

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF
MAPLE FINANCIAL GROUP INC.
OF THE CITY OF TORONTO, PROVINCE OF ONTARIO**

**FACTUM OF DELOITTE RESTRUCTURING INC.,
IN ITS CAPACITY AS TRUSTEE IN BANKRUPTCY OF MAPLE FINANCIAL GROUP INC.
(MOTION RETURNABLE MAY 23, 2017)**

May 16, 2017

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capacity as trustee in bankruptcy of Maple
Financial Group Inc.*

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PART I - OVERVIEW

1. Deloitte Restructuring Inc. ("**Deloitte**"), in its capacity as the trustee in bankruptcy (in such capacity, the "**Trustee**") of the bankruptcy estate (the "**Bankruptcy Estate**") of Maple Financial Group Inc. ("**MFGI**") pursuant to section 49 of the *Bankruptcy and Insolvency Act* (Canada) R.S.C 1985. c. B-31, ("**BIA**"), seeks an order authorizing the Trustee to make an interim withdrawal or advance in the aggregate amount of \$200,505.16 from the funds of the Bankruptcy Estate to pay the fees and disbursements of the Trustee in the amount of \$137,958.64 (inclusive of HST) and the fees and disbursements of its legal counsel, Cassels Brock & Blackwell LLP ("**Cassels Brock**"), in the amount of \$62,546.52 (inclusive of HST), in each case for the period up to May 12, 2017 as set out in the Affidavit of Jean-François Nadon sworn May 16, 2017 and the exhibits thereto (the "**Deloitte Fee Affidavit**") and the Affidavit of R. Shayne Kukulowicz sworn May 16, 2017 and the exhibits thereto (the "**Cassels Brock Fee Affidavit**").

2. This factum is filed on behalf of the Trustee in support of its motion.

PART II - THE FACTS

3. The relevant facts are set out in detail in the second report of the Trustee issued on May [16], 2017 (the “**Second Report**”) and as summarized as follows.

4. MFGI is the ultimate parent of a group of companies located in various countries, including Canada and Germany, and wholly owns two direct subsidiaries: Maple Futures Corp. (“**Maple Futures**”) and Maple Financial Europe SE Germany (“**MFE**”).

Second Report at para 1

5. MFE is a Canadian holding company and wholly owns a German bank, Maple Bank GmbH (“**Maple Bank Germany**”). Maple Bank Germany also conducted business in Canada through its Toronto branch (“**Maple Bank Toronto**”).

Second Report at para 1

6. On February 11, 2016, the Frankfurt Lower District Court appointed a German insolvency administrator in respect of Maple Bank Germany (the “**Maple Bank Germany Insolvency**”) and thereafter this Honourable Court granted an order winding-up Maple Bank Toronto and appointing KPMG Inc. as liquidator (the “**Maple Bank Toronto Wind-Up**”).

Second Report at para 3

7. On August 4, 2016, MFGI filed an assignment in bankruptcy (the “**MFGI Bankruptcy**”) pursuant to section 49 of the BIA. Deloitte was appointed as trustee in bankruptcy of MFGI. On August 23, 2016, the Trustee held the First Meeting of Creditors of MFGI and no inspectors were appointed.

Second Report at paras 4-5

8. On April 5, 2017, the Trustee sought and obtained an order of this Honourable Court appointing Deloitte as receiver of all the assets of Maple Futures pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "**Maple Futures Receivership**").¹

Second Report at para 7

9. The administration of the Bankruptcy Estate, including the determination of creditor claims, is completely dependent on the timing and outcome of the other Maple Group Insolvency Proceedings and there is no certainty as to when the Trustee will be in a position to complete the administration of the MFGI Bankruptcy and file a Final Statement of Receipts and Disbursements. There are also no inspectors of the Bankruptcy Estate to approve an interim payment of the fees of the Trustee and its counsel as is usually the practice. The Trustee is therefore requesting authorization from the Court to make an interim advance or withdrawal to pay the account of the Trustee and its counsel.

