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## THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO

**TO:** STEPHEN Z. ADAMS, CA

**AND TO:** The Discipline Committee of the Institute of  
Chartered Accountants of Ontario

The Professional Conduct Committee hereby makes the following allegations of professional misconduct against Stephen Z. Adams, CA, a member of the Institute:

1. THAT, the said Stephen Z. Adams, on or about the 5<sup>th</sup> day of May, 2011, was convicted of the offence of fraud as set out in Schedule "A" attached, and did thereby fail to act in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the Rules of Professional Conduct.

Dated at Kingsville, Ontario this                      day of March, 2012

D.P. SETTERINGTON, FCA, CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

Schedule A

## UNITED STATES DISTRICT COURT

NORTHERN

District of

ILLINOIS

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

STEPHEN ADAMS

Case Number: 10 CR 663-2

USM Number: 42615-424

Ronald D. Menaker

Defendant's Attorney

## THE DEFENDANT:

☒ pleaded guilty to count(s) Four☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

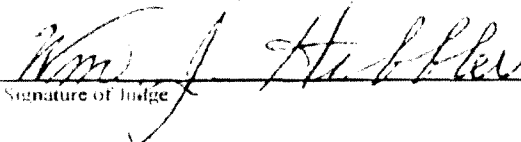
Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. 1343	Wire Fraud	3/26/08	Four

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) \_\_\_\_\_☒ ALL REMAINING COUNTS ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

MAY 5, 2011

Date of Imposition of Judgment



Signature of Judge

HON. WILLIAM J. HIBBLER, U.S. DISTRICT JUDGE

Name and Title of Judge

MAY 11, 2011

Date

DEFENDANT: STEPHEN ADAMS  
CASE NUMBER: 10 CR 663-2

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **NINETY-SIX (96) MONTHS on Count 4.**

☒ The court makes the following recommendations to the Bureau of Prisons:  
that defendant be housed at the Oxford, Wisconsin facility.

☐ The defendant is remanded to the custody of the United States Marshal.

☒ The defendant shall surrender to the United States Marshal for this district:

☒ at 1:30 ☐ a.m. ☒ p.m. on 6/21/11 in Judge Hibbler's courtroom .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_

DEPUTY UNITED STATES MARSHAL

DEFENDANT: STEPHEN ADMAS  
CASE NUMBER: 10 CR 663-2

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **THREE (3) YEARS**. As a condition of supervised release, upon completion of the defendant's term of imprisonment, the defendant is to be surrendered to a duly authorized official of the Homeland Security Department for a determination of deportability by the appropriate authority in accordance with the laws under the Immigration and Nationality Act and the established implementing regulations. If ordered deported, defendant shall not re-enter the U.S. without obtaining, in advance, the express written consent of the Attorney General or the Sec. of Homeland Security. Any restitution balance shall become a condition of defendant's supervised.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: STEPHEN ADAMS  
CASE NUMBER: 10 CR 663-2

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$ 8,067,186.00

☐ The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
SEE ATTACHMENT FOR PAYEES.			

TOTALS	\$ _____ 0	\$ _____ 0
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☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

10 cr 663-2

\$	267,089	Richard Chambers
	106,836	Clyde Harrison
	267,089	D-W Investments, LLC
	534,178	Robert G. McLennan 1998 Trust
	534,178	Petralli Trust (Created: June 13, 1997)
	90,368	Worth Trust U/A August 17, 2001
	267,089	Wozencraft Investments, Ltd.
	2,136,714	KGT Ltd
		C. Keith and Gaynel Thompson Generation Skipping
	801,268	Trust
	801,268	Recon Exploration, Inc Profit Sharing
	534,178	RTL Trust 04 (Created: March 23, 2004)
\$	6,340,256	Subtotal: Investment in the BRMG Trust
\$	350,000	Richard Chambers
	127,560	Worth Trust U/A August 17, 2001
	600,000	Walnut Street Absolute Return Fund, L.P.
	400,000	Walnut Street Offshore Absolute Return Fund, Ltd.
	100,000	Frederick Plautz Irrevocable Trust
	150,000	Hathaway Equity
\$	1,727,560	Subtotal: Investment in Brookshire and/or Subsidiaries
\$	8,067,816	Total Loss to Victims

DEFENDANT: STEPHEN ADAMS  
CASE NUMBER: 10 CR 663-2

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A** ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☒ Special instructions regarding the payment of criminal monetary penalties:  
Defendant shall make a \$20,000.00 payment by 6/6/2011. The balance shall be at least 10% of defendant's net monthly income.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

**X Joint and Several**

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

John Marshall 10 CR 663-1 \$8,067,186.00.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 4.2  
Eastern Division**

UNITED STATES OF AMERICA

Plaintiff,

v.

