

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

MOTION RECORD

(Returnable September 26, 2017)

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(Updated: September 19, 2017)

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Index

**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

I N D E X

TAB

DOCUMENT

- 1 Notice of Motion returnable September 26, 2017.
Schedule "A" - Draft Second Interim Distribution Order.
- 2 Twelfth Report of KPMG Inc. in its capacity as Court Appointed Liquidator.
- 3 Report #2 of the Court Appointed Cost Counsel dated September 18, 2017.
- 4 Affidavit of Nick Brearton sworn September 18, 2017.
- 5 Affidavit of Douglas O. Smith sworn September 19, 2017.
- 6 Affidavit of Lilly Wong sworn September 19, 2017.

Tab 1

**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

NOTICE OF MOTION

KPMG Inc., in its capacity as the Court-appointed Liquidator (the “**Liquidator**”) in respect of the winding up of the business in Canada (the “**Business**”) of Maple Bank GmbH (“**Maple Bank**”) and its assets (the “**Assets**”) as defined in section 618 of the *Bank Act* (the “*Bank Act*”) will make a Motion to Regional Senior Justice Morawetz, on Tuesday, September 26, 2017 at 8:30 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

THE PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order substantially in the form attached as Schedule “A” to this Notice of Motion (the “**Second Interim Distribution Order**”):
 - (a) if required, abridging the time for service of the Notice of Motion and the Motion Record and validating service so that the Motion is properly returnable on the proposed date and dispensing with the requirement for any further service thereof;
 - (b) approving the Twelfth Report of the Liquidator dated September 19, 2017 (the “**Twelfth Report**”) and the activities of the Liquidator as set out in the Twelfth Report;
 - (c) authorizing and directing the Liquidator to make a partial distribution in the amount of \$91.4 million to the GIA (as defined below) (the “**Second Interim Distribution**”) of a portion of the estimated surplus of funds, which have been realized by the Liquidator from the liquidation and/or sale of the Assets and the Business of the Toronto Branch, on, or after September 26, 2017 (the “**Distribution Date**”);
 - (d) approving *nunc pro tunc* the notice to creditors of the Toronto Branch published in the National Edition of *The Globe and Mail* and the International Edition of *The Wall Street Journal* on September 15, 2017 giving notice of the Second Interim Distribution by the Distribution Date substantially in the form of the notice attached as Schedule “A” to the Second Interim Distribution Order;
 - (e) approving the receipts and disbursements of the Toronto Branch for the period from February 28, 2017 to August 31, 2017;
 - (f) approving the Radius Settlement, and the Liquidator’s activities with respect to the Global One Settlement, settlement of the Non-Executive Employees’ claims, and partial settlement of the Executive Employees’ claims (as defined below), and detailed in the Confidential Supplement to the Twelfth Report, pursuant to the Claims Procedure;

- (g) approving the fees in the amount of \$709,735.00 and the disbursements in the amount of \$12,181.49 (plus applicable HST totalling \$93,784.54 on the foregoing amounts) of Borden Ladner Gervais LLP (“**BLG**”) as counsel for the Liquidator for the period from November 30, 2016 to July 31, 2017, as well as fees in the amount of \$44,296.32 and the disbursements in the amount of \$5,727.12 (plus applicable HST totalling \$6,482.25 on the foregoing amounts) of Gowling WLG (Canada) LLP (“**Gowling**”) as counsel on certain residual transactional and tax work;
- (h) approving the fees in the amount of \$1,275,152.00 and the disbursements in the amount of \$74,553.50 (plus applicable HST totalling \$175,461.71 on the foregoing amounts) of the Liquidator for the period from November 30, 2016 to July 31, 2017;
- (i) approving the Report of the court appointed cost counsel dated September 18, 2017 and the activities of Jonathan Wigley of the law firm Gardiner Roberts LLP, in his capacity as court appointed cost counsel as set out in the September 18 2017 report;
- (j) and Order sealing the contents of the Confidential Supplement to the Twelfth Report, including the above confidential settlement agreements;
- (k) such other relief as counsel may advise and this Court may permit.

THE GROUNDS FOR THE MOTION ARE

Background

2. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Twelfth Report.
3. 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*. As a German bank, Maple Bank is subject to regulation in Germany by the Federal Financial Supervisory Authority

(“**BaFin**”). As an authorized foreign bank under the *Bank Act*, Maple Bank is regulated with respect to its business in Canada (the “**Toronto Branch**”) by the Office of the Superintendent of Financial Institutions (“**OSFI**”).

4. On February 6, 2016, BaFin issued a moratorium on Maple Bank’s business activities by reason of over-indebtedness, required Maple Bank to cease business and then instituted insolvency proceedings in Germany to appoint an insolvency administrator (the “**GIA**”).
5. On February 16, 2016, upon application by the Attorney General of Canada, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued a winding-up order (the “**Winding-Up Order**”), winding-up the Business of Maple Bank and appointing KPMG as Liquidator of the Business and Assets pursuant to the *Winding Up and Restructuring Act* (“**WURA**”).

The Claims Procedure

6. On June 8, 2016, this Court issued an order (the “**Claims Procedure Order**”) approving a claims procedure (the “**Claims Procedure**”) to be used as part of these WURA proceedings.

The Appointment Order

7. On June 8, 2016, the Court issued an order appointing Mr. Jonathan Wigley of the law firm of Gardiner Roberts LLP as the Independent Cost Counsel (“**ICC**”) for the purpose of reviewing the fees and disbursements of the Liquidator and its former counsel, Gowling (the “**Professional Fees**”) and reporting to the Court with respect to the fairness and reasonableness of such Professional Fees (the “**Appointment Order**”).
8. Pursuant to paragraph 2 of the Appointment Order, the Liquidator is required to bring a motion to have the Professional Fees assessed and allowed by the Court.

The Distribution Order

9. On November 25, 2016, the Court issued an order authorizing the Liquidator to make a distribution to creditors of the Toronto Branch with proven claims under the Claims Procedure (the “**Distribution Order**”). In accordance with the Distribution Order, on

December 9, 2016 the Liquidator paid proven claims in the total value of approximately \$686.8 million.

The Initial Interim Distribution Order

10. Following the filing of the Liquidator's Tenth Report, on January 27, 2017, the Court issued the Principal Officers Additional Claims Order setting February 28, 2017 as the claims bar date (the "**Principal Officers Claims Bar Date**"), and also put in place a Representative Counsel Order for counsel to represent Non-Executive Employees of the Toronto Branch.
11. It has now been in excess of fourteen months since the Claims Procedure was commenced, and the Principal Officers Claims Bar Date has expired.
12. On March 10, 2017, the Liquidator filed its Eleventh Report which provided information to the Court in respect of the statement of receipts and disbursements for the period ending February 28, 2017, an update on the Claims Procedure, the Estimated Surplus available to satisfy stakeholders and a request to make an interim distribution to the GIA, and approval of the notice of distribution as published on March 3, 2017.
13. On March 20, 2017, the Court granted an Order which authorized the Liquidator to make a partial distribution in the amount of up to \$660.6 million to the GIA from the estimated surplus as realized from the sale of the Assets and the Business of the Toronto Branch (the "**Initial Interim Distribution Order**"). The Court also approved (i) the fees of the Liquidator in the amount of \$4,323,352 (ii) the fees of Gowlings WLG in the amount of \$2,681,417 (iii) the activities of the ICC, (iv) the report of ICC dated March 7, 2017 (the "**ICC Report**"), and (v) the Executive Employee Claim Order of Proceedings which authorized the timeline for the determination by the Court of the Executives' Claims if not settled.
14. In accordance with the Initial Interim Distribution Order, on March 14, 2017 the Liquidator duly issued a payment of approximately \$658 million to the GIA.

The Twelfth Report and Requested Interim Distribution

15. To date, the Liquidator has disbursed approximately \$1.4 billion from the proceeds of the Toronto Branch liquidation to satisfy the proven Claims of all but seven creditors.

16. The Twelfth Report describes, and seeks the Court's approval, of the Liquidator's activities with respect to several settlements under the Claims Procedure since the filing of the Eleventh Report.
17. In particular, and as further detailed in the Confidential Supplement to the Twelfth Report, on August 4, 2017 the Liquidator and the successor by merger to Global One Financial Inc. executed a settlement agreement to resolve the Global One Claim (the "**Global One Settlement**").
18. Similarly, and as further detailed in the Confidential Supplement to the Twelfth Report, a settlement agreement was executed by the Liquidator with a contract counterparty, Radius Financial Inc., on September 7, 2017 (the "**Radius Settlement**").
19. The Radius Settlement is conditional upon approval by the Court.
20. The Liquidator also entered into settlements of the Non-Executive Employees' claims, in late March, 2017, the details of which are summarized in the Confidential Supplement to the Twelfth Report.
21. The remaining unresolved Claims consist of those advanced by Canada Revenue Agency (the "**CRA Claim**"), amounting to approximately \$11.9 million, and five executive employees (the "**Executives Claim**") in the amount of \$8.7 million (collectively, the "**Unresolved Claims**"). With respect to the latter, the executive employees entered into a partial settlement of their Claims with respect to notice period amounts in late March, 2017, and continue to advance the Executives Claim concerning deferred bonuses, "phantom stock", and trailer fee claims.
22. Consequently, the total Unresolved Claims total approximately \$20.6 million. The Liquidator has established an appropriate reserve in the amount of \$52.7 million (the "**Estimated Reserve**") to provide for, *inter alia*, the Unresolved Claims and possible future claims (the "**Future Potential Claims**").
23. As at August 31, 2017 the Toronto Branch held approximately \$141.1 million in cash and cash equivalents.
24. The realization process for all of the Assets of the Toronto Branch is complete, with the only remaining anticipated realization consisting of interest income on invested funds.

25. The Liquidator recommends that the Court approve the Second Interim Distribution on the basis, *inter alia*, that: (i) the Asset realization process is complete and the Liquidator is currently holding cash or equivalents in excess of \$144.1 million, (ii) the Estimated Reserve is adequate to cover all existing Unresolved Claims and any Future Potential Claims at \$52.7 million as prescribed under WURA to March 31, 2018, and (iii) the Estimated Surplus is accordingly in the amount of approximately \$91.4 million.
26. On September 15, 2017 the Liquidator posted a Notice of Distribution notifying creditors of the Second Interim Distribution in the national editions of *The Globe and Mail* and international editions of *The Wall Street Journal*, and all creditors that have filed Claims with the Liquidator will be served a copy of the Twelfth Report.
27. The Second Interim Distribution will be, in essence, a transfer to another insolvency administrator for the benefit of the creditors of the German Estate.
28. As a consequence of the Estimated Reserve, the Second Interim Distribution will not prejudice the interests of creditors of the Toronto Branch.
29. The Liquidator similarly recommends that the Court approve the Radius Settlement. The Liquidator consulted with the GIA throughout the negotiation, and the GIA was supportive of the Radius Settlement. As outlined in the Confidential Supplement to the Twelfth Report, the agreement represents a commercially reasonable resolution of the Radius Claim.

The Second ICC Report and Professional Fees

30. Pursuant to the Appointment Order, on September 18, 2017 Mr. Jonathan Wigley of the law firm of Gardiner Roberts LLP, acting as ICC, provided a further report detailing and recommending the approval of the professional fees (the “**Second ICC Report**”).
31. In particular, the Second ICC Report recommends the approval of the accounts of the Liquidator, BLG and Gowling as being fair and reasonable in the overall context of the Maple Bank liquidation.

Miscellaneous

32. The contents of the Confidential Supplement, including the Global One and Radius Settlements, as well as the Non-Executive Employees and Executive Employees settlement agreements, are commercially sensitive and confidential, and accordingly should be sealed in the Court record.
33. Sections 35, 74, 75, 76, 158.1 of the WURA.
34. Rules 1.04, 1.05, 2.03, 3.02(1), 16 and 37 of the *Rules of Civil Procedure*.
35. The Winding-Up Order.
36. The Claims Procedure Order.
37. The Initial Interim Distribution Order, and
38. Such further and other grounds as counsel may advise and the Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Twelfth Report.
2. The Second ICC Report.
3. The Affidavit of Douglas O. Smith sworn September 19, 2017.
4. The Affidavit of Nick Brearton sworn September 18, 2017.
5. The Affidavit of Lilly Wong sworn September 19, 2017.
6. Such further and other documentary evidence as counsel may advise and the Court may accept.

September 19, 2017

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

TO: SERVICE LIST

Tab A

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

THE HONOURABLE REGIONAL) TUESDAY, THE 26th DAY
)
SENIOR JUSTICE MORAWETZ) OF SEPTEMBER, 2017

IN THE MATTER OF MAPLE BANK GmbH
AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*,
R.S.C. 1985, C.W-11, AS AMENDED
AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GmbH

Respondent

SECOND INTERIM DISTRIBUTION ORDER

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

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

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

- (h) approving the fees in the amount of \$1,275,152.00 and the disbursements in the amount of \$74,553.50 (plus applicable HST totalling \$175,461.71 on the foregoing amounts) of the Liquidator for the period from February 16, 2016 to November 30, 2016 to July 31, 2017;
- (i) approving the Report of the court appointed cost counsel dated September 18, 2017 (the “**Second ICC Report**”) and the activities of Jonathan Wigley of the law firm Gardiner Roberts LLP, in his capacity as court appointed cost counsel (“**Independent Cost Counsel**”) as set out in the Second ICC Report;
- (j) sealing from the public record the Confidential Supplement to the Twelfth Report, as containing certain commercially-sensitive and confidential information and documents;
- (k) such further relief as may be required in the circumstances and which this Court deems as just and equitable,

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

ON READING the Twelfth Report and Confidential Supplement, Second ICC Report, and affidavits of Lilly Wong, Douglas Smith, and Nick Brearton filed, and on hearing the submissions of counsel for the Liquidator, counsel for the German Insolvency Administrator of Maple Bank, counsel for Radius Financial Inc., and such other parties who were in attendance and no one else appearing although served as evidenced by the Affidavit of Service of Marie Pacheco sworn September 19, 2017, filed,

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

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is validated so that the Motion is properly returnable today and hereby dispenses with further service thereof, including without limitation, any prescribed notice requirements under the WURA.
3. **THIS COURT ORDERS** that the Twelfth Report and the activities of the Liquidator as set out in the Twelfth Report, and related Confidential Supplement, be and are hereby approved.
4. **THIS COURT ORDERS** that the Liquidator is hereby authorized and directed to make the Second Interim Distribution, on, or after the Distribution Date.
5. **THIS COURT ORDERS** that the Distribution Notice be and is hereby approved, *nunc pro tunc*.
6. **THIS COURT ORDERS** that the Radius Settlement, as defined in the Twelfth Report, is hereby approved.
7. **THIS COURT ORDERS** that the R&D for the Toronto Branch for the period from February 28, 2017 to July 31, 2017 be and is hereby approved.
8. **THIS COURT ORDERS** that the fees in the amount of \$709,735.00 and the disbursements in the amount of \$12,181.49 (plus applicable HST totalling \$93,784.54 on the foregoing amounts) of BLG as counsel for the Liquidator for the period from November 30, 2016 to July 31, 2017 are hereby approved.
9. **THIS COURT ORDERS** that the fees in the amount of \$44,296.32 and the disbursements in the amount of \$5,727.12 (plus applicable HST totalling \$6,482.25 on the foregoing amounts) of Gowling are hereby approved.
10. **THIS COURT ORDERS** that the fees in the amount of \$1,275,152.00 and the disbursements in the amount of \$74,553.50 (plus applicable HST totalling \$175,461.71 on the foregoing amounts) of the Liquidator for the period from November 30, 2016 to July 31, 2017 are hereby approved.

