IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND
IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF DANA CARLSON, A MEMBER OF THE LAW SOCIETY OF ALBERTA

The Panel:

Larry Ackerl, Q.C., Chairperson
Nancy Dilts, Q.C.
Amal Umar

Counsel Appearances:

Garner Groome, for the Law Society of Alberta
Elizabeth Aspinall, for Dana Carlson

Date and Place of Hearing:

February 28, 2012
Calgary, Alberta

REPORT OF THE HEARING COMMITTEE

I. OVERVIEW

1. Dana Carlson (sometimes referred to as the "Member") is subject to conduct proceedings under the *Legal Profession Act*, R.S.A. 2000, c. L - 8 on 7 separate citations. During the hearing, counsel jointly proposed certain amendments to these citations. The Hearing Committee accepted these amendments. The resulting citations, with amendments italicized, are as follows:

   Citation 1: IT IS ALLEGED THAT you *unwittingly enabled a party or parties to achieve* an improper purpose, and that such conduct is conduct deserving of sanction

   Citation 2: IT IS ALLEGED THAT you issued *inadvertently* misleading or inappropriate letters *used* for the purpose of giving reassurance to prospective investors regarding the security of their investments, and such conduct is conduct deserving of sanction

   Citation 3: IT IS ALLEGED THAT you improperly accepted compensation, other than appropriate legal fees, from a party or parties seeking to achieve an

improper purpose, and that such conduct is conduct deserving of sanction

Citation 4: IT IS ALLEGED THAT you represented clients in business transactions which you knew or ought to have known were in breach of securities law, and that such conduct is conduct deserving of sanction

Citation 5: IT IS ALLEGED THAT you received payment of monies for your own use which you failed to disclose on your Income Tax returns, and such conduct is conduct deserving of sanction

Citation 6: IT IS ALLEGED THAT you *unnecessarily complicated* the Law Society investigation by destroying *potential* evidence *and not being immediately forthright in explaining to the Law Society why you did so*, and such conduct is conduct deserving of sanction

Citation 7: IT IS ALLEGED THAT you failed to be candid with the Law Society, and such conduct is conduct deserving of sanction.

2. The Hearing Committee received and accepted an Admission of Facts and Guilt, accepted a joint submission on sanction, imposed a 3 month suspension and directed the Member pay costs fixed at $6,100.25 within 6 months of reinstatement.

3. The Member was present throughout the hearing and represented by counsel. At the conclusion of the hearing, the Hearing Committee provided oral reasons, and indicated a written report would follow more fully outlining the considerations informing their findings.

II. JURISDICTION

4. Jurisdiction depends upon the existence of citations directed by the Conduct Committee of the Law Society of Alberta against a member of the LSA and the appointment of the Hearing Committee members by the Chair of the Conduct Committee.

5. These jurisdictional requirements were established in Exhibits 1 through 4. Counsel for the Law Society of Alberta and the Member agreed the Hearing Committee had jurisdiction to hear the matter. The Hearing Committee similarly agreed.

6. Counsel for both the Law Society of Alberta and the Member were asked whether there was objection to any of the Hearing Committee members based on bias, apprehension of bias or any other reason. No objection was made.

III. PRIVATE HEARING MATTERS

7. When the hearing commences, the committee chairperson must invite applications to have the whole or part of the hearing held in private (LPA, s. 78; *Rules of the Law Society of Alberta* (the "Rules"), R. 98).

8. Hearings ought to be conducted in public unless a compelling privacy interest requires protection, and then only to the extent necessary: Hearing Guideline dated February 2005 (reformatted December 2008) (The "Hearing Guide").

9. The Law Society of Alberta exercised its discretion to issue a private hearing notice to one person who was or may be an interested party (Exhibit 5). The Hearing Committee was advised by Law Society's counsel that no such request was made.

10. Counsel agreed the hearing should be held in public. The Hearing Committee directed the oral hearing proceed in public.

11. At the conclusion of proceedings, the Hearing Committee directed that any third party names and client names be redacted from the Hearing Committee report, the transcript of proceedings and exhibits filed in the proceedings prior to any publication or public access occurring. This direction extended to identifying personal information.

IV. EXHIBITS

12. The Hearing Committee received and entered into evidence Exhibits 1 through 9.

V. MEMBER'S CONDUCT WAS DESERVING OF SANCTION

13. The parties tendered into evidence an Admission of Facts and Guilt (Exhibit 6). The Member admitted guilt on citations 1, 2, 3, 4 and 6, as amended. Counsel jointly

submitted that citation 7 be dismissed as being duplicative of a particularized citation 6. They also agreed citation 5 should be dismissed because insufficient evidence existed to discharge the burden of proof.

14. The Admission of Facts and Guilt covers 35 pages and thoroughly details the Member's role in an international Ponzi scheme. It is attached as Appendix "A" to this report. Portions of this document are excerpted or summarized in the report proper for the limited purpose of highlighting certain evidence supporting the Hearing Committee findings. The Hearing Committee emphasizes that the entire Admission of Facts and Guilt was considered in reaching its conclusions.

CITATION 1:

IT IS ALLEGED THAT you *unwittingly enabled a party or parties to achieve* an improper purpose, and that such conduct is conduct deserving of sanction.

15. These citations arise from Mr. Carlson's involvement in a fraudulent investment scheme perpetrated by Corporation A and its principals, M.S., R.F. and Garth Bailey.

16. Corporation A was at the centre of a huge alleged Ponzi scheme involving tens of millions of dollars, more than 100 Corporation A "Customer Care Specialists" responsible for soliciting investors, hundreds of investors, thousands of payments and several banks in Canada, the U.S., and offshore. The Corporation A scheme apparently began in the first half of 2001 and collapsed in 2004.

17. This type of Ponzi scheme is characterized as a Prime Bank Instrument (PBI) fraud. In this scheme, promoters tell investors they can participate in earning huge profits from trading in international financial instruments in sometimes clandestine markets otherwise available only to major financial institutions. However, in actuality, there is absolutely no connection to the world's leading financial institutions and neither the instruments, nor the markets in which they allegedly trade, exist.

18. PBI frauds frequently involve lawyers to assist with banking transactions. Lawyers, such as Mr. Carlson, who perform this role, are known as "paymasters". These lawyers often

provide assurances to potential investors that the investment scheme is safe. They may also falsely claim existence of a surety bond or other assets to comfort prospective investors.

19. Corporation A investment agreements promised investors return rates of 8% to 12% per month. Investment conditions included leaving money invested for a minimum of 1 year and maintaining secrecy about the investment. Corporation A represented that its corporate lawyer, Garth Bailey, held $40 million worth of bonds in trust to ensure any principal would be refunded to investors should Corporation A default.

20. Mr. Bailey's main role appears to have been acting as paymaster. More than $52 million involving Corporation A flowed through his trust accounts and, save for about $3.6 million, directly back to investors without intervening investment.

21. Mr. Carlson's involvement with Corporation A started in February 2003 through A.R., an existing client. Carlson incorporated Corporation B for A.R. who used that company to recruit Corporation A investors. Mr. Carlson had no knowledge of this arrangement. He believed, throughout his involvement, that he was facilitating legitimate business transactions.

22. Mr. Carlson was initially skeptical about the unrealistic rates of return for Corporation A investments. In response, he researched the Bretton Woods Agreement, IMF and World Bank writings to understand the operation of high yield investment programs. He also spoke with multiple financial advisors and independent business contacts to obtain background information. This education assuaged his concerns and persuaded Carlson that Corporation A was a legitimate investment vehicle.

23. Mr. Carlson's initial role was limited to designing trust conditions for transfer of funds between Corporation B and Garth Bailey. These trust conditions were designed to protect the funds and ensure the return of principal upon investor demand. However, almost immediately, A.R. instructed Carlson not to impose trust conditions on funds forwarded to Corporation A. A.R. advised that the process of imposing trust conditions

would cause missed investment opportunities. Despite having significant concerns (and contrary to the rationale for his involvement) Carlson followed this direction.

24. Shortly thereafter, Mr. Carlson agreed, on an interim basis, to receive and disburse funds directly on behalf of Corporation A. He accepted this role solely upon Bailey's explanation that bankers refused to process Corporation A transactions because the accounts were new and involved voluminous transactions. Carlson was unaware that the bank's concerns involve Bailey's trust accounts. Mr. Carlson made no attempt to confirm Bailey's explanation.

25. On March 3, 2003 Mr. Carlson met with 3 Corporation A executives (M.S., Bailey, R.F.) and A.R. to discuss the company's program. He was particularly impressed by Bailey's professionalism and his position as a lawyer with a reputable national law firm. Subsequent contact with Bailey reinforced that impression. On other occasions Carlson also met multiple, seemingly experienced investors, who vouched for the integrity and success of Corporation A investments. Mr. Carlson made no meaningful attempts to independently verify information received during these meetings. In particular, he never confirmed the legitimacy, or even existence, of any intervening Corporation A investments.

26. Mr. Carlson's banking duties continued despite his initial understanding they were to be temporary. His involvement also increased. He eventually opened 9 different accounts with 3 different banks. These accounts were used to issue cheques to Corporation A investors. Carlson treated them as trust accounts without identifying them as such.

27. Between February 2003 and March 2005 more than 2,000 transactions involving Corporation A and totalling 24.6 million dollars occurred in these accounts. During that time, one bank refused further business because of the size and volume of transactions. Carlson responded, not with inquiries, but by moving that business to a different bank.

28. In June 2003, Mr. Carlson's role further expanded to issuing comfort letters to potential Corporation A investors. At A.R.'s request he also began issuing cash cards (rather than cheques) to investors. This involvement is more fully described under specific citations

concerning these roles. (see paragraphs 31-37) Issuance of comfort letters attracted investors while issuance of cash cards streamlined and disguised investor payments. In providing these services Carlson unwittingly enabled operation of the Corporation A investment scam.

29. Mr. Carlson also became aware that two provincial securities commissions had issued cease-trading orders against Corporation A and named executives. He also knew another securities commission had issued an investor alert with a further commission referring its investigation to police. As with other concerns he encountered, Carlson undertook only token inquiries and failed to properly confirm excuses and explanations offered by Corporation A officials.

30. In retrospect, and in mounting totality, numerous red flags presented to Mr. Carlson about Corporation A dealings. He responded by initially conducting generalized research and subsequently questioning Corporation A parties about specific operational concerns. His inquiries were entirely inadequate and frequently inappropriate as they audienced self-interested Corporation A parties. This habitual lack of diligence was compounded by Mr. Carlson's readiness to accept explanations based upon the superficial cache of Corporation A players. Mr. Carlson's naivety and inaction, while of considerable concern, does not approach wilful blindness. He was, in effect, an unwitting participant in this fraudulent investment scam.

CITATION 2:

IT IS ALLEGED THAT you issued *inadvertently* misleading or inappropriate letters *used* for the purpose of giving reassurance to prospective investors regarding the security of their investments, and such conduct is conduct deserving of sanction.

31. Mr. Carlson issued at least 20 comfort letters which he understood would be used to solicit potential Corporation A investors. He expected any resulting investment would involve him dealing only with the investor's counsel to establish trust conditions.

32. Two different forms of comfort letters were issued by Mr. Carlson. They were frequently distributed as a package. In one type of letter, Mr. Carlson, in his capacity as a lawyer, vouched for a history of successful investment yields, historical protection of investment principal, and a $40 million reserve to protect these principal amounts. The second letter provided more detail about protection afforded these investments. Both letters stated the Law Society of Alberta would insure any loss resulting from a breach in handling funds.

33. The comfort letters written by Mr. Carlson were inaccurate and misleading. He overstated his previous dealings with A.R. Additionally, his involvement was far too limited to support assurances that returns were being paid as represented. These assurances were based upon representations from A.R. and testimonials from ostensible Corporation A investors. These investors were actually paid "songbirds" recruited to attract investors. Mr. Carlson did not verify their representations or those of A.R. to validate the content of his comfort letters. Finally, his statement about LSA coverage of funds was also inaccurate and misleading, and particularly irresponsible, given Carlson's obligation to understand LSA assurance issues.

34. Ultimately Mr. Carlson's letters were, or may have been, used to promote the scheme's success by enticing new investors relying upon Mr. Carlson's status as a lawyer and representations he made in these comfort letters.

CITATION 3:

IT IS ALLEGED THAT you improperly accepted compensation, other than appropriate legal fees, from a party or parties seeking to achieve an improper purpose, and that such conduct is conduct deserving of sanction.

