

**IN THE MATTER OF THE SECURITIES ACT  
R.S.O. 1990, c. S.5, AS AMENDED**

**AND**

**IN THE MATTER OF FIRST GLOBAL VENTURES, S.A., ABRAHAM  
HERBERT GROSSMAN (a.k.a. ALLEN GROSSMAN) and ALAN MARSH  
SHUMAN (a.k.a. ALAN MARSH)**

**REASONS FOR DECISION ON THE MERITS  
(Section 127 of the *Securities Act*)**

<b>Hearing:</b>	April 17, 19 and 20, 2007	
<b>Written Submissions Received:</b>	May 18, 2007 June 29, 2007 July 9, 2007 July 18, 2007	
<b>Decision:</b>	December 14, 2007	
<b>Panel:</b>	Wendell S. Wigle, Q.C. Suresh Thakrar Margot C. Howard	- Commissioner (Chair of the Panel) - Commissioner - Commissioner
<b>Counsel:</b>	Derek Ferris  Ari Kulidjian  Alan Marsh Shuman  First Global Ventures, S.A.	- For Staff of the Ontario Securities Commission  - For Allen Grossman  - On his own behalf  - No one appeared on behalf of First Global Ventures, S.A.

# TABLE OF CONTENTS

<b>I. Overview.....</b>	<b>1</b>
<b>II. Background .....</b>	<b>2</b>
<b>A. The Respondents .....</b>	<b>2</b>
1. First Global .....	2
2. Shuman .....	3
3. Grossman .....	3
<b>B. The Events and Circumstances Surrounding the First Global Proceeding .....</b>	<b>4</b>
1. The Relationship Between the First Global Proceeding and the Maitland Proceeding .....	4
(i) The Maitland Proceeding .....	4
(ii) The Incorporation of Introvest.....	5
(iii) Consulting Agreement Between Introvest and First Global .....	5
2. Solicitations by First Global and Shuman.....	6
3. First Global’s Website .....	7
4. Cease Trade Orders.....	7
(i) Orders Relating to First Global .....	7
(ii) Orders Relating to Maitland .....	8
<b>III. The Issues .....</b>	<b>8</b>
<b>IV. The Evidence.....</b>	<b>9</b>
<b>A. The Witnesses .....</b>	<b>9</b>
1. The Investors.....	9
(i) Investor #1.....	9
(ii) Investor #2.....	10
(iii) Investor #3.....	11
(iv) Investor #4.....	12
2. Testimony Regarding the Websites .....	12
(i) The President of the Web Development Company .....	12
3. The Investigators.....	13
(i) LeBlanc .....	13
(ii) Handanovic.....	14
(iii) Sikora .....	14
4. Testimony Regarding Interactive Offices Worldwide .....	15
(i) The Interactive Offices Employee.....	15
<b>B. The Agreed Statement of Facts .....</b>	<b>16</b>
<b>C. Evidence Relating to Grossman.....</b>	<b>17</b>
<b>D. The Affidavits .....</b>	<b>17</b>
1. The Affidavit of Grossman .....	17
2. The Affidavit of Shuman .....	18
<b>E. Shuman’s Admissions .....</b>	<b>19</b>
<b>V. Submissions .....</b>	<b>19</b>
<b>VI. Analysis.....</b>	<b>19</b>
<b>A. Preliminary Issues.....</b>	<b>19</b>
1. The Failure of Some of the Respondents to Appear at the Hearing .....	19
2. The Use of Hearsay Evidence .....	20

