

Court File No.

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

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**APPLICATION RECORD**

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TO: Maple Bank GmbH, Toronto Branch  
79 Wellington Street West  
Suite 3500, P.O. Box 328  
Toronto, Ontario M5K 1K7  
Attention: Mr. Paul Lishman  
PLishman@maplefinancial.com

AND TO: Dr. Michael C. Frege,  
Insolvency Administrator of Maple Bank GmbH  
CMS Hasche Sigle  
Neue Mainzer Straße 2-4  
60311 Frankfurt, Germany  
Michael.Frege@cms-hs.com

AND TO: Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Attn: Maria Konyukhova and Peter Hamilton  
mkonyukhova@stikeman.com and phamilton@stikeman.com

AND TO: 100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8  
Attn: Stephen D.A. Clark and Victoria Graham  
sclark@osler.com and vgraham@osler.com

AND TO: KMPG Inc.  
333 Bay Street, Suite 4600  
Toronto, ON M5H 2S5  
Attn: Phillip J. Reynolds, KMPG Inc.  
preynolds@kpmg.ca

AND TO: Gowling Lafleur Henderson LLP  
1 First Canadian Place  
100 King Street West  
Suite 1600  
Toronto, Ontario  
Canada M5X 1G5  
Attn: Alex MacFarlane  
alex.macfarlane@gowlings.com

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3. Draft Order

# TAB 1

Court File No.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
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IN THE MATTER OF MAPLE BANK GmbH

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**NOTICE OF APPLICATION**

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TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will be made to a judge presiding over the Commercial List at 330 University Avenue, Toronto and will come on for a hearing on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 2016 at 330 University Avenue, Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant lawyer or, where the applicant do not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: \_\_\_\_\_ 2016

Issued by: \_\_\_\_\_  
Local Registrar

Address of court office:  
360 University Avenue, 7th Floor,  
Toronto M5G 1R7

TO: Maple Bank GmbH, Toronto Branch  
79 Wellington Street West  
Suite 3500, P.O. Box 328  
Toronto, Ontario M5K 1K7  
Attention: Mr. Paul Lishman  
PLishman@maplefinancial.com

AND TO: Dr. Michael C. Frege,  
Insolvency Administrator of Maple Bank GmbH  
CMS Hasche Sigle  
Neue Mainzer Straße 2–4  
60311 Frankfurt, Germany  
Michael.Frege@cms-hs.com

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Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8  
Attn: Stephen D.A. Clark and Victoria Graham  
sclark@osler.com and vgraham@osler.com

AND TO: KMPG Inc.  
333 Bay Street, Suite 4600  
Toronto, ON M5H 2S5  
Attn: Phillip J. Reynolds, KMPG Inc.  
preynolds@kpmg.ca

AND TO: Gowling Lafleur Henderson LLP  
1 First Canadian Place  
100 King Street West  
Suite 1600  
Toronto, Ontario  
Canada M5X 1G5  
Attn: Alex MacFarlane  
alex.macfarlane@gowlings.com



**THE APPLICANT MAKES APPLICATION FOR:**

1. A winding up order under section 10.1 of the Winding- up and Restructuring Act, R.S.C., 1985, c. W-11, as amended (the "*WURA*") for the winding up of the business in Canada of the respondent Maple Bank, GmbH ("Maple Bank") and for the liquidation of its assets as defined in section 618 of the *Bank Act*, S.C. 1991, c.46, as amended ("*Bank Act*");
2. an order appointing KPMG Inc. (KPMG) as liquidator of the estate and effects of Maple Bank or, alternatively, provisionally appointing KPMG as liquidator under section 28 of the *WURA* and provisionally granting KPMG all of the powers of a liquidator pending further order of the Court, and providing directions under section 28 of the *WURA* regarding the manner, form and length of notice to be given in respect of the proposed final appointment of KPMG as liquidator;
3. An order restraining further proceedings, in any action, suit or proceeding against Maple Bank, pursuant to Section 17 of the *WURA*;
4. An order that the time for service of the Notice of Application and the Application Record is hereby abridged and validated, including without limitation pursuant to section 12(2) of *WURA*, 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*; and
5. Such further and other relief as the Court may deem just.

**THE GROUNDS FOR THE APPLICATION ARE:**

1. Maple Bank is a German bank, regulated by the Federal Financial Supervisory Authority ("BaFin") in Germany.
2. In February 2001, Maple Bank received permission from the Secretary of State (International Financial Institutions) to establish a branch to carry on business in Canada as an Authorized Foreign Bank under Part XII.1 of the *Bank Act*. In April, 2001, Maple

Bank received authorization to commence and carry on business as an Authorized Foreign Bank through an order of the Office of the Superintendent of Financial Institutions (the “Superintendent”).

3. Maple Bank’s primary business activities in Canada are the securitization of mortgage receivables, fixed income trading, structured finance and securities finance.

### **Events Leading to the Superintendent Taking Control of the Assets of Maple Bank**

4. In September 2015, German authorities commenced an investigation of Maple Bank for alleged tax evasion. As a result, Maple Bank was placed on OSFI’s Watch List in December 2015.
5. On February 6, 2016, BaFin placed a moratorium on Maple Bank’s business activities, including its operations in Canada (the “Moratorium”), on the basis of the potential over-indebtedness of Maple Bank’s balance sheet, taking into consideration German tax liabilities. The Moratorium restricted Maple Bank from all business activities without prior approval from BaFin, with certain limited exceptions.
6. On February 8, 2016, Maple Bank advised BaFin of its impending insolvency and gave its consent to BaFin to initiate liquidation proceedings in respect of Maple Bank in Germany. BaFin subsequently commenced insolvency proceedings in Germany in respect of Maple Bank February 10, 2016.
7. Following the imposition of the Moratorium, the Superintendent was advised by Maple Bank that Maple Bank’s operations were severely constrained by the Moratorium, which had led to a number of defaults in relation to Maple Bank’s business in Canada. Also following the imposition of the Moratorium, numerous financial institutions delivered default notices to Maple Bank and terminated their agreements with Maple Bank as a result of the Moratorium

### **The Superintendent Takes Temporary Control of Assets Under Subsection 619(1)(a) of the Bank Act**

8. On February 10, 2016, the Superintendent, having formed the opinion that Maple Bank

will not be able to pay its liabilities as they become due and payable generally as well as in respect to Maple Bank's business in Canada and that a state of affairs exist in respect of Maple Bank that may be materially prejudicial to the interests of Maple Bank's depositors and creditors in respect of its business in Canada, took control of the assets in respect of the business in Canada and the assets in Canada of Maple Bank for a period not exceeding sixteen days pursuant to s. 619(1)(a) of the *Bank Act*, on the basis of the grounds set out in paragraphs 619(2)(a) and (g) of the *Bank Act*. On that same day, pursuant to s. 621 of the *Bank Act*, the Superintendent requested that the Attorney General of Canada initiate proceedings under the *WURA* in respect of Maple Bank.

9. On February 11, 2016, the German court had initiated insolvency proceedings in respect of Maple Bank, and that the German court had appointed an insolvency administrator and assigned to the insolvency administrator the right of disposal of current and future assets of Maple Bank.

#### **The Superintendent Continues Control of Assets Under Subsection 619(1)(b) of the Bank Act**

10. In light of these developments, and taking into consideration the relevant facts related to this matter, including the Moratorium, Maple Bank's insolvency declaration and the appointment of the insolvency administrator in Germany, the Superintendent decided that grounds existed under subsection 619(2) of the *Bank Act* for continuing control of Maple Bank's assets (as defined in section 618 of the *Bank Act*) under subsection 619(1)(a), (b), and (g) of the *Bank Act*, and to request, pursuant to section 621 of the *Bank Act*, that the Attorney General of Canada apply to the Ontario Superior Court of Justice for a winding-up order in respect of Maple Bank's business in Canada under section 10.1 of the *WURA*.
11. On February, 12, 2016, the Superintendent appointed KPMG as its representative, pursuant to subsection 619(5) of the *Bank Act*, to assist in relation to the Superintendent's control of Maple Bank's assets in Canada and in respect of its business in Canada.

## **A Winding-up Order is Urgently Required**

12. A winding up order and appointment of a liquidator are urgently needed in order to protect the integrity, fairness and efficacy of the required winding up and liquidation of Maple Bank's business in Canada in accordance with Canadian law and particularly having regard to the interests of claimants related to the business in Canada. The circumstances of this case which rise to this need include:
  - a) The admitted insolvency of Maple Bank;
  - b) The cessation of business imposed by the BaFin in the Moratorium, and the subsequent appointment of a German Insolvency Administrator;
  - c) The actions already taken by various financial institutions;
  - d) The potential for further actions by individual claimants or third parties that may prejudice a fair and effective liquidation process; and
  - e) The inadequacy in this context of measures short of a winding up order and appointment of a liquidator to deal effectively with the rapidly deteriorating conditions;
13. KPMG , having been previously appointed by the Superintendent to assist it in the control of the assets of Maple Bank, has indicated its willingness to be the court appointed liquidator in relation to proceedings under the Winding-Up and Restructuring Act in respect of the business in Canada of Maple Bank;

### **THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:**

1. The Affidavit of Paul Lavery, sworn February 15, 2016.
2. The Consent of KPMG dated sworn February 15, 2016.
3. Such other materials as counsel may advise and this Honourable Court permit.

**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

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.

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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**NOTICE OF APPLICATION**

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**John J. Lucki**

Department of Justice  
Ontario Regional Office The Exchange Tower  
130 King Street West  
Suite 3400, Box 36  
Toronto, Ontario  
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Law Society No.

Solicitor for the Applicant  
The Attorney General of Canada

## **TAB 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

**IN THE MATTER OF MAPLE BANK GMBH**

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

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

**BETWEEN:**

**THE ATTORNEY GENERAL OF CANADA**

Applicant

and

**MAPLE BANK GMBH**

Respondent

**AFFIDAVIT OF PAUL LAVERTY  
(Sworn February 15, 2016)**

I, PAUL LAVERTY, of the City of Toronto, MAKE OATH AND SAY:

1. I am a Director, in the Deposit-Taking Group (Toronto) of the Office of the Superintendent of Financial Institutions ("OSFI"), a position that I have occupied since June, 2013. I have been employed by OSFI since 2006, holding the positions of Manager (Credit Risk Department) and Senior Credit Risk Specialist previous to my current position. In my capacity, I oversee the supervision of Maple Bank GmbH ("Maple



Bank”), and as such, I have knowledge of the matters hereinafter deposed to, except where indicated to be based on information and belief.

### **History of Maple Bank in Canada**

2. Maple Bank is a German bank, regulated by the Federal Financial Supervisory Authority (“BaFin”) in Germany. Maple Bank is also an authorized foreign bank under the Bank Act, having been permitted in 2001, as further outlined below, to establish a branch in Canada to carry on business in Canada, and is therefore regulated, with respect to its business in Canada, by OSFI.
3. Attached at Exhibit “A” is a copy of an organizational chart relating to Maple Bank and related companies reproduced from the official webpage of Maple Financial Group (“MFG”). As appears therefrom, Maple Bank is shown to be indirectly wholly-owned by MFG, a privately held, global financial organization based in Canada. MFG describes itself as providing banking, securities and financial services to financial institutions, corporations and individuals worldwide. In addition to Maple Bank, which has a branch in Canada and a service office in the Netherlands, MFG includes subsidiaries that operate as broker-dealers in Canada, the U.K and the U.S.
4. I understand from interim management-prepared financial statements that at September 30, 2015, Maple Bank reported Tier 1 and Total Capital Ratios of 27.1 per cent and 29.4 per cent, respectively. At that same date it reported total assets of approximately €6.5 billion and €297 million of regulatory capital.
5. Maple Bank was authorized by the Superintendent of Financial Institutions (the “Superintendent”) to commence and carry on business in Canada as an authorized foreign bank on April 30, 2001. A copy of the order made in that regard by the Superintendent, referred to as an Order to Commence and Carry on Business, is attached as Exhibit “B”). Maple Bank had previously obtained permission from the Secretary of State (International Financial Institutions) on February 27, 2001 to establish a branch in Canada as an authorized foreign bank under Part XII.1 of the *Bank Act*. As a consequence of the foregoing, Maple Bank’s business in Canada is regulated by the

Superintendent.

6. Maple Bank's primary business activities in Canada are the securitization of mortgage receivables, fixed income trading, structured finance and securities finance.
7. Under the terms of the order of the Superintendent referred to in paragraph 5 above, Maple Bank is not authorized to accept deposits from Canadian sources, but was not prohibited from accepting wholesale deposits from foreign institutional investors. It currently holds about \$700 million CAD in wholesale deposits. I understand that these deposits are protected under the *German Deposit Guarantee Act* up to €100,000 per depositor. I further understand that Maple Bank is also a member of the Deposit Protection Fund of the Association of German Banks, which generally provides further protection to eligible deposits up to a limit of 20% of the bank's capital per depositor.
8. According to Maple Bank's management-prepared financial statements, Maple Bank had a mortgage securitization business. It's my understanding that this business was structured as follows. Maple Bank Toronto purchased mortgages from a handful of non-traditional lenders. These Lenders would take funded mortgages, package them up, sell them to Maple Bank and then Maple Bank (as a Canada Mortgage and Housing Corporation ("CMHC") approved issuer) would issue *National Housing Act (Canada) Mortgage-Backed Securities ("MBS")* and/or sell these pooled mortgages into the Canada Mortgage Bond program. In addition to the above, Maple Bank provided warehouse facilities (i.e., short-term capital to fund mortgages until they were sold to investors).
9. At December 31, 2015, Maple Bank's Canadian branch reported total assets and total liabilities of CAD \$5.4 billion. The latter included \$563 million of wholesale deposits. At December 31, 2015, Maple Bank had unencumbered assets on deposit with a Canadian financial institution totalling approximately \$469 million.

#### **Events Leading to the Superintendent Taking Control of the Assets of Maple Bank**

10. I understand from my involvement in this matter that in September 2015, German authorities commenced an investigation of Maple Bank for alleged tax evasion. As a result, Maple Bank was placed on OSFI's Watch List in December 2015. It is OSFI's

understanding that the German authorities recently turned down a settlement offer from Maple Bank in relation to its taxes owing.

11. On February 6, 2016, BaFin placed a moratorium on Maple Bank's business activities, including its operations in Canada (the "Moratorium"), on the basis of the potential over-indebtedness of Maple Bank's balance sheet, taking into consideration German tax liabilities. I understand that, other than certain limited exceptions, the Moratorium restricted Maple Bank from all business activities without prior approval from BaFin. Attached as Exhibit "C" is a copy of an email from the principal officer of Maple Bank's Canadian branch, Mr. Paul Lishman, dated February 7, 2016 regarding the Moratorium, and a press release concerning the Moratorium imposed on Maple Bank printed from BaFin's website. The first two paragraphs of the BaFin press release state that:

*"On 6 February 2016, the Federal Financial Supervisory Authority (BaFin) issued a ban on disposals and payments for Maple Bank GmbH due to the threat of balance-sheet overindebtedness. In addition, BaFin ordered that the bank be closed for business with customers and prohibited the institution from receiving payments not intended for payment of debts towards it ("moratorium"). The BaFin measures are immediately enforceable but not yet final."*

*As the reason for the moratorium, BaFin stated that it had to be ordered to secure the assets in an orderly proceeding. BaFin further explained that following the required provisions for taxes, the institution may face balance-sheet overindebtedness."*

12. Following the imposition of the Moratorium, OSFI had daily teleconferences with Maple Bank, through its principal officer of the Canadian branch, Mr. Lishman, and Canadian counsel for Maple Bank. I was present at each of those teleconferences. Over the course of those conversations, Mr. Lishman disclosed that Maple Bank's operations were severely constrained by the Moratorium, which had led to a number of defaults in relation to Maple Bank's business in Canada. For example, CMHC suspended Maple Bank as an Approved issuer of National Housing Act Mortgage-Backed Securities.
13. Following imposition of the Moratorium, numerous financial institutions such as Canadian Imperial Bank of Commerce ("**CIBC**"), Royal Bank of Canada ("**RBC**"), Bank of Montreal ("**BMO**") and others delivered default notices to Maple Bank and terminated their agreements with Maple Bank as a result of the Moratorium:

- On February 8, 2016, CIBC issued default notices to Maple Bank in relation to a Global Master Repurchase Agreement dated March 5, 2012 and an ISDA Master Agreement dated November 26, 1998. With respect to the latter, CIBC provided notice that it was designating February 9, 2016 to be the "Early Termination Date". A copy of these notices is attached as Exhibit "D".
- On February 9, 2016, CMCH suspended Maple Bank's Toronto Branch as an Approved Issuer of MBS. The termination was predicated on an event of default having occurred under the *Program Guide*, Chapter 13 section 4. A copy of CMHC's notification is attached as Exhibit "E".
- On February 9, 2016, BMO issued a notice of default to Maple Bank in relation to an ISDA Master Agreement dated May 11, 2000. As a result of alleged events of default under the agreement, BMO provides notice that (i.) it was designating February 10, 2016 as the "Early Termination Date" and (ii.) no further payment or delivery will be made by BMO under the agreement. A copy of that notice is attached as Exhibit "F".
- On February 9, 2016, Societe Generale ("**SG**") issued a notice of default to Maple Bank in relation to a Global Master Repurchase Agreement dated July 18<sup>th</sup>, 2015. As a result of alleged events of default under the agreement, SG provided notice that (i.) it was designating February 9, 2016 as the "Early Termination Date" and (ii.) it would advise as soon practical about any amounts that may be due as a result of termination. A copy of that notice is attached as Exhibit "G".
- On February, 2016, RBC issued a notice of default to Maple Bank in relation to an ISDA Master Agreement dated September 6, 1994. As a result of alleged events of default under the agreement, RBC provided notice that (i.) it was designating February 10, 2016 as the "Early Termination Date" and (ii.) the amounts if any payable on termination will be calculated pursuant to section 6(e) of the agreement. A copy of that notice is attached as Exhibit "H".
- On February 11, 2016, State Street Bank ("**SSB**") issued a notice of default to Maple Bank in relation to a Securities Lending Agreement dated September 10, 2003. As a result of alleged events of defaults, SSB stated that it was accelerating all obligations under the Securities Lending Agreement including *inter alia*

delivery and payment obligations. A copy of that notice is attached as Exhibit "I".

- On February 12, 2016, CMHC sent notice to Maple Bank advising that CMHC had determined that it was necessary to appoint, as soon as possible, a successor to Maple Bank as issuer under the MBS Program, and had appointed Deloitte to assist CMHC, including in connection with the selection of and transition to a successor issuer. A copy of that notice is attached as Exhibit "J".

14. In the meantime, OSFI had the following correspondence with Maple Bank on February 8 and 9, 2016.

- i. The Superintendent sent a letter dated February 8, 2016 to Maple Bank's principal officer of its Canadian branch and to Maple Bank's CEO advising of the Superintendent's intention to vary Maple Bank's Order to Commence and Carry on Business (referred to in paragraph 5 above) to add restrictions. The proposed restrictions were to prohibit Maple Bank, without the Superintendent's prior approval, from moving to a foreign jurisdiction any assets in Canada, and from transferring (except pursuant to existing employment contracts) any of its assets in Canada or in respect of its business in Canada if the value of the assets transferred exceeded \$25,000. The letter also advised Maple Bank that it was being provided an opportunity to make representations concerning the proposed restrictions. A copy of the Superintendent's letter of February 8, 2016 is attached at Exhibit "K".
- ii. OSFI sent a further letter dated February 8, 2016 to Maple Bank's principal officer of its Canadian branch with respect to these limitations and also advising of a change in OSFI's "Intervention Rating", reflecting "OSFI's assessment that the Branch's overall financial viability is in serious doubt given the potential insolvency of Maple Bank GmbH Frankfurt." A copy of that letter is attached as Exhibit "L".
- iii. Maple's principal officer of its Canadian branch sent an email dated February 9, 2016 confirming that "Maple Bank is not making any representations on the intent to limit the revised Order to Commence and Carry On Business as dated

February 8, 2016.” A copy of that email is attached as Exhibit “M”.

15. Following the imposition of the Moratorium by BaFin, OSFI entered into daily conversations with BaFin during the period February 8 to February 11 in order to obtain updates with respect to the state of Maple Bank. I was present at each of those teleconferences.
16. On February 9, 2016, BaFin informed OSFI, and I therefore believe, that Maple Bank had indicated to BaFin that its insolvency was imminent and as a consequence, Maple Bank had agreed in writing to give BaFin permission to commence insolvency proceedings in Germany.
17. I also understand from BaFin that MFG has been unable to obtain additional capital support from existing shareholders or other investors to support Maple Bank.
18. On February 10, 2016, BaFin advised OSFI that it had commenced insolvency proceedings in Germany in respect of Maple Bank based on the admission by Maple Bank of its impending insolvency and with Maple Bank’s consent. Attached as Exhibit “N” is a copy of email correspondence from legal counsel for Maple Bank confirming her client’s consent to insolvency proceedings in Germany. Attached to that email was a copy of a letter from Maple Bank to BaFin written in the German language dated February 8, 2016, a copy of which is attached as Exhibit “O”. We have had the letter translated and I have been advised and believe that the English translation of that letter is as follows: *By letter dated 7 February 2016, we have advised you of the impending insolvency of Maple Bank. We hereby consent to the placing of an insolvency petition by the BaFin.*

**The Superintendent Takes Temporary Control of Assets Under Subsection 619(1)(a) of the Bank Act**

19. In light of the actions taken by BaFin, and Maple Bank’s admission of insolvency and consent to insolvency proceedings, the Superintendent decided that control of the assets of Maple Bank in Canada or in respect of its business in Canada was necessary to protect the depositors and creditors of Maple Bank in regards to its business in Canada. (It should

be noted in this regard, further to paragraph 7 above, that references by OSFI to the objective of protecting depositors are intended to address circumstances prior to any impacts of any applicable deposit insurance.)

20. Accordingly, on February 10, 2016, the Superintendent took control of the assets in respect of Maple Bank's business in Canada for a period not exceeding sixteen days pursuant to paragraph 619(1)(a) of the Bank Act, on the basis of the grounds set out in paragraphs 619(2)(a) and (g) of the Bank Act. Attached as Exhibit "P" is a copy of the notice from the Superintendent to Maple Bank dated February 10, 2016 advising of the Superintendent's taking of control of these assets.
21. Also on February 10, 2016, the Superintendent issued a further order amending Maple Bank's Order to Commence and Continue Business, to impose additional restrictions to accept any deposit liabilities and/or assuming debts in excess of \$25,000. A copy this order is attached as Exhibit "Q".

#### **The Appointment of an Insolvency Administrator in Germany**

22. On February 11, 2016, BaFin informed OSFI, and I therefore believe, that the German courts had initiated insolvency proceedings in respect of Maple Bank, and that the German court had appointed an insolvency administrator and assigned to the insolvency administrator the right of disposal of current and future assets of Maple Bank. Attached as Exhibit "R" is a copy of the order from the German court, with an English translation of the order.