35. Mr. Carlson received various types of compensation for services provided to Corporation A. He received a one-time fee of $10,500 before being placed on a monthly retainer between August 2003 and February 2005. Under this arrangement he received about $80,000. Carlson also received a $20,000 loan for a company he owned.

36. Mr. Carlson also received payment, from A.R., through cash card withdrawals. The total amount received was $76,000. A.R. originally stipulated these payments were a loan but refused to discuss terms or amount.

37. Mr. Carlson had already made cash card payments to certain Corporation A investors. Carlson knew cash cards could be used to avoid spousal and child support and tax obligations. Carlson also knew A.R. was using cash card payments to him to test the system. Under the circumstances, Carlson should have understood use of cash cards was being considered to disguise the flow of Corporation A funds.

CITATION 4:

IT IS ALLEGED THAT you represented clients in business transactions which you knew or ought to have known were in breach of securities law, and that such conduct is conduct deserving of sanction.

38. Corporation A was never registered to trade securities in Alberta. Neither Corporation B nor A.R. were registered with the Alberta Securities Commission as a dealer, salesperson or advisor. Furthermore, Corporation A securities were not issued under a prospectus registered in Alberta, nor were Corporation B securities issued under prospectus.

39. Corporation A, Corporation B, and A.R. were trading in securities as defined in the *Securities Act* and related legislation, and were required to be registered. Similarly, they were trading in securities which required them to issue an approved prospectus. Mr. Carlson knew or ought to have known that such was the case but took no action to advise his client to correct the situation or stop the unlawful conduct, nor did he make any reasonable effort to ensure Corporation B and A.R. qualified for any exemption.

40. Between December 4, 2011 and December 18, 2003 two provincial securities commissions (Alberta, Saskatchewan) issued temporary cease-trading orders against Corporation A and involved persons and for non-compliance with securities law. The British Columbia Securities Commission had expressed concern to police about

Corporation A trading while Manitoba had issued an investor alert. Mr. Carlson discussed these sanctions with A.R. who dismissed them as arising from technical temporary violations. Carlson was entirely derelict in not fully, independently investigating the basis for these commission orders involving multiple jurisdictions, severe sanctions and an extended time frame.

41. By assisting A.R., Corporation B and Corporation A in executing investment transactions that did not comply with securities laws, Mr. Carlson directly participated in investment activities he knew or ought to have known were unlawful. His actions included:

a) acting as a conduit for the flow of funds.

b) issuing comfort letters promoting the investment scheme, and

c) drafting various key documents relating to the investment transactions, including trust condition letters relating to the flow of funds between Corporation B and Corporation A and promissory notes between Corporation B and investors.

CITATION 6:

IT IS ALLEGED THAT you *unnecessarily complicated* the Law Society investigation by destroying *potential* evidence *and not being immediately forthright in explaining to the Law Society why you did so*, and such conduct is conduct deserving of sanction.

42. On February 17, 2005 the LSA issued an Investigation Order directing an examination of Mr. Carlson's law practice. During the resulting hearing to consider suspension (March 11, 2005) he was permitted to continue practicing but placed under significant restrictions.

43. On August 8, 2005 another LSA investigation was ordered to examine Mr. Carlson's compliance with undertakings.

44. On October 16, 2006 a LSA investigator contacted Mr. Carlson to inform him the LSA wanted to image his computers either later that day or on Friday, October 20, 2006. The October 20th date was agreed upon.

45. On October 18, 2006 Mr. Carlson purchased new hard drives for his two office computers, as well as a home computer that he moved to his office. He had operating systems installed, certain data files restored, and destroyed the hard drives the LSA was seeking to image.

46. On January 30, 2007 the LSA was able to image Mr. Carlson's computers. It was determined that virtually all electronic data such as emails, memos and letters no longer existed. Recovered data did not include any items relevant to the Corporation A scheme.

47. On December 18, 2006 Mr. Carlson first explained his actions to a LSA investigator. His explanation was confusing, overstated, and incorrect. His justifications included concerns about using pirated operating systems and revealing embarrassing content unrelated to the Corporation A investment scheme. He was not completely forthcoming on these points with the LSA investigator and only imparted his full explanation incrementally.

ACCEPTANCE OF ADMISSION OF FACTS AND GUILT

48. Section 60 of the *Legal Profession Act* requires that an admission of guilt be in a form acceptable to the hearing committee before it is acted on. If accepted, each admission of guilt regarding conduct is deemed to be a finding of the hearing committee that the conduct is deserving of sanction.

49. It is very important to recognize that Law Society counsel are far better placed than a hearing committee to judge the prospects of proving alleged misconduct. Recommendations of Law Society counsel to vary or dismiss existing citations arise from experience and considered analysis of potential evidence conducted outside the adversarial arena. This review may also be informed by additional information

unavailable to the Conduct panel ordering the citations. It follows that deference should be given to the judgment of Law Society counsel in proposing proper citations.

50. In this case, Hearing Committee members had the benefit of reviewing a proposed exhibit book several days before the hearing started. This book included the Admission of Facts and Guilt which extensively details relevant case circumstances. It is evident that this statement was fashioned from the extensive involvement of informed and able counsel. Evidence tendered during the hearing and counsel's oral submissions fortified these advance materials and further justified acceptance of the Admissions of Facts and Guilt.

51. The Hearing Panel was cognizant that the citation amendments mitigated Mr. Carlson's culpability in committing multiple offences. In effect, they disclaimed full knowledge (including wilful blindness) for his misconduct. The Hearing Panel concluded these amendments properly reflected the evidence available to prove these citations on a balance of probabilities.

52. The Hearing Panel also agreed with the joint submissions to dismiss citations 5 and 7. Citations 5 was dismissed for lack of evidence. Citation 7 was dismissed because it was directed to, and subsumed by, the detailed allegations in count 6. These citations were essentially duplicates. Accordingly, there is a deemed finding that the conduct admitted to in Exhibit 6 is deserving of sanction pursuant to section 60 of the *Legal Profession Act*.

VI. REASONS AND DECISIONS ON SANCTION

53. The fundamental objectives of sanctioning are to ensure the public is protected and that the public maintains a high degree of confidence in the legal profession. A purposeful approach should be taken during the sanctioning process to ensure these objectives are satisfied.

54. Paragraph 60 of the Hearing Guide outlines factors that may be considered in satisfying these principals. These factors, weighted according to case circumstances, include the

need to maintain public confidence in the integrity of the profession, the ability of the profession to effectively govern its own members, specific and general deterrence, denunciation of the conduct, rehabilitation of the member and parity of dispositions.

55. Paragraph 61 of the Hearing Guide lists more specific factors to be considered in imposing sanctions. They include the nature of the conduct, the level of intent, the impact of or injury caused by the conduct, the number of incidents and length of time involved.

56. Counsel for the Law Society and the Member jointly submitted that a 3 month suspension addressed these factors and fulfilled fundamental sentencing objectives.

57. A joint submission on sanction deserves deference. As an Appeal Panel of the Law Society of Upper Canada stated, a joint submission "promotes resolution, the saving of time and expense, and reasonable certainty for the parties". *Law Society of Upper Canada v. Cooper, supra*. A hearing committee should give serious consideration to a joint sentencing submission, should not lightly disregard it, and should accept it unless it is unfit or unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting it. (See ***Rault v. Law Society of Saskatchewan***, 2009 SKCA 81, [2010] 1 W.W.R. 678; ***R. v. L.R.T.***, 2010 ABCA 224.)

58. As a general comment, there was minimal guidance available to suggest appropriate sanction quantum. LSA counsel advised the Law Society of Upper Canada had sentenced certain members involved in Ponzi schemes. Sanctions ranged from 30 day to 18 month suspensions depending upon the member's involvement and mix of mitigating and aggravating factors.

59. The Hearing Committee recognized the nominal utility of these dispositions and was sensitive to the absence of supporting facts. However, the Committee was confident a suspension was consistent with the spirit of these decisions and, more importantly, appropriate in the circumstances of this case.

60. The Hearing Committee did have concerns about the proposed length of the suspension. In our view, a 3 month suspension term barely falls within an acceptable sanction range. However, it was not demonstrably unfit and, in the totality of circumstances, adequately addressed sentencing objectives.

61. Multiple aggravating factors exist in this case. These factors include:

a) The massive scope of the Corporation A investment fraud. It lasted multiple years, involved transactions totalling approximately $48 million and attracted hundreds of investors. The damage to investors was real and was substantial. The harm to public confidence in the legal profession was similarly consequential.

b) Mr. Carlson undertook multiple roles and became increasingly involved in the Corporation A scheme over a period of two years. The banking services he provided as lawyer were extensive and essential to the operations of Corporation A. In total, Carlson processed about 2,000 bank transactions including $24.8 million on behalf of Corporation A. He also issued approximately 1,600 cheques or were transfers. Carlson also disbursed approximately $1.63 million in cash card payments. In issuing comfort letters Carlson also employed his status as a practicing lawyer to influence potential Corporation A investors.

62. Various mitigating factors also exist in this case. They include:

a) Mr. Carlson's state of mind. While Carlson's conduct is clearly deserving of sanction, it is equally apparent that he did not act with full knowledge or in bad faith. Rather, his misconduct arose from a regular failure to verify crucial and troubling information. His naive reliance on assurances from Corporation A parties was unacceptable especially as warning signs accumulated. Although mistaken and misguided, the Member did not act with mala fides. In effect, his moral culpability is lessened.

b) Entry of a timely guilty plea. Mr. Carlson had stated this intention immediately upon citations being directed. This plea indicates genuine remorse and generated substantial savings involved in the estimated 2 week hearing.

c) The absence of any disciplinary record for Mr. Carlson.

d) Continuation of his practice under restrictions, and without incident, for almost 7 years, and

e) Mr. Carlson no longer has a solicitor's practice. At the time of his involvement with Corporation A he conducted a mixed solicitor and litigation practice. Shortly after the LSA s.63 hearing he deliberately moved to practice litigation only. This was a direct effort to avoid further corporate misdealings. This change speaks positively to Mr. Carlson's character and suggests self-rehabilitation is underway. More significantly, it offers protection to the public as Mr. Carlson's misconduct related exclusively to his role as solicitor.

63. Under all the circumstances, the Hearing Committee ordered, pursuant to Section 72(1)(b) of the *Legal Professions Act R.S.A. 2000, c. L-8*, that Mr. Carlson be suspended for 3 months, effective March 26, 2012.

VII. RECORD OF DECISIONS

64. The Member was found guilty of citations 1, 2, 3, 4 and 6 as amended. Citations 5 and 7 are dismissed.

65. The Hearing Committee imposed the following sanction on the Member:

a) A suspension of 3 months duration to commence March 26, 2012.

66. The Member shall pay the costs of these proceedings, in the amount of $6,100.25. These costs must be paid within 6 months of reinstatement.

67. A redaction order was issued as described in paragraph 11 of this report.

68. There is no direction that any report be made to the Attorney General.

Dated April 10, 2012 at Edmonton, Alberta.

Larry Ackerl, Q.C. (Chairperson)	Nancy Dilts, Q.C.
Amal Umar	

Appendix "A"

THE LAW SOCIETY OF ALBERTA

IN THE MATTER OF THE Legal Profession Act, and
in the matter of a Hearing regarding
the conduct of DANA CARLSON
a Member of The Law Society of Alberta

AGREED FACTS

The Parties to this Hearing have agreed that the following facts are admissible as evidence in this Hearing without further or formal proof, and without prejudice to the right of the Parties to adduce additional evidence at the Hearing:

1. This Hearing and the citations herein arise from Dana Carlson's involvement in a scheme perpetrated by Corporation A and its principals, M.S., R.F. and Garth Bailey.

2. On March 11, 2005, following preparation of an Interim Investigation Report, a s.63 Hearing was conducted to determine whether Mr. Carlson's involvement in the Corporation A scheme merited his interim suspension. Mr. Carlson was not suspended from practise following that Hearing; conditions were placed on his practise, including the requirement that another member of the LSA in good standing counter-sign all cheques issued from Mr. Carlson's trust accounts.

Overview

3. Corporation A was at the centre of a huge alleged Ponzi scheme (*i.e.* investment fraud) that involved tens of millions of dollars, more than 100 Corporation A Customer Care Specialists ("CCSs"), hundreds of investors, thousands of payments and several banks in Canada, the U.S., and offshore. The Corporation A scheme apparently began in the first half of 2001 and collapsed in 2004 (though Corporation A's principals represented to investors and others it had been in operation for considerably longer).