Case No.: 1:10-cr-00663

Honorable William J. Hibbler

John Marshall, et al.

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Friday, June 17, 2011:

MINUTE entry before the Honorable William J. Hibbler: as to Stephen Adams (2). Defendant's Emergency Motion to vacate status date of June 21, 2011 and allow defendant to self-report to designated Bureau of Prisons Facility on June 27, 2011 [43] is granted. Defendant is to surrender to the designated institute before 2:00 p.m. on June 27, 2011. Mailed notice (jdh)

**ATTENTION:** This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO  
*THE CHARTERED ACCOUNTANTS ACT, 2010*

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** An Allegation against **STEPHEN ZELIG ADAMS, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

**TO:** Mr. Stephen Z. Adams

**AND TO:** The Professional Conduct Committee, ICAO

**DECISION AND ORDER MADE AUGUST 28, 2012**

**DECISION**

THAT, having determined to proceed with the hearing in the absence of Mr. Adams, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to the allegation, and having seen and considered the evidence, the Discipline Committee finds Stephen Zelig Adams guilty of the allegation.

**ORDER**

IT IS ORDERED in respect of the allegation:

1. THAT Mr. Adams be and he is hereby fined the sum of \$20,000 to be remitted to the Institute within seven (7) years from the date this Decision and Order is made.
2. THAT Mr. Adams' membership in the Institute be and is hereby revoked.
3. THAT notice of this Decision and Order, disclosing Mr. Adams' name, be given after this Decision and Order is made:
  - (a) to all members of the Institute;
  - (b) to all provincial institutes/Ordre;and shall be made available to the public.
4. THAT notice of the revocation of membership, disclosing Mr. Adams' name, be given by publication on the Institute's website and in the *Globe and Mail* and in a newspaper distributed in the City of Chicago. All costs associated with the publication shall be borne by Mr. Adams and shall be in addition to any other costs ordered by the committee.
5. THAT Mr. Adams surrender his certificate of membership in the Institute to the Discipline Committee Secretary within ten (10) days from the date this Decision and Order is made.

IT IS FURTHER ORDERED:

6. THAT Mr. Adams be and he is hereby charged costs fixed at \$3,000 to be remitted to the Institute within seven (7) years from the date this Decision and Order is made.

DATED AT TORONTO THIS 4th DAY OF SEPTEMBER, 2012  
BY ORDER OF THE DISCIPLINE COMMITTEE

DIANE WILLIAMSON  
SECRETARY - DISCIPLINE COMMITTEE

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO  
*THE CHARTERED ACCOUNTANTS ACT, 2010*

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** An Allegation against **STEPHEN ZELIG ADAMS, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

**TO:** Mr. Stephen Z. Adams

**AND TO:** The Professional Conduct Committee, ICAO

**REASONS**

**(Decision and Order made August 28, 2012)**

1. This tribunal of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on August 28, 2012 to hear an allegation of professional misconduct brought by the Professional Conduct Committee against Stephen Z. Adams, a member of the Institute.

2. Ms. Alexandra Hersak appeared on behalf of the Professional Conduct Committee (PCC). Mr. Adams was not represented by counsel and did not attend. Mr. Robert Peck attended the hearing as counsel to the Discipline Committee.

3. Ms. Hersak advised the tribunal that Mr. Adams is incarcerated in a Pennsylvania correctional institution and had advised by correspondence that he would not be represented at the hearing (Exhibit 1). Additional letters from Mr. Adams (Exhibits 2 and 3) provide details of the actions leading up to his incarceration and confirmed that he would not be present at the hearing. Ms. Hersak filed an Order for Substituted Service dated May 1, 2012 (Exhibit 4) whereby the Chair of the Discipline Committee, upon reviewing the Notice of Motion filed on behalf of the PCC, had ordered substituted service of documents pertaining to the allegations of misconduct could be sent to an address other than that on record with the Institute. The tribunal determined that Mr. Adams had received proper notice of the hearing and decided to proceed in his absence.

4. The decision of the tribunal was made known at the conclusion of the hearing on August 28, 2012, and the written Decision and Order sent to the parties on September 4, 2012. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegation, the decision, the order, and the reasons of the tribunal for its decision and order.

