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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **DAVID GRAHAM HOEY, CA** and **JOHN ALEXANDER WOODCROFT, CA**, members of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

TO: Mr. D. Graham Hoey, CA
Mr. John A. Woodcroft, CA

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Order made September 21, 2012)

1. This tribunal of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on April 16, 2012 and September 21, 2012 to deal with the matter of sanction as directed by the Appeal Committee.

2. The Professional Conduct Committee (PCC) laid charges of professional misconduct against David Graham Hoey, CA and John Alexander Woodcroft, CA on July 16, 2010. The charges against both members were heard by a panel of the Discipline Committee on September 30, 2010. The members entered a plea of guilty and there was a joint submission on sanction. The sanction imposed was different than the sanction jointly recommended in that the fines were increased to $10,000 rather than $7,500 for Mr. Hoey and $10,000 rather than $5,000 for Mr. Woodcroft, and instead of no suspension for either member both members were to be suspended for two years. The decision and order of the Discipline Committee was made on September 30, 2010 and the written reasons for the decision and order are dated March 31, 2011.

3. The members appealed and asked the Appeal Committee for an order for a new hearing before a differently constituted panel of the Discipline Committee. The appeal was heard on October 27, 2011 and the reasons of the Appeal Committee, referring the matter of sanction back to a differently constituted panel of the Discipline Committee, are dated December 19, 2011.

4. There was no issue in September 30, 2010 before the Discipline Committee, or on the appeal on October 27, 2011 or on this hearing with respect to the decision that the members

were guilty of professional misconduct. The matter or issue before this differently constituted panel of the Discipline Committee was the sanction appropriate for the members' misconduct and the hearing was convened to provide an opportunity for the parties to make additional submissions on sanction.

5. Paul Farley appeared on behalf of the Professional Conduct Committee, accompanied by Mr. Jim King, CA, the investigator for the Professional Conduct Committee who was present throughout the hearing on April 16, 2012. Messrs. Hoey and Woodcroft did not attend, but were represented by counsel, Mr. Joseph Groia and Ms. Kellie Seaman. Mr. Robert Peck attended the hearing as counsel to the Discipline Committee.

6. The decision of the tribunal was made known at the conclusion of the hearing on September 21, 2012, and the written Decision and Order sent to the parties on September 25, 2012. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the charges, the orders, and the reasons of the tribunal for the orders.

CHARGES

7. The misconduct of Mr. Hoey is summarized in the charges which were laid against him by the Professional Conduct Committee on July 16, 2010, namely:

1. THAT the said Graham Hoey, while employed as Senior Vice-President Finance of Philip Services Corp. ("Philip") in or about the period January 1, 1997 through June 30, 1998, failed to 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, in that he acquiesced in filing with the Ontario Securities Commission financial statements of Philip in a final Prospectus which did not contain full, true and plain disclosure of:

    (i) restructuring charges in the amount of $155.72 million as required under Canadian generally accepted accounting principles; and

    (ii) a financing arrangement between Philip and CIBC in the amount of $10 million as required under Canadian generally accepted accounting principles.

2. THAT the said Graham Hoey, while employed as Senior Vice-President Finance of Philip Services Corp. ("Philip") in or about the period January 1, 1997 through June 30, 1998, failed to 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 , in that:

    (i) he authorized a journal entry in the books and records of Philip to record a payment of approximately $4.7 million made on or about December 17, 1997, pursuant to a financing agreement with CCG Inc., as part of capitalized acquisition costs when the underlying liability had not been recorded; and

(ii) he instructed Philip staff to record in the books and records of Philip a complex financing arrangement with CIBC as a sale of inventory, resulting in an overstatement of gross profit in the second quarter of 1997 of $3.2 million.

8. The misconduct of Mr. Woodcroft is summarized by the charges that were laid against him by the Professional Conduct Committee on July 16, 2010, namely:

1. THAT the said John Woodcroft while employed as Executive Vice President Operations of Philip Services Corp. ("Philip") on or about November 6, 1997, failed to 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, in that he acquiesced in filing with the Ontario Securities Commission financial statements of Philip in a final Prospectus which did not contain full, true and plain disclosure of:

   (i) restructuring charges in the amount of $155.72 million as required under Canadian generally accepted accounting principles;

   (ii) holding certificates between Philip and certain of its customers in the amount of $31 million as required under Canadian generally accepted accounting principles;

   (iii) approximately $29 million of unrecorded liabilities for invoices issued by a supplier in 1996 as required under Canadian generally accepted accounting principles;

   (iv) a financing arrangement between Philip and Commodity Capital Group Metals Inc. in the amount of $30.222 million as required under Canadian generally accepted accounting principles;

   (v) a financing arrangement between Philip and CIBC in the amount of $10 million as required under Canadian generally accepted accounting principles; and

   (vi) a promissory note due from Robert Waxman in the amount of $10 million as required under Canadian generally accepted accounting principles.

2. THAT the said John Woodcroft while employed as Executive Vice President Operations of Philip Services Corp. ("Philip") in or about the period January 1, 1997 through June 30, 1998, failed to 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, in that:

   (i) on or about August 19, 1997 he approved for payment an invoice from CCG Inc., knowing that this obligated Philip to repurchase inventory as part of a financing

arrangement, which resulted in an overstatement of revenue and an understatement of liabilities in the Philip financial statements for the year ended December 31, 1997 in the amount of approximately $25.225 million.

Proceedings on April 16, 2012

9. Mr. Farley opened the case for the PCC by filing a booklet setting out after four tabs, Exhibits 1 to 4 before the Discipline Committee on September 20, 2010. Exhibit 1 is an organizational chart of Philip; Exhibit 2 is the Agreed Statement of Facts of Mr. Hoey; Exhibit 3 is the Agreed Statement of Facts of Mr. Woodcroft; and Exhibit 4 is the Settlement Agreement between the members and the Ontario Securities Commission ("OSC") dated March 2006. The reasons for the decision and order of the Discipline Committee dated March 31, 2011, and the reasons for the decision and order of the Appeal Committee, dated December 19, 2011, were provided to the tribunal.

10. Mr. Farley gave an overview of the proceedings before the Discipline Committee on September 30, 2010. He set out the sanction proposed by the PCC and agreed to by Messrs. Hoey and Woodcroft, which were as follows:

(a) for Mr. Hoey:
  (i) that Mr. Hoey be reprimanded in writing by the chair of the hearing;
  (ii) that Mr. Hoey be fined the sum of $7,500; and
  (iii) that notice of this Decision and Order, disclosing Mr. Hoey's name be given for publication in *The Globe and Mail* and that all costs associated with the publication be borne by Mr. Hoey.

(b) for Mr. Woodcroft:
  (i) that Mr. Woodcroft be reprimanded in writing by the chair of the hearing;
  (ii) that Mr. Woodcroft be fined the sum of $5,000; and
  (iii) that notice of this Decision and Order, disclosing Mr. Woodcroft's name be given for publication in *The Globe and Mail* and that all costs associated with the publication be borne by Mr. Woodcroft.

11. Mr. Farley explained that at the original hearing the PCC did not seek costs because the courts had not then held, as they have since, that the Discipline Committee and Appeal Committee have the authority to order costs. Mr. Farley advised the tribunal that the PCC would not now resile from the agreement it had made in September 2010.

12. Mr. Farley said that the Discipline Committee, on September 30, 2010, had not accepted the jointly recommended sanction but had increased the amount of the fine and imposed a two year suspension on both members. Mr. Farley said the issue at this hearing was whether the

increased sanction, particularly the suspensions, were appropriate. He acknowledged that the Discipline Committee had the right to impose a different sanction than the one jointly recommended but that it had to do so in a reasoned way. The Appeal Committee was not satisfied that the Discipline Committee went far enough to highlight to the members that the sanction imposed could be more onerous than the jointly recommended sanction.

13. Mr. Farley reviewed the misconduct of Mr. Hoey and Mr. Woodcroft, making reference to the Agreed Statements of Facts (Exhibits 2 and 3) and the Settlement Agreement with the OSC (Exhibit 4). He pointed out that Mr. Hoey was guilty of both acquiescing in filing financial statements which did not contain full, true and plain disclosure (Charge 1) and of actually authorizing an improper journal entry of approximately $4.7 million and instructing staff to record an overstatement of gross profit in the amount of $3.2 million (Charge 2). Mr. Woodcroft was also guilty of acquiescing in filing financial statements which did not contain full, true and plain disclosure (Charge1) and of approving payment of an invoice knowing it was part of a financing arrangement which resulted in an overstatement of revenue and an understatement of liabilities in the amount of approximately $25.225 million.

14. Mr. Farley explained the rationale of the PCC for the sanction it sought by referring to the mitigating and aggravating factors of the members' misconduct.

15. The mitigating circumstances included the cooperation of the members, which made a difficult and expensive investigation unnecessary, and a plea of guilty which saved the Discipline Committee from a lengthy and difficult hearing. The cooperation of the members enabled the PCC to base its case on the facts set out in the two Agreed Statements of Facts and the Settlement Agreement with the OSC. The resulting savings in time and costs were significant.