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

General

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

Schedule "A"

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

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

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

DATED at Toronto this 15th day of September, 2017.

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

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

IN THE MATTER OF MAPLE BANK GmbH
AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*, R.S.C. 1985, C.W-11, AS AMENDED
AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

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

PROCEEDING COMMENCED AT TORONTO

SECOND INTERIM DISTRIBUTION ORDER

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

IN THE MATTER OF MAPLE BANK GmbH
AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*, R.S.C. 1985, C.W-11, AS AMENDED
AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

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

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION
(Returnable September 26, 2017)**

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

Tab 2

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF MAPLE BANK GmbH

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

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

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GmbH

Respondent

THE

TWELFTH REPORT OF KPMG INC. IN ITS CAPACITY AS

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

September 19, 2017

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Listing of Appendices

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

1. INTRODUCTION AND PURPOSE OF THE TWELFTH REPORT

BACKGROUND

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

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

proceedings, including the appointment of a Claims Officer (as defined in the Claims Procedure Order); (iv) the proposed appointment of Jonathan Wigley of the law firm Gardiner Roberts LLP as independent cost counsel (the “**ICC**”) to review and report to the Court on the fees and disbursements of the Liquidator and its counsel; and (v) the statement of receipts and disbursements of the Toronto Branch for the period February 16 to May 13, 2016.

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

11. On October 6, 2016, the Liquidator filed its Seventh Report which provided information regarding the sale to KEB of the Residual Receivable Backed Notes issued by KEB and secured by, *inter alia*, notes issued by CIC.
12. On November 15, 2016, the Liquidator filed its Eighth Report which provided information regarding the proposed settlement between the Liquidator and the Bank of Montreal (“**BMO**”) of the liabilities and obligations of each of BMO and Maple Bank arising from a repurchase transaction and the early termination of certain foreign exchange transactions, along with a proposed sale of certain NHA MBS by the Liquidator to BMO.
13. On November 16, 2016, the Liquidator filed its Ninth Report which provided:
 - i. An update on the actions of the Liquidator since the issuance of the Third Report;
 - ii. An update on the status of the Claims Procedure;
 - iii. Information regarding the Liquidator’s proposed interim distribution to creditors with Proven Claims (the “**Interim Distribution**”);
 - iv. A recommendation that the Liquidator be authorized to implement a hedging or conversion strategy to mitigate the Euro – Canadian dollar foreign exchange risk (the “**FX Risk**”) related to the amounts that would be distributed to the Association of German Banks Deposit Protection Fund and the Compensation Scheme of German Private Banks (collectively, the “**GDPF**”) and the GIA as part of the Interim Distribution; and
 - v. The Liquidator’s statement of receipts and disbursements for the period from February 16, 2016 to October 31, 2016.
14. On November 24, 2016, the Liquidator filed its supplemental report to the Ninth Report (the “**First Supplemental Report**”) which provided an update on the Liquidator’s activities since November 18, 2016, and sought amended relief to the relief sought in the Ninth Report, including an order approving:
 - i. The Interim Distribution to creditors with proven Claims within two days following December 19, 2016;

- ii. The amended notice to creditors of the Interim Distribution;
 - iii. A Claims bar notice and Claims bar date in respect of Claims that may be asserted against the principal officers of the Toronto Branch (the “**Principal Officers Claims Bar Notice**” and “**Principal Officers Claims Bar Date**”, respectively);
 - iv. The Liquidator’s statement of receipts and disbursements for the period February 16, 2016 to October 31, 2016; and
 - v. The activities of the Liquidator since the filing of the Third Report, up to and including the Ninth Report, including the activities of the Liquidator as described in the Third Report.
15. On December 8, 2016, the Liquidator filed its second supplemental report to the Ninth Report (the “**Second Supplemental Report**”) which provided an update on i) the Liquidator’s activities since the filing of the First Supplemental Report, ii) the foreign exchange transactions that occurred in respect of the Toronto Branch regarding the FX Risk of the GDPF and the GIA, and sought amended relief to the relief sought in the Ninth Report and First Supplemental Report, including an order approving:
- i. The Principal Officers Claims Bar Notice (as amended);
 - ii. The Principal Officers Claims Bar Date (as amended); and
 - iii. The activities of the Liquidator since the filing of the Ninth Report as described in the First Supplemental Report and the Second Supplemental Report.
16. On January 25, 2017, the Liquidator filed its Tenth Report which:
- i. Provided an update to the Court on the status of the protocol developed in conjunction with the GIA and the former principal officer of the Toronto Branch to implement a procedure to identify any Claims which may be asserted against the Principal Officers of the Toronto Branch arising out of the positions that the Principal Officers may have held with a number of Maple Bank affiliated companies (the “**Principal Officers Claims**

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

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

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

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

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

PURPOSE OF THE TWELFTH REPORT

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

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

TERMS OF REFERENCE AND DISCLAIMER

22. In preparing this report, the Liquidator has been provided with, and has relied upon, unaudited and other financial information, books and records (collectively, the “**Information**”) prepared by the Toronto Branch and/or its representatives, and discussions with its former management and/or its former representatives. The Liquidator has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided and in consideration of the nature of evidence provided to the Court. However, the Liquidator has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Liquidator expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.
23. The information contained in this report is not intended to be relied upon by any prospective purchaser or investor in any transaction with the Liquidator.
24. Capitalized terms not defined in the Twelfth Report are as defined in either the Winding-Up Order and/or the First Report through the Eleventh Report. Unless otherwise indicated, all references to monetary amounts herein are denominated in Canadian dollars (“**CAD**”).
25. Copies of the Liquidator’s Court reports and all motion records and Orders in these proceedings are available on the Liquidator’s website at <http://www.kpmg.com/ca/maplebank>.

2. **RECEIPTS, DISBURSEMENTS AND REMAINING ESTIMATED REALIZATIONS**

Summary of Receipts and Disbursements

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

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

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

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

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

Analysis of Receipts

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

Cash and Securities from Toronto Branch's accounts

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

Structured Loan Portfolio Realizations

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

MBS Business Asset Sale

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

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

Related Party Intercompany Account Settlements

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

Settlement of Brokerage Account

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

Derivative Instruments

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

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

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

Other and Miscellaneous

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

Analysis of Disbursements

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

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

Remaining Anticipated Realizations

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

3. CLAIMS PROCEDURE UPDATE

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

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

Notes:

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

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

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

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

Resolved Claims

Vendor Claims

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

Global One Claim

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

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

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

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

Radius Claim

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

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

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

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

Employee Claims

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

Non-Executives

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

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

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

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

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

Executives

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

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

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

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

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

Unresolved Claim

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

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

Canada Revenue Agency (“CRA”)

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

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

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

Notes:

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

Corporate Income Taxes and Branch Taxes

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

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

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

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

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

HST

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

Executives

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

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

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

4. UPDATE ON PRINCIPAL OFFICERS CLAIMS PROCEDURE

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

5. DATA SHARING PROTOCOL

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

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

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

6. ESTIMATED SURPLUS AND PROPOSED DISTRIBUTION

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

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

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

Notes:

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

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

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

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

In the matter of the winding-up of Maple Bank GmbH (Toronto Branch)	
Estimated Surplus	
As at August 31, 2017	
Amounts in CAD millions	
Assets available for distribution	\$ 144.1
Less: Estimated Reserve	\$ 52.7
Estimated Surplus	\$ 91.4

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

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

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

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

7. LIQUIDATOR'S ACTIVITIES AND FEES

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

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

8. LIQUIDATOR'S RECOMMENDATIONS

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

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

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

All of which is respectfully submitted at Toronto, Ontario this 19th day of September, 2017.

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

Per:



Nicholas Brearton
President



Jordan Sleeth
Senior Vice President

Tab A

Appendix "A"

Winding-Up Order dated February 16, 2016

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

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

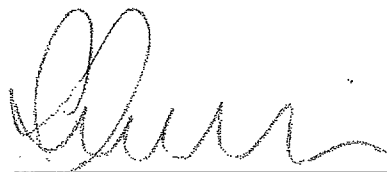
33. **THIS COURT ORDERS** that this Order and any other orders in these proceedings shall have full force and effect in all Provinces and Territories in Canada.
34. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in 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-16-11290-0002

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

WINDING-UP ORDER

John J. Lucki

Department of Justice

Ontario Regional Office The Exchange Tower

130 King Street West

Suite 3400, Box 36

Toronto, Ontario M5X 1K6

Tel: (416) 973-5402

Fax: (416) 973-2319

Law Society No.

Solicitor for the Applicant,

The Attorney General of Canada

Tab B

Appendix "B"

Principal Officers Additional Claims Order dated January 27, 2017

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

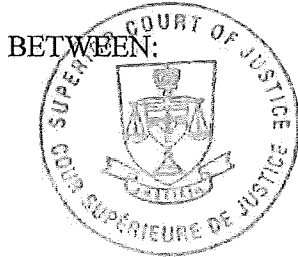
THE HONOURABLE REGIONAL) THURSDAY, THE 27th DAY
)
SENIOR JUSTICE MORAWETZ) OF JANUARY, 2017

IN THE MATTER OF MAPLE BANK GmbH

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

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

BETWEEN:



ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GmbH

Respondent

PRINCIPAL OFFICERS ADDITIONAL CLAIMS ORDER

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

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

- (b) approving the Tenth Report of the Liquidator dated January 25, 2017 (the “**Tenth Report**”) and the activities of the Liquidator set out in the Tenth Report;
- (c) setting February 28, 2017 as the Principal Officers Claims Bar Date (as defined below) for any Claim against any individual who is or has been a Principal Officer (as defined in the Bank Act) of the Toronto Branch (the “**Principal Officer**”) that relates to amounts for which such individual may in law be liable to pay in his or her capacity as Principal Officer and that arose prior to the Winding-Up Date including, without limitation, any Claims arising in such individual’s capacity as an officer and/or director of Maple Financial Group Inc., Maple Futures Corp., Maple Holdings Canada Limited, Maple Securities Canada Limited, Maple Trade Finance Inc., Maple Securities U.S.A. Inc., Maple Arbitrage Inc., Maple Trade Finance Corp, Maple Commercial Finance Corp, and Maple Partners America Inc. (each, an “**Affiliate**” and collectively the “**Affiliates**”) that arose prior to the Winding-Up Date, to the extent that such individual served in such role in his or her capacity as Principal Officer;
- (d) approving the notice to creditors of the Toronto Branch to be published in the National Edition of the Globe and Mail and the International Edition of the Wall Street Journal giving notice of the Principal Officers Claims Bar Date, substantially in the form of the notice attached as Schedule “A”, hereto (the “**Principal Officers Claims Bar Notice**”);
- (e) approving the Protocol to Address Reserves Re: Lishman (the “**Protocol**”, substantially in the form of the Protocol attached as Schedule “B” hereto; and
- (f) such further relief as may be required in the circumstances and which this Court deems as just and equitable,

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

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

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

PRINCIPAL OFFICERS CLAIMS BAR DATE

5. **THIS COURT ORDERS** that the Principal Officers Claims Bar Notice shall, inter alia, provide notice to all Persons with a Claim against any individual who is or has been a Principal Officer of the Toronto Branch that relate to amounts for which such individual may in law be liable to pay in his or her capacity as Principal Officer and that arose prior to the Winding-Up Date including, without limitation, any Claims arising in such individual’s capacity as an officer and/or director of the Affiliates, to the extent that such individual served in such role in his or her capacity as Principal Officer of Toronto Branch, that such Persons shall file a Proof of Claim with the Liquidator by 4:00 p.m. Eastern Time on February 28, 2017 (the “**Principal Officers Claims Bar Date**”).
6. **THIS COURT ORDERS** that, subject to paragraphs 7 and 9, any Person with a Claim, other than a Claim asserted on the basis of fraud, intentional misconduct or illegal actions, against any individual who is or has been a Principal Officer of the Toronto Branch that relate to amounts for which such individual may in law be liable to pay in his or her capacity as Principal Officer and that arose prior to the Winding-Up Date including, without limitation, any Claims arising in such individual’s capacity as an officer and/or director of an Affiliate, to the extent that such individual served in such role in his or her capacity as Principal Officer, that does not file a

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

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

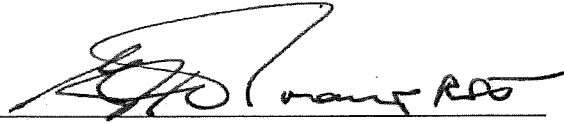
GENERAL

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

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

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

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



A handwritten signature in black ink, appearing to read "R. Wang" followed by a flourish, positioned above a horizontal line.

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

JAN 27 2017

PER / PAR:



Handwritten initials or a signature mark, consisting of two overlapping loops, positioned to the right of the "PER / PAR:" label.

Schedule "A"

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

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

PLEASE TAKE NOTICE that this notice is being published pursuant to an Order of the Superior Court of Justice of Ontario [Commercial List] made January 27, 2017 (the "**Claims Bar Order**"). The Claims Bar Order provides that Proofs of Claim must be submitted to the Liquidator by **4:00p.m. Eastern Time on February 28, 2017** (the "**Principal Officers Claims Bar Date**") for any Claim against the individuals who are or have been Principal Officers of Maple Bank and that relate to amounts for which such individual may in law be liable to pay in his or her capacity as Principal Officer and that arose prior to the Winding-Up Date including, without limitation, any Claims arising in such individual's capacity as an officer and/or director of **Maple Financial Group Inc., Maple Futures Corp., Maple Holdings Canada Limited, Maple Securities Canada Limited, Maple Trade Finance Inc., Maple Securities U.S.A. Inc., Maple Arbitrage Inc., Maple Trade Finance Corp, Maple Commercial Finance Corp, and Maple Partners America Inc.** (each, an "Affiliate" and collectively the "Affiliates"), to the extent that such individual served in such role in his or her capacity as Principal Officer of Toronto Branch, and that arose prior to the Winding Up Date. Creditors can obtain the Claims Bar Order and a Proof of Claim package from the website of the Liquidator (<http://www.kpmg.com/ca/maplebank>) or by contacting the Liquidator by telephone (416) 777-8415, by fax (416) 777-3364 or by email (pjreynolds@kpmg.ca).

