

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE REGIONAL

)

FRIDAY THE 18<sup>th</sup>

SENIOR JUSTICE MORAWETZ

)

DAY OF NOVEMBER, 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

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by KPMG Inc. ("**KPMG**"), in its capacity as the Court-appointed Liquidator (the "**Liquidator**") in respect of the winding up 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 approving (a) the sale transaction (the "**Sale Transaction**") contemplated by a letter agreement dated October 31, 2016 (the "**Sale Agreement**") between the Liquidator and Bank of Montreal (the "**Purchaser**"), and (b) a settlement (the "**Settlement**")

and, collectively with the Sale Transaction, the “**Transactions**”) contemplated by a letter agreement dated October 31, 2016 (the “**Settlement Agreement**” and, collectively with the Sale Agreement, the “**Agreements**”) between the Liquidator and the Purchaser, in each case appended to the Confidential Supplement to the Eighth Report of the Liquidator dated November 15, 2016 (the “**Confidential Supplement to the Eighth Report**”), and, in the case of the Sale Transaction vesting in the Purchaser Maple Bank’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Eighth Report of the Liquidator dated November 15, 2016 (the “**Eighth Report**”), the Confidential Supplement to the Eighth Report, and on hearing the submissions of counsel for the Liquidator, no one appearing for any other person on the service list in connection with the Transactions, although properly served as appears from the affidavit of Frances Dunne sworn November 15, 2016, filed:

#### **Service / Approval of the Activities**

1. THIS COURT ORDERS, that the time for service of the Notice of Motion and the Motion Record is validated so that the Motion is properly returnable today and hereby dispenses with further service thereof, including without limitation, any prescribed notice requirements under the *Winding-up and Restructuring Act* R.S.C., 1985, c. W-11 (the “**WURA**”).
2. THIS COURT ORDERS that the Eighth Report and the Confidential Supplement to the Eighth Report and the activities of the Liquidator outlined in the Eighth Report and the Confidential Supplement to the Eighth Report be and are hereby approved.

#### **Sale and Approval**

3. THIS COURT ORDERS AND DECLARES that (i) the Transactions are hereby approved; (ii) the execution of each of the Agreements by the Liquidator is hereby authorized, ratified and approved, and (iii) the Liquidator is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the conveyance of the Purchased Assets to the Purchaser, including the making of such minor amendments to each of the Agreements as the Liquidator may deem necessary.
4. THIS COURT ORDERS AND DECLARES that Maple Bank has no right, title or interest in and to the securities provided by Maple Bank under the Master Agreement (as defined in the Settlement

Agreement) described in the first table (Maple Bank as Transferor) in Exhibit 5 to Schedule "B" to the Settlement Agreement.

5. THIS COURT ORDERS AND DECLARES that upon the delivery of a Liquidator's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Liquidator's Certificate**"), all of Maple Bank's right, title and interest (including, for greater certainty, any right, title or interest held by the GIA) in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of ~~Regional Senior Justice Morawetz~~ dated February 16, 2016; (ii) any charges created under the WURA; (iii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* R.S.O. 1990, c. P.10, or any other personal property registry system, and, without limiting the generality of the foregoing, the registrations listed as Schedule "B" hereto (all of which are collectively referred to as the "**Encumbrances**"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Liquidator's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. THIS COURT ORDERS AND DIRECTS the Liquidator to file with the Court a copy of the Liquidator's Certificate, forthwith after delivery thereof.

8. THIS COURT ORDERS that, notwithstanding the pendency of these proceedings, the vesting of the Purchased Assets in the Purchaser pursuant to this Order, and the payment of the amounts and other transactions contemplated under each of the Agreements shall not be void or voidable by creditors of Maple Bank, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent

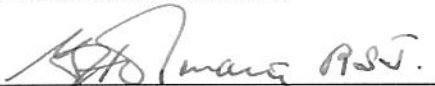
conveyance, transfer at undervalue, or other reviewable transaction under the WURA, or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

**Sealing**

9. THIS COURT ORDERS that the Confidential Supplement to the Eighth Report is hereby sealed and shall not form part of the public record until all remaining amounts owing by Maple Bank to any counterparty in connection with the early termination of any of Maple Bank's derivative transactions in Canada have been settled and paid, unless otherwise ordered by this Court on notice to the Liquidator, and as soon as practicable thereafter, the Liquidator shall file a certificate with this Court confirming that the Confidential Supplement to the Eighth Report be unsealed.