Second Report at paras 15-17

10. As at May 12, 2017, the Trustee has incurred fees and disbursements (excluding the accounts of Cassels Brock) in the amount of \$110,862.50 and \$11,224.79, respectively (exclusive of HST) as more fully described in the Deloitte Fee Affidavit.

Second Report at para 19; Deloitte Fee Affidavit para 4

11. As at May 12, 2017, the Trustee's counsel, Cassels Brock, has incurred fees and disbursements acting as counsel to the Trustee in connection with the MFGI Bankruptcy in the amount of \$53,724.50 and \$1,675.91, respectively (exclusive of HST) as more fully described in the Cassels Brock Fee Affidavit.

¹ The MFGI Bankruptcy, the Maple Bank Germany Insolvency, the Maple Bank Toronto Wind-Up, and the Maple Futures Receivership are referred to collectively herein as the "**Maple Group Insolvency Proceedings**".

Second Report at para 19; Cassels Brock Fee Affidavit para 3

PART III - ISSUES

12. The issue on this Motion is whether the Court should authorize the Trustee to make an interim withdrawal or advance in the aggregate amount of \$200,505.16 from the funds of the Bankruptcy Estate to pay the fees and disbursements of the Trustee and Cassels Brock.

PART IV - LAW AND ARGUMENT

13. Pursuant to section 25(1.3) of the BIA, a trustee is not permitted to withdraw any funds from the trust account of an estate without permission in writing of the inspectors or order of the court.

Bankruptcy and Insolvency Act, RSC 1985, c. B-3, s.25(1.3); Schedule B

14. Directive No. 27R, *Advances of Trustee's Remuneration for Bankruptcies under Ordinary Administration* issued by the Office of the Superintendent of Bankruptcy on February 10, 2010 ("**Directive No. 27R**") provides the procedure that a trustee must follow when making an interim withdrawal or withdrawing an advance on his or her remuneration for an ordinary administration bankruptcy and provides that:

4. To withdraw an advance on his or her remuneration, the trustee must obtain proper authorization in the form of a resolution of a duly constituted meeting of creditors or of a majority of inspectors or make an application to the Court for an order approving payment of the advance (emphasis added)

Directive No. 27R, *Advances of Trustee's Remuneration for Bankruptcies under Ordinary Administration* ("**Direction No. 27R**"), s.3 and s.4, Schedule B

15. A Court order approving the payment of an interim withdrawal or advance must stipulate the specific dollar amount requested by the trustee.

Directive No. 27R, s.6. Schedule B

16. Directive No. 27R also provides that the trustee must ensure that sufficient funds remain in the trust account to cover the disbursements and fees necessary to complete the administration of the estate. As noted in the Second Report, there will be more than sufficient funds to cover the anticipated costs to administer the Bankruptcy Estate if the requested interim advance or withdrawal is deducted.

Directive No. 27R, s.5, Schedule B

17. In the present case, given the absence of inspectors for the Bankruptcy Estate, the Trustee cannot obtain the usual inspector approval for an interim advance or withdrawal on account of the Trustee's and its counsels' fees and disbursements, and holding a special meeting of creditors is not justified at this time.

18. The administration of the Bankruptcy Estate, including the Trustee's determination of the approximately \$3.8 billion proof of claim filed by Bundesverband deutscher Banken ("**BdB**") relating to MFGI's guarantees of Maple Bank Germany, is completely dependent on the timing and outcome of the other Maple Group Insolvency Proceedings.

Second Report at para 16

19. The Trustee expects the Maple Bank Insolvency Proceedings to continue for a number of years and there is no certainty as to when the Trustee will be in a position to complete the administration of the Bankruptcy Estate and file a Final Statement of Receipts and Disbursements.