16. The mitigating circumstances also included the facts that: the members had not received any personal gain other than their employment and the remuneration therefrom; both members had been sanctioned by the OSC, Mr. Woodcroft had been prohibited from becoming or acting as a director or officer of a reporting issuer for 10 years and Mr. Hoey for five years; and each paid the OSC costs in the amount of $100,000. Further mitigating factors included: the significant publicity with respect to the proceedings before the OSC and a resulting loss of reputation and loss of professional opportunities for both members; and that neither member had a record of misconduct either before or since the misconduct in this case, which took place 15 years ago.

17. With respect to aggravating circumstances, Mr. Farley pointed out that while neither member had the primary responsibility for filing the financial statements with the OSC, Phillip was a public company, there had been significant losses, they did acquiesce in the filing of the financial statements which did not contain full, true and plain disclosure and they were senior members of the executive group at Philip.

18. Mr. Farley submitted that the sanctions asked for by the PCC and agreed to by the members were appropriate and that the reprimands, fines and publicity would fulfill the relevant principles of sentencing – rehabilitation and general deterrence.

19. Mr. Farley distributed a Sanction Brief of Authorities containing the cases *Lee, Davies* and *Messina*, noting that there are no precedents that reflect the exact circumstances of this case. Mr. Farley submitted that in the three cases referred to the misconduct, which resulted in suspensions of three months to two years, was far more egregious than Mr. Hoey's or Mr. Woodcroft's misconduct.

20. Mr. Groia stated that the joint submission on sanction had been prepared following a rigorous process of questions posed by members of the PCC to Messrs. Hoey and Woodcroft. He submitted the joint recommendation as to sanction should be given great weight, particularly because it expressed the view of the PCC.

21. Mr. Groia submitted that the entire matter, which goes back a number of years, had a significant effect on Messrs. Hoey and Woodcroft and has resulted in personal and professional ruin. He said that the OSC settlement in 2006 and the proposed joint sanction was an example of cooperative regulation between the OSC and the ICAO and the members had already received a significant penalty

22. Mr. Groia submitted that both members had cooperated with the OSC and had assisted the new management of Philip in the restructuring of the company. He said their cooperation had assisted in the police investigation of the "Waxman fraud" and allowed the PCC to proceed without a long and expensive investigation, and further by agreeing to plead guilty and make a joint submission on sanction a long proceeding before the Discipline Committee had been avoided.

23. Mr. Groia submitted that the nature of the misconduct in this case, where the members had acquiesced in certain filings to the OSC, was different from other cases before the Discipline Committee where suspensions had been imposed for direct and deliberate misconduct. He said that given the nature of the misconduct in this case the sanctions contained in the joint submission were fair, reasonable and most appropriate.

24. After counsel had finished their submissions members of the tribunal, prior to an adjournment for lunch, indicated that they had some questions and were in particular interested to know if counsel could provide cases where the public had been misled and the member was not suspended or where the OSC imposed a penalty similar to the penalty in this case and there had been no suspension.

25. When the hearing resumed Mr. Farley provided copies of the decisions in *Norris, Gary* and *Sinclair*. Mr. Farley referred to the unique facts of the three cases and advised that in *Gary* the PCC had sought expulsion and the Discipline Committee had ordered suspension and

monitoring. Mr. Groia also made submissions with reference to these three cases. Members of the tribunal raised questions which counsel addressed. Mr. Groia asserted that an important and distinguishing feature of the misconduct in this case compared to many of the cases where a suspension had been imposed was that the members here had acted honestly and in good faith and had already paid a heavy price for mistakes made by others through no fault of their own.

26. After deliberating, the tribunal advised the parties that given the facts and circumstances of this case and the submissions heard it was not apparent to the tribunal that the proposed sanction, without a suspension, was appropriate. In light of the decision of the Appeal Committee the tribunal wanted to make it explicitly clear on the record that if the parties wished to make further submissions they should do so.

27. Mr. Groia stated that he had spoken to Messrs. Hoey and Woodcroft who now wished to attend and give evidence. He asked that the hearing be adjourned and reconvened at a later date.

28. Mr. Farley, on behalf of the PCC, objected to the members now giving evidence in this matter. He submitted that the Agreed Statement of Facts had been negotiated with the members' counsel and both parties were *ad idem*. He stated that the members' counsel should argue the matter rather than the members now giving evidence which would be subject to cross-examination and would enable to PCC to give evidence as well. Mr. Groia stated that Messrs. Hoey and Woodcroft could attend without giving evidence.

29. After deliberation, without ruling on whether evidence would be heard or not, the tribunal adjourned the hearing to a mutually convenient hearing date to be arranged.

Proceedings on September 21, 2012

30. On the resumption of the hearing on September 21, 2012, while neither Mr. Hoey nor Mr. Woodcroft were present, both counsel said they were ready to proceed. Mr. Farley summarized the long journey from the time of the members' misconduct which started in 1997 and the repercussions which followed including the OSC decision in 2006 and the discipline hearings. He noted that while the PCC maintained its position that the sanction proposed in the joint submission was appropriate, it was clear to him that the tribunal thought a suspension was required. Accordingly, the PCC would accept a three-month suspension.

31. Mr. Groia filed another Book of Authorities which included the cases*: Lee, Davies, Messina, Woodsford, Norris, Sinclair, Gary; Becker* and *Duffield*. He said in light of the fact that the tribunal was not satisfied that in the circumstances no suspension was appropriate, after consulting with his clients, he and Mr. Farley had gathered their thoughts and proposed that there be 90-day suspensions. He suggested that rather than both counsel making extensive

submissions, as a matter of efficiency the tribunal consider whether or not 90-day suspensions would satisfy its concerns.

32. The tribunal deliberated and advised the parties that it wished to hear submissions on all four elements of the now proposed sanction.

33. Mr. Farley referred to *Duffield* and Becker as precedents which supported the amended joint submission. He also provided a copy of and referred to the decision of the Saskatchewan Court of Appeal in *Rault v. Law Society (Saskatchewan)* 2009 CarswellSask 462 [2010] 1 W.W.R. 678. He drew the attention of the tribunal to paragraph 19 of the decision which spoke to the desirability of proceeding expeditiously, the advantages of cooperation and said that joint submissions should be considered in a principled way.

34. Both counsel referred to paragraph 28 of the *Rault* decision and the need to give good and cogent reasons if the joint submission was rejected. This paragraph reads:

> In summary, the Discipline Committee had a duty to consider the joint submission. The reasons for decision do not reflect that the Discipline Committee understood it was constrained to consider the joint submission, and give reasons as to why it was inappropriate; not within the range of sentences; unfit or unreasonable; and/or contrary to the public interest. If the Discipline Committee was of the view the joint submission penalty was not an appropriate disposition in the case before them, then it was required to give good or cogent reasons as to why it is inappropriate. Failure to do so leads to the inevitable conclusion that the decision of the Discipline Committee is unreasonable.

35. Mr. Groia made submissions to the effect that the proposed sanction including a suspension of three months is clearly within the range of sanction appropriate. He described in some detail the process followed in arriving at the joint recommendation as amended. He referred to the members' good conduct before and after the event at Philip, their cooperation while still at Philip and thereafter with the OSC and the PCC with the resulting savings in time and costs, the significant sanction imposed by the OSC and the impact all of this had on the members' professional and personal lives. He submitted that the OSC sanction, including costs, had addressed the principles of specific and general deterrence and pointed out the members had agreed to publicity.

36. Mr. Groia then reviewed the misconduct of the members in detail. He emphasized they were not responsible for and should not be penalized for the Waxman fraud. He submitted that the members were not guilty of and did not plead guilty to culpable misconduct. He submitted they failed to know what they should have known and therefore were guilty of professional misconduct. In his view one could acquiesce in the filing of financial statements which did not contain full, true and plain disclosure even if they did not know of the problems with the financial statements.

37. Mr. Groia concluded his submissions by reviewing *Lee, Davies, Messina, Woodsford, Norris* and *Sinclair*, and submitted that the sanction for similarly situated misconduct should be consistent and on a review of the cases, where the members knew fraud was involved, the joint submission in this case was near the harsh end of the appropriate range of sanction.

38. In reply Mr. Farley said that he and Mr. Groia were *ad idem* on the cases and the appropriateness of the joint submission, but he did not agree with the "blush" Mr. Groia put on the misconduct. He reviewed the misconduct making specific reference to the Charges, Agreed Statements of Facts and the Settlement Agreement of the members with the OSC. Mr. Farley characterized acquiescence as involving implied consent; he noted that the members were aware that the financial statements made no provision for a sizable restructuring charge and they had admitted acting contrary to the public interest. Mr Farley said the members had not participated in a fraud but that they were not wallflowers, but senior executives, CAs who understood accounting transactions and knew that some transactions were not recorded properly, and permitted, or in Mr. Hoey's case instructed entries to be made in Philip's books and records which were false and misleading.