**Allegations**

5. The following allegation was laid against Mr. Adams by the Professional Conduct Committee on March 16, 2012:

1. THAT, the said Stephen Z. Adams, on or about the 5<sup>th</sup> day of May, 2011, was convicted of the offence of fraud as set out in Schedule "A" attached, and did thereby fail to act in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the Rules of Professional Conduct.

**Plea**

6. A plea of not guilty to the allegation was entered on Mr. Adam's behalf.

### **Evidence**

7. Ms. Hersak made an opening statement. She advised the tribunal that the case for the PCC would be presented by way of a certified copy of conviction, which was set out in Schedule "A" to the allegation and a Document Brief. She then filed the Certified Copy of the United States District Court Judgment (Exhibit 5) and the Document Brief (Exhibit 6) which contained the transcript of the hearing at which Mr. Adams entered a plea of guilty and the transcript of the sentencing hearing, both hearings being before the United States District Court in Illinois.

8. In presenting the case for the PCC, Ms. Hersak reviewed the correspondence received from Mr. Adams, the certified copy of the judgment, and made reference to the relevant documents in the Document Brief which summarized Mr. Adam's conduct which led to his criminal conviction. No other evidence was called on behalf of the PCC.

9. Ms. Hersak submitted that the evidence was clear, cogent and convincing, and, as Mr. Adams acknowledged in his letters that he pleaded guilty to one count of fraud in Federal Court, would not contest the allegation and expected to be found guilty of professional conduct, he should be found guilty. Ms. Hersak also submitted that under Rule 201.2, when a certificate of conviction is filed with the Discipline Committee, there is a rebuttable presumption that the member failed to maintain the good reputation of the profession, which Mr. Adams did not deny but acknowledged in his correspondence.

### **The relevant facts**

10. The relevant facts in this case were not in dispute. Mr. Adams was the CFO of a management company, which was a commodity pool operator. The management company was the managing owner of a group trust and was responsible for managing the trust and directing its trading activities. The trust pooled investor funds to trade commodity futures and forward contracts. Mr. Adams and his non-CA business partner Mr. Marshall, the CEO and Chairman of the Board of the management company, provided investors with private placement memorandums (PPMs) which identified and limited the way in which investors' money could be used. The PPMs also specified a limited number of fees and expenses that could be paid from investors' funds. Funds were to be used for certain investments, commodity futures and forward contracts. Any funds not needed to satisfy margin requirement were maintained at a custodian bank, HSBC Bank, in New York and invested in high credit quality short-term fixed-income securities cash or cash equivalents.

11. From January 2007 to December 2008, Messrs. Adams and Marshall devised and participated in a scheme to defraud investors. Mr. Marshall proposed that funds be misappropriated from the trust and Mr. Adams agreed. Approximately \$6.3 million was misappropriated from the trust investors. The transferred funds were used for purposes unrelated to the trust including salary payments to Messrs. Adams and Marshall and to cover expenses and staff salaries for their other companies unrelated to the trust. The other companies were private companies that managed US and Canadian investor money, operating three mutual funds. These companies had been started by Messrs. Adams and Marshall in 2003 and when these businesses ran out of working capital, cash funds were misappropriated from the trust.

12. After they began misappropriating funds, it was agreed by Mr. Adams that Mr. Marshall would continue to obtain additional funds from investors for the trust. Mr. Adams knew that false representations were made to investors by stating that investors' funds were being used in the manner set out in the PPMs and without disclosing that invested funds had been misappropriated. False monthly statements were issued to investors knowing that the statements were false in that the misappropriation of funds was concealed from the investors.

13. In 2008, Mr. Adams failed to disclose to the investors that due to the misappropriation there were insufficient funds to repay them and falsely told the investors they would be repaid when he knew the trust had insufficient funds to do so. HSBC was fraudulently directed to transfer investor's funds to bank accounts in Canada controlled by Mr. Adams. In order to convince the bank to release the funds, Messrs. Adams and Marshall agreed to submit false invoices to HSBC requesting payment of operating costs.

14. By late 2007, Mr. Adams was aware that at least \$1.5 million had been taken from the trust with no repayment being made. Although Mr. Marshall raised funds, he allocated those funds to make payments to his other businesses. The misappropriation of funds continued and in the fall of 2008, Mr. Adams and his partner falsely told investors the money had been placed in a certificate of deposit which would not come due until November 2008. For the purpose of executing this scheme, Messrs. Adams and Marshall transmitted by means of wire communication approximately \$350,000 from the trust account of HSBC, through a correspondent bank to the Bank of Montreal in Toronto. Such funds were deposited to an account controlled by Mr. Adams and his partner.

