

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 such other parties as may be in attendance,

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

#### **PRINCIPAL OFFICERS CLAIMS BAR DATE**

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

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

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

#### **GENERAL**

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

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

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

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

  
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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