ORDER

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

ORDER FOR DAVID GRAHAM HOEY

IT IS ORDERED in respect of the charges:

1. THAT Mr. Hoey be reprimanded in writing by the chair of the hearing.

2. THAT Mr. Hoey be and he is hereby fined the sum of $10,000 to be remitted to the Institute within six (6) months from the date this Order is made.

3. THAT Mr. Hoey be suspended from the rights and privileges of membership in the Institute for a period of six (6) months from the date this Order is made.

4. THAT Mr. Hoey surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Order is made, to be held during the period of suspension and thereafter returned to Mr. Hoey. In the event Mr. Hoey fails to surrender his certificate of membership within this ten day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificate remains undelivered to the secretary.

5. THAT notice of this Decision and Order, disclosing Mr. Hoey's name, be given after this Order is made, in the form and manner determined by the Discipline Committee:

   (a) to all members of the Institute;
   (b) to all provincial institutes/Ordre;
   and shall be made available to the public.

6. THAT notice of this Decision and Order, disclosing Mr. Hoey's name, be given by publication in *The Globe and Mail*. All costs associated with the publication shall be borne by Mr. Hoey.

7. THAT in the event Mr. Hoey fails to comply with any of the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three month period, his membership in the Institute will be revoked, and notice of the revocation, disclosing his name, shall be given in the manner specified above, and in *The Globe and Mail*. All costs associated with the publication shall be borne by Mr. Hoey.

ORDER FOR JOHN ALEXANDER WOODCROFT

IT IS ORDERED in respect of the charges:

1. THAT Mr. Woodcroft be reprimanded in writing by the chair of the hearing.

2. THAT Mr. Woodcroft be and he is hereby fined the sum of $10,000 to be remitted to the Institute within six (6) months from the date this Order is made.

3. THAT Mr. Woodcroft be suspended from the rights and privileges of membership in the Institute for a period of six (6) months from the date this Order is made.

4. THAT Mr. Woodcroft surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Order is made, to be held during the period of suspension and thereafter returned to Mr. Woodcroft. In the event Mr. Woodcroft fails to surrender his certificate of membership within this ten day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificate remains undelivered to the secretary.

5. THAT notice of this Decision and Order, disclosing Mr. Woodcroft's name, be given after this Order is made, in the form and manner determined by the

Discipline Committee:

(c) to all members of the Institute;
(d) to all provincial institutes/Ordre;
and shall be made available to the public.

6. THAT notice of this Decision and Order, disclosing Mr. Woodcroft's name, be given by publication in *The Globe and Mail*. All costs associated with the publication shall be borne by Mr. Woodcroft.

7. THAT in the event Mr. Woodcroft fails to comply with any of the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three month period, his membership in the Institute will be revoked, and notice of the revocation, disclosing his name, shall be given in the manner specified above, and in *The Globe and Mail*. All costs associated with the publication shall be borne by Mr. Woodcroft.

REASONS FOR SANCTION

40. The order includes a reprimand and provisions for notice of the decision and order to be given to all members of the Institute, all provincial Institutes and to be published in *The Globe and Mail*. Neither counsel took issue with these provisions in the original order. Both terms were included in the joint submission on sanction.

41. A reprimand is usually ordered to stress to the member that his or her conduct is unacceptable. Each of the member's conduct in this case was unacceptable. A reprimand is particularly appropriate in this case as it was not readily apparent from the submissions of the members' counsel that they appreciated the nature and extent of their misconduct.

42. Discipline and Appeal Committees have often referred to publication of the notice of the decision and order as an effective specific and general deterrent. The publication of notice also demonstrates to the public at large that the Institute takes its obligation to regulate its members seriously and that professional misconduct is sanctioned not ignored. As there was considerable publicity with respect to the losses at Philip, notice of the decision and order should be published in a newspaper of general circulation.

43. The issue for the tribunal was whether the jointly proposed sanction was appropriate for the members' misconduct. The tribunal made their concerns about the inadequacy of the proposed sanction known to the parties on April 16, 2012 and as a result the hearing was adjourned to September 21, 2012. The adjournment was granted so that that the members could attend the hearing. In fact, the members did not attend the September 21, 2012 and no new evidence was presented in support of the adequacy of the proposed sanction.

44. Counsel did file another authorities brief and made detailed submissions, repeating and expanding on the submissions made on April 16, 2012. Counsel reviewed the cases in the second authorities brief and made reference to the *Rault* case.

45. The tribunal accepts the law is as set out in *Rault* above. The tribunal does not think that the sanction as jointly submitted is within the appropriate range for the misconduct in this case. The tribunal concluded that without a more substantial fine and a six month suspension, the proposed sanction, even as amended on the second day of the hearing, was contrary to the public interest and would not serve as an effective general deterrent.

46. The tribunal's decision on sanction only varied the length of suspension and amount of the fine. All members of the profession have a duty to maintain the good reputation of the profession and its ability to serve the public interest. As senior officers and directors of a publicly listed company this onus on the members was elevated. Their failure to adhere to the applicable requirements and standards failed to protect the public. The sanction must be commensurate with the misconduct and the foreseeable resulting consequences. Given the magnitude of the dollars involved and the nature of the misconduct, the public interest and the principle of general deterrence required the sanction imposed, not the sanction recommended.

47. Our decision was not reached lightly. The mitigating factors were considered. The members have paid a steep price for their failures at Philip. They have been penalized by the OSC. Their personal lives and professional lives have suffered as a result as would the personal and professional lives of any member in similar circumstances. However, the predictable consequence of the misconduct and the penalty imposed by the OSC does not excuse the Discipline Committee from imposing the appropriate sanction on the members. Nor does the fact that the misconduct took place years ago change the duty to impose a sanction commensurate with the misconduct.

48. It was common ground that there had been a significant fraud at Philip. Mr. Groia referred to it as the Waxman fraud and said the members should not be punished for it. If the members had themselves been the fraudsters the appropriate sanction would have included revocation of membership. The sanction imposed is for the members' misconduct. They knew what they were doing and that it was wrong. They knew why the prospectus was filed. Such conduct not only warrants censure but requires it.

49. Philip raised $364 million from the public offering of common shares after the prospectus with the financial statements which did not contain full, true and plain disclosure as set out in the charges. Who lost what and who is responsible for it, or who, if anyone, bears criminal responsibility is determined by the courts. What is relevant for the purposes of sanction here is the members knew the financial statements, a necessary part of the prospectus, should not have been filed. Their misconduct helped to enable the fraud.

50. While it is true that the members were responsible for the effective operating of internal controls and the ineffective internal controls enabled a fraud, this is not a just a case where the

member should have known about problems but did not know. This is a case where the members knew and played an active role in material transactions which were misrepresented and knew a restructuring charge was not disclosed as it should have been.

51. Mr. Hoey knew that there would be a substantial and significant restructuring charge, ultimately determined to be $155.7 million. He knew that the Bank Agreement with CIBC and a financing agreement with Commodity Capital Group (CCG) were not properly reflected in the financial statements. He authorized an improper entry of $4.7 million and instructed staff to record as a sale a complex financing arrangement which resulted in a $3.2 million overstatement of profit in a particular quarter.

52. Although Mr. Woodcroft's role was in operations, not accounting, he was a chartered accountant who knew a significant restructuring charge was not disclosed (Charge 1, particular (i)) and that the agreement with CCG resulted in an overstatement of revenue and an understatement of liabilities of approximately $25.225 million (Charge2). While he may not have had as active a role with the other particulars of the failure to disclose (particulars (ii) to (vi) of Charge 1) it is not credible that he did not understand the nature of the transactions.

DATED AT THIS 31ST DAY OF JANUARY, 2013
BY ORDER OF THE DISCIPLINE COMMITTEE

Jan Cullemore

J.A. CULLEMORE, FCPA, FCA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:
C. DANCHUK, CPA, CA
A.R. DAVIDSON, CPA, CA
S. WALKER (PUBLIC REPRESENTATIVE)

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

APPEAL COMMITTEE

IN THE MATTER OF: An appeal by **DAVID GRAHAM HOEY, CA** and **JOHN ALEXANDER WOODCROFT, CA**, members of the Institute, of the Order of the Discipline Committee made on September 30, 2010, pursuant to the Rules of Practice and Procedure of the Institute.

TO: Mr. David Graham Hoey, CA
Mr. John Alexander Woodcroft, CA

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Order made October 27, 2011)

1. This appeal was heard by a panel of the Appeal Committee of the Institute of Chartered Accountants of Ontario on October 27, 2011. Paul Farley appeared on behalf of the Professional Conduct Committee, accompanied by James King, the investigator. Messrs. Hoey and Woodcroft were not present but were represented by their legal counsel, Mr. Joseph Groia and Ms. Kelly Seaman. Peter Carey attended the hearing as counsel to the Appeal Committee.

