

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF MAPLE BANK GmbH

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

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

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GmbH

Respondent

THE

SUPPLEMENT TO THE SIXTEENTH 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*

June 13, 2024

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# ***1. INTRODUCTION AND PURPOSE OF THE SUPPLEMENTAL REPORT***

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## **BACKGROUND**

1. This report (the “**Supplemental Report**”) is supplemental to the sixteenth report to the Court of the Liquidator of the Toronto Branch of Maple Bank GmbH (the “**Sixteenth Report**”), and is being provided to the Court further to the endorsement of Associate Justice Ilchenko dated April 25, 2024 (the “**April 25 Endorsement**”).
2. Copies of the Sixteenth Report and the April 25 Endorsement are attached hereto as **Appendix “A”** and **Appendix “B”**, respectively.
3. Capitalized terms used herein and not otherwise defined have the meanings ascribed thereto in the Sixteenth Report.

## **PURPOSE OF THE LIQUIDATOR’S SUPPLEMENTAL REPORT**

4. The purpose of this Supplemental Report is to provide information to the Court in respect of the fees of the Liquidator and its counsel, BLG, and the realizations of the Toronto Branch estate, as requested by Associate Justice Ilchenko in the April 25 Endorsement, thereby assisting Associate Justice Ilchenko with his review and assessment of the fees of the Liquidator and BLG pursuant to the Data Custodian Extension Order.

## **TERMS OF REFERENCE AND DISCLAIMER**

5. 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>.

## 2. **PROFESSIONAL FEES AND ESTATE REALIZATIONS**

7. The table below is an analysis of the fees of the Liquidator and its counsel as a percentage of the realizations of the Toronto Branch estate for the following periods:
- i. February 16, 2016 to July 31, 2017, being the period for which the fees of Liquidator and its counsel have been taxed by the Court;
  - ii. August 1, 2017 to January 31, 2024, being the period for which the Liquidator is seeking approval of the fees of the Liquidator and its counsel; and
  - iii. February 16, 2016 to January 31, 2024.

<b>KPMG Inc., in its capacity as Liquidator of Maple Bank GmbH (Toronto Branch)</b>			
<b>Professional Fees and Disbursements of the Liquidator and its Counsel, and Estate Realizations</b>			
			<b>\$CAD</b>
<b>Period</b>	<b>February 16, 2016 - July 31, 2017</b>	<b>August 1, 2017 - January 31, 2024 <sup>(1)</sup></b>	<b>February 16, 2016 - January 31, 2024</b>
Professional Fees of the Liquidator	5,598,504	2,166,391	7,764,895
Disbursements of the Liquidator	369,503	45,849	415,352
HST	775,841	287,591	1,063,432
<b>Total Professional Fees of the Liquidator</b>	<b>6,743,848</b>	<b>2,499,831</b>	<b>9,243,680</b>
Professional Fees of the Liquidator's counsel	3,451,269	1,383,135	4,834,404
Disbursements of the Liquidator's counsel	65,720	11,456	77,176
HST	456,416	181,071	637,487
<b>Total Professional Fees of the Liquidator's counsel</b>	<b>3,973,405</b>	<b>1,575,662</b>	<b>5,549,066</b>
<b>Total Professional Fees <sup>(2)</sup></b>	<b>[A] 10,717,253</b>	<b>4,075,493</b>	<b>14,792,746</b>
<b>Receipts</b>	<b>[B] 1,240,043,804</b>	<b>3,226,263</b>	<b>1,243,270,068</b>
<b>Professional Fees as a % of Estate Realizations</b>	<b>[A] / [B] 0.86%</b>	<b>126.32%</b>	<b>1.19%</b>
<b>Professional Fees as a % of Hybrid Estate Realizations <sup>(3)(4)</sup></b>	<b>0.86%</b>	<b>17.69%</b>	<b>1.17%</b>

<sup>(1)</sup> The Liquidator's fees are for the period August 1, 2017 to December 2023 and the Liquidator's Counsel's fees are for the period August 1, 2017 to January 31, 2024

<sup>(2)</sup> Total professional fees in the table above (\$14.8M) are less than total professional fees in the Statement of Receipts and Disbursements (\$16.2M), as the former includes only the fees of the Liquidator and its counsel, while the latter includes the fees of other professional advisors engaged by the Liquidator in connection with the liquidation (e.g. tax advisors, U.S. legal counsel, etc)

<sup>(3)</sup> Professional Fees as a % of Hybrid Realizations considers a \$19.8M increase to Estate Realizations, as outlined in Note 4 below