**General**

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

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

NOV 18 2016

PER / PAR: 

**Schedule A – Form of Liquidator’s Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF MAPLE BANK GmbH

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

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

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

Applicant

and

**MAPLE BANK GmbH**

Respondent

**LIQUIDATOR’S CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order of Regional Senior Justice Morawetz of the Ontario Superior Court of Justice [Commercial List] (the "**Court**") dated February 16, 2016, KPMG Inc. was appointed under the provisions of the *Winding-Up and Restructuring Act* R.S.C., 1985, c. W-11 as the Liquidator (the "**Liquidator**") of the business in Canada of Maple Bank GmbH ("**Maple Bank**") and of its assets, as defined in section 618 of the *Bank Act*, S.C. 1991, c.46, as amended.
- B. Pursuant to an Order of the Court dated November 18, 2016, the Court approved the letter agreement made as of October 31, 2016 (the "**Sale Agreement**") between the Liquidator and Bank of Montreal (the "**Purchaser**"), and provided for the vesting in the Purchaser of Maple Bank’s right, title and interest in and to the Purchased Assets, which vesting is to be effective

with respect to the Purchased Assets upon the delivery by the Liquidator to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions precedent to the Transaction as set out in Section 3 of the Sale Agreement have been satisfied or waived by the Liquidator and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Liquidator.

- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE LIQUIDATOR CERTIFIES the following:

1. The Purchaser has paid and the Liquidator has received the Purchase Price for the Purchased Assets payable pursuant to the Sale Agreement;
2. The conditions precedent to the Transaction as set out in Section 3 of the Sale Agreement have been satisfied or waived by the Liquidator and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Liquidator.
4. This Certificate was delivered by the Liquidator at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**KPMG Inc.**, in its capacity as the Court-appointed Liquidator in respect of the winding up of the business in Canada of Maple Bank GmbH, and of its assets, as defined in section 618 of the *Bank Act*, S.C. 1991, c.46, as amended.

Per: \_\_\_\_\_

Name:

Title:

**Schedule B – PPSA Registrations**

**Name of Debtor:** Maple Bank GmbH

**As of:** November 13, 2016

SECURED PARTY		FILE NO./ REGISTRATION NO./ REGISTRATION PERIOD	COLLATERAL CLASSIFICATION/DESCRIPTION	FINANCING CHANGE STATEMENTS
1.	Maple Trust Company	888740613 20021030 1124 1590 6773 5 years	Accounts, Other	<b>20060330 1439 1590 4212</b> <b>Renewal:</b> 99 years
2.	The Bank of Nova Scotia	623817576 20060330 1407 1590 4200 99 years	Accounts, Other	
3.	BMO Nesbitt Burns Inc.	679448196 20120625 1701 1532 2776 25 years	Accounts, Other <b>GCD:</b> Collateral pledged under the Securities Loan Agreement dated November 6 <sup>th</sup> , 2007, as it may be amended, supplemented, restated or replaced from time to time.	<b>20120627 1445 1530 4477</b> <b>Amendment</b> Amend debtor's address from 79 Wellington West, Suite 3500, Toronto, ON M5K 1K7 to 79 Wellington Street West, Suite 3500, Toronto, ON M5K 1K7

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ACT, S.C. 1991, C.46, AS AMENDED  
BETWEEN: **ATTORNEY GENERAL OF CANADA**, Applicant – and – **MAPLE BANK GmbH**, Respondent

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

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

PROCEEDING COMMENCED AT  
TORONTO

**APPROVAL AND VESTING ORDER**

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