Second Report at para 15-17

20. In light of the ongoing Maple Group Insolvency Proceedings and the lack of certainty as to when these proceedings may be complete such that the administration of the Bankruptcy Estate can also be completed, the Trustee believes that it is just and appropriate that it be

authorized to make an interim withdrawal or advance in the aggregate amount of \$200,505.16 from the funds of the Bankruptcy Estate to pay the account of the Trustee in the amount of \$137,958.64 (inclusive of HST) and the accounts of Cassels Brock in the amount of \$65,546.52 (inclusive of HST).

Second Report at para 21

21. Based on the current assets in the Bankruptcy Estate and the anticipated costs to complete the administration, if this Honourable Court authorizes the interim advance or withdrawal, there will still be more than sufficient funds in the Bankruptcy Estate to cover the disbursements and fees necessary to complete the administration of the Bankruptcy Estate and the creditors of MFGI will not be prejudiced by the requested relief for an interim withdrawal or advance of this nature.

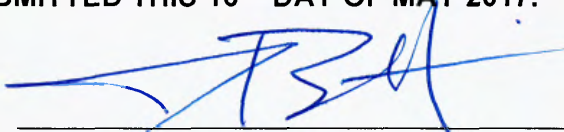
Second Report at para 22

22. However, the Trustee also intends to serve its motion on each of the parties that have filed proofs of claim against the Bankruptcy Estate, along with the liquidator in the Maple Bank Toronto Wind-Up and the insolvency administrator in the Maple Bank Germany Insolvency as potentially interested parties.

PART V - RELIEF SOUGHT

23. Based on the foregoing, the Trustee respectfully requests that the Court grant the relief sought in the Trustee's Notice of Motion substantially in the form of the draft order appended at Tab 5 to the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 16TH DAY OF MAY 2017.



Joseph J. Bellissimo, counsel for the Trustee

SCHEDULE "A"

Bankruptcy and Insolvency Act, RSC 1985, c. B-3,

Trust account

Permission needed for certain act

25 (1.3) The trustee shall not withdraw any funds from the trust account of an estate without the permission in writing of the inspectors or, on application, the court, except for the payment of dividends and charges incidental to the administration of the estate.

Remuneration of Trustee

To be voted by creditors

39 (1) The remuneration of the trustee shall be such as is voted to the trustee by ordinary resolution at any meeting of creditors.

Not to exceed 7½ per cent

(2) Where the remuneration of the trustee has not been fixed under subsection (1), the trustee may insert in his final statement and retain as his remuneration, subject to increase or reduction as hereinafter provided, a sum not exceeding seven and one-half per cent of the amount remaining out of the realization of the property of the debtor after the claims of the secured creditors have been paid or satisfied.

For carrying on debtor's business or in case of a proposal

(3) Where the business of the debtor has been carried on by the trustee or under his supervision, he may be allowed such special remuneration for such services as the creditors or the inspectors may by resolution authorize, and, in the case of a proposal, such special remuneration as may be agreed to by the debtor, or in the absence of agreement with the debtor such amount as may be approved by the court.

Successive trustees

(4) In the case of two or more trustees acting in succession, the remuneration shall be apportioned between the trustees in accordance with the services rendered by each, and in the absence of agreement between the trustees the court shall determine the amount payable to each.

Court may increase or reduce

(5) On application by the trustee, a creditor or the debtor and on notice to such parties as the court may direct, the court may make an order increasing or reducing the remuneration.

Bankruptcy and Insolvency Rules, C.R.C., c. 368, Rule 58

Remuneration of Trustees

58 (1) Unless the court orders otherwise, the remuneration of a trustee is deemed to take into account all services performed by the trustee and by the trustee's partners and employees.

(2) In taxing the accounts of a trustee pursuant to section 152 of the Act, the taxing officer shall tax disbursements at the rates provided by the tariff.

(3) A trustee's disbursements do not include the indirect costs of the trustee's facilities or premises.

(4) The expenses incurred by a trustee for the services of an interpreter referred to in section 57 and subsection 108(2) are calculated, at the time of taxation, at a rate that the taxing officer deems reasonable.

(5) The taxing officer shall determine the disbursements for which the trustee is entitled to be repaid in accordance with this section.

