in the Twelfth Report.

| Maple Bank GmbH, Toronto Branch | | |
|---|---------------|----------------------|
| Unproven and unresolved Claims summary | | |
| As at October 31, 2017 | | |
| Creditor | Claims | Claimed (\$) |
| CRA - Corporate Income Taxes | 1 | \$ 11,674,126 |
| CRA - HST | 1 | \$ 198,929 |
| Total | 2 | \$ 11,873,055 |

45. Subsequent to the filing of the Twelfth Report, the Liquidator has briefed representatives from the Department of Justice on the Toronto Branch tax situation with a view to determining the most efficient path to resolving the CRA's corporate income tax claim (this includes both the unproven claims outlined above along with any liability associated with tax returns filed by the Liquidator and associated with the Stub Period Tax Return (i.e. October 1, 2015 to the Wind-Up Date) and the period after the Wind-Up date. The Liquidator anticipates that it will be required to appeal certain of CRA's determinations of the Toronto Branch's tax liabilities as well as re-file various years' income tax returns for the Toronto Branch in order to utilize the losses available to the Toronto Branch and thereby reduce its overall corporate income tax liability. The Liquidator will provide updates to the Court on the resolution of the CRA Claims in subsequent reports.

4. DATA TRANSFER TO THE GIA

46. The GIA has requested that the Liquidator provide it with a copy of all Toronto Branch data which is in the power, possession or control of the Liquidator, including all data related to Maple Bank or its affiliates that is stored at four Canadian storage facilities or held on computer tapes in the possession of KPMG or Ernst & Young. The GIA will subsequently transfer this data from Canada to Germany.
47. The basis of the GIA's record request, as understood by the Liquidator, is to allow the GIA to fulfill his statutory or other legal duties under German law including with respect to a) the collection, safeguarding and assessment of information of the insolvent parties; b) satisfaction of tax filings, annual returns and other compliance and disclosure obligations to tax authorities, banking authorities or German prosecutors; c) investigation of potentially improper conduct within Maple Bank and its various affiliates (the "**Maple Bank Group**") with respect to liability, damage, claw back and repayment claims; and d) obligations to cooperate with, and respond to, the tax authorities and German prosecutors with respect to their investigations. We believe it is important to note, in understanding the GIA's statutory or other legal duties, that the Toronto Branch is not a separate legal entity but rather a branch of Maple Bank and that the Liquidator has been advised that a criminal and tax investigation has been commenced in Germany in relation to former directors, supervisory board members, officers and former employees of Maple Bank involving allegations of serious tax evasion and money-laundering.
48. By the end of November 2016, the Liquidator had completed the realization process associated with virtually all of the Toronto Branch's assets. It therefore closed the Toronto Branch's office effective December 31, 2016, making arrangements to ship physical records located at the office to a third party operated record storage facility located in Scarborough that had previous been used by the Toronto Branch (the "**RecordXpress Facility**") and, when that facility became full, to a third party operated record storage facility in the Greater Toronto Area

(the “**Recall Facility**”). In the case of digital records, the Liquidator made arrangement with MSCL to have access to the Toronto Branch’s records that had been backed up on a server located at an offsite disaster recovery center located in Mississauga, Ontario and operated by SunGard (the “**SunGard Facility**”). The arrangement to have a daily back up performed by MSCL of the Toronto Branch’s records was in place prior to the Winding Up Date, which arrangement the Liquidator continued after its appointment. The Liquidator also arranged, in conjunction with MSCL, to have a copy made of the data stored on the servers located at the Toronto Branch’s office as at the time of office’s closure, which computer tape is stored at Ernst & Young’s downtown Toronto office (the “**EY Facility**”). There is no software associated with the computer tape stored at the EY Facility. Finally, in addition to the above, the Toronto Branch’s records also include certain physical records stored at a third party storage facility in Brampton (the “**Iron Mountain Facility**”) and a copy of data stored on the servers located at the Toronto Branch’s office as at the Winding Up Date, which computer tape is stored at KPMG’s downtown Toronto office (the “**KPMG Facility**”). There is no software associated with the computer tape stored at the KPMG Facility.

49. The contractual counterparty for the RecordXpress Facility, the Iron Mountain Facility, the SunGard Facility and the EY Facility is MSCL while the Liquidator is the contractual counterparty for the Recall Facility and the KPMG Facility. We also understand that MSCL entered into all the contractual arrangements regarding software licenses required to access the data stored at the SunGard Facility to the extent the software was not owned by it.
50. In evaluating the GIA’s request for a copy of the books and records of the Toronto Branch, the Liquidator has identified the following issues:
 - i. The Toronto Branch’s records are comingled with those of Maple Bank and its various affiliates;
 - ii. The Toronto Branch’s records contain personal information of both former employees of the Toronto Branch and mortgagors and immigrant investors

whose mortgages / loans were either securitized through the NHA MBS program (under which the Toronto Branch was an Approved Issuer) or indirectly financed by the Toronto Branch; and

- iii. The GIA will be transferring to Germany the data it receives pursuant to the request.

Additional information on these three issues is outlined below.

COMINGLED RECORDS

51. The Liquidator understands that, in the case of the server located at the SunGard facility (the “**SunGard Server**”), the data associated with Maple Bank’s affiliates in both Canada and the United States was regularly backed up to that server, which data was not segregated by entity (i.e. the Toronto Branch’s data is commingled with that of other Maple Bank affiliates). In addition, the emails of certain key employees that held multiple roles in the Maple Bank Group are not segregated by entity. Finally, it is possible that data associated with Maple Bank and its affiliates located outside of North America is also stored on the SunGard Server. An organizational chart showing Maple Bank and those affiliates we understand may have data stored on the SunGard Server is attached as **Appendix F** to this report (Maple Bank and its affiliates, other than the Toronto Branch, appearing on the chart, being defined as “**Maple Bank and Affiliates**”). The computer tapes stored at the EY Facility and the KPMG Facility also contain data of both the Toronto Branch and Maple Bank and Affiliates.
52. Similarly, the Liquidator understands that the physical records stored at the RecordXpress Facility, the Recall Facility and the Iron Mountain Facility may relate to both the Toronto Branch and Maple Bank and Affiliates.
53. The Liquidator understands that is not practical, and likely not possible, to segregate, by legal entity, the digital records maintained on the SunGard Server, or the computer tapes located at the EY Facility and the KPMG Facility. The Maple Bank Group had a common information technology system, with many of

the significant business functions using common software and data bases. In addition, the volume of digital data involved is enormous. In the case of physical records stored at the various facilities, the cost of segregating the records would be prohibitive, given the volume of records involved.

PERSONAL DATA AND DATA TRANSFER TO GERMANY

54. The Toronto Branch's records contain personal information associated with its former employees, though this data is thought to be a small portion of the total. The personal data is of two types; that related to the Toronto Branch, such as employee personnel files and payroll information, and that associated with the employee's personal life.

55. The Toronto Branch had a Computer Network and Internet Usage Policy (the "Network and Internet Policy") and an Email Policy, copies of which are attached as **Appendix G** and **H**.

i. The Network and Internet Policy included the following:

- "...All such information, content and files are the property of the Company. You should have no expectation of privacy regarding them..." (See Privacy section)
- "...The company reserves the right to monitor, inspect, copy, review and store at any time and without prior notice any and all usage of the Network and the Internet as well as any and all materials, files, information, software communications and other content transmitted, received or store in connection with this usage..." (See Privacy section)

ii. The Email Policy includes the following:

- "Employees may use email to communicate with spouses, children, domestic partners and other family members" (See Authorized Personal Use of Email section)

- “Email messages created and transmitted on Company computers are the property of the Company...” (See Employees Have No Reasonable Expectation of Privacy section)
- “...Employees have no reasonable expectation of privacy when it comes to business and personal use of the Company’s email system.” (See Employees Have No Reasonable Expectation of Privacy section).

The Computer and Network Policy and the Email Policy both contemplate that an employee would sign an acknowledgment of the policy. In reality, the Liquidator understands that the policies were posted on the Maple Bank intranet site but employees were not asked to acknowledge the policies and the standard employment letter of the Toronto Branch did not refer to the policies. There is also no evidence that such Toronto Branch employees were informed and/or consented to having their Personal Information transferred outside of Canada.

In light of the above policies, given the type of information at stake (i.e. data which would most likely qualify as “work product information” under PIPEDA), it is the view of the Liquidator’s counsel, Borden Ladner Gervais LLP (“**BLG**”) that the expectation of privacy of Toronto Branch employees in the Toronto Branch’s records to be transferred would be significantly reduced.

56. The Liquidator understands that the identification and subsequent segregation / destruction of employees’ personal information contained within the Toronto Branch’s books and records is not feasible given the volume of digital and physical records that would need to be reviewed, the complexities that can arise in determining what is personal information as opposed to work product, and the resulting cost of the process.
57. The Toronto Branch’s records contain personal information associated with approximately 13,500 individual mortgagors. The mortgages were originated by third parties, subsequently purchased by the Toronto Branch and, with only a few exceptions, thereafter securitized through the NHA MBS program (as the Toronto

Branch was an Approved Issuer under the program). At the time of purchase, the Toronto Branch took copies of the underwriting and related files associated with each purchased mortgage. These files contain personal information (e.g. Proof of income) of the mortgagors. The Toronto Branch would also be in possession of the payment history of the mortgagor, given its role as Approved Issuer under the NHA MBS program, which also contains personal information (e.g. banking details) of the mortgagors. Effective October 12, 2016, pursuant to a Successor Issuer Agreement between Equitable Bank (“**Equitable**”) and Canada Mortgage and Housing Corporation, that was part of a Court approved transaction, Equitable became the Successor Issuer for the Toronto Branch under the NHA MBS program. Equitable’s role as Successor Issuer covered approximately 10,500 mortgages at the time of their appointment, and it is these mortgages for which the Toronto Branch has mortgagor’s personal information. The balance of the mortgagor information currently in the possession of the Toronto Branch relates to matured mortgages. There were some mortgages that the Toronto Branch purchased but did not securitize through the NHA MBS program because the liquidation of the Toronto Branch interrupted the normal securitization process. These mortgages were purchased from the Liquidator by Xceed Mortgage Corporation and myNext Mortgage Premier Trust c/o Radius Financial Inc., pursuant to Court approved sales. In addition, the Toronto Branch financed a third party; Lakeview Mortgage Funding Trust 1 (“**Lakeview**”), to acquire insured single family residential mortgages, with the Toronto Branch taking security over the residential mortgages as part of the financing arrangement. The Toronto Branch has copies of the underwriting and other files, along with the payment history, associated with the collateralized residential mortgages, which data contains personal information of the mortgagors. The Lakeview loan was sold by the Liquidator to Equitable pursuant to a Court approved sale.