<sup>(4)</sup> On September 12, 2016, the CRA filed a claim with the Liquidator in respect of unremitted corporate income taxes of \$11.7M, which included applicable interest and penalties up to February 16, 2016 (i.e. the Winding-Up Date). The Liquidator and its counsel have disputed CRA's initial claim, filed a formal tax appeal with the Tax Court of Canada, and had extensive settlement discussions with the CRA, ultimately resulting in the Liquidator and the CRA reaching a settlement agreement. In accordance with the settlement agreement, the Liquidator anticipates receiving a net refund of approximately \$3.5M. \$19.8M (i.e. the delta between the CRA's initial claim of \$11.7M plus interest in accordance with the Winding-up and Restructuring Act that would have otherwise accrued thereon, and the Liquidator's anticipated refund of \$3.5M) as this is the net amount that accrued to the estate as a result of the Liquidator's efforts in dealing with this issue. This is summarized in the calculation below:

<b>CRA Claim</b>	
Tax	10,981,258.49
Interest	623,084.28
Penalties	69,783.39
<b>Total unremitted corporate tax liability</b>	<b>11,674,126.16</b>
Total taxes owing as of February 16, 2016	11,674,126.16
Interest rate at 5% per Winding-up and Restructuring Act	4,597,686.67
Total taxes (including interest) owing as of December 31, 2023	16,271,812.83
Estimated tax refund from the CRA, pursuant to the settlement agreement	(3,536,046.18)
<b>Net Tax Recovery</b>	<b>19,807,859.01</b>

A substantial portion of the fees and disbursements of the Liquidator and its Counsel incurred during the period August 1, 2017 to January 31, 2024 relate to the Liquidator's dealings with the CRA on this issue

### 3. **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

8. The Liquidator's statement of receipts and disbursements for the periods of (i) February 16, 2016 to July 31, 2017, (ii) August 1, 2017 to January 31, 2024, and (iii) February 16, 2016 to January 31, 2024, is included below.

<b>KPMG Inc., in its capacity as Liquidator of Maple Bank GmbH (Toronto Branch)</b>			
<b>Statement of Receipts and Disbursements <sup>(1)</sup></b>			<b>SCAD millions</b>
<b>Period</b>	<b>February 16, 2016 - July 31, 2017</b>	<b>August 1, 2017 - January 31, 2024</b>	<b>February 16, 2016 - January 31, 2024</b>
CED and Securities	489.6	-	489.6
Structured Loan Portfolio	357.4	-	357.4
MBS Business	176.5	-	176.5
Related Party Settlements	84.3	-	84.3
Settlement of Brokerage Account	64.7	-	64.7
Derivative Instruments	59.6	-	59.6
Miscellaneous/Other	7.9	3.3	11.2
<b>Total Receipts</b>	<b>1,240.0</b>	<b>3.3</b>	<b>1,243.3</b>
Payroll	2.7	-	2.7
General and Administrative	1.9	1.3	3.2
Occupancy Rent	0.4	-	0.4
Transfer to CMHC	0.3	-	0.3
<b>Total Operating Disbursements</b>	<b>5.3</b>	<b>1.3</b>	<b>6.6</b>
GIA Distribution	658.0	122.0	780.0
Distribution to Proven Creditors, with interest	732.8	9.0	741.8
Professional Fees <sup>(2)</sup>	11.2	5.1	16.2
<b>Net Disbursements in excess of Receipts</b>	<b>(167.2)</b>	<b>(134.2)</b>	<b>(301.4)</b>
<b>Opening Cash Balance</b>	<b>316.1</b>	<b>148.9</b>	<b>316.1</b>
<b>Closing Cash and Cash Equivalents Balance</b>	<b>148.9</b>	<b>14.7</b>	<b>14.7</b>

<sup>(1)</sup> Certain totals above may not foot due to rounding of underlying figures.

<sup>(2)</sup> Professional fees include KPMG and various other professional service firms.

All of which is respectfully submitted at Toronto, Ontario this 13th day of June, 2024.