#### **The Superintendent Continues Control of Assets Under Subsection 619(1)(b) of the Bank Act**

23. In light of these developments, and taking into consideration the relevant facts related to this matter, including the Moratorium, Maple Bank's insolvency declaration and the appointment of the insolvency administrator in Germany, the Superintendent determined that it was reasonable to form the opinion that the following grounds existed under subsection 619(2) of the Bank Act for continuing control of Maple Bank's assets (as defined in section 618 of the Bank Act) under subsection 619(1)(b) of the Bank Act:

- a. Maple Bank will not be able to pay its liabilities as they become due and payable (paragraph 619(2)(a) of the Bank Act);
  - b. Maple Bank, in respect of its business in Canada, will not be able to pay its liabilities as they become due and payable (paragraph 619(2)(b) of the Bank Act);
  - c. A state of affairs exists in respect of Maple Bank that may be materially prejudicial to the interests of Maple Bank's depositors and creditors in respect of its business in Canada (paragraph 619(2)(g) of the Bank Act) .
24. On February 12, 2016, the Superintendent provided notice to Maple Bank of its intention to continue the control of the assets beyond the sixteen day period pursuant to subparagraph 619(1)(b)(ii) of the Bank Act, based on the grounds set out in 619(2)(a), (b) and (g) of the Bank Act. OFSI confirmed with the Minister of Finance that the Minister of Finance had no objection to the continuation of control of assets under subsection 619(1)(b). The Superintendent also forwarded to Maple Bank, and the German Insolvency Administrator, a copy of a memorandum dated February 11, 2016 from the Assistant Superintendent to the Superintendent summarizing the circumstances and recommendations that led to the Superintendent's notice proposing to continue control of assets under subparagraph 619(1)(b)(ii) of the Bank Act. A copy of that notice to Maple Bank including the memorandum to the Superintendent is attached as Exhibit "S". The notice gave Maple Bank the opportunity to make written representations in respect of the Superintendent's proposed course of action as contemplated by subsection 619(3) of the Bank Act by 9:00 AM on February 15, 2016.
25. Also on February, 12, 2016, the Superintendent appointed KPMG Inc. ("**KPMG**") as its representative, pursuant to subsection 619(5) of the Bank Act, to assist in relation to the Superintendent's control of Maple Bank's assets in Canada and in respect of its business in Canada. A copy of the Superintendent's letter to KPMG is attached at Exhibit "T". Attached at Exhibit "U" is a sample of one of a series of letters that I am advised by KPMG, and believe, were sent by KPMG to various creditors advising of KPMG's appointment.



26. On February 12, 2016, Canadian counsel for the German insolvency administrator sent an email to KPMG requesting extensive information regarding Maple Bank's business in Canada. KPMG responded by email dated February 14, 2016, forwarding a copy of a preliminary trial balance as at February 10, 2016. A copy of that email exchange is attached at Exhibit "V".
27. On February 14, 2016, Canadian counsel for the German insolvency administrator requested an extension of the time fixed by the Superintendent for representations in respect of the Superintendent's Notice of February 12, 2016. In support of that extension request, counsel for the German insolvency administrator advised that the administrator wished to obtain additional information from KPMG, including information regarding the deposits of the Canadian branch. KPMG responded by providing certain additional available financial information, and pointed out that the deposit information requested by counsel for the German insolvency administrator was already available to the administrator. The Superintendent denied the extension requested. Copies of this email exchange is attached as Exhibit "W".
28. Earlier today, counsel for the German insolvency administrator submitted lengthy written representations in respect of the Superintendent's notice dated February 12, 2016. A copy of those representations is attached as Exhibit "X".
29. Following careful consideration of those representations, the Superintendent decided to proceed to continue its control of the assets of Maple Bank in Canada or in respect of its business in Canada pursuant to subparagraph 619(1)(b)(ii) of the Bank Act, and to request, pursuant to section 621 of the *Bank Act*, that the Attorney General of Canada apply to the Ontario Superior Court of Justice for a winding-up order in respect of Maple Bank's business in Canada under section 10.1 of the Winding-up and Restructuring Act.. A copy of the confirming notice dated February 15, 2016 from the Superintendent to Maple Bank is attached as Exhibit "Y". As reflected in that notice, the Superintendent determined that circumstances existed warranting a continuation of control on grounds previously identified in the notice of February 12, 2016. Also on February 15, 2016, the Superintendent sent a letter to KPMG appointing KPMG to assist in the management of

the affected assets of Maple Bank under subsection 619(6) of the Bank Act. A copy of that letter is attached as Exhibit "Z".

### **A Winding-up Order is Urgently Required**

30. I believe, having regard to the circumstances outlined above, including:

- The admitted insolvency of Maple Bank;
- The cessation of business imposed by the BaFin in the Moratorium, and the subsequent appointment of a German Insolvency Administrator;
- The actions already taken by various financial institutions, including the determination by CMHC to appoint a successor to Maple Bank as issuer under the MBS program;
- The potential for further actions by individual claimants or third parties that may prejudice a fair and effective liquidation process; and
- The inadequacy in this context of measures short of a winding up order and appointment of a liquidator to deal effectively with the rapidly deteriorating conditions;

that a winding up order and appointment of a liquidator are urgently needed in order to protect the integrity, fairness and efficacy of the required winding up and liquidation of Maple Bank's business in Canada in accordance with Canadian law and particularly having regard to the interests of claimants related to the business in Canada.

31. KPMG, having been previously appointed by the Superintendent to assist it in the control of the assets of Maple Bank, has indicated its willingness to be the court appointed liquidator in relation to proceedings under the Winding-Up and Restructuring Act in respect of the business in Canada of Maple Bank. Attached as Exhibit "AA", is a copy of the consent of KMPG in this regard.

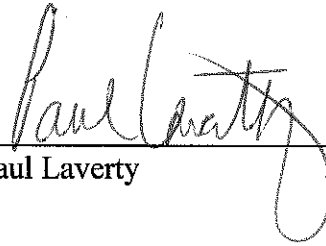
**SWORN before me at the City of Toronto**

**on the 15 day of February, 2016**



\_\_\_\_\_  
Commissioner for Taking Affidavits

*Thomas Bernier*



\_\_\_\_\_  
Paul Laverty

**THIS IS EXHIBIT "A" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



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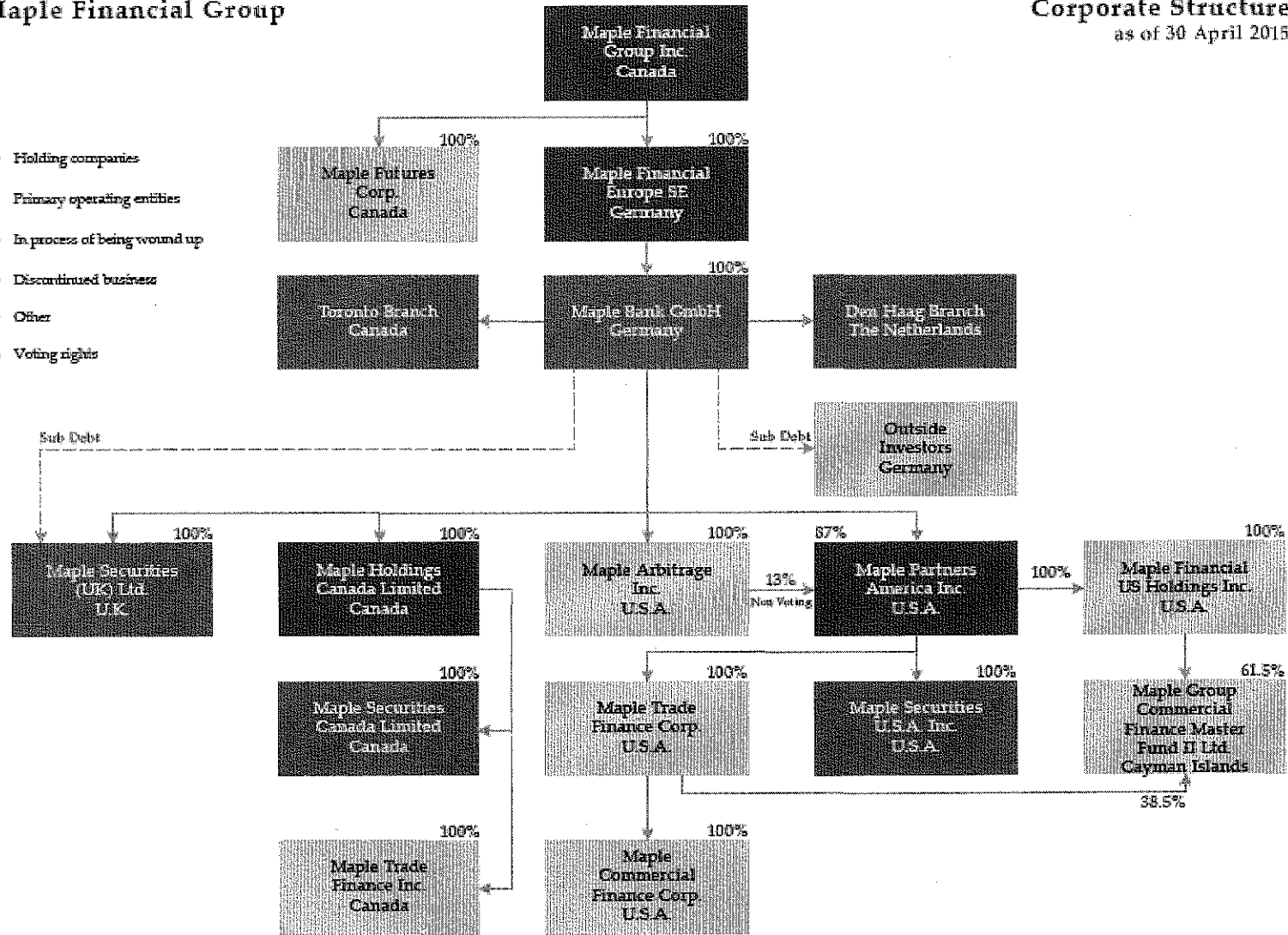
**A commissioner for taking affidavits**

*Thomas Gestard*

# Maple Financial Group

# Corporate Structure as of 30 April 2015

- Holding companies
- Primary operating entities
- ▨ In process of being wound up
- ▨ Discontinued business
- ▨ Other
- % Voting rights



**THIS IS EXHIBIT "B" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



---

**A commissioner for taking affidavits**

Thomas Gertner

Office of the Superintendent  
of Financial Institutions CanadaBureau du surintendant  
des institutions financières Canada255 Albert Street  
Ottawa, Canada  
K1A 0H2255, rue Albert  
Ottawa, Canada  
K1A 0H2

---

**Our file: P3120-M3-3-2/1****April 26, 2001****MEMORANDUM**

**TO: John Palmer**  
**Superintendent**

**FROM: Robert Mitchell**  
**Manager, Registration and Approvals Division**

**SUBJECT: Maple Bank GmbH**

---

**Purpose**

To recommend that you issue an order to commence and carry on business to Maple Bank GmbH, an authorized foreign bank.

**Legislative Authority**

Subsection 534(1) of the *Bank Act* states that on application by an authorized foreign bank, the Superintendent may make an order approving the commencement and carrying on of business in Canada by the authorized foreign bank.

**Background**

1. On February 27, 2001, the Secretary of State (International Financial Institutions) issued an order permitting Maple Bank GmbH to establish a branch to carry on business in Canada. Attached for your information is a copy of the memorandum to the Secretary of State.

2. Subsection 534(3) of the *Bank Act* states that the Superintendent may make the commencement order only if he is satisfied that the authorized foreign bank has adequate unencumbered assets on deposit with a Canadian financial institution, has submitted a signed power of attorney expressly authorizing the principal officer to receive notices under the laws of Canada, and has complied with all relevant requirements of the Act.

**Considerations**

3. As you know, we have advised Maple Bank GmbH that it will initially be restricted in sourcing its funding from deposits outside Canada. Should it wish to raise deposits in Canada in the future, it will require your prior approval. This restriction appears in the attached commencement order.



Office of the Superintendent of Financial Institutions  
Bureau du surintendant des institutions financières

*Order to Commence and Carry  
on Business by an Authorized  
Foreign Bank*

*Autorisation de fonctionnement  
par une banque étrangère  
autorisée*

*Bank Act*

*Loi sur les banques*

Pursuant to subsection 534(1) of the *Bank Act*, the Superintendent of Financial Institutions declares that **Maple Bank GmbH** may commence and carry on business in Canada.

En vertu du paragraphe 534(1) de la *Loi sur les banques*, le surintendant des institutions financières statue que **Maple Bank GmbH** peut commencer à exercer ses activités au Canada.

This order is subject to the following limitation: **Maple Bank GmbH** shall not, in respect of its business in Canada, engage in the business of accepting deposit liabilities or act as an agent for any person in the taking of deposit liabilities.

La présente ordonnance est assujettie à la restriction suivante : **Maple Bank GmbH** ne peut, dans le cadre de l'exercice de ses activités au Canada, accepter des dépôts ou faire fonction de mandataire pour l'acceptation de dépôts.

This order is effective on  
April 30, 2001.

La présente ordonnance entre en vigueur  
le 30 avril 2001.

John Palmer  
Superintendent/Surintendant



**THIS IS EXHIBIT "C" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



**A commissioner for taking affidavits**

Thomas G. [unclear]

## Gertner, Thomas

---

**From:** Lavery, Paul [Paul.Lavery@osfi-bsif.gc.ca]  
**Sent:** February-07-16 3:21 PM  
**To:** Pararajalingam, Ajenthan; Knight, Scott; Cummings, Lascelle; Hubbs, James  
**Cc:** Sam, David; Cameron, Judy; Phaneuf, Brigitte; Peterson, Andrew; Girouard, Jean-Pierre; Rigakos, Bill  
**Subject:** RE: update tomorrow

One more important point, the 375 million euro settlement amount exceeds Maple Bank's capital base.

---

**From:** Lavery, Paul  
**Sent:** February-07-16 3:01 PM  
**To:** Pararajalingam, Ajenthan; Knight, Scott; Cummings, Lascelle; Hubbs, James  
**Cc:** Sam, David; Cameron, Judy; Phaneuf, Brigitte; Peterson, Andrew; Girouard, Jean-Pierre; Rigakos, Bill  
**Subject:** RE: update tomorrow

Hi all,

I spoke to Paul Lishman at Maple Bank around noon today by phone. The update is that the German Tax Authority and the Prosecutor General have turned down Maple's settlement offer and want the full amount they believe is owed (around 375 million euros). They have also had a meeting over the weekend with Maple's investor group (which includes NBC) who have declined to offer any further support. BaFin has since imposed what they call a "moratorium" (see below) on Maple Bank (including the Canadian Branch) which effectively limits them from doing any business other than paying trade suppliers, payroll and rent. A few minutes ago I got an e-mail from Judy Cameron indicating (through Brigitte Phaneuf's contacts at NBC) that BaFin would take over control of Maple Bank as of opening of business Monday AM. We will join Judy and others for a teleconference at 9:00AM tomorrow and will contact BaFin tomorrow morning as well to clarify their position.

Paul Lavery

---

**From:** Pararajalingam, Ajenthan  
**Sent:** February-07-16 2:17 PM  
**To:** Paul Lishman  
**Cc:** Sam, David; Lavery, Paul  
**Subject:** Re: update tomorrow

Thanks for the update Paul.

AJ

Sent from my BlackBerry 10 smartphone on the Rogers network.

---

**From:** Paul Lishman  
**Sent:** Sunday, February 7, 2016 12:45 PM  
**To:** Lavery, Paul; Pararajalingam, Ajenthan  
**Cc:** Sam, David  
**Subject:** RE: update tomorrow

Hi Paul:

As discussed earlier today this is a translated excerpt from the BaFIN's Moratorium order put in place last night:

**FIRST DRAFT PRIOR TO ANY REVIEW**

## Maple Bank GmbH

### BaFin-Moratorium Key Aspects

- The moratorium has *immediate effect*. The moratorium applies to Maple Bank GmbH, including its Canadian branch.
- Maple Bank is *prohibited* from taking in deposits, funds or securities from customers, and must not extend any credit to customers.
- Maple Bank is *prohibited* from (i) making any payments (subject to limited the exceptions below) and (ii) selling or disposing of any of its assets
- Maple Bank is *closed for business* with customers.
- Maple Bank is *prohibited* from accepting payments, other than payments made by any third party to discharge payables due to Maple Bank.
- Maple Bank is *prohibited* from making any payments to any of its affiliates.
- The annual variable compensation components are cancelled.

There are *very limited exceptions* to these prohibitions. The most important exceptions are:

- Salaries of employees (fixed compensation) may continue to be paid, including social security payments and wage taxes.
- Payments for rent, utilities, telephone/postage, insurance, certain legal costs, costs for credit recovery, cleaning costs, VAT, office stationery, photocopy, rent and maintenance costs for IT and certain other items.

Regards  
Paul

Paul Lishman  
General Manager (Principal Officer)  
Maple Bank – Toronto Branch  
(416) 350-8290  
[plishman@maplefinancial.com](mailto:plishman@maplefinancial.com)

---

**From:** Paul Lishman  
**Sent:** Sunday, February 07, 2016 11:33 AM  
**To:** 'Lavery, Paul'; 'Pararajalingam, Ajenthan'  
**Cc:** 'Sam, David'  
**Subject:** RE: update tomorrow

Thank you – speak then.

---

**From:** Lavery, Paul [<mailto:Paul.Lavery@osfi-bsif.gc.ca>]  
**Sent:** Sunday, February 07, 2016 11:13 AM  
**To:** Paul Lishman; Pararajalingam, Ajenthan  
**Cc:** Sam, David  
**Subject:** Re: update tomorrow

Noon works for me, Paul. I'll call your office number.

Sent from my BlackBerry 10 smartphone on the Rogers network.

---

**From:** Paul Lishman  
**Sent:** Sunday, February 7, 2016 9:11 AM  
**To:** Pararajalingam, Ajenthan  
**Cc:** Sam, David; Lavery, Paul  
**Subject:** RE: update tomorrow

Gentlemen – are you available for a call at noon today ? You can reach me in the office. Please let me know your timing.

Regards  
Paul

Paul Lishman  
General Manager (Principal Officer)  
Maple Bank – Toronto Branch  
(416) 350-8290  
[plishman@maplefinancial.com](mailto:plishman@maplefinancial.com)

---

**From:** Pararajalingam, Ajenthan [<mailto:Ajenthan.Pararajalingam@osfi-bsif.gc.ca>]  
**Sent:** Friday, February 05, 2016 4:52 PM  
**To:** Paul Lishman  
**Cc:** Sam, David; Lavery, Paul  
**Subject:** update tomorrow

Hi Paul,

Thanks again for your update today. In addition to myself and David Sam, please also include Paul Lavery on any email communication / updates tomorrow morning.

Thank you.

**Ajenthan (AJ) Pararajalingam**  
Manager  
Deposit Taking Group – Supervision  
Office of the Superintendent of Financial Institutions Canada / Bureau du surintendant des institutions financières Canada  
121 King Street West  
Toronto, ON M5H3T9



Federal Financial Supervisory Authority

## Willkommen auf der Seite der Bundesanstalt für Finanzdienstleistungsaufsicht

You are here: [Homepage](#) [Data & documents](#) [Press releases](#) **BaFin orders moratorium on Maple Bank GmbH**

### BaFin orders moratorium on Maple Bank GmbH

Bonn/Frankfurt a. M., 8 February 2016

On 6 February 2016, the Federal Financial Supervisory Authority (BaFin) issued a ban on disposals and payments for Maple Bank GmbH due to the threat of balance-sheet overindebtedness. In addition, BaFin ordered that the bank be closed for business with customers and prohibited the institution from receiving payments not intended for payment of debts towards it ("moratorium"). The BaFin measures are immediately enforceable but not yet final.

As the reason for the moratorium, BaFin stated that it had to be ordered to secure the assets in an orderly proceeding. BaFin further explained that following the required provisions for taxes, the institution may face balance-sheet overindebtedness.

Maple Bank GmbH is not systemically important and thus poses no threat to financial stability. As at 4 February 2016, the balance sheet total of Maple Bank GmbH, domiciled in Frankfurt am Main, stands at roughly 5 billion euros. Also based on the data as at 4 February 2016, the institution has liabilities towards institutional customers of close to 2.6 billion euros; liabilities to retail customers only make up a negligible share of the liabilities.

Maple Bank GmbH describes itself as a niche provider in the investment banking sector, focusing on single strategies. It carries out its activities on the securities and derivatives markets in Western and Northern Europe as well as in North America. The bank's sole shareholder is Maple Financial Europe SE, domiciled in Frankfurt am Main, which, in turn, is a wholly owned subsidiary of parent company Maple Financial Group Inc., which is domiciled in Toronto, Canada.

The deposits of customers of Maple Bank GmbH are protected under the German Deposit Guarantee Act (Einlagensicherungsgesetz). The institution belongs to the Compensation Scheme of German Banks (Entschädigungseinrichtung deutscher Banken GmbH – EdB). The statutory conditions for compensation of up to 100,000 euros per depositor are met when BaFin has determined that compensation is payable. The EdB must inform creditors of the institution without delay if such case has occurred.

Maple Bank GmbH is also a member of the Deposit Protection Fund of the Association of German Banks (Einlagensicherungsfonds des Bundesverbandes Deutscher Banken e.V.). In accordance with its statute, this Deposit Protection Fund assumes the part of the deposits exceeding the statutory limit of 100,000 euros – up to the respective protection limit.

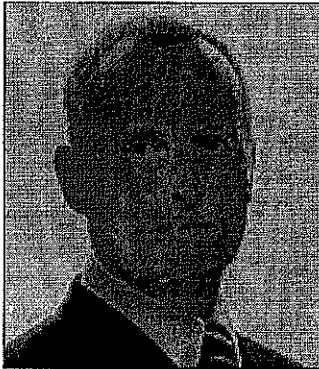
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### Additional information

### Contact

2/12/2016

BaFin - Press releases - BaFin orders moratorium on Maple Bank GmbH




**Oliver Struck**

Phone: +49 (0) 228 4108-2410

E-mail: [write e-mail](#)

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**THIS IS EXHIBIT "D" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



---

**A commissioner for taking affidavits**

*Thomas Gorker*



Doug Isbister  
Senior Counsel & General Manager, Derivatives  
and Trading Documentation

CIBC Legal Department  
199 Bay Street  
Commerce Court West, 11<sup>th</sup> Floor  
Toronto, Ontario  
M5L 1A2

Tel. (416) 214-8899  
Email: [doug.isbister@cibc.com](mailto:doug.isbister@cibc.com)

February 8, 2016

Maple Bank GmbH  
Feuerbachstrasse 26 – 32  
60325 Frankfurt am Main  
Germany

Attention: Mr. Jürgen Daume

Dear Sir:

**Re: Global Master Repurchase Agreement dated March 5, 2012 – Event of Default**

We refer to the Transactions entered into between Maple Bank GmbH ("Counterparty") and Canadian Imperial Bank of Commerce (CIBC) under the Global Master Repurchase Agreement (the "Agreement") dated as of March 5, 2012 between the parties.

