

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

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

Table of Contents

1.	INTRODUCTION AND PURPOSE OF THE SUPPLEMENT TO THE NINTH REPORT	2
2.	LIQUIDATOR’S ACTIVITIES SINCE NOVEMBER 18, 2016.....	5
3.	THE LISHMAN CONTINGENT CLAIM	7
1.	THE AMENDED NOTICE AND PROPOSED DISTRIBUTION	9
2.	LIQUIDATOR’S RECOMMENDATIONS.....	13

Listing of Appendices

Appendix A	The Ninth Report (excluding appendices)
Appendix B	Tab 8 from Proof of Claim of Mr. Lishman
Appendix C	Proposed Principal Claims Bar Notice
Appendix D	The Amended Distribution Notice

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

BACKGROUND

1. This report is a supplemental (the “**Supplemental Report**”) to the ninth report to the Court of the Liquidator of the Toronto Branch of Maple Bank GmbH (the “**Ninth Report**”), and is being provided to the Court further to the hearing with respect to the relief sought by the Liquidator in this matter on November 18, 2016 (the “**Relief**”), and the relief now sought by the Liquidator on November 25, 2016 (the “**Amended Relief**”).
2. Background to the Relief, along with other information is set out in the Ninth Report (attached as **Appendix A**).

TERMS OF REFERENCE AND DISCLAIMER

3. In preparing this report, the Liquidator has been provided with, and has relied upon, unaudited and other financial information, books and records (collectively, the “**Information**”) prepared by the Toronto Branch and/or its representatives, and discussions with its former management and/or its former representatives. The Liquidator has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided and in consideration of the nature of evidence provided to the Court. However, the Liquidator has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Liquidator expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.
4. The information contained in this report is not intended to be relied upon by any prospective purchaser or investor in any transaction with the Liquidator.
5. Capitalized terms not defined in the Supplemental Report are as defined in either the Winding-Up Order and/or the First Report through Ninth Report. Unless

otherwise indicated, all references to monetary amounts herein are denominated in Canadian dollars (“CAD”).

6. Copies of the Liquidator’s Court reports and all motion records and Orders in these proceedings are available on the Liquidator’s website at <http://www.kpmg.com/ca/maplebank>.

PURPOSE OF THE SUPPLEMENT

7. The purpose of the Supplemental Report is to:
 - i. Provide an update regarding the Liquidators activities since November 18, 2016; and
 - ii. Request the Amended Relief, namely:
 - i. An order approving:
 1. A first distribution to creditors with Proven Claims that have been allowed in whole or in part) (the “**First Distribution**”) such First Distribution to be made as soon as possible and within two days following December 19, 2016 (the “**Distribution Date**”) in the full amount of such proven Claims as at the Distribution Date, inclusive of statutory interest in the amount of 5% per annum in accordance with section 158.1(2) of the Winding-Up and Restructuring Act;
 2. The amended proposed notice to be provided to creditors of the Toronto Branch prior to making the Distribution (the “**Amended Distribution Notice**”), to be placed in the National Edition of *The Globe and Mail* and the International Edition of *The Wall Street Journal* (the “**Newspapers**”) as soon as practicable, giving notice of the Distribution;
 3. A further notice to creditors of the Toronto Branch, Maple Bank and certain entities related to Maple Bank in

connection with possible Claims against individuals who were both a Principal Officer of the Toronto Branch and also a director and/or officer of certain related and affiliated entities of Maple Bank (as listed and described further herein), (the “**Principal Claims Bar Notice**”), to be placed in the Newspapers as soon as practicable. In addition, the Liquidator is also requesting that a bar date be approved with respect to such Claims (the “**Principal Claims**”) of January 25, 2017 (the “**Principal Claims Bar Date**”), such bar date to be included in the Principal Claims Bar Notice; and,

4. Approving the Receipts and Disbursements for the Toronto Branch for the period from February 16, 2016 to October 31, 2016 (as set out in the Ninth Report); and
5. Approving the activities of the Liquidator since the filing of the Third Report, up to and including the Ninth Report, including the activities of the Liquidator as described in the Third Report.

2. LIQUIDATOR'S ACTIVITIES SINCE NOVEMBER 18, 2016

8. The following activities were undertaken by the Liquidator since November 18, 2016:
 - i. Together with its investment advisor, the Liquidator facilitated certain foreign currency transactions, with input from the GDPF and GIA, in order to reduce the FX Risk of the GDPF, which actions which were approved by this Court in its order dated November 18, 2016 (the “**November 18 Order**”). The GIA has elected not to have any foreign currency transactions carried out to date;
 - ii. The Liquidator met or held conversations with all former employees of the Toronto Branch and a number of other creditors to further its review of the respective Proofs of Claim of those parties, and to further understand the claimants’ concerns with the Relief. These meetings included those parties who sought the adjournment of the Relief on November 18, 2016;
 - iii. In connection with (i.) above, the Liquidator has sought further clarifications and supporting information for certain of the Proofs of Claim, in some cases from the claimants and in other cases from the records of the Toronto Branch. Where possible, the Liquidator has advised certain claimants (mainly the former Toronto Branch employees) of its position regarding all or some components of their Proofs of Claim;
 - iv. The Liquidator has held discussions with Mr. Paul Lishman (“**Lishman**”), a former employee and the Principal Officer of the Toronto Branch appointed under the *Bank Act* and his counsel. Lishman has filed a Proof of Claim in the Claims Procedure that includes a contingent component relating to contribution and indemnity from the Toronto Branch in connection with his employment and his Principal Officer role with the Toronto Branch including with respect to his role as a director and/or officer of certain related and affiliated corporations to Maple Bank (the “**Lishman**”).