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

Per:   
**George Bourikas**  
 Vice-President

# Appendix A

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SIXTEENTH 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*

February 28, 2024

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# ***1. INTRODUCTION AND PURPOSE OF THE SIXTEENTH REPORT***

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## **BACKGROUND**

1. Maple Bank GmbH (“**Maple Bank**”) is a Canadian-owned German bank, and an authorized foreign bank in Canada under Section 2 and Part XII.1 of the *Bank Act* (an “**Authorized Foreign Bank**”). In Germany, Maple Bank is subject to regulation by the Federal Financial Supervisory Authority (“**BaFin**”). As an Authorized Foreign Bank, Maple Bank was regulated with respect to its business in Canada (the “**Toronto Branch**”) by the Office of the Superintendent of Financial Institutions (“**OSFI**”).
2. As more fully described in the Liquidator’s first report to this Court dated March 2, 2016 (the “**First Report**”), in the period leading up to the commencement of the *Winding-up and Restructuring Act* (“**WURA**”) proceeding, the Toronto Branch had three major lines of business: (i) the origination and securitization of real property mortgages in Canada; (ii) structured secured lending; and (iii) security financing transactions (collectively, the “**Business**”).
3. The emergence of significant German tax claims against Maple Bank and the resulting indebtedness of Maple Bank led to:
  - i. BaFin imposing a moratorium on Maple Bank’s business activities, which caused Maple Bank to cease business and institute insolvency proceedings in Germany;
  - ii. The appointment of a German insolvency administrator (the “**GIA**”) over Maple Bank;
  - iii. The issuance of default notices and the termination of agreements by financial institutions that were counterparties to financial contracts (primarily swaps and hedging instruments) with the Toronto Branch in respect of their dealings with Maple Bank’s Business in Canada;

- iv. Canada Mortgage and Housing Corporation, after the issuance of a default notice to Maple Bank, taking control of the mortgage backed securities business of the Toronto Branch and the corresponding mortgage pools (totaling approximately \$3.5 billion); and
  - v. OSFI issuing orders under section 619 of the *Bank Act* for the taking of control of the assets of Maple Bank in respect of the Business.
4. The events described above prompted OSFI to request that the Attorney General of Canada seek a winding-up order pursuant to section 10.1 of the WURA in respect of the Business. On February 16, 2016, Regional Senior Justice Morawetz of the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) granted an order (the “**Winding-Up Order**”) to, among other things, (i) wind-up the Business; and (ii) appoint KPMG Inc. (“**KPMG**”) as liquidator (the “**Liquidator**”) of the Business and of the assets of Maple Bank as defined in section 618 of the *Bank Act* (the “**Assets**”).
  5. The Liquidator has, under the supervision of the Court, subsequently realized upon substantially all of the Assets, run a claims process and paid all of the liabilities of the Toronto Branch, and made four interim distributions to the GIA. The only remaining substantive issues the Liquidator is dealing with are the receipt of a refund from the Canada Revenue Agency (the “**CRA**”) related to various tax appeals and the GIA’s request that the records of the Toronto Branch and Maple Securities Canada Limited (“**MSCL**”) be transferred to it in Germany. The Liquidator’s activities for the period up to August 20, 2021, and various Court Orders requested in connection thereto, are outlined in reports of the Liquidator numbered One through Fifteen, which are available on the Liquidator’s website at <http://www.kpmg.com/ca/maplebank>.
  6. Pursuant to an Order dated June 8, 2016, the Court appointed Jonathan Wigley of the law firm Gardiner Roberts LLP as Independent Cost Counsel (the “**ICC**”) to review the fees and disbursements (collectively the “**Professional Fees**”) of the Liquidator and its counsel; Gowling WLG (Canada) LLP (“**Gowling**”), and to report to the Court (the “**ICC Report**”) with respect to the fairness and reasonableness of the Professional Fees (the “**ICC Order**”). A copy of the ICC

Order is attached hereto as **Appendix “A”**.

7. Pursuant to an Order dated March 10, 2017, the Court approved the Professional Fees of the Liquidator and Gowling for the period February 16, 2016 to November 30, 2016, along with the related ICC Report and the activities of the ICC (the **“March 2017 Distribution Order”**). The March 2017 Distribution Order also expanded the scope of the ICC’s responsibilities to include reviewing the fees and disbursements of Borden Ladner Gervais LLP (**“BLG”**), who had become the Liquidator’s primary legal counsel. A copy of the March 2017 Distribution Order is attached hereto as **Appendix “B”**.
8. Pursuant to an Order dated September 26, 2017, the Court approved the Professional Fees of the Liquidator and its counsel; BLG, for the period November 30, 2016 to July 31, 2017, along with certain fees of Gowlings related to various tax and transaction matters (the **“September 2017 Distribution Order”**). The September 2017 Distribution Order also approved the related ICC Report and the activities of the ICC. A copy of the September 2017 Distribution Order is attached hereto as **Appendix “C”**.
9. Due to the unexpected death of Mr. Wigley, on March 2, 2020, the Court issued an Order, (the **“Second ICC Order”**) pursuant to which Mr. Ilchenko, a lawyer at Pallett Valo LLP, was appointed as the replacement ICC. The ICC was ordered to review the fees and disbursements of the Liquidator and its counsel and make submissions to the Court with respect to the fairness and reasonableness of the Professional Fees and whether the Professional Fees ought to be assessed and allowed by the Court as filed. A copy of the Second ICC Order is attached hereto as **Appendix “D”**.
10. Thereafter, Mr. Ilchenko commenced a review of certain KPMG and BLG invoices covering the period subsequent to those last approved by the Court (i.e. subsequent to July 31, 2017) but did not complete the review prior to his appointment to the bench.
11. On August 16, 2021, Mr. Ilchenko was sworn in as a Bankruptcy Registrar (the **“Registrar”**) for Toronto. As a result of this appointment, Mr. Ilchenko was no longer able to continue as ICC.