We hereby provide you with notice that an event under paragraph 10 of the Agreement has occurred and shall be treated as an Event of Default for purposes of the Agreement.

A failure or delay by CIBC in exercising any of its rights and remedies under the Agreement does not constitute a waiver of those rights and remedies by CIBC or preclude any subsequent exercise of those rights and remedies by CIBC.

If you have any questions, please feel free to contact the undersigned.

Thank you.

Regards,

A handwritten signature in black ink, appearing to read "D. Isbister".

Doug Isbister

cc:





Doug Isbister  
Senior Counsel & General Manager, Derivatives  
and Trading Documentation

CIBC Legal Department  
199 Bay Street  
Commerce Court West, 11<sup>th</sup> Floor  
Toronto, Ontario  
M5L 1A2

Tel. (416) 214-8699  
Email: doug.isbister@cibc.com

February 8, 2016

Maple Bank GmbH – Toronto Branch  
Maritime Life Tower  
79 Wellington Street West  
Toronto, Ontario  
Canada M5K 1K7

Attention: Paul Lishman, Chief Financial Officer

Dear Sir:

**Re: Amended and Restated ISDA Master Agreement dated November 26, 1998 –  
Event of Default**

We refer to the Transactions entered into between Maple Bank GmbH ("Counterparty") and Canadian Imperial Bank of Commerce ("CIBC"), as evidenced by the Confirmation(s). The Confirmation(s) form(s) part of and are subject to the Amended and Restated ISDA Master Agreement (the "Agreement") dated as of November 26, 1998, as amended from time to time between the parties. Capitalised terms used and not otherwise defined in this notice of Event of Default shall have the meaning ascribed to them in the Agreement.

We hereby provide you with notice that a Bankruptcy Event of Default has occurred on or about February 6, 2016 and is continuing under the Agreement. We hereby designate February 9, 2016 to be an Early Termination Date in respect of the Transactions.

A failure or delay by CIBC in exercising any of its rights and remedies under the Agreement does not constitute a waiver of those rights and remedies by CIBC or preclude any subsequent exercise of those rights and remedies by CIBC.

If you have any questions, please feel free to contact the undersigned.

Thank you.

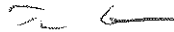
Regards

A handwritten signature in black ink, appearing to read "D. Isbister", written over a white rectangular area.

Doug Isbister

cc:

**THIS IS EXHIBIT "E" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



---

**A commissioner for taking affidavits**

Thomas Greiner



February 9, 2016

Maple Bank GmbH – Toronto Branch  
3500-79 Wellington St. W.  
Toronto, Ontario  
M5K 1K7

Attention: Paul Lishman  
General Manager

E-mail: [plishman@maplefinancial.com](mailto:plishman@maplefinancial.com)

**Re: Default Under the NHA Mortgage-Backed Securities Program**

Dear Sirs and Mesdames:

We are writing to you in our capacity as guarantor under the *National Housing Act (Canada) Mortgage-Backed Securities Program Guide* (the “**Guide**”) and your agreements with us under or in connection with the Guide, including without limitation the Mortgage Pools Transfer Agreement dated August 27, 2003 and all related Schedules of Subscribers and Contractual Agreements (collectively, the “**Agreements**”). Pursuant to the Agreements, the Agreements are governed by, subject to and incorporate by reference the terms and conditions of the Guide. Capitalized terms that are used but not defined in this letter have the meanings defined in the Guide and the Agreements.

We are aware that the German banking regulator, known as BaFin, has ordered a halt to financial transactions and other business activities by Maple Bank GmbH. We are very seriously concerned with this situation and we consider it to materially adversely affect Maple Bank's ability to act as an issuer and our liability and rights as guarantor and under terms of the Guide. Accordingly, we hereby give you notice that this situation constitutes a default under Section 4 of chapter 13 of the Guide. We are exercising our rights and remedies in this regard and have, therefore, suspended Maple Bank from acting as an issuer.

The terms of the Guide and the other Agreements remain in full force and effect without amendment and we expressly reserve all of our rights as a result of this default, including without limitation all of our rights and remedies set forth in Chapter 13 of the Guide and at law. No delay on our part in the

exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by us of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy. Please govern yourself accordingly.

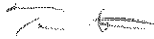
Yours very truly,



CANADA MORTGAGE AND HOUSING CORPORATION

Wojciech (Wojo) Zielonka  
Senior Vice-president,  
Capital Markets

**THIS IS EXHIBIT "F" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



---

**A commissioner for taking affidavits**

*Thomas Gertner*

**BMO**  **Bank of Montreal**

VIA COURIER – HAND DELIVERED

CONFIDENTIAL

Maple Bank GmbH  
Feuerbachstraße 26-32  
60326 Frankfurt am Main  
Germany

79 Wellington Street West  
Suite 3500  
Toronto, ON M5K 1K7

Tuesday, 9 February 2016

Dear Sirs,

**NOTICE OF AN EVENT OF DEFAULT UNDER 1992 ISDA MASTER AGREEMENT AND DESIGNATION OF AN EARLY TERMINATION DATE**

We refer to the 1992 ISDA Master Agreement (Multicurrency-Cross Border) including the English law Transfer Annex between Bank of Montreal ("BMO") and Maple Bank GmbH ("Maple") dated as of May 11, 2000 as amended from time to time (the "Master Agreement") and the outstanding Transactions thereunder.

Terms not otherwise defined in this letter shall have the meanings set out in the Master Agreement.

An Event of Default under Section 5(a)(vii) of the Master Agreement has occurred with respect to Maple.

Accordingly, pursuant to Section 6(a) of the Master Agreement, by this notice we hereby designate February 10, 2016 as the Early Termination Date in respect of all outstanding Transactions under the Master Agreement.

As a consequence of the occurrence of this Event of Default with respect to Maple (which is continuing), pursuant to Section 2(a)(iii) of the Master Agreement, no payment or delivery in respect of the outstanding Transactions is required to be made by BMO to Maple.

On or as soon as reasonably practicable after the Early Termination Date, we will provide you with a statement as required under Section 6(d)(i) of the Master Agreement.

BMO hereby reserves, and does not waive any of, its rights to take further action or other action in connection with any Event of Default or Termination Event, now or hereafter existing under the Master Agreement and specifically reserves all, and does not waive any, of its rights, remedies, causes of action and claims under the Master Agreement and any other instrument or document relating to the Transactions or the Master Agreement or under applicable law.

BANK OF MONTREAL

By:

  
Name: Victoria Wilson  
Title: Senior Counsel and Director

**THIS IS EXHIBIT "G" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



**A commissioner for taking affidavits**





February 9, 2016

**BY HAND, EMAIL & FAX**

Maple Bank, GmbH, acting through its Toronto Branch  
79 Wellington Street West  
Suite 3500, P.O. Box 328  
Toronto, Ontario  
CANADA M5K 1K7  
Tel: (416) 350-8200  
Fax: (416) 350-8226

Dear Sirs,

We hereby make reference to the Global Master Repurchase Agreement entered into between SG Americas Securities, LLC and Maple Bank, GmbH, acting through its Toronto Branch, dated July 28, 2015 (the "Agreement").

Capitalized terms used in this letter and not defined shall have the meaning ascribed to them in the Agreement.

Based on the Counterparty Communication email correspondence we received from you on February 8, 2016, we have hereby determined that an Event of Default has occurred with respect to your company pursuant to paragraphs 10(a) (vi), (vii), (viii) and (ix) of the Agreement. We hereby designate February 9, 2016 as the Early Termination Date in respect of all outstanding Transactions.

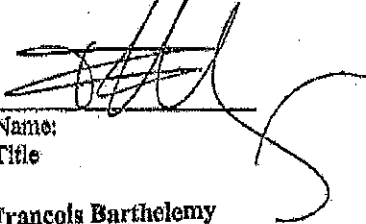
Pursuant to the terms of the Agreement, sub-paragraphs (b) to (d) of paragraph 10 shall apply. We will inform you as soon as reasonably practicable of any amount that will be due by either of us to the other party as a result of the termination of all Transactions entered into under the Agreement.

We hereby reserve all of our rights in respect of the Agreement whether arising under the Agreement, at law or otherwise (and for the avoidance of doubt this letter does not constitute a waiver of any such rights) including but not limited to the right to serve any further notice to you.

This notice is governed by the laws of England and Wales.




Yours faithfully,  
SC Americas Securities, LLC

By: 

Name:  
Title

**Francois Barthelemy**  
**Managing Director**

**THIS IS EXHIBIT "H" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



---

**A commissioner for taking affidavits**

*Thomas G. Brennan*



RBC Capital Markets

EINGANG

10. Feb. 2016

Maple Bank GmbH

Royal Bank of Canada  
 Thames Court  
 One Queenhithe  
 London EC4V 3DQ  
 Switchboard: 020 7653 4000  
 Facsimile: 020 7029 7900

February 9, 2016

Maple Bank GmbH  
 Feuerbachstrasse 26-32  
 60325 Frankfurt am Main  
 Germany  
 Attention: Martina Nielsen  
 Fax: (49 69) 97166 113

Maple Bank GmbH  
 Maritime Life Tower, T-D Centre  
 79 Wellington Street West  
 Suite 3450  
 P.O. Box 328  
 Toronto, Ontario M5K 1K7  
 Attention: Paul Lishman  
 Fax: (416) 350-8226

Maple Bank GmbH  
 79 Wellington Street West  
 Suite 3500  
 P.O. Box 328  
 Toronto, Ontario M5K 1K7  
 Attention: Paul Lishman  
 Fax: (416) 350-8226

NOTICE DESIGNATING AN EARLY TERMINATION DATE FOLLOWING A  
 TERMINATION EVENT

Dear Sirs &amp; Mesdames:

Reference is made to (i) the 1992 ISDA Master Agreement (Multicurrency-Cross Border), dated as of 6 September 1994 (as amended, modified and supplemented and in effect from time to time, together with the Schedule and Credit Support Annex thereto (collectively, the "Master Agreement")), between Royal Bank of Canada and Maple Bank GmbH; and (ii) the Confirmations thereunder. Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Master Agreement.

Pursuant to Section 6(b) of the Master Agreement we hereby notify you that an Illegality has occurred under Section 5(b)(i)(2) of the Master Agreement and Part 5(2) of the Schedule. Such event is continuing and constitutes a Termination Event. Accordingly, pursuant to Section 6(b)(iv)(2) of the Master Agreement, by this notice we hereby designate February 10, 2016, as the Early Termination Date in respect of all outstanding Transactions under the Master Agreement.

The consequence of the occurrence of an Early Termination Date is that:

- (a) no further payments or deliveries under Section 2(a)(i) or 2(e) of the Master Agreement in respect of all Transactions will be required to be made; and
- (b) the amount, if any, payable in respect of the Early Termination Date shall be determined pursuant to Section 6(e) of the Master Agreement;

On or as soon as reasonably practicable after the Early Termination Date, we will provide you with a statement as required under Section 6(d)(i) of the Master Agreement.

Sincerely,

Royal Bank of Canada

By: 

Name:

Title: **MATTHEW GILCHRIST**  
**AUTHORIZED SIGNATORY**

**THIS IS EXHIBIT "I" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



---

**A commissioner for taking affidavits**

*Thomas G. Baker*



State Street Global Markets  
www.statestreet.com

February 11, 2016

Via Courier, Facsimile and Electronic Mail

Maple Bank GmbH, Toronto Branch  
79 Wellington Street West, Suite 3450  
Toronto, Ontario M5K 1K7  
Attention: Chief Financial Officer

With a copy to each address, facsimile number and email below:

Maple Bank GmbH - Toronto Branch  
79 Wellington Street West  
Suite 3500 PO, Box 328  
Toronto, Ontario M5K 1K7  
Attention: Chief Financial Officer

Facsimile: (416) 350-8226  
Facsimile: (416) 350-8220

Email: [jcampbell@maplefinancial.com](mailto:jcampbell@maplefinancial.com)

Re: Notice of Events of Default

Ladies and Gentlemen:

Reference is hereby made to that certain Securities Lending Agreement dated September 10, 2003 between State Street Bank and Trust Company ("State Street") and Maple Bank GmbH, Toronto Branch ("you"), and as amended, modified or supplemented from time to time, and together with all schedules, exhibits and annexes, and all confirmations entered into in connection therewith, the "Agreement". All capitalized terms used herein without definition shall have the meanings assigned to such terms in the Agreement.

As you may be aware, certain Events of Default have occurred. These events include, without limitation, the following:

## STATE STREET.

- Maple Bank GmbH, Toronto Branch has failed to return Equivalent Securities in connection with a Loan by the date specified in the applicable Appendix or pursuant to clause 10 of the Agreement. This is an Event of Default under Section 12.1(a) of the Agreement.
- On February 6, 2016, Maple Bank GmbH's business activities were suspended by Germany's Federal Financial Supervisory Authority (commonly known as BaFin). This is an Event of Default under Section 12.1(g) of the Agreement.

This letter is the written notice contemplated by Section 12.1 that the above events shall be treated as Events of Default for purposes of the Agreement.

As a result of such Events of Default, all obligations of Maple Bank GmbH under the Agreement, including, without limitation, delivery and payment obligations are immediately accelerated.

Neither this correspondence nor the acceptance of any payment by State Street on account of your obligations to State Street shall constitute a waiver of any defaults or Events of Default that exist under the Agreement or any other instruments, documents or agreements executed and/or delivered by you in connection therewith or otherwise (collectively, the "Securities Lending Documents"). State Street reserves all rights and remedies arising under the Securities Lending Documents, at law and in equity, including, but not limited to, the right to demand payment in full of all of your indebtedness, liabilities and obligations owed to State Street. No failure on the part of State Street to exercise, and no delay in exercising, any such right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by State Street of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Very truly yours,

STATE STREET BANK AND TRUST COMPANY

By: 

Name: Charles Murray

Title: Vice President

**THIS IS EXHIBIT "J" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



---

**A commissioner for taking affidavits**

*James G. ...*



Maple Bank, Toronto Branch  
Suite 3500 Maritime Life Tower  
TD Centre, 79 Wellington Street West  
Toronto, Ontario  
M4K 1K7

February 12, 2016

Attention: Don Scott

Dear Sirs/Mesdames:

Re: Appointment of Successor Issuer to Maple Bank under NHA MBS Program

Further to our recent discussions, this will confirm that CMHC, as guarantor under the NHA MBS Program, has determined that a successor to Maple Bank as issuer under that program must be appointed as soon as possible.

CMHC would be pleased to consider a proposal by or on behalf of Maple Bank as to a suitable institution to assume Maple Bank's responsibilities as issuer. In light of the urgency of the current situation, we would respectfully request that CMHC be advised (via email to Karen Bailey, Director, Securitization Operations at [kbailey@cmhc.ca](mailto:kbailey@cmhc.ca)) of a proposed successor together with any additional relevant information Maple Bank is able to provide by no later than 5 p.m. on Tuesday, February 16, 2016. If a suitable successor issuer is not found by that time, CMHC plans to launch a process to choose a successor issuer.

CMHC has retained Deloitte to assist it and act in connection with all financial aspects of the NHA MBS Pools involved and Maple Bank's role under both the NHA MBS Program and the CMB Program, including the review and verification of Maple's related financial records and data provided by the mortgage loan servicers appointed by Maple Bank, as well as in connection with the selection of and transition to a successor issuer.

We appreciate Maple Bank's most helpful cooperation to date, and look forward to maintaining daily contact with you in order to be briefed regarding all relevant developments.


Yours very truly,

CANADA MORTGAGE AND HOUSING CORPORATION

Per: Wojciech (Wojo) Zielonka  
Senior Vice-President, Capital Markets



**THIS IS EXHIBIT "K" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



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**A commissioner for taking affidavits**

Thomas Gerhart



Office of the Superintendent of  
Financial Institutions Canada

Bureau du surintendant des  
institutions financières Canada

**PROTECTED B**

February 8, 2016

Mr. Paul Lishman  
General Manager Principal Officer  
Maple Bank GmbH, Toronto Branch  
Suite 3500, P.O. Box 328  
Toronto, Ontario  
M5K 1K7

**Subject: Letter of Intent to Vary the Order to Commence and Carry On  
Business of Maple Bank GmbH (Maple Bank)**

Further to our conversation this afternoon during which we communicated to you and Maple Bank's legal counsel OSFI's intent to vary Maple Bank's Order to Commence and Carry On Business (the "Order"), notice is hereby given of the intention of the Superintendent of Financial Institutions (the "Superintendent") to make the Order subject to the following limitations pursuant to paragraph 534(6)(a) of the *Bank Act* (the "Act"):

Maple Bank shall not, without the Superintendent's prior approval:

- 1- move to a foreign jurisdiction any of its assets in Canada, and
- 2- transfer to any person, by way of one or more transactions, any of its assets in Canada or in respect of its business in Canada if the total value of the assets transferred exceeds \$25,000.

Transfers that relate to recurring employment payments under existing employment contracts are not subject to the restriction set out by paragraph 2.

As required by the Act, we are providing Maple Bank with an opportunity to make representations on this intent to limit Maple Bank's Order. In the event Maple Bank wishes to make representations, they must be communicated to OSFI no later than 12:00 PM EDT on



OSFI  
BSIF

255 Albert Street  
Ottawa, Canada  
K1A 0H2

[www.osfi-bsif.gc.ca](http://www.osfi-bsif.gc.ca)


Canada

February 9, 2016. Absent receipt of any representations from Maple Bank by the prescribed date, the Superintendent may proceed with making Maple Bank's Order subject to the above-mentioned limitations.

Until further notice and effective immediately, OSFI expects Maple Bank to comply with the proposed limitations set out above.

Should you have any questions regarding this matter, please contact the undersigned by telephone at 613-990-7337 or by e-mail at [judy.cameron@osfi-bsif.gc.ca](mailto:judy.cameron@osfi-bsif.gc.ca).

Sincerely,



Judy Cameron  
Managing Director  
Legislation and Approvals Division

Cc: Mr. Wolfgang Schuck, CEO Maple Bank GmbH



255 Albert Street  
Ottawa, Canada  
K1A 0H2  
[www.osfi-bsif.gc.ca](http://www.osfi-bsif.gc.ca)

Canada

**THIS IS EXHIBIT "L" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



---

**A commissioner for taking affidavits**

Thomas Getter



**PROTECTED B**

February 8, 2016

Paul Lishman  
General Manager (Principal Officer)  
Maple Bank GmbH - Toronto Branch  
Suite 3500  
79 Wellington Street West  
Toronto, ON  
M5K 1K7

Dear Mr. Lishman,

Further to our discussion today with you and the Branch's legal counsel, we are writing to advise that the Branch has been reclassified to Intervention Stage 3 effective the date of this letter. The increase in the Intervention Rating from 0 to 3 reflects OSFI's assessment that the Branch's overall financial viability is in serious doubt given the potential insolvency of Maple Bank GmbH Frankfurt. In addition, any further deterioration in the Bank's situation could lead OSFI to determine that the Branch is, or will imminently become, non-viable. At that point the Branch would be reclassified to Intervention Stage 4 and OSFI would consider whether the statutory conditions for taking control have been met.

Further, as a result of the heightened intervention status, the following supervisory actions will be put in place effective as of the date of this letter.

- 1- Per OSFI's Letter of Intent to Vary the Order to Commence and Carry On Business of Maple Bank GmbH dated February 8, 2016, the Branch shall not, without the Superintendent's prior approval:
  - move to a foreign jurisdiction any of its assets in Canada, and
  - transfer to any person, by way of one or more transactions, any of its assets in Canada or in respect of its business in Canada if the total value of the assets transferred exceeds CAD \$25,000. (Transfers that relate to recurring employment payments under existing employment contracts are not subject to this restriction).
- 2- OSFI monitors will be installed at the Branch to ensure compliance with the above order.

OSFI requires that the Branch continue to provide us with information that supports the current monitoring program. Adjustments to the monitoring program will continue to be made as conditions warrant.



OSFI  
BSIF

121 King Street West  
Toronto, Ontario  
M5H 3T9  
[www.osfi-bsif.gc.ca](http://www.osfi-bsif.gc.ca)

Page 1 of 1  
**Canada**

**THIS IS EXHIBIT "M" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



---

**A commissioner for taking affidavits**

Thomas Gerace

**Gertner, Thomas**

---

**From:** Paul Lishman [PLishman@maplefinancial.com]  
**Sent:** February-09-16 11:35 AM  
**To:** Laverty, Paul  
**Cc:** Girouard, Jean-Pierre; Peterson, Andrew; Richer, Gino; Cameron, Judy; Pararajalingam, Ajenthan; Hubbs, James; Cummings, Lascelle; Sam, David; Knight, Scott  
**Subject:** RE: Amended OCCB and OSFI Supervisory Letter

**Paul**

**Further to our conversation this morning, as the Principal Officer of Maple Bank's Toronto Branch, I acknowledge that Maple Bank is not making any representations on the intent to limit the revised Order to Commence and Carry On Business as dated February 8, 2016.**

**Regards  
Paul**

Paul Lishman  
General Manager (Principal Officer)  
Maple Bank – Toronto Branch  
(416) 350-8290  
[plishman@maplefinancial.com](mailto:plishman@maplefinancial.com)

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**From:** Laverty, Paul [<mailto:Paul.Laverty@osfi-bsif.gc.ca>]  
**Sent:** Monday, February 08, 2016 8:30 PM  
**To:** Paul Lishman  
**Cc:** Girouard, Jean-Pierre; Peterson, Andrew; Richer, Gino; Cameron, Judy; Pararajalingam, Ajenthan; Hubbs, James; Cummings, Lascelle; Sam, David; Knight, Scott  
**Subject:** RE: Amended OCCB and OSFI Supervisory Letter

Paul,  
Attached please find the following executed documents:

1. Amended OCCB letter
2. OSFI Supervisory Letter with notification of revised Intervention Rating

Regards.

**Paul Laverty**

**Director  
Directeur**

**Deposit Taking Group – Non-Conglomerates  
Groupe des institutions de dépôts – Non-Conglomérats**



**416-973-5603**

**[paul.laverty@osfi-bsif.gc.ca](mailto:paul.laverty@osfi-bsif.gc.ca)**

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PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



---

**A commissioner for taking affidavits**

Thomas Gattner

**Lalonde, Angèle**

**Subject:** FW: Maple Bank

**From:** Cameron, Judy  
**Sent:** February-10-16 10:52 AM  
**To:** Covert, David  
**Subject:** FW: Maple Bank

This is the statement that Maple Bank provided to BaFin.