Ponzi Schemes in General

4. A Ponzi Scheme (a.k.a. a pyramid scheme) is a fraudulent investment scheme named after Charles Ponzi, a notorious Bostonian who used such a scheme to defraud investors in 1920. These schemes promise investors spectacularly high rates of return, but simply use new investors' monies to pay the "returns" to earlier investors without intervening investment. There are usually few or no legitimate business or

investment activities taking place, and if there are, the returns are not sustainable in relation to the promised returns.

5. A key feature of the fraud is that promoters point to the fact that early investors are receiving returns as evidence of the apparent credibility of the program. These recipients are known as "songbirds" since they sing the praises of the scam to others. The scheme thereby gains momentum as more and larger investors are convinced to join. The ever-increasing amounts of investment create ever-increasing amounts of unsustainable and undisclosed debt. The scheme eventually collapses when the amounts brought in from new investors are not adequate to fund the returns to earlier investors and the huge amounts typically siphoned off by the perpetrators.

Prime Bank Instrument (PBI) Frauds

6. A PBI fraud is a modern variation of the Ponzi scheme, in which promoters of the scheme tell investors that they can participate in earning huge profits from trading in international financial instruments in sometimes clandestine markets otherwise available only to major financial institutions. However, according to the U.S. Securities and Exchange Commission (SEC), "prime bank" and other related schemes have no connection whatsoever to the world's leading financial institutions and neither the instruments, nor the markets on which they allegedly trade, exist.

7. The Commercial Crime Services (CCS) division of the International Chamber of Commerce (ICC) published a special report in 1996 titled "Prime Bank Instrument Fraud II - The Fraud of the Century." In addition to the above elements, the CCS report identified the following characteristics common to PBI frauds that were relevant in this investigation:

- they may attempt to gain credibility by using law firms to assist them with banking (a lawyer performing such a function is often referred to as a "paymaster")
- in many cases, a lawyer is working with the fraudsters and gives assurance to victims that it is safe to invest their money in the scheme,
- they often falsely claim the existence of a "surety bond" or other assets to provide assurance to victims.

Magnitude

8. In terms of the threat these financial predators pose to the public, the Better Business Bureau in the U.S. has described Ponzi schemes as "the biggest single fraud threat confronting American investors." Excluding massive frauds against financial markets by companies such as Enron and WorldCom, every one of the top frauds targeting individual investors, as cited by the North American Securities Administrators (including internet and email, telemarketing, and abusive sales practices), has been run as a Ponzi.

The Corporation A Investment Scheme

9. In February 2003, Mr. Carlson was introduced to Corporation A by his client A.R. Mr. Carlson became involved in the Corporation A scheme through A.R. and A.R.'s company, Corporation B. Mr. Carlson has known A.R. since 1996, seven years before his involvement with Corporation A through Corporation B and A.R. In his capacity as a lawyer practising in Red Deer, Alberta, Mr. Carlson had known and represented A.R. Mr. Carlson knew that, for many years, A.R. was a realtor in Red Deer; A.R. often referred real estate files to Mr. Carlson. A.R. sold some properties for Mr. Carlson's company, C.H. Inc. A.R. also brought a number of potential real estate opportunities to Mr. Carlson's attention (for C.H. Inc.). In one case, C.H. Inc. purchased land through A.R. C.H. Inc. then subdivided the land and sold it to another builder. A.R. acted as C.H. Inc.'s realtor in that sale. In 1999 or 2000, A.R. ceased working as a realtor and advised Mr. Carlson he had done so. A.R. also advised Mr. Carlson that he had left his career as a realtor to pursue a career in financial investment markets.

10. Corporation A was based in Linden, Alberta, a town approximately 100 kilometres northeast of Calgary. The name of Corporation A was apparently drawn from the initials of its founder. Corporation A was incorporated in Alberta on July 23, 2001. The Directors were M.S., R.F., and R. Brickard Ratcliffe, Barrister & Solicitor. The shareholders were M.S. (50%) and R.F. (50%).

11. M.S. and R.F. are also known to the LSA as co-conspirators in a U.S. $1 million fraud that involved money moving through trust accounts of other LSA members.

12. According to Corporation A's company literature:

    (a) Corporation A was established in 1980 [*i.e.* 21 years before its incorporation in Alberta] and developed into an international company with businesses in 23 countries;

    (b) Corporation A provided mortgages to the residential and commercial markets in Ontario and expanded to provide financing throughout Canada;

    (c) Corporation A's offshore connections allowed the main thrust of its business to evolve into financing projects ranging from marble quarries in Alabama to condominium/hotel complexes in South Korea;

    (d) Through its connections with the G. Trust, Corporation A was "invited to participate in High Yield bank programs at the trading floor level . . . the closest a company can get to the action of high yield trading programs".

Tab 1: Corporation A's Overview Documentation

13. The LSA investigation found no evidence to support any of these claims by Corporation A.

14. The earliest Corporation A investment agreement identified by the LSA (*i.e.* identified in the LSA's investigation into Mr. Bailey) was May 8, 2001. In that agreement Corporation A promised investors rates of return of 8% to 12% per month. Investors invested by entering into "joint venture agreements" (JVs) with Corporation A. Each JV was an investment contract that included conditions such as leaving the money invested for a minimum of 1 year, and maintaining secrecy about the investment. Investors could elect to have returns paid periodically or rolled over/reinvested. Corporation A represented that its lawyer, Garth Bailey, was holding bonds in trust worth over $30 million that would be liquidated if necessary to ensure principal would be refunded to investors in case of any default by Corporation A. When Mr. Carlson became involved in February 2003, the purported security held by Mr. Bailey had increased to US $40 million.

Tab 1: Corporation A's Overview Documentation

15. Periodic and timely returns were initially paid to investors in Corporation A; however, the program began having problems in late 2003 when payments were not made on time. The program ultimately closed in March 2004. In correspondence to its investors, Corporation A blamed the closure on new measures including the Canadian Anti-Terrorist and Money Laundering Act, the USA Patriot Act, and the U.S. Homeland Security Act that were restricting the movement of funds.

Tab 2: Corporation A's Program Closing Letter dated March 23, 2004

16. The LSA investigation identified over 2,900 JVs totalling approximately US $48 million. There may be additional JVs. Most JVs ranged from $5,000 to $20,000, but some were for up to $2 million. While the full scale of the Corporation A scheme is beyond the scope of this Hearing, the following points are relevant to it:

    (a) Corporation A appears to have been one of numerous Ponzi schemes operating in Canada and the United States. The class action suit against Corporation A *et al* filed in the Court of Queen's Bench of Alberta (Action No. 0501-08152) lists more than 95 corporate entities and 110 individuals as Defendants. The LSA investigation identified transactions involving more than 30 additional parties not named in that suit;

    (b) Corporation A was a "prime bank instrument fraud" promising investors high returns (*e.g.* up to 120% per year) by allegedly allowing them to participate in Corporation A's trading program in highly leveraged, exotic financial instruments said to be traded in exclusive international financial markets;

    (c) Corporation A used offshore bank accounts (*e.g.* in Belize, Virgin Islands, including St. Vincent, St. Martin/Marteen, and Grand Cayman);

    (d) Corporation A recruited many investors directly, and made extensive use of Customer Care Specialists (CCSs) to recruit many more. CCSs were individuals or entities (*e.g.* companies or pseudo-foundations) set up to solicit funds. CCSs

typically did not invest their own money, but appear to have been paid well for bringing investors into the program through one or more of the following:

(i) In some cases, CCSs received a commission of 1-2% of the investment dollars they brought into the program;

(ii) In other cases a CCS would borrow funds from an investor under a "promissory note" that typically promised interest of approximately 3% per month. The CCS would in turn put the funds into a Corporation A JV at approximately 10% per month and retain the difference (*i.e.* 7%); and,

(iii) In a variation of this approach, a CCS would sell an investor a share in the CCSs's company. The investor would then lend the company money as a "shareholder loan", typically at approximately 3% per month. The CCS company would put the funds into a Corporation A JV, retaining the difference as above.

17. The hallmark of a "Ponzi" scheme is that "returns" to investors are paid, at least in part, from principal funds contributed by other investors without intervening investments. The Corporation A scheme was a "Ponzi" scheme-type fraud because Corporation A told investors that they would be participating in "high-yield" investment transactions which in fact did not exist: payments back to investors appear to have been made solely from later investors' "contributions".

18. Mr. Bailey's principal role as "corporate counsel" for Corporation A appears to have been acting as "paymaster" for the scheme. While millions of dollars flowed through the corporate bank accounts of Corporation A itself, millions more flowed through Mr. Bailey's trust accounts. The LSA's investigation of Mr. Bailey found that more than US $52 million relating to the Corporation A scheme flowed through Mr. Bailey's trust accounts. The key finding from the LSA's analysis of these transactions was that money from investors flowed directly back out to investors without intervening investment of that money.

19. The majority of funds deposited into Mr. Bailey's trust accounts came from investors and CCSs. There was an additional $13 million from unknown/undocumented sources. The majority of funds were paid directly back out to investors and CCSs, or to Mr. Bailey and related parties. Only $3.6 million went to potentially "legitimate" investments in T.T. Inc., A.M.E. Inc., and B.I. Inc. Approximately $1.5 million, or less than 3% of the $52 million flowing into Mr. Bailey's accounts, was forwarded to Corporation A: the purpose of these transfers is unknown.

20. The Corporation A scheme was elaborate, allegedly backed by millions of dollars in liquid securities held in trust by an Alberta lawyer in good standing (*i.e.* Mr. Bailey), and executed through seemingly legal and enforceable documents.

21. Mr. Bailey, without admitting he had perpetrated a fraud in the Corporation A scheme, was granted a resignation in the face of discipline on May 25, 2010, pursuant to s. 61 of the *Legal Profession Act* and was deemed disbarred.

Action by the RCMP

22. Since early 2004, Corporation A has been the subject of an ongoing RCMP investigation. In an April 28, 2004 Affidavit supporting their request for a warrant to search Corporation A's premises, the RCMP allege that Corporation A was a PBI (Prime Bank Instruments) fraud "Ponzi" scheme. The RCMP Affidavit alleges that Corporation A:

> By deceit, falsehood or other fraudulent means did defraud unknown investors of money of an unknown amount by offering high yield investment opportunities and not actually investing the money and/or using investment money of other investors contrary to Section 380(1)(a) of the Criminal Code.

Tab 3A: RCMP Warrant to Search dated April 28, 2004

Tab 3B: RCMP Information to Obtain a Search Warrant dated April 28, 2004

23. As part of its investigation, the RCMP Commercial Crime Section executed a warrant against Corporation A's offices and seized documents, including JV Agreements. Some of the investors' funds were invested with high-yield investment programs in the United States, which were in turn, another investment fraud. It was never disclosed to investors in Corporation A that the high-yield plan failed and no principal or interest was returned from that investment. Corporation A failed to advise its investors that principal and interest was repaid to early investors by money placed with later investors, not from *bona fide* investment income as the investors were led to believe. In December 2011, M.S. and R.F. each pleaded guilty to one count of fraud over $5,000. M.S. was sentenced to six years in prison while R.F. was sentenced to eight years. Mr. Bailey is scheduled to appear in Court in February 2012 on similar charges.

Tab 3A: RCMP Warrant to Search dated April 28, 2004

24. In their investigation, the RCMP are also considering financial information provided to them.

25. Mr. Carlson has not been charged by the RCMP in relation to its investigation into Corporation A. However, in 2010, M.S., R.F., Garth Bailey and K.R.B. were charged as a result of their involvement in Corporation A.

A.R. and Corporation B

26. A.R., through his company Corporation B, recruited investors into the Corporation A program. In some cases, A.R./Corporation B issued promissory notes to investors and placed the funds with Corporation A under a JV. A.R./Corporation B appears to have been a CCS in the Corporation A scheme.

27. A.R./Corporation B appears to have been compensated in one or more of the following ways:

(a) They may have received commissions on investment dollars they recruited into the scheme. In some cases, they were successful in having others recruit investors into the scheme under Corporation B's name (*e.g.* D.M. who recruited C.B. and others);

(b) In many cases, they may have received higher returns from Corporation A than they paid their investors (*i.e.* investors or lenders in the case of Promissory Note holders), and retained the difference as profit;

(c) They may have received fees for various aspects of the investment transactions, for example a flat fee and/or percentage based on initial investment and/or "returns", and/or fees associated with fund transfers. However, Mr. Carlson is not aware of A.R./Corporation B being compensated in this way.

