

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

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

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1. INTRODUCTION AND PURPOSE OF 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 (said to arise from alleged tax evasion in Germany) 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**”);
 - 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 Toronto Branch. On February 16, 2016 (the “**Liquidation 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 the Toronto Branch as defined in section 618 of the *Bank Act* (the “**Assets**”). Attached as Appendix “A” to this report is a copy of the Winding-Up Order.
5. On March 2, 2016, the Liquidator filed its First Report which, among other things, outlined the protocol that was agreed to between the Liquidator and the GIA regarding the existing Chapter 15 filing under the *United States Bankruptcy Code* made by the GIA with regard to Maple Bank’s non-Toronto Branch assets in the U.S. and the assets of the Toronto Branch which reside in the U.S.
6. On March 30, 2016, the Liquidator filed its Second Report 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 for use in these proceedings, including the appointment of a Claims Officer; (iv) the proposed appointment of Independent Cost Counsel 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 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 sales 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 closing of these three sales transactions certain unsold Receivable Backed Notes remained in the possession of the Toronto Branch estate (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.

TERMS OF REFERENCE AND DISCLAIMER

11. 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.

12. 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.
13. Capitalized terms not defined in this seventh report to the Court (the “**Seventh Report**”) are as defined in either the Winding-Up Order, the First Report, the Second Report, the Third Report, the Fourth Report, the Fifth Report, and/or the Sixth Report. Unless otherwise indicated, all references to monetary amounts herein are denominated in Canadian dollars (“**CAD**”).
14. Copies of the Liquidator’s Court reports and all motion records and Orders in these proceedings are available on the Liquidator’s website at <http://www.kpmg.com/ca/maplebank>.

PURPOSE OF THE LIQUIDATOR’S SEVENTH REPORT

15. The purpose of the Seventh Report is to provide information to this Court in respect of:
 - i. The proposed sale by the Liquidator of the Residual Receivable Backed Notes to KEB. The Liquidator is seeking, pursuant to Section 7(f)(b) of the Winding-Up Order, the Court’s approval of this sale transaction and the granting of a vesting order to effect the same, and
 - ii. The activities of the Liquidator in respect of the marketing of the Residual Receivable Backed Notes.

2. RECEIVABLE BACKED NOTES PORTFOLIO

16. As described in the Second Report, as at the Liquidation Date, the Toronto Branch's assets included approximately \$223.3 million (face value) of structured loans associated with the IIP.
17. The IIP was created by the Canadian and Quebec governments to attract successful business immigrants to Canada. In order to qualify, an individual selected under the IIP (the "**Immigrant Investor**") must *inter alia* have a net worth of at least \$1.6 million and invest \$400,000 to \$800,000 with either CIC or IQII, for a period of 5 years at 0% interest. In exchange, the Immigrant Investor would receive, as applicable, a promissory note from CIC (a "**Federal Promissory Note**") or IQII (a "**Quebec Promissory Note**") for the amount of his/her investment, the payment of which is guaranteed by the government of Canada (provincially allocated) or the government of Quebec, respectively. The IIP offered through CIC was cancelled in June, 2014.
18. A number of financial institutions are in the business of providing loans ("**Immigrant Investor Loans**", each an "**Immigrant Investor Loan**") to Immigrant Investors to fund their investment with CIC or IQII. Each Immigrant Investor Loan is secured by a Federal Promissory Note or Quebec Promissory Note, as the case may be, issued to an Immigrant Investor. The Toronto Branch in turn provided financing to certain of these financial institutions (the "**RBN Financing**") to fund their Immigrant Investor Loans. The RBN Financing was provided by the Toronto Branch through the purchase of a Receivable Backed Note issued by the financial institution (a "**RBN Issuer**") for each Immigrant Investor Loan made by it. Each Receivable Backed Note was secured by the assignment or hypothecation of the Immigrant Investor Loan funded by the RBN Issuer from the proceeds of such Receivable Backed Note (together with the applicable Federal Promissory Note or Quebec Promissory Note which secured such Immigrant Investor Loan). Pursuant to each Receivable Backed Note transaction, the Toronto Branch received a Receivable Backed Note from the RBN Issuer and took physical possession of the Federal Promissory Note/Quebec Promissory Note securing the related Immigrant Investor Loan. The funds received from CIC/IQII upon the maturity of the Federal

Promissory Note/Quebec Promissory Note have been directed to be paid directly to the Toronto Branch to repay the applicable Receivable Backed Note.