Directive No. 27R, Advances of Trustee's Remuneration for Bankruptcies under Ordinary Administration, Office of the Superintendent of Bankruptcy Canada, February 10, 2010

See attached.



Office of the Superintendent
of Bankruptcy Canada

An Agency of
Industry Canada

Bureau du surintendant
des faillites Canada

Un organisme
d'Industrie Canada

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155 Queen Street
4th Floor
Ottawa, Ontario
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155, rue Queen
4^e étage
Ottawa (Ontario)
K1A 0H5
<http://osb-bsf.ic.gc.ca>

Date: FEB 10 2010

Date : 10 FEV. 2010

To: OSB Staff, Trustees and
Registrars

À : Employés du BSF, syndics et
registraires

Subject: Directive No. 27R, *Advances
of Trustee's Remuneration
for Bankruptcies Under
Ordinary Administration*

Objet : Instruction n° 27R, *Avances de
rémunération du syndic dans les
faillites d'administration ordinaire*

The Office of the Superintendent of Bankruptcy (OSB) received a number of questions from various stakeholders regarding Directive No. 27, *Advances of Trustee's Remuneration for Bankruptcies Under Ordinary Administration*, which was issued on August 14, 2009.

Le Bureau du surintendant des faillites (BSF) a reçu un certain nombre de questions de la part de divers intervenants au sujet de l'instruction n° 27, *Avances de rémunération du syndic dans les faillites d'administration ordinaire*, qui a été émise le 14 août 2009.

There was uncertainty in terms of the trustees' reporting obligations under paragraph 7 of the Directive. Specifically, subparagraph 7(1)(e) of Directive No. 27 referred to only one of the three ways in which a trustee can obtain proper authorization to withdraw an advance on his or her remuneration and the term "unless otherwise required" in subparagraph 7(2) of the Directive was too vague and created unnecessary reporting obligations.

Il y avait une incertitude concernant les obligations de production de rapports des syndics aux termes du paragraphe 7 de l'instruction. Plus particulièrement, l'alinéa 7(1)e) de l'instruction n° 27 ne mentionnait qu'un seul des trois moyens par lesquels un syndic peut obtenir la permission requise afin de retirer une avance de rémunération, et l'expression « sauf avis contraire », à l'alinéa 7(2) de l'instruction, était trop vague et entraînait des obligations inutiles en matière de production de rapports.

Canada



Protecting the
Integrity of the
Insolvency System

Protéger l'intégrité
du système
d'insolvabilité

Directive No. 27 has been amended as follows:

(1) Subparagraph 7(1)(e) now reflects the three ways in which an advance on a trustee's remuneration may be approved (as provided for in paragraph 4 of the Directive):

(1) by a resolution of a duly constituted meeting of creditors;

(2) by a majority of the inspectors; or

(3) by a Court Order approving payment of the advance.

(2) Subparagraph 7(2) of the Directive now requires trustees to remit a copy of the documents referred to in subparagraph 7(1) to the OSB at the time of filing the Final Statement of Receipts and Disbursements and to the registrar or taxing officer if and when there is a taxation hearing. Trustees must only remit a copy of the documents referred to in subparagraph 7(1) to the creditors upon request.

Coming into Force

Directive 27R comes into force on February 12, 2010.

L'instruction n° 27 a été modifiée comme suit :

(1) L'alinéa 7(1)e) mentionne dorénavant les trois moyens par lesquels peut être approuvée une avance de rémunération du syndic (tel qu'il est indiqué au paragraphe 4 de l'instruction) :

(1) par résolution adoptée à l'assemblée des créanciers;

(2) par résolution adoptée par la majorité des inspecteurs;

(3) par ordonnance du tribunal autorisant le paiement de l'avance.

(2) L'alinéa 7(2) de l'instruction exige maintenant que les syndics remettent une copie des documents mentionnés à l'alinéa 7(1) au BSF au moment de déposer l'État définitif des recettes et des débours, ainsi qu'au registraire ou au fonctionnaire taxateur au moment de l'audition de la taxation, si une telle audition a lieu. Les syndics doivent remettre une copie des documents mentionnés à l'alinéa 7(1) aux créanciers seulement si on le leur demande.

