

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF MAPLE BANK GmbH

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

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

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GmbH

Respondent

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

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

BACKGROUND

1. This report is the second supplemental report (the “**Second Supplemental Report**”) to the ninth report to the Court of the Liquidator of the Toronto Branch of Maple Bank GmbH (the “**Ninth Report**”), and is being provided to the Court further to the filing of the first supplemental report to the Ninth Report (the “**First Supplemental Report**”) and the hearing with respect to the relief sought by the Liquidator in this matter on November 25, 2016 (the “**Amended Relief**”), as well as the relief now sought by the Liquidator on December 9, 2016 (the “**Further Relief**”).
2. Background to the Amended Relief, along with other information is set out in the Ninth Report and the First Supplemental Report (attached as **Appendix A** and **Appendix B**, respectively).
3. Since the filing of the Ninth Report, the Court has:
 - i. Authorized the Liquidator to convert or hedge amounts to be distributed (or anticipated to be distributed) to the GDPF and/or to the GIA in order to mitigate their respective foreign exchange risk (the “**FX Risk**”);
 - ii. Approved a distribution to creditors of the Toronto Branch with Proven Claims (in whole or in part), including statutory interest in accordance with the WURA, on or after December 19, 2016 (the “**Distribution Date**”);
 - iii. Approved the Notice of the Distribution and its publication in the National edition of *The Globe and Mail* and the International edition of *The Wall Street Journal* (collectively, the “**Newspapers**”); and
 - iv. Approved the Third Report and Ninth Report and the activities of the Liquidator as more particularly described in those reports.

TERMS OF REFERENCE AND DISCLAIMER

4. 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.
5. 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.
6. Capitalized terms not defined in the Second Supplemental Report are as defined in either the Winding-Up Order and/or the prior reports of the Liquidator. Unless otherwise indicated, all references to monetary amounts herein are denominated in Canadian dollars (“**CAD**”).
7. 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>.

PURPOSE OF THE SECOND SUPPLEMENTAL REPORT

8. The purpose of the Second Supplemental Report is to:
 - i. Provide an update on the activities of the Liquidator since the filing of the First Supplemental Report;
 - ii. Provide an update on foreign exchange transactions which have occurred in respect of the Toronto Branch regarding the FX Risk of the GDPF and the GIA;
 - iii. Request the Further Relief, namely, an order approving:
 - a) The notice to creditors of the Toronto Branch, Maple Bank and certain entities related to Maple Bank in connection with possible Claims against individuals who were a Principal Officer of the Toronto Branch and also a director and/or officer of certain related and affiliated entities of Maple Bank (as listed and described further herein), (the “**Principal Officers Claims Bar Notice**”), to be placed in the Newspapers as soon as practicable;
 - b) That January 9, 2017 be fixed as the Principal Officers’ claims bar date (the “**Principal Officers Claims Bar Date**”) with respect to any Claims that may be filed with the Liquidator against the Principal Officers of the Toronto Branch (the “**Principal Officers Additional Claims**”); and,
 - c) The activities of the Liquidator since the filing of the Ninth Report, as described in the First Supplemental Report and in this Second Supplemental Report.

2. LIQUIDATOR'S ACTIVITIES SINCE NOVEMBER 25 2016

9. The following activities were undertaken by the Liquidator since November 25 2016:
- i. The Liquidator has continued its dialogue with all former employees as well as a number of other creditors of the Toronto Branch to exchange information and advance the respective Proofs of Claim. During this time, the Liquidator has issued a number of Notices of Allowance and Notices of Disallowance to various claimants;
 - ii. As set out in the First Supplemental Report, Lishman filed a Proof of Claim with the Liquidator that includes, among other things, a contingent claim (the “**Lishman Contingent Claim**”) 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 role 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**”). Further information regarding the Lishman Contingent Claim was provided in the First Supplemental Report. In the process of its review of the Lishman Contingent Claim, the Liquidator learned that there was a concern that Lishman might be subject to a claim advanced by the GIA, on behalf of Maple Bank, (the “**GIA Claim**”) after all the proceeds from the assets of the Toronto Branch were distributed by the Liquidator. In an effort to resolve the Lishman Contingent Claim, address the possibility of a GIA Claim and also allow for a timely distribution to the creditors and other stakeholders of the Toronto Branch in these proceedings, including a

distribution to the GIA, the Liquidator has been in discussions with Lishman and the GIA and their respective counsel, regarding the Principal Officers Claims Bar Notice and Principal Officers Claims Bar Date, as described in the Further Relief. Although there has not been a consensus as to the best approach to be adopted to actually address, or resolve these issues, the Liquidator is of the view that it would be beneficial to all creditors and stakeholders of the Toronto Branch to commence the Principal Officers Additional Claims process, without delay; and

- iii. The Liquidator continues to work with the GIA as it relates to any potential foreign currency transactions, as further described herein.
10. The Liquidator understands that the GIA and Lishman, and their respective counsel are continuing discussions with regard to the various issues surrounding the Lishman Contingent Claim and the GIA Claim.
 11. Based on the ongoing discussions that the Liquidator continues to have with Lishman, the Liquidator also understands that Lishman will continue to cooperate with the Liquidator with regard to the Liquidator's ongoing administration and winding up of the Business of the Toronto Branch. In this regard, the Liquidator notes that Lishman's cooperation and assistance to date with the Liquidator's winding up of the Business have been instrumental in maximizing realizations for the benefit of all creditors and stakeholders of the Toronto Branch. Lishman has also provided significant assistance to the Liquidator with regard to the Liquidator's ongoing review of Proofs of Claim that have been submitted to the Liquidator in accordance with the Claims Procedure.