12. Pursuant to an Order dated August 26, 2021, the Court, *inter alia*, discharged Mr. Ilchenko as ICC, *nunc pro tunc*, effective August 16, 2021 and authorized him, in his capacity as Registrar, to continue and complete his review and assessment of the fees and disbursements of the Liquidator and its counsel including the completion of the ICC Report (the “**Data Custodian Extension Order**”). The Data Custodian Extension Order also permitted the Registrar, in furtherance of conducting such review and assessment, to access any and all documents and materials previously utilized by the ICC. A copy of the Data Custodian Extension Order is attached hereto as **Appendix “E”**.

### **PURPOSE OF THE SIXTEENTH REPORT**

13. The purpose of this Sixteenth Report (the “**Sixteenth Report**”) is to provide information to the Court in respect of:
  - i. The Liquidator’s Professional Fees from August 1, 2017 to December 31, 2023; and
  - ii. The Professional Fees of the Liquidator’s Counsel; BLG from August 1, 2017 to January 31, 2024

thereby assisting Associate Justice Ilchenko with his review and assessment of the Professional Fees of the Liquidator and its counsel; BLG, pursuant to the Data Custodian Extension Order.

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

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

## 2. ***THE LIQUIDATOR’S PROFESSIONAL FEES***

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### **SUMMARY OF PROFESSIONAL FEES**

15. A summary of the Liquidator’s accounts for the period August 1, 2017 to December 31, 2023 (the “**Fee Period**”) is outlined below:

Hours	3,395.35 hours
Fees	\$2,166,391.00
Disbursements	\$45,848.99
HST	\$287,591.25
Total	\$2,499,831.24
Average Rate per Hour	\$638.05 / hour

A summary of the Liquidator’s accounts for the Fee Period, including both Phase 1 and Phase 2 (each term as defined herein) is attached hereto and marked as **Appendix “F”**. Actual invoice copies are attached in the fee affidavit of Nicholas Brearton (defined and referenced below).

16. The Liquidator has split its activities in respect of the winding up of Toronto Branch into two parts; (a) those related to the transfer of certain Toronto Branch digital data to the GIA (“**Phase 2**”) and (b) all other activities (“**Phase 1**”).
17. With respect to the Phase 2 activities, only those activities related to the analysis of digital data which the GIA had requested be transferred to it, along with the identification and exclusion of specific data as requested by certain DTO Stakeholders (as defined below), all pursuant to the Data Transfer Order dated January 26, 2024 (the “**Data Transfer Order**”) were included. For clarity, the Liquidator’s activities associated with the transfer of undisputed physical and digital data (as outlined in paragraph 21 (viii) below) to the GIA (also pursuant to the Data Transfer Order), along with the Liquidator’s activities associated with the Data Custodian Order dated July 23, 2020, as subsequently extended, (the “**Data Custodian Order**”) were included in Phase 1. Copies of the Data Transfer Order

and the Data Custodian Order are attached hereto as **Appendices “G”** and **“H”** respectively.

18. The separate tracking of activities associated with Phase 2 was necessary to preserve the ability to allocate these fees, if determined appropriate, to the various parties who had an interest in the data the GIA sought to have transferred to it. However, we understand that the GIA has subsequently agreed with these parties that these fees will be paid by the estate of Toronto Branch.
19. The fee summaries and tables presented herein have been assembled based on KPMG’s fiscal year, which runs from October 1 to September 30. In the case of invoices that straddle two fiscal years (there were only four such invoices which involved periods prior to October 1, 2020), the hours, fees, disbursements and taxes were allocated to their respective fiscal year.