Tab 4: Documents Pertaining to C.B.

28. Mr. Carlson does not know for certain how A.R. or Corporation B was paid. Until Corporation A collapsed, Mr. Carlson had no knowledge as to what the arrangement between Corporation A and Corporation B/A.R. was. Upon Corporation A's collapse, A.R./Corporation B instructed Mr. Carlson to draft correspondence demanding the return of Corporation B's funds. At that time, A.R. provided supporting documentation to Mr. Carlson to enable him to draft the correspondence.

29. Mr. Carlson recommended that A.R. instruct him to write to Mr. Bailey demanding liquidation of the bond which Mr. Bailey and Corporation A represented that Mr. Bailey held as security in the event that Corporation A failed to pay returns in a timely manner (see para. 14 above). However, A.R. refused to provide these instructions to Mr. Carlson.

Mr. Carlson's Research Respecting High Yield Investments (HYIs)

30. While Mr. Carlson's role was never to research on A.R.'s behalf the legitimacy of any investment in which A.R. was involved, given that A.R. sought Mr. Carlson's assistance in the Corporation A program, Mr. Carlson did attempt to satisfy himself that Corporation A, as an HYI promising what appeared to him to be ridiculous and unrealistic rates of return, was legitimate.

31. The returns represented to Mr. Carlson in Corporation A were concerning to him. However, the information he obtained, educational resources he was directed to, educational resources he himself sought out, and people involved convinced him that the program was legitimate. He did not receive direction to educational resources from Corporation A principals. He consequently agreed to represent A.R. in receiving funds on behalf of Corporation B and repaying investors who had entered JVs with Corporation B. Other than as set out above, Mr. Carlson never sought

independent verification of the claims being made by those involved in the Corporation A scheme or of the scheme's intervening investments or claims.

32. Before and throughout the time Mr. Carlson represented Corporation B, A.R. provided educational material to him and directed him to resources which supported A.R.'s representations that HYIs are possible. A.R. provided to Mr. Carlson a book with accompanying CD entitled *The Creature from Jekyll Island* written by G. Edward Griffin and published in 1998. This text discusses the history or functioning of the Federal Reserve System.

33. Mr. Carlson himself also sought out educational resources. He searched the internet for M.S.'s and R.F.'s names. At that time, there were "Boards" that identified investments or schemes that may not have been legitimate. Once such website was the "Dilligizer". At the time, Dilligizer was, as far as Mr. Carlson was aware, a reliable and comprehensive source that could be relied upon to identify investment scams. When Mr. Carlson searched this website, neither of M.S.'s, Garth Bailey's came up. However, R.F.'s name did: R.F. was identified as being a legitimate investment professional. Mr. Carlson spent considerable time conducting key word searches and reviewing comments on Dilligizer.

34. In seeking to satisfy himself that HYIs generally, and Corporation A specifically, were legitimate investment vehicles, Mr. Carlson sought information from third parties whom he understood to be independent from A.R., Corporation B and Corporation A.

35. Mr. Carlson spoke with numerous financial advisors and business people about HYIs. One such individual was B.G. who advised Mr. Carlson he was a Certified Financial Planner with approximately 20 years of experience. B.G. advised Mr. Carlson that HYIs exist and can be legitimate. Mr. Carlson has known B.G. since 1996. B.G. has no involvement in or connection with Corporation A, Corporation B or A.R.

36. In February or March 2003, when Mr. Carlson advised A.R. that he remained sceptical about HYIs, A.R. urged Mr. Carlson to meet an individual, Mr. A. Mr. Carlson met Mr. A. in Calgary. Mr. A. represented to Mr. Carlson that he was an investor in Corporation A and was situated in the United States. Mr. Carlson understood that Mr. A. was independent of Corporation A's Alberta operations; his business card provided to Mr. Carlson at that meeting indicated he was a Vice-President of Corporation A and listed a North Carolina address. Mr. Carlson did not closely review this business card when he received it. Mr. A. advised Mr. Carlson that he was independent of A.R. On Mr. Carlson's request, Mr. A. showed Mr. Carlson picture identification, original bank statements and ledgers identifying the returns on the money he had allegedly invested in Corporation A over a period of at least 2 years. He also advised Mr. Carlson that he had been invested with Corporation A for 4.5 years. Mr. Carlson compared the bank statements to the ledgers, everything in these statements appeared legitimate, including timely investor payouts from Corporation A.

Tab 5: Business Card of Mr. A.

37. R.F. was also a principal of Corporation A. Mr. Carlson met him on two or three occasions. One such meeting took place at his farm for his 50th birthday celebration. This was a grand occasion attended by more than 140 people. At that gathering Mr. Carlson met many people who told him they were investors in Corporation A. To a person, the people Mr. Carlson spoke to at that gathering attested to the legitimacy and strength of their investments through Corporation A. People were excitedly talking about the success of Corporation A. These conversations suggested to Mr. Carlson that Corporation A was a valid investment program: it appeared to be working and a large number of people were clearly excited about its success. As it turned out, some of these were apparently either some of the "songbirds" set up by the Corporation A scheme to convince more individuals to buy into the Ponzi fraud or direct participants in the fraud. Mr. Carlson did not know this at the time.

38. Mr. Carlson also met with an individual, J.E. a few days before R.F.'s 50th birthday celebration. J.E. represented to Mr. Carlson that he was an investor in Corporation A. He, along with other investors, attended R.F.'s 50th birthday celebration. J.E. advised Mr. Carlson that Corporation A was paying "on time all the time" and that he had been involved with it for approximately 3 years. On Mr. Carlson's request, he provided bank statements and ledgers confirming the returns on his investments with Corporation A. He advised Mr. Carlson that he was situated in the United States, and advised Mr. Carlson that Corporation A was operating in other jurisdictions and had been doing so longer than it had been operating in Alberta. At that time, Mr. Carlson believed Corporation A had been operating in Alberta for 4 years. J.E. also appears to have been a "songbird". Mr. Carlson did not know this at the time.

39. Mr. Carlson also read the Bretton Woods Agreement and literature relating thereto (the Bretton Woods Agreement established rules for financial and commercial relations among the world's major industrial states in the mid Twentieth Century), writings relating to the IMF and World Bank, as well as some writings by John Maynard Keynes, a British Economist. Mr. Carlson read these materials because he wanted to understand the mechanics of how HYIs could work and be legitimate.

40. Mr. Carlson was aware or subsequently learned that other lawyers were directly and indirectly involved with Corporation A, one of whom was Michael Grosh, a Calgary lawyer. Mr. Carlson learned that Mr. Grosh was a purported expert in offshore investments and had authored a book entitled *Choosing an Offshore: Cybertax in the New Millennium*. A.R. advised Mr. Carlson that he had retained Mr. Grosh to advise him in the context of the Corporation A investments on how to legally minimize tax. As far as Mr. Carlson was aware, A.R.'s relationship with Mr. Grosh was ongoing before and throughout the time that Mr. Carlson was involved with Corporation B. Mr. Carlson was reassured as to the validity of what Corporation B was doing by the representations made to him that a lawyer of Michael Grosh's reputation was involved and had advised Corporation B about its involvement in the Corporation A program. Michael Grosh was disbarred from the LSA on October 19, 2009 (for

ungovernability as he had refused to participate with the LSA's investigation into, *inter alia,* his role in the Corporation A scheme).

41. Mr. Carlson attended with A.R. at a meeting with 2 individuals, one of whom advised he was a former senior partner of Borden Ladner Gervais LLP (Mr. Borden), the second individual advised that he was a former senior computer trader with Financial Institution A and was responsible for programming the Financial Institution A's computer trading programs. Together they provided information to Mr. Carlson about how banks take people's money, pool it and then trade on it 24 hours per day to generate large returns.

42. Also in Toronto, Mr. Carlson met with 2 individuals, J.R. and A.K. They advised Mr. Carlson that they were experienced investors and facilitators who routinely sought out, scrutinized and invested in HYIs.

43. In May 2004, Mr. Carlson travelled to New York City where he met an individual E.M. (who represented himself to be an experienced trader) and his lawyer, Marshall Rosenthal. E.M. advised Mr. Carlson of the mechanics of the trading opportunity as the lawyer who was handling the American side of Corporation A. Mr. Carlson met privately with Mr. Rosenthal in his offices.

Tab 6: Business Card of E.M.

Tab 7: Mr. Carlson's meeting notes dated May 4, 2004

44. Each of J.R., A.K., E.M. and Mr. Rosenthal represented to Mr. Carlson that HYIs are legitimate. As individuals who appeared to be polished, professional and educated, Mr. Carlson was encouraged to believe in the legitimacy of HYIs and that Corporation A was a legitimate HYI.

45. Between 1996 and 2003, Mr. Carlson represented a number of A.R.'s clients in real estate matters. Between 2000 and 2003 Mr. Carlson did not represent or act for A.R. himself, though he represented A.R. from 1996 – 2000 and knew him personally throughout this time (*i.e.* between 1996 and 2003). During this period, A.R. was apparently involved in other investment companies with which Mr. Carlson had no involvement. Some of these clients, as far as Mr. Carlson is aware, were involved in HYIs. These former clients of A.R. advised Mr. Carlson that they were happily involved with A.R. in terms of the returns that they had received on investments they had placed with him. Three such individuals are K. and S. H. and C.C. Mr. Carlson recalled the comments these clients made when A.R. later asked Mr. Carlson to become involved by representing A.R. and his investment company *(i.e.* what was eventually incorporated as Corporation B). C.C. did invest in Corporation A through Corporation B or A.R.

Tab 8: Cheques and Cheque Stubs Payable to C.C.

Mr. Carlson's Involvement with Corporation B

46. Mr. Carlson first became involved with Corporation A through Corporation B/A.R. in early 2003. He believed then, and throughout his involvement, that he was involved in a legitimate business transaction**,** but while having seen some verification of payments made out to what may have been one or two songbirds, he never sought independent verification of the legitimacy of the supposed financial investment vehicles in the Corporation A scheme. Mr. Carlson placed heavy reliance on Mr. Bailey's representations.

47. A.R. advised Mr. Carlson that he required a company to operate his investment business, including his involvement with Corporation A. A.R. instructed Mr. Carlson to incorporate Corporation B. At no time was Mr. Carlson involved in Corporation B's day-to-day operations or management. However, he did permit A.R. and Corporation B to use his law office address as Corporation B's registered address (which is not an uncommon practice).

48. Initially, A.R./Corporation B engaged Mr. Carlson to establish trust conditions for the transfer of funds between A.R./Corporation B and Corporation A's lawyer, Garth Bailey. When Mr. Carlson was first retained, the arrangement was that A.R./Corporation B would forward their funds to Mr. Carlson and he in turn would forward the funds to Mr. Bailey on trust conditions that Mr. Carlson was to design and impose to protect A.R./Corporation B. Mr. Carlson understood the intended transaction to be that A.R./Corporation B would give Mr. Carlson money to place in his trust account. Mr. Carlson would then forward the funds to Mr. Bailey, ensuring that trust conditions were properly set and adhered to by Mr. Bailey. Mr. Carlson understood his role to be to assist A.R. by establishing a mechanism, such as a trust condition, which would protect the funds and ensure the return of the principal upon demand.

49. Mr. Carlson understood that A.R. wanted to be able to compel Mr. Bailey to act on the security in the event that the principal funds in the investment were not returned.

50. A.R. advised Mr. Carlson that he wanted the security of having an Alberta lawyer acting on his behalf because he had previously had problems in respect of funds being sent to other jurisdictions. Mr. Carlson understood that A.R. was concerned that Mr. Bailey or other individuals or entities might abscond with the funds before placing them in the target investment. Mr. Carlson further understood that A.R.'s primary concern was having Mr. Carlson impose trust conditions on Mr. Bailey, as Corporation A's counsel to establish trust conditions under which Mr. Carlson would forward A.R.'s/Corporation B's funds to Mr. Bailey.

51. Before being introduced to Corporation A and Mr. Bailey through A.R., Mr. Carlson had never heard of either Corporation A or Mr. Bailey.