58. The Liquidator has no knowledge regarding the mortgage originators’ and Lakeview’s privacy policies that were in place at the time they obtained the personal information of the mortgagors. It is the Liquidator’s understanding that the Toronto Branch has had no contact with the mortgagors as the sale of their

mortgages to the Toronto Branch and their subsequent servicing were matters between the Toronto Branch and the mortgage originator / Lakeview.

59. The records of the Toronto Branch also contain the personal information associated with approximately 440 borrowers under the Immigrant Investor Program (“**IIP**”). Under the IIP, business immigrants to Canada were required to deposit funds with either Citizenship and Immigration Canada (“**CIC**”) or IQ Immigrants Investissuers Inc. (“**IQII**”) for a 5 year period at 0% interest, with the individuals receiving in exchange a promissory note guaranteed by either the government of Canada or the government of Quebec. A number of financial institutions are in the business of providing loans (each an “**Immigrant Investor Loan**”) to immigrant investors to fund their investment with CIC or IQII. The Toronto Branch in turn provided certain of these financial institutions with financing (the “**Receivable Backed Notes**”) to fund their Immigrant Investor Loans, with the Immigrant Investor Loan and related government promissory note being collateral for the related Receivable Backed Note. As part of these financings, the Toronto Branch obtained copies of the loan applications associated with each Immigrant Investor Loan, which applications contain personal information (e.g. banking information) of the borrower. The Liquidator sold Toronto Branch’s Receivable Backed Notes to Canadian Imperial Bank of Commerce, KEB Hana Bank Canada, and ICICI Bank Canada pursuant to various Court approved sales transactions.
60. The Liquidator has no knowledge regarding the financial institutions’ privacy policies in place at the time they obtained the personal information of the borrowers. It is the Liquidator’s understanding that the Toronto Branch has had no contact with the borrowers as the granting of the Immigrant Investor Loans as collateral to the Toronto Branch and the subsequent servicing of the Immigrant Investor Loans were matters between the Toronto Branch and the financial institution.

61. The Toronto Branch's data is subject to the Personal Information Protection and Electronic Document Act ("PIPEDA") which imposes rules on how federally regulated entities and businesses collect, use and disclose personal information about individuals. In light of the GIA's intention to transfer the Toronto Branch's books and records to Germany, the Liquidator requested BLG to perform a high level comparison of the protection afforded personal information and the obligations associated with requests for information from government authorities pursuant to PIPEDA and German privacy laws, a copy of that comparison being attached as **Appendix I** to this report. The conclusion of BLG, as informed by Willkie Farr & Gallagher LLP, is that:

- i. The protections of personal information, including requests for information from government authorities, in Germany are comparable to PIPEDA; and
- ii. German privacy laws apply to personal information of non-resident employees.

It should be noted, however, that, according to the Office of the Privacy Commissioner (i.e. the Canadian privacy regulator), a company holding personal information in Canada about Canadian residents is not required to provide that information to a foreign government or agency in response to a direct Court order issued abroad. As such, once the GIA transfers the Toronto Branch's books and records to Germany, the Toronto Branch's former employees would lose this protection the personal information once transferred to Germany would become subject to German laws.

62. The Liquidator understands that the identification and subsequent segregation / destruction of the mortgagors' and borrowers' personal data contained within the Toronto Branch's books and records could be time consuming, and therefore expensive, to perform.

63. The Liquidator has provided notice of this Court motion to the Toronto Branch's former employees but has not provided notice to the mortgagors or borrowers for

whom the Toronto Branch possesses personal information. The reason for not providing notice to the mortgagors and borrowers is based on the Liquidator's belief that this would create confusion with them on account of their lack of knowledge of the Toronto Branch's involvement with their mortgages / Immigrant Investor Notes.

64. It is likely that the Maple Bank and Affiliates data that is comingled with the Toronto Branch's data also contains personal information, as defined by PIPEDA, of employees and customers.
65. In the event the Court grants the order being sought by the Liquidator regarding the transfer of the Toronto Branch's data to the GIA, the Liquidator anticipates taking the following steps, in no particular order, to transfer the Toronto Branch's data:
 - i. Assigning to the GIA the storage contract associated with the Recall Facility, and providing to the GIA all the physical records located at the facility. These records will include both those of the Toronto Branch and Maple Bank and Affiliates;
 - ii. Authorizing MSCL to create a copy of the data stored on the SunGard Server and provide the copy to the GIA. This copy will include data of both the Toronto Branch and Maple Bank and Affiliates;
 - iii. Authorizing MSCL to provide to the GIA all of the physical records located at the RecordXpress Facility and the Iron Mountain Facility. This copy will include data of both the Toronto Branch and Maple Bank and Affiliates;
 - iv. Assigning to the GIA any rights the Toronto Branch has to access the Toronto Branch data;
 - v. To the extent technically feasible, providing to the GIA a copy of the computer tape located at the KPMG Facility. This copy will include data of both the Toronto Branch and Maple Bank and Affiliates; and

- vi. To the extent technically feasible, authorizing MSCL to provide to the GIA a copy of the computer tape located at the EY Facility. This copy will include data of both the Toronto Branch and Maple Bank and Affiliates;

We understand that MSCL intends to take the following steps in the event the Liquidator's proposed order is granted:

- i. Assigning to the GIA the storage contracts associated with the RecordXpress Facility and the Iron Mountain Facility;
 - ii. Assigning to the GIA the storage contracts associated with the SunGard Facility;
 - iii. Assigning to the GIA any software and technical equipment required to access the SunGard Server; and
 - iv. Assigning to the GIA any technical equipment required to access the computer tape stored at the EY facility.
66. The Liquidator also anticipates that, upon its discharge and assuming the GIA has already received either copies or the originals of all Toronto Branch data that it was entitled to receive pursuant to the proposed order or any subsequent additional order, if applicable, and which it was technically feasible to transfer, it will be destroying any Toronto Branch data, including any comingled data related to Maple Bank and Affiliates, still in its possession.

5. ESTIMATED SURPLUS AND PROPOSED DISTRIBUTION

67. As described above, the Toronto Branch now has approximately \$48.0 million available to satisfy outstanding Claims. Two unproven Claims remain outstanding with an aggregate Claim value of approximately \$11.9 million.
68. As discussed in the Twelfth 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 July 31, 2018, a date by which where the Liquidator estimates it will have resolved all Claims;
 - iv. The Legal Fees Reserve pursuant to the Principal Officers Additional Claims Order, and the Protocol to Address Reserves re: A former Principal Officer;
 - v. Estimated costs to administer the Toronto Branch Liquidation through to July 31, 2018; and
 - vi. Tax liabilities in respect of the post Winding-Up Date periods.

69. 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 October 31, 2017 | | |
| Amounts in CAD millions | | |
| Unproven Claims ⁽¹⁾ | \$ | 11.9 |
| Interest on Unproven Claims ⁽²⁾ | | 1.5 |
| Future Potential Claims (inclusive of interest) ⁽³⁾ | | 15.0 |
| Principal Officers Legal Fee Reserve ⁽⁴⁾ | | 5.0 |
| Toronto Branch Administration Costs ⁽⁵⁾ | | 1.3 |
| Post Winding-Up Date tax liability ⁽⁶⁾ | | 8.0 |
| CRA Remittance accruals ⁽⁷⁾ | | 2.2 |
| Total Estimated Reserve | \$ | 44.8 |

Notes:

- ⁽¹⁾ Represents unproven or disputed Proofs of Claim as filed, as at October 31, 2017, at amounts as filed by the claimants. Balance relates to Claims filed by the CRA.
- ⁽²⁾ Includes interest at 5% p.a. pursuant to the WURA from the Liquidation Date to July 31, 2018, an assumed date upon which all Unproven Claims and Future Potential Claims are resolved and a final distribution is made.
- ⁽³⁾ Reserve to provide for any Claims not yet identified or filed with the Liquidator.
- ⁽⁴⁾ Pursuant to the Principal Officers Additional Claims Order and the Protocol to Address Reserves re: a former Principal Officer therein, the reserves are to include an amount not in excess of \$5 million to fund a former Principal Officer's legal fees in respect of certain litigation that may be initiated against the former Principal Officer.
- ⁽⁵⁾ Represents estimated professional fees and operating disbursements for the Toronto Branch through to July 31, 2018.
- ⁽⁶⁾ Represents gross income tax (\$3.0M) and branch tax (\$3.2M) plus estimated penalties and interest arising from the Liquidator's filing of the 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) the appeal of certain re-assessments by CRA 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.
- ⁽⁷⁾ Represents income tax, CPP and EI amounts deducted from the final settlement with the Executives that is to be remitted to CRA. The Liquidator has since remitted these funds to CRA.

70. 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.

71. The reserve for Future Potential Claims and associated interest provides for any claims not yet filed with the Liquidator. As reported in the Twelfth Report, this particular reserve was decreased from \$50 million 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.
72. The table below summarizes i) the net assets available for distribution, ii) the Estimated Reserve and iii) the Estimated Surplus available for the Third Interim Distribution of \$5.1 million as at October 31, 2017, of which \$5 million is proposed to be distributed to the GIA.

| In the matter of the winding-up of Maple Bank GmbH (Toronto Branch) | |
|--|---------------|
| Estimated Surplus | |
| As at October 31, 2017 | |
| Amounts in CAD millions | |
| Assets available for distribution | \$ 49.9 |
| Less: Estimated Reserve | \$ (44.8) |
| Estimated Surplus ⁽¹⁾ | \$ 5.1 |

Notes:

⁽¹⁾ As discussed previously, this amount excludes the funds generated from the settlement of the Credit Suisse FX Forwards, in the amount Euro 3,792,160.04 (CAD 5,550,812.18) which were received directly by Maple Bank.