We are getting a "rough" translation from someone on the team.

However, if it is useful to include in the affidavit, we should probably get it officially translated.

---

**From:** Graham, Victoria [mailto:VGraham@osler.com]  
**Sent:** February-09-16 5:39 PM  
**To:** Cameron, Judy; Girouard, Jean-Pierre  
**Cc:** Clark, Stephen D.A.; Paul Lishman  
**Subject:** Maple Bank

Judy/Jean-Pierre,

As requested, attached please find a copy of the letter Maple Bank GmbH submitted to the BaFin consenting to the filing of bankruptcy proceedings in Germany concerning the bank.

Will you be circulating a dial-in for our call tomorrow at 9 am or would you like us to send one to the working group?

Many thanks,  
-Victoria

**OSLER**

Victoria Graham

416.862.4856 DIRECT  
416.862.6666 FACSIMILE  
[vgraham@osler.com](mailto:vgraham@osler.com)

Osler, Hoskin & Harcourt LLP  
Box 50, 1 First Canadian Place  
Toronto, Ontario, Canada M5X 1B8

[osler.com](http://osler.com)

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\*\*\*\*\*  
This e-mail message is privileged, confidential and subject to  
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Le contenu du présent courriel est privilégié, confidentiel et

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THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



---

**A commissioner for taking affidavits**

Thomas Getman

**MAPLE BANK**



Fax: +49 22841081550

An

Bundesanstalt für Finanzdienstleistungsaufsicht

Graurheindorfer Str. 108

53117 Bonn

z. H. Herrn Exekutivdirektor Raimund Röseler,

Herrn Gruppenleiter Adam Ketessidis,

Herrn Referatsleiter Detlef Stiel

8. Februar 2016

**Eilt – bitte sofort vorlegen**

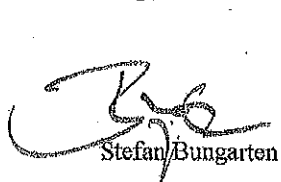
**Zustimmung nach § 46 b KWG**

Sehr geehrter Herr Röseler,  
sehr geehrter Herr Ketessidis,  
sehr geehrter Herr Stiehl,  
sehr geehrte Damen und Herren,

mit Schreiben vom 7. Februar 2016 haben wir Ihnen die drohende Zahlungsunfähigkeit der Maple Bank GmbH angezeigt. Hiermit stimmen wir der Stellung eines Insolvenzantrages durch die BaFin zu.

Mit freundlichen Grüßen

**Maple Bank GmbH**



Stefan Bungarten



Walter Kraushaar

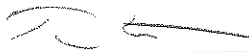


James Leach



Florian Wirsching

**THIS IS EXHIBIT "P" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



**A commissioner for taking affidavits**

Thomas G. Stone



Office of the Superintendent of  
Financial Institutions Canada

Bureau du surintendant des  
institutions financières Canada

**PROTECTED B**

February 10, 2016

Mr. Paul Lishman  
General Manager (Principal Officer)  
Maple Bank GmbH, Toronto Branch  
Suite 3500, P.O. Box 328  
Toronto, Ontario  
M5K 1K7

Dear Mr. Lishman:

**Re: Notice of Taking Control of the assets of Maple Bank GmbH (Maple Bank)**

This is to notify you that pursuant to paragraph 619(1)(a) of the *Bank Act* I have taken control of the assets in Canada and the assets in respect of the business in Canada of Maple Bank until 11:59 PM on February 25, 2016.

Paragraph 619(1)(a) of that Act provides as follows:

- (1) Subject to this Act, where any of the circumstances described in subsection (2) exist in respect of an authorized foreign bank or the business in Canada of an authorized foreign bank, the Superintendent may
  - (a) take control, for a period not exceeding sixteen days, of the assets of the authorized foreign bank;

I have taken control of the assets of Maple Bank on the grounds set out in paragraphs 619(2)(a) and (g) of the *Bank Act*.

I am of the opinion that Maple Bank will not be able to pay its liabilities as they become due and payable and a state of affairs exists in respect of Maple Bank that may be materially prejudicial to the interests of Maple Bank's depositors or creditors in respect of its business in Canada.



OSFI  
BSIF

255 Albert Street  
Ottawa, Canada  
K1A 0H2

[www.osfi-bsif.gc.ca](http://www.osfi-bsif.gc.ca)

Canada

- 2 -

This decision was based on the current situation of Maple Bank, including the following facts:

- (1) a moratorium has been imposed by the Federal Financial Supervisory Authority of Germany (BaFin) with respect to the business activities of Maple Bank;
- (2) Maple Bank has indicated to BaFin that its ability to make payments is in doubt;
- (3) Maple Bank gave its permission to BaFin to commence insolvency proceedings in Germany;
- (4) BaFin has indicated it will commence insolvency proceedings shortly;

Should you require further information, please contact Paul Lavery at 416-973-5603.

Yours very truly,

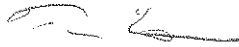
A handwritten signature in black ink, appearing to be "J. R." followed by a horizontal line and a flourish.

Superintendent of Financial Institutions

cc. Wolfgang Schuck, CEO of Maple Bank GmbH

Daniel Mestek, BaFin

**THIS IS EXHIBIT "Q" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



---

**A commissioner for taking affidavits**

Thomas Bestner





***Order to Vary an Order to  
Commence and Carry On  
Business in Canada***

***Ordonnance modifiant une  
ordonnance autorisant l'exercice  
d'activités au Canada***

***Bank Act***

***Loi sur les banques***

Pursuant to paragraph 534(6)(a) of the *Bank Act* and on behalf of the Superintendent of Financial Institutions, I vary the order approving the commencement and carrying on of business in Canada of Maple Bank GmbH ("Maple") by making that order subject to the limitation that Maple shall not, in respect of its business in Canada, without the approval of the Superintendent:

Sur le fondement de l'alinéa 534(6)a) de la *Loi sur les banques* et au nom du surintendant des institutions financières, je modifie l'ordonnance d'agrément permettant à Maple Bank GmbH (Maple) de commencer à exercer ses activités au Canada en l'assortissant d'une restriction lui interdisant d'effectuer les opérations suivantes à l'égard de ses activités au Canada sans l'agrément du surintendant :

- accept any deposit liabilities; or
- enter into a transaction or a series of transactions with a person that would cause Maple to owe in excess of \$25,000 (the "Maximum Amount") to that person.

- accepter toute forme de dépôt;
- effectuer une opération ou une série d'opérations avec une personne qui aurait pour effet de faire que Maple devrait plus de 25 000 \$ (le montant maximal) à cette personne.

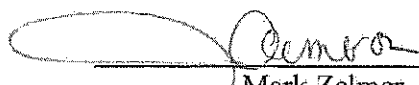
For clarity, any amounts owing to a person on the date of this document do not count toward the Maximum Amount and the restriction does not apply to amounts owing under existing contracts or other arrangements that are not amended on or after the date of this order.

À titre de précision, toute somme due à une personne en date des présentes n'est pas prise en compte pour le calcul du montant maximal et la restriction ne s'applique pas aux sommes dues aux termes des contrats en vigueur ou d'autres accords qui ne sont pas modifiés en date la présente ordonnance ou ultérieurement.

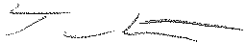
Date: FEB 10 2016

Date :

FEB 10 2016

  
Mark Zelmer  
for Deputy Superintendent  
Surintendant adjoint

**THIS IS EXHIBIT "R" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



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**A commissioner for taking affidavits**

Thomas Gerber

## Certified English Translation of German Original

- Executed Copy -

Amtsgericht Frankfurt am Main  
 Insolvenzgericht [Insolvency Court]  
 Case no.: 810 IN 128/16 M  
 (Please quote in all correspondence)

11 February 2016

				mkr Init.
CMS Insolvenz / FIM				

**Decision**

In the insolvency proceedings

Maple Bank GmbH, Feuerbachstraße 26-32, 60325 Frankfurt am Main (Frankfurt am Main Local Court [Amtsgericht]; HRB 26931),  
 Represented by:

1. Florian Wirsching, (director),
2. Walter Kraushaar, (director),
3. Stefan Buugarten, (director),
4. James Leach, (director),

**Counsel:**

Rechtsanwalt [German lawyer] Dr Sven Schelo, Linklaters LLP, Mainzer Landstraße 16, 60325 Frankfurt am Main,

insolvency proceedings pursuant to §§ 2, 3, 11, 16 ff German Insolvency Code [Insolvenzordnung] are opened today 11 February 2016 at 13:07 owing to imminent illiquidity.

The following is appointed insolvency administrator:

Rechtsanwalt [German lawyer] Dr Michael C. Frege, Neue Mainzer Straße 2-4, 60311 Frankfurt am Main, Tel. 069/71701-300, Fax: 069/71701-40-410.

The debtor may not dispose of its current and future assets for the duration of the insolvency proceedings and the right of such disposal is assigned to the insolvency administrator [Insolvenzverwalter]. Debt-discharging payments may no longer be made to the debtor after the date of commencement; if payments are nevertheless made to the debtor and if the funds do not accrue to the insolvency estate there is a risk that the same payment may have to be repeated but this time to the insolvency administrator.

**Grounds**

The present proceedings are main insolvency proceedings within the meaning of Art. 3 para 1, Art. 16 EC Regulation on Insolvency Proceedings.

The criterion for application of the EC Regulation on Insolvency Proceedings is satisfied: International insolvency law governs insolvencies where the assets of the debtor are situated in more than one country. A prerequisite is that the insolvency has "cross-border effects"; this is satisfied in the present case owing to the branch office in the Netherlands.

The Frankfurt am Main Insolvency Court [Insolvenzgericht] is competent for the main insolvency proceedings within the meaning of Art. 3 para 1 EC Regulation on Insolvency Proceedings. This states that international jurisdiction lies with the courts of the Member State



## Certified English Translation of German Original

[Round stamp: incomplete]

in which the centre of a debtor's main interests is situated at the time that the application is filed (= "centre of main interests" = COMI). In the case of a company or legal person, the place of the registered office is presumed to be the centre of its main interests in the absence of proof to the contrary (Art. 3 para 1 sentence 2 EC Regulation on Insolvency Proceedings)

Current information and the information which the debtor has provided to the German Federal Financial Supervisory Authority [*Bundesanstalt für Finanzdienstleistungsaufsicht*] indicates that its centre of economic activity lies in Frankfurt am Main. Moreover, as its registered office is in Frankfurt the presumption set out in the statute Art. 3 para 1 sentence 2 EC Regulation on Insolvency Proceedings applies.

**Right to appeal**

The debtor, the pension safeguarding fund [*Pensions-Sicherungsverein*], the German Federal Financial Supervisory Authority and – in the case of legal persons and companies without legal personality – any member of a board with representative authority [*Vertretungsorgan*] or any general partner [*persönlich haftender Gesellschafter*] may appeal against this decision by lodging an immediate appeal [*sofortige Beschwerde*]. This must be filed to the Local Court [*Amtsgericht*], Gerichtsstraße 2, 60313 Frankfurt am Main, within a two-week statutory time limit.

The time limit begins on service/pronouncement of the decision. Where service is effected by public announcement [*öffentliche Bekanntmachung*] the time limit begins as soon as two further days have elapsed after the day of such announcement. If the decision is both served and publicly announced the time limit begins at the time of whichever is earlier.

The appeal can be lodged by filing a notice of appeal [*Beschwerdeschrift*] with the above-named court or by making a formal statement to the court registry [*Geschäftsstelle*] of any local court [*Amtsgericht*]; whether the notice of appeal is lodged within the time limit depends on when it is received by the above-named court. The appeal must be signed by the appellant or the appellant's authorised representative. The appeal must contain the reference number of the appealed decision and the statement that an appeal is being filed against this decision. If the appeal only concerns part of the decision, the part concerned must be indicated.

The appeal must be substantiated.

Wissen

Judge at local court

Executed

Frankfurt am Main, 11 February 2016

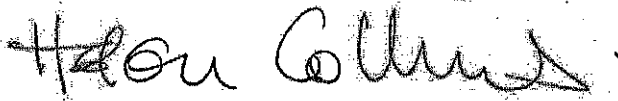


[Signature: not legible]  
Comely, court clerk  
Clerk of court registry



*Certified English Translation of German Original*

I hereby certify that the above text is a true and accurate translation of the German document provided. A print-out of that document, which was provided for translation as a PDF file, is attached hereto for information purposes.



Helen Collins, B.A. (Hons.), BDÜ\*  
Publicly appointed and sworn translator for English  
for the courts in Baden-Württemberg  
Stuttgart, 12 February 2016



\* Bundesverband der Dolmetscher und Übersetzer / German Association of Interpreters and Translators

**- Ausfertigung -**

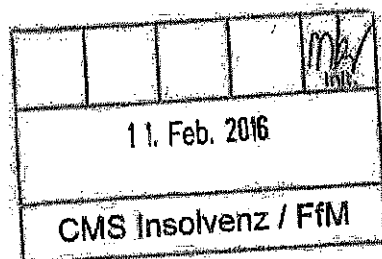
**Amtsgericht Frankfurt am Main**

11.02.2016

Insolvenzgericht

Geschäfts-Nr.: 810 IN 128/16 M

(Bitte stets angeben)



**B e s c h l u s s**

In dem Insolvenzverfahren

Maple Bank GmbH, Feuerbachstraße 26-32, 60325 Frankfurt am Main (AG Frankfurt am Main, HRB 26931),

vertreten durch:

1. Florian Wirsching, (Geschäftsführer),
2. Walter Kraushaar, (Geschäftsführer),
3. Stefan Bungarten, (Geschäftsführer),
4. James Leach, (Geschäftsführer),

Verfahrensbevollmächtigte:

Rechtsanwalt Dr. Sven Schelo, Linklaters LLP, Mainzer Landstraße 16, 60325 Frankfurt am Main,

wird heute am 11.02.2016 um 13:07 Uhr das Insolvenzverfahren gemäß §§ 2, 3, 11, 16ff InsO wegen drohender Zahlungsunfähigkeit eröffnet.

Zum Insolvenzverwalter wird bestellt:

Rechtsanwalt Dr. Michael C. Frege, Neue Mainzer Straße 2-4, 60311 Frankfurt am Main, Tel.: 069/71701-300, Fax: 069/71701-40-410.

Der Schuldnerin wird die Verfügung über ihr gegenwärtiges und zukünftiges Vermögen für die Dauer des Insolvenzverfahrens verboten und dem Insolvenzverwalter übertragen. Schuldbefreiende Leistungen an die Schuldnerin können nach dem Eröffnungszeitpunkt nicht mehr erfolgen, wird gleichwohl an die Schuldnerin geleistet und gelangen die Mittel nicht zur Masse, besteht die Gefahr der nochmaligen Leistungsverpflichtung gegenüber dem Insolvenzverwalter.

**G r ü n d e**

Bei dem vorliegenden Verfahren handelt es sich um ein Hauptinsolvenzverfahren im Sinne von Art. 3 Abs. 1, Art. 16 EuInsVO.

Der Anwendungsanlass der EuInsVO ist gegeben: Das internationale Insolvenzrecht regelt Insolvenzen, bei denen das Schuldnervermögen auf mehrere Länder verteilt ist. Erforderlich ist ein „grenzüberschreitender Bezug“ des Insolvenzverhältnisses, der vorliegend im Hinblick auf die Zweigstelle in den Niederlanden gegeben ist.

Das Insolvenzgericht Frankfurt am Main ist für das Hauptinsolvenzverfahren im Sinne von Art. 3 Abs. 1 EuInsVO zuständig. Danach sind die Gerichte des Mitgliedsstaates

international zuständig, in dem der Schuldner im Zeitpunkt der Antragstellung den Mittelpunkt seiner hauptsächlichsten Interessen" (= „centre of main interests“ = COMI) hat. Für Gesellschaften und juristische Personen gilt dabei die widerlegbare Vermutung, dass dieser Mittelpunkt der satzungsmäßige Sitz der Gesellschaft ist (Art. 3 Abs. 1 Satz 2 EuInsVO).

Nach den bisherigen Erkenntnissen und den vorliegenden Angaben der Schuldnerin gegenüber der Bundesanstalt für Finanzdienstleistungsaufsicht hat diese den Schwerpunkt ihrer wirtschaftlichen Tätigkeit in Frankfurt am Main. Des Weiteren hat sie ihren satzungsmäßigen Sitz in Frankfurt, weshalb die gesetzliche Vermutung des Art. 3 Abs. 1 S. 2 EuInsVO greift.

### Rechtsmittelbelehrung

Diese Entscheidung kann von dem Schuldner, dem Pensions-Sicherungsverein, der Bundesanstalt für Finanzdienstleistungsaufsicht sowie bei juristischen Personen und Gesellschaften ohne Rechtspersönlichkeit von jedem Mitglied des Vertretungsorgans bzw. jedem persönlich haftenden Gesellschafter mit der sofortigen Beschwerde angefochten werden. Sie ist innerhalb einer Notfrist von 2 Wochen bei Amtsgericht, Gerichtsstraße 2, 60313 Frankfurt am Main einzulegen.

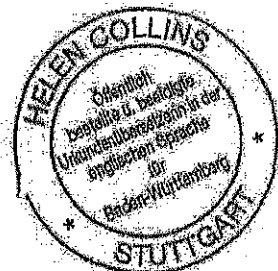
Die Frist beginnt mit der Zustellung bzw. mit der Verkündung der Entscheidung. Soweit die Zustellung durch öffentliche Bekanntmachung erfolgt ist, beginnt sie, sobald nach dem Tage der Veröffentlichung zwei weitere Tage verstrichen sind. Erfolgt die öffentliche Bekanntmachung neben der Zustellung ist für den Beginn der Frist das frühere Ereignis maßgebend.

Die Beschwerde kann durch Einreichung einer Beschwerdeschrift bei dem o. g. Gericht eingelegt oder auch zu Protokoll der Geschäftsstelle eines jeden Amtsgerichts erklärt werden, wobei es für die Einhaltung der Frist auf den Eingang bei dem o. g. Gericht ankommt. Sie ist von dem Beschwerdeführer oder seinem Bevollmächtigten zu unterzeichnen. Die Beschwerde muss die Bezeichnung des angefochtenen Beschlusses sowie die Erklärung enthalten, dass Beschwerde gegen diesen Beschluss eingelegt wird. Soll die Entscheidung nur zum Teil angefochten werden, so ist der Umfang der Anfechtung zu bezeichnen. Die Beschwerde soll begründet werden.

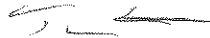
Wissen

Richter am Amtsgericht

Ausgefertigt  
Frankfurt am Main, den 11.02.2016  
Cornely, Justizangestellte  
als Urkundsbeamtin der Geschäftsstelle



**THIS IS EXHIBIT "S" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



---

**A commissioner for taking affidavits**

*Thomas Berke*





Office of the Superintendent of  
Financial Institutions Canada

Bureau du surintendant des  
institutions financières Canada

PROTECTED B

February 12, 2016

Mr. Paul Lishman  
General Manager (Principal Officer)  
Maple Bank GmbH, Toronto Branch  
Suite 3500, P.O. Box 328  
Toronto, Ontario  
M5K 1K7

Dear Mr. Lishman:

**Re: Notice of Intent to Continue to Control the Assets of Maple Bank GmbH  
(Maple Bank)**

This is to notify you that I intend to continue to control the assets in Canada and the assets in respect of the business in Canada (collectively, the Assets) of Maple Bank pursuant to subparagraph 619(1)(b)(ii) of the *Bank Act*. In accordance with subsection 619(3) of that Act, Maple Bank has the right to make written representations on the proposed action. Any such representations are requested to be made on or before 9:00am EST on February 15, 2016 and be sent by email to Judy Cameron at this address:  
[judy.cameron@osfi-bsif.gc.ca](mailto:judy.cameron@osfi-bsif.gc.ca)

I intend to continue to control the Assets on the grounds set out in paragraphs 619(2)(a), (b) and (g) of the *Bank Act*. I am of the opinion that Maple Bank will not be able to pay its liabilities as they become due and payable, and a state of affairs exists in respect of Maple Bank that may be materially prejudicial to the interests of Maple Bank's depositors or creditors in respect of its business in Canada. The details in support of that proposed action are set out in the attached memorandum.

If I take control of the Assets pursuant to subparagraph 619(1)(b)(ii), I intend to request the Attorney General of Canada, pursuant to section 621 of the *Bank Act*, to apply for a winding-up order in respect of the Assets.



OSFI  
BSIF

265 Albert Street  
Ottawa, Canada  
K1A 0H2

[www.osfi-bsif.gc.ca](http://www.osfi-bsif.gc.ca)

Canada

- 2 -

Should you require further information, you can contact Judy Cameron at 613-990-7337.

Yours very truly,



Superintendent of Financial Institutions

cc.

Dr. Michael C. Frege, Appointed Insolvency Administrator of Maple Bank GmbH  
Peter Hamilton, Stikeman Elliott LLP

Attachment

PROTECTED B

## MEMORANDUM

**TO:** Jeremy Rudin  
Superintendent of Financial Institutions

**FROM:** Jamey Hubbs  
Assistant Superintendent, Deposit-Taking Supervision Sector

**SUBJECT:** Maple Bank GmbH

---

**Purpose**

The purpose of this memorandum is to recommend that you:

1. Inform the Minister of Finance (Minister) that you intend to continue your control of the assets of Maple Bank GmbH for a period exceeding sixteen days, unless he notifies you by 5:00pm EST on February 12, 2016 that he is of the opinion that your decision is not in the public interest (public interest override).
2. Provided that the Minister does not indicate that he intends to exercise his public interest override, notify Maple Bank GmbH on February 12, 2016 that you intend to continue control for a period exceeding sixteen days and it has until 12:00pm EST on February 13, 2016 to make representations regarding your intended action.
3. Subject to your review of any representations made by Maple Bank GmbH, continue your control of the assets of Maple Bank GmbH for a period exceeding sixteen days and request the Attorney General of Canada to apply for a winding-up order under the *Winding-up and Restructuring Act* (WURA).

All references to "assets" in this memorandum have the meaning under section 618 of the *Bank Act* (Act), except as provided otherwise.

---

**Legislative Authority**

Section 618 of the Act provides that for the purposes of section 619 to 627, "assets", in relation to an authorized foreign bank, means a) an asset in respect of its business in Canada, including the assets referred to in subsection 582(1) and section 617 and the assets under its administration and b) any other asset in Canada of the authorized foreign bank.

Paragraph 619(1)(a) of the Act provides that, where any of the circumstances described in subsection 619(2) of the Act exist in respect of an authorized foreign bank, the Superintendent may take control, for a period not exceeding sixteen days, of the assets of the authorized foreign bank.