52. On February 5, 2003, (the same day Corporation B was incorporated) A.R. sent an email to Mr. Carlson:

"hi Dana - please find below the kind of information from you - from your bank rather - that all I need to do is forward this to the bailey corp. and they'll send the funds directly to you"

Tab 9: Email from A.R. to Mr. Carlson February 5, 2003

53. In February 2003, Mr. Carlson also agreed to receive money from Mr. Bailey on behalf of the Corporation A program for investors who were not affiliated with Corporation B or A.R. to distribute as Mr. Carlson was instructed by A.R. Mr. Carlson was aware that it was necessary for Corporation A to find another lawyer to perform this role as Mr. Bailey's bankers had closed his accounts due to concerns with his banking practices. Mr. Carlson did not know it was a problem with his trust accounts and was told that his role would be short term. He was also advised that if he did not assist, investors (including A.R. and his clients) would be harmed by delay.

54. After receiving funds from Corporation A or on its behalf, Mr. Carlson disbursed the funds based on instructions he received from Corporation B through A.R.

55. On March 3, 2003, Mr. Carlson attended a meeting with M.S., Mr. Bailey, R.F. and A.R. at a restaurant in Calgary. This was the first time Mr. Carlson met Mr. Bailey and R.F. M.S. and Mr. Bailey confirmed to Mr. Carlson that they had been operating this particular investment program for more than 4 years in Canada (originating in Ontario and later commencing operation in Saskatchewan) and that Corporation A had been in existence for more than 20 years in multiple jurisdictions. These representations are also reflected in the Corporation A document entitled "Overview" which Mr. Bailey, M.S. and R.F. hand delivered to him. M.S., R.F. and Mr. Bailey represented to Mr. Carlson that they were experienced, high-level traders who were accustomed to unconventionally high returns because of the knowledge they possessed, their experience and the relationships they had fostered over many years.

56. On March 4, 2003, Mr. Carlson wrote to Mr. Bailey to follow-up on his meeting with Mr. Bailey, R.F. and M.S. the previous day. While Mr. Carlson's email indicates that Mr. Carlson met M.S. previously, Mr. Carlson has no recollection of that prior meeting.

Tab 10: Email from Dana Carlson to Garth Bailey dated March 4, 2003

57. Mr. Carlson believed that Mr. Bailey was a legitimate business person because of Mr. Bailey's professional presentation, the fact that Mr. Bailey was a lawyer at a national law firm, (Mr. Bailey presented Mr. Carlson with his McCarthy Tétrault business card), the fact that he was lawyer in good standing with the LSA (Mr. Carlson did check the LSA website to confirm Mr. Bailey's status), and the fact that Mr. Bailey represented that he held $40 Million USD in liquid securities within his control in the event A.R.'s/Corporation B's invested principal funds were lost.

58. Having not only the comfort of the representations made by his clients who were also A.R.'s former clients that A.R.'s investments paid out, but also believing that by

2003, the investment returns in Corporation A had been made for approximately 3 or 4 years (going back to 1999 or 2000) without any concerns, and, in particular, knowing that Mr. Bailey was represented to be a successful lawyer at a large National firm, and that he held a bond of US $40 Million to secure the investments, Mr. Carlson agreed with A.R. to accept his funds and forward them to Mr. Bailey on an undertaking given by Mr. Bailey that if those monies were misappropriated, Mr. Bailey had the authority and means to return the principal funds invested by A.R.

Tab 1: Corporation A's Overview Documentation

59. On March 10, 2003, Mr. Bailey wrote to Mr. Carlson confirming that he held assets with a value in excess of USD $40 Million on behalf of Corporation C and that the assets were free of liens, claims or encumbrances. In the event of a default in an agreement between Corporation B and Corporation A that was not resolved within 45 days, Mr. Bailey had the authority, on Corporation B's request, to use the assets to raise funds to return Corporation B's principal.

Tab 11: Email Correspondence from Mr. Bailey to Mr. Carlson dated March 10, 2003

60. Mr. Bailey's representations were comforting to Mr. Carlson, and had the effect of encouraging him to believe in HYIs and in Corporation A. Further, Mr. Bailey gave Mr. Carlson the impression that he routinely accepted investment funds under trust conditions. Mr. Carlson did not obtain or request any independent substantive verification that the alleged underlying Corporation A investment transactions were actually occurring, that the Corporation A income and financial positions were as being represented, or that any of the claims or representations made by Mr. Bailey, or those made to him by M.S. and R.F., were true.

61. On March 13, 2003, Mr. Carlson sent an email to Mr. Bailey setting out a draft form of the trust conditions under which Mr. Carlson would forward Corporation B's funds to Mr. Bailey.

Tab 12: Email Correspondence from Mr. Carlson to Mr. Bailey dated March 13, 2003

62. On March 14, 2003, Mr. Bailey replied to Mr. Carlson that, subject to some minor changes, he was agreeable to the terms of the trust conditions set out in Mr. Carlson's March 13, 2003 correspondence.

Tab 13: Email Correspondence from Mr. Bailey to Mr. Carlson dated March 14, 2003

63. On March 17, 2003, Mr. Carlson, on A.R.'s instructions, sent USD $137,000 to Mr. Bailey. A.R. instructed Mr. Carlson to send the money without trust conditions. Mr. Carlson believes these funds belonged to A.R. or members of A.R.'s family.

64. On April 10, 2003, Mr. Carlson sent USD $200,000 to Mr. Bailey. These funds were sent under trust conditions. An individual, D.S. had provided the funds to Corporation B/A.R. for Corporation B/A.R. to invest in Corporation A.

Tab 14: April 4, 2003 Correspondence from Dana Carlson to D.S. countersigned by D.S.

Tab 15: April 1, 2003 US Draft for $200,000 with handwritten note

Tab 16: April 8, 2003 Financial Institution B deposit slip of USD $200,000 re D.S.

Tab 17: April 8, 2003 Cheque from Dana Carlson for USD $200,000 to Corporation B

Tab 18: April 10, 2003 Direction to Wire USD $200,000 to Corporation A/Mr. Bailey

Tab 19: April 10, 2003 Correspondence from Mr. Carlson to Mr. Bailey forwarding USD $200,000 contribution to Joint Venture with Corporation A under trust conditions

65. Mr. Carlson was aware that the funds which Corporation A invested were pooled. Mr. Carlson had been advised that a minimum of $10 million was necessary before anyone could participate in a HYI and that the vast sum itself necessitated the pooling. A.R. explained to Mr. Carlson that the pooling of funds enabled modest investors to participate in these high-level investments. As an explanation of why the average investor was not commonly educated about, or even aware of HYIs, it made sense to Mr. Carlson.

66. Mr. Carlson devoted a great deal of time to working on Corporation B's/A.R.'s matters. The bulk of his practise was taken up by A.R., including entities like Corporation B and U.W. Inc. (U.W. Inc. was incorporated to import vehicles from the United States. Mr. Carlson had limited involvement with this entity). A.R. continually required meetings with Mr. Carlson to have him, among other things, review contracts and meet with individuals who were managing trades where the pooling of funds included A.R.'s money.

67. Mr. Carlson advised A.R. at the commencement of and throughout his representation of Corporation B/A.R. that Mr. Carlson would not represent anyone except Corporation B in respect of the Corporation A investments. When he received calls from, for example, M.D., M.S. or J.W., Mr. Carlson would contact A.R., advise him of the call and seek A.R.'s instructions for Corporation B.

68. Mr. Carlson learned from A.R. that the cheques he was issuing were returns on investments or return of principal to people who were investing in Corporation A through A.R./Corporation B.

69. Sometime in late 2003 or early 2004, Mr. Carlson stated to A.R., in the context of a different investment program, T.F. Inc., that he was not comfortable with that investment because the principals would not answer his questions directly. A.R.'s response that it was his money to invest and that Mr. Carlson should simply send it. Mr. Carlson believed that the funds he sent to T.F. Inc. belonged to A.R. alone and were not pooled. He thus sent the funds as A.R. directed. He later learned that those funds were in all likelihood pooled funds belonging to others besides A.R.

Distributions by Mr. Carlson

70. Mr. Carlson received $23,356 from Corporation A on February 11 or 12, 2003. A.R. provided the cheque to Mr. Carlson and instructed him to deposit it in trust and then distribute it. Mr. Carlson understood that these funds were the returns of principal, interest and, as he now understands, commissions payable to Corporation B investors.

Tab 20: Corporation A Cheque dated February 11, 2003 for $23,356.50

71. On February 18, 2003, Mr. Carlson again received funds from Corporation A/Mr. Bailey. This was a wire transfer in the amount of $74,820. Mr. Carlson understood these funds to be the return of principal, interest and, as he now understands commissions payable to Corporation B investors.

Tab 21: Financial Institution B Credit Advice dated February 18, 2003 for $74,820

72. Mr. Carlson received, on behalf of A.R., a cheque dated February 7, 2003 for $1,000 from Corporation A. Mr. Carlson believes this was a return of investment principal or interest.

Tab 22: Cheque from Corporation A dated February 7, 2003 payable to Mr. Carlson

73. Mr. Carlson had little to no knowledge of, and no control over, how Corporation B's investment funds were being invested or what the mechanisms for investment were. A.R. assured Mr. Carlson that he legitimately had complete access and control over the funds that were given to him by others and that it was within his discretion as to where those funds were invested. A.R. advised Mr. Carlson that he had earned a reputation for earning reasonable and reliable returns on investments. As a result of that reputation, people approached him and asked if they could invest with him. Mr. Carlson may have read the JVs, but otherwise had no involvement in the agreements between Corporation B/A.R. and individual investors. Mr. Carlson did as A.R. and Corporation B instructed him and relied upon the representations of A.R. and Mr. Bailey.

74. At the time he received these first cheques from Corporation A, Mr. Carlson did not appreciate that receiving cheques and distributing funds to Corporation A investors would be a part of his ongoing role for Corporation B/A.R. In this time frame he had

a discussion with A.R. about why A.R. could not receive and disburse the funds himself. Mr. Carlson's involvement in distributing the cheques was supposed to be short term.

75. While Mr. Carlson and A.R. discussed and initially agreed that Mr. Carlson's role was to review documentation and establish means, such as undertakings, to protect A.R.'s/Corporation B's investment funds, soon after Mr. Carlson was retained, his role changed. Almost immediately, A.R. asked Mr. Carlson to receive funds (as Mr. Carlson understood, returned principal, interest thereon and, as he now understands, possibly commissions) on Corporation B's behalf and then distribute the funds to people who had participated in the investment by pooling their money in Corporation B. When Mr. Carlson stated to A.R. that he himself could simply distribute the funds, A.R. stated that it would be more efficient if Mr. Carlson did it because Mr. Carlson was set up for doing so using PCLaw (a legal accounting package) and there would be a continual reconciliation of the funds. Mr. Carlson would thus be providing an enhanced service.

76. A.R. advised Mr. Carlson that the initial distributions which he received from Corporation A were funds belonging to Corporation B for Corporation B to distribute to its investors in accordance with agreements between Corporation B and its investors. Mr. Carlson did not review the actual agreements or confirm that A.R. was complying with the agreements – these were decisions for A.R. to make in his operating of Corporation B.

77. Mr. Carlson later learned from A.R. that Mr. Bailey needed someone to take over the receipt and distribution of funds to Corporation A's investors because Mr. Bailey's banks were refusing to process transactions for him. Mr. Carlson was told, and believed, that the banks were not processing transactions for Mr. Bailey because Mr. Bailey's accounts were new and were for a new company (*i.e.* K.A.S. Inc.) and the volume of transactions and dollar amounts were unusual for a new company.

78. When A.R. asked Mr. Carlson to issue cheques to Corporation A investors, as well as Corporation B investors, he advised Mr. Carlson he would only be required to assist Corporation A on an interim basis until Corporation A had satisfactorily re-organized its banking affairs.

79. As it turned out, the assistance was not on an interim basis. Mr. Carlson eventually opened nine different accounts for "cutting up" funds, three each at Financial Institutions B, C and D. None of these were actually identified as trust accounts as the banks would not open them as true trust accounts. The accounts were kept in Canadian and U.S. dollars and were treated by Mr. Carlson as trust accounts in that he would keep trust records with respect to them. These accounts were charged service charges which were assumed by A.R. or Corporation B. Eventually Financial Institution B advised Mr. Carlson he could no longer operate his accounts through Institution B given the size and volume of the transactions being conducted through the Institution B accounts. Mr. Carlson then continued with the other banks.

80. Mr. Carlson never spoke to anyone except A.R. about issuing cheques to investors in Corporation A. No one at any organization except Corporation B gave Mr. Carlson directions or instructions with respect to the funds he held in trust. The instructions were usually written and on occasion were verbal.

