

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 January 27, 2017)

January 25, 2017

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

**Alex MacFarlane (LSUC No. 28133Q)**  
Tel: 416.367.6305  
[amacfarlane@blg.com](mailto:amacfarlane@blg.com)

**Douglas O. Smith (LSUC No. 36915R)**  
Tel: 416.367.6015  
[dsmith@blg.com](mailto:dsmith@blg.com)

**Rachael Belanger (LSUC No. 67674B)**  
Tel: 416.367.6485  
[rbelanger@blg.com](mailto:rbelanger@blg.com)

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

TO: **KPMG Inc., in its capacity as Liquidator of the business in Canada  
of Maple Bank GmbH and its assets**  
333 Bay Street, Suite 4600  
Toronto, ON M5H 2S5

Attn: Phillip J. Reynolds  
[pjreynolds@kpmg.ca](mailto:pjreynolds@kpmg.ca)

AND TO: **Dr. Michael C. Frege**  
CMS Hasche Sigle  
Neue Mainzer Straße 2–4  
60311 Frankfurt, Germany

[michael.frege@cms-hs.com](mailto:michael.frege@cms-hs.com)  
*Insolvency Administrator of Maple Bank GmbH*

AND TO: **Dr. Charlotte Louise Schildt**  
CMS Hasche Sigle  
Neue Mainzer Straße 2–4  
60311 Frankfurt, Germany

[Charlotte.Schildt@cms-hs.com](mailto:Charlotte.Schildt@cms-hs.com)  
*Insolvency Administrator of Maple Bank GmbH*

AND TO: **Stikeman Elliott LLP**  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9

Attn: Maria Konyukhova / Peter Hamilton / Meaghan Obee Tower  
[mkonyukhova@stikeman.com](mailto:mkonyukhova@stikeman.com) / [phamilton@stikeman.com](mailto:phamilton@stikeman.com) / [mobeetower@stikeman.com](mailto:mobeetower@stikeman.com)

*Counsel to Michael C. Frege,  
Insolvency Administrator of Maple Bank GmbH*

AND TO: **Department of Justice Canada | Office of the  
Superintendent of Financial Institutions Canada**  
255 Albert Street, 12<sup>th</sup> Floor  
Ottawa, ON K1A 0H2

Attn: David J. Covert  
[david.covert@osfi-bsif.gc.ca](mailto:david.covert@osfi-bsif.gc.ca)

*Counsel to the Applicant, The Attorney General of Canada*

AND TO: **Osler, Hoskin & Harcourt LLP**  
100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto, ON M5X 1B8

Attn: Chris Bennett / Victoria Graham / Marc Wasserman  
[cbennett@osler.com](mailto:cbennett@osler.com) / [vgraham@osler.com](mailto:vgraham@osler.com) / [mwasserman@osler.com](mailto:mwasserman@osler.com)

*Counsel to Maple Financial*

AND TO: **Department of Justice**  
Ontario Regional Office  
Tax Law Services Division  
The Exchange Tower  
130 King St. West, Suite 3400, Box 36  
Toronto, ON M5X 1K6

Attn: Diane Winters  
[diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca)

*Counsel for Her Majesty the Queen in Right of Canada,  
as represented by the Minister of National Revenue*

AND TO: **Her Majesty the Queen in the Right of the Province of Ontario,  
as Represented by the Minister of Finance**  
33 King Street West, 6th Floor  
Oshawa, ON L1H 8E9

Attn: Kevin J. O'Hara  
[kevin.ohara@ontario.ca](mailto:kevin.ohara@ontario.ca)

*Counsel for Her Majesty the Queen in Right of the Province of Ontario,  
as represented by the Minister of Finance*

AND TO: **Goodmans LLP**  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H TS7

Attn: Daniel Gormley / Brian Empey  
[dgormley@goodmans.ca](mailto:dgormley@goodmans.ca) / [bempey@goodmans.ca](mailto:bempey@goodmans.ca)

*Counsel to Paradigm Quest Inc.*

AND TO: **Home Bank** (formerly CFF Bank)  
145 King Street West, 25th Floor  
Home Bank (formerly CFF Bank)  
145 King Street West, 25th Floor  
Toronto, ON M5H 1J8

Attn: Krishna Gadhraju  
[krishna.gadhraju@hometruster.ca](mailto:krishna.gadhraju@hometruster.ca)

AND TO: **Torkin Manes LLP**  
151 Yonge Street  
Suite 1500  
Toronto, ON M5C 2W7

Attn: Fay Sulley  
[fsulley@torkinmanes.com](mailto:fsulley@torkinmanes.com)

*Counsel to Home Bank (formerly CFF Bank)*

AND TO: **Radius Financial - Formerly myNext Mortgage Company**  
150 King Street West, Suite 2512  
P.O. Box 410  
Toronto, ON M5H 1J9

Attn: CEO / VP Capital Markets & Treasurer / General Counsel  
[Ron.swift@radiusfinancial.ca](mailto:Ron.swift@radiusfinancial.ca) / [George.zhang@radiusfinancial.ca](mailto:George.zhang@radiusfinancial.ca)

AND TO: **MyNext Mortgage Premier Trust**  
c/o Radius Financial  
150 King Street West, Suite 2512  
P.O. Box 410  
Toronto, ON M5H 1J9

Attn: CEO / VP Capital Markets & Treasurer / General Counsel  
[Ron.swift@radiusfinancial.ca](mailto:Ron.swift@radiusfinancial.ca) / [George.zhang@radiusfinancial.ca](mailto:George.zhang@radiusfinancial.ca)

AND TO: **Miller Thomson LLP**  
Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, ON M5H 3S1

Attn: Maurice Fleming/ James Rumball / Alfred Apps  
[m Fleming@millertomson.com](mailto:m Fleming@millertomson.com) / [j rumball@millertomson.com](mailto:j rumball@millertomson.com) / [aapps@millertomson.com](mailto:aapps@millertomson.com)

*Counsel to Radius Financial - Formerly myNext Mortgage Company*

AND TO: **Xceed Mortgage Corporation**  
200 King Street West, Suite 600  
Toronto, ON M5H 3T4

Attn: CFO  
[jbouganim@xceedmortgage.com](mailto:jbouganim@xceedmortgage.com)

AND TO: **Torys LLP**  
79 Wellington St. W., Suite 3000  
Toronto, ON M5K 1N2

Attn: Scott Bomhof / Adam Slavens / Lee Cassey  
[sbomhof@torys.com](mailto:sbomhof@torys.com) / [aslavens@torys.com](mailto:aslavens@torys.com) / [lcassey@torys.com](mailto:lcassey@torys.com)

*Counsel to MCAN Mortgage Corporation and Xceed Mortgage Corporation*

AND TO: **MCAP Service Corporation**  
200 King Street West, Suite 400  
Toronto, ON M5H 3T4

Attn: Mark Adams  
[mark.adams@mcap.com](mailto:mark.adams@mcap.com)

AND TO: **Blake, Cassels & Graydon LLP**  
199 Bay Street, Suite 400  
Commerce Court West  
Toronto, ON M5L 1A9

Attn: Mark Selick / Frank Guarascio / Chris Burr  
[mark.selick@blakes.com](mailto:mark.selick@blakes.com) / [frank.guarascio@blakes.com](mailto:frank.guarascio@blakes.com) / [chris.burr@blakes.com](mailto:chris.burr@blakes.com)

*Counsel to MCAP Service Corporation*

AND TO: **Norton Rose Fulbright Canada LLP**  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 3800  
Toronto, ON M5J 2Z4

Attn: Evan Cobb  
[evan.cobb@nortonrosefulbright.com](mailto:evan.cobb@nortonrosefulbright.com)

*Counsel to Equitable Bank*

AND TO: **Lakeview Mortgage Funding Trust I**  
250 University Avenue, Suite 200  
Toronto, ON M5H 3E5

Attn: Jonathan Zamir  
[jonathan.zamir@lakeviewmortgage.ca](mailto:jonathan.zamir@lakeviewmortgage.ca)