Contingent Claim”). These discussions included a review of possible alternatives which might expeditiously resolve or determine the extent of the Lishman Contingent Claim, and also allow for an eventual further and timely distribution to the stakeholders of the Toronto Branch under these proceedings. The alternative which has been proposed to address the Lishman Contingent Claim, in addition to advancing a future adjudication of Lishman’s Proof of Claim pursuant to the Claims Procedure, is the Principal Claims Bar Notice and Principal Claims Bar Date proposed in the Amended Relief. Further information regarding the Lishman Contingent Claim is provided further in this report; and

- v. The Liquidator has held further discussions with a number of claimants and the GIA regarding the Amended Relief.

3. THE LISHMAN CONTINGENT CLAIM

9. As stated above, the Lishman Proof of Claim asserted the Lishman Contingent Claim. Accompanying the Lishman Proof of Claim is a letter from Lishman’s counsel, Thornton Grout Finnigan LLP, (the “**TGF Letter**”) particularizing the Lishman Contingent Claim, which is attached as **Appendix B**. As set out in the TGF Letter, the Lishman Contingent Claim relates to all amounts for contribution, indemnity, reimbursement, costs and any other relief arising out of, or on account of any claims made against Lishman due to, or connected with his roles as Principal Officer of the Toronto Branch or as a director and/or officer of the Maple Affiliates (defined below), known or unknown. The list of potential liabilities is listed in the TGF Letter. The entities aside from the Toronto Branch that are listed are those where Lishman has held director and/or officer capacities and are listed in the TGF Letter and below:

- i. Maple Financial Group Inc.;
- ii. Maple Futures Corp.;
- iii. Maple Holdings Canada Limited;
- iv. Maple Securities Canada Limited;
- v. Maple Trade Finance Inc.;
- vi. Maple Securities U.S.A. Inc.;
- vii. Maple Arbitrage Inc.;
- viii. Maple Partners America Inc.;
- ix. Maple Trade Finance Corp.;
- x. Maple Commercial Finance Corp.;
- xi. MFG Guarantee Committee;
- xii. MFG Executive Committee; and/or

- xiii. any other affiliate or related entity of the Toronto Branch or the above-listed entities, in Canada or elsewhere.

(together, the “**Maple Affiliates**”)

10. In discussions with Lishman and his counsel immediately following the November 18th Court attendance, with regard to the substance and merits of the Lishman Contingent Claim, the Liquidator learned that, in addition to the potential contingent claims relating to Lishman’s roles at the Maple Affiliates, a significant unknown component of the Lishman Contingent Claim was in respect of any claims that the GIA on behalf of Maple Bank GmbH, Frankfurt might assert against him as the Principal Officer of the Toronto Branch. Accordingly, since Lishman asserts that he has a right to contribution and indemnity from the Toronto Branch with regard to any liabilities that he may be exposed to on account of him being an employee and being the Principal Officer of the Toronto Branch, that indemnity from the Toronto Branch would only be of value to him if there remained assets in Canada to satisfy the Lishman Contingent Claims once determined.
11. After discussions regarding the Lishman Contingent Claim with Lishman and his counsel, and after further discussions with the GIA, the Liquidator is recommending that the Principals Claim Bar Notice in the form as presented in **Appendix C**, be published in the Newspapers with the proposed Principals Claims Bar Date. The Liquidator is proposing this resolution mechanic in order to determine the extent of the Lishman Contingent Claim, and facilitate future distributions to stakeholders.
12. The Liquidator understands that the GIA may be making separate submissions in respect of the Lishman Contingent Claim.

1. THE AMENDED NOTICE AND PROPOSED DISTRIBUTION

Amended Notice

13. As referred to above, the Liquidator is proposing the Amended Distribution Notice, substantially in the form as attached as **Appendix D**. With the approval of the Distribution and Amended Distribution Notice by the Court, the Liquidator will publish the Amended Distribution Notice in the Newspapers as soon as practicable. The Amended Distribution Notice period is proposed to end on December 19, 2016.

Proposed Distribution

14. The Ninth Report set out a proposed distribution to creditors with Proven Claims and the GIA, and included a reserve for Proofs of Claim that have yet to be resolved at the claimants filed amounts, plus a contingency of \$50 million, plus accrued interest under WURA at 5% per annum for a future period ended March 31, 2018.
15. Certain claimants in these proceedings have voiced their concern over the originally proposed distribution for reasons which include the following:
 - i. In their view, all creditors in the Canadian liquidation proceedings should receive full distributions plus interest prior to the GIA receiving any distribution in respect what they view as a subordinate estate interest *vis a vis* regular unsecured creditors;
 - ii. The Lishman Contingent Claim is difficult to determine in terms of quantum at this time, unless there is a claims process that will provide more certainty as to a final determination of such claim; and
 - iii. Creditors would like to see an expeditious resolution of all Proofs of Claim.