2. The following charges were laid against Mr. Hoey by the Professional Conduct Committee on July 16, 2010:

1. THAT the said Graham Hoey, while employed as Senior Vice-President Finance of Philip Services Corp. ("Philip") in or about the period January 1, 1997 through June 30, 1998, failed to 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, in that he acquiesced in filing with the Ontario Securities Commission financial statements of Philip in a final Prospectus which did not contain full, true and plain disclosure of:

   (i) restructuring charges in the amount of $155.72 million as required under Canadian generally accepted accounting principles; and

   (ii) a financing arrangement between Philip and CIBC in the amount of $10 million as required under Canadian generally accepted accounting principles.

2. THAT the said Graham Hoey, while employed as Senior Vice-President Finance of Philip Services Corp. ("Philip") in or about the period January 1, 1997 through June 30, 1998, failed to 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 , in that:

   (i) he authorized a journal entry in the books and records of Philip to record a payment of approximately $4.7 million made on or about December 17, 1997,

pursuant to a financing agreement with CCG Inc., as part of capitalized acquisition costs when the underlying liability had not been recorded; and

(ii) he instructed Philip staff to record in the books and records of Philip a complex financing arrangement with CIBC as a sale of inventory, resulting in an overstatement of gross profit in the second quarter of 1997 of $3.2 million.

3. The following charges were laid against Mr. Woodcroft by the Professional Conduct Committee on July 16, 2010:

1. THAT the said John Woodcroft while employed as Executive Vice President Operations of Philip Services Corp. ("Philip") on or about November 6, 1997, failed to 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, in that he acquiesced in filing with the Ontario Securities Commission financial statements of Philip in a final Prospectus which did not contain full, true and plain disclosure of:

   (i) restructuring charges in the amount of $155.72 million as required under Canadian generally accepted accounting principles;

   (ii) holding certificates between Philip and certain of its customers in the amount of $31 million as required under Canadian generally accepted accounting principles;

   (iii) approximately $29 million of unrecorded liabilities for invoices issued by a supplier in 1996 as required under Canadian generally accepted accounting principles;

   (iv) a financing arrangement between Philip and Commodity Capital Group Metals Inc. in the amount of $30.222 million as required under Canadian generally accepted accounting principles;

   (v) a financing arrangement between Philip and CIBC in the amount of $10 million as required under Canadian generally accepted accounting principles; and

   (vi) a promissory note due from Robert Waxman in the amount of $10 million as required under Canadian generally accepted accounting principles.

2. THAT the said John Woodcroft while employed as Executive Vice President Operations of Philip Services Corp. ("Philip") in or about the period January 1, 1997 through June 30, 1998, failed to 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, in that:

   (i) on or about August 19, 1997 he approved for payment an invoice from CCG Inc., knowing that this obligated Philip to repurchase inventory as part of a financing arrangement, which resulted in an overstatement of revenue and an understatement of liabilities in the Philip financial statements for the year ended December 31, 1997 in the amount of approximately $25.225 million.

4. Messrs. Hoey and Woodcroft had pleaded guilty to the charges and the decisions of the Discipline Committee read as follows:

> THAT, having heard the plea of guilty to the charges, and having seen and considered the evidence, including the agreed statement of facts, filed, the Discipline Committee finds Mr. David Graham Hoey guilty of the charges.
>
> THAT, having heard the plea of guilty to the charges, and having seen and considered the evidence, including the agreed statement of facts, filed, the Discipline Committee finds Mr. John Alexander Woodcroft guilty of the charges.

5. The Order appealed from, dated October 18, 2010, reads as follows:

> ORDER FOR DAVID GRAHAM HOEY
>
> IT IS ORDERED in respect of the charges:
>
> 1. THAT Mr. Hoey be reprimanded in writing by the chair of the hearing.
>
> 2. THAT Mr. Hoey be and he is hereby fined the sum of $10,000 to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
>
> 3. THAT Mr. Hoey be suspended from the rights and privileges of membership in the Institute for a period of two (2) years from the date this Decision and Order becomes final under the bylaws.
>
> 4. THAT Mr. Hoey surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held during the period of suspension and thereafter returned to Mr. Hoey. In the event Mr. Hoey fails to surrender his certificate of membership within this ten day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificate remains undelivered to the secretary.
>
> 5. THAT notice of this Decision and Order, disclosing Mr. Hoey's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
> (a) to all members of the Institute;
> (b) to all provincial institutes/Order;
> and shall be made available to the public.
>
> 6. THAT notice of this Decision and Order, disclosing Mr. Hoey's name, be given by publication in *The Globe and Mail.* All costs associated with the publication shall be borne by Mr. Hoey.
>
> 7. THAT in the event Mr. Hoey fails to comply with any of the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three month period, he shall thereupon be

expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in *The Globe and Mail*. All costs associated with the publication shall be borne by Mr. Hoey.

ORDER FOR JOHN ALEXANDER WOODCROFT

IT IS ORDERED in respect of the charges:

1. THAT Mr. Woodcroft be reprimanded in writing by the chair of the hearing.

2. THAT Mr. Woodcroft be and he is hereby fined the sum of $10,000 to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.

3. THAT Mr. Woodcroft be suspended from the rights and privileges of membership in the Institute for a period of two (2) years from the date this Decision and Order becomes final under the bylaws.

4. THAT Mr. Woodcroft surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held during the period of suspension and thereafter returned to Mr. Woodcroft. In the event Mr. Woodcroft fails to surrender his certificate of membership within this ten day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificate remains undelivered to the secretary.

5. THAT notice of this Decision and Order, disclosing Mr. Woodcroft's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
   (c) to all members of the Institute;
   (d) to all provincial institutes/Order;
   and shall be made available to the public.

6. THAT notice of this Decision and Order, disclosing Mr. Woodcroft's name, be given by publication in *The Globe and Mail*. All costs associated with the publication shall be borne by Mr. Woodcroft.

7. THAT in the event Mr. Woodcroft fails to comply with any of the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three month period, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in *The Globe and Mail*. All costs associated with the publication shall be borne by Mr. Woodcroft.

6. On this appeal, Messrs. Hoey and Woodcroft seek an order for a new hearing before a differently constituted panel of the Discipline Committee. Should the Appeal Committee determine that the matter should not proceed as a new hearing, the appellants ask that the Order be set aside and that an Order be made consistent with the joint submission on sanction

agreed to by the appellants and the Professional Conduct Committee. Alternately, the appellants ask that the Order be varied to be consistent with those joint submissions.

7. There were no preliminary matters and the Index to the Appeal Book was filed as Exhibit 1.

Submissions

8. Mr. Groia submitted that the circumstances of this appeal are virtually unprecedented where the Order of the Discipline Committee deviated so far from the sanctions recommended jointly by the parties. He stated that normally the sanctions put forward are accepted by the Discipline Committee panel. The joint submission on sanction had recommended: a reprimand, a fine in the amount of $7,500 for Mr. Hoey and $5,000 for Mr. Woodcroft, full publicity including publication in the *Globe and Mail* with all costs to be borne by Messrs. Hoey and Woodcroft.

9. Messrs. Hoey and Woodcroft had fully cooperated with the Professional Conduct Committee, giving full and candid answers at a meeting, obviating the need for a lengthy investigation. The members agreed to incorporate the Ontario Securities Commission (OSC) Settlement Agreement into an Agreed Statement of Facts, in an effort to expedite the process.

10. At the hearing before the Discipline Committee, no evidence was called by the parties and no written submissions were made. The hearing proceeded solely on the basis of the Agreed Statement of Facts. Mr. Groia submitted that the Discipline Committee concluded the joint submission was outside the range of sanction which was appropriate and ordered that the members be suspended for a period of two years. He stated that the Discipline Committee had erred in making certain findings of fact that were not supported by evidence.

11. The reasons of the committee indicated that the conduct of the appellants facilitated a fraud. There was no evidence to support such finding and the appellants never knew of or facilitated a fraud. Mr. Groia submitted that the Discipline Committee, not having had the opportunity to hear any evidence, could not have been in a position to assess credibility or make findings of fact. The record before the Discipline Committee consisted solely of the Agreed Statement of Facts and the Settlement Agreement of the OSC.

12. Mr. Groia stated that the Discipline Committee hearing had proceeded on the basis of the Agreed Statement of Facts and, in the absence of an opportunity to hear evidence that was before the Professional Conduct Committee, had drawn inferences and purported facts not in evidence.

13. Mr. Groia submitted that there had been a denial of natural justice as the appellants were not given an opportunity to present evidence that had been before the Professional Conduct Committee or to otherwise present evidence, and the Discipline Committee's sanctions were made without the benefit of such evidence. Mr. Groia stated that counsel for the members had not been given an opportunity to make submissions on a change to the agreed upon sanctions.

14. Messrs. Hoey and Woodcroft would have asked to testify on allegations of fraud, which they never admitted to. The members had not been aware of a fraud but had agreed that they should have known.