#### **PHASE 1 SUMMARY AND DESCRIPTION OF ACTIVITIES**

20. Attached hereto and marked as **Appendix “I”** is a summary of each professional’s hourly rate by fiscal year for Phase 1 of the Fee Period. Additionally, attached hereto and marked as **Appendix “J”** is a summary of the Liquidator’s accounts for Phase 1 of the Fee Period by fiscal year including the average hourly rate. An overview of the Liquidator’s accounts for Phase 1 of the Fee Period, is outlined below:

Hours	2,857.50 hours
Fees	\$1,855,875.00
Disbursements	\$45,716.39
HST	\$247,206.92
Total	\$2,148,798.31
Average Rate per Hour	\$649.48 / hour

21. A high-level description of the Liquidator’s Phase 1 activities during the Fee Period is outlined below.

- i. Reviewing submitted proof of claim forms and settling claims pursuant to the Claims Procedure Order, including:
  - a. Settlement of the Global One Financial Inc. claim;
  - b. Settlement of the Radius Financial Inc. (and related entities) claim;
  - c. Settlement of the Non-Executives Employees' claims; and
  - d. Settlement of the Executives Employees' claims.

Each claim settlement listed above involved the review and subsequent counterparty negotiation of a written settlement agreement.

- ii. Establishing appropriate reserves to provide for unproven claims, possible future claims, outstanding tax liabilities, and costs of these Liquidation proceedings;
- iii. Issuing interim distributions to the GIA, and publishing their respective notice of distribution to creditors, as detailed below:
  - a. A distribution of approximately \$91.4 million CAD was made on September 27, 2017, in accordance with the September 2017 Distribution Order;
  - b. A distribution of approximately \$5.0 million CAD was made on December 13, 2017, in accordance with the Third Interim Distribution Order; and
  - c. A distribution of approximately \$25.7 million CAD was made on August 5, 2020, in accordance with the Fourth Interim Distribution Order.
- iv. Liaising with the CRA and their legal counsel; Department of Justice (the “**DOJ**”), to settle the Initial CRA Claims and the Amended CRA Claim (collectively, the “**CRA Claims**”). This included, among other things:
  - a. Delivering to the DOJ a settlement proposal in respect of the CRA Claims;
  - b. Filing administrative appeals (i.e objections) to the CRA's position

- with respect to amounts owing;
- c. Filing a Notice of Appeal and subsequently a second Notice of Appeal (collectively, the “**Tax Appeal**”) with the Tax Court of Canada should a settlement on the CRA claims not be reached with the CRA;
  - d. Filing an Amended Notice of Appeal on April 12, 2018, and a Notice of Objection on May 23, 2018;
  - e. In conjunction with the CRA, requesting the Tax Court of Canada amend the timetable associated with the Tax Appeal;
  - f. Responding, with the assistance of the former Toronto Branch CFO and the Liquidator’s counsel; BLG, to the CRA’s written questions made pursuant to examination for discovery;
  - g. Working with the CRA to reach an omnibus settlement in respect of all amounts owing to/due from the CRA that were subject to the Tax Appeal as subsequently amended. This included demonstrating to the CRA, with the assistance of Ernst & Young LLP (“**EY**”), that the Liquidator’s proposed settlement amounts were complete and accurate;
  - h. Negotiating with the CRA the written agreement settling all matters subject to the Notice of Appeals filed with the Tax Court of Canada as subsequently amended;
  - i. Discussing with the CRA the Interest Stops Issue (i.e. the interest owing to the CRA on Toronto Branch’s unpaid taxes after it entered into liquidation proceedings), resulting in a settlement of the dispute;
  - j. Reviewing the CRA’s draft refund calculations and, with the assistance of EY, providing to the CRA the Liquidator’s comments on same; and
  - k. Communicating with the GIA on developments associated with the Tax Appeal and the Interest Stops Issue, including material actions to be taken.