AND TO: **Lakeview Mortgage Funding Inc.**  
250 University Avenue, Suite 200  
Toronto, ON M5H 3E5

Attn: Jonathan Zamir  
[jonathan.zamir@lakeviewmortgage.ca](mailto:jonathan.zamir@lakeviewmortgage.ca)

AND TO: **TREZ Capital (2011) Corporation**  
1185 West Georgia Street, Unit 1550  
Vancouver, British Columbia V6E 4E6

Attn: Ken Lai  
[kenl@trezcapital.com](mailto:kenl@trezcapital.com)

*in its capacity as general partner of TREZ Capital Limited Partnership*

AND TO: **The Bank of Nova Scotia**  
40 King Street West  
Scotia Plaza, 9<sup>th</sup> Floor  
Toronto, ON M5H 1H1

Attn: Kristen Riess, Legal Counsel | Litigation  
[kristen.riess@scotiabank.com](mailto:kristen.riess@scotiabank.com)

AND TO: **BMO Financial Group**  
1 First Canadian Place / FCP Tower  
100 King Street West, 20<sup>th</sup> Floor  
Toronto, ON M5X 1A1

Attn: Mark Pratt, Associate General Counsel | Legal  
[mark.pratt@bmo.com](mailto:mark.pratt@bmo.com)

AND TO: **Citizenship and Immigration Canada**  
365 Laurier Avenue West  
Ottawa, ON K1A 1L1

Attn: Christine Hou  
<mailto:Christine.hou@ci.gc.ca> / <mailto:immigrant.investor@ci.gc.ca>

AND TO: **Arton Investments (formerly PWM Capital)**  
4195 Dundas Street West, Suite 312  
Toronto, ON M8X 1Y4

Attn: Armand Arton, President and CEO  
[aarton@artoncapital.com](mailto:aarton@artoncapital.com)

*IQ Authorized Intermediary*

AND TO: **CTI Capital**  
1 Place Ville Marie  
Montreal, Québec H3B 2B6

Attn: Viet Buu, President and CEO  
[ybuu@cticap.com](mailto:ybuu@cticap.com)

*IQ Authorized Intermediary*

AND TO: **ICICI Bank of Canada**  
150 Ferrand Drive  
Toronto, ON M3C 3E5

Attn: Anthony Coulthard / Akshay Chaturvedi  
[anthony.coulthard@icicibank.com](mailto:anthony.coulthard@icicibank.com) / [akshay.chaturvedi@icicibank.com](mailto:akshay.chaturvedi@icicibank.com)

AND TO: **Blaney McMurtry LLP**  
2 Queen Street East, Suite 1500  
Toronto, ON M5C 3G5

Attn: David T. Ullmann  
[dullmann@blaney.com](mailto:dullmann@blaney.com)

*Counsel to ICICI Bank*

AND TO: **Canadian Imperial Bank of Commerce**  
161 Bay Street  
5th Floor, Brookfield Place  
Toronto, ON M5J 2S8

Attn: Daniele Fiacco  
[daniele.fiacco@cibc.com](mailto:daniele.fiacco@cibc.com)

AND TO: **Canadian Imperial Bank of Commerce:**  
199 Bay Street, 11<sup>th</sup> Floor  
Commerce Court West  
Toronto, ON M5L 1A2

Attn: Tim Meadowcroft  
[tim.meadowcroft@cibc.com](mailto:tim.meadowcroft@cibc.com)

AND TO: **Torys LLP**  
79 Wellington Street West, Suite 3000  
Box 270, TD Centre  
Toronto, ON M5K 1N2

Attn: Ricco Bhasin / David Bish  
[rbhasin@torys.com](mailto:rbhasin@torys.com) / [dbish@torys.com](mailto:dbish@torys.com)

*Counsel to CIBC*

AND TO: **Investissement Québec**  
Immigration Affairs / l'immigration d'affaires  
1200, route de l'Eglise, bureau 500  
Quebec G1V 5A3

Attn: Guy Gravel, Director/Directeur / Nicole Gagnon  
[guy.gravel@invest-quebec.com](mailto:guy.gravel@invest-quebec.com); [Nicole.gagnon@invest-quebec.com](mailto:Nicole.gagnon@invest-quebec.com)

AND TO: **Treasury and Balance Sheet Management Inc.**  
13620 Ravine Drive. N.W.  
Edmonton, AB T5N 3L9

Attn: Doug Adams  
[doug@tbsm.ca](mailto:doug@tbsm.ca)

AND TO: **Davies LLP**  
1501 avo McGill College, Suite 2600  
Montreal, Quebec H3A3N9

Attn: George J. Pollack / Natalie Renner  
[gpollack@dwpv.com](mailto:gpollack@dwpv.com) / [nrenner@dwpv.com](mailto:nrenner@dwpv.com)

*Canadian Counsel to Global One Funding VII, LLC and Global One Financial, Inc.*



AND TO: **Davies Ward Phillips & Vineberg LLP**  
155 Wellington Street West  
Toronto, ON M5V 3J7

Attention: James Bunting / Natalie Renner  
[jbunting@dwpv.com](mailto:jbunting@dwpv.com) / [nrenner@dwpv.com](mailto:nrenner@dwpv.com)

*Counsel for Global One Funding VII, LLC and Global One Financial, Inc.*

AND TO: **Alston & Bird LLP**  
One Atlantic Center, 120 1 West Peachtree Street  
Atlanta, Georgia 30309

Attn: Jonathan T. Edwards, Esq.  
[jonathan.edwards@alston.com](mailto:jonathan.edwards@alston.com)

*U.S. Counsel to Global One Funding VII, LLC and Global One Financial, Inc.*

AND TO: **Linda Lai**  
62 Suncrest Boulevard, Suite 621  
Thornhill, ON L3T 7Y6  
[llai@maplefinancial.com](mailto:llai@maplefinancial.com) / [123seashell@gmail.com](mailto:123seashell@gmail.com)

AND TO: **Beatrice Tsang**  
41 Phalen Crescent  
Scarborough, ON M1V 1Y5  
[bbskt@yahoo.com](mailto:bbskt@yahoo.com)

AND TO: **Sofia Petrossian**  
321 – 168 Simcoe Street  
Toronto, ON M5H 4C9  
[spetrossian@gmail.com](mailto:spetrossian@gmail.com)

AND TO: **Joanna Parina**  
81 Black Creek Drive  
Markham, ON L6B 0Y4  
[joanna.parina@gmail.com](mailto:joanna.parina@gmail.com)

AND TO: **Janice Rickard**  
2175 Countryclub Drive, Unit 1  
Burlington, ON L7M 4H9  
[jani.rickard@gmail.com](mailto:jani.rickard@gmail.com)

AND TO: **Thornton Grout Finnigan LLP**  
100 Wellington Street West  
Suite 3200, TD West Tower  
Toronto, ON M5K 1K7

Attention: Robert Thornton Kyla Mahar / Erin Pleet  
[rthornton@tgf.ca](mailto:rthornton@tgf.ca) / [kmahar@tgf.ca](mailto:kmahar@tgf.ca) / [epleet@tgf.ca](mailto:epleet@tgf.ca)

*Counsel for Paul Lishman*

AND TO: **Milburne & Associates**  
20 Toronto Street, Suite 860  
Toronto, ON M5C 2B8

Attention: Jane Milburne  
[jmilburn@milburnlaw.ca](mailto:jmilburn@milburnlaw.ca)

*Employment Counsel for Paul Lishman and Cyrus Sukhia*

AND TO: **Paul Lishman**  
886 Canyon Street  
Mississauga, ON L5H 4L6  
[plishman@rogers.com](mailto:plishman@rogers.com)

AND TO: **Cyrus Sukhia**  
36 Charlotte Street, Suite 1104  
Toronto, ON M5V 3P7  
[sukhiac@gmail.com](mailto:sukhiac@gmail.com)

