

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

FOURTEENTH 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*

July 17, 2020

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1. INTRODUCTION AND PURPOSE OF THE FOURTEENTH 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**”). Appended hereto 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 the Court with information in respect of: (i) the actions of the Liquidator since the granting of the Winding-Up Order; (ii) the assets and liabilities of the Toronto Branch; and (iii) 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 the Court with information in respect of: (i) the actions of the Liquidator since the issuance of the Second Report; (ii) 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, 2016 to May 13, 2016.

8. On June 17, 2016, the Liquidator filed its Fourth Report which provided the Court with information regarding the sale by the Liquidator of certain un-pooled insured residential mortgages to the originators of those mortgages; myNext Mortgage Premier Trust and Xceed Mortgage Corporation.
9. On July 25, 2016, the Liquidator filed its Fifth Report which provided the Court with information in respect of three sale transactions by the Liquidator involving certain structured loans associated with the federal Immigrant Investor Program, 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 the Court with information in respect of 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 the Court with information in respect of 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 the Court with information in respect of 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 the Court with information in respect of:
 - i. The activities of the Liquidator since the issuance of the Third Report;
 - ii. The status of the Claims Procedure;
 - iii. 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 the Court with information in respect of the Liquidator’s activities since November 18, 2016, and sought amended relief to that sought in the Ninth Report, including an order approving:

- 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);
 - 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 the Court with information in respect of (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 provided the Court with information in respect of:
- i. 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. 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. 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. 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 the Court with information 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. The status of the Claims Procedure implemented pursuant to the Claims Procedure Order Dated June 8, 2016;
 - iii. The status of the Principal Officers Claims Procedure implemented pursuant to the Principal Officers Additional Claims Order;
 - iv. The Liquidator’s estimated surplus available to satisfy the claims of the 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 Liquidator’s estimated surplus (the “**German Estate Interim Distribution**”), for which an order was granted (the “**German Estate Interim Distribution Order**”), 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. 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 provided the Court with information 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. 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 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; and
 - e. the sealing of the Employee, Radius and Global One settlement agreements;
 - iii. The status of Principal Officers Additional Claims Procedure implemented pursuant to the Principal Officers Additional Claims Order;
 - iv. The Liquidator’s Estimated Surplus available to satisfy the Claims of the 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;
 - v. 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 report dated March 6, 2017 (the “**First ICC Report**”) and the Liquidator’s request for approval of same.
19. On December 8, 2017, the Liquidator filed its Thirteenth Report, a copy of which is appended hereto as **Appendix B**, which provided the Court with information 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. 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 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 Liquidator’s 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**”); and
 - iv. The Liquidator’s activities since the filing of the Twelfth Report and the Liquidator’s request for approval of same.
20. On December 12, 2017, the Liquidator filed its confidential supplement to the Thirteenth Report which provided the Court with information in respect of the terms of the final settlement agreements with the Executives.
21. On January 25, 2018, the Liquidator filed its second supplement to the Thirteenth Report (the “**Second Supplement to the Thirteenth Report**”), a copy of which is appended hereto as **Appendix C**, which provided the Court with information in respect of:

- i. The Liquidator's activities since the adjournment of the Data Sharing Motion including (a) the deletion of personal information that is contained in the Toronto Branch's digital Data, and (b) assisting the GIA, the MFGI Trustee, OTPP and National in better understanding the structure and quantum of the data, and ability to search the data that is proposed to be transferred to the GIA; and
- ii. The Liquidator's request that in the interim period while the Court is considering the Data Sharing Motion, that the Court grant an order authorizing and directing the Liquidator to transfer to the GIA (a) the Recall Records, (b) the Toronto Branch's Global One Data, and (c) the Laserfiche System Requested Data.

PURPOSE OF THE FOURTEENTH REPORT

22. The purpose of this Fourteenth Report (the "**Fourteenth Report**") is to provide information to the Court in respect of:
 - i. The Liquidator's activities since the filing of the Thirteenth Report;
 - ii. The Liquidator's statement of receipts and disbursements for the period February 16, 2016 to May 31, 2020;
 - iii. The Data Transfer Order and the Liquidator's performance of its duties thereto;
 - iv. The Liquidator's proposed role as Data Custodian (defined herein);
 - v. The status of the Claims Procedure implemented pursuant to the Claims Procedure Order, specifically as it relates to the initial claims and the subsequently amended claim filed by Canada Revenue Agency ("**CRA**");
 - vi. The Liquidator's estimated surplus available to satisfy the claims of Toronto Branch's creditors, as well as details in respect of the Estimated Reserve; and
 - vii. A proposed distribution to the German Estate.
23. The Liquidator is seeking an order:

- i. Approving the Fourteenth Report, the activities of the Liquidator as described herein, and the statement of receipts and disbursements for the period February 16, 2016 to May 31, 2020;
- ii. Approving the Liquidator's completion of its role under the Data Transfer Order and discharge from same;
- iii. Appointing the Liquidator as Data Custodian (defined herein);
- iv. Approving the revisions to the Estimated Reserve;
- v. Approving, *nunc pro tunc*, the notice of distribution to creditors of the Toronto Branch that will be published on July 21, 2020, in the National Edition of *The Globe and Mail* and the International Edition of *The Financial Times* (the "**July 21, 2020 Notice of Distribution**"), a copy of which is appended hereto as **Appendix D**; and
- vi. Approving a fourth interim distribution to the German Estate (the "**Fourth Interim Distribution**") in the amount of approximately \$25.7 million (as detailed further herein).

TERMS OF REFERENCE AND DISCLAIMER

24. 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.

25. 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.
26. Capitalized terms not defined in the Fourteenth Report are as defined in either the Winding-Up Order and/or the First Report through the Thirteenth Report. Unless otherwise indicated, all references to monetary amounts herein are denominated in Canadian dollars (“CAD”).
27. 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. ACTIVITIES OF THE LIQUIDATOR

28. Detailed descriptions of the Liquidator's activities from the Winding-Up Date up to and including the date of the Thirteenth Report have been set out in previous reports, and approved by the Court.
29. A detailed description of the Liquidator's activities since the date of the Thirteenth Report is set out below.

DATA TRANSFER ORDER

30. As outlined in the Thirteenth Report, the GIA had requested that the Liquidator provide it with a copy of all Toronto Branch data which was in the power, possession or control of the Liquidator, including all data related to Maple Bank or its affiliates that is stored at various Canadian storage facilities or held on computer tapes in the possession of the Liquidator or Ernst & Young LLP ("**EY**"). The basis of this request was to allow the GIA to fulfill its statutory or other legal duties under German law.
31. As outlined in the Second Supplement to the Thirteenth Report, at the Court hearing on December 13, 2017, counsel for Ontario Teachers' Pension Plan ("**OTPP**") and National Bank ("**National**") (both being shareholders, and whose representatives were also directors of Maple Financial Group Inc. ("**MFGI**")), raised concerns with respect to the Data Sharing Motion, including their lack of knowledge regarding the specific MFGI records that were to be transferred to the GIA, as well as the fact that privileged documents could be included in the MFGI records.
32. On January 26, 2018, the Court granted an Order authorizing and directing the Liquidator to produce, transfer and release certain of the books and records of the Toronto Branch which were in the power, possession or control of the Liquidator to the GIA (the "**Data Transfer Order**").
33. Pursuant to the Order, the Liquidator was to:

- i. Immediately produce, transfer and release certain data, and books and records to the GIA; and
 - ii. In the case of data stored at a third party owned off site facility (the “**SunGard Facility**”), identify and segregate (a) data containing certain personal information, and (b) data that OTPP and National considered to be privileged, as identified through the application of search terms provided by OTPP and National, following which segregation, the balance of the data was to be provided to the GIA by the Liquidator.
34. Pursuant to paragraph 1 of the Data Transfer Order, the Liquidator has produced, transferred or released to the GIA:
 - i. All digital records of the Toronto Branch stored on the Global One Database were transferred to the GIA on February 2, 2018;
 - ii. All physical records of the Toronto Branch stored at the storage facility known as the “Recall Facility” were transferred to the GIA on February 21, 2018 (notwithstanding the transfer of the physical records to the GIA, the Liquidator has agreed to continue paying the storage charges pending the GIA setting up its own account with the storage company); and
 - iii. All data stored in the Laserfiche system that relates solely to the Master Agreements for Securities Lending and Repo transactions for the Toronto Branch was transferred to the GIA on February 2, 2018.
35. Pursuant to paragraph 2 of the Data Transfer Order, the Liquidator made a copy of the data stored at the SunGard Facility. The following personal and other information (the “**Personal Information**”) was segregated from the data copy by the Liquidator (the remaining data associated with the copy being identified as the “**Data Set**”):