- v. Reviewing and filing various tax returns on behalf of Toronto Branch including:
  - a. The 2015 to 2023 T2 Corporate Income Tax Returns;
  - b. The 2019 and 2020 GST/HST Returns; and
  - c. The self assessed GST for 2021 to 2023.
- vi. Preparing financial statements for Toronto Branch and providing audit support to the German auditor of Maple Bank for the years ended September 30, 2015 up to and including 2021;
- vii. Preparing and/or reviewing various Court reports and motion materials, and attending associated Court hearings, as follows:
  - a. Filing the Twelfth Report of the Liquidator on September 19, 2017;
  - b. Preparing content requested by the Independent Cost Counsel for his Second Report;
  - c. Attending Court and subsequently obtaining the September 2017 Distribution Order dated September 26, 2017;
  - d. Filing the Thirteenth Report of the Liquidator on December 8, 2017;
  - e. Filing the Supplement to the Thirteenth Report dated December 12, 2017;
  - f. Attending Court and subsequently obtaining the Third Interim Distribution Order dated December 13, 2017;
  - g. Filing the Second Supplement to the Thirteenth Report of the Liquidator dated January 25, 2018;
  - h. Attending Court and subsequently obtaining the Data Transfer Order dated January 26, 2018;
  - i. Attending Court and subsequently obtaining the Second ICC Order dated March 2, 2020;
  - j. Filing the Fourteenth Report of the Liquidator on July 17, 2020;

- k. Attending Court and subsequently obtaining the Fourth Interim Distribution Order and the Data Custodian Order dated July 23, 2020;
  - l. Filing the Fifteenth Report of the Liquidator on August 20, 2021; and
  - m. Attending Court and subsequently obtaining the Data Custodian Extension Order dated August 26, 2021;
- viii. Transferring certain books and records of Toronto Branch which were in the power, possession or control of the Liquidator to the GIA as outlined in the Data Transfer Order. Pursuant to the Order, the Liquidator:
- a. Transferred to the GIA on February 2, 2018, all digital records of the Toronto Branch stored on the Global One Database;
  - b. Transferred to the GIA on February 21, 2018, all physical records of the Toronto Branch stored at the Recall Facility; and
  - c. Transferred to the GIA on February 2, 2018, all data stored in the Laserfiche system that relates solely to the Master Agreements for Securities Lending and Repo transactions for the Toronto Branch;
- ix. Acting in its capacity as the Data Custodian, pursuant to the Data Custodian Order and Data Custodian Extension Order, which among other things, included taking into its power, possession and control the Custodial Data (this included those Toronto Branch records not already transferred to the GIA along with the records of MSCL, an affiliated entity that was wound up outside of a formal insolvency process), and receiving an assignment of existing service agreements.
- x. At the request of the GIA, assembling and subsequently providing to them the documentation associated with approximately three hundred security lending transactions involving German publicly traded stocks and having Toronto Branch or MCSL as counterparty;
- xi. Considering a request from the GIA to transfer all of the remaining Toronto Branch and MSCL data being held by the Data Custodian (including comingled data of affiliated entities such as Maple Financial Group Inc

(“MFGI”) and personal data of employees and customers) to the custody of GIA, with the data to be stored in Germany. Activities performed included the following;

- a) Identifying, with the assistance of BLG, issues associated with the data transfer and subsequently agreeing to a process with the GIA to attempt to resolve them;
  - b) Reviewing, in conjunction with BLG, a draft legal opinion provided by the GIA’s German legal counsel regarding data protections under German law that are applicable to the data proposed to be transferred to the GIA;
  - c) Discussing with BLG the data protections afforded under German law as compared to Canadian law;
  - d) Assisting BLG in the development of a protocol between the GIA and the Data Custodian that would govern the transfer of the data to the GIA. This subsequently evolved into a draft order that the Liquidator would seek from the Court; and
  - e) Discussing the draft protocol details, and subsequently the draft order, with the GIA and its Canadian counsel, which discussions are still ongoing; and
- xii. Carrying out the day-to-day administration of the estate of Toronto Branch including the following;
- a. Continuing to manage the assets of the estate of Toronto Branch;
  - b. Investing cash holdings in order to preserve value for the creditors of Toronto Branch;
  - c. Communicating with Toronto Branch’s creditors and suppliers regarding the liquidation of Toronto Branch;
  - d. Arranging for payment of the costs associated with the liquidation of Toronto Branch; and
  - e. Maintaining an accounting of the financial activities of the Liquidator.

22. The Liquidator notes that the issues associated with both the tax disputes with the CRA and the GIA’s request that all remaining Toronto Branch and MSCL data held by the Data Custodian be transferred to it in Germany, which issues have dominated the Liquidator’s activities during much of the Fee Period, are very complex, necessitating the involvement of senior KPMG professionals.