AND TO: **Desmond Fallon**  
1422 Clearview Drive  
Oakville, ON  
[desfallon@hotmail.com](mailto:desfallon@hotmail.com)

AND TO: **Dan Torangeau**  
2342 Brookhurst Road  
Mississauga, ON L5J 1R2  
[dan.torangeau@gmail.com](mailto:dan.torangeau@gmail.com)

AND TO: **Heidi Rose**  
326 Manning Avenue  
Toronto, ON M6J 2L1  
[heidirose@live.ca](mailto:heidirose@live.ca)

AND TO: **KBA Law**  
43 Front Street East, Suite 400  
Toronto, ON M5E 1B3  
  
Attention: Kimberly Boara Alexander  
[kalexander@kbalaw.ca](mailto:kalexander@kbalaw.ca)

*Counsel to Don Scott*

AND TO: **Don Scott**  
250 Hanna Road  
Toronto, ON M4G 3P4  
[donald.scott@rogers.com](mailto:donald.scott@rogers.com)

AND TO: **Jeff Campbell**  
483 Brunswick Avenue  
Toronto, ON M5R 2Z6  
[jeff.campbell@me.com](mailto:jeff.campbell@me.com)

AND TO: **Canadian Bankers Association**  
199 Bay Street, Suite 3000  
Toronto, ON M5L 1G2

Attention: Jay Lewis  
[jlewis@cba.ca](mailto:jlewis@cba.ca)

AND TO: **Computershare Trust Company**  
100 University Ave, 11<sup>th</sup> Floor, South Tower  
Toronto, ON M5J 2Y1

Attention: Annie Yang Lu  
[Yang.lu@computershare.com](mailto:Yang.lu@computershare.com)

AND TO: **Discount Power Inc.**  
6 Armstrong Road  
Shelton, CT 06484 U.S.A.

Attention: Joel Glassman  
[jglassman@discountpowerinc.com](mailto:jglassman@discountpowerinc.com)

AND TO: **Holland & Knight LLP**  
Suite 864084, 11050 Lake Underhill Road  
Orlando, FL 32825-5016 U.S.A.

Attention: Stephen J. Humes  
[steve.humes@hklaw.com](mailto:steve.humes@hklaw.com)

AND TO: **Ernst & Young LLP**  
222 Bay Street, P.O. Box 251  
Toronto, ON M5K1J7

Attention: Sivan Ilangko  
[Sivan.Ilangko@ca.ey.com](mailto:Sivan.Ilangko@ca.ey.com)

AND TO: **CRA**  
1 Front Street West  
Toronto, ON M5J 2X6

Attention: Kay Singh  
[kay.singh@cra-arc.gc.ca](mailto:kay.singh@cra-arc.gc.ca)

AND TO: **Maple Holdings Canada Limited, Maple Securities  
Canada Limited and Maple Trade Finance Inc.**  
c/o 79 Wellington Street West, 35<sup>th</sup> Floor  
Toronto, ON M5K 1K7

Attention: David Schnarr, President  
[dschnarr@maplefinancial.com](mailto:dschnarr@maplefinancial.com)

AND TO: **Maple Securities U.S.A. Inc.**  
525 Washington Blvd. Suite 1400  
Jersey City, NJ 07310 U.S.A.

Attention: Anthony Vinci  
[anthonyv@mapleusa.com](mailto:anthonyv@mapleusa.com)

AND TO: **Deloitte**  
22 Adelaide Street West, Suite 200  
Toronto, ON M5H 0A9

Attention: M. Graham Page, Manager – Financial Advisory  
[grapage@deloitte.ca](mailto:grapage@deloitte.ca)

*In its capacity as Trustee of Maple Financial Group Inc.,  
the sole shareholder of Maple Futures Corp.*

AND TO: **Dentons Canada LLP**  
77 King Street West, Suite 400  
Toronto-Dominion Centre  
Toronto, ON M5K 0A1

Attention: John Salmas  
[John.salmas@dentons.com](mailto:John.salmas@dentons.com)

*Counsel for Royal Bank of Canada*

AND TO: **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.**

c/o Maple Securities USA Inc.  
525 Washington Boulevard  
Jersey City, NJ 07310 U.S.A.

Attention: James Finlayson, President  
[JamesF@mapleusa.com](mailto:JamesF@mapleusa.com)

#### **COURIER SERVICE LIST**

TO: **Vesna Manojlovic**  
1807 Kingston Road  
Scarborough, ON M1N 1T3

TO: **Lindsay Chase**  
50 Sunny Glenway, Unit #209  
North York, ON M3C 2Z2

TO: **Jose Dela Cruz**  
52 La Maria Lane  
Maple, ON L6A 3X2

TO: **Renat Khousnoutdinov**  
39 Queens Quay East, Apt. 116  
Toronto, ON M5E 0A5

TO: **Graham Dyke**  
49 Joicey Boulevard  
Toronto, ON M5M 2S8

TO: **Yao Fu**  
114 Belinda Square  
Scarborough, ON M1W 3M2

TO: **Mary-Ann Noronha**  
47 Craigmont Drive  
Toronto, ON M2H 1C8

# 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**

<b>TAB</b>	<b>DOCUMENT</b>
1	Notice of Motion returnable January 27, 2017 Schedule "A" - Draft Principal Officers Additional Claims Order Schedule "B" – Draft Representative Counsel Order
2	Tenth Report of the Liquidator dated January 25, 2017 Appendix "A" – Winding-Up Order dated February 16, 2016 Appendix "B" – Notice to Creditors of the Toronto Branch to be published in the National Edition of <i>The Globe and Mail</i> and the International Edition of <i>The Wall Street Journal</i> Appendix "C" – Protocol to Address Reserves Re:Lishman Appendix "D" – Sample Notice of Objection sent by the GIA to the Toronto Branch Employees (personal information has been redacted)



# 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 Friday, January 27, 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 “**Principal Officers Additional Claims Order**”):
  - (a) Setting February 28, 2017 as the Principal Officers Claims Bar Date (as defined in Schedule “A” hereto) for any Claim against any individual who is or has been a Principal Officer (as defined in the *Bank Act*) (the “**Principal Officer**”) of Maple Bank’s business in Canada (the “**Toronto Branch**”) 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. 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;
  - (b) 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” to the Principal Officers Additional Claims Order;
  - (c) Approving the Protocol to Address Reserves Re: Lishman (the “**Protocol**”), substantially in the form of the Protocol attached as Schedule “B” to the Principal Officers Additional Claims Order; and
  - (d) 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.
2. An Order substantially in the form attached as Schedule “B” to this Notice of Motion (the “**Representative Counsel Order**”):

- (a) Appointing Graham Dyke, Linda Lai, Mary-Ann Noronha and Sofia Petrossian as representatives of certain former Canadian employees of Maple Bank identified in Schedule A of the Representative Counsel Order; and
  - (b) Appointing Paliare Roland Rosenberg Rothstein LLP as representative counsel.
3. If required, an Order 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.
4. Such other relief as counsel may advise and this Court may permit.

## **THE GROUNDS FOR THE MOTION ARE**

### **Background**

5. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Tenth Report.
6. 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 by the Office of the Superintendent of Financial Institutions.
7. 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;
8. 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**”).

### **Principal Officers Additional Claims and Protocol Approval**

9. 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, and Maple Partners America Inc., known or not known, that arose prior to the Winding-Up Date (as defined in the Claims Procedure Order (as defined below)), 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**”).
10. The proposed Principal Officers Additional Claims Order sets out procedures for the filing and determination of claims against the Principal Officers, including the Lishman Contingent Claims, in a timely and efficient manner.
11. The proposed Principal Officers Additional Claims Order includes a claims bar date in respect of Claims against the Principal Officers of the Toronto Branch of 4:00 p.m. Eastern Time on February 28, 2017.
12. The proposed Protocol establishes certain reserves to be held by the Liquidator in respect of the Lishman Contingent Claim, which is further described in the Tenth Report.
13. The Principal Officers Additional Claims Order and the accompanying Protocol is a fair and reasonable method of determining and reserving for the Claims against the Principal Officers of the Toronto Branch in connection with the Winding-Up, including the Lishman Contingent Claim.