81. Mr. Carlson never accepted instructions from any investors in Corporation A and rarely had any contact with people of Corporation A. He only took instructions from A.R. which were, on very infrequent occasion, forwarded to him by A.R.'s wife (who was also a director of Corporation B).

82. In August or September 2003, along with A.R., Mr. Carlson met with a Calgary lawyer. A.R. advised Mr. Carlson that one of the partners of that lawyer's firm was interested in purchasing Corporation B for $10 million. Mr. Carlson later learned, contrary to A.R.'s statements, it may not have been a lawyer or lawyers who was or were interested in acquiring Corporation B, but was a client of the firm. This proposed or perhaps purported transaction again bolstered Mr. Carlson's belief in the validity of A.R.'s investment business generally and his dealings with Corporation A specifically.

83. In August 2003, Mr. Carlson received $4.1 million from Corporation A. He was aware that the funds were Corporation B's and Corporation A's for distribution to both entities' investors. While Mr. Carlson was uncomfortable distributing Corporation A's funds, Mr. Carlson was told by A.R. that he would be doing something honourable and helpful by returning money to its rightful owners in a timely manner which Corporation A and Mr. Bailey could not do at the time. Indeed, A.R. advised Mr. Carlson that people needed and were relying on the money and if Mr. Carlson did not assist, many people would suffer financial hardship. Mr. Carlson knew that if returns were delayed, A.R.'s/Corporation B's reputation would be damaged, and A.R. asked him to prevent this problem. In this way, Mr. Carlson's role in representing Corporation B again changed from what Mr. Carlson and A.R. had agreed his role would be.

84. Mr. Bailey never advised Mr. Carlson of any investigations into Mr. Bailey's conduct or of the true causes of his difficulties with the banks. In a face to face meeting in March 2003, Mr. Bailey answered in the affirmative when Mr. Carlson specifically asked him if he had US $40 Million in liquid securities and if that money was available to repay investors' principal.

85. While Mr. Carlson placed trust conditions on the funds sent to Mr. Bailey on April 10, 2003, contrary to Mr. Carlson's advice and recommendations, A.R. instructed him not to impose trust conditions on the initial $137,000 Mr. Carlson forwarded to Mr. Bailey (on March 17, 2003) or on subsequent investments sent to Mr. Bailey/Corporation A. These subsequent instructions caused Mr. Carlson great concern as it was Mr. Carlson's understanding that A.R. had asked Mr. Carlson to become involved to help protect his funds and Mr. Carlson felt A.R./Corporation B was not taking reasonable steps to ensure the protection of the funds. When Mr. Carlson expressed his concern to A.R. about proceeding without the trust conditions,

A.R. told Mr. Carlson to send the money because it needed to be done right away or Corporation B/A.R. would miss the investment opportunity and obtaining Mr. Bailey's undertaking in the past had taken two to three weeks. Mr. Carlson recalls that in negotiating the previous trust conditions, Mr. Bailey was not particularly available or responsive and A.R. expressed frustration with this.

Tab 23: Emails between Mr. Carlson and A.R. dated March 6 and 7, 2003

Tab 24: Email from Mr. Carlson to A.R. dated January 11, 2004

86. Mr. Carlson terminated the Lawyer-Client relationship with A.R./Corporation B and anything relating to A.R. in general after the LSA's s. 63 Hearing in March 2005. By February 28, 2005, Mr. Carlson had closed the accounts he had opened in the course of representing A.R./Corporation B.

87. On one occasion, A.R. provided some cheques or bank drafts to Mr. Carlson (Mr. Carlson believes there were five cheques or bank drafts which totalled approximately $150,000) to deposit into Corporation B's account. Mr. Carlson believed these funds belonged to A.R. and that he had full and complete control over them. However, several days after Mr. Carlson had deposited the funds, A.R. advised Mr. Carlson that the funds were investor funds (*i.e.* belonged solely to individual investors, not A.R.) and were not pooled with Corporation B's/A.R.'s funds. Mr. Carlson demanded that A.R. return the funds to the investors. A.R. told Mr. Carlson on more than one occasion that he would return the funds to the investors. However Mr. Carlson does not know whether this happened because A.R. never provided a specific direction to him to repay the investors from the funds Mr. Carlson held in his accounts. As there were no names on the bank drafts, Mr. Carlson could not himself return the funds to the individual investors. Mr. Carlson asked A.R. for the names and was told that A.R. would look after the situation directly. Mr. Carlson believed him. At no time did anyone contact Mr. Carlson in relation to those cheques. Mr. Carlson returned the funds to A.R., trusting that A.R. would himself return these funds to investors.

88. During the course of his involvement in the Corporation A scheme, Mr. Carlson became aware through A.R. and others of various lawsuits in progress or pending against Corporation A, M.S., R.F., and Mr. Bailey from individual investors in the United States.

Trust Transactions

89. In addition to making payments to individuals identified to Mr. Carlson as investors in the Corporation A scheme he made the following payments to Corporation A or related parties: 6 payments to Mr. Bailey and 1 payment to Corporation D.

90. While LSA Investigators believe C. Trust is a Corporation A off shore subsidiary, Mr. Carlson had no knowledge that this was the case. As Corporation A promotors likely intended, Mr. Carlson believed that it was an independent financial institution related to C.M.

91. Similarly, while Corporation D is now believed to be a CCS, Mr. Carlson was told by A.R., and believed, that Corporation D was loaning money to Corporation A to cover the shortfall while Corporation A worked with foreign governments to have their funds released.

92. In total, between February 2003 and March 2005, more than 2,000 transactions occurred in Mr. Carlson's trust accounts relating to A.R., Corporation B, Mr. Bailey, Financial Institution E, Corporation A (including principals, CCSs, and investors), and other related parties.

93. Over CDN $24.6 million was deposited into Mr. Carlson's A.R./Corporation B trust account (net of internal transfers). The largest deposits were:

$14.2 million from Mr. Bailey in 12 transactions between March 1, 2003 and February 9, 2004

$6.0 million from Corporation A in 12 transactions between February 12, 2003 and April 4, 2004

$1.023 million from Corporation D (a Corporation A CCS) in 2 payments on December 2, 2003 and December 5, 2003

$1.2 million from Corporation B/A.R. in 8 transactions between March 17, 2003 and February 5, 2005

$1 million from C. Trust (Corporation A's offshore subsidiary) in 5 transactions between February 3, 2004 and April 22, 2004

$1 million from Financial Institution F (A.R.'s spouse)

94. While LSA investigators have determined that B.R. was a or the principal of Financial Institution F, Mr. Carlson was not aware of that fact. Mr. Carlson first learned about this corporation on December 15, 2004 when A.R. wired $899,985 from it to Mr. Carlson for a real estate transaction (which never closed).

95. The deposits from Mr. Bailey stopped in February 2004 and deposits from Corporation A stopped in April 2004

96. 20 deposits totalling approximately CDN $903,000 between April 3, 2003, and April 20, 2004, appear to have come directly from investors or Corporation A CCSs other than A.R. or Corporation B. A.R. delivered these funds to Mr. Carlson.

97. The amounts deposited into A.R. or Corporation B's trust account were paid out to Corporation B, various other Corporation A CCSs, investors, A.R. and related parties, Mr. Carlson himself for payment only of his monthly retainer, Corporation A and other investment schemes. In many cases, sufficient information was not available in the investigation to determine whether payees were CCSs or individual investors. Mr. Carlson often did not know himself as he simply paid funds to whomever A.R. instructed him to.

98. Payments were made via more than 1,600 cheques and wire transfers ranging from $500 to over $200,000. It appears many of the smaller payments were "returns on investment", while larger payments were payments to CCSs for further distribution to their investors and/or "returns of principal" to CCSs and investors. Most payments appear to be to Corporation A investors and CCSs rather than Corporation B investors, since Corporation B was just one of many CCSs working for Corporation A although Mr. Carlson was not privy to any of this information. Mr. Carlson knew that most of the funds were related to Corporation A investors and not A.R.'s investors when he received larger funds from Mr. Bailey to distribute to Corporation A investors on May 15, 2003. A.R. advised Mr. Carlson that the greater majority of these funds were not related to Corporation B or A.R.

99. Mr. Carlson paid the last major batch of cheques and wire transfers to Corporation A CCSs and investors in December 2003, after which Corporation A failed to make its "normal" distributions for CCSs and investors. Money continued to flow into Mr. Carlson's trust account in relatively smaller amounts from Corporation A, Mr. Bailey, and C. Trust until April 22, 2004.

100. Payments included 6 cheques/transfers to Mr. Bailey totalling US $393,000 that were apparently investor funds flowing to Corporation A.

101. Payments to A.R. and related parties included:

US $1.6 million to Financial Institution F (owned by A.R. and his wife)
US $403,000 to Corporation B Holdings Ltd. (A.R.)
US $117,000 to A.R. (personally)
US $43,000 + CDN$204,000 to B.R. (being A.R.'s brother)
US $13,000 – K.R. (A.R.'s brother)

102. There were also several payments to cash card companies totalling approximately CDN $1.63 million:

$805,000 was paid to Corporation E,
$746,000 was paid to Corporation F, and
$79,000 was paid to Corporation G

M.S.

103. Mr. Carlson met M.S. on four or five occasions throughout his involvement in this matter. Mr. Carlson first met M.S. before the initial meeting in Calgary with Mr. Bailey and R.F., though he does not recall that meeting (see para. 55 above). He met him again at R.F.'s 50th Birthday Celebration in May 2003, and at M.S.'s office. Mr. Carlson also met M.S. at the airport in Toronto while Mr. Carlson was on his way to Toronto in May 2004 when A.R. was experiencing difficulties receiving his money back from Corporation A. On this occasion Mr. Carlson urged M.S. to assist A.R. and was told not to worry, the matter was being looked after and Corporation A had

significant investments in corporations such as a pharmaceutical company and A.M.E. Inc.

104. Each of the four or five times Mr. Carlson met him, M.S. represented to Mr. Carlson that he had a great deal of experience in the international investment transactions in which Corporation A was involved. He also spoke in general terms of the humanitarian component of the investment funds (no specifics of the humanitarian component were provided, only generalized discussion about how each trade had a humanitarian component). M.S. advised Mr. Carlson that a humanitarian component was a requirement arising from the Bretton Woods Agreement mechanism. His representations reassured Mr. Carlson, as they were no doubt intended to do, that Corporation A was a legitimate investment vehicle which also contributed to the community.

105. M.S. seemed completely at ease with the situation when Mr. Carlson met him at the airport in Toronto in early May 2004 and was very calming in his approach. Mr. Carlson had requested the meeting with him to emphasize that A.R./Corporation B was serious about getting his/its money back by having Mr. Carlson, as his lawyer, discuss the matter with M.S. M.S. advised Mr. Carlson at that meeting that Corporation A was worth well over $100,000,000, which more than covered any problems that Corporation A was experiencing at that time and not to worry about it: the only difficulties were delays they were experiencing by government authorities holding up their funds for what M.S. stated were improper reasons, but which M.S. advised Mr. Carlson was not uncommon. M.S. further advised Mr. Carlson that he was experienced in dealing with and resolving such delays.

106. On February 1, 2004, Mr. Bailey wrote to Mr. Carlson confirming that he held "a directive from Corporation A Financial Inc. that [permitted], in the event of default of Corporation A under its agreements, liquidation of assets to reimburse original funds placed under such agreements."

Tab 25: Correspondence from Garth Bailey to Dana Carlson dated February 1, 2004

107. In the Spring of 2004, Mr. Carlson became aware of some investors who did not receive the returns that Corporation A had promised, so he had to vary the wording of his comfort letters as outlined below.

A.M.E. Inc.

108. Mr. Carlson became aware of A.M.E. Inc. through Mr. Bailey. Mr. Bailey brought a device with him during his initial meeting with Mr. Carlson which was a transparent and detailed model of a motor. Mr. Bailey advised Mr. Carlson that it had unique engineering qualities in respect of the piston configuration and that the design would revolutionize motors in the airplane industry because it was much more efficient, had fewer moving parts, and less vibration. He advised that, like the rotary engine, it was

going to be huge. He then told Mr. Carlson that he was personally involved or invested in it and it would result in incredible wealth.

Comfort Letters

109. The term "comfort letter" is borrowed from financial markets terminology where it refers to written assurances provided to prospective investors regarding statements made by the promoters.