16. Those who have provided their input in respect of the Distribution, including all three parties which sought an adjournment of the Relief on November 18, 2016, to date have not indicated that they would oppose to the Distribution, which provides for a payout of all Claims which are Proven Claims, or that will be proven on or before the Distribution Date. In addition to the above, and in order to facilitate the Distribution to Creditors with Proven Claims, in full, (or claims that have been allowed in whole, or in part) with accrued interest to the Distribution Date, the GIA has agreed to permanently cap the GIA Claim at an amount which results in the Toronto Branch having assets in excess of its liabilities available for distribution to Canadian creditors with proven Claims.
17. Therefore, the Liquidator is proposing the Distribution be made to all Creditors with Proven Claims, whose Claims have been allowed, in whole or in part, on or before December 19, 2016. As of November 24, 2016, the proven Claims in the estate, by general Claim category, are summarized below:

Maple Bank GmbH, Toronto Branch Claims Admitted by the Liquidator As at November 24, 2016 CAD Millions	
Creditor	Claim (\$) ⁽¹⁾
Secured Claims - Office of the Superintendent of Financial Institutions	\$ 0.1
GIA ⁽²⁾	-
German Depositors	686.1
Vendors	0.2
Canada Revenue Agency	-
Employee	-
Non-vendor	-
Related Party	-
Total Proven Claims	\$ 686.4

⁽¹⁾ Other than the claim of the Office of the Superintendent of Financial Institutions, all Proofs of Claim are unsecured.

18. The Liquidator, after discussing this matter in detail with various stakeholders, is of the view that the Distribution is proper under the circumstances, and notes that the estimated remaining estate funds, subject to the proving of further Claims, will be in excess of \$818 million inclusive of cash which is held in the U.S., and which

is subject to a Stipulation with the GIA, as approved by the U.S. Bankruptcy Court, in the order of \$111.2 million. The Principal Claims Bar Notice and the Principal Claims Bar Date, if approved, should result in the Liquidator being in a position to make timely further distributions to Creditors with Proven Claims (including Claims that have been allowed in whole or in part) of the Toronto Branch, including the GIA. In addition, the Amended Notice period will afford the Liquidator and Creditor with an opportunity to further resolve outstanding Claims issues and thereby result resulting in a timely release of monies to those Creditors with Proven Claims (that have been allowed in whole or in part) by the Distribution Date.

19. In connection with the proposed Distribution, the Liquidator has also considered the following:
 - i. Paying out all Proven Claims plus interest at the end of the Amended Notice period will result in a cessation of interest accruing on those Proven Claims, which will be for the benefit of the GIA and all creditors with unproven Claims;
 - ii. The Distribution is proposed to be made with in accordance with the time periods set out in the Amended Notice. If additional Proofs of Claim are received, which are of concern to the Liquidator, the Liquidator will re-attend before the Court in order to seek directions;
 - iii. The Liquidator contacted the Office of the Superintendent of Financial Institutions (“OSFI”) in order to determine if OSFI was prepared to consent to a distribution to the GIA pursuant to s. 158.2 of WURA. OSFI was not prepared to provide its consent under s. 158.2, but advised that it would not object to the proposed distribution under s. 158.1 (2) of WURA to the GIA;
 - iv. Aspects of the Contingent Claim, as previously described are new. In response, the Liquidator has proposed the Claims process,

as described above, in order to deal with and bring more certainty to the Lishman Contingent Claim, which neither the Liquidator or Lishman have been able to value, at this time. The Claims Procedure, through the Principal Claims Bar Notice and the Principal Claims Bar Date, should serve to bring more certainty to the Lishman Contingent Claim in a relatively short period of time (i.e. 60 days);

2. LIQUIDATOR'S RECOMMENDATIONS

20. The Liquidator submits this Supplemental Report to the Court in support of the Liquidator's Motion for the Amended Relief as set out in the Notice of Motion dated November 24, 2016 and recommends that the Court grant an Order to:
 - i. Approve the Distribution;
 - ii. Approve the Amended Distribution Notice;
 - iii. Approve the Principal Claims Bar Notice and the Principal Claims Bar Date;
 - iv. Approve the Receipts and Disbursements of the Toronto Branch for the period from February 16, 2016 to October 31, 2016 (as set out in the Ninth Report); and
 - v. Approve the activities of the Liquidator since the filing of the Third Report, along with the activities of the Liquidator as described in the Third Report.

All of which is respectfully submitted at Toronto, Ontario this 24th day of November, 2016.

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

A handwritten signature in black ink, appearing to read "P. Reynolds", written in a cursive style.

Per: _____

Philip Reynolds
Senior Vice President