14. The Principal Officers Additional Claims Order and the accompanying Protocol are reasonable and appropriate in the circumstances.

**The Representative Counsel**

15. The Liquidator has filed with the Court its Tenth Report outlining, among other things, the rationale for the proposed appointment of Paliare Roland Rosenberg Rothstein LLP as representative counsel.

**Miscellaneous**

16. Sections 35, 74, 75, 76, 158.1 of the WURA;
17. Rules 1.04, 1.05, 2.03, 3.02(1), 16 and 37 of the *Rules of Civil Procedure*;
18. The claims procedure order issued by the Court on June 8, 2016;
19. The Winding-Up Order; and
20. 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 Tenth Report; and
2. Such further and other documentary evidence as counsel may advise and the Court may accept.

January 25, 2017

**BORDEN LADNER GERVAIS LLP**

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

**Alex MacFarlane (LSUC No. 28133Q)**

Tel: 416.367.6305  
[amacfarlane@blg.com](mailto:amacfarlane@blg.com)

**Douglas O. Smith (LSUC No. 36915R)**

Tel: 416.367-6015  
[dsmith@blg.com](mailto:dsmith@blg.com)

**Rachael Belanger (LSUC No. 67674B)**

Tel: 416.367.6485  
[rbelanger@blg.com](mailto:rbelanger@blg.com)

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

TO: **SERVICE LIST**

**SCHEDULE A**

(see attached)



ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE REGIONAL ) THURSDAY, THE 27<sup>th</sup> 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 no one else appearing although served as evidenced by the Affidavits of Service of Rachael Belanger sworn January 26, 2017, filed,

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.

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**Schedule "A"**

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

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**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](mailto: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  
333 Bay Street, Suite 4600  
Toronto, ON M5H 2S5, Canada

Attention: Phillip J. Reynolds: [pjreynolds@kpmg.ca](mailto:pjreynolds@kpmg.ca)

Fax: (416) 777-3364  
Phone: (416) 777-8415

## 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**

**BORDEN LADNER GERVAIS LLP**

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

**Alex MacFarlane (LSUC No. 28133Q)**

Tel: 416.367.6305  
amacfarlane@blg.com

**Douglas O. Smith (LSUC No. 36915R)**

Tel: 416.367.6015  
dsmith@blg.com

**Rachael Belanger (LSUC No. 67674B)**

Tel: 416.367.6485  
rbelanger@blg.com

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

**SCHEDULE B**

(see attached)

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

THE HONOURABLE REGIONAL ) THURSDAY, THE 27<sup>TH</sup> 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**

**REPRESENTATIVE COUNSEL ORDER**

**THIS MOTION**, made by KPMG Inc., 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) appointing Graham Dyke, Linda Lai, Mary-Ann Noronha and Sofia Petrossian as representatives of certain former Canadian employees identified in Schedule A (collectively, the “**Employees**”) of Maple Bank GmbH, Toronto Branch (“**Maple Bank**”), and appointing Paliare Roland Rosenberg Rothstein LLP as representative counsel; and
- (c) 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 of the Liquidator dated January 25, 2017 (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**”), counsel for Paul Lishman and counsel for the Steering Committee, no one else appearing although served as evidenced by the Affidavits of Service of Rachael Belanger sworn January 26, 2017, filed,

1. **THIS COURT ORDERS** that further service of the Notice of Motion and Motion Record on any party not already served is hereby dispensed with, such that this motion was properly returnable.
2. **THIS COURT ORDERS AND DIRECTS** that Graham Dyke, Linda Lai, Mary-Ann Noronha and Sofia Petrossian (collectively, and as such members may be replaced from time to time, the “**Steering Committee**”) are hereby appointed to represent the Employees in respect of this proceeding under the WURA and the Bank Act, and in respect of any other incidental proceedings, with the power to do all things necessary to



carry out the terms of this order and to further and protect the interests of the Employees (collectively the “**Employee Interests**”), including, without limitation:

- a. bringing or responding to any motion in these proceedings that directly affects, or relates to the Employee Interests;
- b. pursuing any rights of appeal or responding to any appeal that arises from or directly affects, or relates to the Employee Interests;
- c. proving, amending, litigating, settling or releasing the claim of any Employee;
- d. appearing before or dealing with any court, claims officer, regulatory authority, or other government ministry, department or agency with regard to any proceedings, or issues that directly affects, or relates to the Employee Interests; and
- e. instructing Representative Counsel with respect to any proceedings, or issues that directly affects, or relates to the Employee Interests .

3. **THIS COURT ORDERS AND DIRECTS** that Paliare Roland Rosenberg Rothstein LLP is hereby appointed as counsel (“**Representative Counsel**”) to the Steering Committee on such terms as the Steering Committee and Representative Counsel may agree, with authority to take instructions from the Steering Committee to act on behalf of all or any of the Employees with respect to the Employee Interests in these proceedings or in any proceedings incidental hereto.
4. **THIS COURT ORDERS AND DIRECTS** the Liquidator to pay Representative Counsel’s reasonable accounts for fees and expenses, forthwith upon receipt of the

account, provided that, subject to further order of this court, such accounts shall not exceed \$150,000 in the aggregate.

5. **THIS COURT ORDERS AND DIRECTS** the Liquidator to provide to the Steering Committee, without charge, upon request of the Steering Committee, such documents and data as may be relevant to matters relating to its appointment, including, without limitation, documents and data pertaining to the Employees' terms of employment, wages, salaries, bonuses, benefits and other compensation of any kind, notice of termination of employment and entitlements to notice and severance pay.
6. **THIS COURT ORDERS** that the Steering Committee and Representative Counsel shall not have any liability in respect of actions taken pursuant to the appointments in this order, except in respect of acts of gross negligence or willful misconduct.
7. **THIS COURT ORDERS** that that the Steering Committee and Representative Counsel shall be given notice of all motions to which the Employees are entitled to receive notice in these proceedings and that it shall be entitled to represent those on whose behalf it is hereby appointed in all such motions.
8. **THIS COURT ORDERS** that the Steering Committee shall be at liberty and is authorized at any time to apply to this court for advice and directions in the discharge or variation of their powers and duties upon notice to the Liquidator and to other interested parties, unless otherwise ordered by this Court.
9. **THIS COURT ORDERS** that any member of the Steering Committee may resign and that, on notice to the Liquidator, the remaining members may appoint any other

individual Employee as a replacement, which replacement will have all the rights and obligations of the resigning member as though they had been named in this order, and if there is any disagreement concerning the appropriateness of a replacement member the matter may be remitted to this Court for determination.

10. **THIS COURT ORDERS** that in the event that this order is later amended by further order of this Court, the Liquidator may post such further order on the Liquidator's website and such posting shall constitute adequate notice to the Employees of such amended order.
11. **THIS COURT ORDERS** that no amendment to this order shall derogate from the rights and protections afforded to the Steering Committee and Representative Counsel by this order in respect of actions taken prior to the later of (a) the amendment, and (b) the final determination of any and all appeals from the order effecting the amendment.
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, the Steering Committee, Representative Counsel and their respective 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.