- i. Personal information of mortgagors, borrowers, and/or guarantors related to (a) mortgage loans; (b) immigrant investor program loans; and (c) personal information related to employees;
 - ii. Personal information of former Maple Securities Canada Limited (“**MSCL**”) employees;
 - iii. Personal information of the mortgagors associated with the Maple Bank Den Haag Branch in the Netherlands; and
 - iv. Certain confidential and/or proprietary information of sub-tenants of MSCL.
36. Pursuant to paragraph 3 of the Data Transfer Order, the Liquidator, in consultation with the GIA, MSCL, OTPP, National, and Deloitte Restructuring Inc., in its capacity as trustee in bankruptcy of MFGI (the “**MFGI Trustee**”) (collectively, the “**DTO Stakeholders**”), selected a software called “Nuix” to index the data associated with the Data Set and render it searchable.
37. Upon review of the Data Set, the Liquidator noted that the Data Set consisted of both email and financial information in various electronic formats. From an indexing and search capability perspective, the Data Set was divided by the Liquidator into two subsets, as follows:
 - i. Email data contained in Microsoft PST format, and financial information contained in various file formats (e.g. Microsoft Word, Microsoft Excel, Adobe PDF) (collectively, the “**Non-Database Files**”); and
 - ii. Financial information contained in databases (e.g. SQL, Oracle) (collectively, the “**Database Files**”).
38. The Liquidator issued a communication to the DTO Stakeholders outlining the above, and the potential implications on the ability to effectively formulate and apply search terms to the Non-Database Files and the Database Files, respectively.

Non-Database Files

39. The Liquidator was provided with the Search Terms and the Additional MFGI Privileged Search Terms (the latter being confidential and only disclosed to the Liquidator (i.e. not disclosed to the other DTO Stakeholders)) by OTPP and National.
40. Pursuant to paragraphs 11 and 13 of the Data Transfer Order, the Liquidator applied the Search Terms and the Additional MFGI Privileged Search Terms to the Non-Database files and segregated all files that returned positive hits.
41. Pursuant to paragraph 17 of the Data Transfer Order, on September 24, 2018, the Liquidator provided the GIA with a hard drive containing a copy of the Non-Database Files with certain data removed from the Data Set (the “**First Interim Transfer**”). The data provided to the GIA in the First Interim Transfer excluded the following:
 - i. All files identified as containing Personal Information;
 - ii. All unsearchable files; and
 - iii. All files returning positive hits following the application of both the Search Terms and the Additional MFGI Privileged Search Terms, pursuant to paragraphs 11 and 13 of the Data Transfer Order.
42. The Liquidator issued a letter to the GIA (copying the DTO Stakeholders) accompanying the hard drive associated with the First Interim Transfer, a copy of which is appended hereto as **Appendix E**.

Database Files

43. As a result of the Liquidator’s preliminary review of the Database files, the DTO Stakeholders agreed that additional information regarding the Database Files was required in order for effective search terms to be formulated pursuant to paragraphs 11 and 13 of the Data Transfer Order. It was determined that the Liquidator would

perform a comprehensive review of the Database Files (the “**Database Files Review**”) and report its findings to the DTO Stakeholders. The Database Files Review specifically focused on:

- i. The identification of non-searchable documents;
 - ii. The nature of the linkages between the various databases; and
 - iii. The content of the various databases.
44. The primary purpose of the Database Files Review was to provide OTPP and National with sufficient information regarding the Database Files such that they would be able to formulate effective search terms pursuant to the Data Transfer Order.
45. The Liquidator engaged the former MSCL database administrator to assist in performing the Database Files Review.
46. The Database Files Review was delivered to the DTO Stakeholders on May 17, 2018.
47. Following consideration of the Database Files Review, the DTO Stakeholders agreed that it would be difficult to formulate effective search terms to apply to the Database Files. As such, it was determined that certain databases within the Database Files would be transferred to the GIA, with the consent of the DTO Stakeholders.
48. Pursuant to paragraph 17 of the Data Transfer Order, and as agreed with the DTO Stakeholders, on March 11, 2019, the Liquidator provided the GIA with a hard drive containing a copy of a subset of Database Files (the “**Second Interim Transfer**”). The files were provided in a format that was agreed upon by the technical teams of the Liquidator and the GIA.

49. The Liquidator issued a letter to the GIA (copying the DTO Stakeholders) accompanying the hard drive associated with the Second Interim Transfer, a copy of which is appended hereto as **Appendix F**.
50. All parties to the Data Transfer Order, including the GIA, the MFGI Trustee, MSCL, OTPP, and NB, were provided notice in advance of both the First Interim Transfer and the Second Interim Transfer.

Completion of role under Data Transfer Order

51. The Liquidator is of the view that it has completed its duties under the Data Transfer Order, mainly, as they relate to paragraphs 1, 2, 3, 11, 13, and 17 of the Order.
52. The Liquidator continues to possess certain data as a result of its role under the Data Transfer Order (the “**Remaining DTO Data**”).
53. The Liquidator is of the view that the Remaining DTO Data is the only remaining issue associated with the Data Transfer Order, and is proposing to address this through the proposed Data Custodian Order (described further herein).
54. Pursuant to paragraph 26 of the Data Transfer Order, all costs incurred by, or on behalf of the Liquidator in connection with the order are to be separately tracked and allocated among the Liquidator, GIA, OTPP and National as those parties agree or, failing such an agreement, by order of the Court. The Replacement ICC will review these costs and thereafter the Liquidator will approach the aforementioned parties to determine if they have agreed on how the costs are to be allocated.
55. In light of the above, the Liquidator is seeking an order from the Court acknowledging that it has completed its duties pursuant to the Data Transfer Order.

CRA CLAIMS

Claims

56. CRA initially filed two claims in the Toronto Branch Estate (details of which are described in the Twelfth Report) in respect of:
- i. Unremitted corporate income taxes for the taxation years ended September 30, 2015, September 30, 2014, September 30, 2013, and September 30, 2012, totalling \$11.7 million; and
 - ii. Unremitted HST totalling \$199k, for the periods ended September 30, 2015 and June 16, 2016 (collectively, the “**Initial CRA Claims**”)
57. The Liquidator has filed tax returns for the Toronto Branch covering the period prior to the Winding-Up Date, being the taxation years September 30, 2015 and February 15 2016, the later return indicating taxes payable of approximately \$6 million. The taxation year ended February 15, 2016 was not covered by the Initial CRA Claims.
58. As a result of the Initial CRA Claims and the liability arising from the tax return for the February 15, 2016 tax year, the Liquidator reserved approximately \$20 million (plus applicable interest for these amounts). These reserves are described in further detail herein.
59. CRA subsequently filed an amended claim dated February 18, 2019 related to unpaid corporate taxes, in the amount of approximately \$3.4 million, which replaced its earlier claim of approximately \$11.7 million related to unremitted corporate taxes (the “**Amended CRA Claim**”). For clarity, the Amended CRA Claim did not replace CRA’s claim in respect of unremitted HST.
60. The Liquidator disputes the Amended CRA Claim as a result of certain tax appeals that the Toronto Branch had underway as at the Winding-Up Date, as outlined herein.

Tax Appeal

61. Prior to the Winding-Up Date, Toronto Branch had filed administrative appeals (i.e. objections) to CRA’s position with respect to amounts owing to CRA in

relation to the 2009 and 2012 (and, implicitly, with respect to the 2011) tax years. The Appeals Branch of CRA subsequently upheld CRA's original position in decisions rendered in early October, 2017.

62. The dispute of the 2009, 2011 and 2012 tax years involves two principle issues:
 - i. Whether Toronto Branch can recognize, on the closing date, the loss it incurred on the sale of a mortgage portfolio it owns into the CMHC NHA MBS program (CRA's position is that the loss is incurred over the remaining life of the mortgages); and
 - ii. Whether the financing type of expenses associated with that mortgage securitization business can be deducted on a current basis rather than, as CRA claims, over a five year period (collectively, the "**Tax Appeal Issue**").
63. The Liquidator consulted with its tax counsel; Borden Ladner Gervais LLP ("**BLG**"), and determined that it agreed with the position taken by Toronto Branch in its Administrative Appeals prior to the Winding-Up Date.
64. The Liquidator, with the assistance of its tax advisors, EY, who were the Toronto Branch's tax advisor prior to the Winding Up Date, has estimated that the Toronto Branch is in a refund position of approximately \$4.9 million as it relates to corporate taxes only (i.e. excluding applicable interest and penalties, and HST owing), as compared to the Amended CRA Claim of approximately \$3.4 million. Following consultation with the GIA (the fulcrum economic stakeholder of the Toronto Branch estate), the Liquidator took steps to continue to dispute the amounts assessed by CRA.
65. The Liquidator does not dispute CRA's claim in respect of unremitted HST in the amount of approximately \$199k.
66. Interest and penalties associated with the corporate tax assessments are a function of the outcome of the Tax Appeal Issue and are discussed further herein.