73. 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.
74. In addition to the Estimated Surplus available for distribution to the German Estate, the Liquidator is seeking approval of a distribution of proceeds from the settlement of the Credit Suisse FX Forwards which settled to Maple Bank in March 2016. Prior to the Winding-Up Date, Toronto Branch routinely entered into foreign exchange contracts to hedge the currency risk associated with Euro

denominated deposits made by German depositors. In the normal course, such deposits were made to a Toronto Branch Euro denominated bank account at Maple Bank in Germany. Toronto Branch would then sell the Euros for Canadian dollars to be used by Toronto Branch in Canada. These transactions were settled by the Bank of Montreal in Canada. Concurrently, Toronto Branch would enter into a forward contract to purchase Euros at a future date in order to repay the German depositors. The settlement of these forward contracts occurred in the Toronto Branch's Euro denominated account at Maple Bank in Germany.

75. On the Winding-Up Date, Toronto Branch had nine forward contracts with Credit Suisse that had just matured or were maturing in the near term. As a result of the Maple Bank insolvency and the Toronto Branch Winding-Up proceedings, Credit Suisse issued a default notice to Toronto Branch and terminated all nine forward contracts. The net settlement amount resulting from the termination of the Credit Suisse FX Forwards was Euro 3,792,160.04 (CAD 5,550,812.18) payable to Toronto Branch. In accordance with the typical practice, Credit Suisse deposited these Euros into Toronto Branch's account at Maple Bank in Germany on or about March 21, 2016.
76. At the time of their deposit, the Liquidator sought the return of the funds from Maple Bank and the GIA. However, as it appeared that the Toronto Branch was solvent and the liquidation would result in a surplus of funds after settling the anticipated claims of creditors, the Liquidator and the GIA reached an agreement whereby these funds would remain at Maple Bank, but would be returned to Toronto Branch in the event that it was unable to satisfy creditors' claims.
77. The Liquidator is of the view that abandoning Toronto Branch's interest in these funds constitutes a distribution of a portion of the estimated surplus of the Toronto Branch and that such distribution is subject to approval of the Court. To date the Liquidator has distributed approximately \$749.4 million to the German Estate and has satisfied all claims other than two filed by CRA. The Liquidator believes that the Estimated Reserve is sufficient to satisfy any Future Potential Claims and accordingly recommends that the distribution of the funds associated with the

Credit Suisse FX Forwards, in the amount of Euro 3,792,160.04 (CAD 5,550,812.18), and \$5 million to the German Estate be approved.

78. 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 Third Interim Distribution, consisting of a) the settlement of the Credit Suisse FX Forwards, which settlement amounts are Euro 3,792,160.04 (CAD 5,550,812.18) and which were previously paid by Credit Suisse directly to Maple Bank GmbH and were retained by the GIA; and b) a portion of the remaining Estimated Surplus in the amount of \$5.0 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 over a 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;
- 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 who filed claims with the Liquidator have received service of the:
 - a. Ninth Report and supplemental reports thereto;
 - b. Tenth Report with the related notice of distribution; and
 - c. Twelfth Report;

- iv. All creditors that have filed Claims with the Liquidator will be served a copy of the Thirteenth Report;
- v. Notices of the German Estate Interim Distribution and the Second 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 and September 15, 2017, respectively;
- vi. The December 8 Notice of Distribution notifying creditors of the Third Interim Distribution will be posted in the National editions of *The Globe and Mail* and International editions of *The Financial Times* on December 8, 2017;
- vii. Notwithstanding that the Liquidator anticipates that one of the remaining unproven Claims will be litigated (i.e in order to appeal the CRA determinations of the Toronto Branch's tax liability), the Liquidator has provided for the full value of that Claim, as filed, (plus 5% statutory interest pursuant to the WURA through to July 31, 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 this Claim;
- viii. 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;
- ix. 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;
- x. The GIA has stated that it is supportive both of the specific reserves and of the additional reserve that comprise the Estimated Reserve;

- xi. The Third Interim Distribution, which will be paid 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;
- xii. The Third Interim Distribution permits the creditors of the German Estate to receive an interim distribution(s) in a timely manner. Such distribution(s) will allow the creditors of the German Estate to be treated more consistently with the treatment afforded to creditors of the Toronto Branch;
- xiii. On account of the quantum of the Estimated Reserve, the Third Interim Distribution does not prejudice the interests of the creditors of the Toronto Branch; and
- xiv. A timely distribution of proceeds to the Toronto Branch stakeholders is the most efficient manner of handling the liquidation of the Toronto Branch.

6. LIQUIDATOR'S RECOMMENDATIONS


79. The Liquidator submits this Thirteenth Report and the Confidential Supplement to the Thirteenth Report to the Court in support of the Liquidator's Motion for the relief as set out in the Notice of Motion dated December 6, 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 October 31, 2017;
 - ii. Approving the activities of the Liquidator in respect of the settlement of the Executives' Disputed Claim Amounts and negotiating, entering into and closing the Executives' Final MOS;
 - iii. Sealing the Confidential Supplement to the Thirteenth Report, including the Executives' Final MOS until the earlier of a final resolution of the claims of the CRA, or further order of the Court;
 - iv. Approving, *nunc pro tunc*, the December 8 Notice of Distribution;
 - v. Authorizing and directing the Liquidator to make the Third Interim Distribution to the German Estate, consisting of:
 - a. the settlement of the Credit Suisse FX Forward Contracts, which settlement amounts were previously paid directly to Maple Bank GmbH and retained by the GIA in the amount of Euro 3,792,160.04 (CAD 5,550,812.18); and
 - b. a portion of the Estimated Surplus in the amount of \$5.0 million, on, or after December 19, 2017 (the "**Distribution Date**");
 - vi. Authorizing and directing the Liquidator to provide the GIA with a copy of all Toronto Branch data which is in the Liquidator's power, possession or control, including such data of Maple Bank and its affiliates that is comingled therein.

- vii. Approving the Liquidator's activities since the filing of the Twelfth 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 8th day of December, 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

**This is Appendix “A” to the
Thirteenth Report of the Liquidator**

Court File No. CV-16 - 11290 - 0002

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE REGIONAL)
SENIOR JUSTICE MORAWETZ)
)

TUESDAY, THE 16TH
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

WINDING-UP ORDER

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

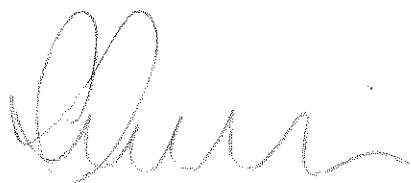
33. **THIS COURT ORDERS** that this Order and any other orders in these proceedings shall have full force and effect in all Provinces and Territories in Canada.
34. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in 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

**This is Appendix “B” to the
Thirteenth Report of the Liquidator**

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



THE HONOURABLE REGIONAL
SENIOR JUSTICE MORAWETZ

)
)
)

FRIDAY, THE 10th
DAY OF MARCH, 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

DISTRIBUTION 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 (the "**Business**") of Maple Bank GmbH ("**Maple Bank**") 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 amended Notice of Motion, the Motion Record and the Supplemental 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 Eleventh Report of the Liquidator dated March 2, 2017 (the "**Eleventh Report**") and the activities of the Liquidator as set out in the Eleventh Report;
- (c) authorizing and directing the Liquidator to make a partial distribution in the amount of up to but not materially different from \$660.6 million to the GIA (as defined below) of a portion of the estimated surplus of funds, which have been realized by the Liquidator from the liquidation and/or sale of the Assets and the Business of the Toronto Branch (the "**Distribution**"), on, or after March 10, 2017 (the "**Distribution Date**");
- (d) approving the notice to creditors of the Toronto Branch published in the National Edition of the Globe and Mail and the International Edition of the Wall Street Journal on March 3, 2017 giving notice of the Distribution by the Distribution Date substantially in the form of the notice attached as Schedule "A", hereto (the "**Distribution Notice**");
- (e) approving the Receipts and Disbursements ("**R&D**") for the Toronto Branch for the period from February 16, 2016 to February 28, 2017;
- (f) approving the fees in the amount of \$2,681,417.00 and the disbursements in the amount of \$47,811.53 (plus applicable HST totalling \$354,809.49 on the foregoing amounts) of Gowling WLG (Canada) LLP ("**Gowling**") as former counsel for the Liquidator for the period from February 16, 2016 to November 25, 2016;
- (g) approving the fees in the amount of \$4,323,352.05 and the disbursements in the amount of \$294,949.87 (plus applicable HST totalling \$600,379.25 on the

foregoing amounts) of the Liquidator for the period from February 16, 2016 to November 30, 2016;

- (h) approving the Report of the court appointed cost counsel dated March 6, 2017 (the “**ICC Report**”) and the activities of Jonathan Wigley of the law firm Gardiner Roberts LLP, in his capacity as court appointed cost counsel (“**Independent Cost Counsel**”) as set out in the ICC Report;
- (i) amending the order of the Court dated June 8, 2016 appointing Mr. Jonathan Wigley of the law firm of Gardiner Roberts LLP as the Independent Cost Counsel (the “**Appointment Order**”) by:
 - (i) in paragraph 2 adding “and Borden Ladner Gervais LLP (“**BLG**”)” following “Gowling WLG (Canada) LLP (“**Gowling**”)”; and
 - (ii) adding “and BLG” following each subsequent reference to “Gowling”; and
- (j) 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 Eleventh Report, the affidavit of Lilly Wong sworn March 7, 2017, the affidavit of Philip Reynolds sworn March 8, 2017 and the ICC Report, filed, and on hearing the submissions of counsel for the Liquidator, counsel for the German Insolvency Administrator of Maple Bank, representative counsel for the Non-Exec Employees, counsel for Radius Financial Inc., and such other parties who were in attendance and no one else appearing although served as evidenced by the Affidavit of Service of Rachael Belanger sworn March 3, 2017, filed,

Service / Approval of the Activities of Liquidator

1. **THIS COURT ORDERS** that all defined terms used herein, not otherwise defined shall have the meaning attributed to them in the Eleventh Report.