<b>B. Issue 1 - Did the Respondents trade in securities while not being properly registered with the Commission contrary to subsection 25(1) of the Act and contrary to the public interest? .....</b>	<b>21</b>
1. The Law .....	21
2. Grossman’s Conduct Constituted Acts in Furtherance of a Trade .....	22
3. Shuman’s Conduct Constituted Acts in Furtherance of a Trade .....	24
4. First Global Engaged in Acts in Furtherance of a Trade.....	25
5. The Respondents do not Qualify for Exemptions .....	25
<b>C. Issue 2 - Did the Respondents engage in a distribution contrary to subsection 53(1) of the Act and contrary to the public interest? .....</b>	<b>27</b>
1. The Law .....	27
2. The Evidence Demonstrating that the Respondents Engaged in Conduct Contrary to Subsection 53(1) of the Act.....	28
<b>D. Issue 3 - Did Grossman’s activities constitute a breach of the Commission order issued against him, Maitland and others on January 24, 2006? .....</b>	<b>29</b>
<b>E. Issue 4 - Did the activities of First Global and Shuman after May 29, 2006, constitute a breach of the Commission order issued against First Global and its officers and employees on May 29, 2006? .....</b>	<b>29</b>
<b>F. Issue 5 - Did Shuman’s activities after June 28, 2006, constitute a breach of the Commission order issued against him on June 28, 2006? .....</b>	<b>30</b>
<b>G. Issue 6 - Did the Respondents use high-pressure sales tactics when selling First Global shares to the public contrary to the public interest?.....</b>	<b>30</b>
<b>H. Issue 7 - Did First Global fail to comply with the Commission order dated September 12, 2006, by not posting a copy of the September 12, 2006 Commission order on the homepage of First Global’s website? .....</b>	<b>31</b>
<b>I. Issue 8 - Was the conduct of the Respondents contrary to the public interest and harmful to the integrity of Ontario’s capital markets? .....</b>	<b>31</b>
1. The Law .....	31
2. Information Posted on First Global’s Website is Contrary to the Public Interest .....	33
3. Disregard for Commission Orders .....	33
4. Misrepresentations Contrary to the Public Interest.....	34
5. Conclusion on Public Interest .....	35
<b>VII. Conclusion .....</b>	<b>36</b>

## REASONS AND DECISION ON THE MERITS

### I. Overview

[1] This was a hearing on the merits before the Ontario Securities Commission (the “Commission”) pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), to consider whether First Global Ventures, S.A. (“First Global”), Abraham Herbert Grossman (a.k.a. Allen Grossman) (“Grossman”) and Alan Marsh Shuman (a.k.a. Alan Marsh or Al Marsh) (“Shuman”) (collectively, the “Respondents”) breached the Act and acted contrary to the public interest.

[2] The parties agreed that this proceeding should be bifurcated; first, a hearing on the merits of the case; and second, if necessary, a hearing to address sanctions.

[3] This hearing arose from a Statement of Allegations and Notice of Hearing filed by Staff of the Commission (“Staff”) on June 5, 2006. On July 11, 2006, an Amended Statement of Allegations and an Amended Notice of Hearing were issued. Subsequently, on March 8, 2007, an Amended Amended Statement of Allegations was issued, and on March 9, 2007, an Amended Amended Notice of Hearing was issued setting down the hearing on the merits for April 17, 2007 (the “First Global Proceeding”).

[4] Staff make the following allegations against the Respondents in the Amended Amended Statement of Allegations:

- (a) First Global, Grossman and Shuman are not registered with the Commission in any capacity and thus they have traded in securities contrary to subsection 25(1) of the Act and contrary to the public interest;
- (b) First Global, Grossman and Shuman solicited individuals to purchase shares of First Global, which are shares that have never been previously issued and are therefore distributions, which is contrary to subsection 53(1) of the Act and contrary to the public interest;
- (c) Grossman, Shuman and First Global and its representatives made misleading representations to investors, including representations regarding the future listing and future value of First Global shares with the intention of effecting sales of First Global shares contrary to subsections 38(2) and (3) of the Act and contrary to the public interest;
- (d) Grossman’s conduct constitutes a breach of the Commission order issued on January 24, 2006, against him, Maitland Capital Ltd. (“Maitland”) and others;
- (e) the conduct of First Global and Shuman after May 29, 2006 constitutes a breach of the Commission order issued against First Global and its officers and employees on May 29, 2006;
- (f) Shuman’s activities after June 28, 2006 constitute a breach of the Commission order issued against him on June 28, 2006;

- (g) the Respondents used high-pressure sales tactics when selling First Global shares to the public, contrary to the public interest;
- (h) by order dated September 12, 2006, the Commission ordered First Global to post a copy of the Commission order dated September 12, 2006 prominently on the homepage of First Global's website. This order was never posted on First Global's website and First Global remains in breach of the Commission order of September 12, 2006; and
- (i) the conduct of the Respondents was contrary to the public interest and harmful to the integrity of the Ontario capital markets.