15. Mr. Adams did not disclose to the investors that the continued misappropriations were draining all of the assets out of the trust as he believed that investors would not invest money in the management company if they learned that the CEO and CFO had appropriated funds belonging to other investors. False business plans and PPMs relating to the trust were provided to potential investors.

16. Mr. Adams had pleaded guilty and was found guilty of one count of wire fraud by the US Northern District Court of Illinois, Eastern Division, and the remaining counts were dismissed. Mr. Adams was sentenced to 96 months (eight years) in a correctional institution and ordered to pay restitution of approximately \$8,000,000 to parties who had been defrauded. The total amount of monies misappropriated was approximately \$12,000,000 but some individuals did not wish to be identified or participate as defendants.

### **Finding**

17. The tribunal accepted the uncontradicted evidence that Mr. Adams did misappropriate funds from the investors and associated himself with statements which he knew were false and misleading.

### **Decision**

18. The evidence in this matter is clear, cogent and convincing. Further, Mr. Adams provided no evidence or claims to refute this charge. The misconduct as alleged has been proven; Mr. Adams failed to uphold the good reputation of the profession. After deliberating, the tribunal made the following decision:

THAT, having determined to proceed with the hearing in the absence of Mr. Adams, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to the allegation, and having seen and considered the evidence, the Discipline Committee finds Stephen Zelig Adams guilty of the allegation.

### **Sanction**

19. Ms. Hersak did not call any additional evidence with respect to sanction.

20. Ms. Hersak, on behalf of the PCC, submitted that an appropriate sanction in this matter would be: a written reprimand; a fine in the amount of \$20,000; revocation of membership; and full publicity including newspaper publication in the *Globe and Mail* and in a Chicago newspaper. The PCC also sought an order for costs on a partial indemnity basis. Ms. Hersak filed a Costs Outline

(Exhibit 8) which showed that the costs were limited to approximately \$6,000 since an investigator did not need to be appointed. The PCC was seeking an order for recovery of approximately 50% of the costs in the amount of \$3,000. Ms. Hersak said the PCC had no objection to a time period of several years for Mr. Adams to pay the costs and fine.

21. Ms. Hersak submitted that the proposed sanctions would satisfy the principles of sentencing: specific and general deterrence. Mr. Adams' serious misconduct has damaged his own and the profession's reputation and should result in the revocation of his membership. This is a matter of moral turpitude whereby Mr. Adams made 26 fraudulent transfers over a two-year period and issued false monthly statements to investors. Publicity in Toronto and Chicago newspapers will inform the public that Mr. Adams is no longer a CA.

22. Ms. Hersak indicated that the aggravating factors included the misappropriation of a significant amount of money from numerous investors, many of whom lost their life's savings. Each time, Mr. Adams could have considered whether what he was doing was right or wrong but his actions only stopped when he was caught. The total loss of approximately \$12 million accumulated over a period of two years. Mr. Adams continued to lie to the investors when the money was actually gone and continued the scheme by seeking new investors. All monthly statements and financial statements issued were signed by Mr. Adams. His conduct was egregious since he was a chartered accountant signing false documents which were provided to banks and investors.

23. Ms. Hersak submitted there is the issue of whether Mr. Adams intends to pay any of the money back. No money has ever been paid back to the trust despite Mr. Adams' stated intent to do so and despite the fact that he continued to work and draw a salary until 2011. Ms. Hersak filed a press release issued by the US Commodity Future Trading Commission (Exhibit 6) indicating that Mr. Adams and Mr. Marshall have been ordered by the courts to pay more than \$15 million in disgorgement and a civil monetary penalty for defrauding commodity pool investors.

24. Ms. Hersak indicated the mitigating factors included that Mr. Adams did cooperate fully with the criminal courts, even though his cooperation occurred only after Mr. Marshall admitted to the fraud. Mr. Adams admitted he knew what he did was wrong and accepts responsibility for his actions. He did plead guilty to one count in the criminal proceedings. He advised in his letters to the PCC (Exhibits 2 and 3) that he acknowledges and accepts the fact that he failed to act in a manner which will maintain the good reputation of the profession and its ability to serve the public interest. Mr. Adams did not contest the allegation made by the PCC and indicated he expected to be found guilty of professional misconduct. Mr. Adams has no previous criminal record and has no previous discipline history. Mr. Adams expressed remorse for his actions and accepts the consequences of his wrongdoing.