67. On December 20, 2017, the Liquidator filed a Notice of Appeal and subsequently filed a second Notice of Appeal in respect of a loss determination in connection with the 2011 tax year which revolved around the same issues as the 2009 and 2012 tax years (collectively, the “**Tax Appeal**”) with the Federal Tax Court of Canada. The purpose of the Tax Appeal was to appeal CRA’s determinations in respect of the 2009 and 2012 tax years (i.e. to continue the Toronto Branch’s administrative appeals).
68. Following discussions between the Liquidator, CRA and the Department of Justice (“**DOJ**”), the Liquidator filed an Amended Notice of Appeal on April 12, 2018 (the “**Amended Notice of Appeal**”) which made certain technical changes as to the basis to the appeal, however the substantive issues were unchanged.
69. On May 23, 2018, the Liquidator filed a Notice of Objection with CRA in respect of the 2011 Taxation Year (the “**Notice of Objection**”).
70. The Liquidator received correspondence from CRA dated August 23, 2018 indicating that the Notice of Objection was disallowed and that CRA’s initial assessment was confirmed.
71. CRA issued a Notice of Reply on July 30, 2018 in respect of the 2009 and 2011 taxation years, and issued a Notice of Reply on April 1, 2019 in respect of the 2011 taxation year, wherein CRA presented the basis of their view of the issues, and conceded the issue regarding the deduction of financing type expenses on a current basis.
72. On August 15, 2019, the Liquidator and CRA made a request to the Tax Court of Canada to amend the timetable associated with the Tax Appeal (the “**Amended Timetable**”). The Amended Timetable is as follows:
 - i. Written questions on examination for discovery shall be served by September 13, 2019;
 - ii. Answers to written questions shall be served by November 13, 2019;

- iii. Further questions, if any, shall be served by January 15, 2020;
 - iv. Answers to further questions, if necessary, shall be served by February 28, 2020; and
 - v. The parties shall communicate with the hearings coordinator by April 15, 2020.
73. The Liquidator, with the assistance of the former Toronto Branch CFO, and its counsel spent a significant amount of time responding to written questions (which were in excess of 100). Items (i) through (iv) above regarding written questions on examination for discovery have been completed in accordance with the Amended Timetable.
74. Hearings with the Tax Court of Canada are significantly delayed due to COVID-19. As a result, timetables associated with tax appeals have been adjusted. October 5, 2020 is the new date by which the parties are to communicate with the hearings coordinator (replacing (v) above). As such, we are anticipating obtaining a trial date for some time in the second half of 2021 in respect of the Tax Appeal.
75. The Liquidator continues to work, in consultation with the GIA, with its counsel and EY to dispute the Amended CRA Claim.

Settlement Discussions

76. In parallel to the steps outlined above in respect of disputing the Amended CRA Claim, the Liquidator and CRA have also been working towards reaching an omnibus settlement in respect of all amounts owing to/due from CRA.
77. The Liquidator, with the assistance of EY, prepared detailed spreadsheets and calculations outlining the amounts that would be owing to/due from CRA under various scenarios (i.e. comparing CRA's position vs the Liquidator's position on the various unresolved issues) (the "**Scenario Spreadsheets**").

78. In August 2018 a CRA auditor visited EY's offices to conduct a field audit of the Toronto Branch's records covering the 2011, 2012, 2013, and subsequent taxation years, including the Scenario Spreadsheets. The Liquidator and its advisors worked with the CRA auditor to assist in the field audit. The field audit did not cover interest and penalties related to the corporate tax amounts owing. The purpose of the audit was not only to substantiate the income and losses reported in the specific tax years involved, but also to form a view of whether a review of additional tax years was warranted.
79. On April 11, 2019, the CRA auditor issued a memo to the Liquidator which concluded that the figures disclosed in the Scenario Spreadsheets were complete and accurate, and that there were no material risks of non-compliance warranting further review. As such, the Liquidator and CRA proceeded to rely on the figures within the Scenario Spreadsheets as the basis for settlement discussions.
80. Based on the Scenario Spreadsheets, the Liquidator has quantified the maximum potential amount owing to CRA to be approximately \$3.1 million. The Liquidator's quantification: (i) assumes that the Liquidator is not successful on the Tax Appeal Issue; (ii) assumes a 50:50 split of the disputed amount associated with the Interest Stops Issue (defined herein), which the Liquidator and CRA have agreed to, (iii) includes unremitted HST owing to CRA, and (iv) includes pre-filing penalties and interest penalties. This figure was used as the basis of the revised CRA reserve (details of which are provided herein).
81. As of the date of this report, no settlement between the Liquidator and CRA has been reached in respect of the Tax Appeal.

Interest Stops

82. In respect of interest on amounts owing to CRA relating to the period after the Winding-up Date ("**Post-Filing Interest**"), it is the Liquidator's view that Post-Filing Interest should be calculated pursuant to the *Winding-up and Restructuring Act*, such that interest is payable only on the ultimate claim of CRA (i.e. after the

application of all subsequent tax losses arising in the taxation years after the Winding-Up Order), while it is CRA's view that Post-Filing Interest should be calculated pursuant to the *Income Tax Act* (i.e. that tax losses can only be applied each year as incurred, with interest being paid on the "interim" balances (the "**Interest Stops Issue**").

83. The amount of Post-Filing Interest payable to/due from CRA is dependent on the outcome of both the Tax Appeal Issue and the Interest Stops Issue. This amount ranges from approximately a \$3.6 million amount payable to CRA (if the Liquidator were to be unsuccessful on both the Tax Appeal Issue and Interest Stops Issue) to a \$0.2 million amount due from CRA (if the Liquidator were to be successful on both the Tax Appeal Issue and Interest Stops Issue).
84. The Liquidator and CRA engaged in discussions and have ultimately come to an agreement in principle with respect to the Interest Stops Issue, however Post-filing Interest amounts are dependent on the ultimate outcome of the Tax Appeal Issue.
85. The Liquidator has consulted with the GIA in respect of all actions taken to date in respect of both the Tax Appeal issue and the Interest Stops Issue.

MAPLE BANK GmbH Financial Statements

86. The financial statements of Toronto Branch form part of the consolidated financial statements of Maple Bank GmbH. Since our last Court report, we understand that, under the direction of the GIA, the following consolidated financial statements of Maple Bank GmbH have been (or are in the process of being) prepared in accordance with *German Generally Accepted Accounting Principles*:
 - i. Year ending September 30th, 2015;
 - ii. Period October 1, 2016 to February 15, 2016 (in process); and
 - iii. Period February 16, 2016 to September 30, 2016 (in process).

87. The Liquidator also understands that the financial statements above have been or are in the process of being audited by a third party accounting firm in Germany.
88. The Liquidator (primarily with the assistance of the former Toronto Branch CFO) has been assisting Maple Bank GmbH with this process in the form of providing financial statements and supporting information for the Toronto Branch and responding to queries from the auditor.

MANAGING ASSETS OF THE ESTATE

89. The Liquidator has continued to manage the assets of the estate and investing its cash holdings in safe, short-term interest bearing investments in order to preserve value for the creditors of the Toronto Branch.

PROVIDING UPDATES AND CONSULTING WITH THE GIA

90. The Liquidator has provided updates to, and consulted with, the GIA on the following matters:
 - i. The Data Transfer Order and the Liquidator's activities associated with carrying out duties pursuant to same;
 - ii. The Liquidator's proposed role as Data Custodian;
 - iii. The resolution of the claims filed by CRA, including providing the GIA with various analyses in order to assist it in making informed decisions with respect to the Tax Appeal Issue and the Interest Stops Issue;
 - iv. Preparing periodic financial reporting for the stakeholders of the Maple Bank GmbH estate; and
 - v. Other miscellaneous matters as required.

3. RECEIPTS AND DISBURSEMENTS

SUMMARY OF RECEIPTS AND DISBURSEMENTS

91. The Liquidator previously reported the receipts and disbursements of the Toronto Branch for the period August 31, 2017 to October 31, 2017, in the Thirteenth Report. The table below summarizes the receipts and disbursements for the Toronto Branch for the period February 16, 2016 to May 31, 2020. Significant changes since the Thirteenth Report are discussed below.