15. Mr. Farley, on behalf of the Professional Conduct Committee, submitted that the Discipline Committee has the power, under the *Chartered Accountants Act 2010*, to ultimately decide on an appropriate penalty, regardless of sanctions agreed to by the parties. The members had pleaded guilty to the charges. The Discipline Committee had evidence set out in the Agreed Statement of Facts and the OSC Settlement Agreement that Messrs. Hoey and Woodcroft, both senior people with significant positions, had acted contrary to the public interest.

16. In response to the allegation that the members were treated unfairly by the Discipline Committee and not given an opportunity to be heard, Mr. Farley stated that the members were represented by competent legal counsel who knew the facts. Although an agreement had been presented to the Discipline Committee, an opportunity was given to present the case.

17. In response to the issue raised about findings without evidence, Mr. Farley submitted that the appellants had agreed to the facts to support their guilty plea and elected to call no evidence on the issue of guilt or sanction. The Discipline Committee specifically asked the parties if they wished to call evidence on sanction and both counsel stated they had no evidence. Mr. Farley stated that it cannot now be asserted that the members were disadvantaged.

18. Mr. Farley submitted that any evidence that was presented to the Professional Conduct Committee and was not included in the Agreed Statement of Facts, and therefore not presented to the Discipline Committee, cannot now be presented as fresh evidence before this tribunal.

19. Mr. Farley stated that the application for a hearing *de novo* must fail as it does not meet the criteria. The allegation of unfairness to the members is not supported by the facts and the onus is on the appellants to prove any allegation of bias.

20. With respect to the issue of whether the Discipline Committee is bound to accept a joint submission on sanction, Mr. Farley stated that discretion on sentencing remains with the tribunal hearing the matter. The Discipline Committee did follow a fair process and provided the parties with an opportunity to be heard. The parties were alerted that the tribunal was considering a period of suspension as one of its sanctions and invited further argument. There is no error in the Discipline Committee refusing to adopt a joint recommendation on penalty.

21. Mr. Farley submitted that the facts demonstrate there was no denial of natural justice, no unfairness in the tribunal's treatment of the members and no basis for a new hearing.

22. Mr. Groia responded that the Discipline Committee had changed the nature of the proceeding by finding that the members had committed fraud without evidence or testimony of Messrs. Hoey and Woodcroft. Mr. Groia stated that the Discipline Committee had ignored the joint submission and substituted a harsh penalty when there was no evidence of fraud by the members. During the Discipline Committee hearing, Messrs. Hoey and Woodcroft had responded to questions raised by the Discipline panel but not in the form of testimony.

23. Mr. Groia submitted that the Discipline Committee did not clearly indicate that they were proposing to reject the joint submission on sanction.

24. Ms. Seaman, who had acted as counsel for the members before the Discipline Committee, responded to questions raised by the panel. Ms. Seaman stated that when the Discipline Committee raised the sanction issue, it was not clear that the parties were being

asked to make further submissions and she was concerned to raise issues that were outside the Agreed Statement of Facts.

Order

25. This panel of the Appeal Committee considered all the submissions, as well as the material filed in this matter and, after deliberations, ordered as follows in the matter of the application for a new hearing before the Discipline Committee. The parties were informed of the decision at the conclusion of the appeal, and were provided with a written Order dated November 1, 2011, as follows:

> HAVING seen, heard and considered the submissions made on behalf of Messrs. Hoey and Woodcroft for a new hearing before the Discipline Committee, and the response of the Professional Conduct Committee to that application, IT IS ORDERED:
>
> > THAT the Order of the Discipline Committee made on September 30, 2010 be set aside and the matter of sanction be brought before a differently constituted tribunal of the Discipline Committee.

Reasons

26. Mr. Farley, on behalf of the Professional Conduct Committee, and Ms. Seaman, on behalf of the appellants, had made a joint submission to the Discipline Committee as to sanction. It is acknowledged that in the case of a joint submission, the Discipline Committee is not bound by any proposal on sanction put forward by the counsel for the Professional Conduct Committee and the appellants. Rather, it is the responsibility of the Discipline Committee to review the sanction proposed and determine if it is reasonable taking into consideration the facts of the hearing and sanctions that have been levied in similar circumstances in the past. It is anticipated that if the joint submission put forward to the Discipline Committee is within a range that may be considered reasonable based on the facts of the case and sanctions ordered in similar circumstances that the joint submission will be accepted. A failure of the Discipline Committee to accept a joint proposal on sanction when it is within a reasonable range for the transgressions being reviewed would limit the opportunity to develop the degree of cooperation that is needed to conduct a meaningful and efficient investigation of matters that come before them. The Appeal Committee did not consider the reasonableness of the sanction proposed in the joint submission of the parties to the Discipline Committee and does not express any opinion thereon.

27. In any situation where the Discipline Committee is planning to increase the sanction above and beyond that which is proposed in a joint submission, the Discipline Committee should make it abundantly clear that it is planning to reject the joint submission and intends to impose a more severe sanction on the members. Further, it is the Appeal Committee's opinion that the Discipline Committee should then provide an opportunity for counsel for the members and/or the members to make representations on the matter of the more severe sanction being considered. This principle is set out in *College of Physicians and Surgeons of Ontario v. Petrie*, (1989), 68 O.R. (2d) 100, 101 (Div. Ct.), as referred to in the case of *Schlater v. Ontario College of Teachers*, [2000] O.J. No. 1428 (Div. Ct.), which was provided to the panel in the Respondent's Authorities Brief. While, in the present case, it is acknowledged that the members were asked if they had any further representations to make, it is the opinion of the committee that the Discipline Committee did not go far enough in highlighting the fact that a

more severe sanction was being proposed than that contained in the joint submission and in extending an invitation to the members to make representations on the increased sanction.

28. It is the decision of the Appeal Committee that the matter of sanction be referred back to a differently constituted panel of the Discipline Committee to provide an opportunity for any of the parties to make additional representations and for the Discipline Committee to consider the reasonableness of the sanction.

DATED AT TORONTO THIS 19TH DAY OF DECEMBER, 2011.
BY ORDER OF THE APPEAL COMMITTEE

S.R. MEEK, FCA – DEPUTY CHAIR
APPEAL COMMITTEE

MEMBERS OF THE PANEL:

D.W. DAFOE, FCA
J.F. OLAFSON, CA
B. RAMSAY (PUBLIC REPRESENTATIVE)
W.R. SCHMIDT, CA

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **DAVID GRAHAM HOEY, CA** and **JOHN ALEXANDER WOODCROFT, CA**, members of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

TO: Mr. D. Graham Hoey, CA
Mr. John A. Woodcroft, CA

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order made September 30, 2010)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on September 30, 2010, to hear charges of professional misconduct brought by the Professional Conduct Committee against David Graham Hoey, CA and John Alexander Woodcroft, CA, members of the Institute.

2. Paul Farley appeared on behalf of the Professional Conduct Committee, accompanied by Mr. Jim King, CA, the investigator for the Professional Conduct Committee who was present throughout the hearing. Messrs. Hoey and Woodcroft attended, and were represented by counsel, Kellie Seaman. Robert Peck attended the hearing as counsel to the Discipline Committee.

3. The decision of the panel was made known at the conclusion of the hearing on September 30, 2010, and the written Decision and Order sent to the parties on October 18, 2010. These reasons, given pursuant to Bylaw 574, contain the charges, the decisions, the orders, and the reasons of the panel for its decisions and orders.

PRELIMINARY MATTERS

4. Although the charges against Mr. Hoey and Mr. Woodcroft are not identical, both members were employed by Philip Services Corp. ("Philip"), Mr. Hoey as Senior Vice-President, Finance and Mr. Woodcroft as Executive Vice-President, Operations. The charges relate to their actions which impacted the financial reporting of Philip.

5. Messrs. Hoey and Woodcroft and the Professional Conduct Committee proposed to proceed by way of a joint hearing and submitted an Agreed Statement of Facts for Mr. Hoey (Exhibit #2) and Mr. Woodcroft (Exhibit #3). Paragraph 35(5) of the *Chartered Accountants Act, 2010* provides that "If two or more proceedings before the Discipline Committee involve the same member or firm or the same or similar questions of fact, law or policy, the Committee may, without the consent of the parties, combine the proceedings or any part of them or hear the proceedings at the same time." Accordingly, the matters were heard together and these Reasons are for both matters.

CHARGES

6. The following charges were laid against Mr. Hoey by the Professional Conduct Committee on July 16, 2010:

1. THAT the said Graham Hoey, while employed as Senior Vice-President Finance of Philip Services Corp. ("Philip") in or about the period January 1, 1997 through June 30, 1998, failed to 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, in that he acquiesced in filing with the Ontario Securities Commission financial statements of Philip in a final Prospectus which did not contain full, true and plain disclosure of:

    (i) restructuring charges in the amount of $155.72 million as required under Canadian generally accepted accounting principles; and

    (ii) a financing arrangement between Philip and CIBC in the amount of $10 million as required under Canadian generally accepted accounting principles.