3. UPDATE ON FOREIGN CURRENCY TRANSACTIONS

12. As outlined in the Ninth Report, the Toronto Branch's two largest stakeholders reside in Germany, namely the GDPF, as the assignee of German depositors with proven claims of \$686.1 million (plus accrued interest), and the GIA for the estimated surplus from the Toronto Branch which is expected to be available after the satisfaction of all Proven Claims plus interest (the "**Estimated Surplus**"). At this time and subject to a further adjudication of the Proofs of Claims that have been filed with the Liquidator, the Estimated Surplus is currently forecast at approximately \$574.3 million (as further described in the Ninth Report), plus the value of the U.S. Assets (now, all in cash form) which is currently estimated at approximately \$91.3 million.
13. On November 18, 2016 the Court issued an interim distribution order, which authorized the Liquidator, subject to the approval of the GDPF or the GIA, to either convert the amounts held for the Proven Claims of the GDPF and the Estimated Surplus to Euros or, alternatively, purchase derivative financial products that would hedge the FX Risk (the "**Interim Distribution Order**").
14. Immediately after the issuance of the Interim Distribution Order the Liquidator convened a dialogue with the Liquidator, its investment advisor RBC Dominion Securities Inc. ("**RBC DS**"), the GDPF, the GIA, and their respective counsel and Royal Bank of Canada ("**RBC**"). During the conference call, the Liquidator and RBC DS discussed various conversion and hedging options available to the GDPF and the GIA. As a result of the call, the GDPF requested a foreign exchange forward outright purchase transaction that was executed by RBC on November 21, 2016 (the earliest possible time when the foreign markets opened that day). The GIA, however, elected not to execute any foreign exchange transaction.
15. The GIA has been advised on a number of occasions by the Liquidator, in consultation with RBC, regarding the particular options available to it to hedge or convert its position. The CAD/EUR exchange rate has moved in a materially favourable manner to the GIA's position since the date of the Winding-Up Order.

It is the Liquidator's view that the improvement in the GIA's position since the date of the Winding-Up order is currently in excess of any reasonable total hedging, or conversion costs (including the expected negative yield experience on holding a Euro-denominated position) plus all of the expected interest costs relating to claims, as prescribed under WURA in these proceedings.

16. The Liquidator has been advised that the GIA continues to consider its options and may decide to hedge its position in the near future.

4. *PRINCIPAL OFFICERS CLAIMS BAR DATE*

17. The Liquidator, subsequent to the hearing on November 25, 2016, has amended the notice period provided under the Principal Officers Claims Bar Notice to thirty (30) days.
18. The Liquidator recommends that the Principal Officers Claims Bar Notice, which includes the Principal Officer Claims Bar Date, be published in the Newspapers in the form as appended in **Appendix C**, hereto.
19. The Liquidator notes that the Affiliates do not include Maple Bank GmbH (Germany). Furthermore, neither the GIA or Maple Bank GmbH are affected by the Principal Officers Additional Claims Order, or the Principal Officers Claims Bar Date.

5. FUTURE PLANS OF THE LIQUIDATOR

20. The Liquidator's near term plans in connection with administering the winding-up of the Toronto Branch include the following:
 - i. Continue to advance its review, analysis and settlement, if possible, of the existing Proofs of Claims (to the extent not already fully proven) and any new Proofs of Claim which may be received by the Liquidator through the Claims Procedure;
 - ii. On or after the Distribution Date to make an initial distribution to Creditors with Proven Claims as approved by the Court on November 25, 2016;
 - iii. Publish the Principal Officers Claims Bar Notice, which will include the Principal Officers Claims Bar Date, in the Newspapers as soon as practicable should the Court approve the Further Relief;
 - iv. With an appropriate reserve for unproven Claims, plus interest as prescribed under WURA, make a subsequent distribution to any further Creditors with Proven Claims after the Distribution Date, as well as a distribution of the Estimated Surplus to the GIA after the expiry of the Principal Officers Claims Bar Date (set at January 9, 2017); and
 - v. Make further distributions as all remaining Claims are settled, or finally adjudicated in accordance with the Claims Procedure.

21. The Liquidator observes that a timely distribution of the Estimated Surplus to the GIA prior to the Liquidator making a distribution to all Creditors with Proven Claims, in full, including statutory interest in accordance with the WURA, may require the cooperation and negotiation of corresponding arrangements among those creditors, the GIA and Lishman.

6. LIQUIDATOR'S RECOMMENDATIONS

22. The Liquidator submits this Second Supplemental Report to the Court in support of the Liquidator's Motion for the Further Relief as set out in the Notice of Motion dated December 8, 2016 and recommends that the Court grant the Principal Officers Additional Claims Order, substantially in the form of the Order appended as **Appendix D** hereto:
- i. Approving the Principal Officers Claims Bar Notice and the Principal Officers Claims Bar Date; and
 - ii. Approving the activities of the Liquidator since the filing of the Ninth Report.

All of which is respectfully submitted at Toronto, Ontario this 8th day of December, 2016.

**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