2. **THIS COURT ORDERS** that the time for service of the amended Notice of Motion, Motion Record and Supplemental 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 Eleventh Report and the activities of the Liquidator as set out in the Eleventh Report be and are hereby approved.

Approval of the Distribution

4. **THIS COURT ORDERS** that the Liquidator is hereby authorized and directed to make the Distribution, on, or after the Distribution Date.

5. **THIS COURT ORDERS** that the Distribution Notice be and is hereby approved, *nunc pro tunc*.

Approval of the Liquidator's R&D

6. **THIS COURT ORDERS** that the R&D for the Toronto Branch for the period from February 16, 2016 to February 28, 2017 be and is hereby approved.

Approval of Professional Fees and ICC Report

7. **THIS COURT ORDERS** that the fees in the amount of \$2,681,417.00 and the disbursements in the amount of \$47,811.53 (plus applicable HST totalling \$354,809.49 on the foregoing amounts) of Gowling as former counsel for the Liquidator for the period from February 16, 2016 to November 25, 2016 are hereby approved.

8. **THIS COURT ORDERS** that the fees in the amount of \$4,323,352.05 and the disbursements in the amount of \$249,949.87 (plus applicable HST totalling \$600,379.25 on the foregoing amounts) of the Liquidator for the period from February 16, 2016 to November 30, 2016 are hereby approved.

9. **THIS COURT ORDERS** that the ICC Report and the activities of the Independent Cost Counsel as set out in the ICC Report are hereby approved.

Amending the Appointment Order

10. **THIS COURT ORDERS** that the Appointment Order is hereby amended by:
- (a) in paragraph 2 adding “and Borden Ladner Gervais LLP (“**BLG**”)” following “Gowling WLG (Canada) LLP (“**Gowling**”)”; and
 - (b) adding “and BLG” following each subsequent reference to “Gowling”.

General

11. **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.



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

MAR 10 2017

PER / PAR:



Schedule "A"

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

**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 KPMG, 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 Superior Court of Justice of Ontario [Commercial List] on March 10, 2017 to approve a distribution by the Liquidator to the German Insolvency Administrator 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 of Maple Bank by the Liquidator on or after March 10, 2017.

DATED at Toronto this 3rd day of March, 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: Phillip J. Reynolds: pjreynolds@kpmg.ca
Fax: (416) 777-3364
Phone: (416) 777-8415

ATTORNEY GENERAL OF CANADA – Applicant

- and -

MAPLE BANK GmbH, – Respondent

ONTARIO

**SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

(PROCEEDING COMMENCED AT TORONTO, ONTARIO)

DISTRIBUTION ORDER

BORDEN LADNER GERVAIS LLP

Barristers and Solicitors
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON
M5H 4E3

Alex MacFarlane (LSUC No.: 28133Q)

Doug O. Smith (LSUC No.: 28133Q)

Rachael Belanger (LSUC No.: 67674B)

Tel: (416) 367-6000

Fax: (416) 367-6749

Lawyers for KPMG Inc. in its capacity as the Court-appointed
Liquidator of the business in Canada of Maple Bank GmbH and its
assets as defined in section 618 of the *Bank Act*.

**This is Appendix “C” to the
Thirteenth Report of the Liquidator**

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

Table of Contents

| | | |
|----|--|----|
| 1. | INTRODUCTION AND PURPOSE OF THE TWELFTH REPORT | 2 |
| 2. | RECEIPTS, DISBURSEMENTS AND REMAINING ESTIMATED REALIZATIONS | 12 |
| 3. | CLAIMS PROCEDURE UPDATE..... | 17 |
| 4. | UPDATE ON PRINCIPAL OFFICERS CLAIMS PROCEDURE..... | 33 |
| 5. | DATA SHARING PROTOCOL..... | 34 |
| 6. | ESTIMATED SURPLUS AND PROPOSED DISTRIBUTION | 36 |
| 7. | LIQUIDATOR’S ACTIVITIES AND FEES | 42 |
| 8. | LIQUIDATOR’S RECOMMENDATIONS..... | 44 |

Listing of Appendices

| | |
|------------|---|
| Appendix A | Winding-Up Order dated February 16, 2016 |
| Appendix B | Principal Officers Additional Claims Order dated January 27, 2017 |
| Appendix C | Eleventh Report of the Liquidator dated March 10, 2017 (excluding appendices) |
| Appendix D | Notice of Distribution to Creditors of the Toronto Branch published on September 15, 2017, in the National Edition of <i>The Globe and Mail</i> and the International Edition of <i>The Wall Street Journal</i> |

1. INTRODUCTION AND PURPOSE OF THE TWELFTH REPORT

BACKGROUND

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

| Receipts | CAD Total⁽¹⁾ |
|--|--------------------------------|
| 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 |
| Total receipts | 1,240.1 |
| Disbursements | |
| Payroll | 2.7 |
| General and administrative | 1.9 |
| Occupancy | 0.4 |
| Transfer to CMHC | 0.3 |
| Total operating disbursements | 5.3 |
| Distribution to creditors with Proven Claims, with interest ⁽²⁾ | 736.4 |
| Interim Distribution to the GIA | 658.0 |
| Professional fees | 11.4 |
| Net disbursements in excess of receipts | (171.0) |
| Opening cash balance | 315.1 |
| Closing cash and cash equivalents balance | 144.1 |

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

⁽²⁾ 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.

| Maple Bank GmbH, Toronto Branch | | | | | | |
|--|------------------|-------------------|-----------------|-------------------|---------------------------|-------------------|
| Status of Claims Summary | | | | | | |
| CAD Millions | | | | | | |
| As at August 31, 2017 | | | | | | |
| Creditor | Claim (#) | Claimed | Admitted | Disallowed | Paid⁽²⁾ | Unresolved |
| GIA ⁽¹⁾ | 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 | - |
| Total Claims | 60 | \$ 1,587.3 | \$ 702.3 | \$ 864.1 | \$ 706.8 | \$ 20.6 |
| Interim Distribution to the GIA ⁽¹⁾ | | | | | \$ 658.0 | |
| Total Distributions⁽²⁾ | | | | | \$ 1,364.8 | |

Notes:

⁽¹⁾ 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.

⁽²⁾ 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 |
| Total | 7 | \$ 20,613,716 |

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:

| In the matter of the wind-up of Maple Bank GmbH (Toronto Branch) | | | | | |
|---|------------------------------------|---------------------------------------|--|--|---|
| Summary of Tax Status | | | | | |
| Tax Year | Return Filed ⁽¹⁾ | Return Assessed ⁽²⁾ | Return Disputed by CRA ⁽³⁾ | Tax Liability Paid ⁽⁴⁾ | Objection outstanding ⁽⁵⁾ |
| 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:

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

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

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

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

Notes:

- ⁽¹⁾ Represents unproven or disputed Proofs of Claim as filed, as at August 31, 2017, at amounts as filed by the claimants.
- ⁽²⁾ 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.
- ⁽³⁾ Reserve to provide for any Claims not yet identified or filed with the Liquidator.
- ⁽⁴⁾ 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.
- ⁽⁵⁾ Represents estimated professional fees and operating disbursements for the Toronto Branch through to March 31, 2018.
- ⁽⁶⁾ 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 |
| Estimated Surplus | \$ | 91.4 |

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

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


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 19th 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

**This is Appendix “D” to the
Thirteenth Report of the Liquidator**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)



THE HONOURABLE REGIONAL) TUESDAY, THE 26th DAY
SENIOR JUSTICE MORAWETZ) OF SEPTEMBER, 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

SECOND INTERIM DISTRIBUTION 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 (the “**Business**”) of Maple Bank GmbH (“**Maple Bank**”) 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 Twelfth Report of the Liquidator dated September 19, 2017 (the "**Twelfth Report**") and the activities of the Liquidator as set out in the Twelfth Report;
- (c) authorizing and directing the Liquidator to make a partial distribution in the amount of \$91.4 million to the GIA (as defined below) of a portion of the estimated surplus of funds, which have been realized by the Liquidator from the liquidation and/or sale of the Assets and the Business of the Toronto Branch (the "**Second Interim Distribution**"), on, or after September 26, 2017 (the "**Distribution Date**");
- (d) approving the notice to creditors of the Toronto Branch published in the National Edition of the Globe and Mail and the International Edition of the Wall Street Journal on September 15, 2017 giving notice of the Second Interim Distribution by the Distribution Date substantially in the form of the notice attached as Schedule "A", hereto (the "**Distribution Notice**");
- (e) approving the Receipts and Disbursements ("**R&D**") for the Toronto Branch for the period from February 28, 2017 to August 31, 2017;
- (f) approving the Radius Settlement, and the activities of the Liquidator with respect to the Global One Settlement, the settlement of the Non-Executive Employees' claims, and the partial settlement of the Executive Employees' claims, pursuant to the Claims Procedure, and as defined and described in the Confidential Supplement to the Twelfth Report;
- (g) approving the fees in the amount of \$709,735.00 and the disbursements in the amount of \$12,181.49 (plus applicable HST totalling \$93,784.54 on the foregoing amounts) of Borden Ladner Gervais LLP ("**BLG**") as counsel for the Liquidator

for the period from November 30, 2016 to July 31, 2017, as well as fees in the amount of \$44,296.32 and the disbursements in the amount of \$5,727.12 (plus applicable HST totalling \$6,482.25 on the foregoing amounts) of Gowling WLG (Canada) LLP (“**Gowling**”) as counsel for certain tax and transactional tasks;

- (h) approving the fees in the amount of \$1,275,152.00 and the disbursements in the amount of \$74,553.50 (plus applicable HST totalling \$175,461.71 on the foregoing amounts) of the Liquidator for the period from February 16, 2016 to November 30, 2016 to July 31, 2017;
- (i) approving the Report of the court appointed cost counsel dated September 18, 2017 (the “**Second ICC Report**”) and the activities of Jonathan Wigley of the law firm Gardiner Roberts LLP, in his capacity as court appointed cost counsel (“**Independent Cost Counsel**”) as set out in the Second ICC Report;
- (j) sealing from the public record the Confidential Supplement to the Twelfth Report, as containing certain commercially-sensitive and confidential information and documents;
- (k) 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 Twelfth Report and Confidential Supplement, Second ICC Report, and affidavits of Lilly Wong, Douglas Smith, and Nick Brearton filed, and on hearing the submissions of counsel for the Liquidator, counsel for the German Insolvency Administrator of Maple Bank, counsel for Radius Financial Inc., and such other parties who were in attendance and no one else appearing although served as evidenced by the Affidavit of Service of Marie Pacheco sworn September 19, 2017, filed,

1. **THIS COURT ORDERS** that all defined terms used herein, not otherwise defined shall have the meaning attributed to them in the Twelfth Report.