13. **THIS COURT ORDERS** that the Liquidator be at liberty to 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 the order.
-

## SCHEDULE A

Linda Lai  
Beatrice Tsang  
Sofia Petrossian  
Joanna Parina  
Janice Rickard  
Desmond Fallon  
Dan Torangeau  
Heidi Rose  
Vesna Manojlovic  
Lindsay Chase  
Jose Dela Cruz  
Graham Dyke  
Yao Fu  
Mary-Ann Noronha

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

**REPRESENTATIVE COUNSEL ORDER**

**BORDEN LADNER GERVAIS LLP**

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

**Alex MacFarlane (LSUC No. 28133Q)**

Tel: 416.367.6305  
amacfarlane@blg.com

**Douglas O. Smith (LSUC No. 36915R)**

Tel: 416.367.6015  
dsmith@blg.com

**Rachael Belanger (LSUC No. 67674B)**

Tel: 416.367.6485  
rbelanger@blg.com

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

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**

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

**Alex MacFarlane (LSUC No. 28133Q)**  
Tel: 416.367.6305  
[amacfarlane@blg.com](mailto:amacfarlane@blg.com)

**Douglas O. Smith (LSUC No. 36915R)**  
Tel: 416.367.6015  
[dsmith@blg.com](mailto:dsmith@blg.com)

**Rachael Belanger (LSUC No. 67674B)**  
Tel: 416.367.6485  
[rbelanger@blg.com](mailto:rbelanger@blg.com)

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

# 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

TENTH 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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## ***Listing of Appendices***

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- Appendix A            Winding-Up Order dated February 16, 2016
- Appendix B            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*
- Appendix C            Protocol to Address Reserves Re:Lishman
- Appendix D            Sample Notice of Objection sent by the GIA to the Toronto Branch Employees (personal information has been redacted)

# ***1. INTRODUCTION AND PURPOSE OF THE TENTH 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 GmbH (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 in Canada of Maple Bank. On February 16, 2016 (the “**Winding-Up Date**”), this 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 to the Court 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 to the Court 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 to the Court 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 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 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 to the Court which provided information regarding the proposed settlement between the Liquidator and the Bank of Montreal of the liabilities and obligations of each of the Bank of Montreal and Maple Bank arising from the Repo Transaction and the early termination of the ISDA Transactions.
13. On November 16, 2016, the Liquidator filed its Ninth Report to the Court 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 Process;
  - iii. Information about a 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 EUR-CAD foreign exchange risk (the “**FX Risk**”) related to the amounts that would be distributed to 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 a supplemental report (the “**First Supplemental Report**”) to the Ninth 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 Distribution Notice;

- iii. A Principal Claims Bar Notice and Principal Claims Bar Date;
  - 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 a second supplemental report to the Ninth Report (the "**Second Supplemental Report**") which provided an update on (a) the Liquidator's activities since the filing of the First Supplemental Report, (b) 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.

#### **PURPOSE OF THE TENTH REPORT**

16. The purpose of the Tenth Report is to:
- i. Provide an update to the Court on the status of the protocol developed in conjunction with the GIA and the former Principal Officer of Toronto Branch to implement the Principal Officers' Call for Claims in order to effect a distribution of the estimated surplus in the Toronto Branch to the German Estate;
  - ii. Seek approval of the Court for the proposed 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* (the “**Notice of Claims**”) which is attached as **Appendix B**;

- iii. Provide an update to the Court on the status of the Proofs of Claim filed by the former employees of the Toronto Branch;
- iv. Advise the Court on the Liquidator’s analysis of the employee claims and the the principles on which the employee claims were assessed;
- v. Advise the Court of the Notices of Objection sent by the GIA (the “**GIA Objection**”) to the former employees of the Toronto Branch in respect of certain components of the Employee Claims;
- vi. Seek the approval of the Court for the appointment of Representative Counsel (as defined herein) to advise and represent the non-executive group of employees in respect of the GIA Objection;
- vii. Seek directions from the Court in order to determine the resolution of the GIA Objection;
- viii. Seek directions from the Court for the hearing of disputed employee claims; and
- ix. Update the Court on the activities of the Liquidator since the filing of the Ninth Report and the Supplemental Reports.

#### **TERMS OF REFERENCE AND DISCLAIMER**

17. 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.

18. 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.
19. Capitalized terms not defined in the Tenth Report are as defined in either the Winding-Up Order and/or the First Report through the Second Supplemental to the Ninth Report. Unless otherwise indicated, all references to monetary amounts herein are denominated in Canadian dollars (“CAD”).
20. 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. PRINCIPAL OFFICER CLAIM PROTOCOL**

### **Overview**

21. The realization process for all of the assets of the Toronto Branch is almost entirely complete. The Liquidator currently maintains \$819.7 million in cash on hand, including cash in connection with realized U.S. Assets of \$90.8 million. The winding-up of the Toronto Branch is also essentially complete, but for distributions to be made to creditors and certain stakeholders of the Toronto Branch.
22. In this regard and for some time, the Liquidator has been working with the various stakeholders of the Toronto Branch in an effort to expeditiously resolve Unproven Claims and provide for a timely distribution to the Creditors and certain other stakeholders of the Toronto Branch. In doing so, the Liquidator aims to protect the interests of creditors of the Toronto Branch, provide the GIA with a timely material interim distribution, and conclude the winding-up of the Toronto Branch within a reasonable period of time.

### **Proposed Resolution**

23. At this time, the Unproven Claims which have been filed with the Liquidator with regard to the Toronto Estate are summarized below:

<b>Maple Bank GmbH, Toronto Branch Claims Filed But Unproven To Date As at January 24, 2017</b>		
<b>Creditor Name</b>	<b># of Claims Filed</b>	<b>Total Amount of Claim(s)</b>
Canadian Tax Authorities	2	11,873,055
Employee Claims	19	20,891,465
A Commercial Loan Borrower	1	17,349,048
A Mortgage Originator	1	36,261,482
<b>Total Filed but Unproven Claims</b>	<b>23</b>	<b>86,375,050</b>

24. Not provided for in the above table is a Proof of Claim which was submitted by the GIA. The GIA's Proof of Claim was described in the Liquidator's Ninth Report and was filed in the amount of \$791.3 million. As referenced in the Ninth

Report, this Proof of Claim is subject to a capping agreement between the Liquidator and the GIA whereby the GIA has agreed that the GIA's Claim is to be permanently reduced to the extent of any distribution the GIA may receive, and capped at the amount that results in the Toronto Branch having assets in excess of its liabilities. This arrangement was entered into in order to (i) facilitate an orderly and timely distribution to all Toronto Branch Creditors with Proven Claims at the proven amount of such Claims plus accrued interest as prescribed under the WURA, (ii) facilitate a timely distribution to the GIA, and (iii) avoid costs with regard to potentially litigating the GIA Claim.

25. Notwithstanding this arrangement, the Liquidator disallowed the GIA Claim on December 21, 2016 and on January 4, 2017 the GIA filed a Notice of Dispute to the Disallowance of the GIA Claim by the Liquidator. To date no further steps have been taken by either the Liquidator or the GIA with regard to litigating or resolving the GIA Claim as both parties have focused on resolving the terms of the Protocol (as defined herein) and the Principal Officers Claims Order (as defined herein). As noted in the chart above, there are very few Unproven Claims remaining in the Toronto Branch. Notice of the Claims Procedure Order, and the the Interim Distribution, has been previously provided in these proceedings. The Liquidator is not aware of any further potential Claims, at this time. These proceedings have been ongoing since since February 16, 2016, the Claims Procedure was approved on June 2, 2016 and the Interim Distribution was made on December 19 2016.
26. Several stakeholders have expressed their views to the Liquidator as to how the funds currently held by the Liquidator should be distributed:
  - a. The GIA would prefer to receive a timely distribution of a material amount of the estimated surplus from the Toronto Branch;
  - b. Lishman has communciated that he requires certain protections to be afforded to him on account of certain contingent claims as set out in the Lishman Claim and is not prepared to agree to a distribution to the GIA until he has received the protections, including, without

limitation: (i) some form of bar order for potential Claims that may be made against him, and (ii) that his potential legal fees, which may be incurred, in the event he is sued by the GIA are covered; and

- c. Certain other Creditors are opposed to any funds being paid to the GIA until the Proven Claims of all Toronto Branch Creditors have been paid, in full, with interest in accordance with the WURA.