2. THAT the said Graham Hoey, while employed as Senior Vice-President Finance of Philip Services Corp. ("Philip") in or about the period January 1, 1997 through June 30, 1998, failed to 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 , in that:

    (i) he authorized a journal entry in the books and records of Philip to record a payment of approximately $4.7 million made on or about December 17, 1997, pursuant to a financing agreement with CCG Inc., as part of capitalized acquisition costs when the underlying liability had not been recorded; and

    (ii) he instructed Philip staff to record in the books and records of Philip a complex financing arrangement with CIBC as a sale of inventory, resulting in an overstatement of gross profit in the second quarter of 1997 of $3.2 million.

7. The following charges were laid against Mr. Woodcroft by the Professional Conduct Committee on July 16, 2010:

1. THAT the said John Woodcroft while employed as Executive Vice President Operations of Philip Services Corp. ("Philip") on or about November 6, 1997, failed to 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, in that he acquiesced in filing with the Ontario Securities Commission financial statements of Philip in a final Prospectus which did not contain full, true and plain disclosure of:

    (i) restructuring charges in the amount of $155.72 million as required under Canadian generally accepted accounting principles;

    (ii) holding certificates between Philip and certain of its customers in the amount of $31 million as required under Canadian generally accepted accounting principles;

    (iii) approximately $29 million of unrecorded liabilities for invoices issued by a supplier in

1996 as required under Canadian generally accepted accounting principles;

(iv) a financing arrangement between Philip and Commodity Capital Group Metals Inc. in the amount of $30.222 million as required under Canadian generally accepted accounting principles;

(v) a financing arrangement between Philip and CIBC in the amount of $10 million as required under Canadian generally accepted accounting principles; and

(vi) a promissory note due from Robert Waxman in the amount of $10 million as required under Canadian generally accepted accounting principles.

2. THAT the said John Woodcroft while employed as Executive Vice President Operations of Philip Services Corp. ("Philip") in or about the period January 1, 1997 through June 30, 1998, failed to 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, in that:

(i) on or about August 19, 1997 he approved for payment an invoice from CCG Inc., knowing that this obligated Philip to repurchase inventory as part of a financing arrangement, which resulted in an overstatement of revenue and an understatement of liabilities in the Philip financial statements for the year ended December 31, 1997 in the amount of approximately $25.225 million.

PLEA

8. Mr. Hoey entered a plea of guilty to the charges. Mr. Woodcroft entered a plea of guilty to the charges.

EVIDENCE

9. An Agreed Statement of Facts was filed with respect to Mr. Hoey (Exhibit 2) and to Mr. Woodcroft (Exhibit 3). Both Agreed Statements of Facts (Agreed Statements) referred to a Settlement Agreement between the members and the Ontario Securities Commission dated February 28, 2006, which was included in a Document Brief (Exhibit 4). The Agreed Statements both say: "It is agreed that the Settlement Agreement in the Document Brief contains an accurate recital of the facts stated therein". None of the parties called or filed any other evidence.

10. Mr. Farley reviewed the Agreed Statements and the Settlement Agreement, using the latter as a "road map". The parties then withdrew and the panel reviewed the evidence. When the hearing resumed, Ms. Seaman said she would not call evidence. Thereafter, Mr. Farley made submissions and the panel deliberated.

THE RELEVANT FACTS

11. The Agreed Statements and Settlement Agreement set out the facts in full. The panel summarizes the most pertinent facts, as it finds them to be, in paragraphs 12 to 57 below.

12. Philip Services Corp. ("Philip") was a reporting issuer in Ontario, British Colombia, Quebec, Saskatchewan, Nova Scotia and Newfoundland. Its shares were listed for trading on the Toronto

Stock Exchange, the Montreal Stock Exchange and the New York Stock Exchange. Mr. Hoey was the Senior Vice-President, Finance of Philip in the period January 1997 through June 1998. Mr. Woodcroft was the Executive Vice-President, Operations of Philip, during the period January 1997 through February 1998.

13. On November 6, 1997 Philip made a public offering of 20 million common shares and raised $364 million. In connection with this offering Philip filed a prospectus which included audited financial statements for the company for the years December 31, 1996 and December 31, 1995, and unaudited statements for the periods ended June 30, 1997 and June 30, 1996.

Charge 1

14. On or about November, 1997, Messrs. Hoey and Woodcroft acquiesced in filing with the Ontario Securities Commission (OSC) financial statements of Philip in a final prospectus which did not contain full disclosure of restructuring charges identified by Philip as early as September 1997 in the amount of $155.72 million.

15. On September 26, 1997 Philip filed the preliminary prospectus with the OSC which did not include the restructuring charge.

16. The final restructuring charge taken by two operating divisions of Philip, ISG and the Metals Group, amounted to $155.72 million.

Charge 1(i) - Hoey

17. Prior to filing the prospectus on November 6, 1997, Mr. Hoey and others participated in the Q2 review of Philip's financial results which, amongst other things, considered the quantum of restructuring charge that would be appropriate. By September 9, 1997 Mr. Hoey was made aware of an estimated restructuring charge of $194 million.

18. While Mr. Hoey and others had discussions with the auditor ("Deloitte") about the restructuring charge, Deloitte was not provided with schedules prepared by Philip management indicating a potential charge of $194 million. Deloitte was told no decision had been made as to whether to take a charge.

19. A spreadsheet dated November 28, 1997, was given to Mr. Hoey after the final prospectus was filed on November 6, 1997, which calculated the restructuring charge for the Metals Group in the amount of $201.599 million.

20. On December 2, 1997 Mr. Hoey met with others to discuss a list of charges totaling $267 million. On December 22, 1997 Mr. Hoey and others attended a meeting with Deloitte to discuss the restructuring charge in general terms but did not provide supporting detail.

Charge 1(i) - Woodcroft

21. On November 6, 1997, Mr. Woodcroft acquiesced in filing with the OSC financial statements of Philip in a final prospectus which did not contain full disclosure of the required restructuring charges.

22. By December 23, 1997 Mr. Woodcroft was aware that the Metals Group required a restructuring charge of at least $150 million.

Charge 1(ii) – Hoey

23. On or about November 6, 1997, Mr. Hoey acquiesced in filing with the OSC financial statements of Philip in a final prospectus which did not contain full disclosure of a financing arrangement between Philip and CIBC in the amount of $10 million ("the Bank Agreements") This arrangement is made up of the purchase, sales agency and processing agreements and the swap agreement, all finalized on June 27, 1997.

24. The Bank Agreements were finalized on June 27, 1997 and signed by Mr. Hoey and others on behalf of Philip. While the Bank Agreement purported to describe the purchase (by a special purpose trust vehicle of the CIBC) and sale by Philip of copper inventory, Philip retained possession of the copper and all risks of ownership remained with Philip.

25. The CIBC, on October 21, 1997, alerted Philip to the possibility that the auditors may view the transactions as a "…pure financing transaction which could violate its off balance sheet treatment…"

26. Mr. Hoey gave instructions to record the transaction as a sale and not a financing arrangement thereby overstating gross profit in Q2 of 1997 in the amount of $3.2 million.

27. The transaction should have been recorded as a financing transaction and that the inappropriate accounting treatment resulted in misleading financial statements contained in the final prospectus filed November 6, 1997.

Charge 1(ii) - Woodcroft

28. On or about November 6, 1997 Mr. Woodcroft failed to ensure disclosure in the financial statements of Philip, filed with the final prospectus, holding certificates between Philip and customers in the amount of $31 million.

29. At various times Philip financed operations through holding certificates which signified that inventory was being held by Philip but was the property of the customer. This inventory would be sold and repurchased but would never move. Philip was liable to repurchase the inventory.

30. The liability of Philip to repurchase this inventory was not recorded.

31. These transactions involving holding certificates should have been recorded as financing arrangements and not sales of inventory.

32. Mr. Woodcroft failed to ensure that Philip filed financial statements in the prospectus that contained full, true and plain disclosure of holding certificates in the amount of approximately $31 million.

Charge 1(iii) - Woodcroft

33. On or about November 6, 1997 Mr. Woodcroft failed to ensure disclosure in the financial

statements of Philip filed with the final prospectus, $29 million of unrecorded liabilities for invoices issued by a supplier, Pechiney.

34. In summary, Philip accounting staff reversed a number of invoices for the purchase of copper inventory from a supplier thereby understating the cost of sales and liabilities for 1996. In 1997 they reversed the 1996 reversal and paid the $29 million due. This resulted in the understatement of cost of sales and liabilities for 1996 and an overstatement of cost of sales for 1997.

35. Because the purchases and repayments involving this supplier were not properly recorded in the financial statements for the year ended December 1996 and for the quarters ended March and June, 1997, these financial statements were misleading and inaccurate.