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and 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 Twelfth Report and the activities of the Liquidator as set out in the Twelfth Report, and related Confidential Supplement, be and are hereby approved.

4. **THIS COURT ORDERS** that the Liquidator is hereby authorized and directed to make the Second Interim Distribution, on, or after the Distribution Date.

5. **THIS COURT ORDERS** that the Distribution Notice be and is hereby approved, *nunc pro tunc*.



6. **THIS COURT ORDERS** that the Radius Settlement, as defined in the Twelfth Report, is hereby approved.

7. **THIS COURT ORDERS** that the R&D for the Toronto Branch for the period from February 28, 2017 to July 31, 2017 be and is hereby approved.

8. **THIS COURT ORDERS** that the fees in the amount of \$709,735.00 and the disbursements in the amount of \$12,181.49 (plus applicable HST totalling \$93,784.54 on the foregoing amounts) of BLG as counsel for the Liquidator for the period from November 30, 2016 to July 31, 2017 are hereby approved.

9. **THIS COURT ORDERS** that the fees in the amount of \$44,296.32 and the disbursements in the amount of \$5,727.12 (plus applicable HST totalling \$6,482.25 on the foregoing amounts) of Gowling are hereby approved.

10. **THIS COURT ORDERS** that the fees in the amount of \$1,275,152.00 and the disbursements in the amount of \$74,553.50 (plus applicable HST totalling \$175,461.71 on the foregoing amounts) of the Liquidator for the period from November 30, 2016 to July 31, 2017 are hereby approved.

 10.1 THIS COURT ORDERS THAT THE CONFIDENTIAL SUPPLEMENT ^{IS} HEREBY ~~BE~~ SEALED TO THE EARLIER OF A FINAL RESOLUTION OF THE EXECUTIVES' DISPUTED CLAIM AND THE CLAIMS OF CANADA REVENUE AGENCY, OR FURTHER ORDER OF THE COURT 

11. **THIS COURT ORDERS** that the Second ICC Report and the activities of the Independent Cost Counsel as set out in the Second ICC Report are hereby approved.

General

12. **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.



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

SEP 26 2017

PER / PAR:



Schedule "A"

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

**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 15th 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

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

SECOND INTERIM DISTRIBUTION ORDER

BORDEN LADNER GERVAIS LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto ON M5H 4E3

Alex MacFarlane - LSUC No. 28133Q
Tel: 416.367.6305
amacfarlane@blg.com

Bevan Brooksbank - LSUC No. 56717U
Tel: 416.367.6604
bbrooksbank@blg.com

Lawyers for KPMG Inc., in its capacity as Liquidator of the
business in Canada of Maple Bank GmbH

**This is Appendix “E” to the
Thirteenth Report of the Liquidator**

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

**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 December 13, 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 December 19, 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.

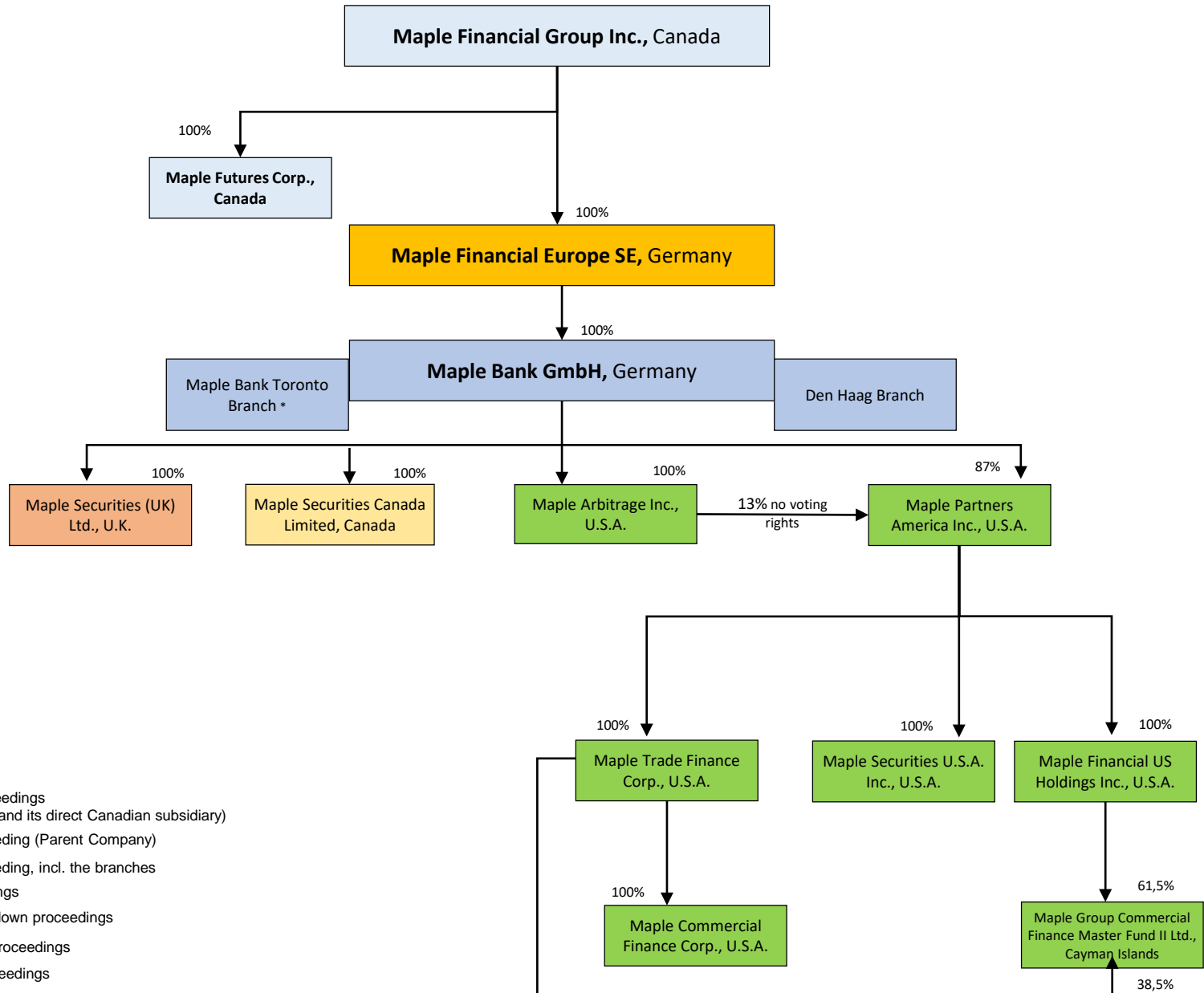
DATED at Toronto this 8th day of December, 2017.

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

**This is Appendix “F” to the
Thirteenth Report of the Liquidator**

Group Structure Maple



- Canadian bankruptcy proceedings (ultimate holding company and its direct Canadian subsidiary)
- German Insolvency Proceeding (Parent Company)
- German Insolvency Proceeding, incl. the branches
- * Canadian WURA proceedings
- Canadian liquidation/wind down proceedings
- US liquidation/wind down proceedings
- English administration proceedings

**This is Appendix “G” to the
Thirteenth Report of the Liquidator**

Computer Network and Internet Usage Policy

The Company is pleased to offer access to the organization's computer Network and the Internet. This Policy applies to employees granted Network and Internet access by the Company. Upon acceptance of your account information and agreement to follow this Policy, you will be granted Network and Internet access. If you have any questions about the provisions of this Policy, you should contact your manager.

If you or anyone you allow to access your account (itself a violation of this Policy) violates this Policy, your access may be denied or withdrawn. In addition, you may be subject to disciplinary action, up to and including termination.

Personal Responsibility

By accepting your account password and related information, and accessing the Company's Network or Internet system, you agree to adhere to this Policy. You also agree to report any Network or Internet misuse to the Chief Information Officer. Misuse includes Policy violations that harm another person or another individual's property.

Term of Permitted Use

Network and Internet access extends throughout the term of your employment, provided you do not violate the organization's Computer Network and Internet Usage Policy. Note: The Company may suspend access at any time for technical reasons, Policy violations, or other concerns.

Purpose and Use

The Company offers access to its Network and Internet system for primarily business purposes. If you are unsure whether an activity constitutes appropriate business use, consult your manager.

Netiquette Rules

Employees must adhere to the rules of Network etiquette, or Netiquette. In other words, you must be polite, and use the Network and Internet appropriately and legally. The Company will determine what materials, files, information, software, communications, and other content and activity are permitted or prohibited, as outlined below.