110. When A.R. first asked Mr. Carlson to write comfort letters expressing the reliability of Corporation B's investments with Corporation A, Mr. Carlson refused; Mr. Carlson did not know anything about the investments themselves. A.R. urged and pressured Mr. Carlson to write the letters. Because nothing suggested to Mr. Carlson that Corporation A was not a legitimate investment vehicle or that investors were not being paid Mr. Carlson wrote the letters expressing what, in his experience, was true.

111. Mr. Carlson wrote the letters with the intention, which is not stated in any of the letters, that if someone contacted him expressing a desire to invest in Corporation A through Corporation B, he would communicate with that individual's lawyer. It was Mr. Carlson's intention not to act for other investors: that would result in a conflict of interest. However, Mr. Carlson prepared and issued at least 20 comfort letters which he understood would be utilized by Corporation B and A.R. for the purpose of soliciting investors. Mr. Carlson did not knowingly meet with people for the purpose of promoting investment in Corporation A. A.R. advised Mr. Carlson that the "Comfort Letters" would be used by investors to get involved with the Corporation A program through their own lawyer, and the letters would be used as a starting point to deal with Mr. Carlson, something which never actually happened.

112. There were two types of letters which were usually sent as a pair:

(1) Those which generally refer to Mr. Carlson's relationship with A.R. and Corporation B, and which generally reference Mr. Bailey's undertaking (without actually naming Mr. Bailey) and the US $40 Million assets protecting the principal (the "Type 1 Letters"); and,

(2) Those which explain in greater detail the means by which an investor in Corporation B's funds are protected (the "Type 2 Letters").

113. The general text of the Type 1 letters was:

> I have represented A.R. for at least 6 years in the course of his business dealings. I have also represented Corporation B since it's [*sic*] inception, a corporation incorporated pursuant to the laws of the Province of Alberta and in good standing. The majority of my dealings with A.R. and all my dealings with Corporation B involve the loaning of Canadian and American funds in return for unconventionally high yields.

> I have, in my capacity as a barrister and solicitor, frequently and regularly disbursed returns on those funds as directed by A.R. and Corporation B and, although I am aware that returns are not guaranteed, I am not aware of returns not being paid as represented, nor I am [*sic*] I aware of anyone or any entity who has failed to have the principal amount of their funds retuned.
>
> Corporation B has the undertaking of a [*sic*] Alberta lawyer in good standing that he will only deal with the funds forwarded to him by Corporation B on trust condition that he return the principal sum in the event of a default. As a consequence of this arrangement I am comfortable in forwarding the principal funds to be loaned because, even though I am advised that the funds are protected by assets exceeding $40,000,000.00 USD, the Law Society will insure the loss if there is a breach in the handling of those funds.

114. The general text of the Type 2 Letters was:

> Often I am asked how funds are protected once they leave a contributor's hands. Naturally, contributors are concerned that once they give up control of their funds, their funds may not reach their intended destination and become non-recoverable by the contributor.
>
> I act for and receive my instructions from Corporation B and as such am instructed to receive funds from contributors on account of Corporation B. Once I receive certified funds from a contributor I will undertake not to deposit them into Corporation B's account until I have a [*sic*] executed cheque in my possession for the same amount and when I do so deposit such funds into Corporation B's account, I will further undertake to forthwith certify the said Corporation B cheque for the same amount and deposit it back into my trust account, now identified as funds that I hold in trust on behalf of Corporation B.
>
> I undertake to then forward those funds to Corporation A's lawyer on trust condition that he only deal with the funds when he undertakes, as he indicates that he will and as he has in the past, to return the principal sum in the event of a default under the terms of a referenced Joint Venture Agreement between Corporation A and Corporation B. As a consequence of this arrangement I am comfortable in forwarding the principal funds to Corporation A because, even though I am advised that the funds so forwarded are protected by assets exceeding $40,000,000.00 USD in value, the Law Society of Alberta will effectively insure the loss if there is a breach in the handling of those funds.

I will also undertake to obtain a irrevocable Direction to Pay from Corporation B directing:

1. me to forward the principal to Corporation A's lawyer on trust conditions as set out above;

2. that the principal and returns thereon from Corporation A, if any, be paid to my office; and

3. then directing me to pay those returns, if any, and the principal to the contributor.

   There may be an alternative in so far as I could bypass depositing the contributor's funds into Corporation B's account, but for the time being, expert accounting and tax advice to Corporation B recommends against proceeding in such a manner.

115. Within those 2 general types of letters, there were some variations in wording:

(a) June 3, 2003 Type 1 Letter included the sentence at the end of paragraph 2:

"I am quite certain that if an individual was not paid as represented that I would have first-hand knowledge of it because my office receipts and distributes a significant quantum of funds on behalf of Corporation B."

(b) June 3 and 9, 2003 Type 1 Letters included the sentence at the end of paragraph 3:

"I have not met or heard of a single individual who has not been completely satisfied with the program despite my efforts to locate one and the due diligence I have performed on the Program and its members."

(c) Type 1 Letters sent after June 3, 2003 included the following at the end of the letter:

Recently I separately met with two individuals who have been in the Program for years. One gentleman from Boca Raton, Florida, USA has been involved in the Program for over 3 years and the other, from North Caroline, USA has been involved for over 4.5 years. Both of these individuals proved to my satisfaction that they were who they represented they were and provided detailed documentation evidencing receipt of the returns they were promised and return of their principal. To use their words, the Program "pays on time all the time".

(d) In the Type 2 Letters, some of the letters included at the first paragraph the phrase "their funds may not reach their intended destination and become non-recoverable by the contributor(s)".

The bolded phrase was not included in letters issued on June 9, July 29, August 3 and 8, September 5 or after September 21, 2003.

(e) Some of the Type 2 Letters contain at the second paragraph the following phrase:

In this way the funds will then change their complexion to funds that I hold in trust on behalf of Corporation B. As I represent Corporation B, I am unable to represent a contributor(s) because of the potential conflict issues raises.

The bolded portion was only included in letters issued July 29, August 8, September 5 and October 8, 2003.

(f) In one Type 2 letter written by Mr. Carlson dated March 2, 2004, Mr. Carlson stated:

> I confirm that I presently hold funds in excess of the sum of $1,000,000.00 USD on behalf of A.R./Corporation B in one of my Financial Institution C USD trust accounts located in Red Deer, Alberta, Canada.
>
> I confirm that these funds are fully free of any liens, debts and/or encumbrances and are clean, clear and of non-criminal origin.

Tab 26: Index of Letters written by Mr. Carlson to Potential Investors in Corporation A through Corporation B

116. The Type 2 Letters describe a process whereby Mr. Carlson, upon receiving an investor's cheque, would not deposit that cheque until he was in receipt of a cheque from Corporation B in the same amount. Upon depositing the investor's cheque, he would obtain a certified cheque for the same amount issued by Corporation B. He would then forward the certified cheque to Mr. Bailey on trust conditions.

Tab 27: Type 1 Letters written by Mr. Carlson

Tab 28: Type 2 Letters written by Mr. Carlson

117. Mr. Carlson wrote these letters on A.R.'s request. He believes he sent two of the Type 2 Letters.

118. In stating in both the Type 1 and Type 2 Letters that "the Law Society of Alberta has mechanisms that will effectively insure a lose if there is a breach in the handling of those funds", Mr. Carlson was addressing the concern of what would happen if Mr. Bailey, as the lawyer receiving funds impressed with trust conditions, absconded with them in breach of those trust conditions. On one occasion, Mr. Carlson addressed letters to potential investors on behalf of T.G.E. Inc. A.R. had requested that Mr. Carlson prepare these letters as a precedent package. Mr. Carlson never received any cheques from or payable to the addressee of these letters. Mr. Carlson did not take any further steps in representing T.G.E. Inc.

119. The comfort letters written by Mr. Carlson were inaccurate and misleading. He overstated his previous dealings with A.R., his involvement was far too limited to support assurances that returns were being paid as represented, he relied on A.R.'s word and the word of the songbirds (although he did not know they were songbirds at the time) that investors always got paid and would not have known about any defaults in any event, references to individual successes actually had no involvement in Corporation B but Corporation A and the length of their involvement was misstated. He had no basis for vouching for the character of funds he was holding, and the LSA's coverage of funds provided to him and passed on to Mr. Bailey in the scheme was not unconditional.

120. In the case of personalized letters, Mr. Carlson knew about specific individuals who were being targeted as prospective investors and who would rely upon his representations in making a decision to invest.

121. In the case of generic "To whom it may concern" letters, Mr. Carlson was aware of the specific class of prospective investors in contact with the scheme's promoters who would rely upon his representations in making a decision to invest.

122. The comfort letters were not mechanical descriptions of Mr. Carlson's role in furthering the investment scheme. Ultimately Mr. Carlson's letters were or may have been utilized by the scheme's perpetrators to promote the scheme's success by bringing new investors relying, at least in part, upon the strength of Mr. Carlson's status as a lawyer and the representations he was making in these comfort letters.

Payment Received by Mr. Carlson

123. On January 24, 2003, Mr. Carlson met with A.R. to discuss the terms of Mr. Carlson's retainer. At that meeting A.R. instructed Mr. Carlson to incorporate Corporation B and stated to Mr. Carlson that his fee would be 1% of funds he received from Corporation A. A.R. advised Mr. Carlson that Corporation A would be forwarding payments on May 15, August 15, and November 15, 2003. Mr. Carlson would consequently get paid when returns were paid (At that time, Mr. Carlson did not know that A.R. had investors. A.R. advised Mr. Carlson that the money belong to him. Until A.R. asked Mr. Carlson to write cheques to other people, he was unaware that it was not all of his own money). A few months later Mr. Carlson went on a monthly retainer.

Tab 29: Dana Carlson's notes from January 24, 2003 meeting with A.R.

124. Although A.R. invited Mr. Carlson to invest in Corporation A, Mr. Carlson did not invest in Corporation A because he considered it a conflict.

125. Mr. Carlson was on a general retainer with Corporation B from August 2003 to February 2005, receiving USD $3,000 per month from August – September 2003, USD $4, 000 per month from October 2003 – October 2004 and CND $5,000 per month from October 2004 – February 2005 when he ceased acting for A.R. and Corporation B, totalling approximately CDN $80,000.

Tab 30: Resolutions of Directors and Shareholders of Corporation B

Tab 31: Accounts issued by Mr. Carlson to Corporation B/A.R. between February 2003 and August 2004

126. In February 2004, Mr. Carlson issued account #2-9-04 to Corporation B "with respect to February 2004 reception and payout of J.W.". That account was for USD $10, 484.62 and was paid from funds which Mr. Carlson held for Corporation B. A.R. had negotiated the amount of Mr. Carlson's account with J.W. and told Mr. Carlson what

to bill. Mr. Carlson had, as a one off, received and disbursed funds for J.W. or his company.

Tab 32: Dana Carlson's Account 2.9.04 issued to Corporation B in February 2004

127. On November 18, 2002, Mr. Carlson's company, C.H. Inc., received a $30,000 loan from ###### Alberta Ltd., a company owned by A.R.'s brother B.R. Mr. Carlson advised B.R. that he could receive independent legal advice in respect of the loan. C.H. Inc. repaid the principal of the loan. B.R. forgave C.H. Inc. the interest on the loan.

128. On December 5, 2003, Corporation B loaned Mr. Carlson $20,000 at 8% interest. The loan was intended for C.H. Inc. and Mr. Carlson forwarded the funds to C.H. Inc.

Cash Cards

129. Cash cards can be used as mechanism to avoid surveillance by banks and anti money laundering authorities including Canada's FINTRAC and the U.S. Treasury's FinCEN. Cash cards are effective for this purpose because they eliminate the need to cut individual cheques (*i.e.* one large payment can be made to the cash card company to fund multiple cards, rather than cutting separate cheques to each investor). Mr. Carlson was advised that A.R. sought to use cash cards to streamline payments to his investors because it was easy and could be done online.

130. Mr. Carlson not only knew that several individuals would receive money through the cash cards, he also knew who the individuals were and what amounts they were to receive. This information was provided to him, by A.R., at the times Mr. Carlson was directed to make the payments to Cash Cards International as specific listings showing payees, amounts, and totals that Mr. Carlson was directed to pay to the cash card companies.

131. Ponzi schemes have also been known to use off shore jurisdictions with lax regulations in conjunction with cash cards in a further attempt to avoid detection. For example, in one U.S. case in 2005 it was alleged that the defendants convinced members of the public to wire money to an attorney-client trust account held in the name of the law office of one of the defendants. Investors' funds were then transferred from the attorney-client trust account to a cash card company and the defendants would then cause the cash card company to transfer the money back to those same investors or earlier investors as purported "returns" on their investments, as was done in the case of numerous Corporation A/Corporation B investors.