Statement of Receipts and Disbursements Amounts in \$CAD millions	February 16, 2016 to October 31, 2017	February 16, 2016 to May 31, 2020	Changes
Receipts	Total⁽¹⁾	Total⁽¹⁾	
CED and Securities	489.6	489.6	-
Structured Loan Portfolio	357.4	357.4	-
MBS Business	176.5	176.5	-
Related Party Settlements	84.3	84.3	-
Settlement of Brokerage Account	64.7	64.7	-
Derivative Instruments	59.6	59.6	-
Miscellaneous/Other	7.9	10.2	2.3
Total Receipts	1,240.1	1,242.3	2.3
Disbursements			
Payroll	2.7	2.7	-
General and Administrative	2.1	2.7	0.6
Occupancy Rent	0.4	0.4	-
Transfer to CMHC	0.3	0.3	-
Total Operating Disbursements	5.5	6.1	0.6
GIA Distribution	749.3	754.3	5.0
Distribution to Proven Creditors, with interest	739.6	741.8	2.2
Professional Fees	11.8	14.7	2.9
Net Disbursements in excess of Receipts	(266.2)	(274.6)	(8.4)
Opening Cash Balance	316.1	316.1	-
Closing Cash and Cash Equivalents Balance	49.9	41.5	(8.4)

⁽¹⁾ Certain totals above may not foot due to rounding of the underlying figures.

ANALYSIS OF RECEIPTS

92. Since the Winding-Up Date, receipts totalled approximately \$1.24 billion.

93. Receipts increased during the period since October 31, 2017 by approximately \$2.3 million relating to i) the nominal amount of interest earned in the securities balances, and ii) unrealized foreign exchange gains on U.S. dollar denominated assets.

ANALYSIS OF DISBURSEMENTS

94. Operating disbursements for the period since October 31, 2017 total approximately \$0.6 million and relate primarily to consulting fees paid to the former CFO of Toronto Branch, and other general and administrative expenses.
95. A distribution to the GIA of approximately \$5.0 million was made on December 13, 2017, in accordance with the Third Interim Distribution Order. Approximately \$754.3 million has been distributed to the GIA since the Winding-Up Date.
96. Since October 31, 2017, the Liquidator has distributed approximately \$2.2 million to the CRA in relation to taxes withheld in connection with the distribution to Executives described in the Twelfth Report. The total distributions to Proven Creditors, with interest, totals approximately \$741.8 million since the Winding-Up Date.
97. Professional fees paid during the period since October 31, 2017, in the amount of \$2.9 million, consist primarily of professional fees of the Liquidator, its counsel (BLG), the ICC and EY (Toronto Branch's tax advisor). 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 July 31, 2017 have been reviewed by the ICC and approved by the Court.
98. As at May 31, 2020, the Toronto Branch held approximately \$41.5 million of cash and cash equivalents, which is comprised of approximately \$0.8 million in Toronto Branch bank accounts and \$40.7 million in liquid securities in the Toronto Branch's RBC DS account.
99. The Liquidator is holding approximately USD 14.5 million which arose as a result of the sale of certain Toronto Branch assets that were denominated in USD, and

approximately EUR 7.5 million which arose as a result of the unwinding of certain hedging derivatives that were denominated in Euros.

4. PROPOSED ROLE AS DATA CUSTODIAN

PROPOSED DATA CUSTODIAN ROLE

100. The Liquidator was asked by MSCL, who has wound up its operations and is in the final stages of formally dissolving its corporate entity, to take possession of certain electronic data and physical records pertaining to Toronto Branch, Maple Bank GmbH, and other Maple Bank affiliates (the “**MSCL Data**”).
101. Specifically, the MSCL Data consists of the following:
- i. All electronic data currently stored at the SunGard Facility;
 - ii. 195 boxes of physical commingled records currently stored at RecordsXpress; and
 - iii. Back-up tapes of historical data previously stored at the SunGard Facility, and currently stored at RecordsXpress.
102. The Liquidator has in its possession certain back-ups of the data stored on the SunGard Facility that were taken by the Liquidator at various points in time following the Winding-Up Date, which are currently being stored at KPMG’s offices (the “**Liquidator Back-up Tapes**”, and collectively, with the MSCL Data and the Remaining DTO Data, the “**Custodial Data**”).
103. The GIA does not want to have any of the MSCL Data or the Remaining DTO data destroyed at this time as it may require access to certain of the Custodial Data to fulfill its statutory role under German law.
104. The Liquidator understands that the MSCL Data is an impediment to the dissolution of MSCL.
105. The Liquidator Back-up Tapes include comingled data. The Liquidator is of the view that the Liquidator Back-up Tapes are not required to complete the administration of the Toronto Branch estate, however the Liquidator does not want to destroy the data at this time.

106. The Liquidator is of the view that the Remaining DTO Data is the only remaining issue associated with the Data Transfer Order.
107. The Liquidator, MSCL, and the GIA have engaged in discussions and agreed on a concept by which the Liquidator would take possession and custody of the Custodial Data and be appointed.
108. Key terms of the proposed Data Custodian Order are summarized as follows:
 - i. The Liquidator would be appointed as custodian of the Custodial Data (the **“Data Custodian”**);
 - ii. The Data Custodian would take into its power, possession and control of the Custodial Data;
 - iii. In conjunction with the appointment of the Data Custodian, the existing SunGard Services Agreement dated September 1, 2016, and RecordsXpress Services Agreement dated October 1, 2016 are expected to be assigned by MSCL to the Liquidator, in its capacity as Data Custodian;
 - iv. The Data Custodian’s appointment shall conclude and be terminated on the earlier of i) August 31, 2021, and ii) the date upon which KPMG is discharged as Liquidator of the Toronto Branch;
 - v. The transfer of custody of the Custodial Data shall be without prejudice to any of the rights of the GIA thereto;
 - vi. The Toronto Branch Estate shall be responsible to pay the reasonable costs incurred by the Data Custodian and its counsel in connection with the Data Custodian Order, and the Liquidator shall establish a reserve of \$750k to provide for such costs.
109. The SunGard Services Agreement has been prepaid by MSCL through August 31, 2021.
110. The stakeholders in respect of the Custodial Data are (i) MSCL, Maple Bank GmbH, and a number of Maple Bank affiliates (all of whom were served with the

Liquidator's motion in regards to the Data Transfer Order and none of whom responded to same), and (ii) the DTO Stakeholders.

111. The stakeholders above will be served with this report and related motion materials.

5. ESTIMATED SURPLUS AND PROPOSED DISTRIBUTION

ESTIMATED RESERVE

112. As described above, the Toronto Branch now has approximately \$41.5 million in cash and cash equivalents in order to satisfy outstanding claims in the Toronto Branch estate. The only filed claim that has yet to be resolved is that filed by CRA.
113. 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 at 5% per annum (in accordance with the WURA) up to and including July 31, 2018, a date by which 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 July 31, 2018; and
 - vi. Tax liabilities in respect of the post Winding-Up Date periods.
114. The Estimated Reserve was designed to fund the completion of the estate and 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.

115. The Liquidator, in consultation with the GIA, has revised the components of the Estimated Reserve, as set out in the table below.

Summary of Estimated Reserve			
Amounts in \$CAD millions	13th Report	Revised	Changes
Unproven claims	\$ 11.9	\$ -	\$ (11.9)
Interest on unproven claims	1.5	-	\$ (1.5)
Future potential claims (inclusive of interest)	15.0	-	\$ (15.0)
Principal officers legal fee reserve	5.0	5.0	\$ -
Toronto Branch administration costs	1.3	-	\$ (1.3)
Post winding-up date tax liability	8.0	-	\$ (8.0)
CRA remittance accruals	2.2	-	\$ (2.2)
CRA reserve	-	5.0	\$ 5.0
General reserve	-	5.0	\$ 5.0
Data Custodian reserve	-	0.8	\$ 0.8
Total Estimated Reserve	\$ 44.8	\$ 15.8	\$ (29.0)

116. The prior reserves associated with (i) unproven claims, (ii) interest on unproven claims, and (iii) post Winding-Up Date tax liability were all in relation to the Initial CRA Claims. The Liquidator is proposing to collapse these three reserves into one CRA reserve (detailed further below).
117. The Future Potential Claims reserve was established to ensure that the Liquidator had sufficient funds to satisfy any valid claim that was filed in connection with the Toronto Branch estate. The Liquidator is proposing to reduce the future potential claims reserve to nil for the following reasons:
- i. 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;
 - ii. A significant passage of time has occurred since the Claims Procedure Order was issued on June 8, 2016, and since the Notice to all Creditors of a Claims Process was issued by the Liquidator on June 14, 2016;