Banned Activity

The following activities violate the Company's Computer Network and Internet usage Policy:

- Using, transmitting, receiving, or seeking inappropriate, offensive, vulgar, suggestive, obscene, abusive, harassing, belligerent, threatening, defamatory (harming another person's reputation by lies), or misleading language or materials.
- Engaging in illegal or inappropriate activities, violating the Employee Handbook, or encouraging others to do so. Examples:
 - Accessing others' folders, files, work, networks, or computers. Intercepting communications intended for others.
 - Downloading or transmitting the organization's confidential information or trade secrets.
- Causing harm or damaging others' property including downloading or transmitting copyrighted materials without permission from the copyright holder. Even when materials on the Network or the Internet are not marked with the copyright symbol, employees should assume all materials are protected under copyright laws – unless explicit permission to use the materials is granted.
- Jeopardizing the security of access, the Network, or other Internet Networks by disclosing or sharing passwords and/or impersonating others.
- Wasting the Company's computer resources. Do not send electronic chain letters. Do not send email copies to nonessential readers. Do not send email to group lists unless it is appropriate for everyone on a list to receive the email. Do not send organization-wide emails without your supervisor's permission.
- Connecting hardware to any computer or the Company's Network, or installing or upgrading software without the explicit permission of the IT department.

Confidential Information

Employees may have access to confidential information about the Company, our employees, and clients. With the approval of management, employees may use email to communicate confidential information internally to those with a need to know. When in doubt, do not use email to communicate confidential material. When a matter is personal, it may be more appropriate to send a hard copy, place a phone call, or meet in person.

Privacy

Network and Internet access is provided as a tool for our organization’s business. The Company reserves the right to monitor, inspect, copy, review, and store at any time and without prior notice any and all usage of the Network and the Internet, as well as any and all materials, files, information, software, communications, and other content transmitted, received, or stored in connection with this usage. All such information, content, and files are the property of the Company. You should have no expectation of privacy regarding them. Network administrators may review files and intercept communications for any reason, including but not limited to maintaining system integrity and ensuring employees are using the system consistently with this Policy.

Noncompliance

Your use of the Network and the Internet is a privilege, not a right. Violate this policy and your access to the Network and the Internet may be terminated, perhaps for the duration of your tenure with the Company. Permitting another person to use your account or password to access the Network or the Internet – including but not limited to someone whose access has been denied or terminated – is a violation of Policy. Should another user violate this Policy while using your account, you will be held responsible, and both of you will be subject to disciplinary action. Criminal violations may lead to criminal or civil prosecution.

Employee Acknowledgment

Note: If you have questions or concerns about this Policy, contact your manager before signing this agreement.

I have read the Company’s Computer Network and Internet Usage Policy and agree to abide by it. I understand violation of any of the above terms may result in discipline, up to and including my termination.

User Name

User Signature

Date

**This is Appendix ‘H’ to the
Thirteenth Report of the Liquidator**

Email Policy

The Company provides employees with electronic communications tools, including an Email System. This written Email Policy, which governs employees' use of the Company's email system, applies to email use at the Company's headquarters and district offices, as well as at remote locations, including but not limited to employees' homes, airports, hotels, client and supplier offices. The Company's email rules and policies apply to full-time employees, part-time employees, independent contractors, interns, consultants, suppliers, clients, and other third parties. Any employee who violates the Company's email rules and policies may be subject to disciplinary action, up to and including termination.

Email Exists for Business Purposes

The Company allows email access primarily for business purposes. Employees may use the Company's email system for personal use only in accordance with this policy.

Authorized Personal Use of Email

Employees may use email to communicate with spouses, children, domestic partners, and other family members. Employees' personal use of email should be limited and reasonable. Employees are prohibited from using email to operate a business, conduct an external job search, solicit money for personal gain, campaign for political causes or candidates, or promote or solicit funds for a religious or other personal cause unless explicitly authorized by their manager.

Employees Have No Reasonable Expectation of Privacy

Email messages created and transmitted on Company computers are the property of the Company. The Company reserves the right to monitor all email transmitted via the Company's computer system. Employees have no reasonable expectation of privacy when it comes to business and personal use of the Company's email system.

The Company reserves the right to Monitor, Inspect, Copy, Review, and Store

at any time and without notice any and all usage of email, and any and all files, information, software, and other content created, sent, received, downloaded, uploaded, accessed, or stored in connection with employee usage. The Company reserves the right to disclose email text and images to regulators, the courts, law enforcement, and other third parties without the employee's consent.

Offensive Content and Harassing or Discriminatory Activities Are Banned

Employees are prohibited from using email to engage in activities or transmit content that is harassing, discriminatory, menacing, threatening, obscene, defamatory, or in any way objectionable or offensive.

Confidential, Proprietary, and Personal Information Must Be Protected

Unless authorized to do so, employees are prohibited from using email to transmit confidential information to outside parties. Employees may not access, send, receive, solicit, print, copy, or reply to confidential or proprietary information about the Company, employees, clients, suppliers, and other business associates. Confidential information includes but is not limited to client lists, credit card numbers, Social Insurance Numbers, employee performance reviews, salary details, trade secrets, passwords, and information that could embarrass the Company and employees were it to be made public.

Do Not Use Email to Communicate with Lawyers

In order to preserve the attorney-client privilege for communications between lawyers and clients, never use email to seek legal advice or pose a legal question.

Violations

These guidelines are intended to provide Company employees with general examples of acceptable and unacceptable use of the Company's email system. A violation of this policy may result in disciplinary action up to and including termination.

Acknowledgement

If you have questions about the above policies and procedures, address them to your manager before signing the following agreement.

I have read the Company's Email Policy and agree to abide by it. I understand that a violation of any of the above policies and procedures may result in disciplinary action, up to and including my termination.

User Name

User Signature

Date

**This is Appendix “I” to the
Thirteenth Report of the Liquidator**

DATA PROTECTION LAWS

CHART COMPARING CANADIAN AND GERMAN LEGAL REQUIREMENTS

| REQUIREMENTS / APPLICABLE LEGISLATION | CANADA: <i>Personal Information Protection and Electronic Documents Act ("PIPEDA")</i> | GERMANY: <i>Federal Data Protection Act ("BDSG")</i> |
|---|---|---|
| 1. Type of Information Protected: "Personal Information" | <p>Principle: Means information about an identifiable individual.</p> <p>Legal provision: Section 2 of PIPEDA.</p> <p>Relevant case law / Interpretation: Canadian privacy regulators usually take a broad, contextual view of the definition of "personal information". Information will be about an identifiable individual where there is a serious possibility that an individual could be identified through the use of that information, alone or in combination with other available information (See <i>Gordon v. Canada (Minister of Health)</i>, 2008 FC 258).</p> <p>Treatment of "work product": "Work product," i.e. information that employees have created at work such as emails, analysis or accounting records, is not automatically excluded from the definition of "personal information." See section 5 for details.</p> <p>Exception: Is excluded from the definition of "personal information" the business contact information of an individual that the organization collects, uses or discloses <u>solely for the purpose of communicating or facilitating communication with the individual in relation to their employment, business or profession.</u> (Section 4.01 of PIPEDA)</p> | <p>Principle: "Personal data" means any information concerning the personal or material circumstances of an identified or identifiable individual (the data subject).</p> <p>Note: Personal data must necessarily relate to an individual person. Any company related data (either sensitive or not) is not protected by the BDSG.</p> <p>Legal provision: Section 3 (1) of the BDSG</p> <p>Relevant case law / Interpretation: N/A</p> <p>General Note: As of May 25, 2018, the BDSG in its current version will be replaced by the <u>EU General Data Privacy Regulation (GDPR) ((EU) 2016/679)</u> and a revised Federal Data Privacy Act (BDSG new) which will then govern the processing of personal data.</p> |
| 2. Application (commercial activities) | <p>Principle: PIPEDA applies to an organization in the course of "commercial activities," defined as "any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fundraising lists."</p> <p>Legal provision: Section 4(1)(a) of PIPEDA</p> | <p>Principle: The purpose of the BDSG is to protect the individual against his/her right to privacy being impaired through the handling of his/her personal data.</p> <p>The BDSG governs the</p> <ul style="list-style-type: none"> • collection, • processing, use, modification and the |

| | | |
|---|---|---|
| | <p>Relevant case law / Interpretation: See OPC, <i>Interpretation Bulletin: Commercial Activity (January 2017)</i></p> | <ul style="list-style-type: none"> • transfer <p>of personal data by state entities and private entities. Generally, the BDSG will only cover data which is collected / processed automatically <u>with the exception of employee related data</u>. Such data also falls within the scope of the BDSG if collected manually.</p> <p>Legal provision: Section 1 (1), (2) No. 3, section 2 (4), section 32 of the BDSG</p> <p>Relevant case law / Interpretation: N/A</p> |
| <p>3. Extra-Territoriality of PIPEDA</p> | <p>Principle: PIPEDA will apply to an organization located outside Canada that collects, uses or disclose their personal information of individuals residing in Canada if there is a “real and substantial connection” between the organization and Canada.</p> <p>Legal provision: N/A</p> <p>Relevant case law / Interpretation:</p> <ul style="list-style-type: none"> • <i>In Lawson v Accusearch Inc (cob Abika.com)</i>, 2007 FC 125: The relevant connecting factors include (i) the location of the target audience of the website, (ii) the source of the content on the website, (iii) the location of the website operator, and (iv) the location of the host server. • <i>A.T. v. Globe24h.com</i>, 2017 FC 114: the Court based its decision that there was “real and substantial connection” with Canada on these facts: (i) the content that is at issue is Canadian court and tribunal decisions containing personal information which was copied by the respondent from Canadian legal websites; (ii) the website directly targets Canadians by specifically advertising that it provides access to “Canadian Caselaw”/”Jurisprudence de Canada”. The evidence is that the majority of visitors to Globe24h.com are from Canada; (iii) the impact of the website is felt by members of the Canadian public. | <p>Principle: The applicability of the BDSG does not depend on the nationality or residency of an individual. The BDSG protects the personal data of any individual as long as collecting, processing or using or transfer of data is a domestic procedure. Consequently, the BDSG will apply to an organization outside Germany which collects, processes or uses personal data in Germany.</p> <p>Legal provision: Section 1 of the BDSG</p> <p>Relevant case law / Interpretation: N/A</p> |
| <p>4. Consent</p> | <p>Principle: Consent is required from individuals before collection, using or disclosing their personal information.</p> <p>Legal provision: Principle 4.3 of Schedule 1 of PIPEDA</p> | <p>Principle: The collection, processing, use and transfer (herein: “Processing”) of personal data is only admissible if permitted or prescribed by the BDSG, any other legal provision or if the data subject has consented. The consent declaration is, hence, only one option for a legal procession of data. Other important legitimate bases for the processing of personal data are:</p> |

Relevant case law / Interpretation: See OPC, *Interpretation Bulletin: Form of Consent* (March 2014); See also recent 2017 Report on Consent (2016-2017 Annual Report to Parliament); OPC, Draft guidelines: Obtaining meaningful online consent (fall 2017); OPC, Draft guidance: Inappropriate data practices – interpretation and application of subsection 5(3) (fall 2017).