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

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

DATED at Toronto this _____ day of _____, 2017.

KPMG Inc. in its capacity as Court-appointed
Liquidator of Maple Bank GmbH, (Toronto Branch)
Bay Adelaide Centre
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Schedule "B"

PROTOCOL TO ADDRESS RESERVES RE: LISHMAN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IN THE MATTER OF MAPLE BANK GmbH
AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*, R.S.C. 1985, C.W-11, AS AMENDED
AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

**PRINCIPAL OFFICERS ADDITIONAL
CLAIMS ORDER**

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

Tab C

Appendix "C"

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF MAPLE BANK GmbH
AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*,
R.S.C. 1985, C.W-11, AS AMENDED
AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GmbH

Respondent

THE
ELEVENTH REPORT OF KPMG INC. IN ITS CAPACITY AS
COURT APPOINTED LIQUIDATOR OF THE BUSINESS IN CANADA OF MAPLE BANK
GMBH AND ITS ASSETS AS DEFINED IN SECTION 618 OF THE *BANK ACT*

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Appendix A	Winding-Up Order dated February 16, 2016
Appendix B	Ninth Report of the Liquidator dated November 16, 2016 (without appendices)
Appendix C	Tenth Report of the Liquidator dated January 25, 2017 (without appendices)
Appendix D	Principal Officers Additional Claims Order dated January 27, 2017
Appendix E	Notice to Creditors of the Principal Officers Claims Bar Date that was published on January 31, 2017, in the National Edition of <i>The Globe and Mail</i> and the International Edition of <i>The Wall Street Journal</i>
Appendix F	Representative Counsel Order dated January 27, 2017
Appendix G	Notice of Distribution to Creditors of the Toronto Branch that was published on March 3, 2017, in the National Edition of <i>The Globe and Mail</i> and the International Edition of <i>The Wall Street Journal</i>
Appendix H	Letter from the GIA to the Liquidator dated March 2, 2017

1. INTRODUCTION AND PURPOSE OF THE ELEVENTH 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 (the “**First Report**”), which, among other things, outlined the protocol that was agreed to between the Liquidator and the GIA regarding the existing Chapter 15 filing under the *United States Bankruptcy Code* made by the GIA with regard to Maple Bank’s non-Toronto Branch assets in the U.S. and the Assets of the Toronto Branch which reside in the U.S.
 6. On March 30, 2016, the Liquidator filed its Second Report (the “**Second Report**”), which provided: (i) an update on the actions of the Liquidator since the granting of the Winding-Up Order; (ii) an update on the Assets and liabilities of the Toronto Branch; and (iii) details of a proposed marketing process to identify a successor issuer to the Toronto Branch’s MBS program and for the sale of all or a portion of certain other Assets (the “**Marketing Process**”).
 7. On June 2, 2016, the Liquidator filed its Third Report (the “**Third Report**”), which provided information in respect of: (i) an update on the actions of the Liquidator since the issuance of the Second Report; (ii) an update on the status of

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

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

11. On October 6, 2016, the Liquidator filed its Seventh Report to the Court which provided information regarding the sale to KEB of the Residual Receivable Backed Notes issued by KEB and secured by, *inter alia*, notes issued by CIC.
12. On November 15, 2016, the Liquidator filed its Eighth Report (the “**Eighth Report**”) to the Court which provided information regarding the proposed settlement between the Liquidator and the Bank of Montreal (“**BMO**”) of the liabilities and obligations of each of BMO and Maple Bank arising from a repurchase transaction and the early termination of certain foreign exchange transactions, along with a proposed sale of certain NHA MBS by the Liquidator to BMO.
13. On November 16, 2016, the Liquidator filed its Ninth Report (the “**Ninth Report**”) to the Court (a copy of which is attached hereto as **Appendix B**) which provided:
 - i. An update on the actions of the Liquidator since the issuance of the Third Report;
 - ii. An update on the status of the Claims Procedure;
 - iii. Information regarding the Liquidator’s proposed interim distribution to proven creditors (the “**Interim Distribution**”);
 - iv. A recommendation that the Liquidator be authorized to implement a hedging or conversion strategy to mitigate the Euro – Canadian dollar foreign exchange risk (the “**FX Risk**”) related to the amounts that would be distributed to the Association of German Banks’ Deposit Protection Fund and the Compensation Scheme of German Private Banks (collectively, the “**GDPF**”) and GIA as part of the Interim Distribution; and
 - v. The Liquidator’s statement of receipts and disbursements for the period from February 16, 2016 to October 31, 2016.
14. On November 24, 2016, the Liquidator filed its supplemental report to the Ninth Report (the “**First Supplemental Report**”) which provided an update on the

Liquidator's activities since November 18, 2016, and sought amended relief to the relief sought in the Ninth Report, including an order approving:

- i. The Interim Distribution to creditors with proven Claims within two days following December 19, 2016;
 - ii. The amended notice to creditors of the Interim Distribution;
 - iii. A Claims bar notice and Claims bar date in respect of Claims that may be asserted against the Principal Officers of the Toronto Branch (the "**Principal Officers Claims Bar Notice**" and "**Principal Officers Claims Bar Date**", respectively);
 - iv. The Liquidator's statement of receipts and disbursements for the period February 16, 2016 to October 31, 2016; and
 - v. The activities of the Liquidator since the filing of the Third Report, up to and including the Ninth Report, including the activities of the Liquidator as described in the Third Report.
15. On December 8, 2016, the Liquidator filed its second supplemental report to the Ninth Report (the "**Second Supplemental Report**") which provided an update on i) the Liquidator's activities since the filing of the First Supplemental Report, ii) the foreign exchange transactions that occurred in respect of the Toronto Branch regarding the FX Risk of the GDPF and the GIA, and sought amended relief to the relief sought in the Ninth Report and First Supplemental Report, including an order approving:
- i. The Principal Officers Claims Bar Notice;
 - ii. The Principal Officers Claims Bar Date; and
 - iii. The activities of the Liquidator since the filing of the Ninth Report as described in the First Supplemental Report and the Second Supplemental Report.
16. On January 25, 2017, the Liquidator filed the Tenth Report (the "**Tenth Report**") (a copy of which is attached hereto without appendices as **Appendix C**) which:

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

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

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

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

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

PURPOSE OF THE ELEVENTH REPORT

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

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

TERMS OF REFERENCE AND DISCLAIMER

19. In preparing this report, the Liquidator has been provided with, and has relied upon, unaudited and other financial information, books and records (collectively, the "**Information**") prepared by the Toronto Branch and/or its representatives, and discussions with its former management and/or its former representatives. The Liquidator has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided and in consideration of the nature of evidence provided to the Court. However, the Liquidator has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Liquidator expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.
20. The information contained in this report is not intended to be relied upon by any prospective purchaser or investor in any transaction with the Liquidator.

21. Capitalized terms not defined in the Eleventh Report are as defined in either the Winding-Up Order and/or the First Report through the Tenth Report. Unless otherwise indicated, all references to monetary amounts herein are denominated in Canadian dollars (“CAD”).
22. Copies of the Liquidator’s Court reports and all motion records and Orders in these proceedings are available on the Liquidator’s website at <http://www.kpmg.com/ca/maplebank>.

2. RECEIPTS, DISBURSEMENTS AND REMAINING ESTIMATED REALIZATIONS

Summary of Receipts and Disbursements

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

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

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

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

Analysis of Receipts

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

Cash and Securities from Toronto Branch's accounts

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

Structured Loan Portfolio Realizations

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

MBS Business Asset Sale

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

Related Party Intercompany Account Settlements

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

Settlement of Brokerage Account

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

Derivative Instruments

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

Other and Miscellaneous

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

Analysis of Disbursements

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

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

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

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

Notes:

- ⁽¹⁾ Represents cash held at Toronto Branch accounts and includes Euro 49 million (CAD\$68.9 million) held in a Euro denominated account at CIBC.
- ⁽²⁾ Consists of approximately US\$69.0 million in a USD Escrow account that is subject to a protocol agreed to between the Liquidator and the GIA for administering the Toronto Branch's Assets which reside in the U.S.
- ⁽³⁾ Consists of liquid securities held at RBC DS with various rates of return and maturity dates.

Remaining Estimated Realizations

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

3. CLAIMS PROCEDURE UPDATE

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

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

Notes:

⁽¹⁾ Amounts are in millions of Canadian dollars.

⁽²⁾ Excludes payment of statutory interest in accordance with the WURA.

40. As noted above, 29 Claims, including those of the GDPF, with a total value of approximately \$686.8 million were paid on or about December 19, 2016. The Liquidator disallowed four Claims filed by counter parties to MBS business contracts as these contracts were assumed in accordance with the Equitable Transaction.
41. As described in the Ninth Report, the Liquidator reached an agreement with the GIA pursuant to which the Claim filed by the GIA (the "GIA Claim"), to the extent that it is valid, shall be permanently reduced to the extent of any distribution made to the GIA in respect of the GIA Claim. The GIA has further agreed that such corresponding portion of the GIA Claim shall be extinguished and released by such distribution. In addition, the remaining portion of the GIA Claim, to the extent that it is valid, after taking into account any distributions, shall be capped at an amount (which amount may from time to time increase or decrease) that results in the Toronto Branch having assets in excess of its liabilities. Accordingly, Creditors with existing proven Claims will receive 100% of their Claim amounts, plus interest to the date of any distributions to those Creditors. This agreement is

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

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

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

Canada Revenue Agency

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

Vendor Claims

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

Employee Claims

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

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

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

Global One Claim

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

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

Radius Claim

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

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

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

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

4. UPDATE ON PRINCIPAL OFFICERS CLAIMS PROCEDURE

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

5. ESTIMATED SURPLUS AND PROPOSED DISTRIBUTION

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

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

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

Notes:

- ⁽¹⁾ Represents unproven third party Proofs of Claim as filed, as at February 28, 2017, at amounts as filed by the claimants.
- ⁽²⁾ Includes interest at 5% p.a. pursuant to the WURA from the Liquidation Date to March 31, 2018, a conservatively 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⁾ Represents estimated professional fees for the Liquidator and its counsel to complete the administration of the Toronto Branch Liquidation through to an estimated outside date of March 31, 2018, fees for Representative Counsel and counsel to the Executives and includes estimated costs to litigate any unproven Claims.

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

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

Assets available for distribution	\$	820.1
Estimated Reserve	\$	159.4
Estimated Surplus	\$	660.6

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

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

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

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

6. LIQUIDATOR'S RECOMMENDATIONS

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

All of which is respectfully submitted at Toronto, Ontario this 2nd day of March, 2017.

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



Per:

Philip Reynolds
Senior Vice President



Jordan Sleeth
Senior Vice President

Tab D

Appendix “D”

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

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

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

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

DATED at Toronto this 15th day of September, 2017.

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

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

Tab 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF MAPLE BANK GMBH

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

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

B E T W E E N:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GMBH

Respondent

REPORT #2 OF THE COURT APPOINTED COST COUNSEL

September 18, 2017

GARDINER ROBERTS LLP

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Cost Review Counsel for the Liquidator,
KPMG Inc.

TO: THE SERVICE LIST

AND TO: **BORDEN LADNER GERVAIS LLP**
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Alex MacFarlane
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Fax: (416) 397-6749

Lawyers for KPMG Inc., in its capacity as the Liquidator in respect of the winding up of the business in Canada of Maple Bank GmbH and its related assets as defined under section 618 of the Bank Act pursuant to an order of the Superior Court of Justice.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF MAPLE BANK GMBH

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

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

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GMBH

Respondent

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF MAPLE BANK GMBH

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

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

B E T W E E N:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GMBH

Respondent

**REPORT #2 OF THE COURT APPOINTED COST COUNSEL
(SEPTEMBER 2017)**

PART I - INTRODUCTION

1. On February 16, 2016, Regional Senior Justice Morawetz appointed KPMG Inc. (“KPMG”) as Liquidator under the provisions of the *Winding Up and Restructuring Act* R.S.C 1985, c. W-11, as amended (“WURA”) of Maple Bank GmbH Canada Branch (“Maple Bank”) and of its assets, as defined in section 618 of the Bank Act, S.C. 1991, c.46, as amended, (the “Bank Act”). The relevant order can be found on the Liquidator’s Website [here](#).
2. By order dated June 8, 2016, Regional Senior Justice Morawetz appointed Independent Cost Counsel (“Cost Counsel”) to review the fees and disbursements of the Liquidator and its counsel. The appointment order required Cost Counsel to report to the Court and

make submissions, if necessary, with respect to the fairness and reasonableness of those fees and disbursements.

3. A copy of that appointment order is also found on the Liquidator's Website [here](#).
4. All of the information concerning the proceedings in Maple Bank and the relevant orders and reports is also recorded on the Liquidator's Website ([here](#)). This includes the pre-filing Report of the proposed Liquidator dated February 16, 2016 up to and including the 11th Report of March 10, 2017.
5. Report #1 of the Independent Cost Counsel was considered by the court on March 10, 2017 and the fees and expenses from the outset of this matter up to and including November 2016 ("Period 1") were approved.
6. This Report #2 covers the period from **December of 2016** up to and including the end of **July 2017** ("Period 2").

PART II - OVERVIEW

7. As set out in Report #1,
 - (a) Maple Bank has only one office in Canada at Toronto (the "Toronto Branch"). It was generally engaged in the business of mortgage securities (through the NHA Mortgage Backed Securities Program and the Canada Mortgage Bond Program), secured loan transactions secured by investment grade financial assets and complex security financing transactions.
 - (b) As of February 10, 2016 Maple Bank's balance sheet showed \$5.5B in assets and \$5.34B in liabilities. \$3.5B of the assets related to the mortgage business.

- (c) Maple Bank GmbH has its head offices in Frankfurt, Germany. It is under insolvency administration procedures in Germany pursuant to the German Insolvency Code (Dr. M.C. Frege, Insolvency Administrator (the “GIA”). The Toronto Branch’s net assets are considered an asset in the German process. There has been and continues to be considerable interaction and discussion between the GIA and the Liquidator on matters relating to the Canadian insolvency process, the GIA claims, their priority and the priority claims of others.
- (d) The German administration came about as a result of an investigation by German authorities in the fall of 2015 for alleged tax evasion. By February 6th, 2016, the German Financial Supervisory Authority placed a moratorium on Maple Bank GmbH’s business. This in turn caused severe difficulties for the parent bank. In Canada, several institutions¹ delivered default notices to Maple Bank and terminated their agreements including Master Repurchase Agreements, Approved Issuer agreements, Securities Lending Agreements and others. By February 11th of 2016, the financial authorities in Germany had initiated insolvency proceedings culminating in the appointment of the GIA. In the meantime, on February 10th, 2016, the Canadian federal Superintendent of Financial Institutions had concluded that Maple Bank would not be able to pay its liabilities as due and took control of its assets under the provisions of the Bank Act. To maintain control, proceedings were initiated under WURA.
- (e) Distribution orders were made by this Court on November 18 and 25th of 2016 and a further order on March 10, 2017.