- iii. A nominal value and number of claims have been filed since September 19, 2016, being the date that the Court ordered that all creditors with claims against the Toronto branch file their claims;
 - iv. The Principal Officers Additional Claims Bar Date (December 22, 2016) has passed with no valid claims being filed; and
 - v. Notices of distribution were published by the Liquidator in various newspapers in connection with:
 - a. The First Interim Distribution Order, dated November 18, 2016;
 - b. The Second Interim Distribution Order, dated March 10, 2017; and
 - c. The Third Interim Distribution Order, dated December 13, 2017.
118. The Principal Officers legal fee reserve has remained unchanged. This reserve provides for funding of a former Principal Officer's legal fees in respect of certain litigation that may be initiated against the former Principal Officer, pursuant to the Principal Officers Additional Claims Order and the Protocol to Address Reserves. Notwithstanding that there has been no claim asserted against the Principal Officer, the release of this reserve is conditional on the GIA issuing a release confirming that they do not intend to pursue legal action against the Principal Officer, which the GIA has not confirmed.
119. The Liquidator is proposing to reduce the Toronto Branch administration costs reserve to nil, and to establish a General reserve to replace same (detailed further below).
120. The CRA remittance accruals related to income tax, CPP and EI amounts deducted from the final settlement with the Executives. The Liquidator has since remitted these funds to CRA. As such, this reserve has been reduced to nil.
121. The Liquidator is proposing to establish a CRA reserve in the amount of \$5 million to provide for all amounts potentially owing to CRA, including amounts in connection with the Initial CRA Claims and the Amended CRA Claim. CRA has

consented to this reserve amount as evidenced by an email from the DOJ dated May 8, 2020, a copy of which is appended hereto as **Appendix G**.

122. The Liquidator is proposing to establish a General reserve of \$5 million to provide for the following:

- i. Fees and disbursements of the Liquidator and its counsel, in connection with:
 - a. The resolution of the Initial CRA Claims and the Amended CRA Claim; and
 - b. The completion of the liquidation of the Toronto Branch; and
- ii. Other unforeseen future costs to the Toronto Branch.

123. The Liquidator is proposing to establish a Data Custodian reserve in the amount of \$750k, to provide for costs associated with its role pursuant to the proposed Data Custodian Order.

PROPOSED DISTRIBUTION TO THE GIA

124. The table below summarizes (i) the net assets available for distribution, (ii) the Estimated Reserve, and (iii) the Estimated Surplus available for the Fourth Interim Distribution of approximately \$25.7 million as at May 31, 2020 (the “**Estimated Surplus**”), all of which is proposed to be distributed to the GIA (assuming that the Liquidator does not receive any additional claims by August 1, 2020, being 10 days following the publication of the July 21, 2020 Notice of Distribution)..

Estimated Surplus	
Amounts in CAD millions	May 31, 2020
Assets available for distribution	\$ 41.5
Less: Estimated Reserve	\$ (15.8)
Estimated Surplus	\$ 25.7

125. As the Estimated Surplus is held in a combination of Canadian dollars, U.S. dollars, and Euros, the Estimated Surplus available for distribution, if approved by the Court, will fluctuate with changes in the foreign exchange rates. For clarity,

the proposed Fourth Interim Distribution of approximately \$25.7 million will consist of the following:

- i. Approximately EUR 7.5 million (approximately CAD 11.3 million equivalent as at May 31, 2020); and
- ii. Approximately USD 10.4 million (approximately CAD 14.4 million equivalent as at May 31, 2020) (collectively, the “**Distribution Funds**”).

126. Should the Court approve the Fourth Interim Distribution, the Liquidator will consult with the GIA in respect of:

- i. Whether the GIA would like the Liquidator to convert any of the Distribution Funds to a specific currency, prior to initiating the Fourth Interim Distribution; and
- ii. Whether the GIA would like the Liquidator to (a) cash the short-term investment vehicles that the Distributed Funds are currently being held in; or (b) hold the short-term investment vehicles to maturity (being mid-August 2020), and initiate the Fourth Interim Distribution thereafter.

127. The Liquidator will convert all foreign currencies remaining in its possession following the Fourth Interim Distribution, which are estimated to be approximately USD 4.1 million, to CAD, in order to have the \$15.8 million Estimated Reserve held in CAD.

128. As discussed in previous 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 as soon as practicable to the German Estate. The Liquidator is of the view that the Fourth Interim Distribution, of \$25.7 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, as explained above;

- iii. Notices of the German Estate Interim Distribution, the Second Interim Distribution, and the Third 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, September 15, 2017, and December 8, 2017, respectively;
- iv. The July 21, 2020 Notice of Distribution notifying creditors of the Fourth Interim Distribution will be posted in the National editions of *The Globe and Mail* and International editions of *The Financial Times* on July 21, 2020;
- v. The Liquidator has provided for a reserve of \$5 million in relation to all potential amounts owing to CRA, which amount CRA has consented to. This is the only unresolved claim in the estate;
- vi. The GIA has stated that it is supportive of the Estimated Reserve;
- vii. The Fourth 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;
- viii. The Fourth 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;
- ix. On account of the quantum of the Estimated Reserve, the Fourth Interim Distribution does not prejudice the interests of the creditors of the Toronto Branch; and
- x. 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

129. The Liquidator submits this Fourteenth Report to the Court in support of the Liquidator's Motion for the relief as set out in the Notice of Motion dated July 17, 2020 and recommends that the Court grant an order(s):
- i. Approving the Fourteenth Report, the activities of the Liquidator as described herein, and the statement of receipts and disbursements for the period February 16, 2016 to May 31, 2020;
 - ii. Approving the Liquidator's completion of its role under the Data Transfer Order and discharge from same;
 - iii. Appointing the Liquidator as Data Custodian;
 - iv. Approving the revisions to the Estimated Reserve;
 - v. Approving, *nunc pro tunc*, the July 21, 2020 Notice of Distribution;
 - vi. Approving the Fourth Interim Distribution in the amount of approximately \$25.7 million, subject to no claims being received by August 1, 2020, pursuant to the July 21, 2020 Notice of Distribution; and
 - vii. 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 17th day of July, 2020.

**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

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

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
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Law Society No.
Solicitor for the Applicant,
The Attorney General of Canada

**This is Appendix “B” to the
Fourteenth 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

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

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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
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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 “C” to the
Fourteenth 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

SECOND SUPPLEMENT TO 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*

January 25, 2017

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Appendix L	The Liquidator's proposed process to identify certain MFGI data dated January 16, 2018

1. INTRODUCTION AND PURPOSE OF THE SECOND SUPPLEMENT TO THE THIRTEENTH REPORT

BACKGROUND

1. 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.
2. In February 2016 BaFin imposed a moratorium on Maple Bank’s business activities, which caused Maple Bank to cease business and institute insolvency proceeding in Germany. This resulted in the appointment of a German insolvency administrator (the “**GIA**”) over Maple Bank.
3. On February 16, 2016, KPMG was appointed as the Liquidator of the business and assets of Maple Bank as defined in section 618 of the Bank Act (the “**Liquidator**”).
4. On December 8, 2017, the Liquidator filed its Thirteenth Report which includes a summary of the First through Twelfth Reports previously filed by the Liquidator. The Thirteenth Report also provided information in support of the Liquidator’s motion for approval of, inter alia, the production, transfer and release by the Liquidator to the GIA of certain Toronto Branch documents, records and data (the “**Data**”) which are in the power, possession or control of the Liquidator (the “**Data Sharing Motion**”), consisting of physical documents stored at three Canadian storage facilities, and digital data stored at an offsite disaster recovery center in Mississauga (the “**Sungard Facility**”) and two data tapes in the possession of KPMG or Ernst & Young. The Toronto Branch’s Data is comingled with those of Maple Bank and many of its affiliates. As a result, the Liquidator was proposing that both the Toronto Branch’s Data, along with the comingled Data of Maple Bank and many of its affiliates, would be provided to the GIA. The Liquidator also

noted in its Thirteenth Report that the Toronto Branch's Data that it was proposing to transfer to the GIA included certain personal data associated with former employees of the Toronto Branch and mortgagors and immigrant investors whose mortgages/loans were purchased by the Toronto Branch.

5. During the December 13, 2017 Court hearing regarding the Data Sharing Motion, counsels for the Ontario Teachers' Pension Plan ("**OTPP**") and National Bank ("**National**") raised concerns about the transfer of Maple Financial Group Inc.'s ("**MFGI**") Data that was comingled with the Toronto Branch's Data. OTPP and National were both shareholders of MFGI and each also had a representative on MFGI's Board of Directors. MFGI is now a bankrupt and Deloitte & Touche Inc. has been appointed as the Trustee-in-Bankruptcy (the "**MFGI Trustee**"). The Court hearing as it related to the Data Sharing Motion was subsequently adjourned to January 22, 2018.
6. Capitalized terms not defined in this Second Supplemental Report are as defined in the Thirteenth Report.