**PHASE 2 SUMMARY AND DESCRIPTION OF ACTIVITIES**

23. Attached hereto and marked **Appendix “K”** is a summary of each professional’s hourly rate by fiscal year for Phase 2 of the Fee Period. Additionally, attached hereto and marked as **Appendix “L”** is a summary of the Liquidator’s accounts for Phase 2 of the Fee Period by fiscal year including the average hourly rate. An overview of the Liquidator’s accounts for Phase 2 of the Fee Period is outlined below:

Hours	537.85 hours
Fees	\$310,516.00
Disbursements	\$132.60
HST	\$40,384.33
Total	\$351,032.93
Average Rate per Hour	\$577.33 / hour

24. A high-level description of the Liquidator’s Phase 2 activities during the Fee Period is outlined below.
- i. Understanding the structure and quantum of, and ability to search, the Toronto Branch digital data that the GIA was seeking to have transferred to it, and subsequently providing this information to the GIA, Deloitte Restructuring Inc in its capacity as trustee in bankruptcy of MFGI (“**MFGI Trustee**”),

Ontario Teachers Pension Plan (“**OTPP**”) and National Bank of Canada (“**NB**”);

- ii. Developing the Data Scrubbing Process, in conjunction with MSCL, to:
  - a. Identify certain databases that contain personal information;
  - b. Identify certain folders within the Shared Files Database that could potentially contain personal information; and
  - c. Prepare a list of reports/documents that Toronto Branch employees used as part of their job performance, and which included personal information.
- iii. Removing folders and files that contain personal information pursuant to the Data Scrubbing Process (the data with personal information removed being defined as the “**Data Set**”);
- iv. Indexing the data associated with the Data Set to render it searchable, with consultation with the GIA, MSCL, OTPP, NB, and MFGI Trustee (collectively, the “**DTO Stakeholders**”);
- v. Reviewing the Data Set, consisting of both email and financial information in various electronic formats, and dividing it into two subsets (referred to as the Non-Database Files and Database Files);
- vi. Applying search terms supplied by OTPP and NB to identify documents within the Non-Database Files that were to be segregated (the “**Segregated Data**”) and not transferred to the GIA pending agreement amongst the OTPP, NB and the GIA;
- vii. Providing the GIA with a hard drive containing a copy of the Non-Database Files excluding the Segregated Data (the “**First Interim Transfer**”) on September 24, 2018;
- viii. Providing to the DTO Stakeholders certain information regarding the Database Files, including the contents of the various databases, and subsequently liaising with them regarding information they were concerned with the GIA being transferred; and

- ix. Providing the GIA with a hard drive containing a copy of a subset of Database Files (the “**Second Interim Transfer**”) on March 11, 2019.

## **SUMMARY OF DISBURSEMENTS**

25. The disbursements during the Fee Period were primarily associated with the following:
  - i. \$36,799 in disbursements related to data processing fees from a software tool called Nuix with fees that vary between months based on the volume of data that is loaded into Nuix; and
  - ii. \$8,890 in disbursements related to advertisements in the Wall Street Journal and Globe and Mail regarding proposed interim distributions to the GIA.

While these expenses have been invoiced to Phase 1, they actually relate to Phase 2.

## **OTHER MATTERS**

26. Attached hereto and marked as **Appendix “M”** are pie charts that depict the KPMG hours and work distribution for the fiscal periods related to Phase 1, Phase 2, and the Fee Period.
27. Attached hereto as **Appendix “N”** is the fee affidavit of Nicholas Brearton sworn on February 27, 2024 in respect of the Liquidator’s accounts for the Fee Period.

### 3. ***BLG's PROFESSIONAL FEES***

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#### **SUMMARY OF PROFESSIONAL FEES**

28. A summary of the BLG's accounts for the period August 1, 2017 to January 31, 2024 (the "**BLG Fee Period**") is outlined below:

Hours	1,837.20 hours
Fees	\$1,383,135.00
Disbursements	\$11,455.88
HST	\$181,070.78
Total	\$1,575,661.66

29. During the BLG Fee Period, BLG rendered various services in its capacity as counsel to the Liquidator, including but not limited to:

- i. Activities related to the liquidation and winding-up of Maple Bank:
  - a. Advising upon and preparing all necessary settlement agreements and supporting documents regarding settlements with Global One Financial Inc., Radius Financial Inc. (and related entities), MFGI, and Maple Bank's Non-Executive and Executive Employees in Canada;
  - b. Preparing for and attending Court regarding various interim distribution orders, data protocol orders, and data transfer orders, including drafting all necessary motion materials and assisting the Liquidator in preparation of its Court reports;
  - c. Attending conference calls and corresponding via email with the Liquidator, the GIA, various creditors, and their respective counsels regarding settlement negotiations, claims, motions, and distribution orders;
  - d. Conducting legal research and analysis, including (1) review of legislation and caselaw and (2) review of data sharing protocols and