132. Mr. Carlson knew that cash cards could be used to avoid obligations such as spousal or child support, or taxes. He thought it could be possible to use cash cards to avoid taxes, but also believed that most jurisdictions have a tax enforcement treaty that mandates the exchange of information so that such funds could be tracked for income reporting purposes. At the time, Mr. Carlson was not concerned that A.R./Corporation B were using the cash cards for illegal or improper purposes.

133. Mr. Carlson received additional funds from A.R. through cash card withdrawals. Mr. Carlson did not keep records of the amount he received through the cash cards. Mr. Carlson's recollection is that the total he received through the cash cards is approximately CDN $40,000. The LSA investigation found evidence that the total amount received is closer to CDN $76,000.

134. A.R. advised Mr. Carlson that the cash cards were intended to be a mechanism by which Mr. Carlson would be removed from disbursing payment to investors. Mr. Carlson understood that A.R. was "testing" the system by issuing funds to Mr. Carlson through the cash cards. Mr. Carlson ought to have appreciated that by using cash cards and adding another layer of distribution that it would make it more difficult to track the funds flowing through the scheme.

135. Mr. Carlson did not declare the funds he received from the cash cards as income because A.R. originally stipulated these funds were a loan. Despite repeated requests by Mr. Carlson of A.R., A.R. (a) would not discuss the terms of the loan with Mr. Carlson, and (b) would not confirm the amount of the loan. When it became clear to Mr. Carlson that he would not be able to obtain those details from A.R. and that A.R. considered the funds payment of or gift to Mr. Carlson, Mr. Carlson declared the $40,000 as income following his s. 63 Hearing and incurred (and paid) penalties and interest for doing so late. CRA has not raised this as an issue with Mr. Carlson since.

Securities Law Issues

136. Corporation A was never registered to trade securities in Alberta. Neither Corporation B nor A.R. were registered with the Alberta Securities Commission as a dealer, salesperson or advisor.

137. Corporation A securities were not issued under a prospectus registered in Alberta, nor were Corporation B securities issued under prospectus.

138. Corporation A, Corporation B, and A.R. were trading in securities as defined in the *Securities Act* and related legislation, and were required to be registered. Similarly, they were trading in securities which required them to issue an approved prospectus. Mr. Carlson knew or ought to have known that such was the case but took no actions to advise his client to correct the situation or stop the unlawful conduct, nor did he make any reasonable effort to ensure Corporation B and A.R. qualified for any exemption.

139. Mr. Carlson accepted Mr. Bailey's and M.S.'s advice that the JVAs and Promissory Notes complied with the law. He himself had experience with Promissory Notes (for instance, in the context of real estate, matrimonial law matters and business purchase transactions) and therefore accepted their representations.

140. On December 4, 2001, the Saskatchewan Securities Commission (SSC) issued a temporary cease-trade order against Corporation A and R.F., among others, and directing them to cease trading in all securities. The SSC found that none of the Respondents were registrants within the meaning of the *Securities Act* and that no

preliminary prospectus or prospectus had been filed with, or approved by, the SSC. On December 17, 2001, the SSC extended its temporary order indefinitely. On June 2, 2004, the temporary order was extended indefinitely.

141. On May 16, 2004, the Alberta Securities Commission (ASC) issued a temporary cease-trade order against, among others, Corporation A, R.F., M.S., and Garth Bailey, Garth Bailey Professional Corporation. The interim order provided that all trading cease in securities of Corporation A, including any subsidiary, affiliate or successor.

142. At the ASC hearing, evidence indicated that securities were sold illegally to a number of investors. The securities consisted of promissory notes coupled with an expectation of both principal and a significant rate of interest or return. The Respondents traded in these securities without being registered to do so, and distributed securities for which there was no prospectus or receipt obtained from the ASC's Executive Director.

143. By July 2003, the British Columbia Securities Commission ("BCSC") was investigating Corporation A for the same issues identified in Saskatchewan and Alberta. The BCSC forwarded its investigation file to the RCMP because it prefers to see the police handle alleged or potential criminal matters.

144. On December 18, 2003, the Manitoba Securities Commission issued an Investor Alert stating that Corporation A, Corporation D and certain others are involved in illegal investment opportunities. The warning stated: "The public is warned that none of (these) entities are permitted to collect money from the public in this way. If you have invested your money with them, your money may be at risk."

145. Mr. Carlson became aware of the SSC's orders while he represented Corporation B/A.R. When he did become aware of the SSC's orders, Mr. Carlson spoke with A.R. who advised him that they were a result of a technical non-compliance issue in Saskatchewan which Corporation A anticipated would be resolved shortly. Mr. Carlson did check the ASC website after this discussion. There was nothing pertaining to Corporation A on the ASC website at this time which led Mr. Carlson to accept A.R.'s representations that the issue existed in Saskatchewan only. Mr. Carlson did not draft promissory notes between Corporation B and investors, though on one instance he drafted an agreement between C.B. and Corporation B pertaining to C.B.'s investment with Corporation B. However, in effect, Mr. Carlson, through his role with Corporation B and Corporation A was aiding Corporation A to trade in violation of the cease trade orders.

146. By assisting A.R., Corporation B and Corporation A in executing investment transactions that did not comply with securities laws, Mr. Carlson participated directly in investment activities he knew or ought to have known were unlawful (*i.e.* breached securities laws), through actions including:

- acting as a conduit for the flow of funds
- issuing comfort letters promoting the investment scheme

- drafting various key documents relating to the investment transactions, including trust condition letters relating to the flow of funds between Corporation B and Corporation A, promissory notes between Corporation B and investors, and a non solicitation/non disclosure/non circumvention agreement for another Corporation A CCS

RCMP Investigation

147. The RCMP appears to be aware of Mr. Carlson's role in the Corporation A investment scheme as a paymaster. As far as is known to Mr. Carlson, he is not under criminal investigation. He was contacted by the RCMP as a potential witness but was never interviewed.

LSA Investigation Procedure

148. The LSA Audit Department began a Rule 130 Audit of Mr. Carlson's law practice on October 6, 2004. That Audit identified a high volume of trust transactions that were unusual in their number and dollar amount. Specifically, more than CND $20 million pertaining to Corporation A went into and out of Mr. Carlson's accounts in a period of approximately 8 months, commencing February 12, 2003.

149. Based on the findings of the Rule 130 Audit and the investigation by the LSA into Garth Bailey, Investigation Order #IN######## was issued on February 17, 2005, directing an examination of Mr. Carlson's law practice.

150. On March 11, 2005, following preparation of an Interim Investigation Report, a s.63 Hearing was conducted. Mr. Carlson was not suspended from practise following that Hearing; conditions were placed on his practise, including the requirement that another member of the LSA in good standing counter-sign all cheques issued from Mr. Carlson's trust accounts.

151. On August 8, 2006, a separate investigation into Mr. Carlson's compliance with the undertakings was also commenced (CO########/IN########). This investigation was dismissed by the Executive Director on October 23, 2008.

152. On Monday, October 16, 2006, the Law Society investigator contacted Mr. Carlson to inform him that the LSA wanted to take an image of his computers either later that day or on Friday, October 20, 2006. Mr. Carlson wanted to defer to the advice of his counsel pertaining to this demand. Mr. Carlson's counsel was not available to consult on October 16th.

153. Before the LSA could attend on October 20th to mirror his hard drives, Mr. Carlson purchased new hard drives on October 18, 2006, for his two office computers, as well as a home computer that he moved to his office at this time. He had operating systems installed, certain data files restored, and he destroyed the hard drives that the LSA was seeking to take images of.

154. Mr. Carlson's initial explanations to the LSA investigator on December 18, 2006, for the reason and context of the changes to his hard drives were made were confusing,

overstated, and incorrect. He was not completely forthcoming on these points with the LSA investigator and only imparted his full explanation incrementally.

Mr. Carlson's Explanation for the Destruction of Computer Hard Drives

155. Mr. Carlson has had computers in his office since the inception of his practice. The ones the LSA intended to mirror were second hand computers moved into the office from a recreational property he jointly owned with a friend. The computers, which were accessible to anyone at the recreational property and not password protected, contained software for which Mr. Carlson was not licensed to use when he began using the computers for his law practice. In addition, the young adult son of Mr. Carlson's friend had an extended stay at the property with unfettered access to the computers. There were numerous parties attended by persons unknown to Mr. Carlson who may have been using the computers. Mr. Carlson was concerned about potential content on the computers, residual or otherwise. Mr. Carlson was also concerned about the LSA reviewing his personal emails and internet history. So he consequently arranged for the change in the hard drives of the computers the LSA was coming to mirror.

156. Mr. Carlson feared that his situation with the LSA would be worsened by a reaction to the pirated operating systems and potentially embarrassing data on his hard drives unrelated to the Corporation A investment scheme. When the hard drives were changed, Mr. Carlson told a friend he had asked to perform this work to install properly licensed software. The transfer of data was accomplished by Mr. Carlson identifying the files he wanted to keep. The old hard drives were left with Mr. Carlson who destroyed them. The intent was to ensure that all of his work files (whether active or dormant) were retained and transferred to the new hard drives.

157. The LSA finally had Mr. Carlson's computers imaged on January 30, 2007. The LSA's access to the information therein was subject to conditions proposed by Mr. Carlson's legal counsel and agreed to by the LSA, namely that:

- The LSA use the services of an independent third party (mutually agreed upon as Grant Thornton LLP) to identify items of potential interest through keyword searches

- Mr. Carlson's counsel will review the documents, files, and/or text fragments so identified to determine whether any are protected from LSA review by solicitor client privilege as it pertained to the investigation (i.e. communications between Carlson and his counsel)

158. On January 2, 2009, the LSA received an initial report from Grant Thornton LLP on the results of various keyword searches done on Mr. Carlson's computer data, such as it was on January 30, 2007. Grant Thornton LLP released the report to the LSA after complying with the request of Mr. Carlson's counsel "that two very minor references be redacted … to preserve solicitor/client privilege."

159. The Grant Thornton LLP report did not identify any further items of interest to the investigation. There was virtually a complete lack of any electronic data relating to this matter such as emails, memos, and letters where the hard copy evidence gathered during the course of the investigation clearly showed that such data must have existed electronically on Mr. Carlson's computers at one time.

160. Mr. Carlson insists he did not delete or have deleted any content that related in any way to Corporation B, A.R., Corporation A, or Mr. Bailey in order to avoid LSA Investigators finding such information. Rather, Mr. Carlson's practice at the time was to delete old files to make room for new files as his computers filled up, and after he ensured he had complete hard copies of the files that were deleted.

161. The LSA is unable to find any direct evidence that Mr. Carlson actually knew the Corporation A investment scheme was a fraud.

Proposed Amendments to Citations

162. It is proposed that the Citations against Mr. Carlson be amended as follows (amendments in italics):

Citation 1: IT IS ALLEGED THAT you *unwittingly enabled a party or parties to achieve* an improper purpose, and that such conduct is conduct deserving of sanction

Citation 2: IT IS ALLEGED THAT you issued *inadvertently* misleading or inappropriate letters *used* for the purpose of giving reassurance to prospective investors regarding the security of their investments, and such conduct is conduct deserving of sanction

Citation 3: IT IS ALLEGED THAT you improperly accepted compensation, other than appropriate legal fees, from a party or parties seeking to achieve an improper purpose, and that such conduct is conduct deserving of sanction

Citation 4: IT IS ALLEGED THAT you represented clients in business transactions which you knew or ought to have known were in breach of securities law, and that such conduct is conduct deserving of sanction

Citation 5: IT IS ALLEGED THAT you received payment of monies for your own use which you failed to disclose on your Income Tax returns, and such conduct is conduct deserving of sanction

Citation 6: IT IS ALLEGED THAT you *unnecessarily complicated* the Law Society investigation by destroying *potential* evidence *and not being immediately forthright in explaining to the Law Society why you did so*, and such conduct is conduct deserving of sanction

Citation 7: IT IS ALLEGED THAT you failed to be candid with the Law Society, and such conduct is conduct deserving of sanction.

Admission of Facts and Guilt

163. Mr. Carlson admits to the above Agreed Facts and admits guilt to Citations 1, 2, 3, 4 and 6, as amended.

THIS AGREED STATEMENT OF FACTS IS MADE this 28th day of February, 2012.

Per: Dana I. Carlson