PURPOSE OF THIS SUPPLEMENT

7. The purpose of the Second Supplemental Report is as follows:
 - i. To provide the Court with an update regarding the Liquidator's activities since the adjournment of the Data Sharing Motion including (a) the deletion of personal information that is contained in the Toronto Branch's digital Data; and, (b) assisting the GIA, the MFGI Trustee, OTPP and National in better understanding the structure, quantum, and ability to search the data, which is proposed to be transferred to the GIA; and
 - ii. To request that in the interim period while the Court is considering the Data Sharing Motion, that the Court grant an order authorizing and directing the Liquidator to transfer (a) the Recall Records (as subsequently defined herein) (b) the Toronto Branch's Global One Data (as subsequently defined

herein), and, (c) the Laserfiche System Requested Data (as subsequently defined herein).

2. ACTIVITIES OF THE LIQUIDATOR

UPDATE ON THE PHYSICAL AND DIGITAL RECORDS

Physical Records

8. In the Thirteenth Report, the Liquidator made reference to three facilities where the physical records (the “**Physical Records**”) of the Toronto Branch were being stored, being the RecordXpress Facility, the Recall Facility, and the Iron Mountain Facility.
9. Following additional discussions with Maple Securities Canada Limited (“**MSCL**”), the Liquidator now has further details about the location and contents of the Physical Records.
10. Prior to the Liquidator being appointed, various Maple entities stored Physical Records at the Iron Mountain Facility. This storage contract was between Iron Mountain and MSCL.
11. During the period of our appointment as Liquidator, MSCL, with the approval of the Liquidator as it related to Toronto Branch records, retrieved all Physical Records stored at the Iron Mountain Facility in order to re-box the records and create a more detailed record listing.
12. Following the retrieval of the Physical Records described above, the use of the Iron Mountain Facility ceased. The re-boxed Physical Records were stored at either the Recall Facility or the RecordXpress Facility. Details of the records stored at each facility and the contracting party with the storage facility was as follows:

Recall Facility

- Documents relate exclusively to the Toronto Branch;
- The storage contract is between Recall and the Liquidator;

- The documents are stored in sixty one boxes; and
- The Liquidator is in possession of a detailed listing of the stored boxes, a copy being attached as **Appendix A** hereto.

RecordXpress Facility

- Documents other than those related exclusively to the Toronto Branch are stored at this facility;
 - The storage contract is between RecordXpress and MSCL;
 - The documents are stored in two hundred and thirty six boxes;
 - Both the Liquidator and MSCL are in possession of a detailed listing of the stored boxes; and
 - Certain boxes are specifically described in the document listing as relating to both the Toronto Branch and a second Maple entity (i.e. these are records of both the Toronto Branch and those of another Maple Bank related entity). There are also boxes described as “Multi-Maple”, which may include records of the Toronto Branch.
13. Upon further investigation of the Physical Records, the Liquidator issued a letter to MSCL, the GIA, and the MFGI Trustee, with copies to OTPP’s and National’s legal counsel, on December 18, 2017 outlining the above points, a copy of which is attached hereto as **Appendix B**.
14. The Liquidator is in the progress of reviewing the physical records at the Recall Facility and removing any personal information that is contained therein (“the records at the Recall Facility after removal of the personal information being defined as the “**Recall Records**”).

Digital Records

15. In the Thirteenth Report, the Liquidator made reference to three facilities at which copies of digital records were held, being the SunGard Facility, the EY Facility, and the KPMG Facility.

16. Following additional discussions with MSCL, the Liquidator now understands that two additional copies of the data stored at the SunGard Facility were made. One of these copies is stored on the SunGard servers, while the other is stored at a secure offsite location to ensure that the data would not be lost in the event that the SunGard Facility, or the servers located therein were damaged/destroyed by a fire etc..
17. The Liquidator has also become aware that the MFGI Trustee has made an additional backup copy of the data stored on the servers that were located at the Toronto Branch offices (which were also the offices of MFGI). The backup copy of this data is currently being stored at the offices of the MFGI Trustee.
18. MSCL has also advised the Liquidator that while the data tapes stored at the EY Facility and the KPMG Facility were taken at different points in time, the tapes are subsets of the data stored on the server located at the SunGard Facility, effectively making the SunGard data the master data set.

UNIVERSE OF DIGITAL RECORDS

19. The digital records stored at the SunGard Facility include the following:
 - The TBSM system SQL database (“**TBSM**”), which was created to manage the mortgage portfolio, along with two additional versions of TBSM, being the TBSM Hedge Effectiveness system database (“**TBSM_HE**”) and the TBSM Netherlands system database (“**TBSM_NL**”);
 - The Broadridge system SQL database (the “**Broadridge Database**”), which is a copy of a data download from the Broadridge service bureau, that acted as the primary financial record keeping system;
 - The Global One database (the “**Global One Database**”), which was used to track stock loan and collateral movement under derivative transactions (the server holding this data is in located in Germany and is in the possession of the GIA);

- The Apex system Oracle database (the “**Apex Database**”), which systems replaced the Global One Database several years ago;
 - The Epicor accounting Oracle database (the “**Epicor Database**”);
 - A shared file server that includes a variety of miscellaneous files stored by individual users, including files related to mortgages, immigrant investor notes, and employee files (the “**Shared Files Database**”);
 - Exchange email system (the “**Email Database**”) which contains a copy of all user emails that were not deleted by the user;
 - The Seccas Files (the “**Seccas Database**”), which contains a subset of user emails that were maintained for regulatory compliance reasons; and
 - Other miscellaneous SQL databases and file shares.
20. The above enumerated data can be further divided into two subsets: email files (vii. and viii. above) (collectively the “**Email Files**”) and financial files (all of the above, other than vii. and viii.) (collectively the “**Financial Files**”).

Email Files

21. The Liquidator has had numerous conversations with MSCL, and further discussions with the GIA and its counsel, the MFGI Trustee and its counsel, and counsel to OTTP and National to discuss the structure, size and searchability of the Email Files.
22. The Email Files are all in the form of PST files. In the case of the Seccas Database, there are eighty four files containing approximately 264 gigabytes of data representing, based on a sample file and extrapolating based on the contents of that file, 2.7 million documents. The Seccas Database is organized by period of time. In the case of both the Email Database and the Seccas Database, it is estimated that they hold approximately half of a terabyte of data. However, once the mortgage files containing personal data are deleted, the total amount of data is estimated to fall by half. The Email Database files are organized by user. Users

were added to the Seccas Database over time. It is not currently known which individual users' email files are currently stored within the Seccas Database.

23. There is expected to be considerable overlap between the information contained in the Email Database and the Seccas Database. The Email Database would include the emails of all users of the email system with the exception of those emails that users have deleted from their computer. The Seccas Database includes only certain specified users, all of whom could also be included in the Email Database, as it was maintained for regulatory compliance associated with securities trading. However, emails deleted by a user would still be saved in the Seccas Database.
24. While the Email Files are searchable by use of the basic Microsoft Outlook searchability function, this functionality has certain limitations regarding the nature and extent of the files that can be reviewed.

Financial Files

25. Once again, the Liquidator has had further discussions with MSCL, and with the GIA and its counsel, the MFGI Trustee and its counsel, and with counsel to OTPP and National, regarding the Financial Files. However, these discussions have not been as extensive as those involving the Email Files.
26. The Financial Files are searchable by use of the basic Microsoft Windows searchability function. The issue of searching attachments is not an issue with the Financial Files (as there are no attachments in these databases).
27. Many of the data bases involving the Financial Files are organized as SQL databases, which organizes data sequentially. There is a concern that if sufficient data is deleted, the integrity and hence functionality of the remaining data will be effected.