¹ Including CMHC, CIBC, RBC, Societe Generale and BMO.

8. The liquidation process is almost entirely completed. There are a number of creditor claims in the process of being settled or litigated. The handling of those claims is currently the largest part of the activity of the Liquidator and its counsel. These claims include the GIA claim, the “Global One” claim, Employee claims, CRA claims for income tax and HST, and the “Radius” claim.

PART III - FRAMEWORK

9. As Court appointed Liquidator, KPMG’s fees and expenses and those of its counsel should be “fair and reasonable” in the context of the work required to be done.
10. The legal framework for this analysis has been set out in prior reports but is contained in Schedule 7 to this Report #2.
11. Against that legal framework, the various accounts have been reviewed.

PART IV - LIQUIDATION ACTIVITY FOR PERIOD 2

12. Attached as Schedule 1 to this Report, is a further attempt to try to graphically display the overall activity of the Maple Bank liquidation during Period 2 in terms of the assets, the players and the activity ongoing. It is not entirely complete and necessarily there is more detail associated with each of the items and other elements that have not been included. However, it does give an idea of the number of matters required to be dealt with by Liquidator and its counsel and the fairness of the fee accounts.

PART V - REVIEW PERIOD

13. The following are the account periods reviewed in this report,
 - (a) For the Liquidator and Counsel: December 1, 2016 to July 31, 2017

Further review will be required before this matter is complete.

14. A listing of the Liquidator's and Liquidator's Counsel's accounts is attached hereto as Schedule 2. The accounts themselves will be the subject of separate fee affidavits by Liquidator and its Counsel.
15. In the review of the accounts such items as the following have been considered,
 - (a) The nature, extent and value of the assets handled;
 - (b) The complications and difficulties encountered;
 - (c) The degree of assistance provided by the company, its officers or employees;
 - (d) The time spent;
 - (e) The Liquidator's knowledge, experience and skill;
 - (f) The diligence and thoroughness displayed;
 - (g) The responsibilities assumed;
 - (h) The results of the Liquidator's efforts; and,
 - (i) The anticipated cost of comparable services when performed in a prudent and economical manner.

PART VI - LIQUIDATOR ACCOUNTS

16. The Liquidator's accounts for Period 2 exclusive of HST, are summarized as follows:

Hours	2,068.8 hours
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Fees	\$1,275,152.00
Expenses	\$74,523.50
Average Rate per Hour	\$616.37 /hour ²

17. KMPG's accounts and docketed are comprehensive and generally provide clear and complete information as to:
- (a) Name of Individual (either professional staff or administrative staff);
 - (b) Date of work;
 - (c) Description of the work performed;
 - (d) Hours worked;
 - (e) Rate; and,
 - (f) Disbursements.
18. KPMG's accounts are, as is usual in these kinds of proceedings, rendered on a time and rate basis.
19. The narrative in the docketed provided has been considered in conjunction with the time recorded for that particular docket. It is of course always difficult for an outside reviewer, not involved on a day to day basis, to look at recorded activity, and ask if the time spent is reasonable.
20. Considering the recorded narrative, in relation to the time spent on the task, independent cost counsel considers the docketed to be unremarkable. While there are high docketed hours recorded for some individuals from time to time, the narrative was examined

² For Period 1 the average rate was \$627 /hour.

carefully in relation to the context. The question was asked as to whether the time made sense for the higher amount of time recorded.

21. For example, on January 3, 2017, Mr. Dedic spent 6.5 hours on the file. Mr. Dedic has a lower rate. His docket reads:

“Reconciliation of bank statements and bank accounts for period of December 2016 to bank rec file and summary of cash position provided to R. Adlington; discussion with A. Rzhovsky re: reconciling differences between actual cash and transaction report for Maple transactions; draft of November professional services bill; review of correspondence from counsel of R. Khouznoutdinov re: GIA objection; discussion with L. Lai re: explanation for cash transactions for the cash position reconciliation.”

22. It does not seem unreasonable for detailed work of this nature to actually have consumed 6.5 hours. The time and narrative make sense even though the recorded docketed hours are high.
23. Approaching the KPMG dockets in this way and bearing in mind that there is always a measure of imprecision, the time spent for the work recorded is fair and reasonable in the context of that which was being dealt with.
24. Was the time efficiently spent? Mr. Dedic, Senior Consultant, at \$370 per hour, had the highest number of hours overall on the file and in Period 2. This does not seem inappropriate given the nature of the work involved (as a small example, the bank reconciliations referred to in the docket above). Mr. Sleeth, a partner, at \$735 had almost 100 hours less than Mr. Dedic during Period 2 and the numbers for the others fall from there. Mr. Brearton and Mr. Reynolds, the senior partners, account for only 21% of the

time in Period 2. As a result the application of the seniority of personnel to tasks is considered fair and reasonable.

25. Even though 19 people at KPMG worked on the file during Period 2, 90% of the work during Period 2 was completed by 5 people at KPMG; Dedic, Sleeth, Adlington, Reynolds and Brearton in that order. The other 14 persons on the file would appear to have been involved in more administrative type functions as opposed to decisions, tactics and strategy. Of those 14 others, most had worked on the Maple Bank matter during Period 1 and were familiar with it. There does not appear to be duplication of effort among the KPMG group though clearly some discussion among members of the group was necessary and productive in moving the matter along and from time to time several members of the KPMG team might attend some meetings.

KPMG Rates

26. The Liquidator's professional rates and disbursements are comparable to the rates charged by other professional firms in the Toronto.
27. The billing rates for the time spent by the staff at KPMG varies. These rates are set out in Schedule 4 to this Report for Assessment Period 2 and have, for the most part, not significantly changed since Period 1. The highest rate charged through Period 2, was, as in Period 1, \$865 per hour, but most of the work was being done at lower rates as noted above.
28. There were 2,068.8 hours worked by KPMG during Period 2 (8 months). Annualized, this billing picture would be about 3,102 hours per year and, if one assumes an average yearly billing target of 1500 hours, the commitment of manpower for Period 2 can be

equated to the full time effort of 2 people. Accordingly, even though there were 19 people working on the file the effective staffing for the period is about 2 persons. That is not unreasonable for a file of this nature. The average billing rate for Period 1 was \$627/hour. The average rate for Period 2 fell slightly to \$616/hour reflecting the lesser requirement for senior people.

29. As expected, disbursements for Period 2 are only a third of those in Period 1. This reflects the completion during Period 1 of the asset collection phase of the liquidation. Disbursements of \$74,523.50 were incurred in Period 2. These were necessarily incurred, billed at cost and are fair and reasonable in the circumstances.
30. None of the dockets relate to work which cost counsel might criticize as unnecessary.
31. Having read and reviewed the accounts of the Liquidator, in light of the work recorded, the items in paragraph 15, the level of effort needed, the nature and extent of the assets to be dealt with and the overall complexity, the fees submitted for Period 2 for the Liquidator are fair and reasonable in that context.

PART VII - LIQUIDATOR'S COUNSEL

32. At the start of these proceedings, Liquidator's Counsel in Canada was Gowlings WLG (Canada) LLP ("Gowlings"). The KPMG representation shifted to Borden Ladner Gervais LLP ("BLG") with the transition of Mr. Alex MacFarlane to that law firm.

Gowling's Accounts.

33. There are two Gowling accounts arising from "spillover" work by that firm after Mr. MacFarlane's move to BLG. Much of this related to tax and transactional matters and

essentially involve the work of three people. Mr. Baum and Mr. Bussman, tax practitioners at Gowlings docketed 12.7 and 14 hours, respectively, and were dealing with necessary tax opinions for the Liquidator. Typically the rates for tax practitioners are high; Gowlings is not an exception. Ms. L.Wong (transactional work) recorded 18.7 hours. Much of her work related to the transactions completed prior to December of 2016³ and the necessary follow up. The result has been that the overall hourly rate for this “stub” period is high and reflects the specialized nature of the service.

Hours	51.4
Fees	\$44,296.32
Expenses	\$5,622.27
Average Rate/Hr.	\$861.80

34. The Gowling’s account contain the necessary narrative and hours worked. Gowling’s rates also increased at the beginning of 2017.
35. For the work completed by Gowlings following Mr. MacFarlane’s move, the hours worked are fair and reasonable for the tasks required. The rates are higher but are typical for senior tax and transactional solicitors at a comparable larger Toronto firm.
36. Gowlings accounts accordingly are considered fair and reasonable.
37. As a side note, cost counsel identified certain adjustments that needed to be made to the Gowling’s accounts from Period 1. These adjustments were made by KPMG at the time of the payment of Gowling’s December 31, 2016 account 18610168. No further adjustments are required.

³ Ms. Wong has a number of docketed entries that were late and did not make it into the prior accounts for Period 1. There is no duplication of docketed between Period 1 and these Period 2 bills.

BLG Accounts.

38. BLG's unadjusted and billed accounts for Period 2 exclusive of HST, are as follows.

Hours	1,058
Fees	\$709,735.00
Expenses	\$12,181.49
Average Rate per Hour	\$670.83/ hour ⁴

39. Attached as Schedule 5 are the rates being charged by BLG during Period 2. Rates of BLG are of course different from those at Gowlings. Mr. MacFarlane's rate did not change with his transition to BLG and remained at \$875/hr.

40. Attached as Schedule 6 is the general distribution of the hours recorded among the BLG personnel involved.

41. There were 19 BLG fee earners recorded during Period 2. However, only 2 BLG lawyers docketed more than 100 hours on this file during Period 2. These were:

Lawyer	Hours
MacFarlane, Alex L. (Insolvency)	430.9
Smith, D.O. (Litigation)	213

42. Only 5 lawyers accounted for 83% of the work being done. The other fee earners were in more supportive roles. If one annualizes the BLG time (which works out to 1587 hours) and applies a 1500 hour year target, the BLG time for Period 2 is attributable to roughly 1 full time lawyer (at a \$670.83/hour rate). Judged on that basis, again the time spent is not unreasonable given the nature of the matters during Period 2.

⁴ The Gowlings average rate for Period 1 was \$682.74.

- 43. The dockets for BLG are reasonably clear and descriptive of the work being carried out.
- 44. Consideration was given to the effect of the transition of the file to BLG. This necessarily involved a certain amount of education of lawyers other than Mr. MacFarlane. It would not be fair and reasonable for that education to be billed to the client in the circumstances. Alert to that issue, the BLG docketed time does not reflect any re-education. Whatever time was spent bringing other BLG lawyers “up to speed” on the file (and doubtless there was some) does not appear to have been billed.
- 45. Having read and reviewed the accounts of the Liquidator’s counsel, in light of the work recorded, the items in paragraph 15, the level of effort needed, the nature and extent of the assets to be dealt with and the overall complexity, the fees submitted for Period 2 for the Liquidator’s counsel (BLG and Gowlings) are fair and reasonable.

PART VIII - RECOMMENDATIONS

- 46. Cost Counsel recommends that the accounts of the Liquidator and its Counsel be approved as being fair and reasonable in the overall context of this liquidation.
- 47. In summary it is recommended that the accounts of the Liquidator for Period 2 should be approved at:

Fees	\$1,275,152.00
Expenses	\$74,523.50

- 48. The accounts of Liquidator’s Counsel, Gowlings, for Period, should be approved at:

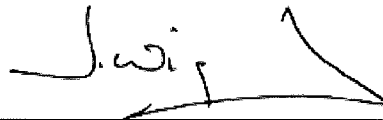
Fees	\$44,296.32
Expenses	\$5,622.27

49. The accounts of Liquidator's Counsel, BLG, for Period 2 should be approved at:

Fees	\$709,735.00
Expenses	\$12,181.49

50. Overall the Maple Bank liquidation has currently cost about \$9 million in fees ignoring expenses and HST. Assuming receipts in the insolvency estate of \$1,231,500,000, the professional fees currently represent 0.73% of the total receipts.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of September, 2017.