Subparagraph 619(1)(b)(ii) of the Act provides that, unless the Minister advises the Superintendent that the Minister is of the opinion that it is not in the public interest to do so, where control of the assets has been taken under paragraph 619(1)(a), continue the control beyond the sixteen days referred to in that paragraph.

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- 2 -

Paragraph 619(2)(a) of the Act provides that control by the Superintendent under subsection 619(1) may be taken in respect of an authorized foreign bank where the authorized foreign bank has failed to pay its liabilities or, in the opinion of the Superintendent, will not be able to pay its liabilities as they become due and payable.

Paragraph 619(2)(b) of the Act provides that control by the Superintendent under subsection 619(1) may be taken in respect of an authorized foreign bank where the authorized foreign bank in respect of its business in Canada has failed to pay its liabilities or, in the opinion of the Superintendent, will not be able to pay its liabilities as they become due and payable.

Paragraph 619(2)(g) of the Act provides that control by the Superintendent under subsection 619(1) may be taken in respect of an authorized foreign bank where in the opinion of the Superintendent, any other state of affairs exists in respect of the authorized foreign bank that may be materially prejudicial to the interests of the authorized foreign bank's depositors or creditors in respect of its business in Canada or to those of the owners of any assets under the authorized foreign bank's administration in respect of its business in Canada, including where proceedings under a law relating to bankruptcy or insolvency have been commenced in Canada or elsewhere in respect of the authorized foreign bank or its holding body corporate.

Subsection 619(3) of the Act provides that the Superintendent shall notify an authorized foreign bank of any action proposed to be taken in respect of it under paragraph 619(1)(b) and of its right to make written representations to the Superintendent within the time specified in the notice, not exceeding ten days after it receives the notice.

Section 621 of the Act provides that the Superintendent may, at any time before the receipt of a request under section 622 to relinquish control of the assets of an authorized foreign bank, request the Attorney General of Canada to apply for a winding-up order under section 10.1 of WURA in respect of the authorized foreign bank, where the assets of the authorized foreign bank are under the control of the Superintendent pursuant to subparagraph 619(1)(b)(ii).

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## Background

1. Maple Bank GmbH (Foreign Bank) is regulated by the Federal Financial Supervisory Authority (BaFin) in Germany. The Foreign Bank is indirectly wholly-owned by Maple Financial Group Inc. (MFG), a privately held, global financial organization based in Canada. MFG provides banking, securities and financial services to financial institutions, corporations and individuals worldwide. In addition to the Foreign Bank, which has a branch in Canada and a service office in the Netherlands, MFG owns subsidiaries that operate as broker-dealers in Canada, the U.K. and the U.S. The Foreign Bank is not a systemically important bank in Germany and at September 30, 2015, it had Tier 1 and Total Capital Ratios of 27.1 per cent and 29.4 per cent, respectively. At the same date, the Foreign Bank had total assets of €6.5 billion and €297 million of regulatory capital.

2. The Foreign Bank is permitted to carry on business in Canada, on a branch basis, as an authorized foreign bank regulated by the Office of the Superintendent of Financial Institutions (OSFI), and commenced operations in Canada on April 30, 2001 (Canadian Branch). A restriction in the Foreign Bank's Order to Commence and Carry on Business in Canada (OCCB) prevented it from accepting deposit liabilities from Canadian domiciled depositors. The Canadian Branch's primary business activities are the securitization of mortgage receivables, fixed income trading, structured finance and securities finance. The balance sheet of the Canadian Branch includes wholesale deposits

raised from German depositors. The Foreign Bank's eligible deposits, including those booked at the Canadian Branch, are protected under the German Deposit Guarantee Act up to €100,000 per depositor. The Foreign Bank is also a member of the Deposit Protection Fund of the Association of German Banks, which protects its eligible deposits up to a limit of 20 per cent of the Foreign Bank's capital (estimated at €59.8 million per depositor).

3. At December 31, 2015, the Canadian Branch reported total assets and liabilities of \$5.4 billion, including \$563 million of wholesale deposits. At December 31, 2015 the Foreign Bank had unencumbered assets on deposit with a Canadian financial institution totalling approximately \$469 million.

4. In September 2015, the German Tax Authority commenced an investigation of the Foreign Bank for tax evasion. Thereafter, the Canadian Branch was placed on OSFI's Watch List. The Foreign Bank engaged KPMG to review the transactions that led to the tax investigation. OSFI was advised that the Foreign Bank had made a settlement offer in relation to taxes owing that was much lower than the amount estimated by KPMG (approximately €392 million); this offer was rejected by the German Tax Authority.

5. On February 6, 2016, BaFin placed a moratorium on the Foreign Bank's business activities, including its operations in Canada (Moratorium) on the basis of the potential over-indebtedness of the Foreign Bank, taking into consideration the provision for taxes. As outlined in BaFin's February 8, 2016 press release, the Moratorium ordered that the Foreign Bank be closed for business with customers and prohibited the Foreign Bank from receiving payments not intended for payment of debts towards it.

6. MFG has been unable to obtain additional capital support from existing shareholders or other investors.

7. In a letter dated February 7, 2016, the Foreign Bank advised BaFin of its impending insolvency and provided consent to BaFin to file an insolvency petition before the court in Germany (Insolvency Declaration).

8. On February 8, 2016:

- a) OSFI informed the Principal Officer of the Canadian Branch that:
  - Its Intervention Rating was re-classified to Stage 3, in line with OSFI's *Guide to Intervention*,
  - OSFI employees would be placed onsite to facilitate enhanced monitoring, and
  - It intended to vary the Foreign Bank's OCCB, as described in paragraph 9b) below. The Principal Officer of the Canadian Branch confirmed that he did not intend to make representations.
- b) LCH.Clearnet Limited, a clearing-house in the UK, issued a default notice to the Foreign Bank.

9. On February 9, 2016:

- a) The Canada Housing and Mortgage Corporation suspended the Canadian Branch from acting as an issuer under the National Housing Act Mortgage-Backed Securities Program.

- b) OSFI varied the Foreign Bank's OCCB to state that the Canadian Branch shall not, without the Superintendent's approval:
- i. move to a foreign jurisdiction any of its assets in Canada, and
  - ii. transfer to any person, by way of one or more transactions, any of its assets in Canada or in respect of its business in Canada if the total value of the assets transferred to that person exceeds \$25,000.
- Transfers related to recurring employment payments under existing employment contracts are not subject to the restrictions set out in paragraph ii).

10. On February 10, 2016:

- a) BaFin filed an application before the relevant court in Germany to commence insolvency proceedings with respect to the Foreign Bank.
- b) The Superintendent took control of the assets for a period not exceeding 16 days (Temporary Control). As a result of the events that had occurred to date, it was reasonable for the Superintendent to be of the opinion that the grounds for taking control pursuant to paragraphs 619(2)(a) and 619(2)(g) of the Act had been met. OSFI notified BaFin and the Canadian Branch of the Superintendent's action prior to issuing a press release.
- c) After receiving assurance from the Principal Officer that he would not make representations, OSFI varied the Foreign Bank's OCCB to provide that the Canadian Branch shall not, without the Superintendent's approval:
  - \* accept any deposit liabilities
  - \* enter into a transaction or a series of transactions with a person that would cause Maple to owe in excess of \$25,000 (the Maximum Amount) to that person.

For clarity, any amounts owing to a person on February 10, 2016 do not count toward the Maximum Amount and the restriction does not apply to amounts owing under existing contracts or other arrangements that are not amended on or after February 10th.

- d) BaFin indicated to OSFI that the Foreign Bank is expected to publish its annual financial statements on February 15, 2016 and this publication is expected to confirm the over-indebtedness of the Foreign Bank.
- e) OSFI informed the Principal Officer of the Canadian Branch that its Intervention Rating was re-classified to Stage 4, in line with OSFI's *Guide to Intervention*.

11. On February 11, 2016, a permanent insolvency administrator was appointed by the court in Germany and who is responsible for all decision-making regarding the Foreign Bank. This action is expected to lead to the liquidation and dissolution of the Foreign Bank under German law.

**Considerations for Continuing Control and Requesting the Attorney General of Canada to Apply for a Winding-up Order**

12. After taking into consideration the relevant facts related to this matter, including the Moratorium, the Insolvency Declaration and the appointment of the permanent insolvency administrator in Germany, it is reasonable for the Superintendent to be of the opinion that:

- a) The Foreign Bank will not be able to pay its liabilities as they become due and payable, and therefore the grounds for taking control of the assets pursuant to paragraphs 619(2)(a) and (b) of the Act have been met; and

- 5 -

- b) A state of affairs exists in respect of the Foreign Bank that may be materially prejudicial to the interests of the Foreign Bank's depositors and creditors in respect of its business in Canada and therefore the ground for taking control of the assets pursuant to paragraph 619(2)(g) of the Act has been met.

13. Although the assets can be included as part of the global liquidation under German law, the best avenue to protect depositors and creditors of the Canadian Branch is to liquidate its assets under WURA. While there may be sufficient assets in Canada to satisfy the depositors and creditors of the Canadian Branch, given the expected over-indebtedness of the Foreign Bank there may be insufficient global assets to satisfy all depositors and creditors. Relying on the German insolvency proceeding could result in Canadian assets being used to satisfy German liabilities which may disadvantage the depositors and creditors of the Canadian Branch.

14. You must have control of the assets in accordance with subparagraph 619(1)(b)(ii) of the Act (Permanent Control) prior to requesting the Attorney General of Canada to apply for a winding-up order under WURA. However, the Minister has a public interest override with respect to Permanent Control. As a result, prior to taking these actions it is important to be confident that the Minister does not intend to exercise such override.

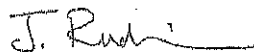
15. Given the concerns with the assets being dealt with under the German insolvency proceeding, I believe it is necessary to request the Attorney General of Canada to apply for a winding-up order under WURA as soon as possible in order to protect depositors and creditors of the Canadian Branch.

### Recommendation

I recommend you:

1. Inform the Minister that you intend to continue your control of the assets for a period exceeding sixteen days, unless he notifies you by 5:00pm EST on February 12, 2016 of his exercise of his public interest override.
2. Provided that the Minister does not indicate that he intends to exercise his public interest override, notify the Foreign Bank on February 12, 2016 that you intend to continue control for a period exceeding sixteen days and it has until 12:00pm EST on February 15, 2016 to make representations regarding your intended action.
3. Subject to your review of any representations made by the Foreign Bank, continue your control of the assets for a period exceeding sixteen days and request the Attorney General of Canada to apply for a winding-up order under WURA.

If you agree, please sign below, as well as the attached notice of intent to the Foreign Bank and the memorandum to the Minister requesting he advise you of his intentions with respect to his public interest override.



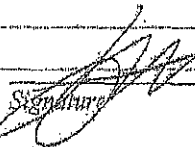
Jeremy Rudin  
Superintendent

FEB 11 2016

Date

Review Path

Assistant Superintendent Deposit-Taking  
Supervision Sector; Jamey Hubbs

  
Signature

  
Date

**THIS IS EXHIBIT "T" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



---

**A commissioner for taking affidavits**

*Shane's Gertre*





Office of the Superintendent of  
Financial Institutions Canada

Bureau du surintendant des  
institutions financières Canada

**PROTECTED B**

February 12, 2016

Mr. Paul Lishman  
General Manager (Principal Officer)  
Maple Bank GmbH, Toronto Branch  
Suite 3500, P.O. Box 328  
Toronto, Ontario  
M5K 1K7

Dear Mr. Lishman:

**Re: Notice of Intent to Continue to Control the Assets of Maple Bank GmbH  
(Maple Bank)**

This is to notify you that I intend to continue to control the assets in Canada and the assets in respect of the business in Canada (collectively, the Assets) of Maple Bank pursuant to subparagraph 619(1)(b)(ii) of the *Bank Act*. In accordance with subsection 619(3) of that Act, Maple Bank has the right to make written representations on the proposed action. Any such representations are requested to be made on or before 9:00am EST on February 15, 2016 and be sent by email to Judy Cameron at this address:  
[judy.cameron@osfi-bsif.gc.ca](mailto:judy.cameron@osfi-bsif.gc.ca)

I intend to continue to control the Assets on the grounds set out in paragraphs 619(2)(a), (b) and (g) of the *Bank Act*. I am of the opinion that Maple Bank will not be able to pay its liabilities as they become due and payable, and a state of affairs exists in respect of Maple Bank that may be materially prejudicial to the interests of Maple Bank's depositors or creditors in respect of its business in Canada. The details in support of that proposed action are set out in the attached memorandum.

If I take control of the Assets pursuant to subparagraph 619(1)(b)(ii), I intend to request the Attorney General of Canada, pursuant to section 621 of the *Bank Act*, to apply for a winding-up order in respect of the Assets.



OSFI  
BSIF

255 Albert Street  
Ottawa, Canada  
K1A 0H2

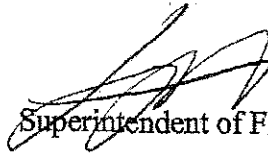
[www.osfi-bsif.gc.ca](http://www.osfi-bsif.gc.ca)

Canada

- 2 -

Should you require further information, you can contact Judy Cameron at 613-990-7337.

Yours very truly,



Superintendent of Financial Institutions

cc.

Dr. Michael C. Frege, Appointed Insolvency Administrator of Maple Bank GmbH  
Peter Hamilton, Stikeman Elliott LLP

Attachment

**THIS IS EXHIBIT "U" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



**A commissioner for taking affidavits**

Thomas Gester ✓



**KPMG Inc.**  
Bay Adelaide Centre  
333 Bay Street Suite 4600  
Toronto ON M5H 2S5  
Canada

Telephone (416) 777-8500  
Fax (416) 777-3364  
Internet [www.kpmg.ca](http://www.kpmg.ca)

February 12, 2016

Karen Bailey  
CMHC  
130 Adelaide St. W., Suite 2000  
Toronto, Ontario  
M5H 3P5

Dear Madame:

**Subject: Maple Bank GmbH ("Maple Bank")**

We are writing in our capacity as a representative of the Superintendent of Financial Institutions ("Superintendent") regarding the Assets (all as defined below) of Maple Bank, and specifically to put you on notice that Maple Bank or any person acting on its behalf can no longer deal in any way with the Assets of Maple Bank (including without limitation cash, securities or any financial instruments or derivatives) that you are currently holding without the prior approval of the Superintendent or KPMG Inc. as a representative of the Superintendent ("Representative").

On February 10, 2016, the Superintendent took control of the assets in Canada and the assets in respect of the business in Canada (collectively, the "Assets") of Maple Bank, pursuant to paragraph 619(1)(a) of the Bank Act (the "Act"). The Superintendent subsequently appointed KPMG Inc. as its representative in connection with the Assets of Maple Bank. A copy of the appointment letter is attached hereto.

The effect of the Superintendent taking control of the Assets is set forth in subsection 619(5) of the Act. Paragraph 619(5)(a) stipulates that where, pursuant to subsection 619(1), the Superintendent has control of the assets of an authorized foreign bank (such as Maple Bank), neither the authorized foreign bank nor any person acting on its behalf shall deal in any way with any of the assets without the prior approval of the Superintendent or a representative designated by the Superintendent. Paragraph 619(5)(b) further stipulates that no person acting on behalf of the authorized foreign bank shall have access to any cash or securities held in Canada by the authorized foreign bank without the prior approval of the Superintendent or a representative designated by the Superintendent.

As such, we wish to put you on formal notice that the prior approval of the Superintendent or the Representative must be provided for any dealing with the Assets (including without limitation the cash, securities or any financial instruments or derivatives) of Maple Bank that you are currently holding.



Should you have any questions regarding the content of this letter, please contact George Bourikas as 416-777-8887, or by email at [gbourikas@kpmg.ca](mailto:gbourikas@kpmg.ca).

Yours very truly,

A handwritten signature in black ink, appearing to read 'N. Bourikas', with a long horizontal flourish extending to the right.

KPMG Inc.

In its capacity as Representative of the Office of the Superintendent of Financial Institutions

Maple Bank GmbH – Toronto Branch

TOR\_LAW\ 8885078\3  
2/12/16

**THIS IS EXHIBIT "V" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



---

**A commissioner for taking affidavits**

*Thomas Keenan*

## **MacFarlane, Alex**

---

**From:** Reynolds, Philip J. [pjreynolds@kpmg.ca]  
**Sent:** February-14-16 12:27 AM  
**To:** Maria Konyukhova  
**Cc:** MacFarlane, Alex; Peter Hamilton; Peter Howard; Cummings, Lascelle; Kung, Ruby; Richer, Gino; Sam, David; Covert, David; john.lucki@justice.gc.ca; Brearton, Nick; Bourikas, George; Wong, Lilly; Lavery, Paul; Pararajalingam, Ajenthan; Bourikas, George  
**Subject:** Maple Bank  
**Attachments:** Maple balance sheet.pdf

Maria,

First we thank Peter and yourself for convening a call yesterday in order to discuss the current issues surrounding Maple Bank GmbH and its branch in Canada. Further discussions may prove to be useful going forward.

With respect to your information request as delineated below, as you know KPMG Inc. was appointed by the Superintendent of Financial Institutions as its agent to assist in respect of the control of the assets of Maple Bank on February 11, 2016. Since its appointment KPMG Inc. has been fully occupied in assisting in respect of the control of the assets and gaining a better and more complete understanding of Maple Bank's assets, liabilities and operations. Accordingly, given that KPMG Inc. was only appointed less than 2 days ago its knowledge and familiarity as to Maple Bank's operations is still limited. This, of course, means that responding to each of your information requests as listed below is essentially impossible. However, in order to assist your client in obtaining a snapshot of Maple Bank's assets and liabilities attached is a copy of Maple Bank's balance sheet as of February 10 2016. We would also suggest that you speak to Maple Bank personnel in Germany as we believe they have a fairly comprehensive knowledge of the Canadian branch, including detailed financial information on same.

We expect to be able to provide further and more complete information with regard to your information request as we continue to familiarize ourselves with Maple Bank's operations.

Best regards.  
Phil Reynolds  
KPMG Inc.

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**From:** Maria Konyukhova [mailto:MKonyukhova@stikeman.com]  
**Sent:** Friday, February 12, 2016 10:52 PM  
**To:** Reynolds, Philip J.  
**Cc:** Alex.MacFarlane@gowlings.com; Peter Hamilton; Peter Howard  
**Subject:** Maple Bank

Phil:

Thanks for setting up and having a call with us earlier today. We are writing further to our discussion and your and OSFI's invitation to liaise with you as necessary to obtain information about the assets, liabilities and operations of the Canadian branch of Maple Bank. We would be obliged if you provide us with all information and documents in your possession about the nature, quantum, and location of the assets and liabilities of the Canadian Branch of Maple Bank, including, in order of priority but without limitation:

- 1) Deposits and depositors
  - a. Breakdown of wholesale deposits
  - b. Breakdown by German, Canadian and other depositors

- 2) Assets
  - a. Nature, location, any known recovery risks
  - b. Particulars of the unencumbered assets on deposit with Canadian institution
- 3) Particulars and status of securitized mortgage receivables, fixed income trading, structured finance and securities finance
- 4) Particulars on amounts owing to and from the Canadian Branch from Maple Bank or related Canadian regulated financial institutions
- 5) Particulars on fixed term deposits
- 6) Cash on hand
- 7) Employee liabilities
- 8) Other operational liabilities and known creditors

The information on deposits and depositors is of the utmost priority. We request that you provide as complete a response as possible tomorrow to permit us and our client to review in light of OSFI's deadline for written representation of Monday, February 15, 2016, 9:00 AM EST.

Finally, please confirm that we will be provided with as much notice as practicable in advance of any court application in connection with this matter and, in any event, no less than 24 hours of notice.

Thanks and we are available throughout the weekend to discuss.

Maria Konyukhova  
Tel : (416) 869-5230  
[mkonyukhova@stikeman.com](mailto:mkonyukhova@stikeman.com)

STIKEMAN ELLIOTT LLP Barristers & Solicitors  
5300 Commerce Court West, 199 Bay Street, Toronto, ON, Canada M5L 1B9  
[www.stikeman.com](http://www.stikeman.com)

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TORONTO MONTREAL OTTAWA CALGARY VANCOUVER NEWYORK LONDON SYDNEY

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At KPMG we are passionate about earning your trust and building a long-term relationship through service excellence. This extends to our communications with you.



Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

- **Disclaimer concerning confidential and privileged information/unintended recipient** (<http://disclaimer.kpmg.ca>).
- **Disclaimer concerning tax advice** (<http://taxdisclaimer.kpmg.ca>).