DIGITAL RECORDS CONTAINING PERSONAL INFORMATION

Toronto Branch Digital Records

28. As noted in the Thirteenth Report, the Liquidator had identified personal information that was included within the Toronto Branch Data that was proposed to be transferred to the GIA. Subsequent to the issuance of the report, the Canada Mortgage and Housing Corporation (“**CMHC**”), who administers the National Housing Act Mortgage Backed Securities program (the “**NHA MBS Program**”) and Equitable Bank, who became the Successor Issuer to Maple Bank under the NHA MBS Program, expressed concerns to the Liquidator regarding the transfer to the GIA of the personal information of mortgagors whose mortgages were securitized through the NHA MBS Program.
29. The Liquidator has worked with MSCL to identify those specific digital files containing personal information so that these files could be deleted from a copy of the data on the server located at the SunGard Facility (the “**GIA Data Copy**”) prior to it being transferred to the GIA (a copy of the data is being taken to ensure that the integrity of the underlying data is not affected through the deletion process).
30. The broad categories of personal information that were identified during this process are as follows:
- Mortgage data, which includes:
 - Mortgage underwriting files;
 - Recurring payment reporting provided to the Toronto Branch by various mortgage servicers;
 - Initial mortgage securitization files provided to CMHC; and
 - Mortgage enforcement files as a result of a mortgage going into default.
 - Immigrant investor program data, which includes:
 - Immigrant investor information associated with their application to become a landed immigrant of Canada; and

- Loan application files, including financial information on the applicant.
 - Employee data, which includes:
 - Payroll information;
 - General employee information (e.g. names, addresses, social insurance numbers, etc.); and
 - Personnel files.
31. The Liquidator, in conjunction with MSCL, developed a process to remove the aforementioned personal information from the GIA Data Copy so that it could eventually be transferred to the GIA (the “**Data Scrubbing Process**”). The data Scrubbing Process included three phases.
 32. The first phase of the Data Scrubbing Process involved MSCL identifying certain databases that are known to contain personal information. MSCL identified the TBSM and TBSM_HE databases as ones that contain personal mortgage data. As such, these databases will be removed from the GIA Data Copy. A full list of all databases that will be removed from the GIA Data Copy is attached hereto as **Appendix C1**.
 33. MSCL has advised the Liquidator that other large databases (e.g. Broadridge, Apex) either contain corporate financial records only, or contain mortgage data or immigrant investor program data at an aggregate level, and therefore do not include personal information. As such, these databases will not be removed from the GIA Data Copy.
 34. The second phase of the Data Scrubbing Process involved MSCL identifying certain folders within the Shared Files Database that could potentially contain personal information. The Liquidator was advised by MSCL that the Shared Files Drive contains approximately 1.6 terabytes of information spread across approximately 2.3 million files. The mortgage data alone that is stored within the Shared Files Database includes approximately 500 gigabytes of data spread across approximately one million files. As it was not feasible to review each file

individually, a search was performed at the “file folder level”. The search was performed as follows:

- A manual search of the Shared Files Database was performed by MSCL based on their knowledge of the contents of the file folders, in order to identify file folders that could contain personal information. A list of the file folders that were identified as a result of this process is attached hereto as **Appendix C2**, all of which will be removed from the GIA Data Copy. During this phase, the Liquidator became aware that certain Toronto Branch employee data was comingled with MSCL employee data. As such, the Liquidator removed employee data related to both entities, which resulted in certain overlap between Appendix C2, and the MSCL List (defined herein) in this regard.
 - An additional keyword search, using the keywords “mortgage” and “immigrant investor”, was performed, in order to identify additional file folders that were not identified in (i) above, and that could contain personal information. A list of the file folders that were identified through this process is attached hereto as **Appendix C3**, all of which will be removed from the GIA Data Copy.
35. The third phase of the Data Scrubbing Process involved the Liquidator, in conjunction with the former CFO of the Toronto Branch, preparing a list of reports/documents (the “**Sample List**”) that Toronto Branch employees used as part of their job performance and which included personal information. The Liquidator proceeded to trace each report/document to the data file contained on the server located at the SunGard Facility in order to confirm that the folders identified pursuant to the second stage above were complete. No additional folders were identified for deletion pursuant to this third stage. A copy of the Sample List and related data folders is attached hereto as **Appendix D**.
36. As of the date of this report, MSCL remains in possession of the GIA Data Copy. The Liquidator has communicated to CMHC, Equitable, and the GIA, the list of folders / files that are to be removed from the GIA Data Copy pursuant to the Data

Scrubbing Process. The actual removal of the folders / files by MSCL has not been completed as at the date of this report.

MSCL and Third Party Digital Records

37. MSCL has also undertaken a process in order to identify digital records that may contain personal information. MSCL has provided the Liquidator with a list of file folders that contain personal information related to MSCL, as well as certain third parties (i.e. entities with no affiliation to Maple Bank) that stored data on the Maple Bank file servers (the **MSCL List**”). A copy of the MSCL List is attached hereto as **Appendix E**. The Liquidator, with the concurrence of the GIA, has arranged for MSCL to remove these databases from the GIA Data Copy.

Den Haag Branch Netherlands Digital Records

38. In the course of deleting personal information contained within the Toronto Branch Data, the Liquidator became aware of personal information stored on the server at the SunGard Facility and associated with mortgages that the Den Haag Branch, (Netherlands) of Maple Bank had financed/purchased. The Liquidator, with the concurrence of the GIA, has arranged for MSCL to remove these databases from the GIA Data Copy. A full list of all databases that will be removed from the GIA Data Copy is attached hereto as **Appendix C1**.

MFGI RECORDS

39. At the Court hearing on December 13, 2017, counsel for OTPP and National raised concerns with respect to the Data Sharing Motion, including their lack of knowledge regarding the specific MFGI records to be transferred to the GIA, as well as the fact that privileged documents could be included in the MFGI records. These concerns pertained to both the Physical Records and the digital records that were subject to the Data Sharing Motion.
40. As previously discussed in paragraph 13, the Liquidator subsequently provided the MFGI Trustee, the GIA, MSCL and counsels to both OTPP and National with

further details about the contents of the Physical Records and certain clarifications regarding the digital records (see Appendix B attached hereto for a copy of the letter issued by the Liquidator).

41. The Liquidator has coordinated numerous discussions, on a without prejudice basis, with some or all of counsel to OTPP and National, the MFGI Trustee, the GIA and its counsel, and MSCL and its counsel. The purpose of these discussions have been to provide all interested parties with additional information relating to the structure and quantum of digital data stored on the server at the SunGard Facility and the corresponding ability to search this data with the goal of developing a process to identify and segregate certain of the MFGI data from the data which is to be transferred to the GIA.
42. On January 11, 2018, the Liquidator was copied on two separate letters sent by Blake, Cassels & Graydon LLP (“**Blakes**”), in their capacity as counsel to OTPP, one addressed to Oslers, Hoskin & Harcourt LLP (“**Osler**”) who are counsel to MSCL and the former counsel to MFGI, and the other addressed to Cassels Brock & Blackwell LLP (“**Cassels**”), who are counsel to the MFGI Trustee, with copies to McCarthy Tetrault (“**McCarthy**”), in its capacity as counsel to National, Borden Ladner Gervais (“**BLG**”), in its capacity as counsel to the Liquidator, Stikeman Elliot (“**Stikeman**”), in its capacity as counsel to the GIA, and the MFGI Trustee. The contents of the two letters were similar, highlighting OTPP’s concerns that certain of MFGI documents contained in the Physical Records and digital records may be subject to solicitor-client privilege, and seeking the assistance of Osler and Cassels to identify such documents. Copies of the two letters are attached hereto as **Appendix F** and **Appendix G**, respectively.
43. On January 12, 2018, the Liquidator was copied on a letter sent by Cassels to Blakes in response to the Blakes’ letter dated January 11, 2018, with copies to the MFGI Trustee, McCarthy, BLG and Stikeman. The MFGI Trustee confirmed that it had not waived solicitor-client privilege on behalf of MFGI and that the MFGI records in the possession of the MFGI Trustee are not subject to the Data Sharing Motion. A copy of this letter is attached hereto as **Appendix H**.

44. On January 15, 2018, the Liquidator was copied on a letter sent by McCarthy to Osler, with copies to the MFGI Trustee, Cassels, BLG, Stikeman, and Blakes . The letter explained that McCarthy echoed the comments made by Blakes in their two letters dated January 11, 2018, referenced above. A copy of this letter is attached hereto as **Appendix I**.
45. On January 16, 2018, the Liquidator was copied on a letter sent by Osler to Blakes, with copies to the MFGI Trustee, Cassels, BLG, McCarthy, and Stikeman, which was written in response to the letter sent from Blakes to Osler on January 11, 2018. This letter explained that Osler would require authorization from the MFGI Trustee in order to release certain information regarding privileged information to OTTP and National. A copy of this letter is attached hereto as **Appendix J**.
46. On January 16, 2018, the Liquidator received a letter from Blakes, that was also addressed to Cassels and Stikeman, with copies to the MFGI Trustee, McCarthy, and Osler, outlining a proposed process to search the digital data and identify certain MFGI documents to be excluded from the Data Sharing Motion (the “**Blakes Search Process**”). The process appears to be designed to address both the confidentiality of, and legal privilege associated with MFGI’s digital data. A copy of this letter is attached hereto as **Appendix K**.
47. On January 16, 2018, the Liquidator sent a letter to Blakes and McCarthy, with copies to Cassels, Stikeman and Osler, which also outlined a proposed process to search the digital data and identify potentially legal privileged documents of MFGI [NTD: to discuss inclusion of ‘shareholders’] to be excluded from the Data Sharing Motion (the “**Data Search Process**”). A copy of this letter is attached hereto as **Appendix K**. The letter was developed by the Liquidator, and in fact, had been finalized by the Liquidator by the time the Blakes Search Process letter was received, in the belief that National’s and OTTP’s concerns regarding the transfer of the MFGI data only related to legally privileged documents.
48. Following the exchange of the two aforementioned proposed MFGI data segregation processes, the Liquidator has held a series of without prejudice meetings and conference calls with all interested parties with the goal of reaching

an agreement on a data segregation process that would be acceptable to all parties while addressing the concerns OTPP and NB, but enabling the transfer of data to the GIA on a cost effective and timely basis.