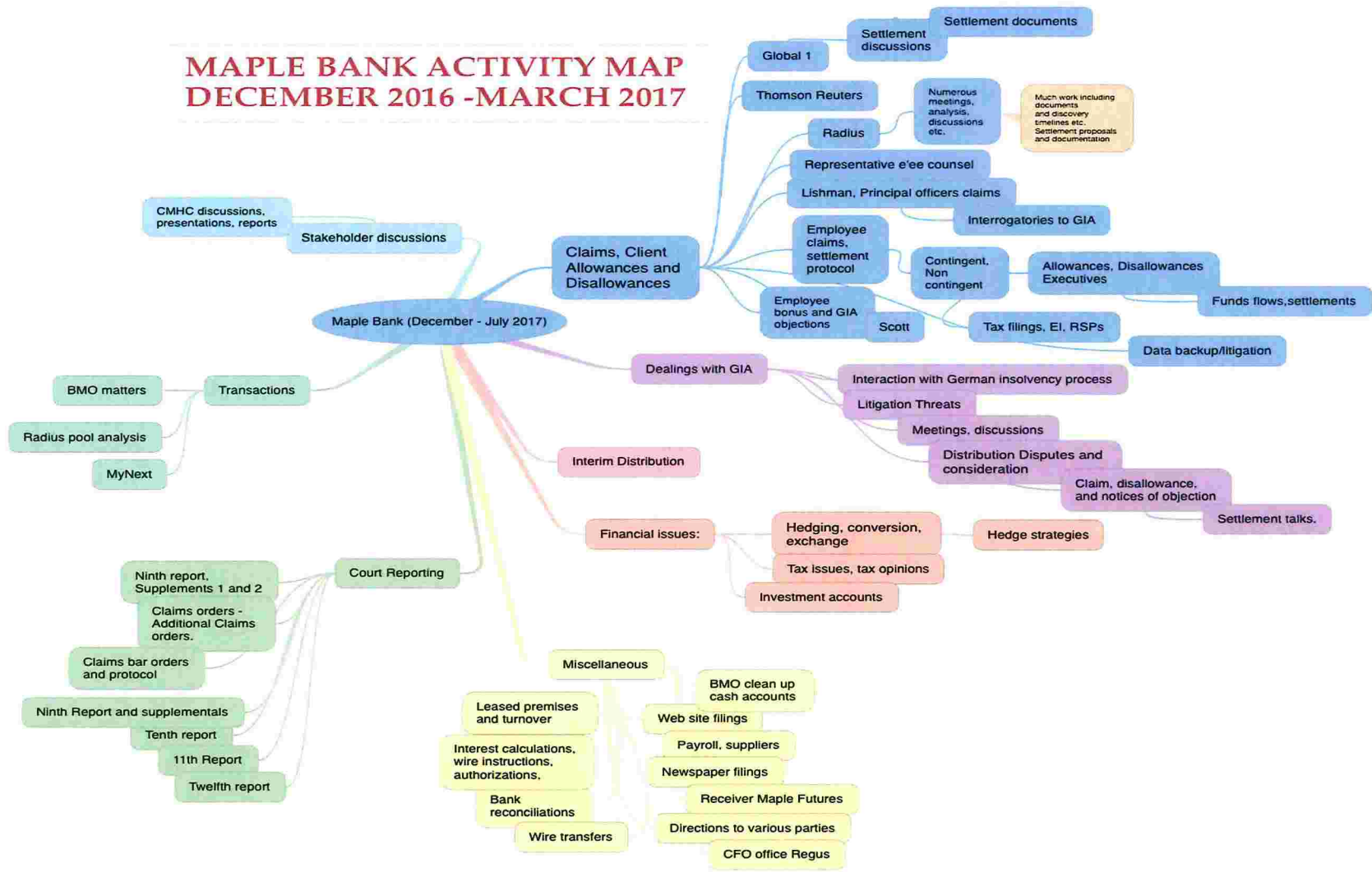


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Tab 1

Schedule 1: Asset Liquidation Activity Map



Tab 2

Schedule 2: List of Accounts

KPMG Accounts

Account Number	Date	Fee Amount	Expenses	Total HST	Total
8001478084	29-Mar-17	\$306,041.50	\$31,387.73	\$43,865.80	\$381,295.03
8001478092	29-Mar-17	\$250,863.50	\$3,769.85	\$33,102.34	\$287,735.69
8001478969	29-Mar-17	\$178,375.00	\$6,292.87	\$24,006.82	\$208,674.69
8001498280	10-Apr-17	\$213,082.50	\$6,085.99	\$28,491.90	\$247,660.39
8001625695	10-Jul-17	\$140,069.50	\$5,053.52	\$18,865.99	\$163,989.01
8001668934	10-Aug-17	\$80,899.00	\$9,238.69	\$11,717.90	\$101,855.59
8001668931	10-Aug-17	\$67,015.50	\$8,562.28	\$9,825.11	\$85,402.89
8001668930	10-Aug-17	\$38,805.50	\$4,162.57	\$5,585.85	\$48,553.92
Totals		\$1,275,152.00	\$74,553.50	\$175,461.71	\$1,525,167.21

BLG Accounts

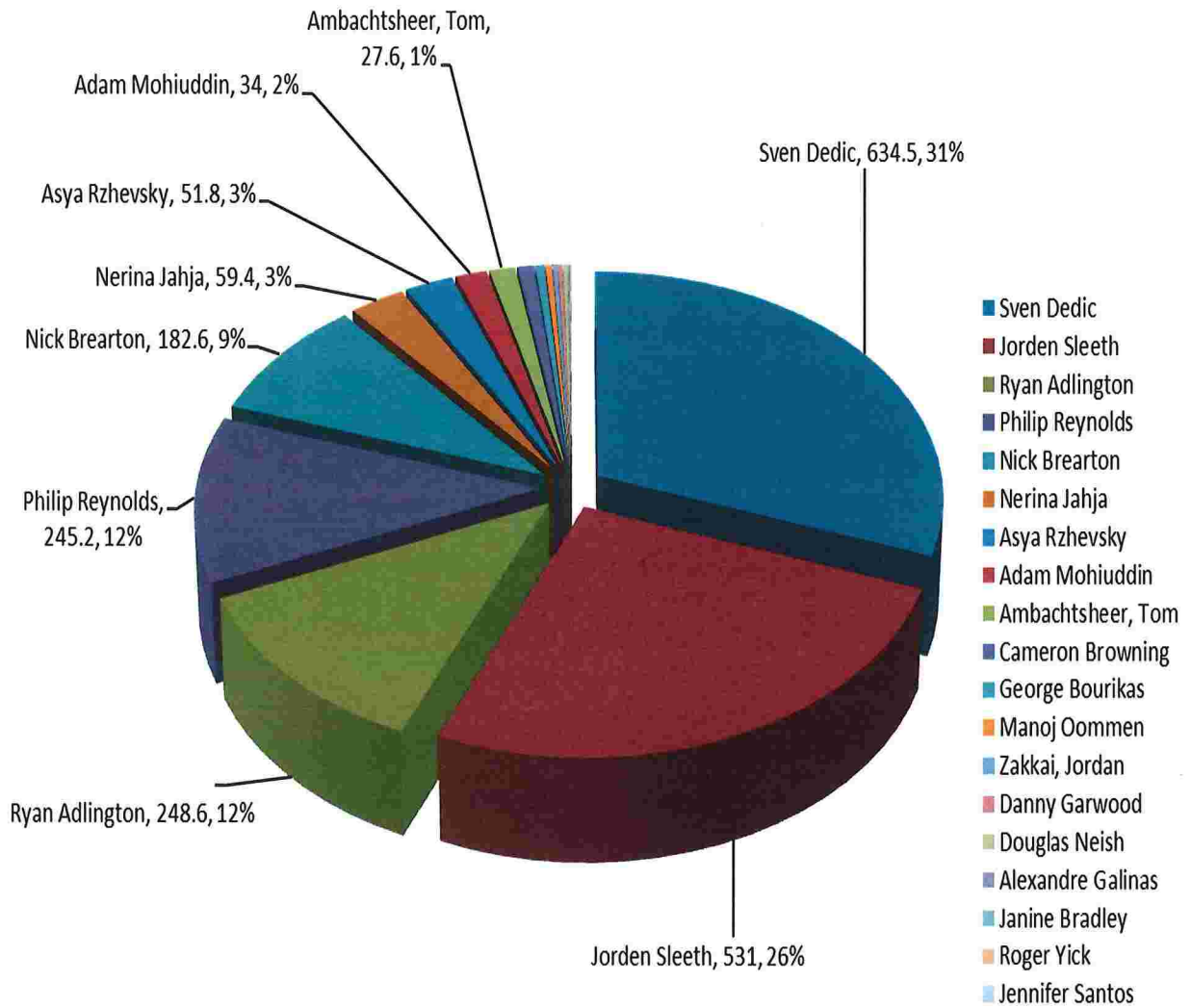
Account Number	Date	Fee Amount	Expenses	HST	Total
697446266	04-Apr-17	\$219,210.50	\$2,861.09	\$28,848.52	\$250,920.11
697449846	11-Apr-17	\$295,434.00	\$7,243.90	\$39,327.33	\$342,005.23
697463566	25-May-17	\$64,485.00	\$405.91	\$8,435.82	\$73,326.73
697470736	16-Jun-17	\$59,231.50	\$890.97	\$7,805.90	\$67,928.37
697495177	08-Sep-17	\$71,374.00	\$779.62	\$9,366.97	\$81,520.59
Totals		\$709,735.00	\$12,181.49	\$93,784.54	\$815,701.03

Gowlings Accounts

Account Number	Date	Fee Amount	Expenses	HST	Total
18610168	31-Dec-16	\$34,324.32	\$5,622.27	\$5,172.26	\$45,118.85
18715524	13-Jul-17	\$9,972.00	\$104.85	\$1,309.99	\$11,386.84
Totals		\$44,296.32	\$5,727.12	\$6,482.25	\$56,505.69

Tab 3

Schedule 3: KPMG Hour and Work distribution for Period 2 (Hours, Percentage)



Tab 4

Schedule 4

Hourly Rates – KPMG (for Period 2)*Maple Financial Liquidation*

Name	Position	Rate
Philip Reynolds	Partner	865
Nick Brearton	Partner	835
Ryan Adlington	Partner	790
Jorden Sleeth	Senior Mgr	735
Janine Bradley	Senior Mgr	680
Douglas Neish	Senior Mgr	680
George Bourikas	Manager	525
Sven Dedic	Senior Consultant	370
Asya Rzhevsky	Technician	205
Danny Garwood	Senior Manager	680
Alexandre Gelinias	Senior Consultant	370
Roger Yick	Manager	525
Ambachtsheer, Tom	Senior Manager	680
Jahja, Nerian	Senior Consultant	370
Zakkai, Jordan	Senior Consultant	370
Manooj Oomen	Technician	205
Browning, Cameron	Senior Consultant	370
Mohiuddin, Adam	Senior Consultant	370
Santos, Jennifer	Manager	525

Tab 5

Schedule 5

Hourly Rates: BLG

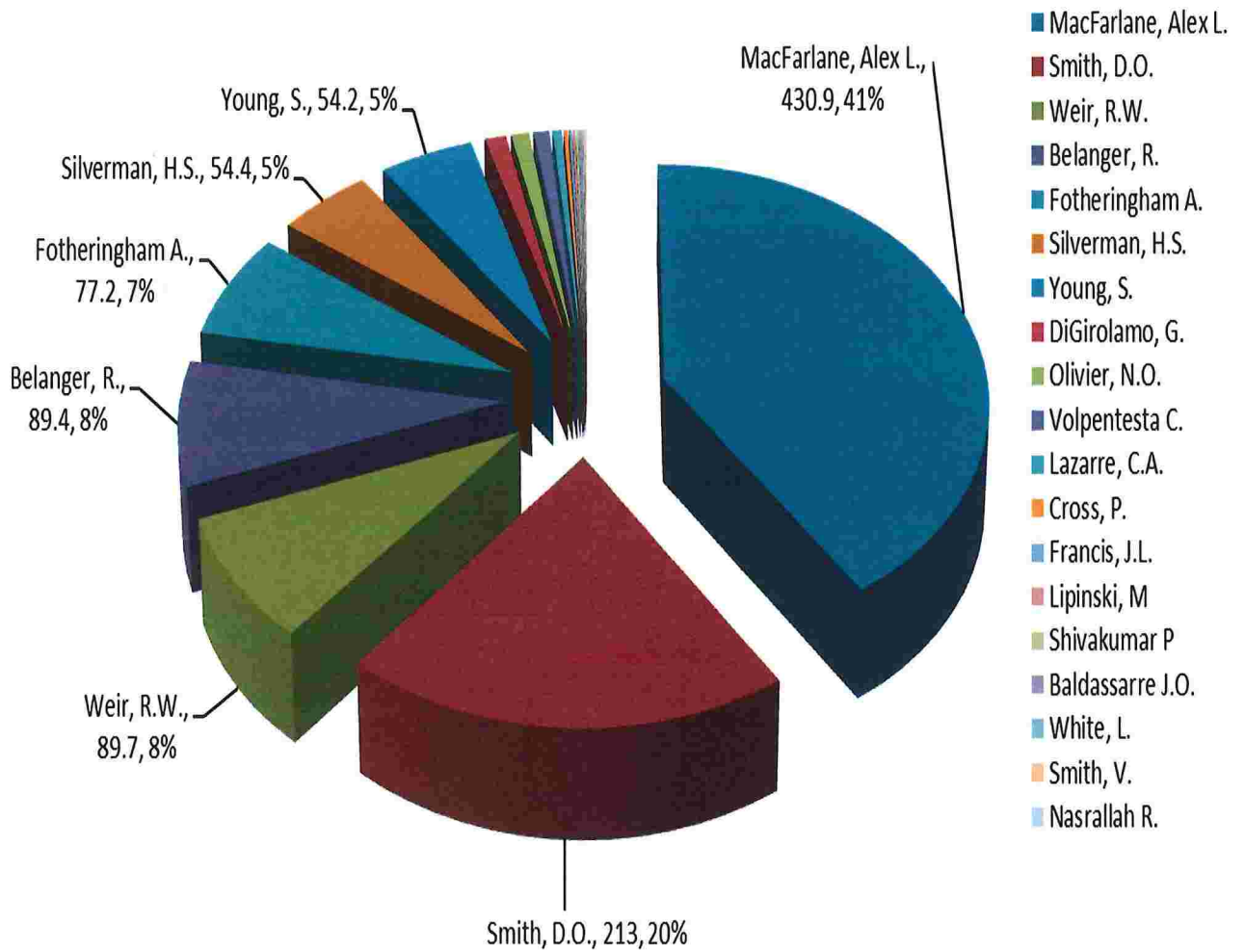
Billor	Rates (\$/hour)
MacFarlane, Alex L.	875
Smith, D.O.	595 - 600
Weir, R.W.	625 - 650
Belanger, R.	385
Fotheringham A.	360
Young, S.	350

Silverman, H.S	925
DiGirolamo, G.	290
Olivier, N.O	310
Volpentesta C.	295
Lazarre, C.A	370
Cross, P.	675
Francis, J.L.	205 – 215
Lipinski, M	300

Shivakumar P	215
Baldassarre J.O.	310
White, L	220
Smith, V.	210
Nasrallah R.	315

Tab 6

Schedule 6: BLG Hour and Work Distribution for Period 2 (Hours, Percentage)



Tab 7

Schedule 7

Legal Framework for Cost Review

1. The concept of “fair and reasonable” fees in receiver like situations has been judicially considered. In *Belyea v Federal Business Development Bank*, (1983), 46 C.B.R. 2144 (N.B.C.A.) the Court of Appeal for New Brunswick stated the law as being as follows:

“There is no fixed rate or settled scale for determining the amount of compensation to be paid a receiver. He is usually allowed either a percentage upon his receipts or a lump sum based upon the time, trouble and degree of responsibility involved. The governing principle appears to be that the compensation allowed a receiver should be measured by the fair and reasonable value of his services and while sufficient fees should be paid to induce competent persons to serve as receivers, receiverships should be administered as economically as reasonably possible, Thus, allowances for services performed must be just, but nevertheless moderate rather than generous.”

2. The decision of Justice Hamilton of the Manitoba Court of Queen’s Bench in *Chartrand et al v de la Ronde et al* (1999) CanLII 14172 (MB Q.B.), echoes this.

“The ultimate question is: Are the charges presented fair and reasonable in all of the circumstances as set out in the Belyea case?”

3. In that case, Mr. Justice Hamilton concluded that the Belyea factors permitted “fair and reasonable compensation” to be determined by looking at fees and disbursements made on the basis of an hourly rate and time spent. This was also the conclusion of Justice Farley in his decision on the *Confectionately Yours, Inc. (Re Bakemates International Inc.* (2001) 25 CBR (4th) 24). Mr. Justice Farley’s comments were:

“I am of the view that subject to the checks and balances of *Chartrand v. De la Ronde* 1999 CanLII 14172 (MB Q.B.), (1999), 9 C.B.R. (4th) 20 (Man. Q.B.) a fair and reasonable compensation can in proper circumstances equate to remuneration based on hourly rates and time spent. Further I am of the view that the market is the best test of the reasonableness of the hourly rates for both receivers and their counsel. There is no reason for a firm to be compensated at less than their normal rates (provided that there is a fair and adequate competition in the marketplace). See *Chartrand*; also *Prairie Palace Motel Ltd. v. Carlson* (1980), 35 C.B.R. (N.S.) 312 (Sask. Q.B.). No evidence was led of lack of competition (although I note that Mr. Pape asserts that legal firms and accounting firms had a symbiotic relationship in which neither would complain of the bill of the other). What would be of interest here is whether the rates presented are in fact sustainable. In other words are these firms able to collect 100 cents on the dollar of their “rack rate” or are there write-offs incurred related to the collection process?”