27. Over the past several months the Liquidator has discussed these issues with the Creditors and certain other stakeholders of the Toronto Branch. Further to those discussions and in connection with the Liquidator's ongoing winding-up of the Toronto Branch, the Liquidator has:

- a. Continued to work with Creditors of the Toronto Branch in order to resolve all Toronto Branch Proofs of Claim as quickly as possible;

- b. Negotiated with the GIA and Lishman the updated proposed Protocol to Address Reserves Re: Lishman (which is attached as **Appendix C**) (the "**Protocol**"), which includes:

- i. The Principal Officers' Additional Claims Order (the "**Principal Officers Claims Order**") for the Principal Officers of the Toronto Branch, in order to address any Claims which may be asserted against the Principal Officers, arising out of the positions that the Principal Officers may have held with a number of Maple Bank affiliated companies, with a proposed bar date of February 28, 2017;
- ii. Clarity regarding Lishman's right of indemnity, in respect of certain contingent claims as set out in the Lishman Claim;
- iii. Clarity as to the reserves the Liquidator may establish in connection with the future payout of remaining Toronto Branch Creditor Claims plus interest as accrued under the WURA; and

- iv. Clarity as to the reserves for legal fees, which may be available to Lishman in order to defend against certain claims which may be asserted against him;
  - c. The Liquidator has updated the reserve estimates and has thereby estimated an amount of excess cash currently held by the Liquidator, which could be distributed to the GIA in the future in a timely manner.
28. The Liquidator's updated current estimate of the surplus in the Toronto Branch, which includes the Liquidator's updated creditor Claim reserve estimate (the "Reserve"), is set forth below:

In the matter of the winding up of Maple Bank GmbH (Toronto Branch) Estimated Toronto Branch Surplus and Reserves As at January 24, 2017		\$CAD
Total Cash and Securities as at January 24, 2017		819.7
Less: U.S. Assets		(90.8)
<hr/>		
Total Canadian Assets		729.0
Less:		
Estimated future Toronto Branch administration costs		(9.5)
Unproven Canadian Claims <sup>(1)</sup>		(86.4)
Interest on Unproven Canadian Claims <sup>(2)</sup>		(8.6)
Unknown Potential Claims		(50.0)
Interest on Unknown Potential Claims <sup>(2)</sup>		(5.0)
<hr/>		
<b>Total Reserve</b>		<b>(159.5)</b>
<hr/>		
<b>Total Canadian Funds Available for Distribution</b>		<b>569.5</b>
Add: U.S. Assets		90.8
Less: U.S. Assets Reserved <sup>(3)</sup>		(18.4)
<hr/>		
<b>Total Funds Available for Distribution</b>		<b>641.8</b>

<sup>(1)</sup> The total of all remaining Claims, at their filed amounts.

<sup>(2)</sup> Assumes a March 1, 2018 distribution date.

<sup>(3)</sup> An amount reserved in connection with a Proof of Claim, on mutually agreed terms.

29. The Liquidator is of the view that it is now appropriate for the Liquidator to plan for a future distribution to the GIA, for the following reasons:

- a. The Reserve has been set at a level to protect the interests of the Toronto Branch creditors, at the full amount of the creditor-filed Proofs of Claim, plus an additional contingency for future Claims of \$50 million, plus interest calculated to March 31, 2018 on the aforementioned two reserve amounts, plus the estimated administration costs which would be incurred by the Liquidator and its legal counsel in finally winding-up the Toronto Branch;
- b. The Protocol, has been negotiated by the Liquidator the GIA and Lishman and is acceptable to both Lishman and the GIA;
- c. Aside from the Lishman Claim, there are no other filed contingent claims that have not been adequately provided for by the Liquidator in the Reserve:
- d. There has been satisfactory notice of these proceedings to potential claimants, as well as a prior notice of the Interim Distribution; and
- e. There will be further notice provided to potential Claimants pursuant to the Principal Officers Claims Order and the proposed Notice.

### ***3. UPDATE ON EMPLOYEE CLAIMS***

---

#### **Background**

30. Toronto Branch had 19 employees that can be classified into two groups:
  - i. Five executive and revenue producing employees (the “**Executives**” and their claims, the “**Executive Claims**”); and
  - ii. 14 business support and administrative employees (the “**Non-Executive Employees**” and their claims the “**Non-Executive Employee Claims**”, and together with the Executive Claims, the “**Employee Claims**”).
31. In accordance with the Claims Process, the employees filed claims with the Liquidator on account of the termination of their employment with Toronto Branch pursuant to the Winding-Up Order. The aggregate value of the Employee Claims is approximately \$20.9 million and consist of amounts in respect of the notice period due to terminated employees (i.e. termination notice and severance pay) (the “**Notice Period**”), benefits during the Notice Period, unpaid bonuses, deferred compensation, trailer fees and reimbursements of certain out of pocket amounts (e.g. legal fees, unpaid employment expenses). The Employee Claims were generally calculated by the employees based on Canadian employment “common law” principles applicable to termination payments and all employee claims are all in excess of the statutory minimums that would be due to them under the Canada Labour Code (which is applicable to banks).
32. The Notice Period portion of the Employee Claims as filed consists of a period of notice (generally claimed as one month per year of service with a range of six to 26 months) at the total compensation rate of the employee which includes base salary, annual bonus and annual benefits.
33. The unpaid bonus claims of the employees are generally in respect of bonus amounts accrued by the Toronto Branch in respect of the fiscal year ended September 30, 2015 (“**Fiscal 2015**”) and the period from October 1, 2015 to the Winding-Up Date (the “**Stub Year**”). The Executives’ bonus claims also include



deferred compensation amounts as portions of their annual bonuses have been deferred since 2012.

### **Liquidator Analysis of Employee Claims**

34. The Liquidator reviewed the Employee Claims as filed and, with the assistance of employment counsel, developed an approach to determine the Employee Claims and the amounts that would be admissible. The Liquidator's approach in determining the admissible components of the employee claims is summarized below.
- i. **Notice Period** – Two employees had employment contracts that specified their Notice Period entitlement and those contract provisions were used to determine their Notice Period entitlement. For the remaining employees, the Liquidator provided one month per completed year of service with a minimum of three months and a maximum of 24 months. Compensation for the Notice Period was based on total annual compensation and included base pay, bonus amounts (i.e. three year historical average or based on most recent year) and benefits. ;
  - ii. **Benefits** – The Liquidator calculated the monthly employer portion paid by Toronto Branch for employee benefits (i.e. health and dental, fitness reimbursements, professional designation and education reimbursements and RRSP matching) and multiplied this by the number of months in the Notice Period;
  - iii. **Unpaid Bonuses** – Amounts recorded as declared bonuses payable to Staff in the 2015 records of the Toronto Branch were assessed as admissible. For the 2016 bonus, the Liquidator converted the 2015 bonus to a monthly amount and assessed four months (i.e. October 1, 2015 to January 31, 2016) equivalent as admissible. For Executives that participated in the deferred compensation arrangements, the Liquidator assessed the cash portion of their unpaid 2015 and 2016 bonuses (i.e. any deferred portion was not admitted by the Liquidator) as admissible;

- iv. **Deferred Compensation / Phantom Shares** – Under the 2014 Compensation Plan and the 2012 and 2014 Amending Agreements to the Employment Agreements issued to the Executives, certain Executives deferred a portion of their annual bonus (40%-50%) and received “Phantom Shares” that “vested” such that the deferred portion of the bonus was paid over a three year period. The deferred portion was converted into a number of Phantom Shares of Maple Financial Group Inc. (“**MFGI**”) based on the book value of MFGI. The Phantom Shares behave like equity as recipients are able to benefit from the increase in the book value of MFGI and are also at risk of suffering a total loss if the book value declines to \$0. Thus an Executive could ultimately receive more than the deferred portion of their bonus if, over the three year vesting period, the book value of MFGI increased. Conversely, they could also receive less than their deferred bonus if the book value of MFGI decreased over the vesting period. The equity value of MFGI is \$0 as it filed an Assignment in bankruptcy on August 4, 2016.