Entrée en vigueur

L'instruction n° 27R entre en vigueur le 12 février 2010.

Enquiries

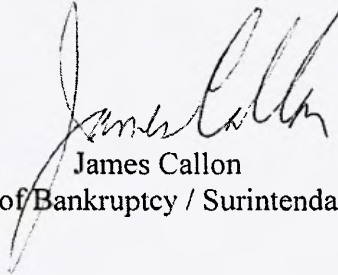
If you require further information, please do not hesitate to contact the OSB office nearest you.

Att.

Demandes de renseignements

Si vous désirez obtenir de plus amples renseignements, n'hésitez pas à communiquer avec le bureau du BSF le plus proche.

p. j.



James Callon
Superintendent of Bankruptcy / Surintendant des faillites



Directive / Instruction

N° 27R

ADVANCES OF TRUSTEE'S REMUNERATION FOR BANKRUPTCIES UNDER ORDINARY ADMINISTRATION

AVANCES DE RÉMUNÉRATION DU SYNDIC DANS LES FAILLITES D'ADMINISTRATION ORDINAIRE

Issued: **FEB 10 2010**

Date d'émission : **FEB 10 2010**

(Supersedes Directive No. 27 issued on
August 14, 2009, on the same topic)

(La présente instruction remplace et annule
l'instruction n° 27 sur le même sujet émise
le 14 août 2009)

Interpretation

1. In this Directive,

“Act” means the *Bankruptcy and Insolvency Act*;

“OSB” means the Office of the
Superintendent of Bankruptcy;

“Rules” means the *Bankruptcy and Insolvency
General Rules*.

Interprétation

1. Les définitions qui suivent s'appliquent à la
présente instruction :

« BSF » désigne le Bureau du surintendant des
faillites;

« Loi » renvoie à la *Loi sur la faillite et
l'insolvabilité*;

« Règles » s'entend des *Règles générales sur
la faillite et l'insolvabilité*.

Authority and Purpose

2. This Directive is issued pursuant to the
authority of paragraphs 5(4)(b) and (c) of the
Act.

Autorité et objet

2. La présente instruction est émise en vertu
de l'autorité conférée par les alinéas 5(4)b) et
c) de la Loi.

3. The purpose of this Directive is to set out the proper procedure the trustee must follow when making an interim withdrawal or withdrawing an advance on his or her remuneration for an ordinary administration bankruptcy.

Procedure

4. To withdraw an advance on his or her remuneration, the trustee must obtain proper authorization in the form of a resolution of a duly constituted meeting of creditors or of a majority of the inspectors or make application to the Court for an order approving payment of the advance.

5. The trustee must ensure that sufficient funds remain in the trust account to cover the disbursements and fees necessary to complete the administration of estates.

6. The request of the trustee for an advance shall stipulate the specific dollar amount, which should also be reflected in the minutes of the meeting of creditors or inspectors and/or in the Court Order.

7.(1) Trustees shall have in their file the following information for each authorized advance on the remuneration:

- (a) number of hours worked;
- (b) tasks performed;

3. La présente instruction a pour objet d'établir la procédure à suivre par un syndic qui désire effectuer un paiement intérimaire ou retirer une avance de rémunération dans une faillite d'administration ordinaire.

Modalités

4. Afin de retirer une avance de rémunération, le syndic doit obtenir la permission requise, soit par résolution adoptée à l'assemblée des créanciers ou par résolution adoptée par la majorité des inspecteurs, ou obtenir du tribunal une ordonnance autorisant le paiement de l'avance.

5. Le syndic doit s'assurer qu'il y a dans le compte en fidéicommiss suffisamment de fonds pour couvrir les frais et honoraires nécessaires afin de mener à bien l'administration des dossiers.