4. At p. 247 of that decision, Justice Farley looked at the factors relating to “reasonable remuneration” including:

“the nature, extent and value of the assets handled, the complications and difficulties encountered, the degree of assistance provided by the company, its officers or its employees, the time spent, the receiver’s knowledge, experience and skill, the diligence and thoroughness displayed, the responsibilities assumed, the result of the receiver’s efforts, and the cost of comparable services when performed in a prudent and economical manner”.

5. The decision of Justice Farley in *Confectionately* was appealed to the Court of Appeal. Again the *Belyea* case was cited with approval. The Court of Appeal held at para 42 of 2002 CanLII 45059.

[42] As I stated earlier, the general standard of review of the accounts of a Court-appointed receiver is whether the amount claimed for remuneration and the disbursements incurred in carrying out the receivership are fair and reasonable. This standard of review had its origin in the judgment of this Court in *Re Atkinson*, [1952] O.R. 685 (C.A.); aff’d [1953 CanLII 11 \(S.C.C.\)](#), [1953] 2 S.C.R. 41, in which it was held that the executor of an estate is entitled to a fair fee on the basis of *quantum meruit*

according to the time, trouble and degree of responsibility involved. The Court, however, did not rule out compensation on a percentage basis as a fair method of estimating compensation in appropriate cases. The standard of review approved in *Re Atkinson* is now contained in s. 61(1) and (3) of the *Trustee Act*, [R.S.O. 1990, c. T.23](#). Although *Re Atkinson* was concerned with an executor's compensation, its principles are regularly applied in assessing a receiver's compensation. See, e.g., *Ibar Developments Ltd. v. Mount Citadel Limited and Metropolitan Trust Company* (1978), 26 C.B.R. (N.S.) 17 (Ont. S.C., Master). I would note that there is no guideline controlling the quantum of fees as there is in respect to a trustee's fees as provided by s. 39(2) of the *Bankruptcy and Insolvency Act*, [R.S.C. 1985, c. B-3](#).

[43] Bennett notes at p. 471 that in assessing the reasonableness of a receiver's compensation the two techniques discussed in *Re Atkinson* are used. The first technique is that the quantum of remuneration is fixed as a percentage of the proceeds of the realization, while the second is the assessment of the remuneration claimed on a *quantum meruit* basis according to the time, trouble and degree of responsibility involved in the receivership. He suggests that often both techniques are employed to arrive at a fair compensation.

6. The Court of Appeal, in commenting on the approach to assessing fees on a quantum meruit basis, also said,

“While sufficient fees should be paid to induce competent persons to serve as receivers, receiverships should be administered as economically as reasonably possible: see *Belyea v. Federal Business Development Bank* (1983), 46 C.B.R. (N.S.) 244 (N.B.C.A.). Reasonably is emphasized. It should not be based on any cut rate procedures or cutting corners and it must relate to the circumstances. It should not be the expensive foreign sports model; but neither should it be the battered used car which keeps its driver worried about whether he will make his destination without a breakdown.”

7. While the above cases deal with receiverships, the “reasonableness” issues and factors are equally to be considered in dealing with a liquidation under the *Winding Up and Restructuring Act* (“WURA”) including the “complications and difficulties encountered” and “the value of the assets handled”.

8. Reference to the *Bankruptcy and Insolvency Act* “guideline” in section 39(2) of 7.5% of the estate is clearly not a realistic guide. See *Re Unified Technologies Inc.* (1995), 32 C.B.R. (3d) 182 (Ont. Gen. Div.). In *Prairie Palace Motel v. Carlson* (1980), 35 C.B.R. (N.S.) 312 (Sask. Q.B.), an argument was advanced that the receiver’s fees and expenses should be 5% of the assets recovered. At pages 313-14,

“In any event, the parties to this matter are all aware that the receiver and manager is a firm of chartered accountants of high reputation. In this day and age, if chartered accountants are going to do the work of receiver-managers, in order to facilitate the ability of the disputing parties to carry on and preserve the assets of a business, there is no reason why they should not get paid at the going rate they charge all of their clients for the services they render. I reviewed the receiver-manager’s account in this matter and the basis upon which it is charged, and I have absolutely no grounds for concluding that it is in any way based on client fees which are not usual for a firm such as Touche Ross Ltd.”

9. In *Canada (Attorney General) v. Standard Loan Co.* (1993), 22 C.B.R. (3d) 92 (Ont. Gen. Div.), Justice Houlden found that where the receipts in an estate are substantial, charging fees on a percentage of receipts is not practical and the only reasonable method may be to charge fees on a time basis.
10. In the present context the comments Deputy Registrar Wellburn in *Re G.A. Ross Hearing Instruments Inc.* (1998) 2 C.B.R. (4th) 49 (B.C.S.C.) are informative.

Where the hourly rate charged by the trustee is the usual rate charged by the accounting firm of which the trustee is a member and is also comparable to the hourly rates charged by other large accounting firms, and the bankruptcy is complicated, a trustee may charge fees on an hourly basis in accordance with its usual rates. In that case, the debtor had previously sold hearing aids and related equipment and while the trustee was forced to deal with some litigation and the company principal was rather uncooperative, the trustee was primarily tasked with handling landlord claims for unpaid rent and the estate was liquidated for roughly \$200,000.

11. The Deputy Registrar concluded that he could confidently state, that “given the complexity of this insolvency, it was not unreasonable for this firm of accountants to act as the trustee and to charge their time at their usual rates.” The Toronto Branch liquidation is far more complicated than that dealt with in the *Ross* case. With respect to legal accounts, the above commentary is equally applicable.

12. In *Bank of Nova Scotia v. Diemer*, 2014 ONSC 365 (CanLii) (the “Cornacre Cattle case”) decided January 22, 2014, the Superior Court of Justice was specifically dealing with legal accounts in a receivership. The Court confirmed the general principles above but added a few further considerations:
 - (a) the principle of proportionality; “there must be practical and reasonable limits to the amounts awarded and those amounts should bear some reasonable connection to the amount that should reasonably have been contemplated”.
 - (b) the Court ought not to second guess the amount of time claimed “unless it is clearly excessive or overreaching”;
 - (c) the Courts should award the costs on a more “holistic manner”;
 - (d) an order appointing the receiver and/or counsel “at standard rates” does not detract from the requirement of proportionality vis-à-vis the size of the estate and the matter’s complexity.

13. The Court of Appeal then rendered its decision in the case at 2014 ONCA 851 (CanLII). In that decision, the Court expressed concern with the traditional time and rate docketing of law firms generally. The Court stated (Justice Pepall);

“[45] In my view, it is not for the Court to tell lawyers and law firms how to bill. That said, in proceedings supervised by the Court and particularly where the Court is asked to give its imprimatur to the legal fees requested for counsel by its Court officer, the Court must ensure that the compensation sought is indeed fair and reasonable. In making this assessment, all the Belyea factors, including time spent, should be considered.

However, value provided should pre-dominate over the mathematical calculation reflected in the hours times hourly rate equation. Ideally, the two should be synonymous, but that should not be the starting assumption. Thus, the factors identified in Belyea require a consideration of the overall value contributed by the receiver's counsel. The focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took.

(and see B. Love Holdings Inc. v. Deloitte Restructuring Inc., 2015 ONSC 5272 echoing these comments).

14. Per *Pandya v. Simpson* [2006] O.J. 2312, “the Court...has to play the role of what a client would ordinarily do, namely consider whether the hourly rate is fair and reasonable in light of the nature of the work involved and the amounts in issue”;
15. As for the informational content of the records supporting the fees, the appeal decision in *Confectionately Yours Inc.* 36 C.B.R. (4th) 200 (Ont. C.A.) is apropos.

37 As for the procedure that applies to the passing of the accounts, Bennett indicates at p. 460 that there is no prescribed process. Nonetheless, the case law provides some requirements for the substance or content of the accounts. The accounts must disclose in detail the name of each person who rendered services, the dates on which the services were rendered, the time expended each day, the rate charged and the total charges for each of the categories of services rendered. See, e.g., *Hermanns v. Ingle* (1988), 68 C.B.R. (N.S.) 15 (Ont. Ass. Off.); *Toronto Dominion Bank v. Park Foods Ltd.* (1986), 77 N.S.R. (2d) 202 (S.C.). The accounts should be in a form that can be easily understood by those affected by the receivership (or by the judicial officer required to assess the accounts) so that such person can determine the amount of time spent by the receiver's employees (and others that the receiver may have hired) in respect to the various discrete aspects of the receivership.

There is no doubt that the Liquidator and its counsel have provided docketing information in an appropriate form.

16. Finally the comments of the Court in *David v. TransAmerica Life Canada* (2016) ONSC 1777 (CanLii) are germane.

[20]...In assessing what is fair and reasonable, [the Court] does not engage in a mechanical exercise but, rather, takes a contextual approach, applying the principles and factors discussed above, and sets a figure that is fair and reasonable in all the circumstances.

[22]In reviewing a claim for costs, the Court does not undertake a line by line analysis of the hours claimed, and should not second-guess the amount claimed, unless it is clearly excessive or overreaching. It considers what is reasonable in the circumstances and, taking into account all the relevant factors, awards costs in a global fashion.

17. [Re Nortel Networks Corporation et al, 2017 ONSC 673](#) (CanLII) case is also instructive on the issue of professional fees and expenses. At para 25 and 26 the court commented on the complexity of the case and the Monitor's fee claims.

[25] The Monitor also seeks to pass the accounts of A&O in the amount of \$31,352,136.73, inclusive of applicable taxes. This amount includes billings for 46,448.4 professional hours at an average hourly rate of \$639.

[26] These amounts are enormous by any measure, even taking into account that they cover eight years of work. However, when one understands the enormity of the work that had to be done by the Monitor and its counsel to regularize the insolvency proceedings, to gather in the assets and to protect the interests of the Canadian creditors against the relentless attacks made by the other estates, these amounts become more understandable.

18. The court did comment on the number of the counsel in the courtroom at any one time for the Monitor.

[74] I could be somewhat critical regarding the number of counsel in the courtroom during the allocation trial. At the outset, there were four or five lawyers in court for the Monitor. When a witness was giving evidence in Delaware, counsel for the Monitor doing the cross-examination attended in the Delaware courtroom with

fewer lawyers in the Toronto courtroom. However, it was quite obvious that the Monitor risked being outmatched. The U.S. debtors had five lawyers in the courtroom throughout the trial, as well as many in the Delaware courtroom, the EMEA debtors had two or three each day, the UKPC had usually two lawyers each day, the UCC had two and the bondholders usually had two. All of these other parties were lined up against the Monitor. After a while, the Monitor began sending fewer lawyers to court. In a case of this size and complexity, I am not in a position to know exactly what role each of the Monitor's lawyers had played in preparation for the trial or to say that they should not have been there.

19. Mr. MacFarlane in this case has relied it appears on usually one other lawyer in court and usually two members of the Liquidator have attended. In a case of this size that does not appear to be unreasonable.
20. Justice Newbould was however at pains to criticize the “insolvency culture”.

[83] There are too many occasions when a large number of lawyers will attend at court on a matter that is on consent or knowingly without opposition, usually conducted in chambers because of those circumstances. Usually there is no need for most of the lawyers to attend and no need for senior lawyers at all. Courts must be mindful when this occurs to register a concern and, if costs are in the discretion of the court, to refuse to provide costs to those who need not have attended.

[89] What *Nortel* teaches us is that the gatekeepers of expenses in insolvency cases must exercise as much vigilance as possible to see that costs are maintained at a proper level. *Nortel* was unusually complex, to be sure, but lessons learned can be useful for less complex insolvencies.

21. In *Nortel* there was no particular objection to the fees and expenses being submitted. In [Canadian Imperial Bank of Commerce v. Urbancorp \(Leslieville\) Developments Inc., 2017 ONSC 4205 \(CanLII\)](#) the situation was more contested. In *Urbancorp* one party objected to Alvarez & Marsal's and its counsel, Blakes, fees and expenses on the grounds that the rates were too high, the time was unreasonable and there were no efficiencies

created with other related professionals. At paragraph 36, Regional Justice Morawetz recapitulated the overall legal tests as stated in *Nortel* and cases prior. Justice Morawetz did criticize the number of persons working on the file however. He considered that there would be a degree of duplication that would not be fair and reasonable.

[55] In my view, there is little to be gained by conducting a minute docket-by-docket examination of the accounts. I have concluded that a minor reduction in Blake's account is appropriate to reflect a degree of duplication arising from having sixteen lawyers involved on the file. In this respect, it seems reasonable in the circumstances to discount the time spent by lawyers and students who contributed fewer than thirty hours of docketed time to the file. In my view, a reduction of the Blakes' fee of \$35,000, plus HST is appropriate.

**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**

THE ATTORNEY GENERAL OF CANADA
Applicant

-and- MAPLE BANK GMBH
Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

REPORT #2 OF COST COUNSEL
RE FEES AND EXPENSES

GARDINER ROBERTS LLP

Lawyers

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Tel: (416) 865-6600

Fax: (416) 865-6636

Cost Review Counsel

Tab 4

**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. B. 46, AS AMENDED

**AFFIDAVIT OF NICK BREARTON
(sworn September 18, 2017)**

I, **Nick Brearton**, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am the President of KPMG Inc., the Liquidator of Maple Bank GmbH (Toronto Branch) (the “**Liquidator**”) and as such have knowledge of the matters hereinafter deposed to.
2. Capitalized terms not defined herein are as defined in the Liquidator’s Twelfth Report dated September 19, 2017.
3. On June 8, 2016, Regional Senior Justice Morawetz of the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) issued an order appointing Mr. Jonathan Wigley of the law firm of Gardiner Roberts LLP as independent counsel (“**Independent Cost Counsel**”) for the purpose of reviewing the fees and disbursements of the Liquidator and its counsel (the “**Professional Fees**”) and reporting to the Court with respect to the fairness and reasonableness of such Professional Fees (the “**Appointment Order**”). A copy of the Appointment Order is attached hereto and marked as Exhibit “A”.
4. Pursuant to paragraph 2 of the Appointment Order, the Liquidator is required to bring a motion to have the Professional Fees assessed and allowed by the Court.

5. This affidavit is made in support of a motion for, *inter alia*, the approval of the fees and disbursements of the Liquidator for the period from December 1, 2016 to July 31, 2017 (the “**Second Liquidator Fee Period**”). This affidavit is filed in conjunction with Report #2 of the Independent Cost Counsel dated September 18, 2017 (the “**Second ICC Report**”).