*If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.*

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Maple Bank - Toronto Branch (Amounts in CAD)  
 Balance Sheet  
 10-Feb-16  
 (income estimate can be off)

Description	(0)	(1)	2	0	0	0
Description	Amount CAD	Amount EUR	Amount USD	Amount NOK	Amount SEK	IFRS Amount Total
<b>Assets</b>						
BMO Bank account	224,201,886	0	35,838,730	0	0	260,040,416
BMO Bank account (Trade Finance)	0	0	0	0	0	0
BMO bank account (myNEXT)	0	0	0	0	0	0
BMO bank account (SPG)	8,066,146	0	0	0	0	8,066,146
Restricted Cash	109,311	0	0	0	0	109,311
BMO depository location	204	0	0	0	0	204
MB Frankfurt bank account	723,093	0	0	0	0	723,093
Accrued interest receivable	0	0	0	0	0	0
Due from clients	49,898,389	(24,983,607)	53,526,732	0	0	78,541,514
Due from banks	0	0	0	0	0	0
BMO short term deposit	0	0	0	0	0	0
BNS ST DEPOSIT	0	0	0	0	0	0
Deutsche Bank ST deposit	0	0	0	0	0	0
Securities Long	507,470,072	0	0	0	0	507,470,072
Accrued interest on securities owned	1,248,610	0	0	0	0	1,248,610
VAR pricing adjustment	0	0	0	0	0	0
Mortgages receivable	3,513,627,619	0	0	0	0	3,513,627,619
Mortgage interest receivable	4,399,673	0	0	0	0	4,399,673
Mortgage premium	48,298,180	0	0	0	0	48,298,180
Mortgage interest reserve	0	0	0	0	0	0
Mortgage suspense account	(0)	0	0	0	0	(0)
Capitalized costs	8,937,433	0	0	0	0	8,937,433
Basis adjustment - assets	43,651,895	0	0	0	0	43,651,895
Deferred premium paid - securitization	0	0	0	0	0	0
Allowance for bad debts	0	0	0	0	0	0
Accrued interest on loan - Structured Finance	(120)	0	0	0	0	(120)
Accrued interest on loan - Trade Finance	0	0	0	0	0	0
CHT Replacement assets	50,592,305	0	0	0	0	50,592,305
CHT swap accrual	0	0	0	0	0	0
Loans receivable from clients	274,899,997	0	87,149,747	0	0	361,849,644
Loans receivable from banks	0	0	0	0	0	0
Loan loss reserve	(180,000)	0	0	0	0	(180,000)
Loan loss reserve - Specific	0	0	0	0	0	0
Accounts receivable	0	0	0	0	0	0
Loan receivable MFG	0	0	0	0	0	0
Intracompany funding	0	0	0	0	0	0
MBFR/MB Frankfurt intercompany	0	0	0	0	0	0
MSCL / MB TOR intercompany	0	0	3,198,246	0	0	3,198,246
MSCL reverse repo	188,020,017	0	11,425,130	0	0	179,445,147
MSCL stock borrow	0	0	0	0	0	0
MSUSA stock	0	0	0	0	0	0
MSUSA / MB TOR intercompany	0	0	0	0	0	0
MFGI / MB TOR intercompany	0	0	0	0	0	0
MB TOR / MPAI intercompany	0	0	0	0	0	0
MSUK / MB TOR intercompany	0	0	277,617	0	0	277,617
MSUK reverse repo	0	0	194,530,777	0	0	194,530,777
MSUSA repo / reverse repo	0	0	35,426,219	0	0	35,426,219
MBTORMIAI intercompany	0	0	0	0	0	0
MHCL / MB TOR intercompany	639,789	0	0	0	0	639,789
Loan receivable MSCL	0	0	0	0	0	0
Loan receivable MHCL	0	0	0	0	0	0
MFG stock loan	0	0	0	0	0	0
MB Frankfurt stock loan	0	0	34,680,117	0	0	34,680,117
State Street stock loan	0	0	0	0	0	0
BGI stock loan	0	0	0	0	0	0
Bank of America stock loan	0	0	0	0	0	0
BMO Nasbitt Burns stock loan	(0)	0	0	0	0	(0)
CIBC World Markets stock loan	0	0	0	0	0	0
CIBC stock loan	0	0	0	0	0	0
Fiducia Desjardins stock borrow/rev repo	0	0	0	0	0	0
National Bank Financial	0	0	0	0	0	0
Healthcare of Ontario Pension stock loan	0	0	0	0	0	0
Healthcare of Ontario Pension rev repo	0	0	0	0	0	0
Abria stock loan	0	0	0	0	0	0
Merrill Lynch stock loan	0	0	0	0	0	0
Societe General Paris stock borrow / rev repo	0	0	0	0	0	0
Credit Suisse Securities	0	0	0	0	0	0
Credit Suisse International	0	0	0	0	0	0
Interest accrual	33,441	0	0	0	0	33,441
Interest accrual - MB	0	0	0	0	0	0
Fixed assets	691,035	0	0	0	0	691,035
Accumulated depreciation	(297,888)	0	0	0	0	(297,888)
Other assets	23,579	0	133,920	0	0	157,499
Other liabilities	0	0	0	0	0	0
Prepaid Expense	90,719	72,288	0	0	0	163,007
DRIP accrual - asset	0	0	0	0	0	0
Letter of Credit	0	0	0	0	0	0
Fair Value MTM Receivable/Payable	11,382,545	0	0	0	0	11,382,545
Fair Value MTM payable	0	0	0	0	0	0
Accrued swap receivable	50,277,432	0	0	0	0	50,277,432
Unpaid balances	(50,000,000)	56,879,548	0	0	0	6,879,548
Income tax recoverable	0	0	0	0	0	0
Income tax payable	0	0	0	0	0	0
CMT tax payable	0	0	0	0	0	0
Deferred tax asset	0	0	0	0	0	0
Deferred tax payable	0	0	0	0	0	0
Deferred asset	0	0	0	0	0	0
Intercompany loan	0	0	0	0	0	0
Swap receivable - held for investment/liquidity	0	0	0	0	0	0
Short term deposit - MB Frankfurt	0	47,312,823	0	0	0	47,312,823
IRS Swap accrual	0	0	0	0	0	0
Short term interest receivable	44	0	4	0	0	48
FX position control	(1,174,870,177)	1,218,784,178	780,435	0	0	44,694,436
IRS cross-currency swap	0	0	0	0	0	0
ADP Platinum control	0	0	12,978	0	0	12,978

Maple Bank - Toronto Branch (Amounts in CAD)  
Balance Sheet  
10-Feb-18  
(Income estimate can be off)

	(0)	(1)	2	0	0	0
Description	Amount CAD	Amount EUR	Amount USD	Amount NOK	Amount SEK	IFRS Amount Total
Head Office netting			0	0	0	0
<b>Total assets</b>	<b>3,742,054,926</b>	<b>1,298,066,244</b>	<b>466,978,652</b>	<b>0</b>	<b>0</b>	<b>5,497,098,822</b>
	0	47,332,828	34,680,117	0	0	81,992,945
<b>Liabilities</b>						
BMO Bank account	0	0	0	0	0	0
BMO Bank account (Trade Finance)	0	0	0	0	0	0
BMO bank account (SPG)	0	0	0	0	0	0
MB Frankfurt bank account	0	24,828	97,441,201	0	0	97,466,030
Securities Short	31,441,955	0	0	0	0	31,441,955
Accrued interest on securities short	81,794	0	0	0	0	81,794
NRF - CMB	3,005,656,975	0	0	0	0	3,005,656,975
NRF - MBS	436,371,678	0	0	0	0	436,371,678
Deferred MBS premium received - securitization	0	0	0	0	0	0
Capitalized costs	0	0	0	0	0	0
Basic adjustment - liabilities	58,320,408	0	0	0	0	58,320,408
Due to clients	123	0	0	0	0	123
MBRR/MB Frankfurt intercompany	0	0	0	0	0	0
MBUSA / MB TOR intercompany	0	0	54,312	0	0	54,312
MFG / MB TOR intercompany	0	0	0	0	0	0
MB TOR / MPAI intercompany	0	0	0	0	0	0
MSUK / MB TOR intercompany	2,064	108,445	0	0	0	110,509
Loans payable to clients	0	0	0	0	0	0
Loan Payable MSCL	0	0	0	0	0	0
Loan Payable MHCL	6,000,000	0	0	0	0	6,000,000
Loan Payable MFG	0	0	0	0	0	0
MHCL / MB TOR intercompany	0	0	0	0	0	0
MSCL / MB TOR intercompany	638,806	0	0	0	0	638,806
Accounts payable	7,221,761	170,189	0	0	0	7,391,950
DRIP accrual	11,731	0	(684)	0	0	11,038
Term deposit liability	0	693,174,031	0	0	0	693,174,031
Deposit interest payable	0	101,256	0	0	0	101,256
MSCL repo	49,046,160	0	0	0	0	49,046,160
MSCL stock loan	0	0	0	0	0	0
MSCL stock borrow	0	0	0	0	0	0
State Street stock loan	0	0	0	0	0	0
Bank of America stock borrow	0	0	0	0	0	0
BGI stock loan	0	0	0	0	0	0
BMO Nesbitt Burns stock loan	0	0	0	0	0	0
CIBC World Markets stock loan	0	0	0	0	0	0
CIBC World Markets repo	7,679,750	0	0	0	0	7,679,750
Credit Suisse International	0	0	12,644,133	0	0	12,644,133
Fiducia Desjardins stock loan / repo	0	0	0	0	0	0
Societe General Paris stock loan / repo	0	0	0	0	0	0
SGA Securities stock loan / repo	0	0	229,198,896	0	0	229,198,896
MSUSA repo / reverse repo	0	0	0	0	0	0
ICBC stock loan/repo	0	0	0	0	0	0
Natrabank Bank Financial	0	0	0	0	0	0
Loan from MB Frankfurt	115,000,000	468,030,000	123,344,467	0	0	706,374,467
Interest accrual	0	0	0	0	0	0
Interest accrual - IIB	78,678	664,027	115,068	0	0	857,673
Other assets	0	0	0	0	0	0
Other liabilities	4,534,756	4,183,463	289,223	0	0	9,007,451
Accrued swap payable	0	0	0	0	0	0
Fair Value MTM Receivable/Payable	0	0	0	0	0	0
Fair Value MTM Payable	50,277,432	0	0	0	0	50,277,432
IRS Swap accrual	(219,700)	0	0	0	0	(219,700)
Swap payable - held for investment/liquidity	0	0	0	0	0	0
Deferred swap payment	0	0	0	0	0	0
CHF swap accrual	(57,023,585)	0	0	0	0	(57,023,585)
MB Frankfurt stock loan	0	0	0	0	0	0
FX position control	0	0	0	0	0	0
IRS cross currency swap	0	0	0	0	0	0
Income tax payable	4,180,379	0	0	0	0	4,180,379
Ontario tax payable	0	0	0	0	0	0
Deferred tax payable	1,087,000	0	0	0	0	1,087,000
GMT tax payable	0	0	0	0	0	0
Capital tax payable	0	0	0	0	0	0
Head Office netting	0	0	0	0	0	0
<b>Total liabilities</b>	<b>3,720,365,966</b>	<b>1,166,456,240</b>	<b>458,066,635</b>	<b>0</b>	<b>0</b>	<b>5,339,908,841</b>
<b>Shareholders' equity</b>						
Notional capital	0	132,608,500	0	0	0	132,608,500
Retained earnings	48,072,022	0	0	0	0	48,072,022
Retained earnings offset	(36,200,334)	0	0	0	0	(36,200,334)
Current yr purchase to RE	0	0	0	0	0	0
Net income for the period	11,817,272	(989,495)	3,692,016	0	0	14,709,793
<b>Total shareholders equity</b>	<b>21,688,960</b>	<b>131,609,005</b>	<b>3,692,016</b>	<b>0</b>	<b>0</b>	<b>157,189,981</b>
<b>Total liabilities &amp; shareholders' equity</b>	<b>3,742,054,926</b>	<b>1,298,066,245</b>	<b>458,978,651</b>	<b>0</b>	<b>0</b>	<b>5,497,098,821</b>

**THIS IS EXHIBIT "W" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



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**A commissioner for taking affidavits**

*Thomas Gertner*

## Gertner, Thomas

---

**From:** MacFarlane, Alex  
**Sent:** February-15-16 7:25 PM  
**To:** Gertner, Thomas  
**Subject:** FW: Maple Bank OSFI Notice of Intent to Take Control

Alex MacFarlane  
Partner - Gowlings  
T 416 369 4631 | F 416 862 7661 | [alex.macfarlane@gowlings.com](mailto:alex.macfarlane@gowlings.com)  
My Assistant Frances Dunne | T 416 862 4459 | [frances.dunne@gowlings.com](mailto:frances.dunne@gowlings.com)

---

**From:** Cameron, Judy [<mailto:Judy.Cameron@osfi-bsif.gc.ca>]  
**Sent:** February-14-16 10:51 PM  
**To:** Reynolds, Philip J. ([pjreynolds@kpmg.ca](mailto:pjreynolds@kpmg.ca)); MacFarlane, Alex; Cummings, Lascelle; Wong, Lilly; Brearton, Nick ([nbrearton@kpmg.ca](mailto:nbrearton@kpmg.ca))  
**Subject:** FW: Maple Bank OSFI Notice of Intent to Take Control

Message delivered.

---

**From:** Cameron, Judy  
**Sent:** February-14-16 10:50 PM  
**To:** 'Peter Hamilton'; 'mkonyukhova@stikeman.com'  
**Cc:** Michael Frege ([Michael.frege@cms-hs.com](mailto:Michael.frege@cms-hs.com)); Richer, Gino; Hubbs, James; Paul Lishman ([PLishman@maplefinancial.com](mailto:PLishman@maplefinancial.com)); Laverty, Paul  
**Subject:** RE: Maple Bank OSFI Notice of Intent to Take Control

Maria

Your request for an extension to the deadline for making representations was forwarded to me by Phil Reynolds of KPMG

I have discussed this matter, including KPMG's response to your information request, with the Superintendent. He has directed me to advise you that he is not prepared to grant an extension.

As such, the deadline for making representations continues to be 9 am on February 15.

*Judy Cameron*

*Managing Director, Approvals and Precedents/Directrice générale, Approbations et précédents  
Legislation and Approvals Division / Division de la législation et des approbations  
Office of the Superintendent of Financial Institutions/Bureau de surintendant des institutions financières  
tel: (613) 990-7337 e-mail/courriel: [judy.cameron@osfi-bsif.gc.ca](mailto:judy.cameron@osfi-bsif.gc.ca)*

---

**From:** Cameron, Judy  
**Sent:** February-12-16 12:30 PM  
**To:** Paul Lishman ([PLishman@maplefinancial.com](mailto:PLishman@maplefinancial.com))  
**Cc:** 'Peter Hamilton'; Michael Frege ([Michael.frege@cms-hs.com](mailto:Michael.frege@cms-hs.com)); Richer, Gino; Hubbs, James

**Subject:** Maple Bank OSFI Notice of Intent to Take Control  
**Importance:** High

Please find attached documentation from OSFI regarding Maple Bank

<< File: Feb 11 2016 Memorandum to Superintendent.pdf >> << File: Feb 12 2016 Maple Notice of Intent to Take Control.pdf >>

Please note that any **representations are due on Monday February 15 at 9 am, as stated in the Notice.** (These times do not align with those set out in the Memorandum to the Superintendent; because we were able to provide this Notice earlier than anticipated, the deadline for making representations has also been advanced).

***Judy Cameron***

***Managing Director, Approvals and Precedents/Directrice générale, Approbations et précédents***

***Legislation and Approvals Division / Division de la législation et des approbations***

***Office of the Superintendent of Financial Institutions/Bureau de surintendant des institutions financières***

***tel: (613) 990-7337 e-mail/courriel: [judy.cameron@osfi-bsif.gc.ca](mailto:judy.cameron@osfi-bsif.gc.ca)***

## Gertner, Thomas

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**From:** MacFarlane, Alex  
**Sent:** February-15-16 7:25 PM  
**To:** Gertner, Thomas  
**Subject:** FW: Maple Bank  
**Attachments:** MBTOr Customer deposits Feb 5, 16.xlsx

Alex MacFarlane  
Partner - Gowlings  
T 416 369 4631 | F 416 862 7661 | alex.macfarlane@gowlings.com  
My Assistant Frances Dunne | T 416 862 4459 | frances.dunne@gowlings.com

-----Original Message-----

**From:** Reynolds, Philip J. [mailto:pjreynolds@kpmg.ca]  
**Sent:** February-14-16 10:31 PM  
**To:** Maria Konyukhova  
**Cc:** MacFarlane, Alex; Peter Hamilton; Peter Howard; Cummings, Lascelle; Kung, Ruby; Richer, Gino; Sam, David; Covert, David; john.lucki@justice.gc.ca; Brearton, Nick; Bourikas, George; Wong, Lilly; Laverty, Paul; Pararajalingam, Ajenthan; judy.cameraon@osfi-bsif.gc.ca  
**Subject:** Maple Banik

Maria,

Further to your email of 5:01 pm today, I attach a report of deposits of the Canadian branch of Maple Bank as of February 5, 2016 provided by management. I have been advised by management of the following: (a) the information with respect to the Canadian branch deposits has been and continues to be fully accessible to the Frankfurt branch of Maple Bank on the Kondor system; (b) these depositors are all resident in Germany, the communication with them is in German and dealings with depositors has been outsourced by the Canadian Branch to Frankfurt under a formal Outsourcing Agreement. As such, the identity of the depositors and the financial details of their deposits are fully known and managed by the Frankfurt branch.

In terms of information, I understand Frankfurt has full access to detailed accounting information with respect to the assets and liabilities of the Canadian branch through certain global systems. In particular, the Frankfurt branch has full access to the global Kondor system which contains the information with respect to the Canadian branch's loan, deposit and derivatives liabilities, and the global Apex system which contains the information with respect to the Canadian branch's securities and investments. I also believe that the Frankfurt branch has at least read only access to the Broadridge system which generates the Canadian branch's general ledger. Finally, I understand that the Frankfurt branch receives detailed monthly reporting packages and continues to receive a balance sheet and associated trial balances on a daily basis.

With respect to your client's request for an extension of time to provide representations, OSFI will be responding directly to such request.

Best Regards,

Phil

Philip J. Reynolds

Senior Vice President and National Practice Co-Leader

Restructuring & Turnaround

KPMG Inc.

Bay Adelaide Centre

333 Bay Street, Suite 4600

Toronto, ON M5H 2S5

Direct: 416.777.8415

Cell: 647.620.2996

[pjreynolds@kpmg.ca](mailto:pjreynolds@kpmg.ca)

-----Original Message-----

From: Maria Konyukhova [<mailto:MKonyukhova@stikeman.com>]

Sent: Sunday, February 14, 2016 5:01 PM

To: Reynolds, Philip J.

Cc: [Alex.MacFarlane@gowlings.com](mailto:Alex.MacFarlane@gowlings.com); Peter Hamilton; Peter Howard; Cummings, Lascelle; Kung, Ruby; Richer, Gino; Sam, David; Covert, David; [john.lucki@justice.gc.ca](mailto:john.lucki@justice.gc.ca); Brearton, Nick; Bourikas, George; Lilly Wong; Laverty, Paul; Pararajalingam, Ajenthan

Subject: RE: Maple Bank

Thanks, Phil. We have forwarded this to our client, but as you know, this does not contain much detail in addition to what is already publicly available. You may also know that the Maple Bank Canadian Branch's employees have refused to provide information to the Administrator appointed by the German Financial Services Authority ("BaFin") without the consent of OSFI which has very much stymied the Administrator's efforts to collect the information requested of OSFI and KPMG yesterday and which is required to enable the Administrator to prepare representations requested by OSFI by tomorrow at 9 a.m., the deadline set by OSFI. In particular, the Administrator still has no information regarding the nature of the deposits and depositors of the Canadian Branch which would enable it to determine the application of the German Banks' Deposit Protection Fund ("GDPF") we had discussed on our call on Friday and, consequently, to confirm its understanding that as a result, GDPF will be the principal economic stakeholder of the Canadian Branch. We anticipate that analysis to be relevant not only to the Administrator, but also to OSFI and the Minister in determining whether to proceed with an application under WURA to appoint a liquidator or determination of other next steps. To



that end, we request an extension of tomorrow's 9 a.m. deadline to permit you, OSFI and the Administrator to obtain and share information that is necessary and relevant to such decision. In the spirit of same co-operation, we also again request confirmation that we will be provided with as much notice as practicable in advance of any court application in connection with this matter and, in any event, no less than 24 hours of notice.

Maria Konyukhova

Tel : (416) 869-5230

mkonyukhova@stikeman.com

-----Original Message-----

From: Reynolds, Philip J. [mailto:pjreynolds@kpmg.ca]

Sent: Sunday, February 14, 2016 12:29 AM

To: Maria Konyukhova

Cc: Alex.MacFarlane@gowlings.com; Peter Hamilton; Peter Howard; Cummings, Lascelle; Kung, Ruby; Richer, Gino; Sam, David; Covert, David; john.lucki@justice.gc.ca; Brearton, Nick; Bourikas, George; Lilly Wong; Laverty, Paul; Pararajalingam, Ajenthan

Subject: Maple Bank

Maria,

First we thank Peter and yourself for convening a call yesterday in order to discuss the current issues surrounding Maple Bank GmbH and its branch in Canada. Further discussions may prove to be useful going forward.

With respect to your information request as delineated below, as you know KPMG Inc. was appointed by the Superintendent of Financial Institutions as its agent to assist in respect of the control of the assets of Maple Bank on February 11, 2016. Since its appointment KPMG Inc. has been fully occupied in assisting in respect of the control of the assets and gaining a better and more complete understanding of Maple Bank's assets, liabilities and operations. Accordingly, given that KPMG Inc. was only appointed less than 2 days ago its knowledge and familiarity as to Maple Bank's operations is still limited. This, of course, means that responding to each of your information requests as listed below is essentially impossible. However, in order to assist your client in obtaining a snapshot of Maple Bank's assets and liabilities attached is a copy of Maple Bank's balance sheet as of February 10 2016. We would also suggest that you speak to Maple Bank personnel in Germany as we believe they have a fairly comprehensive knowledge of the Canadian branch, including detailed financial information on same.

We expect to be able to provide further and more complete information with regard to your information request as we continue to familiarize ourselves with Maple Bank's operations.

Best regards.

Phil Reynolds

KPMG Inc.

From: Maria Konyukhova [mailto:MKonyukhova@stikeman.com]

Sent: Friday, February 12, 2016 10:52 PM

To: Reynolds, Philip J.

Cc: Alex.MacFarlane@gowlings.com; Peter Hamilton; Peter Howard

Subject: Maple Bank

Phil:

Thanks for setting up and having a call with us earlier today. We are writing further to our discussion and your and OSFI's invitation to liaise with you as necessary to obtain information about the assets, liabilities and operations of the Canadian branch of Maple Bank. We would be obliged if you provide us with all information and documents in your possession about the nature, quantum, and location of the assets and liabilities of the Canadian Branch of Maple Bank, including, in order of priority but without limitation:

- 1) Deposits and depositors
  - a. Breakdown of wholesale deposits
  - b. Breakdown by German, Canadian and other depositors
- 2) Assets
  - a. Nature, location, any known recovery risks
  - b. Particulars of the unencumbered assets on deposit with Canadian institution

- 3) Particulars and status of securitized mortgage receivables, fixed income trading, structured finance and securities finance
- 4) Particulars on amounts owing to and from the Canadian Branch from Maple Bank or related Canadian regulated financial institutions
- 5) Particulars on fixed term deposits
- 6) Cash on hand
- 7) Employee liabilities
- 8) Other operational liabilities and known creditors

The information on deposits and depositors is of the utmost priority. We request that you provide as complete a response as possible tomorrow to permit us and our client to review in light of OSFI's deadline for written representation of Monday, February 15, 2016, 9:00 AM EST.

Finally, please confirm that we will be provided with as much notice as practicable in advance of any court application in connection with this matter and, in any event, no less than 24 hours of notice.

Thanks and we are available throughout the weekend to discuss.

Maria Konyukhova

Tel : (416) 869-5230

[mkonyukhova@stikeman.com](mailto:mkonyukhova@stikeman.com)<mailto:mkonyukhova@stikeman.com>

**THIS IS EXHIBIT "X" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**

*T. G.*

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**A commissioner for taking affidavits**

*Thomas G. Galt*

# STIKEMAN ELLIOTT

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BY E-MAIL

February 15, 2016

Judy Cameron  
Senior Director, Legislation and Approvals  
Approvals and Precedents  
Office of the Superintendent of Financial Institutions (Canada)  
255 Albert Street,  
Ottawa, Ontario K1A 0H2

Dear Ms. Cameron,

**Re: Notice of Intention to Continue to Control the Assets of Maple Bank GmbH ("Maple Bank")**

## I. INTRODUCTION

We are Canadian counsel to Dr. Michael C. Frege, the German court-appointed insolvency administrator of Maple Bank (the "**Administrator**"). We refer to correspondence of the Superintendent of Financial Institutions (Canada) (the "**Superintendent**") dated February 12, 2016 to Mr. Paul Lishman, the Principal Officer of the Canadian branch of Maple Bank (the "**Branch**"), and copied to the Administrator. In this correspondence the Superintendent advises that he intends to continue to control the assets of the Branch and that he intends to request that the Attorney General of Canada apply for a winding up order under the *Winding-up and Restructuring Act* (the "**WURA**") in respect of the Branch. The correspondence states that any written submissions in respect of such actions must be made before 9:00 a.m. on Monday February 15, 2016.