- requirement to create, carry out or terminate a contract or other obligation with the individual;
- processing is necessary to safeguard justified interests of the controller of the data and there is no reason to assume that the data subject has an overriding legitimate interest in his data being excluded from processing or use;
- if the data are generally accessible or the controller of the filing system would be entitled to publish them, unless the data subject's legitimate interest in his data being excluded from processing or use clearly outweighs the justified interest of the controller of the filing system;
- personal data of an employee may be collected, processed or used for employment-related purposes where necessary for hiring decisions or, after hiring, for carrying out or terminating the employment contract. Employees' personal data may be collected, processed or used to detect crimes only if there is a documented reason to believe the data subject has committed a crime while employed, the collection, processing or use of such data is necessary to investigate the crime and is not outweighed by the data subject's legitimate interest in excluding the collection, processing or use, and in particular the type and extent are not disproportionate to the reason.

Legal provision: Section 4, section 28, section 32 (1), (2) of the BDSG

For the consent declaration the following applies:

The Consent is effective only when based on the data subject's free decision. The Data subjects must be informed of the purpose of collection, processing or use and, in so far as the circumstances of the individual case dictate or upon request, of the consequences of withholding consent.

The Consent must be in writing unless special circumstances warrant any other form. If consent is to be given together with other written declarations, it must be made distinguishable in its appearance.

The individual may always revoke the consent for any reason.

| | | |
|---|--|--|
| | | <p>Note: Further restrictions regarding the consent will be introduced by the revised Federal Data Privacy Act (BDSG new).</p> <p>Legal provision: Section 4a BDSG</p> <p>Relevant case law / Interpretation: N/A</p> |
| <p>5. “Work product” consent exception</p> | <p>Work product exception: Consent is not required for the collection, use and disclosure of personal information if it “was produced by the individual in the course of their employment, business or profession <u>and the collection, use or disclosure is consistent with the purposes for which the information was produced.</u>”</p> <p>Legal provision: Section 7(1)(b.2) of PIPEDA (in force since June 2015)</p> <p>Relevant case law / Interpretation: Whether certain type information has been produced by the individual in the course of his/her employment, business or profession would have to be assessed on a case to case basis and the use or disclosure of this information would have to be consistent with the purposes for which the information was produced. The privacy regulator in Canada (Office of the Privacy Commissioner, or “OPC”) adopts a “total context approach” to make the assessment of whether the information is personal information, using factors such as how the information was produced, for what purposes, how it will be used, and industry practices.</p> <ul style="list-style-type: none"> For instance, it has found that sales statistics of telemarketers and the number of houses sold by real estate brokers constitute personal information where this information can lead to inferences about an individual’s job performance (<i>PIPEDA Case Summary #220: Telemarketer objects to employer sharing her sales results with other employees (September 15, 2003)</i>; <i>PIPEDA Case Summary #303: Real estate broker publishes names of top five sales representatives in a city (May 31, 2005)</i>) | <p>Principle: See above under “4. Consent”; no “work product” exception</p> |
| <p>6. Consent Exception (Employee)</p> | <p>Principle: Organizations are allowed to collect, use and disclose personal information without the employee’s consent if such information is necessary to “establish, manage or terminate an employment relationship” and the individual was informed that the personal information will be or may be collected, used or disclosed for those</p> | <p>Principle: See above under “4. Consent”</p> |

| | | |
|--|--|---|
| | <p>purposes.</p> <p>Legal provision: Section 7.3 of PIPEDA (in force since June 2015)</p> <p>Relevant case law / Interpretation: Employer must have “informed” the employees that the personal information will be or may be collected, used or disclosed for those purposes – for instance under an employee privacy policy.</p> | |
| <p>7. Consent Exception (General): Disclosure to government institution/ Part of an investigation exception</p> | <p>Principle: PIPEDA authorizes organizations to disclose personal information without the individual’s consent under certain circumstances, such as in the context of an investigation of a disclosure to a government institution</p> <p>Legal provision: Section 7(3) of PIPEDA</p> | <p>Principle: German law includes legal bases for state authorities to collect and process personal information without the individual’s consent in (criminal) investigations. Such legal bases will prevail over the BDSG. The most important legal bases are governed by the German Code of Criminal Procedure (StPO) and within state police laws which give the prosecutor and the law enforcement authorities the right to collect and process personal data to investigate and prevent law infringements.</p> <p>Legal provision: Various federal laws inter alia German Code of Criminal Procedure (StPO) and state police laws.</p> <p>Relevant case law / Interpretation: N/A</p> |
| <p>a) Disclosure to comply with a court order (local)</p> | <p>Principle: Disclosure is required to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of records.</p> <p>Legal provision: Section 7(3)(c) of PIPEDA</p> <p>Relevant case law / Interpretation: According to the OPC, a company holding personal information in Canada about Canadian residents is not required to provide the information to a foreign government or agency in response to a direct court order issued abroad. (see <i>Privacy Commissioner's 2004 Annual Report on the Personal Information Protection and Electronic Documents Act tabled in Parliament — Commissioner reports on the first year of full implementation of Canada's private sector privacy law</i> (October 6, 2005))</p> | <p>Principle: see above under “7. Consent Exception (General)”</p> |

| | | |
|--|---|--|
| <p>b) To enforce a law</p> | <p>Principle: Disclosure is made to a government institution or part of a government institution that has made a request for the information, identified its lawful authority to obtain the information and indicated that the disclosure is requested for the purpose of enforcing any law of Canada, a province or a foreign jurisdiction, carrying out an investigation relating to the enforcement of any such law or gathering intelligence for the purpose of enforcing any such law.</p> <p>Legal provision: Section 7(3) (c.1) (ii) of PIPEDA</p> <p>Relevant case law / Interpretation:</p> <ul style="list-style-type: none"> - “government institution” is not defined in PIPEDA and it is therefore unclear whether a foreign government institution would qualify under this exception. - “lawful authority” does not necessarily refer to a subpoena or warrant, but there has to be a valid law that authorizes the organization to compel the production of the requested information (see <i>R. v. Spencer</i>, 2014 SCC 43). | <p>Principle: see above under “7. Consent Exception (General)”</p> |
| <p>c) Under the Money Laundering Act</p> | <p>Principle: Disclosure made to the government institution mentioned in section 7 of the <i>Proceeds of Crime (Money Laundering) and Terrorist Financing Act</i></p> <p>Legal provision: Section 7(3) (c.2) of PIPEDA</p> <p>Relevant case law / Interpretation: N/A</p> | <p>Principle: The German Banking Act (KWG) contains a provision which enables authorities and courts, under certain conditions, to access certain data with regard to account details.</p> <p>Legal provision: Section 24c (1), (3) of the KWG</p> <p>Relevant case law / Interpretation: N/A</p> |
| <p>d) Investigation of illegal activity (to government)</p> | <p>Principle: Disclosure made on the initiative of the organization to a government institution if the organization has reasonable grounds to believe that the information relates to a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed</p> <p>Legal provision: Section 7.3 (d.1) of PIPEDA</p> <p>Relevant case law / Interpretation: N/A</p> | <p>Principle: see above under “7. Consent Exception (General)”</p> |

| | | |
|--|---|--|
| <p>e) Investigation of illegal activity (to another organization)</p> | <p>Principle: Disclosure made to another organization and is reasonable for the purposes of investigating a breach of an agreement or a contravention of the laws of Canada or a province that has been, is being or is about to be committed and it is reasonable to expect that disclosure with the knowledge or consent of the individual would compromise the investigation.</p> <p>Legal provision: Section 7.3 (d.2) of PIPEDA</p> <p>Relevant case law / Interpretation: N/A</p> | <p>Principle: see above under “7. Consent Exception (General)”</p> |
| <p>f) Detecting fraud (to another organization)</p> | <p>Principle: Disclosure made to another organization and is reasonable for the purposes of detecting or suppressing fraud or of preventing fraud that is likely to be committed and it is reasonable to expect that the disclosure with the knowledge or consent of the individual would compromise the ability to prevent, detect or suppress the fraud.</p> <p>Legal provision: Section 7.3 (d.2) of PIPEDA</p> <p>Relevant case law / Interpretation: N/A</p> | <p>Principle: see above under “7. Consent Exception (General)”</p> |
| <p>8. Cross-border transfer restrictions</p> | <p>Principle: Individuals should be notified if their personal information will be transferred to and/or stored in a foreign country, and further, they should be notified of the fact that such information will be subject to foreign laws and may be disclosed to foreign authorities under such laws. This principle recognizes that individuals have the right to assess their own risks when it comes to potential access to their personal information by foreign authorities, some people being more risk averse than others. See also s. 11 “Outsourcing restrictions”.</p> <p>Legal provision: N/A</p> <p>Relevant Case law / Interpretation: See PIPEDA Case Summary #394, <i>Outsourcing of Canada.com e-mail services to U.S.-based firm raises questions for subscribers</i> (August 7, 2008); PIPEDA Case Summary #365: <i>Responsibility of Canadian financial institutions in SWIFT's disclosure of personal information to US authorities considered</i> (April 2, 2007); PIPEDA Case Summary #313, <i>Bank's notification to customers triggers PATRIOT</i></p> | <p>Principle: Cross-border transfer of personal data to a non EU country requires an additional legal basis such as (i) a bilateral agreement or (ii) an adequate level of data protection as confirmed by a decision of the European Commission or (iii) the use of European standard model clauses on data protection or (iv) binding corporate rules (BCR) as approved by data privacy authorities. For a data transfer to the U.S., the recently adopted Privacy Shield* currently serves as adequate basis for the transfer of personal data to a recipient in the U.S. if the recipient adopted the Privacy Shield principles.</p> <p>With respect to Canada the European Commission confirmed that PIPEDA maintains an adequate level of data protection by decision C(2001) 4539 of December 20, 2001.</p> <p>Legal provision: Section 4b, section 4c of the BDSG</p> <p>Relevant case law / Interpretation: N/A</p> |