The Liquidator’s view is that the Phantom Shares provided both the upside benefit and downside risk associated with an equity instrument and were designed to ensure that holders of Phantom Stock are treated analogously to actual shareholders. The Executives claim that they have protection against the tax issues that have troubled Maple Bank GmbH (and therefore MFGI) as their employment contracts provide mechanisms to adjust the book value of the MFGI shares for the effect of the tax issues (i.e. such liabilities are added back to the book value). The Liquidator is not convinced by this claim and has assessed these claims as inadmissible;

- v. **Trailer Fees** – Certain Executives’s have provisions in their employment agreements for trailer fees to be paid to them if their book of business is liquidated or sold. The trailer fees are calculated based on the value realized on the disposition of their book of business. The Liquidator does not consider the trailer fee claims as admissible.

- vi. **Other Claims** – In addition to the items noted above, certain employees have made claims for vacation pay, legal fees, reputational damage and lost income which the Liquidator has assessed as inadmissible.
- 35. In November, 2016, the Liquidator spoke with the employees to further understand their claims and on November 29, 2016, sent via email the Liquidator’s preliminary assessment of the Employee Claims to the individual employees for their review and consideration. The majority of employees subsequently provided feedback on the preliminary claim assessments as well as additional information to the Liquidator to further support their claims. The Liquidator is considering this feedback and may modify its approach to determining the Employee Claims based on this feedback.
- 36. The Liquidator intends to issue notices of allowance and/or disallowance in accordance with the Claims Procedure following the appointment of Representative Counsel (as defined herein).

**GIA Notice of Objection**

- 37. In accordance with paragraph 8(f) of the Winding-Up Order, the Liquidator sought to consult with the GIA in respect of the Employee Claims and seek approval for the Liquidator’s recommended approach to admit and settle the Employee Claims. On November 28, 2016 and December 7, 2016, the Liquidator provided memorandums to the GIA that set out its recommended approach to the Employee Claims and requested the GIA’s input on the Employee Claims.
- 38. On December 19, 2016, the GIA proposed a meeting with the Liquidator to review the Employee Claims. On December 21, 2016, the Liquidator met with the GIA and reviewed:
  - i. The Employee Claims as filed;
  - ii. The Liquidator’s approach to-date in reviewing and assessing the Employee Claims; and
  - iii. The amounts that the Liquidator recommended be admitted to settle the majority of the Employee Claims.

39. The Liquidator sought the GIA's approval for the Liquidator's recommended approach to assessing and admitting the Employee Claims. The GIA advised that given the cancellation of any bonus compensation imposed by BaFin in Germany, it was unable to approve the acceptance of any Employee Claims that included amounts on account of bonuses.
40. As noted above, the Employee Claims included amounts in respect of bonuses, both in the total compensation used to calculate their Notice Period claim and in respect of unpaid bonus amounts due to them. Based on the advice of its employment counsel, the Liquidator's assessment of the Employee Claims is that amounts in respect of historical bonuses in the employees' total compensation as well as accrued but unpaid bonuses in respect of Fiscal 2015 and the Stub Year are admissible. The Liquidator advised the GIA that it would proceed to issue notices of allowance and/or disallowance to employees early in January 2017 and thereafter proceed to issue payment of any employee claim amounts that were not disputed. The GIA has not advised the Liquidator that it has any opposition to the Liquidator's plan (aside from its inability to approve any bonus inclusion in the Employee Claims given the BaFin restriction noted above) and, as set out below, based on its objection on payment of bonuses.
41. On December 28, 2016, without notice to or consultation with the Liquidator, the GIA issued Notices of Objection (the "**GIA Objection**") pursuant to section 87 of the WURA directly to the employees. The GIA Objection advises that the GIA objects to the claims of the employees "in respect of any amounts attributable to historical, current or future bonuses (variable remuneration or similar components) payable to the Claimant due to, particularly, the cancellation of any such compensation imposed by Bundesanstalt für Finanzdienstleistungsaufsicht (the "German Federal Financial Supervisory Authority" (i.e. BaFin)). A copy of one of the issued GIA Objections (redacted for personal information) is attached hereto at **Appendix D**. Each GIA Objection are in substantially the same form as the GIA Objection attached as Appendix D.

42. The GIA waived the six-day period provided in the WURA for the employees to respond to the GIA Objection until a reasonable time that can be agreed by the GIA and the Liquidator. The Liquidator and the GIA have not yet agreed on a timeframe for the employees to respond to the GIA Objection.

### **Representative Counsel**

43. Each of the Executives have retained experienced employment counsel to assist with the preparation of their claims and negotiation of those claims with the Liquidator. Four Executives are represented by two firms and one Executive has his own counsel. The value of the Executive Claims is materially greater than those of the Non-Executive Employee Claims, both individually and in aggregate. While these differences are due to their positions and rate of pay, their claims also contain complicated components specific to the Executives and in particular in respect of their bonus entitlements (e.g. deferred compensation, trailer fees). Accordingly, it is the Liquidator's view that it is appropriate for these creditors to retain counsel in the circumstances.
44. While certain of the Non-Executive Employees have retained employment counsel to assist with the preparation of their claims and negotiation of those claims with the Liquidator, the majority of these creditors have not retained counsel. The Non-Executive Employee Claims generally consist of the same claim components and the calculation of their claims is generally less complex than the Executive Claims. Accordingly, it is the Liquidator's expectation that in most cases the Non-Executive Employees would not necessarily require counsel to assist with their claims.
45. However, given the filing of the GIA Objection, the Liquidator is of the view that it is appropriate for the employees to be represented and advised by counsel ("**Representative Counsel**") in respect of their claims, and specifically to respond to the GIA Objection. In particular, the un-represented Non-Executive Employees should be advised by employment counsel with insolvency/liquidation experience as to the form and content of their response to the GIA Objection. Further, the

Liquidator is of the view that the present circumstances warrant the appointment of Representative Counsel as:

- i. The Non-Executive Employee Claims are substantially similar that one common counsel can advise them efficiently;
  - ii. The majority of Non-Executive Employees are not currently represented and will require legal representation in order to respond to the GIA Objection; and
  - iii. The GIA Objection is limited to the inclusion of amounts related to historical, current or future bonus payments which issue is common across all Non-Executive Employees (and the Executives as well) and as such, appointing Representative Counsel provides efficiency of information to the Non-Executive Employees as well as to the Court as one counsel will represent the majority of the employees on the GIA Objection.
46. As the Executives are currently represented by experienced employment counsel, the Liquidator is of the view that the Executives should continue to be represented by their existing counsel.
47. The Liquidator has advised the Non-Executive Employees, as well as the Executives, of its support for the retention of Representative Counsel. The Liquidator hosted a meeting of the Toronto Branch employees on January 4, 2017, to: (i) review the GIA Objection; (ii) advise of the Liquidator's intention to seek direction from the Court in respect of the GIA Objection; and (iii) provide the names of experienced law firms that have experience as Representative Counsel in Canadian insolvency cases.
48. The Non-Executive Employees appointed a stewardship group to interview Representative Counsel candidates. The Non-Executive Employees met on January 11, 2017, at the Liquidator's office to consider the stewardship group's recommendation and determine which Representative Counsel to retain (such retention and the fees to be subject to the approval of the Court).

49. The Non-Executive Employees seek to retain Paliare Roland Rosenberg Rothstein LLP (“**Paliare Roland**”) as Representative Counsel to (i) respond to and settle the GIA Objection, and (ii) to take instructions from the representatives of the Non-Executive Employees to act on behalf of all or any of the Non-Executive Employees with respect to the interests of the Non-Executive Employees in these proceedings or in any proceedings incidental to these proceedings. The Liquidator is supportive of the retention of Representative Counsel and recommends that the Court approve the appointment of Paliare Roland as Representative Counsel. The Liquidator further recommends that the activities and fees of Representative Counsel be subject to review and approval by the Court.