We appreciate the practical constraints under which the Superintendent and KPMG are operating and the difficulty of providing information on a timely basis. However the need for such urgency, particularly in light of the already existing control order and the fact of the German proceedings and the German stay, has not been explained to us. In addition, we think that there are risks in proceeding on the basis of incomplete information, particularly as regards the extent of deposit insurance, and who the ultimate creditors are likely to be. The short deadline and the very limited information made available by the Superintendent through KPMG (all as described in greater detail below) have also prejudiced our ability to make full representations, and accordingly we reserve the right to supplement these representations.

TORONTO  
MONTRÉAL  
OTTAWA  
CALGARY  
VANCOUVER  
NEW YORK  
LONDON  
SYDNEY

The principal issue raised here relates to the appropriate manner in which to approach the insolvency of a Canadian branch of a German bank. The Superintendent's actions to date have indicated a fixed preference for a separate Canadian process under the *WURA* and a ring fencing of the Canadian assets of the Branch for the benefit of the Canadian creditors of the Branch. It is not clear that any other option has even been considered.

We note that both the existing German procedure, and the contemplated *WURA* procedure, are both much more in the nature of a traditional insolvency proceeding than they are in the nature of a regulatory action. While both the German regulator and the Superintendent have a continuing consultative role, their formal responsibilities and role are limited once the proceedings are commenced. Therefore, this case should not be regarded as one where the power, prerogatives and privileges of two regulators are in conflict. Indeed, the protagonist on the German side is the Administrator and not the German regulator. Instead this case ought to be regarded as one where traditional insolvency principles of comity require coordination and respect for the procedures of others.

It is the view of the Administrator that the Superintendent should defer any application under the *WURA* and support the recognition in Canada of the existing German liquidation process in relation to Maple Bank. This letter sets out the reasons why we think that such a proceeding is both preferable as a practical matter and more in line with current international thinking as to the appropriate means to address the insolvency of a financial institution. It is our position that the interest of any Canadian creditors of the Branch would be adequately protected by the German proceeding.

Whether the assets in Canada are liquidated through a separate Canadian process or by means of the recognition of the German process, the Administrator supports a cooperative and consultative process between the German and Canadian insolvency officials. The Administrator requests the opportunity to meet and discuss with the Superintendent how a protocol implementing such a cooperative and consultative process might be put in place.

At this time, however, the Administrator is of the view that it is both desirable and compatible with international standards for the Superintendent to agree to include the assets of the Branch in a court supervised liquidation under German law and to support recognition of the German proceeding in Canada. In the view of the Administrator, it would be odd for a Canadian regulator to insist, in a manner inconsistent with the very international standards that Canada itself helped to develop, to exclude the Administrator from an insolvency proceeding in which the principal party concerned from a credit exposure perspective may well be a public deposit insurer in the Administrator's home jurisdiction.

## II. DISCUSSIONS/REPRESENTATIONS

### 1. Legislative Framework and Canada's International Commitments Regarding Insolvency of International Financial Institutions

Prior to 1999, Canadian law did not allow foreign banks to carry on business in Canada through a locally-established branch. A subsidiary was required. In that year, in response to commitments made by Canada as part of the World Trade Organization trade negotiations, amendments were introduced to the *Bank Act* (Canada) (the "Bank Act") to provide for the ability of foreign banks to establish branches in Canada. These amendments also provided for the extension of the Superintendent's supervisory and remedial powers to foreign bank branches. The powers which the Superintendent has exercised in respect of the Branch over the last week are included within these supervisory and remedial powers.

Concurrently with these amendments to the *Bank Act*, amendments were also made to the *WURA* to provide for a bespoke insolvency regime applicable to foreign bank branches. These provisions contemplated that where a control order has been made, the Attorney General of Canada may make an application to the court for the appointment of a liquidator in respect of the Canadian assets of the Canadian branch of a foreign bank. The *WURA* also provides for the liquidation of those assets by the liquidator, subject to the supervision of the Canadian court, and for the distribution of the proceeds of those assets on basis which favours the creditors of the Canadian branch over creditors of the foreign bank generally.

The statutory language in the *WURA* reserves to the Superintendent two broad areas of discretion.

First, the Superintendent and the Attorney General of Canada have a broad discretion with respect to whether or not to bring an application under the *WURA*. There is no obligation of any kind upon the Superintendent or the Attorney General of Canada to bring an application under the *WURA*, and there is no basis upon which a decision not to bring the application can be challenged. Nor does the *WURA* provide any guidance or limitation relative to the manner in which the discretion of the Superintendent and the Attorney General of Canada to make or not make the application should be exercised.

Similarly, as was shown in the *Cavell* decision<sup>1</sup>, the Superintendent and the Attorney General of Canada have the ability to support in Canada the recognition of a foreign proceeding even where, as in the case of the *WURA*, there is no explicit recognition regime. The Superintendent and the Attorney General of Canada therefore appear to have the broadest possible power to either make an application seeking the commencement of a domestic proceeding or to support the extension to Canada of a foreign proceeding.

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<sup>1</sup> *Re Cavell Insurance Co.*, (2004), 6 C.B.R. (5th) 11 (Ont. S.C.J. [Commercial List], aff'd (2006), 80 O.R. (3d) 500 (C.A.)

Second, Section 158.2 of the *WURA* provides that where the foreign bank is subject to liquidation proceedings in its home jurisdiction, the Superintendent may, if he deems it advisable and in the interests of the creditors of the Canadian branch of the foreign bank, authorize the *WURA* liquidator, subject to the approval of the court, to transfer the assets of the Canadian branch of the foreign bank to the liquidator of the foreign bank outside of Canada. This discretion would appear to be somewhat narrower than the first discretion as it requires both a determination that the transfer of assets is "advisable" (which would appear to allow for of broad range of considerations) and a determination that the transfer is in the interests of the Canadian creditors of the Canadian foreign bank branch.

The *WURA* in its current form represents the thinking of 15 years ago relative to the insolvency of a financial institution. Since the financial crisis, a great deal of thought has been given by the world's leading financial institutions regulators as to the appropriate manner in which to address or resolve distressed financial institutions. To be sure, the case of a distressed financial institution raises issues which are different from those raised in an industrial insolvency. First, a regulator is often called upon to take a leading role. Second, many insolvency regimes are characterized by early intervention provisions which do not require proof of insolvency. Third, the distressed financial institution may present issues relating to systemic risk, the protection of depositors, the protection of deposit insurance schemes and other public interests. Finally, due to the integrated and international nature of financial institutions, and the intangible nature of their assets, a distressed financial institution may raise very difficult questions relating to international coordination and the allocation of assets.

For these reasons, international bodies have spent a great deal of time developing principles to be applied to the insolvency of domestic and international financial institutions. The most important of these bodies is the Financial Stability Board (the "FSB"). At the Seoul G20 Summit in November of 2010, the G20 Leaders endorsed a policy framework developed by the FSB. That framework called for action in five areas, including improvements to insolvency regimes so that any financial institution, whatever its size and complexity, could be resolved without disruption to the financial system and without taxpayer funds. Canada has played a leading role in the FSB. In fact, Mark Carney was appointed to head the FSB while he was Governor of the Bank of Canada. Mr. Carney continues in that role today (albeit now with a different employer).

In November 2011, the FSB issued a document entitled "Key Attributes of Resolution Regimes for Financial Institutions". These principles were developed in relation to "too big to fail" institutions and are expressed to apply to "SIFIs" (Systemically Important Financial Institutions). Maple Bank is self-evidently neither "too big to fail" nor a SIFI.

In our view, the principles expressed in the Key Attributes should be applied more broadly. In addition, the values of cooperation and respect for the jurisdiction



of others, reflected in the Key Attributes, underlie the principle of comity, which is of large and increasing importance in insolvency law generally.

Section 7.3 of the Key Attributes acknowledges that it is entirely appropriate for the regulator in the jurisdiction of the branch (otherwise referred to as the host country regulator and in this case, Canada) to have statutory authority to intervene in relation to the branch. However, it also states that that authority should only be infrequently exercised, and, in most cases, deference should be extended to the home country regulator (in this case, Germany):

"7.3 The resolution authority should have resolution powers over local branches of foreign firms and the capacity to use its powers either to support a resolution carried out by a foreign home authority (for example, by ordering a transfer of property located in its jurisdiction to a bridge institution established by the foreign home authority) or, in exceptional cases, to take measures on its own initiative where the home jurisdiction is not taking action or acts in a manner that does not take sufficient account of the need to preserve the local jurisdiction's financial stability. Where a resolution authority acting as host authority takes discretionary national action, it should give prior notification and consult the foreign home authority."  
[emphasis added.]

Note as well the statements in Section 7.4 of the Key Attributes that where the host country regulator does elect to take action in respect of a branch, it should give prior notification to and consult with the foreign home authority. Other statements relative to cross-border cooperation include the statements that legislation and regulations in jurisdictions should not contain provisions that trigger automatic action in that jurisdiction as a result of official intervention or the initiation of resolution or insolvency proceedings in another jurisdiction and that the statutory mandate of a resolution authority should empower and strongly encourage the authority wherever possible to act to achieve a cooperative solution with foreign resolution authorities.

In addition, the Key Attributes discourage provisions such as those found in the *WURA* which favour one national creditor group over another:

"National laws and regulations should not discriminate against creditors on the basis of their nationality, the location of their claim or the jurisdiction where it is payable. The treatment of creditors and ranking in insolvency should be transparent and properly disclosed to depositors, insurance policy holders and other creditors."

As will be seen, the German deposit insurance schemes provides for equal treatment of Canadian depositors. The determination of the extent of this insurance coverage is an important element of this case.

The Key Attributes also favour the creation of effective international recognition regimes:

“Jurisdictions should provide for transparent and expedited processes to give effect to foreign resolution measures, either by way of a mutual recognition process or by taking measures under the domestic resolution regime that support and are consistent with the resolution measures taken by the foreign home resolution authority. Such recognition or support measures would enable a foreign home resolution authority to gain rapid control over the firm (branch or shares in a subsidiary) or its assets that are located in the host jurisdiction, as appropriate, in cases where the firm is being resolved under the law of the foreign home jurisdiction. Recognition or support of foreign measures should be provisional on the equitable treatment of creditors in the foreign resolution proceeding.” [emphasis added.]

## 2. Chronology of Events in Maple Bank’s and the Branch’s Administration

### (i) Appointment of the Administrator

On Saturday, February 6, 2016, the German Federal Financial Services Authority (the “BaFin”) imposed a business moratorium on Maple Bank. On Thursday, February 11, 2016, BaFin commenced insolvency proceedings against Maple Bank and the Administrator was appointed pursuant to an order of the German Insolvency Court (the “German Insolvency Order”).

In Canada, on Wednesday, February 10, 2016, the Superintendent took temporary control order over the assets of the Branch pursuant to the *Bank Act*.

Shortly following the appointment of the Administrator, in the evening of February 11, 2016, the Superintendent sought the consent of the Branch to the control order, to a waiver of the right to make representations, to the winding-up of the Branch under the WURA and to a waiver of the four day statutory notice period in s. 12(2) of the WURA. No information was provided with respect to the form or content of the proceedings to which consent was sought, the nature of the supporting materials or the timing of such proceedings.

On February 11, 2016, a call had been scheduled upon the Superintendent’s request vis-à-vis BaFin as German regulator to arrange a call with the Administrator. Such call was attended by members of the Superintendent’s office, KPMG, counsel to the Superintendent, BaFin, the Administrator and his lawyer team at CMS Hasche Sigle (“CMS”). In such call the Administrator denied waiving any rights related to any measures regarding the Branch by the Superintendent/KPMG upon the Superintendent’s request. Also, the Administrator explained in such call the legal principles of equal treatment of creditors (*par conditio creditorum*) and universality from an international and German law perspective. He also explained that he would need more information as to any measures issued in Toronto by the Superintendent or KPMG. Finally, the Administrator did indicate that the preferred path is to

cooperatively and constructively work together in resolving the liquidation and to focus on safeguarding assets and avoiding further damages on Maple Bank's assets, wherever located. He stressed in that context that cooperation between the Canadian authority/any agent and the Administrator should be installed as soon as possible.

On February 12, 2016 the Administrator, through its counsel Dr. Charlotte Schildt of CMS on behalf of the Branch, sent an email to the Superintendent with the following message:

"In order to consider your request for a consent we would need to see your draft application materials, and, in particular the form of order you propose to seek under *WURA*. In any event, would you please provide us with your draft materials and order far enough in advance of the application that we have the opportunity to consider them. Superintendent's request for a consent and waiver in respect of any Canadian process on the basis that the content of the request made by the Superintendent was unclear."

On February 12, 2016, the Superintendent notified Mr. Lishman of its intent to continue to control the assets of the Branch and that it would request that the Attorney General of Canada apply for an order under the *WURA*. Once again, no information was provided to the Administrator with respect to the form or content of the proposed *WURA* proceedings, the nature of the supporting materials or the timing of such proceedings. On or about that day, the Superintendent also appointed KPMG Inc. pursuant to subsection 619(6) of the *Bank Act* to assist in the control of the assets of the Branch.

On February 12, 2016, the Administrator sought to obtain information regarding the Branch, and in particular the nature and extent of its deposits and depositors, from Branch employees. The employees advised that they could not provide any information without the express consent of the Superintendent. Further, the Administrator has been informed that Branch employees have been denied access to the Branch office as key cards, etc. have been blocked by the Superintendent and KPMG.

On February 12, 2016, we participated on a call with the Superintendent and KPMG. In that call we described the role and responsibilities of the Administrator under German insolvency law and conveyed on behalf of the Administrator a request for information, and his desire to co-operate with KPMG and the Superintendent and to co-ordinate their efforts in the administration of the assets and liabilities of the Branch.

Late on February 12, 2016, we again requested from KPMG information about the assets, liabilities and operations of the Branch. This information was requested for the purpose of preparing the written submissions solicited by the Superintendent. In particular we wanted to understand what liabilities of the Branch were likely to be eligible for deposit insurance under one or more of the German deposit insurance schemes. In order to be prepared to make representations in court

if necessary, we also requested that we be provided with at least twenty-four hours' notice of any court application concerning the Branch.

Early on February 14, 2016, KPMG responded by providing a single balance sheet which contained not much more detail than is publicly available. KPMG advised that responding to the request for information was "essentially impossible" and suggested instead that we seek to obtain this information from Maple Bank personnel in Germany. No reply was given to the request for notice of any pending court proceeding.

### 3. The German Insolvency Regime

In order to properly consider whether to allow for the recognition of the German insolvency proceedings, it is appropriate to seek an understanding of the basic principles of applicable German insolvency law. Our description, below, of the German insolvency regime and the German Deposit Protection Fund ("GDPF") is based on information provided to us by CMS. However, we are of the view that the Superintendent should inform himself of the protections available under German law prior to seeking to exclude the operation of the German process.

#### (a) *Objective and Purpose of the German Insolvency Regime*

There are two principles fundamental to the operation of German insolvency law and to the Administrator's legal obligations that arise in connection with the insolvency of Maple Bank: (i) the principle of *par conditio creditorum* (the equal treatment of all creditors regardless of nationality or residence); and (ii) the principle of "universality" (the insolvent estate falling within the jurisdiction of the German insolvency regime consists of all assets of the debtor, wherever located). Taking each in turn:

#### (i) *Par Conditio Creditorum - The Equal Treatment of All Creditors*

The principle of equal treatment of all creditors is the fundamental statutory principle of German insolvency law. The principle derives from section 1 of the German *Insolvency Act*, an unofficial translation of which reads as follows:

The insolvency proceedings shall serve the purpose of collective satisfaction of a debtor's creditors by liquidation of the debtor's assets and by distribution of the proceeds, or by reaching an arrangement in an insolvency plan, particularly in order to maintain the enterprise...<sup>2</sup>

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<sup>2</sup> Section 1 of the Insolvency Act (or Statute) of 5 October 1994 (Federal Law Gazette I page 2866), as last amended by Article 19 of the Act of 20 December 2011 (Federal Law Gazette I page 2854), unofficial translation provided by the Federal Ministry of Justice and Consumer Protection.

The principle of equal treatment governs the substantive and procedural rights of creditors under German insolvency law. All creditors who fall within the same class are entitled to the same procedural rights (i.e., rights to be heard, rights to vote and/or rights to obtain information) and an equivalent share of any distribution from the insolvent estate (i.e., the principle of equal treatment of all creditors requires that there be a *pari passu* distribution to all creditors that fall within the same class).

The fundamental and substantive consequence of the principle of equal treatment is that there is no distinction between foreign and domestic creditors falling within the same class within German insolvency law. All creditors of the debtor are allowed to file their claim against the insolvent estate, regardless of nationality or residence. All of their claims will be treated equivalently based on their class by the Administrator, with no preference for German claims.

The relative standing of creditors is determined by the German *Insolvency Act*, which provides for formal classes of creditors. The principles are analogous (but not identical) to the principles under the Canadian bankruptcy and insolvency regimes. All claims in the nature of debt rank in preference to any claims based in equity and secured creditors rank in preference to unsecured creditors based on the relative priority of their security interest. More specific subdivisions between various unsecured creditors are specifically set out in the applicable section of the German *Insolvency Act*. The relative priorities of creditors are adjudicated following the commencement of formal insolvency proceedings.

(ii) *The Principle of Universality – A Single Forum Model of Insolvency*

Under the principle of “universality” the German courts assert jurisdiction over all of the assets of the debtor (wherever located). In German law, this is understood to be a particular application of the principle of equal treatment of creditors. This is because the grouping of all possible actions against the debtor into a single proceeding in a single forum places creditors on equal footing (rather than exposing them to the risk that a more aggressive creditor will realize its claims against the debtor’s limited assets in one jurisdiction while the other creditors attempt a compromise in another jurisdiction).

According to the jurisprudence of the German courts and the principles of German international insolvency law, assets located abroad form part of the estate of the debtor. Thus, the German insolvency proceeding includes the assets of the debtor in its entirety, not only assets located in Germany. Hence, the statutory authority of the Administrator to administer, dispose of and liquidate the assets of the debtor contains and covers the property and assets of the debtor in its entirety regardless of where such property and assets are located. The Administrator is obligated to identify, safeguard, protect, liquidate, dispose of or otherwise resolve the insolvency estate of the debtor, which includes the assets which are located in Germany but also assets abroad. Essentially, the German law requires that the Administrator take all possible and reasonable steps to have the effects of the German insolvency

proceeding recognized in any countries or jurisdiction in which the debtor has assets (other than very nominal assets).

**(b) Grounds for Filing for Insolvency**

The German *Insolvency Act* recognizes three grounds for insolvency: (i) "over-indebtedness" (i.e., the liabilities of the debtor exceed its assets); (ii) an inability to pay debts when they are due and payable; and (iii) the imminent inability to pay debts when they become due and payable. In case of the over-indebtedness and the inability to pay debts when they are due and payable, the debtor is required to file for insolvency. In case of the imminent inability to pay, the debtor may file for insolvency.

**(c) Stages of Insolvency Proceedings under German Insolvency Law**

**(i) Commencement of Insolvency Proceedings**

BaFin is exclusively entitled and obligated to file for insolvency proceedings in connection with the insolvency of a credit institution. The managing directors of a credit institution are required to notify BaFin of the potential existence of any three foregoing grounds of insolvency and to provide any information relevant to that determination. Once notified, BaFin is responsible for assessing this information and determining whether to commence formal insolvency proceedings against the credit institution.

In the case of Maple Bank, as noted above, BaFin filed to commence insolvency proceedings on Wednesday, February 10, 2016. The order declaring that Maple Bank was insolvent and appointing the Administrator was issued on Thursday, February 11, 2016.

There are two stays of proceeding imposed in the context of the insolvency of a credit institution. First, BaFin, in its capacity as a regulator, is empowered to impose its own stay of proceedings (the "**BaFin Moratorium**") prior to the commencement of formal insolvency proceedings. As noted above, it did this in respect of Maple Bank on Monday, February 8, 2016. Second, the German Insolvency Court imposes its own stay of proceeding following the commencement of formal insolvency proceedings (the "**German Stay of Proceeding**"). The BaFin Moratorium and German Stay of Proceeding do not operate in concert; rather, the BaFin Moratorium terminates when insolvency proceedings commence. Following the determination that an entity is insolvent, the right and position of all creditors is frozen: no secured creditor may attempt to realize on its security and no unsecured creditor may seek separate satisfaction of its debt outside of the formal insolvency proceedings.

**(ii) Progress in the Usual Course of a German Insolvency Proceeding**

The Administrator is primarily focused on identifying, safeguarding and protecting the assets. Assets are administered, liquidated, disposed of or otherwise

settled or resolved as appropriate. The foregoing measures are carried out in close cooperation with the creditors, who participate in the insolvency by means of a creditors committee and under the supervision of the German Insolvency Court.

(d) *The Role of the Insolvency Administrator*

German law specifically provides for the duties of the Administrator. The Administrator is required to be a natural person. The Administrator is charged with the administration of the business and assets of the debtor pending liquidation and distribution or a reorganization or restructuring further to the equivalent of a plan of arrangement or compromise.

The Administrator is bound by the basic principles of equal treatment of all creditors and has the duty to identify, safeguard, realize and protect the assets and entire estate of the debtor. The Administrator is required to assess the filed claims of creditors in an equal fashion, calculate distributions, provided that sufficient cash is distributable, to creditors, including setting aside reserves for disputed claims etc. and conduct any such distributions according to the legal system and by ensuring "justice in distributions". The duty to oversee the assets of the debtor arises as a consequence of the foregoing principles.

On the basis of the fundamental principles of equal treatment of creditors and universality, the Administrator must oversee all assets of the debtor worldwide. It would amount to a breach of the foregoing principles if the Administrator did not adequately and properly oversee assets located in foreign countries. This includes a case where the assets of the debtor would be liquidated further to a court-sanctioned process but the proceeds would then be distributed preferentially on the basis of nationality (i.e., to domestic creditors in preference to foreign creditors or *vice versa*), because such would be inconsistent with the foregoing principles.

Given that the Administrator is appointed by virtue of an order issued by the competent court, he must be mindful of the legal and economic interests of all participants of the insolvency proceedings. The Administrator is neutral and is obligated to take legal actions, as appropriate, in cases where the principle of equal treatment of creditors is at risk to be undermined or threatened. Furthermore, and critically, if the assets of the debtor are at risk because of any imminent loss in value or attempted execution (among other possible actions) from other parties (including other creditors, wherever in the world), the Administrator is required to take protective actions to preserve the assets of the debtor.