Charge 1(iv) - Woodcroft

36. Commodity Capital Group Metals Inc. ("CCG") in 1997 had entered into a financing transaction with Philip and had provided $31 million in two transactions.

37. In the first transaction on August 19, 1997 Philip purported to sell inventory to CCG for $26.55 million. On August 19, 1997 CCG invoiced Philip for the same quantity of inventory at the same price obligating Philip to repurchase the inventory on November 19, 1997.

38. In the second transaction on September 16, 1997 Philip purported to sell inventory to CCG for $4.752 million. On the same day CCG invoiced Philip for the sale to Philip of the same quantity of inventory at the same price due December 17, 1997.

39. On December 17, 1997 Philip repurchased the inventory from CCG for $4.7 million. The payment was inappropriately capitalized by charging it to acquisition costs because the underlying liability had not been recorded.

40. Mr. Woodcroft was aware of these two transactions which amounted to financing arrangements between Philip and CCG Inc. in the amount of approximately $30 million.

41. On November 6, 1997 Mr. Woodcroft failed to ensure disclosure in the financial statements of Philip filed with the final prospectus, of this financing arrangement between Philip and CCG Inc. in the amount of approximately $31 million.

Charge 1(v) – Woodcroft

42. On or about November 6, 1997, Mr. Woodcroft acquiesced in filing with the OSC financial statements of Philip in a final prospectus which did not contain full disclosure of a financing arrangement between Philip and CIBC in the amount of $10 million ("the Bank Agreements"). This arrangement is made up of the purchase, sales agency and processing agreements and the swap agreement, all finalized on June 27, 1997.

43. The Bank Agreements were finalized on June 27, 1997. While the Bank Agreement purported to describe the purchase (by a special purpose trust vehicle of the CIBC) and sale by Philip of copper inventory, Philip retained possession of the copper and all risks of ownership

remained with Philip.

44. The CIBC, on October 21, 1997, alerted Philip to the possibility that the auditors may view the transactions as a "…pure financing transaction which could violate its off balance sheet treatment…".

45. The transaction should have been recorded as a financing transaction and that the inappropriate accounting treatment resulted in misleading financial statements contained in the final prospectus filed November 6, 1997.

Charge 1(vi) - Woodcroft

46. On October 28, 1997 Waxman executed a $10 million promissory note ("note") in favour of indebtedness to Philip. This was improperly recorded in the 1997 Q3 financial statements as inventory in the amount of $10 million.

47. Mr. Woodcroft failed to insure that Philip filed financial statements in the prospectus that contained full, true and plain disclosure of the $10 million Waxman promissory note.

Charge 2(i) - Hoey

48. Commodity Capital Group Metals Inc. ("CCG") in 1997 had entered into a financing transaction with Philip and had provided $31 million in two transactions.

49. In the first transaction on August 19, 1997 Philip purported to sell inventory to CCG for $26.55 million. On August 19, 1997 CCG invoiced Philip for the same quantity of inventory at the same price obligating Philip to repurchase the inventory on November 19, 1997.

50. In the second transaction, on September 16, 1997, Philip purported to sell inventory to CCG for $4.752 million. On the same day CCG invoiced Philip for the sale to Philip of the same quantity of inventory at the same price due December 17, 1997. On December 17, 1997, Philip repurchased the inventory from CCG for $4.7 million.

51. With respect to the second transaction, Mr. Hoey authorized a journal entry in the books and records of Philip to record the payment of $4.7 million.

52. The payment was inappropriately capitalized by charging it to acquisition costs because the underlying liability had not been recorded.

Charge 2(ii) - Hoey

53. With respect to the Bank Agreements with CIBC, Mr. Hoey instructed Philip employees to record in the books and records of Philip this financing arrangement with CIBC as a sale of inventory.

54. This resulted in an overstatement of gross profit in the second quarter of 1997 of $3.2 million.

Charge 2(i) - Woodcroft

55. As indicated above CCG in 1997 entered into a financing transaction with Philip and had provided $31 million in two transactions.

56. In the first transaction on August 19, 1997, Philip purported to sell inventory to CCG for $26.55 million. On August 19, 1997, CCG invoiced Philip for the same quantity of inventory at the same price obligating Philip to repurchase the inventory on November 19, 1997.

57. Mr. Woodcroft approved for payment the invoice from CCG in the first transaction knowing that this obligated Philip to repurchase inventory as part of a financing arrangement. This resulted in an overstatement of revenue and an understatement of liabilities in the Philip financial statements for the year ended December 31, 1997 in the amount of approximately $25 million.

CONCLUSION AND DECISION

58. The relevant facts set out above, which were admitted by Messrs. Hoey and Woodcroft, proved the particulars of each of the charges. The conduct of each failed to 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. They were each found guilty of the charges they faced.

59. The decisions, read into the record after deliberation, read as follows:

> THAT, having heard the plea of guilty to the charges, and having seen and considered the evidence, including the agreed statement of facts, filed, the Discipline Committee finds Mr. David Graham Hoey guilty of the charges.
>
> THAT, having heard the plea of guilty to the charges, and having seen and considered the evidence, including the agreed statement of facts, filed, the Discipline Committee finds Mr. John Alexander Woodcroft guilty of the charges.

SANCTION

60. Neither the Professional Conduct Committee nor counsel for the members called evidence on sanction.

61. Mr. Farley outlined the following joint submission as to sanction:

(a) for Mr. Hoey:

- (i) that Mr. Hoey be reprimanded in writing by the chair of the hearing;
- (ii) that Mr. Hoey be fined the sum of $7,500; and
- (iii) that notice of this Decision and Order, disclosing Mr. Hoey's name be given for publication in *The Globe and Mail* and that all costs associated with the publication be borne by Mr. Hoey.

(b) for Mr. Woodcroft:

- (i) that Mr. Woodcroft be reprimanded in writing by the chair of the hearing;
- (ii) that Mr. Woodcroft be fined the sum of $5,000; and
- (iii) that notice of this Decision and Order, disclosing Mr. Woodcroft's name be given for publication in *The Globe and Mail* and that all costs

associated with the publication be borne by Mr. Woodcroft.

62. Further, Mr. Farley indicated that the Professional Conduct Committee was not requesting that either Mr. Hoey or Mr. Woodcroft be charged any costs with respect to the investigation or the hearing. Mr. Farley indicated that, as a result of the cooperation provided by Mr. Hoey and Mr. Woodcroft, costs incurred by the PCC were minimal.

63. Mr. Farley indicated that the charges represented egregious breaches of Rule 201in that Mr. Hoey had hands on involvement in the misconduct and that Mr. Woodcroft acquiesced to the filing of the financial statements.

64. Mr. Farley indicated that the aggravating circumstances in these cases included the fact that these financial statements related to a public company that was raising funds from the public, misleading financial information was provided and Messrs. Hoey and Woodcroft held senior financial positions within the company.

65. Mr. Farley also indicated that some of the mitigating circumstances in these cases included:

- the members cooperated throughout the investigation;
- as a result, no significant investigation was required by the PCC;
- Messrs. Hoey and Woodcroft admitted to the facts set out in the Agreed Statement of Facts;
- there was no personal benefit aside from the fact that they were employees of the company;
- in 2006, the Ontario Securities Commission fined the individuals $100,000 each;
- both Mr. Hoey and Mr. Woodcroft are prohibited from serving as a director with a reporting issuer;
- there has been a significant passage of time from the time of the event, being 1997;
- neither Mr. Hoey nor Mr. Woodcroft had complaints filed against them before or after these circumstances; and
- the PCC is of the view that neither had a primary responsibility for the filing of these financial statements.

66. Mr. Farley provided the panel with a Brief of Authorities as to Sanction which included the *Lee, Davies* and *Messina* cases.

67. Mr. Farley explained that both Lee and Davies were more active participants and more "hands on" than were Messrs. Hoey and Woodcroft. Accordingly, their sanctions included suspensions from the rights and privileges of membership.

68. With respect to the *Messina* case, Mr. Farley explained that Ms. Messina knew that the financial statements were misleading and signed the public filings with the OSC and the SEC. As a result, Ms. Messina's sanction included a suspension from the rights and privileges of membership for two years.

69. In all cases, Mr. Farley explained that it was imperative to have notice of the decision published in a national newspaper such as *The Globe and Mail*.

70. Ms. Seaman indicated that both Messrs. Hoey and Woodcroft had been involved in civil proceedings in the United States and Canada although only Mr. Woodcroft was involved in current civil proceedings.

71. Ms. Seaman also emphasized that the offences took place over 13 years ago, and there was a great deal of notoriety which impacted both Mr. Hoey and Mr. Woodcroft personally.

72. Ms. Seaman also emphasized that both Mr. Hoey and Mr. Woodcroft had cooperated with the PCC resulting in expeditious proceedings and that these proceedings were not the final chapter in this matter for Mr. Woodcroft and possibly, for Mr. Hoey.