- related mandates, and prepare memoranda and legislative comparative charts summarizing analysis and recommendations;
- e. Reviewing and revising the draft Data Transfer Order, and attending conference calls with the Liquidator, the GIA and their counsel, and various other parties regarding same;
  - f. Preparing for and attending Court regarding appointment of the independent cost officer, including drafting all necessary materials;
  - g. Advising the Liquidator regarding its role of the Data Custodian and issues surrounding same;
  - h. Reviewing and revising the ICC report, including preparation of the draft fees affidavit and review of fee invoices appended thereto; and
  - i. Corresponding internally, with the Liquidator, GIA, various creditors and their respective counsels to discuss general matters related to the wind-up of the Toronto Branch.
- ii. Activities related to tax-related matters of Maple Bank:
- a. Attending conference calls and corresponding with the Liquidator and other counsel regarding CRA taxation issues, appeals, and settlement;
  - b. In preparation for CRA's appeal before the Tax Court of Canada: (1) reviewing tax and mortgage documents and other supporting documentation, (2) liaising with CRA and DOJ regarding settlement of appeal, and (3) drafting and revising all court materials, including objections;
  - c. Corresponding with the Liquidator and EY regarding tax issues and timetable associated with the Tax Appeal; and
  - d. Reviewing and revising CRA settlement documents and correspond with the DOJ regarding settlement.
- iii. Activities related to the disposition of data:
- a. Conducting legal research and analysis related to data transfers,

retention of data, privacy issues, and conflicts of law, including review of legislation and caselaw, and prepare memoranda and legislative comparative charts summarizing analysis and recommendations;

- b. Corresponding with the Liquidator, the GIA and their counsel regarding data custodian and record issues;
  - c. Drafting foreign law opinion regarding data issues and corresponding internally, with the Liquidator, GIA and their counsel regarding same;
  - d. Drafting and revise letter to stakeholders providing notice regarding disposition of Canadian data held in Germany; and
  - e. Preparing for motion to approve data disposition, including drafting motion materials.
30. The issues addressed by BLG, particularly with regard to the tax disputes with CRA and the GIA's request that all remaining data belonging to the Toronto Branch and MSCL, as currently held by the Data Custodian, be transferred to Germany, are complex and have required the ongoing involvement of partners at senior level who have the required level of expertise to address these issues.
31. Attached hereto as **Appendix "O"** is the affidavit of Bevan Brooksbank sworn on February 28, 2024 in respect of BLG's accounts for the BLG Fee Period.

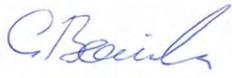
#### ***4. LIQUIDATOR'S RECOMMENDATIONS***

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32. The Liquidator submits this Sixteenth Report to the Court in support of the Liquidator's Professional Fees for the Fee Period and BLG's Professional Fees for the BLG Fee Period.
33. The Liquidator has reviewed the BLG accounts and confirms that the services reflected therein have been duly authorized and rendered and that, in the Liquidator's opinions, the Professional Fees are reasonable.

All of which is respectfully submitted at Toronto, Ontario this 28<sup>th</sup> day of February, 2024.

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

Per:   
**George Bourikas**  
Vice-President

# Appendix B

April 25th, 2024

Alexander L. MacFarlane and Nick Hollard for BLG, counsel to KPMG Inc. ("BLG")

Nicholas Brearton LIT for KPMG Inc. Liquidator and Data Custodian (the "Liquidator") for Maple Bank BmbH ("MBTOR")

Maria Konyukhova for GIA

The 16th Report and the appended exhibits, and the Factum of the Liquidator are excellent and have the required backup documentation and jurisprudence.

It would assist the Court if the 16th Report, the Factum and the Affidavits of Nicholas Brearton and Bevan Brooksbank (all without exhibits) be sent to the Court in Word format to the Bankruptcy Court Office by email to my attention.

It would also be helpful if the Liquidator provide a realization analysis of the realization in this Fee Period against the prior fee period, and the total fees and disbursements in both periods with fees expressed as a % of realization in each period, and also over the total life of the Liquidation.

If a "statement of receipts and disbursements" type of document has been prepared as a preliminary to future court hearings, for this Fee Period, that would also be helpful to assist in setting the context over the last 6 years for the activity.

If the Liquidator could provide this to me through the Bankruptcy Court Office by email by June 14th, 2024 that would also be helpful.



ASSOCIATE JUSTICE ILCHENKO