19. The Toronto Branch, as at the date of the Fifth Report, had 415 Receivable Backed Notes having an aggregate face value of \$222.8 million, which were issued by KEB (or its predecessor), CTI Capital Securities Inc., or PWM Financial Trust/PWM Capital. On July 27, 2016 the Court approved the sale of certain Receivable Backed Notes to ICICI Bank Canada (“**ICICI**”), Canadian Imperial Bank of Commerce (“**CIBC**”) and KEB (the “**July RBN Approval and Vesting Order**”). The July RBN Approval and Vesting Order is attached as Appendix “**B**” to this report. The aggregate amount of notes sold and closing dates in connection with each of these three sales was as follows:

Purchaser	Face value of notes purchased	Closing Date
KEB	\$34.8 million	August 11, 2016
ICICI	\$49.6 million	August 12, 2016
CIBC	\$122.8 million	August 9, 2016

20. After completing the sales to KEB, ICICI and CIBC, the Toronto Branch was left with the Residual Receivable Backed Notes, being more specifically 35 Receivable Backed Notes having an aggregate face value of \$15.6 million which were issued by KEB (or its predecessor) and were indirectly secured by Federal Promissory Notes.

3. *MARKETING PROCESS ASSOCIATED WITH RECEIVABLE BACKED NOTES*

21. On April 5, 2016, the Court approved the Marketing Process, pursuant to which the Liquidator was given the specific power to conduct a sales process for all or substantially all of the Assets of Maple Bank, including *inter alia* the Receivable Backed Notes (the “**Marketing Process Order**”). Attached as Appendix “C” to this report is a copy of the Marketing Process Order.
22. The Liquidator commenced the Marketing Process on April 13, 2016, with Phase 1 consisting of a request for non-binding letters of intent (“**LOIs**”) to purchase the Receivable Backed Notes, the deadline for submissions being May 6, 2016 (the “**Phase 1 Submission Deadline**”). A total of 129 parties were contacted by the Liquidator, six of whom subsequently executed confidentiality agreements. A virtual data room was created by the Liquidator, which provided details of the Receivable Backed Notes available for purchase, along with an overview of the financing structure associated with the notes. All parties who signed a confidentiality agreement were given access to the data room.
23. Two LOIs were received by the Phase 1 Submission Deadline, which LOIs covered less than half of the total available Receivable Backed Notes. Two other parties, who had entered the process when it was fairly advanced from a time perspective, advised the Liquidator that they did not have enough time to submit an LOI.
24. The Liquidator decided, after consultation with the GIA, that both parties who had submitted LOIs would be allowed to progress to Phase 2 of the Marketing Process. It was also decided that the two parties who had advised the Liquidator that they did not have enough time in Phase 1 to submit an LOI would be given the opportunity to progress to Phase 2 but only in relation to those Receivable Backed Notes that were not subject to a LOI (the “**Remaining Notes**”).
25. Phase 2 of the Marketing Process, which commenced on May 19, 2016 in the case of KEB and ICICI and May 25, 2016 in the case of CIBC, contemplated that prospective

purchasers would perform detailed due diligence on the various Receivable Backed Notes, Immigrant Investor Loans, the Federal Promissory Notes, the Quebec Promissory Notes, and the note issuance, loan and security agreements entered into in connection with the Immigrant Investor Loans and the Receivable Backed Notes, with a binding agreement of purchase and sale (“PSA”) to be submitted by June 17, 2016 (the “**Phase 2 Submission Date**”). The virtual data room was updated to include the documentation associated with each Immigrant Investor Loan, and a copy of each Receivable Backed Note Issuance Agreement pursuant to which Receivable Backed Notes were issued to the Toronto Branch (the “**RBN Issuance Agreements**”) (together with any security agreements or hypothecs granted by the RBN Issuer in connection therewith). Prospective purchasers were only given access to that data which was associated with the Receivable Backed Notes for which they had submitted an LOI or the Remaining Notes, as applicable. The Liquidator also responded to prospective purchasers’ queries and information requests.

26. A total of three PSAs were submitted by the Phase 2 Submission Date, which had been extended to June 29, 2016, as a result of the desire of the Liquidator to coordinate the release of the template PSA for the Receivable Backed Notes with the release of the template PSA for the Maple Owned Mortgage Assets. The Liquidator subsequently determined, in consultation with the GIA, to accept these PSAs and thereafter worked with the parties to finalize the same. On July 21, 2016 the Liquidator entered into PSAs with KEB (the “**KEB Sale Agreement**”), and ICICI (the “**ICICI Sale Agreement**”), while the PSA with CIBC was entered into on July 22, 2016. As discussed previously, these transactions were subsequently approved by the Court and closed.
27. In terms of the marketing of the Residual Receivable Backed Notes, as outlined in the Liquidator’s Fifth Report, the Liquidator sought to sell these notes through targeted approaches to potential purchasers. The Liquidator subsequently approached both KEB and ICICI to solicit their interest in purchasing the residual notes, with both parties expressing an interest in doing so (CIBC was not approached as they had previously indicated to the Liquidator that they were only interested in acquiring Receivable Backed Notes indirectly secured by Quebec Promissory Notes). The parties were

subsequently offered the opportunity to perform detailed due diligence on the Residual Receivable Backed Notes.