DELIBERATIONS BY THE PANEL

73. In their deliberations, the panel considered a number of issues including whether there was a personal benefit to Messrs. Hoey and Woodcroft. The panel noted they did receive significant salaries, bonuses and stock options from the company. The panel was also troubled by the fact that neither of them came forward to the authorities until after they were found out, that they purposely hid accounts payable, that they ignored the advice of the CIBC, and that they were involved in the release of interim financial statements for two quarters after the year end of the company.

74. These factors led to a concern whether the sanction requested was significant enough. A sanction which includes suspension is a significant general deterrent in cases involving fraud, especially those relating to public companies.

75. The panel observed that in all three cases in the Brief of Authorities as to Sanction, the members received suspensions.

76. The *Messina* case appeared to be similar to the current one based on the facts and the panel noted that Ms. Messina received a two year suspension even after being a “whistleblower” (which neither Mr. Hoey or Mr. Woodcroft did). Ms. Messina, who had the opportunity to leave Livent for a better position, stayed and took steps to correct her wrong unlike either Mr. Hoey or Mr. Woodcroft. Accordingly, based on the conduct of Messrs. Hoey and Woodcroft, and on similar past cases, the joint submission appeared to be outside the appropriate range.

77. Both Mr. Farley and Ms. Seaman were requested to address the concerns raised by the panel, particularly with regards to the joint submission not seeking a suspension.

RESPONSE TO THE PANEL’S CONCERNS

78. Mr. Farley submitted that, although the sanction requested was a joint submission, the Discipline Committee must impose what it believes to be the appropriate sanction. He noted that rehabilitation is not an issue in these cases and, with respect to specific deterrence, there have been no further complaints against these two members in the last 13 years.

79. With respect to the *Messina* case, he pointed out that Ms. Messina was the CFO of Livent, was involved in a systematic fraud and signed a registration certificate with the SEC and the OSC. He submitted that the misconduct of Messrs. Hoey and Woodcroft was of a lesser degree than that in the Messina case, although he did acknowledge that Ms. Messina did take steps to fix the

wrongs that she had committed. Mr. Farley also submitted that the members have already paid a price in that they were involved in civil suits, had paid a $100,000 penalty and were prohibited from acting as directors for listed companies.

80. Ms. Seaman submitted that there is specific deterrence in that both individuals had suffered a personal impact to their reputations as Chartered Accountants. In support of this submission she noted that Mr. Hoey was "let go" as a partner in Ernst & Young, and Mr. Woodcroft is no longer involved in the profession.

81. She also submitted that the members were not aware of all the details of the fraud. Mr. Woodcroft was the Vice-President of Operations and was not directly involved in the preparation of the statements and was not aware of all of the fraudulent transactions, and Mr. Hoey was Senior Vice-President of Finance who joined the company in May, 1997 and was still learning about the numerous acquisitions when the frauds took place. As well, she pointed out that two acquisitions closed in October, 1997 leading to numerous restructuring charges which had to be dealt with.

ORDER

82. After deliberating, the panel made the following order:

ORDER FOR DAVID GRAHAM HOEY

IT IS ORDERED in respect of the charges:

1. THAT Mr. Hoey be reprimanded in writing by the chair of the hearing.

2. THAT Mr. Hoey be and he is hereby fined the sum of $10,000 to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.

3. THAT Mr. Hoey be suspended from the rights and privileges of membership in the Institute for a period of two (2) years from the date this Decision and Order becomes final under the bylaws.

4. THAT Mr. Hoey surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held during the period of suspension and thereafter returned to Mr. Hoey. In the event Mr. Hoey fails to surrender his certificate of membership within this ten day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificate remains undelivered to the secretary.

5. THAT notice of this Decision and Order, disclosing Mr. Hoey's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
   (a) to all members of the Institute;
   (b) to all provincial institutes/Ordre;
   and shall be made available to the public.

6. THAT notice of this Decision and Order, disclosing Mr. Hoey's name, be given by

publication in *The Globe and Mail*. All costs associated with the publication shall be borne by Mr. Hoey.

7. THAT in the event Mr. Hoey fails to comply with any of the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three month period, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in *The Globe and Mail*. All costs associated with the publication shall be borne by Mr. Hoey.

ORDER FOR JOHN ALEXANDER WOODCROFT

IT IS ORDERED in respect of the charges:

1. THAT Mr. Woodcroft be reprimanded in writing by the chair of the hearing.

2. THAT Mr. Woodcroft be and he is hereby fined the sum of $10,000 to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.

3. THAT Mr. Woodcroft be suspended from the rights and privileges of membership in the Institute for a period of two (2) years from the date this Decision and Order becomes final under the bylaws.

4. THAT Mr. Woodcroft surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held during the period of suspension and thereafter returned to Mr. Woodcroft. In the event Mr. Woodcroft fails to surrender his certificate of membership within this ten day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificate remains undelivered to the secretary.

5. THAT notice of this Decision and Order, disclosing Mr. Woodcroft's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
   (c) to all members of the Institute;
   (d) to all provincial institutes/Ordre;
   and shall be made available to the public.

6. THAT notice of this Decision and Order, disclosing Mr. Woodcroft's name, be given by publication in *The Globe and Mail*. All costs associated with the publication shall be borne by Mr. Woodcroft.

7. THAT in the event Mr. Woodcroft fails to comply with any of the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three month period, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above,

and in *The Globe and Mail*. All costs associated with the publication shall be borne by Mr. Woodcroft.

REASONS FOR SANCTION

83. The panel concluded that the joint submission, in that it did not include a suspension, was outside the range of sanction which was appropriate for the serious nature of the members' misconduct. The panel concluded that both general deterrence and specific deterrence required a suspension for a period of two years for both Mr. Hoey and Mr. Woodcroft.

84. The Philip fraud was extremely high profile, involving major frauds on the public and significant losses. While Messrs. Hoey and Woodcroft were not the architects of the fraud, their conduct, both what they knew and did as well as what they should have known and did not do, facilitated the fraud.

85. A plea of guilty and cooperation with the Professional Conduct Committee often indicate the member takes responsibility for his or her misconduct and is genuinely remorseful. However, in this case it was not apparent the members fully appreciated and accepted responsibility for their misconduct. Several of the representations and explanations offered by Messrs. Hoey and Woodcroft to the panel minimized or contradicted the statements in their Agreed Statements of Facts or the Settlement Agreement. In many instances their position was that they were not "directly" involved.

86. Mr. Hoey's Agreed Statement of Facts and the Settlement Agreement make it clear that he knew that there would be a restructuring charge and knew of the financing arrangements with CIBC and CCG prior to November 6, 1997. Thus he both should have known and did know, prior to the filing of the Prospectus with the OSC on November 6, 1997 that the financial statements did not contain full, true and plain disclosure as set out in the particulars to the charges.

87. Mr. Woodcroft's Agreed Statement of Facts and the Settlement Agreement make it clear that he actually knew about the financing arrangements with CCG and the promissory note from Mr. Waxman prior to November 6, 1997. He may not have actually known until December 1997 about some of the other failures of the financial statements to contain full, true and plain disclosure. This does not minimize the true nature of his misconduct. He actually knew or should have known the financial statements filed with the OSC on November 6, 1997 did not contain full, true and plain disclosure.

88. Further, both members continued to be associated with the interim financial statements of Philip which were released in the first two quarters of 1998. In short, there is no evidence that they resisted the perpetuation of the fraud; however, there is evidence that their actions and inactions contributed to it and evidence they remained silent when they knew about it. The panel concluded that specific deterrence, as well as general deterrence, was relevant when imposing sanction.

89. The fact that the fraud occurred 13 years ago and that both Mr. Hoey and Mr. Woodcroft have suffered professionally and financially as a result is not a reason for imposing a sanction which is not appropriate for the misconduct. Specific and general deterrence both mandate a suspension for a period of two years for both Mr. Hoey and Mr. Woodcroft. Anything less jeopardizes the reputation of the profession and each and every member, and risks the public trust.

90. A fine of $10,000 for each member is appropriate, taking into account all the circumstances, including penalties imposed in other processes. The fine together with the suspension is significant enough to meet the general deterrence purpose of sanctions.

91. Publicity has often been called the single greatest deterrent, both for the member found guilty and for other members of the profession who might otherwise be tempted to act in a similar manner. The conduct in this case is serious. Notice in *CheckMark* and on the Institute's website is not sufficient. The public, not just the profession, should know that the Institute will not tolerate members being involved in a fraud. In addition, members should know that the public will be told if they misconduct themselves as did Messrs. Hoey and Woodcroft. The appropriate manner to communicate with the public, in this case, is in the press. Accordingly, notice is to be placed in *The Globe and Mail.*

DATED AT THIS 31ST DAY OF MARCH, 2011
BY ORDER OF THE DISCIPLINE COMMITTEE

M.B. MARTENFELD, FCA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:
P.A. BUSCH, CA
A.B. MINTZ, CA
H.G. TARADAY, CA
P. McBURNEY (PUBLIC REPRESENTATIVE)