| | | |
|--|--|---|
| | <p><i>Act concerns</i> (October 19, 2005); OPC, <i>Guidelines for Transferring Personal Information Across Borders</i> (January 2009).</p> | <p>*Privacy Shield replaced the former Safer Harbour Principles which were annulled by the European Court of Justice (ECJ) in 2015 (ECJ, Judgement of 6 October 2015 in the case C-362/14). There is an ongoing discussion whether the Privacy Shield may also be challenged before the ECJ.</p> |
| <p>9. Safeguards requirements</p> | <p>Principle: Personal information shall be protected by security safeguards appropriate to the sensitivity of the information. The security safeguards shall protect personal information against loss or theft, as well as unauthorized access, disclosure, copying, use, or modification. Organizations shall protect personal information regardless of the format in which it is held.</p> <p>The methods of protection should include</p> <ul style="list-style-type: none"> • physical measures, for example, locked filing cabinets and restricted access to offices; • organizational measures, for example, security clearances and limiting access on a “need-to-know” basis; and • technological measures, for example, the use of passwords and encryption. <p>Legal provision: Principle 4.7 of Schedule 1 of PIPEDA</p> <p>Relevant Case law / Interpretation: See also s. 11 “Outsourcing restrictions”.</p> | <p>Principle: Public and private bodies processing personal data either on their own behalf or on behalf of others shall take the technical and organizational measures necessary to ensure the implementation of the provisions of the BDSG. Measures shall be required only if the effort involved is reasonable in relation to the desired level of protection.</p> <p>In particular, measures suited to the type of personal data or data categories to be protected shall be taken,</p> <ul style="list-style-type: none"> • to prevent unauthorized persons from gaining access to data processing systems with which personal data are processed or used (access control), • to prevent data processing systems from being used without authorization (access control), • to ensure that persons entitled to use a data processing system have access only to the data to which they have a right of access, and that personal data cannot be read, copied, modified or removed without authorization in the course of processing or use and after storage (access control), • to ensure that personal data cannot be read, copied, modified or removed without authorization during electronic transmission or transport, and that it is possible to check and establish to which bodies the transfer of personal data by means of data transmission facilities is envisaged (transmission control), • to ensure that it is possible to check and establish whether and by whom personal data have been input into data processing systems, modified or removed (input control), • to ensure that, in the case of commissioned processing of personal data, the data are processed strictly in accordance with the instructions of the principal (job control), • to ensure that personal data are protected from accidental destruction or loss (availability control), • to ensure that data collected for different purposes can be processed separately. <p>Special safeguard duties apply if a data processor is used.</p> <ul style="list-style-type: none"> • The agent shall be carefully selected, with particular regard for the suitability of the technical and organizational measures taken by him/her. |

| | | |
|---------------------------------------|---|---|
| | | <ul style="list-style-type: none"> • The commission shall be given in writing, specifying the collection, processing and use of the data, the technical and organizational measures and any subcommissions. • The commission shall be given in writing and shall specify in particular: <ul style="list-style-type: none"> - the subject and the duration of the commission, - the extent, type and purpose of the planned collection, processing or use of data; the type of data and group of persons affected, - technical and organizational measures to be taken under Section 9, - the correction, erasure and blocking of data, - the agent’s obligation under sub-Section 4, in particular controls to be undertaken, - any right to issue subcontracts, - the principal’s rights of control and the agent’s corresponding obligations to tolerate and cooperate, - violations by the agent or persons employed by him/her of provisions to protect personal data or of terms specified in the commission which must be reported, - the extent of the principal’s authority to issue instructions to the agent, - the return of data storage media and the erasure of data stored by the agent after the commission has been completed. <p>Legal provision: Section 9, section 11 of the BDSG</p> <p>Relevant case law / Interpretation: N/A</p> |
| <p>10. Breach Notification</p> | <p>Principle: Explicit obligation to notify individuals in cases of breaches, and report to the OPC, if it is “reasonable in the circumstances to believe that the breach creates a real risk of significant harm to an individual”.</p> <p>Legal provision: New sections 10.1 through 10.3 of PIPEDA (not yet in force)</p> <p>Relevant Case law / Interpretation: “Privacy breach” is a loss of, unauthorized access to or unauthorized disclosure of Personal Information resulting from a breach of the organization’s security safeguards that are referred to in clause 4.7 of Schedule 1 of PIPEDA or from a failure to establish those safeguards. See also <i>Breach of Security Safeguards Regulations</i> published on September 2, 2017,</p> | <p>Principle: Explicit obligation for private and public bodies to notify the responsible supervisory authority and the data subject without delay in case they determine that</p> <ul style="list-style-type: none"> • special types of personal data, • personal data subject to professional secrecy, • personal data related to criminal offences or administrative offences or the suspicion of punishable actions or administrative offences, or • personal data concerning bank or credit card accounts <p>stored with that body have been unlawfully transferred or otherwise unlawfully revealed to third parties, with the threat of serious harm to the data subject’s rights or legitimate interests.</p> <p>Legal provision: Section 42a of the BDSG</p> |

| | | |
|-------------------------------------|--|---|
| | | Relevant case law / Interpretation: N/A |
| 11. Outsourcing restrictions | <p>Principle: An organization is responsible for personal information in its possession or custody, including information that has been transferred to a third party for processing. The organization shall use contractual or other means to provide a comparable level of protection while the information is being processed by a third party.</p> <p>Legal provision: Principles 4.1.3. and 4.7.3 of Schedule 1 of PIPEDA</p> <p>Relevant Case law / Interpretation: See above under “9. Safeguards requirements”.</p> | Principle: See above under “9. Safeguards requirements” |
| 12. Retention requirements | <p>Principle: Personal information must not be retained for a period longer than what is necessary for the fulfilment of the intended purpose, after which it must be destroyed, erased, or made anonymous</p> <p>Legal provision: Principle 4.5 of Schedule 1 of PIPEDA</p> <p>Relevant Case law / Interpretation: See PIPEDA Report of Findings #2016-005, <i>Joint investigation of Ashley Madison by the Privacy Commissioner of Canada and the Australian Privacy Commissioner/Acting Australian Information Commissioner</i> (August 22, 2016)</p> | <p>Principle: Provisions for the retention of personal information is mainly contained in the German corporate laws and the Commercial Code under which companies are obliged to store business information for certain timeframes. Such provisions prevail over the BDSG.</p> <p>Legal provision: e.g. section 257 of the German Commercial Code (HGB), section 147 of the Fiscal Code of Germany (AO), section 14b of the German Value Added Tax Act (UStG)</p> <p>Relevant case law / Interpretation: N/A</p> |
| 13. Enforcement | <p>Principle: Ombudsman model where the OPC may initiate an investigation or investigate based on reception of a complaint from the public. After its investigation, the OPC issues a report and may make recommendations to the organization. After the report is received, an individual can apply to the Federal Court for award of damages.</p> <p>Legal provision: Section 11 to 17 of PIPEDA</p> <p>Fines for failure to report a privacy breach: New obligations to report breach of security safeguards to the OPC will soon come into force, with fines for non-</p> | <p>Principle: State authorities (<i>Landesdatenschutzbeauftragte</i>) are in charge for monitoring the compliance with the BDSG. They may conduct audits, issue request orders or impose fines in case of non compliance.</p> <p>Prosecution is in charge in case of a violation of criminal statues of the BDSG.</p> <p>Fines:</p> <ul style="list-style-type: none"> • Administrative offences shall be punishable by a fine of up to EUR 300,000. If the |

| | | |
|--|---|--|
| | <p>compliance up to \$100,000 (new section 28 of PIPEDA – not yet in force).</p> <p>Relevant case law / Interpretation: The OPC recently argued for stronger enforcement measures in PIPEDA:</p> <ul style="list-style-type: none"> ○ Fines and monetary settlements <ul style="list-style-type: none"> • Other Canadian regulators have the power to impose administrative monetary penalties (<i>Competition Act</i>, for instance). • Fines (like those provided in the <u>GDPR</u>) or monetary settlements (such as those obtained by the U.S. Federal Trade Commission) are becoming the norm internationally. • Factors for imposing a penalty should aim at enhancing compliance (rather than to punish) + due diligence defense. ○ Authority to verify compliance on demand <ul style="list-style-type: none"> • A proactive regulatory model would allow the OPC to verify compliance on demand and require organizations to demonstrate accountability, without evidence that a violation has occurred. • Regardless, the OPC intends on making more frequent and strategic use of its existing power to initiate investigations. ○ Private right of action <ul style="list-style-type: none"> • Parliament should consider creating a private right of action for PIPEDA violations as an alternative to the current complaint model, instead of relying on the lengthy development period of privacy tort law | <p>amount set by the BDSG does not appear appropriate, the fine may be increased. In principle, the fine shall exceed the financial benefit to the perpetrator derived from the administrative offence.</p> <ul style="list-style-type: none"> • Certain breaches of data protection rules constitute criminal offences, carrying a penalty of up to two years of imprisonment. However, such offences shall be prosecuted only if a complaint is filed. Complaints may be filed by the data subject, the Federal Commissioner for Data Protection and Freedom of Information and the supervisory authority. <p>Legal provision: Section 43, section 44 of the BDSG</p> <p>Relevant case law / Interpretation: N/A</p> |
|--|---|--|