25. Ms. Hersak distributed a case brief of fraud and misappropriation cases: *Roy*, *Doutre*, *Humphreys* and *McWilliams*, pointing out that the sanctions sought in this matter are consistent with those imposed for similar misconduct.

### **Order**

26. After deliberating, the tribunal made the following order:

IT IS ORDERED in respect of the allegation:

1. THAT Mr. Adams be and he is hereby fined the sum of \$20,000 to be remitted to the Institute within seven (7) years from the date this Decision and Order is made.
2. THAT Mr. Adams' membership in the Institute be and is hereby revoked.

3. THAT notice of this Decision and Order, disclosing Mr. Adams' name, be given after this Decision and Order is made:
  - (a) to all members of the Institute;
  - (b) to all provincial institutes/Ordre;
 and shall be made available to the public.
4. THAT notice of the revocation of membership, disclosing Mr. Adams' name, be given by publication on the Institute's website and in the *Globe and Mail* and in a newspaper distributed in the City of Chicago. All costs associated with the publication shall be borne by Mr. Adams and shall be in addition to any other costs ordered by the committee.
5. THAT Mr. Adams surrender his certificate of membership in the Institute to the Discipline Committee Secretary within ten (10) days from the date this Decision and Order is made.

IT IS FURTHER ORDERED:

6. THAT Mr. Adams be and he is hereby charged costs fixed at \$3,000 to be remitted to the Institute within seven (7) years from the date this Decision and Order is made.

**Reasons for Sanction**

27. The misappropriation of client funds is an offence that strikes at the very heart of the chartered accountant profession. It reflects badly on the whole profession and has the potential to destroy public trust in the integrity of every member. The fraud was perpetrated repeatedly, it was covered up continuously, the fraud involved many clients, covered several years and included many false claims. There were many opportunities for Mr. Adams to do the right thing but he never acted to correct or stop the offensive activity. Mr. Adams did not admit his guilt until he was caught. His co-operation and expression of regret, while admirable, have come too late to mitigate our conclusion that Mr. Adams' behavior is truly reprehensible. Large amounts of client funds were converted to Mr. Adams' own use. Accordingly, the tribunal concluded that revocation of his membership in the Institute was required.

28. The tribunal believes in this case it has a primary responsibility to the general membership, to share with them its abhorrence to the action of Mr. Adams; and to the public at large to ensure they are made aware of our action to remove from our profession an individual who so clearly has acted so contrary to our commitment to integrity and ethical professional service to the community. Our order to publicize the case to our members and to the community in which Mr. Adams worked meets our primary responsibility.

29. The principles of general and specific deterrence require that a member who conducts himself or herself as Mr. Adams did, in addition to membership revocation, must face a financial penalty. The aggravating factors noted above and the nominal mitigating factors further indicate that the fine should be significant. The tribunal concluded that the fine proposed by the PCC was within the range for offences with circumstances similar to those in this case and so we ordered a fine of \$20,000, meeting both specific and general deterrence criteria.

30. The tribunal decided that it would be appropriate to limit our communication to Mr. Adams to the Decision and Order and these reasons. His membership has been revoked. He has also been ordered to pay a fine, which in his circumstances, is significant. We do not think our denunciation of

his conduct could be clearer. We see no benefit to communicate further with him. We do not want a written reprimand to soften our decision and so consequently we did not order one.

**Costs**

31. Mr. Adams' cooperation with PCC was passive; however he did not inhibit the proceedings. The costs of the investigation and hearing were minimal because they are based on a US federal prosecution and court case. Consequently, the recovery of 50% of the costs at \$3,000 as requested by the PCC was appropriate.

32. Mr. Adams is currently serving his sentence in a US penitentiary and it seems obvious to the tribunal that he has no ability to pay his fine or costs in the near term. Consequently, the tribunal has ordered the fine and costs to be paid seven (7) years after the Decision and Order is made. We estimate that by the end of this time Mr. Adams will have been released from custody and will no longer be frustrated by his incarceration and its consequent impediment to his ability to earn income.

DATED AT TORONTO THIS 14th DAY OF NOVEMBER, 2012  
BY ORDER OF THE DISCIPLINE COMMITTEE

R.J. ADAMKOWSKI, CA – DEPUTY CHAIR  
DISCIPLINE COMMITTEE

**MEMBERS OF THE TRIBUNAL:**

T.D. HOGAN, CA  
G.G. IRELAND, CA  
P. McBURNEY (PUBLIC REPRESENTATIVE)  
A.B. MINTZ, CA