The proposed course of action contemplated by the Superintendent in the February 12, 2016 Notice of Intention conflicts with the legal obligations of the Administrator pursuant to German law. First, the assumption of control further to section 619 of the *Bank Act* prevents the Administrator from discharging his lawful duty to oversee and manage the assets of Maple Bank. Second, the Administrator is obliged to oversee the liquidation of the assets of Maple Bank in accordance with the principle of equal treatment of all creditors, thereby seeking a liquidation in which all creditors, regardless of nationality or residence, claim equally against the assets.

Liquidation pursuant to the *WURA*, which would result in preferential treatment for Canadian creditors of Maple Bank, is contrary to the principle of equal treatment of all creditors.

Once the extent of deposit insurance coverage has been determined, and provided that the pool of Canadian creditors remaining after deposit insurance has been paid is relatively small, it may be even be possible, on a negotiated basis, to extend to Canadian creditors in the German process, the same priority they would have been afforded in a Canadian process.

(e) *The Role of BaFin in the Insolvency of a Credit Institution*

The Administrator has full and unlimited authority with respect to the estate of a credit institution such as Maple Bank. However, the Administrator and BaFin cooperate, informally, with respect to the management of the estate. The Administrator and BaFin discuss strategy for the management and liquidation of the estate and coordinate efforts in dealing with other regulators.

Although the BaFin Moratorium imposed on Maple Bank in Germany has terminated as a result of the commencement of insolvency proceedings, BaFin retains a role. This is because BaFin is still entitled to request reports from the Administrator and, therefore, to oversee the process of the insolvency proceedings. BaFin is furthermore entitled – and obligated – to assess whether it should revoke the banking license of the credit institution (in particular if the business does not actively continue after filing).

#### 4. The German Deposit Insurance Regime

It is important to determine the extent to which the liabilities of the Branch benefit from deposit insurance in Germany. The broader the deposit insurance coverage, the fewer remaining Canadian creditors there will be. At the same time, the subrogation claims of the deposit insurers will become greater. The nature of the creditor group in Canada is fundamental to this case and ought to be determined in advance of any proceedings.

The GDPF currently fully secures the deposits of every customer at private commercial banks in Germany up to a limit of 20% of each bank's own funds as at the date of its last published annual financial statements.<sup>3</sup> Deposits established on or before December 31, 2011 are covered up to the protection limit applying until December 31, 2014 (30% of own funds) until maturity or until the next possible withdrawal date. Calculation of the protection ceiling is based on the amount of the bank's own funds at the time deposits are established.<sup>4</sup>

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<sup>3</sup> The protection limit will be lowered to 15% from 1 January 2020 and to 8.75% from 1 January 2025. Deposits established before 31 December 2011 shall be subject to the old protection limit until maturity or until the next possible withdrawal date.

<sup>4</sup> Own funds have the meaning given to them within the meaning of Article 72 of Regulation (EU) No



The purpose of the GDPF is to preserve the financial position of depositors in the event of imminent or actual financial difficulties of banks, particularly when the suspension of payments is imminent, in order to prevent the collapse of public confidence in private German banks. Since its launch in 1976, the GDPF has fully compensated eligible depositors in all payout cases. Even so, participation by such banks in the GDPF is voluntary. The GDPF is financed primarily through a regular annual contribution levied on its members. Maple Bank is a member of the GDPF.

The GDPF covers all deposits held by non-banking institutions, i.e. deposits held by private individuals, business enterprises and public bodies. As per the statute of the GDPF, the deposits protected are principally demand, term and savings deposits and registered savings certificates (based on an accounting definition - "liabilities to customer").

There is further a statutory deposit guarantee scheme that exists in Germany alongside the GDPF (in German: "Entschädigungseinrichtung deutscher Banken GmbH", abbreviated as the "EdB"), which was established in 1998. The EdB provides compensation up to a maximum of €100,000 per depositor for private commercial banks. The GDPF only covers deposits and depositors if and to the extent that these are not already secured by the EdB fund.

The GDPF covers all creditors of a German private bank, foreign and domestic, up to the maximum amount covered (which depends on the assets of the subject bank and the date of the deposits at issue). Where a depositor makes a claim pursuant to the GDPF, the rights and remedies of the depositor as a creditor of the insolvent bank are transferred to the GDPF. In this way, the GDPF, in aggregate, becomes (one of) the principal economic creditors by value of any insolvent bank.

In the case of the Maple Bank Group, according to public information of the GDPF, deposits with a volume of €2.6 billion are covered by the EdB up to a maximum of €100,000 per depositor and, in addition to that, by the GDPF regime up to the cap of €59,835,000 per depositor. Canadian depositors benefit from the two regimes under German law. The GDPF reimbursement will only trigger (per depositor) if the amount owed to any individual depositor is in excess of the EdB \$100,000 amount.

If and to the extent the assumingly small group of creditors of the Branch, which are not protected by the German deposit protection funds, would be paid out prior to further distributions, such approach may facilitate resolution of Maple Bank, including the Branch, and, hence, be preferable to all participants, including GDPF as assumed main creditor relating to the Branch and Maple Bank.

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575/2013 on prudential requirements for credit institutions and investment firms (Capital Requirements Regulation [CRR]). The own funds shall consist of the Common Equity Tier 1 capital pursuant to Article 50 CRR, the Additional Tier 1 capital pursuant to Article 61 CRR and the Tier 2 capital pursuant to Article 71 CRR; for calculation of the protection ceiling, the Tier 2 capital shall only be taken into account up to an amount of 25% of the Tier 1 capital within the meaning of Article 25 CRR002E

**5. Proposed Approach in respect of the Branch**

As stated above, both the Key Attributes and the practical circumstances of this case favour the approach of extending recognition to the German proceedings. The practical circumstances include the following:

First, due to the relatively modest size of the Branch, there do not appear to be any systemic issues in Canada related to Maple Bank or the Branch.

Second, by virtue of Section 545 of the *Bank Act*, the Branch was restricted in its ability to accept deposits in Canada in an amount of less than \$150,000 CAD. Practically this means that the Branch was not permitted to accept retail deposits. Therefore the considerations relative to the protection of retail depositors, which justify many of the powers and actions of financial institutions regulators, do not apply here.

Third, and for reasons related to the second consideration, the Branch was not a member of the Canada Deposit Insurance Corporation (the "CDIC"). Therefore, the CDIC is not exposed here. The German deposit insurance schemes, are, however, exposed to a very significant extent. While we have not been provided with the information necessary to make this assessment, the Administrator considers that it is quite possible that the principal creditor of the Branch will turn out to be the German deposit insurance schemes.

Fourth, due to the nature of the Canadian proceeding under the *WURA*, which is a court-supervised liquidation of the assets of the Branch, the role of the Superintendent going forward would in any event be extremely limited. Therefore, this should not be regarded as a conflict between regulators. It is instead an assessment of which form of process best serves the interests of the case,

Fifth, separate and parallel proceedings are likely to increase costs (which increased costs would be largely borne by creditors in Germany), give rise to overlap, inconsistent administration and reporting and jurisdictional issues relative to the treatment of specific assets and liabilities. Treating the same legal entity as a separate entity for insolvency purposes (since the Branch is the same legal entity as the headquarter) is likely to give rise to difficult and novel legal issues, such as whether a set off right can be based on a claim against a Branch and a liability to the headquarter, the status of inconsistent or conflicting stays, and whether concurrent court orders will be required. Lastly, it is worthy of note that a proceeding having as its object the standalone liquidation of the assets of a Canadian branch of a foreign bank has never been undertaken in Canada. The statutory provisions with which we are concerned have never been used. Given the absence of a compelling Canadian interest, we would submit that this is not the circumstance to work out all the practical issues around a never-used statute.

In view of the foregoing, the Administrator is of the view that it is both desirable and compatible with the Key Attributes for the Superintendent to agree to include the assets of the Branch as part of a court supervised liquidation under

German law and to support recognition of the German proceeding in Canada. In the view of the Administrator, it would be odd for a Canadian regulator to insist, in a manner inconsistent with the very international standards that Canada itself helped to develop, to exclude the Administrator from an insolvency proceeding in which the principal party concerned from a credit exposure perspective was a public party in the Administrator's home jurisdiction.

It is clear that the *WURA* does not meet the standards set in the Key Attributes. In part the reason for this is that while other aspects of Canada's statutory resolution regime, including in particular, the *Canada Deposit Insurance Corporation Act*, have been regularly updated, the *WURA* has not attracted the same attention (presumably because it is not been thought of as being of the same importance). Nor has the *WURA* been kept up to date with developments in other bankruptcy and insolvency statutes such as the *CCAA* and the *BIA*, which have emphasized comity and international cooperation and have provided for a clear road to recognition for foreign insolvency proceedings. As a result, the *WURA* is now very much out of date. In fact, in 2012, the FSB conducted a Peer Review of Canada's compliance with these and other international standards and recommended that Canadian authorities "enhance their resolution framework" in order to meet the standards set in the Key Attributes.

In the present case, however, what is important is that notwithstanding the failure to update the *WURA*, and any resulting deficiencies in the *WURA*, there is no impediment to the ability of the Superintendent and the Attorney General of Canada to act in accordance with international standards and as the circumstances demand. As noted above, the Superintendent has a very broad discretion to refrain from acting under the *WURA*. Equally it has the ability to support recognition of the foreign proceeding in Canada or the institution in Canada of proceedings in Canada by the foreign liquidator. Therefore, it is for the Superintendent and the Attorney General of Canada to decide whether or not to act in accordance with the principles in the Key Attributes.

Even if the Superintendent and the Attorney General of Canada decline to exercise their discretion in favour of the existing foreign proceedings in relation to Maple Bank, we note that the court to which an application is made under *WURA* has a discretion with respect to the disposition of that application. It is our view that many of the considerations set out above will equally be relevant to the exercise by the court of its discretion.

The Key Principles also emphasize coordination and cooperation. Section 7.3 imposes an obligation to provide prior notification and to consult. Section 7.1 provides that a resolution authority shall whenever possible "act to achieve a cooperative solution", Section 7.2 provides that a resolution authority shall consider the "impact on financial stability in other jurisdictions" and Section 7.6 provides that resolution authorities should have the power, subject to assurances of confidentiality, to share information. In this case, matters have moved very quickly and it is perhaps understandable that information sharing and coordination has not

been as effective as might have been hoped. However, Section 12(2) of WURA provides that except as otherwise directed by a court, four days' notice of an application under that Act be given to the Branch. We have requested 24 hours' notice of an application and our request has gone unanswered and unacknowledged. This letter has been written in response to a letter dated February 12, 2016 imposing a deadline of 9:00 a.m. of a holiday Monday on a long weekend, even though Section 619(3) provides for a ten day period during which representations can be made. Notwithstanding the imposed short notice, information we have requested on a number of occasions relative to which of the liabilities of the branch are in the nature of deposits has not been provided to us. We would have thought that this information would have been of critical importance to you as well, since it goes to who the ultimate creditors are likely to be.

Nonetheless, the Administrator urgently desires, and is prepared to commit to, irrespective of whose process it is, a cooperative process in which information and plans are fully shared, and issues are identified and resolved cooperatively. To that end we would propose a cooperative protocol and the Administrator and his team are available on the telephone at your convenience to discuss and resolve the terms of such a protocol. The Administrator and his team are prepared to come to Canada the week of February 22, 2016 to meet personally with you to settle such a protocol.

In the event that the German process were to extend to Canada, the Administrator would support a formal protocol of cooperation that would protect the ability of the Superintendent to discharge its statutory duties with respect to the insolvency of Maple Bank and the protection of any Canadian depositors. Among other things, such protocol could include a requirement to seek court approval in Canada with respect to certain steps taken by the Administrator in the administration of the Branch's estate and of the appointment of an information officer (such as KPMG), a practice which, while not codified, has developed in CCAA proceedings. The duties of an information officer could include (as they often do in CCAA proceedings):

- providing the Court with periodic reports on material developments in the restructuring process at defined intervals and at other such times as the information officer considers necessary;
- assisting and advising the Administrator in carrying out his duties with respect to the Branch;
- providing recommendations to the Court regarding issues that arise during the recognition proceeding; and
- responding to reasonable information requests from stakeholders.

In the event OSFI and the Attorney General of Canada were to seek to implement a separate proceeding in Canada under the WURA, and in that connection were to seek the appointment of a Canadian liquidator who would be in charge of the assets in Canada of the Branch and responsible for protecting the

interests of creditors of the Branch (whether situated in Canada or in Germany) then we think that there should be the following limitations:

- The appointed liquidator should be required to exchange all information fully regarding the commercial and legal status of the branch on a regular basis
- Any measures undertaken to safeguard, administer and dispose of and liquidate assets should require the prior approval by the liquidator and the Administrator
- The Administrator and/or a representative of GDPF should have the right to observe the proceedings in Canada for example as a member of the creditors committee

As you know, KPMG has been a key adviser and consultant to Maple Bank in Germany on significant legal and commercial issues, including tax issues and positions of creditors. It would be of assistance to the Administrator in formulating its position on any application under the *WURA*, recognition proceedings, and co-operation protocol going forward to understand how that potential conflict was cleared by KPMG and the Superintendent in appointing KPMG as agent under the *Bank Act* and, presumably, putting forward KPMG as the liquidator under the *WURA*.

In the event that there is to be a Canadian process under the *WURA*, which we herewith object to as described above, we trust that the equivalent arrangements would be made.

We would of course be pleased to discuss further any of the foregoing at your convenience.

Yours truly,



Peter Hamilton

Cc (by email) Phillip J. Reynolds, KPMG Inc. <[preynolds@kpmg.ca](mailto:preynolds@kpmg.ca)>  
Dr. Michael C. Frege, Insolvency Administrator of Maple Bank GmbH  
<[Michael.Frege@cms-hs.com](mailto:Michael.Frege@cms-hs.com)>  
Dr. Charlotte Schildt, CMS <[Charlotte.Schildt@cms-hs.com](mailto:Charlotte.Schildt@cms-hs.com)>  
Stuart Carruthers, Stikeman Elliott <[SCarruthers@stikeman.com](mailto:SCarruthers@stikeman.com)>

**THIS IS EXHIBIT "Y" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



**A commissioner for taking affidavits**

*Thomas Gertner*



Office of the Superintendent of  
Financial Institutions Canada

Bureau du surintendant des  
institutions financières Canada

February 15, 2016

Mr. Paul Lishman  
General Manager (Principal Officer)  
Maple Bank GmbH, Toronto Branch  
Suite 3500, P.O. Box 328  
Toronto, Ontario  
M5K 1K7

Dear Mr. Lishman:

**Re: Notice of Continuance of Control of the Assets of Maple Bank GmbH  
(Maple Bank)**

This is to notify you that I now continue to control the assets in Canada and the assets in respect of the business in Canada (collectively, the Assets) of Maple Bank pursuant to subparagraph 619(1)(b)(ii) of the *Bank Act*.

I have carefully considered the written representations submitted on behalf of Maple Bank in response to my notice dated February 12, 2016. I remain of the opinion that Maple Bank will not be able to pay its liabilities as they become due and payable, and a state of affairs exists in respect of Maple Bank that may be materially prejudicial to the interests of Maple Bank's depositors and creditors in respect of its business in Canada.

I believe that immediate action is necessary to protect the rights and interests of depositors and creditors of Maple Bank with respect to its business in Canada. As a result, pursuant to section 621 of the *Bank Act*, I have requested the Attorney General of Canada to apply to the Ontario Superior Court of Justice for a winding-up order under section 10.1 of the *Winding-up and Restructuring Act* with respect to the Assets.

Pursuant to subsection 619(6) of the *Bank Act*, I have also appointed KPMG Inc. to assist in the management of the Assets.

Should you require further information, you can contact Judy Cameron at 613-990-7337.

Yours very truly,

Superintendent of Financial Institutions

c.c.

Dr. Michael C. Frege, Appointed Insolvency Administrator of Maple Bank GmbH  
Peter Hamilton, Stikeman Elliott LLP



OSFI  
BSIF

255 Albert Street  
Ottawa, Canada  
K1A 0H2

[www.osfi-bsif.gc.ca](http://www.osfi-bsif.gc.ca)

Canada

**THIS IS EXHIBIT "Z" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



**A commissioner for taking affidavits**

Thomas Getter





**PROTECTED B**

February 16, 2016

Philip Reynolds  
Senior Vice-President  
KPMG Inc.  
#4600 – 333 Bay Street  
Toronto, ON  
M5H 2S5

Dear Sir:

**Subject: Maple Bank GmbH (Maple Bank)**

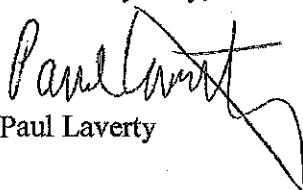
Pursuant to subparagraph 619(1)(b)(ii) of the *Bank Act* (the Act), the Superintendent of Financial Institutions (the Superintendent) continues to control the assets in Canada and the assets in respect of the business in Canada (collectively, the Assets) of Maple Bank.

The effect of such control of the Assets is set forth in subsection 619(5) of the Act. Paragraph 619(5)(a) stipulates that where, pursuant to subsection 619(1), the Superintendent has control of the assets of an authorized foreign bank (such as Maple Bank), neither the authorized foreign bank nor any person acting on its behalf shall deal in any way with any of the assets without the prior approval of the Superintendent or a representative designated by the Superintendent. Paragraph 619(5)(b) further stipulates that no person acting on behalf of the authorized foreign bank shall have access to any cash or securities held in Canada by the authorized foreign bank without the prior approval of the Superintendent or a representative designated by the Superintendent.

This is to confirm that pursuant to subsection 619(6), the Superintendent has appointed KPMG Inc. to assist in the control of the Assets. As a result, KPMG Inc. continues to be designated as a representative of the Superintendent, as referred to in subsection 619(5) of the Act, in connection with the Assets.

Please advise all financial institutions who hold Assets of your designation and take all necessary steps to protect the Assets. You may provide a copy of this letter to these financial institutions or to any other person where appropriate.

Yours very truly,



Paul Laverty



OSFI  
BSIF

255 Albert Street  
Ottawa, Canada  
K1A 0H2

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Canada

**THIS IS EXHIBIT "AA" TO THE AFFIDAVIT OF  
PAUL LAVERTY SWORN BEFORE ME  
THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016**



**A commissioner for taking affidavits**

*Thomas G. A.*

Court File No.:

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:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GMBH

Respondent

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**CONSENT**

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**KPMG Inc.** hereby consents to act as Liquidator of the business in Canada of Maple Bank GMBH in respect of the above-captioned proceedings pursuant to the *Winding-Up And Restructuring Act*, R.S.C.1985, C.W.-11, as amended, if so appointed by this Honourable Court.

Per: \_\_\_\_\_



Name: Philip J. Reynolds

Title: Senior Vice President

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.

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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**AFFIDAVIT OF PAUL LAVERTY  
(SWORN FEBRUARY 15, 2016)**

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**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 3

Court File No.

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

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**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 of the Respondent, as defined in section 618 of the *Bank Act*, S.C. 1991, c. 46, as amended, (the "*Bank Act*") 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 of the Maple Bank, and of the assets of Maple Bank, as defined in section 618 of the *Bank Act* (collectively, the "Assets") including:
  - a) any and all 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 Maple Bank's administration; and,

- b) any and all other assets of Maple Bank in Canada.
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 in Canada, or cease to perform or terminate any contracts of Maple Bank in respect of the Assets or Maple Bank's Business in Canada;
  - 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 in Canada, 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 in Canada;
- 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;
- 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 of Maple Bank in Canada;
- 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 Maple Bank's Business in Canada;
- o) re-direct Maple Bank's mail in respect of its Business in Canada;
- 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 its Business in Canada; and

- q) do and execute all such other things as are necessary for or incidental to: (i) the winding-up of the Business in Canada of Maple Bank 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, shall, to the extent practicable: (a) facilitate an exchange of information with Dr. Michael C. Frege, as Insolvency Administrator of Maple Bank,, as appointed pursuant to the German Insolvency Code (the "German Administrator") regarding the Assets and the Business of Maple Bank in Canada as may be required by the German Administrator to fulfill his statutory obligations; and (b) consult with the German Administrator in respect of (i) any proposed disposition of Assets which would or would reasonably be expected to result in net proceeds in excess of \$10 million; and (ii) any proposed claims process or distribution to creditors of Maple Bank's Business in Canada; and (c) in furtherance of the foregoing, the German Administrator shall be permitted to be appointed as a member of any creditors' committee that may be appointed by this Court.

### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE LIQUIDATOR**

9. **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.

10. **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 of Maple Bank in Canada, 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.
11. **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**

12. **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 Maple Bank's Business in Canada, 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**

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with Maple Bank in respect of the Assets or Maple Bank's Business in Canada, or statutory or regulatory mandates for the supply of goods and/or services in respect of the Assets or Maple Bank's Business in Canada, 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 Maple Bank's Business in Canada, 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**

14. **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 Maple Bank's Business in Canada 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**

15. **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**

16. **THIS COURT ORDERS** that no Proceeding against or in respect of Maple Bank in respect of Maple Bank's Business in Canada, 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**

17. **THIS COURT ORDERS** that all rights and remedies against Maple Bank in respect of its Business in Canada, 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.

18. **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 Maple Bank's Business in Canada 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 its Business in Canada 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 Maple Bank's Business in Canada, 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 Maple Bank's Business in Canada 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 Maple Bank's Business in Canada, 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 Maple Bank's Business in Canada is hereby restrained.

### **LIQUIDATOR'S ACCOUNTS**

- 19. **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.
- 20. **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.
- 21. **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**

22. **THIS COURT ORDERS** that the Liquidator may deposit all moneys belonging to Maple Bank 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**

23. **THIS COURT ORDERS** that the employment of each of the employees of the Maple Bank in Canada with respect to its Business in Canada 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.
24. **THIS COURT ORDERS** that the Liquidator may retain such employees of Maple Bank 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 Maple Bank. 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.
25. **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**

26. **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**

27. **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**

28. **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.
29. **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**

30. **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.
31. **THIS COURT ORDERS AND DIRECTS** that the Liquidator shall publish notice of the Winding-Up Order in respect of Maple Bank 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 its Business in Canada 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**

32. **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.
33. **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.

34. **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
35. **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.
36. **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 Maple Bank's estate as costs properly incurred in the winding-up of Maple Bank's Business in Canada.

#### **ADVICE AND DIRECTIONS**

37. **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.
38. **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.



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.

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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**ORDER**

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**Lawyers for the Applicants**

IN THE MATTER OF MAPLE BANK GmbH  
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**ONTARIO  
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**APPLICATION RECORD**

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