6. The summary of the accounts of the Liquidator referred to as Schedule “2” to the Second ICC Report summarize the invoices submitted by the Liquidator during the Second Liquidator Fee Period. Copies of these invoices can be provided to the Court on a USB memory drive for the Court’s review and convenience if requested. The Liquidator notes that Independent Cost Counsel found the Liquidator’s fees and disbursements during the Liquidator Fee Period to be fair and reasonable and recommended them for approval as submitted.

7. Attached and marked as Exhibit “**B**” to this Affidavit is a schedule summarizing all invoices rendered by the Liquidator, including the fees, disbursements, HST and total fees charged in each invoice (the “**Accounts**”) in respect of the Second Liquidator Fee Period.

8. Attached hereto and marked as Exhibit “**C**” is a summary of the Liquidator’s hourly rates charged by the Liquidator’s professionals during the Second Liquidator Fee Period. There was no change in the rates charged by professional during the Second Liquidator Fee Period.

9. Attached hereto and marked as Exhibit “**D**” is a summary of the hours charged by month by the Liquidator’s professionals during the Second Liquidator Fee Period.

10. Attached hereto and marked as Exhibit “**E**” is a summary of the fees charged by month by the Liquidator’s professionals during the Second Liquidator Fee Period.

11. In addition to the Accounts and the commentary provided in the Second ICC Report, the primary activities of the Liquidator during the Second Liquidator Fee Period were as described in the Liquidator’s Tenth through Twelfth Reports previously filed with the Court. In summary, the Liquidator’s activities in the Second Liquidator Fee Period include, *inter alia*, the following primary activities:

(a) General Activities

(i) Maintaining the security of Toronto Branch assets and data:

- Developing a draft data protocol for the storage, retention and preservation of all Toronto Branch electronic data;
 - Closing and consolidating redundant accounts with information technology providers as appropriate; and
 - Notifying affected suppliers and all financial institutions who are known counterparties to financial transactions with the Toronto Branch.
- (ii) Working with the Toronto Branch CFO to manage the finance function during the liquidation, including:
- Maintaining up-to-date books and records as transactions occurred throughout the winding-up process;
 - Funding payroll, payments to suppliers, and other necessary disbursements;
 - Issuing T4s and records of employment to former employees; and
 - Coordinating the preparation and filing of tax returns and liaising with EY LLP, the Toronto Branch's tax advisor.
- (iii) Banking:
- Preparing comprehensive bank reconciliations of all accounts under control of the Liquidator on a monthly basis; and
 - Closing and consolidating accounts as appropriate.
- (iv) Handling of securities portfolio and cash on hand:
- Communication with financial advisors for the reinvestment of funds on hand; and

- Preparing comprehensive reconciliations of assets managed by the selected financial institution on a monthly basis;

(b) Communication and Coordination with Various Stakeholders

(i) Communicate with and provide updates to:

- The GIA on various Toronto Branch administration matters, discussed further herein;
- OSFI as it relates to regular Toronto Branch updates and other matters;
- Structured loan counterparties as it relates to matters concerning their claims;
- Related entities as it relates to reconciliations of shared costs; and
- Other stakeholders.

(c) Claims Process and Distribution Matters

(i) Evaluating outstanding claims:

- Reviewing claims filed after November 30, 2016;
- Reviewing additional information on certain claims that was submitted as a result of information requests from the Liquidator;
- Reviewing employee claims and providing preliminary assessment of those claims to former employees;
- Meeting periodically (in person and by phone) with Representative Counsel to the Non-Executive Employees and counsel to the Executive employees to understand the former employees' claims;
- Issuing notices of disallowance (and amended notices of disallowance in some cases) to creditors with claims that were not admitted by Liquidator;

- Reviewing dispute notices from creditors who disputed the notices of disallowance issued by the Liquidator in respect of their claims; and
 - Reaching a settlement with the Non-Executive Employees on their entire claims and partial settlements with the Executives.
- (ii) Development of Principal Officers Claims Procedure:
- Developing, in conjunction with the GIA and the former Principal Officer of the Toronto Branch, a process to call for claims against the current and former Principal Officers of the Toronto Branch; and
 - Developing and publishing notice of the Principal Officers Additional Claims Order in national and international newspapers to notify potential claimants of the Principal Officers Claims Bar Date.
- (iii) Disallowance of GIA Claim:
- Issuing a notice of disallowance to the GIA in respect of its claim;
 - Analyzing and responding to the notice of dispute filed by the GIA in response to the notice of disallowance issued by the Liquidator; and
 - Developing, in conjunction with the GIA, a mechanism for the interim distribution to the German Estate of portions of the estimated surplus realized in the liquidation of the Toronto Branch.
- (iv) Issuing distributions to proven creditors:
- Issuing distributions to proven creditors as their claims are admitted.
- (d) Toronto Branch surplus distribution
- Developing an estimated reserve to provide for i) the full amount of unproven claims, ii) unknown claims that may be filed against the Toronto

Branch, iii) post Winding-Up Date tax obligations and iv) estimated costs to administer the liquidation of the Toronto Branch;

- Seeking Court approval of the notice of distribution to the creditors of the Toronto Branch and the subsequent publishing of these notices in national and international newspapers; and
- Seeking Court approval of an interim distribution to the German Estate of a portion of the Toronto Branch's estimated surplus;

(e) Coordination with the GIA

- Periodic updating of the GIA on the status of various unresolved claims, including potential settlements with certain claimants;
- Providing updates on the cash balances and investments of the Toronto Branch;
- Responding to various information requests associated with the GIA's obligation to provide audited financial statements for Maple Bank GmbH and file tax returns;
- Negotiating the treatment of the GIA Claim including the notice of dispute filed with the Liquidator;
- Developing the Principal Officers Claims Procedure;
- Negotiating the interim distributions of portions of the Toronto Branch surplus to the German Estate and working with the GIA to address the foreign exchange risk associated with such distributions; and
- Discussions regarding a draft data protocol that would govern information requests associated with the Toronto Branch's electronic data.

(f) Various other issues, including but not limited to:

Tab A

Exhibit "A"

Appointment Order dated June 8, 2016

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE REGIONAL)
SENIOR JUSTICE MORAWETZ)

WEDNESDAY, THE 8TH
DAY OF JUNE, 2016

IN THE MATTER OF MAPLE BANK GMBH

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

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

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

MAPLE BANK GMBH

Respondent

ORDER

THIS MOTION, made by KPMG Inc., in its capacity as the liquidator (the “**Liquidator**”) in respect of the winding up of the business in Canada (the “**Business**”) of Maple Bank GmbH (the “**Toronto Branch**”) and its related assets as defined under section 618 of the *Bank Act* (the “**Assets**”), for an Order substantially in the form included in the Motion Record of the Liquidator was heard this day at 330 University Avenue, Toronto, Ontario.

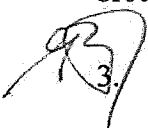
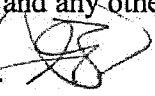
ON READING the Notice of Motion, the third report of the Liquidator dated June 2, 2016 (the "**Third Report**"), and on hearing the submissions of counsel for the Liquidator, the German Insolvency Administrator, Canada Mortgage and Housing Corporation and the other parties in attendance, no one appearing for the other parties served with the Motion Record of the Liquidator, although duly served as appears from the affidavit of service of Frances Dunne sworn June 2, 2016, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record filed by the Liquidator in support of this Motion be and it is hereby abridged such that the Motion is properly returnable today.

APPOINTMENT OF INDEPENDENT COST COUNSEL

2. **THIS COURT ORDERS** that Jonathan Wigley of the law firm Gardiner Roberts LLP be and he is hereby appointed as Independent Cost Counsel (the "**Independent Cost Counsel**") to review the fees and disbursements of the Liquidator and its counsel, Gowling WLG (Canada) LLP ("**Gowling**"), (collectively the "**Professional Fees**") and to make submissions to this Court with respect to the fairness and reasonableness of the Professional Fees and whether the Professional Fees ought to be assessed and allowed as filed upon the hearing of a motion to be brought by the Liquidator to have the Professional Fees assessed and allowed by this Court.

 3. ~~**THIS COURT ORDERS** that the Independent Cost Counsel shall, in considering whether the Professional Fees are fair and reasonable and whether they ought to be assessed and allowed as filed, consider the factors in Rule 57.01 of the Rules of Civil Procedure and any other factors that the Independent Cost Counsel considers necessary in the circumstances.~~ 

4. **THIS COURT ORDERS** that, on the motion to be brought for approval of the Professional Fees, the Liquidator and Gowling shall each file with the Court an affidavit

attesting as to the accuracy of the Exhibits attached thereto, which exhibits shall consist of: (i) a summary of the respective fees and disbursements for the Liquidator and Gowling for the applicable period; and, (ii) copies of the file or files on appropriate media in electronic form readable on computer by the current version of Acrobat Reader.

5. ~~**THIS COURT ORDERS** that all information, documents and materials as may be reasonably requested by the Independent Cost Counsel, in paper or electronic format, including, without limitation, time records and dockets, in order for the Independent Cost Counsel to fulfill his duties hereunder, shall be made available to the Independent Cost Counsel.~~

6. **THIS COURT ORDERS** that the Liquidator and Gowling shall, at the request of the Independent Cost Counsel, meet with the Independent Cost Counsel as necessary and answer any inquiries the Independent Cost Counsel may reasonably pose in order to fulfill his duties hereunder.

7. **THIS COURT ORDERS** that any expenditure or liability which shall be properly made or incurred by the Independent Cost Counsel, including the fees and disbursements of the Independent Cost Counsel incurred at the rates and charges agreed to between the Independent Cost Counsel and the Liquidator, shall be allowed to him in passing his accounts and shall be forthwith paid by the Liquidator out of the funds of the estate of the Toronto Branch.

8. **THIS COURT ORDERS** that the Independent Cost Counsel shall pass his accounts from time to time and, for this purpose, the accounts of the Independent Cost Counsel are referred to the Judge of the Commercial List of the Superior Court of Justice seized of this proceeding.

APPOINTMENT OF THE CLAIMS OFFICER

9. **THIS COURT ORDERS** that Kevin McElcheran of Kevin McElcheran Commercial Dispute Resolution, shall be appointed as Claims Officer (as that term is defined in the Claims

Procedure Order), and shall carry out his duties and powers, as Claims Officer, in accordance with the provisions of the Claims Procedure Order and specifically in accordance with paragraphs 13 to 15 of that Order.

10. **THIS COURT ORDERS** that the Claims Officer shall be at liberty to apply to this Court for advice and directions from time to time, as may be required, in the discretion of the Claims Officer.

PROTECTIONS AND LIMITATION ON LIABILITY

11. **THIS COURT ORDERS** that that the fees of Independent Cost Counsel and the Claims Officer shall be included as costs incurred in the winding up of the Toronto Branch and shall be afforded the priority as provided under section 94 of the *Winding-Up and Restructuring Act*.

12. **THIS COURT ORDERS** that Independent Cost Counsel and the Claims Officer shall incur no liability, or obligation as a result of their respective appointments, or in respect of the carrying out of the provisions of this Order, or the Claims Procedure Order, as applicable, save and except for any gross negligence or willful misconduct on their respective parts. Independent Cost Counsel and the Claims Officer shall also be afforded all the rights and protections afforded to an officer of this Court and nothing included in this Order, or the Claims Procedure Order, as applicable, shall derogate from the above-noted protections afforded to Independent Cost Counsel and the Claims Officer.

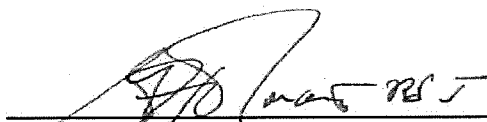
R&D STATEMENT OF THE LIQUIDATOR

13. **THIS COURT ORDERS AND DECLARES** that the Interim Statement of Receipts and Disbursements of the Liquidator for the period February 16, 2016 to May 13, 2016 be and is hereby approved.

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

JUN 08 2016

11



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

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

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

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(JUNE 8, 2016)**

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Tel: 416-862-7525
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Thomas Gertner: thomas.gertner@gowlingwlg.com

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

Tab B

Exhibit "B"

Invoice Summary of the Liquidator's invoices rendered for the period

December 1, 2016 to July 31, 2017

Maple Financial Liquidation
Professional Fee Summary
For the Period December 1, 2016 to July 31, 2017

KPMG Inc.

Invoice No.	Period	Total Hours	Total Fees	Disbursements	HST	Invoice Total	Paid	ICC Approved
8001478084	December 1 to December 31, 2016	460.40	\$ 306,041.50	\$ 31,387.73	\$ 43,865.80	\$ 381,295.03	Yes	No
8001478092	January 1 to January 31, 2017	406.10	\$ 250,863.50	\$ 3,769.85	\$ 33,102.34	\$ 287,735.69	Yes	No
8001478969	February 1 to February 28, 2017	304.80	\$ 178,375.00	\$ 6,292.87	\$ 24,006.82	\$ 208,674.69	Yes	No
8001498280	March 1 to March 31, 2017	366.20	\$ 213,082.50	\$ 6,085.99	\$ 28,491.90	\$ 247,660.39	Yes	No
8001625695	April 1 to April 30, 2017	232.50	\$ 140,069.50	\$ 5,053.52	\$ 18,865.99	\$ 163,989.01	Yes	No
8001668934	May 1 to May 31, 2017	128.00	\$ 80,899.00	\$ 9,238.69	\$ 11,717.90	\$ 101,855.59	Yes	No
8001668931	June 1 to June 30, 2017	108.50	\$ 67,015.50	\$ 8,562.28	\$ 9,825.11	\$ 85,402.89	Yes	No
8001668930	July 1 to July 31, 2017	62.30	\$ 38,805.50	\$ 4,162.57	\$ 5,585.85	\$ 48,553.92	Yes	No
Total	December 1, 2016 to to July 31, 2017	2,068.80	\$ 1,275,152.00	\$ 74,553.50	\$ 175,461.71	\$ 1,525,167.21		

Average hourly rate \$ 616

Total fees for the period February 16 to November 30, 2016 (the "First Liquidator Fee Period") \$ 4,323,352

Total hours for the First Liquidator Fee Period 6,890.8

Average hourly rate for the First Liquidator Fee Period \$ 627

Tab C

Exhibit "C"

Listing of hourly rates charged by the Liquidator's professionals for the period

December 1, 2016 to July 31, 2017

Exhibit "C"**Maple Bank GmbH (Toronto Branch)****Summary of Liquidator Rates by Month****For the Period December 1, 2016 to July 31, 2017**