6. La demande d'avance de rémunération du syndic doit indiquer le montant précis. Ce montant doit également être indiqué dans le procès-verbal de l'assemblée des créanciers ou des inspecteurs ou figurer sur l'ordonnance du tribunal.

7.(1) Les syndics doivent détenir dans leur dossier les informations suivantes pour chaque avance de rémunération autorisée :

- a)* le nombre d'heures travaillées;
- b)* les tâches accomplies;

- (c) hourly rates;
- (d) other factors for consideration in the calculation of fees; and
- (e) resolution of a duly constituted meeting of creditors, resolution of a majority of the inspectors, or Court Order approving payment of the advance, whatever the case may be.

- c) les taux horaires;
- d) les autres éléments à prendre en compte dans le calcul de la demande d'avance de rémunération; et
- e) selon le cas, la résolution adoptée à l'assemblée des créanciers, la résolution adoptée par la majorité des inspecteurs, ou l'ordonnance du tribunal autorisant le paiement de l'avance.

(2) Trustees shall remit a copy of the documents referred to in subparagraph 7(1) to the OSB at the time of filing the Final Statement of Receipts and Disbursements and to the registrar or taxing officer if and when there is a taxation hearing. Trustees must only remit a copy of the documents referred to in subparagraph 7(1) to the creditors upon request.

(2) Les syndics doivent remettre une copie des documents mentionnés à l'alinéa 7(1) au BSF au moment de déposer l'État définitif des recettes et des débours et au registraire ou à l'officier taxateur s'il y a audition de la taxation. Les syndics doivent remettre une copie des documents mentionnés à l'alinéa 7(1) aux créanciers seulement si on le leur demande.

8.(1) When a registrar or taxing officer taxes the remuneration of the trustee to an amount that is less than the advance withdrawn by the trustee, this excess shall be repaid to the estate without delay.

8.(1) Lorsqu'un registraire ou un officier taxateur taxe la rémunération du syndic pour un montant moindre que l'avance déjà prise par le syndic, le surplus doit être immédiatement remboursé à l'actif de la faillite.

(2) The trustee must notify the official receiver in writing of the repayment or other changes due to the taxation.

(2) Le syndic doit immédiatement informer par écrit le séquestre officiel du remboursement ou d'autres modifications suite à la taxation.

9. The registrar or taxing officer is not bound by this Directive and can exercise his or her discretion in relation to the taxation of the trustee's accounts.

9. Le registraire ou l'officier taxateur ne sont pas liés par la présente instruction et exerceront leur discrétion quant à la taxation des comptes du syndic.

Coming into Force

10. This Directive comes into force on February 12, 2010.

Enquiries

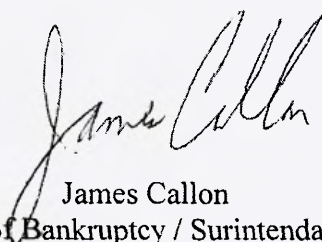
11. For any questions pertaining to this Directive, please contact your local OSB office.

Entrée en vigueur

10. La présente instruction entre en vigueur le 12 février 2010.

Demandes de renseignements

11. Pour toute question se rapportant à la présente instruction, veuillez communiquer avec le bureau du BSF le plus proche.



James Callon
Superintendent of Bankruptcy / Surintendant des faillites

<p>ONTARIO SUPERIOR COURT OF JUSTICE IN BANKRUPTCY AND INSOLVENCY</p>	<p>FACTUM (MOTION RETURNABLE MAY 23, 2017)</p>
<p>CASSELS BROCK & BLACKWELL LLP 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p>	<p>Joseph J. Bellissimo LSUC No.: 46555R Tel: (416) 860-6572 Fax: (416) 642-7150 E-mail: jbellissimo@casselsbrock.com</p>
<p>Monique Sassi LSUC No.: 63638L Tel: (416) 860-6886 Fax: (416) 640-3005 E-mail: msassi@casselsbrock.com</p>	<p><i>Lawyers for the Trustee</i></p>