49. These discussions remain ongoing as the GIA and OTPP/NB have not yet reached an agreement as to the terms of a data segregation process. The Liquidator intends to continue to work with the parties in order to reach an agreed to data segregation process. However, either the GIA, or OTPP/NB may decide that the issue should be decided by the Court.

GLOBAL ONE RECORDS

50. On January 3, 2018, the Liquidator received a request from the GIA seeking the transfer to the GIA of certain Toronto Branch data stored in the Global One database (the Toronto Branch's "**Global One Records**")

51. The Liquidator has held multiple calls with MSCL to develop an understanding of the contents of the Global One Records being requested by the GIA, and can advise as follows:

- The nature of the Toronto Branch's Global One Records consists of the following:
 - Securities borrowing and lending transactions: transactions involving the Toronto Branch borrowing and lending securities from and to various financial institutions;
 - Repo and reverse repo transactions: the Toronto branch enters into repo or reverse repo bond transactions with various financial institutions;
 - Swap collateral deliveries and receipts: the Toronto Branch delivers or receives collateral for swap related transactions; and

- Capital equivalency deposit transactions: the Toronto Branch purchases bonds and deliver's them to BMO in the form of capital equivalency deposits.
- The Toronto Branch's Global One Records are not comingled with those of Maple Bank or its affiliates (i.e. they are the exclusive records of the Toronto Branch), and do not contain personal information.
- The server that contains the Global One Records, including the Toronto Branch's, is located in Frankfurt, Germany, being under the control of the GIA.

LASERFICHE SYSTEM RECORDS

52. On January 18, 2018, MSCL received a request from the GIA seeking the transfer to the GIA of the data contained in the Laserfiche system (the "**Laserfiche System**").
53. The Liquidator held discussions with MSCL to develop an understanding of the contents of the Laserfiche System and can advise as follows:
 - The Laserfiche System is a central document management system that was used by multiple Maple entities for document storage;
 - The Laserfiche System is stored on the Shared Files Database, which is included in the digital data stored at the SunGard Facility;
 - When files are uploaded to the Laserfiche System they are indexed in order to simplify future document retrievals;
 - While the data within the Laserfiche System is comingled (i.e. contains data relating to multiple affiliates of Maple bank);
 - Because documents are indexed, they can be individually searched for and extracted; and
 - The Laserfiche System is not expected to contain any personal information.

54. The Liquidator therefore intends to arrange to have MSCL extract the specific Toronto Branch documents requested by the GIA (the “**Laserfiche System Requested Data**”) and, upon obtaining same, confirms that the Toronto Branch documents do not relate to any other Maple Bank entities and do not contain any personal information.

SOFTWARE REQUIRED TO ACCESS DATA

55. The Liquidator understands, based on input from MSCL, that the GIA Data Copy would be accessible using Microsoft SQL software, which we understand is commercially available worldwide.

LIQUIDATOR’S RECOMMENDATIONS

56. At this time, the Liquidator recommends that the Court grant an order authorizing and directing the Liquidator to transfer (a) the Recall Records (b) the Toronto Branch’s Global One Records, and, (c) the Laserfiche System Requested Data, to the GIA.

57. If the Court grants the above, and assuming no one opposes this aspect of the Liquidator’s motion at the Court hearing on January 26, 2018, the Liquidator intends to immediately transfer the Toronto Branch’s Global One Records to the GIA.

All of which is respectfully submitted at Toronto, Ontario this 25th day of January, 2018.

**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

**This is Appendix “D” to the
Fourteenth 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 July 23, 2020 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 August 1, 2020, 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 21st day of July, 2020.

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 “E” to the
Fourteenth Report of the Liquidator**



KPMG Inc.
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Toronto ON M5H 2S5
Canada

Telephone (416) 777-8500
Fax (416) 777-3364
Internet www.kpmg.ca

September 24, 2018

Stikeman Elliot LLP
5300 Commerce Court West
199 Bay Street, Toronto, ON
M5L 1B9

Attention: Peter Hamilton and Maria Konyukhova

Re: Maple Bank GmbH (Toronto Branch) – First Interim Transfer

Capitalized Terms used herein and not otherwise defined shall have the meanings given to them in the Data Transfer Order dated January 26, 2018 (the “**Data Transfer Order**”), and the Liquidator’s email correspondence of March 14, 2018 (the “**March 14, 2018 Email**”).

Please find attached a hard drive which is provided to you pursuant to Paragraph 17 of the Data Transfer Order. The hard drive contains a copy of the Non-Database Files, excluding certain items (outlined herein) (the “**First Interim Transfer Data**”).

Specifically, the following items have been removed from the Non-Database Files:

- All files identified as containing personal information, as outlined in Schedule A and Schedule B of the Data Transfer Order;
- All unsearchable files, as outlined in Appendix D1 to the Liquidator’s letter dated April 24, 2018; and
- All files returning positive hits following the application of both the Search Terms and Additional MFGI Privileged Search Terms pursuant to paragraphs 11 and 13 of the Data Transfer Order (i.e. non-confidential and confidential search terms), as outlined in Appendix A and Appendix C of the Liquidator’s letter dated May 16, 2018 (including family items).

The First Interim Transfer Data is provided in a format that was agreed upon by the technical teams of the Liquidator and the GIA.

Should you have any questions with respect to the contents of this letter, please do not hesitate to contact us.

Yours truly,

KPMG Inc., in its capacity as Court appointed Liquidator of Maple Bank GmbH (Toronto Branch)



Per: _____
Nick Brearton
President – KPMG Inc.

CC: A. MacFarlane (AMacfarlane@blg.com)
C. Savo (csavo@blg.com)

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



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Telephone (416) 777-8500
Fax (416) 777-3364
Internet www.kpmg.ca

March 11, 2019

Maple GmbH i. Ins.
Mendelssohnstrasse 87
60325 Frankfurt am Main
Germany

Attention: Charlotte Schildt and Markus Werner

Re: Maple Bank GmbH (Toronto Branch) – Second Interim Transfer

Capitalized Terms used herein and not otherwise defined shall have the meanings given to them in the Data Transfer Order dated January 26, 2018 (the “**Data Transfer Order**”), and the Liquidator’s email correspondence of March 14, 2018 (the “**March 14, 2018 Email**”).

Please find attached a hard drive which is provided to you pursuant to Paragraph 17 of the Data Transfer Order. The hard drive contains a copy of a subset of the Database Files, (the “**Second Interim Transfer**”). A list of the specific databases included in the Second Interim Transfer are listed **Appendix A** attached hereto. The Second Interim Transfer is provided in a format that was agreed upon by the technical teams of the Liquidator and the GIA.

Should you have any questions with respect to the contents of this letter, please do not hesitate to contact us.

Yours truly,

KPMG Inc., in its capacity as Court appointed Liquidator of Maple Bank GmbH (Toronto Branch)

Per: 
Nick Brearton
President – KPMG Inc.

- CC: A. MacFarlane (AMacfarlane@blg.com)
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**This is Appendix “G” to the
Fourteenth Report of the Liquidator**

From: "Hamam, Nathalie" <Nathalie.Hamam@justice.gc.ca>
Date: May 8, 2020 at 10:08:32 AM EDT
To: "MacFarlane, Alex" <AMacfarlane@blg.com>, "Fyfe, Stephen J." <SFyfe@blg.com>
Cc: "Winters, Diane" <Diane.Winters@justice.gc.ca>, "Rivamonte, Maria" <Maria.Rivamonte@justice.gc.ca>
Subject: Maple Bank (Toronto Branch) Tax Appeal: Proposed reserve

Good morning,

We now have instructions that the CRA does not oppose the proposed reduction of the reserve to \$5M.

I hope everyone is keeping well.

Nathalie

Nathalie Hamam

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