Name	Position	Rate
Philip Reynolds	Partner	865.0
Nick Brearton	Partner	835.0
Ryan Adlington	Partner	790.0
Jorden Sleeth	Partner	735.0
Janine Bradley	Senior Manager	680.0
Douglas Neish	Senior Manager	680.0
Danny Garwood	Senior Manager	680.0
Todd Ambachtsheer	Senior Manager	680.0
George Bourikas	Manager	525.0
Jennifer Santos	Manager	525.0
Roger Yick	Manager	525.0
Sven Dedic	Senior Consultant	370.0
Adam Mohiuddin	Senior Consultant	370.0
Nerina Jahja	Senior Consultant	370.0
Manoj Oommen	Senior Consultant	370.0
Cameron Browning	Senior Consultant	370.0
Jordan Zakkai	Senior Consultant	370.0
Alexandre Gelinias	Senior Consultant	370.0
Asya Rzhovsky	Technician	205.0

Tab D

Exhibit "D"

Summary of hours charged by month by the Liquidator's professionals for the period

December 1, 2016 to July 31, 2017

Exhibit "D"

Maple Bank GmbH (Toronto Branch)

Summary of Liquidator Time by Month

For the Period December 1, 2016 to July 31, 2017

Name	Position	December	January	February	March	April	May	June	July	Total
Philip Reynolds	Partner	99.7	66.1	27.7	24.7	16.7	9.0	1.3	-	245.20
Nick Brearton	Partner	40.4	38.7	23.1	20.5	22.4	10.1	8.9	18.5	182.60
Ryan Adlington	Partner	66.0	54.2	47.2	30.5	19.9	20.0	9.8	1.0	248.60
Jorden Sleeth	Partner	96.6	73.6	56.3	119.7	67.8	45.7	51.5	19.8	531.00
Janine Bradley	Senior Manager	-	1.0	-	-	-	-	-	-	1.00
Douglas Neish	Senior Manager	4.9	-	-	-	-	-	-	-	4.90
Danny Garwood	Senior Manager	-	-	-	-	4.9	-	-	-	4.90
Todd Ambachtsheer	Senior Manager	13.9	0.5	5.1	2.6	5.5	-	-	-	27.60
George Bourikas	Manager	3.0	2.0	-	5.0	-	-	-	-	10.00
Jennifer Santos	Manager	-	-	-	0.8	-	-	-	-	0.80
Roger Yick	Manager	-	-	-	-	1.0	-	-	-	1.00
Sven Dedic	Senior Consultant	106.0	133.5	123.5	135.0	45.5	39.0	32.0	20.0	634.50
Adam Mohiuddin	Senior Consultant	-	-	-	-	34.0	-	-	-	34.00
Nerina Jahja	Senior Consultant	14.5	24.5	5.5	8.2	6.7	-	-	-	59.40
Manoj Oommen	Senior Consultant	5.0	2.0	-	-	-	-	-	-	7.00
Cameron Browning	Senior Consultant	-	6.9	11.0	-	-	-	-	-	17.90
Jordan Zakkai	Senior Consultant	-	-	0.5	4.8	-	-	-	-	5.30
Alexandre Gelinias	Senior Consultant	-	-	-	-	1.3	-	-	-	1.30
Asya Rzhnevsky	Technician	10.4	3.1	4.9	14.4	6.8	4.2	5.0	3.0	51.80
Total Hours		460.40	406.10	304.80	366.20	232.50	128.00	108.50	62.30	2,068.80

Tab E

Exhibit "E"

Summary of fees charged by month by the Liquidator's professionals for the period

December 1, 2016 to July 31, 2017

Exhibit "E"

Maple Bank GmbH (Toronto Branch)

Summary of Liquidator Fees by Month

For the Period December 1, 2016 to July 31, 2017

Name	Position	December	January	February	March	April	May	June	July	Total
Philip Reynolds	Partner	86,240.5	57,176.5	23,960.5	21,365.5	14,445.5	7,785.0	1,124.5	-	212,098.00
Nick Brearton	Partner	33,734.0	32,314.5	19,288.5	17,117.5	18,704.0	8,433.5	7,431.5	15,447.5	152,471.00
Ryan Adlington	Partner	52,140.0	42,818.0	37,288.0	24,095.0	15,721.0	15,800.0	7,742.0	790.0	196,394.00
Jorden Sleeth	Partner	71,001.0	54,096.0	41,380.5	87,979.5	49,833.0	33,589.5	37,852.5	14,553.0	390,285.00
Janine Bradley	Senior Manager	-	680.0	-	-	-	-	-	-	680.00
Douglas Neish	Senior Manager	3,332.0	-	-	-	-	-	-	-	3,332.00
Danny Garwood	Senior Manager	-	-	-	-	3,332.0	-	-	-	3,332.00
Todd Ambachtsheer	Senior Manager	9,452.0	340.0	3,468.0	1,768.0	3,740.0	-	-	-	18,768.00
George Bourikas	Manager	1,575.0	1,050.0	-	2,625.0	-	-	-	-	5,250.00
Jennifer Santos	Manager	-	-	-	420.0	-	-	-	-	420.00
Roger Yick	Manager	-	-	-	-	525.0	-	-	-	525.00
Sven Dedic	Senior Consultant	39,220.0	49,395.0	45,695.0	49,950.0	16,835.0	14,430.0	11,840.0	7,400.0	234,765.00
Adam Mohiuddin	Senior Consultant	-	-	-	-	12,580.0	-	-	-	12,580.00
Nerina Jahja	Senior Consultant	5,365.0	9,065.0	2,035.0	3,034.0	2,479.0	-	-	-	21,978.00
Manoj Oommen	Senior Consultant	1,850.0	740.0	-	-	-	-	-	-	2,590.00
Cameron Browning	Senior Consultant	-	2,553.0	4,070.0	-	-	-	-	-	6,623.00
Jordan Zakkai	Senior Consultant	-	-	185.0	1,776.0	-	-	-	-	1,961.00
Alexandre Gelinias	Senior Consultant	-	-	-	-	481.0	-	-	-	481.00
Asya Rzhnevsky	Technician	2,132.0	635.5	1,004.5	2,952.0	1,394.0	861.0	1,025.0	615.0	10,619.00
Total Hours		306,041.50	250,863.50	178,375.00	213,082.50	140,069.50	80,899.00	67,015.50	38,805.50	1,275,152.00

**IN THE MATTER OF LIQUIDATION OF MAPLE BANK GmbH (TORONTO BRANCH)
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

PROCEEDINGS COMMENCED AT TORONTO

AFFIDAVIT OF NICK BREARTON
(sworn September 18, 2017)

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

Tab 5

**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

**AFFIDAVIT OF DOUGLAS O. SMITH
(Sworn September 19, 2017)**

I, DOUGLAS O. SMITH, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a partner at Borden Ladner Gervais LLP (“**BLG**”), counsel to KPMG Inc. in its capacity as the liquidator of the business and assets of Maple Bank GmbH (the “**Liquidator**”) from November 30, 2016, and as such have knowledge of the matters set out below.
2. This affidavit is made in support of a motion for, *inter alia*, the approval of the fees and disbursements of BLG for the period November 30, 2016 to July 31, 2017 (the “**BLG Fee**”).

Period") and is filed in conjunction with the second report of the Independent Cost Counsel ("**ICC**") dated September 18, 2017 (the "**Second ICC Report**").

3. Attached hereto and marked as Exhibit "A" is a summary of the hourly rates and time expended by the professionals of BLG for the BLG Fee Period (the "**BLG Accounts**").

4. BLG provided legal advice and assistance to the Liquidator for, among other things, the following activities (with terms as defined in the Notice of Motion):


- i) Advice and preparation of all necessary materials for obtaining the Principal Officers Additional Claims Order of January 27, 2017;
- ii) Advice and preparation of all necessary materials for obtaining the Initial Interim Distribution Order dated March 20, 2017;
- iii) Advice and necessary work on the Global One Settlement, the Radius Settlement, the settlement of the Non-Executive Employees' claims, and partial settlement of the Executive Employees claims;
- iv) Ongoing consultation with the GIA and the Liquidator with respect to the realization process, Estimated Reserve and Estimated Surplus; and
- v) Advice with respect to the Unresolved Claims.

5. BLG respectfully requests that the Court approve the BLG Accounts for fees in the amount of \$709,735.00 and disbursements in the amount of \$12,181.49 (plus applicable HST


totalling \$93,784.54 on the foregoing amounts) for services rendered and recorded during the BLG Fee Period.

6. This affidavit is sworn in support of the motion brought by the Liquidator for an order approving, *inter alia*, the fees and disbursements of BLG and for no other or improper purpose.

SWORN BEFORE ME at the City)
of Toronto, in the Province of Ontario)
this 19th day of September, 2017.)



A Notary Public/Commissioner



DOUGLAS O. SMITH




Tab A

Client Name: KPMG Inc.
 Matter Name: Maple Bank GmbH
 File No. 089171/000017
 Summary of Fees Billed, Hours, Rate
 by Timekeeper



Name	Hrs	Rate Billed		Fees Billed
		2016	2017	
Baldassarre, Josée	1.3	\$310.00	\$310.00	\$403.00
Belanger, Rachael	89.4	\$384.97	\$390.00	\$34,689.00
Cross, Pamela L.	2.7	\$675.00	\$675.00	1,822.50
DiGirolamo, Gloria	12.6	\$290.00	\$305.00	\$3,834.00
Fotheringham, Alannah	77.2	\$360.00	\$360.00	\$27,792.00
Francis, Janice L.	1.7	\$205.00	\$215.00	\$361.50
Lazarre, Christian A.	5.4	\$370.00	\$370.00	\$1,998.00
Lipinski, Maciej	1.5	\$300.00	\$300.00	\$450.00
MacFarlane, Alex	431.9	\$875.00	\$875.00	\$377,912.50
Nasrallah, Ryma	0.8	\$315.00	\$315.00	\$252.00
Olivier, Nathalie	10.6	\$310.00	\$310.00	\$3,286.00
Shivakumar, Parvathi	1.5	\$215.00	\$215.00	\$322.50
Silverman, Howard S.	54.4	\$925.00	\$925.00	\$50,320.00
Smith, Douglas O.	216.9	\$594.15	\$600.00	\$127,401.00
Smith, Victoria	0.9	\$210.00	\$210.00	\$189.00
Volpentesta, Connie	9.2	\$295.00	\$295.00	\$4,452.80
Weir, Robert W.	89.7	\$625.50	\$650.00	\$57,673.00
White, Larry	1.0	\$220.00	\$220.00	\$220.00
Young, Stephanie	54.2	\$350.00	\$350.00	\$18,970.00
TOTAL	1062.9			\$709,735.00
Total Fees				\$709,735.00
Total Disbursements				\$12,181.39
Total Taxes				\$93,784.54
GRAND TOTAL:				\$815,700.93

This is Exhibit "A" referred to in
 the Affidavit of Alex MacFarlane
 sworn before me this 18th day
 of September, 2017.


 A Commissioner for Taking Affidavits
 "Alex MacFarlane"

ATTORNEY GENERAL OF CANADA

- and -

MAPLE BANK GmbH

Applicant

Respondent

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

Proceedings Commenced at Toronto

**AFFIDAVIT OF DOUGLAS O. SMITH
(Sworn September 19, 2017)**

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

Tab 6

**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

**AFFIDAVIT OF LILLY WONG
(Sworn September 19, 2017)**

I, LILLY WONG, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY AS FOLLOWS:**

1. I am a partner at Gowling WLG (Canada) LLP ("**Gowling**"), prior counsel to KPMG Inc. in its capacity as the liquidator of the business and assets of Maple Bank GmbH (the "**Liquidator**") until December 1, 2016, and thereafter counsel to the Liquidator with respect to certain remaining solicitors matters, and as such have knowledge of the matters set out below.

2. This affidavit is made in support of a motion for, *inter alia*, the approval of the fees and disbursements of Gowling for the period November 30, 2016 to July 31, 2017 (which includes some late dockets from the prior period as noted in the Second ICC Report) (the “**Gowling Fee Period**”) and is filed in conjunction with the second report of the Independent Cost Counsel (“**ICC**”) dated September 18, 2017 (the “**Second ICC Report**”).

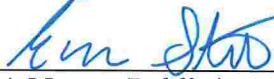
3. Attached hereto and marked as Exhibit “A” is a summary of the hourly rates and time expended by the professionals of Gowling for the Gowling Fee Period (the “**Gowling Accounts**”).

4. Gowling provided legal advice and assistance to the Liquidator for, among other things, the following activities:

- i) The preparation of tax opinions for the Liquidator, and
- ii) Residual transactional work related to transactions of the Liquidator completed prior to December, 2016.

5. Gowling respectfully requests that the Court approve the Gowling Accounts for fees in the amount of \$44,296.32 and disbursements in the amount of \$5,727.12 (plus applicable HST totalling \$6,482.25 on the foregoing amounts) for services rendered and recorded during the Gowling Fee Period.

6. This affidavit is sworn in support of the motion brought by the Liquidator for an order approving, *inter alia*, the fees and disbursements of Gowling and for no other or improper purpose.

SWORN BEFORE ME at the City)
of Toronto, in the Province of Ontario)
this 19th day of September, 2017)
)
_____)
A Notary Public/Commissioner



LILLY WONG

Tab A

THIS IS EXHIBIT "A" TO THE AFFIDAVIT OF
LILLY WONG SWORN SEPTEMBER 19th, 2017.



A Commissioner for Taking Affidavits



EXHIBIT A

IN MATTER OF MAPLE BANK GmbH (Toronto Branch)
Summary of Gowling WLG Invoices for the period July 19, 2016 to March 30, 2017

Professional	2016	2017	July	Aug	Sept	Oct	Nov	Dec	Jan'17	Feb	Mar	Total Hours	Total Fee
	Rate	Rate											
Baum, Steven	\$950	\$995						10.1	0.5	0.7	1.4	12.7	\$12,053.42
Bussman, Michael	\$940	\$965						11.00	0.2	1.3	1.5	14	\$13,096.47
Deepprose, Carl		\$420								0.3		0.3	\$126.00
George, Jessica	\$245							1.3				1.3	\$314.23
Gertner, Thomas	\$390	\$440	0.2						0.7			0.9	\$384.95
Harris, Henry	\$918						1.8	1.7				3.5	\$2,814.27
Wong, Lily	\$835	\$845			6.6		4.1	3.2	3.1	0.5	1.2	18.7	\$15,506.98
Total			0.2	0	6.6	0	5.9	27.3	4.5	2.8	4.1	51.4	\$44,296.32

ATTORNEY GENERAL OF CANADA
Applicant

- and -

MAPLE BANK GmbH
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings Commenced at Toronto

AFFIDAVIT OF LILLY WONG
(Sworn September 19, 2017)

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

IN THE MATTER OF MAPLE BANK GmbH
AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*, R.S.C. 1985, C.W-11, AS AMENDED
AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

MOTION RECORD
(Returnable September 26, 2017)

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