#### ***4. RESOLVING THE GIA OBJECTION***

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50. The GIA Objection is based on the cancellation of bonus compensation imposed by BaFin on Maple Bank GmbH. The Toronto Branch employees' claims as filed, and assessed, on a preliminary basis, by the Liquidator are based on their termination entitlements under Canadian employment law.
51. The Liquidator understands that the Toronto Branch employees' response to the GIA Objection will include, *inter alia*, an argument that the termination claims of Canadian domiciled employees of a Canadian branch of an authorized foreign bank in Canada under section 2 and Part XII.1 of the *Bank Act* should be calculated in accordance with Canadian employment law.
52. The Liquidator is of the view that the Court is the appropriate forum to adjudicate the GIA Objection as the amounts at issue are material, both individually to the employees and in aggregate. In addition, resolution of the GIA Objection will likely require a determination of the jurisdiction of BaFin and German Insolvency Law, which determination can only be made by the Court.
53. Accordingly, the Liquidator is seeking the Court's direction as to how the GIA Objection should be adjudicated.



## ***5. RESOLVING THE EMPLOYEE CLAIMS***

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54. As noted above, the Liquidator has assessed certain components of the Employee Claims as inadmissible and such components relate primarily to the Executive Claims. These components are material individually and in aggregate.
55. The Liquidator anticipates, particularly given the materiality of the components of these claims, that their disallowance will be appealed in accordance with the Claims Process. Notwithstanding that the Claims Process provides for creditors to appeal their claims to a Claims Officer, the Liquidator is of the view that it is appropriate to revise the Claims Process such that employee creditors can appeal disallowances of their claims directly to the Court. This will improve the efficiency of the Claims Process as the Liquidator anticipates that given the materiality of the disallowances that are likely to be issued, the decision of a Claims Officer will likely be appealed by either the Liquidator or employee creditors.

## ***6. LIQUIDATOR'S RECOMMENDATIONS***

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56. The Liquidator submits this Tenth Report to the Court in support of the Liquidator's Motion for the Further Relief as set out in the Notice of Motion dated January 25, 2017 and recommends that the Court:
- i. Grant an Order (the "**Principal Officers Additional Claims and Protocol Approval Order**"):
    - a. Setting February 28, 2017 as the Principal Officers Claims Bar Date (as defined in the Principal Officers Additional Claims and Protocol Approval Order) for any Claim against any individual who is or has been a Principal Officer (as defined in the *Bank Act*) of the Toronto Branch 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. 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;
    - b. 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;
    - c. Approving the Protocol to Address Reserves Re: Lishman (the "**Protocol**"), substantially in the form of the Protocol attached as

Schedule "B" to the Principal Officers Additional Claims and Protocol Approval Order; and

d. Approving the Tenth Report and the activities of the Liquidator set out in the Tenth Report.

ii. Grant an Order (the "**Representative Counsel Order**"):

a. Appointing Graham Dyke, Linda Lai, Mary-Ann Noronha and Sofia Petrossian as representatives of certain former Canadian employees of Maple Bank identified in Schedule A of the Representative Counsel Order; and

b. Appointing Paliare Roland Rosenberg Rothstein LLP as representative counsel.

i.

All of which is respectfully submitted at Toronto, Ontario this 25<sup>th</sup> day of January, 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 A

Court File No. CV-16-11290-0001

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE REGIONAL )  
SENIOR JUSTICE MORAWETZ )  
)

TUESDAY, THE 16<sup>TH</sup>  
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

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**WINDING-UP ORDER**

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**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 A 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. C-16-11290-0006

**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

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

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**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](mailto: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  
333 Bay Street, Suite 4600  
Toronto, ON M5H 2S5, Canada

Attention: Phillip J. Reynolds: [pjreynolds@kpmg.ca](mailto:pjreynolds@kpmg.ca)  
Fax: (416) 777-3364  
Phone: (416) 777-8415

TAB C



## 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.

TAB D

# STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9  
Tel: (416) 869-5500 Fax: (416) 947-0866 www.stikeman.com

Haddon Murray  
Direct: (416) 869-5239  
E-mail: hmurray@stikeman.com

**BY REGISTERED MAIL**

December 28, 2016

[REDACTED]  
[REDACTED]  
[REDACTED]

Attention: Cyrus Sukhia

Dear Sir or Madame:

**Re: Proof of claim relating to Maple Bank GmbH, Toronto  
Branch**

We act for Michael C. Frege in his capacity as the German Insolvency Administrator of Maple Bank GmbH (the "German Insolvency Administrator") in the insolvency proceedings involving Maple Bank GmbH.

Please find enclosed the Notice of Objection of the German Insolvency Administrator relating to your proof of claim in the in the Maple Bank proceedings commenced under the *Winding-up and Restructuring Act* ("WURA"), court file no. CV-16-11290-00CL (the "Maple Bank Proceedings").

Pursuant to subsection 88(2) of the WURA you are entitled to respond to the attached Notice of Objection within six (6) days. Please be advised that our client waives the above noted six day period and any response may be delivered in a reasonable time period to be agreed to by the Insolvency Administrator and KPMG Inc., in its capacity as court-appointed liquidator of Maple Bank GmbH, (Toronto Branch).

Yours truly,



Haddon Murray

HM/  
Encls.

cc: Sven Dedic, *KPMG Inc.*  
Alex MacFarlane, *Borden Ladner Gervais LLP*  
Maria Konyukhova, *Stikeman Elliott LLP*

TORONTO  
MONTREAL  
OTTAWA  
CALGARY  
VANCOUVER  
NEW YORK  
LONDON  
SYDNEY

**NOTICE OF OBJECTION RELATING TO  
MAPLE BANK GmbH, TORONTO BRANCH  
(also known as Maple Bank - Toronto Branch)**

**RE:** Proof of Claim of Cyrus Sukhia (the "Proof of Claim")

**TO:** Cyrus Sukhia  
[REDACTED]  
(the "Claimant")

**AND TO:** **KPMG Inc.** in its capacity as Court-appointed Liquidator of Maple Bank GmbH, (Toronto Branch) (the "**Liquidator**")  
Bay Adelaide Centre  
333 Bay Street, Suite 4600  
Toronto, ON M5H 2S5  
Canada

Attention: Sven Dedic: sdedic@kpmg.ca  
Fax: (416) 777-3364  
Phone: (416) 777-3091

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

Alex MacFarlane  
Tel: 416.367.6305  
Email: amacfarlane@blg.com

Douglas O. Smith (LSUC No. 36915R)  
Tel: 416.367.6015  
Email: dsmith@blg.com

Rachael Belanger (LSUC No. 67674B)  
Tel: 416.367.6485  
Email: rbelanger@blg.com  
Counsel to the Liquidator

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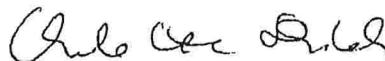
Capitalized terms used but not defined herein have the meanings given to them in the Proof of Claim.



In accordance with section 87 of the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended, you are hereby notified that Maple Bank GmbH or the German court appointed Insolvency Administrator of Maple Bank GmbH (the "German Insolvency Administrator"), objects to the claim of the Claimant in respect of any amounts attributable to historical, current or future bonuses (variable remuneration or similar components) payable to the Claimant due to, particularly, the cancellation of any such compensation imposed by the Bundesanstalt für Finanzdienstleistungsaufsicht (the German Federal Financial Supervisory Authority).

DATED as of the 28<sup>th</sup> day of December, 2016.

Maple Bank GmbH, acting through the  
German court appointed Insolvency  
Administrator of Maple Bank GmbH (Dr M.  
Frege, acting through Dr. Charlotte Schildt as  
attorney)



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Dr. Charlotte Schildt

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

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

PROCEEDINGS COMMENCED AT TORONTO

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**MOTION RECORD**  
(Returnable January 27, 2016)

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

**Alex MacFarlane (LSUC No. 28133Q)**  
Tel: 416.367.6305  
[amacfarlane@blg.com](mailto:amacfarlane@blg.com)

**Douglas O. Smith (LSUC No. 36915R)**  
Tel: 416.367.6015  
[dsmith@blg.com](mailto:dsmith@blg.com)

**Rachael Belanger (LSUC No. 67674B)**  
Tel: 416.367.6485  
[rbelanger@blg.com](mailto:rbelanger@blg.com)

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