28. On September 8, 2016 the Liquidator requested that KEB and ICICI submit a formal offer for the Residual Receivable Backed Notes by way of a PSA by no later than 12:00 PM September 15, 2016. Both KEB and ICICI submitted PSAs by the deadline, each of which contemplated the purchase of all of the Residual Receivable Backed Notes. Each of the PSAs contained the same terms and conditions as the KEB Sale Agreement and ICICI Sale Agreement that the Liquidator previously entered into and closed with KEB and ICICI, respectively. The Liquidator subsequently determined, in consultation with the GIA, to accept the PSA with KEB as its purchase price was higher than that offered by ICICI and the closing risk associated with a transaction with either purchaser was viewed as substantially the same (but in any event not significant). On October 5, 2016, the Liquidator entered into a PSA with KEB (the “**KEB Residual Note Sale Agreement**”), a redacted copy of which is attached as Appendix “D” to this report.

4. SALE OF RESIDUAL RECEIVABLE BACKED NOTES

29. The basic structure of the KEB Residual Notes Agreement is the same as the KEB Sale Agreement, the major aspects being as follows:

- The purchased assets include the Residual Receivable Backed Notes, all of Maple Bank's rights under the Receivable Backed Notes Issuance Agreements, as defined in the KEB Residual Notes Agreement including all security interests, charges and guarantees created thereunder, and books and records associated with the Residual Receivable Backed Notes;
- The sale is on an "as is, where is" basis, with no representations or warranties by either the Liquidator or Maple Bank that survive closing;
- The closing date is the first business day after all of the conditions precedent, as enumerated in the KEB Residual Notes Agreement, have been satisfied or waived (the "**Closing Date**"); and
- The purchaser's deposit will be forfeited if the Liquidator is in a position to close, with all conditions precedent having been met, and the purchaser fails to close by the Closing Date. The conditions precedent to closing include the following:
 - i. The GIA having consented to the transaction and the Approval and Vesting Order;
 - ii. The Court granting the Approval and Vesting Order;
 - iii. CIC providing an acknowledgement and consent that the Federal Promissory Notes that are associated with the Residual Receivable Backed Notes being purchased are outstanding as at the Closing Date and that payment by CIC on the maturity of the promissory notes will be made to the purchaser.

- There is an outside date by which the transaction under the KEB Residual Notes Agreement must have closed failing which, in the absence of an agreement to extend by the parties, the agreement is terminated and, provided the purchaser is not in default, the deposit is returned to the purchaser. This date has been redacted from the KEB Residual Notes Agreement attached to this report but is disclosed in the un-redacted version attached to the Confidential Supplement to the Seventh Report (the “**Confidential Report**”).
30. Other details redacted from the KEB Residual Notes Agreement attached to this report are as follows:
- The purchase price;
 - The amount of the Deposit;
 - The termination provisions of the agreement; and
 - Schedule 1 to the agreement.

These details are disclosed in the un-redacted version of the agreement attached to the Confidential Report.

31. The Liquidator has considered whether withholding taxes need to be deducted from the sales proceeds for the Residual Receivable Backed Notes and remitted to Canada Revenue Agency given that the Toronto Branch is a non-resident for tax purposes. Based on advice received from the Liquidator’s legal counsel that there is an exemption with respect to the Residual Receivable Backed Notes, the Liquidator has concluded that withholding taxes are not applicable to the above referenced sale transaction.
32. The Liquidator has consulted with the GIA regarding the proposed transaction. The Liquidator has been advised that the GIA is in agreement with the proposed transaction from a commercial perspective.
33. In conclusion, the Liquidator is of the view that, in conjunction with its activities pursuant to the Court approved Marketing Process regarding the Receivable Backed

Notes, it has conducted a transparent, fair, robust and thorough marketing of the Residual Receivable Backed Notes and all participants were treated in a fair and even handed manner. The Liquidator recommends that the Court approve the KEB Residual Notes Sale Agreement, and grant a vesting order to effect the transaction. The Liquidator further recommends that, given the commercially sensitive information contained in the Confidential Report, the Court grants an order sealing the Confidential Report until the earlier of the closing of the transaction and further order of this Court.

5. RECOMMENDATIONS OF THE LIQUIDATOR

34. The Liquidator submits this Seventh Report to the Court in support of the Liquidator's Motion for the relief as set out in the Notice of Motion dated October 6, 2016 and recommends that the Court grant an order approving:

- (a) The KEB Residual Notes Sale Agreement; and
- (b) The sealing of the Confidential Report until the earlier of the closing of all of the transactions and further order of this Court.

The Liquidator also recommends that the Court grant a vesting order to effect the above transaction.

All of which is respectfully submitted at Toronto, Ontario this 6th day of October, 2016.

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

Per:



Nicholas Brearton
President

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