[5] With respect to allegation (c) regarding subsections 38(2) and (3) of the Act, we note that in paragraph 132 of Staff's written submissions, Staff states that they "do not seek any findings that the Respondents made any representations that First Global will be listed on an exchange contrary to subsection 38(3) of the Act or provided an undertaking as to the future value of First Global shares in order to effect sales of First Global shares contrary to subsection 38(2) of the Act." In addition, at paragraph 138, Staff's written submissions state: "Staff request that the Commission find that: (a) Staff have proved all the allegations set out in the Amended Amended Statement of Allegations dated March 8, 2007 *except the alleged breaches of subsections 38(2) and 38(3) of the Act [...]*" [emphasis added]. We find that these statements in Staff's written submissions constitute a withdrawal of the allegation that the Respondents breached subsections 38(2) and 38(3) of the Act.

[6] On April 17, 19, and 20, 2007, we heard the evidence in this matter. The respondent Grossman was represented by counsel, the respondent Shuman represented himself and was present only on the first day of the hearing, and the respondent First Global was not represented by counsel and did not participate in the hearing.

[7] Following the close of the evidence, the parties provided the Commission with written submissions regarding the merits. We received written submissions from Staff on May 18, 2007; from Shuman on June 29, 2007; and, from Grossman on July 9, 2007. Staff also provided written reply submissions on July 18, 2007. First Global did not provide any written submissions.

[8] The following are our Reasons and Decision on the merits.

## **II. Background**

### **A. The Respondents**

#### **1. First Global**

[9] First Global is a Panamanian corporation, incorporated on March 28, 2006. According to Panamanian law, a corporation may register using nominee directors. The

directors and officers listed for First Global are: Isis Del Carmen Lara G., Daniel Issac Chi and Akina Chi Pardo.

[10] First Global's only address was a virtual office located at Ave. Aquilino De La Guardia y Calle 47, Edificio Ocean Business Plaza, Piso 18, Panama City, Panama, Apartado postal 0816-02273 (the "First Global Virtual Office"). First Global did not have any actual office space at this location.

[11] On October 6, 2006, the First Global Virtual Office was shut down by the Panamanian National Securities Commission (the "PNSC"). The administrative manager at the Ocean Business Center informed Shuman by e-mail that it was terminating its virtual office services to First Global as instructed by the PNSC.

[12] First Global is not a reporting issuer in Ontario, and it has never filed a prospectus with the Commission. First Global is not and has never been registered under the Act.

[13] As mentioned, First Global did not participate in the hearing on the merits, and was not represented by counsel. Staff provided an affidavit of service of Tammy Orta, sworn on April 17, 2007, indicating that Staff did serve the documents on First Global by a number of means, including: courier, fax, and e-mail.

## **2. Shuman**

[14] Shuman resides in Toronto, Ontario. His title at First Global is "Vice-President, Venture Capital". However, Shuman claims that although his title is Vice-President, he is not an officer, but an employee. Shuman is not and has never been registered under the Act.

[15] Shuman while working for First Global, used the names "Al Marsh", "Alan Marsh" and "Alan Marsh Shuman".

[16] Shuman was not represented by counsel. He attended the first day of the hearing, and left after the cross-examination of the second witness on that day. Shuman did not attend the hearing on April 19 and 20, 2007.

## **3. Grossman**

[17] Grossman is the president and director of Maitland, and resides in Richmond Hill, Ontario. Maitland's office is located at 161 Eglinton Ave. East, Suite 310, Toronto, Ontario.

[18] Grossman is also the president and sole director of Introvest Consulting Ltd. ("Introvest"). Introvest was incorporated in Ontario on February 27, 2006. Its registered office is located at 161 Eglinton Ave. East, Suite 310, Toronto, Ontario, the same address as Maitland.

[19] Grossman is not and has never been registered under the Act. During the First Global Proceeding, Grossman was represented by counsel.

[20] In addition to the First Global Proceeding, Grossman is currently subject to regulatory proceedings (in Ontario and other Canadian jurisdictions) and a section 122 proceeding commenced under the Act in relation to Maitland (the “Section 122 Proceeding”).

## **B. The Events and Circumstances Surrounding the First Global Proceeding**

### **1. The Relationship Between the First Global Proceeding and the Maitland Proceeding**

[21] The First Global Proceeding arose out of the ongoing Maitland proceeding (the “Maitland Proceeding”) under section 127 of the Act, which was commenced by a Statement of Allegations and Notice of Hearing on January 24, 2006. In order to understand the relationship between the First Global Proceeding and the Maitland Proceeding, it is important to identify the background facts relating to: (1) the Maitland Proceeding, and (2) the Consulting and Professional Services Agreement entered into by Grossman on behalf of Introvest with First Global (the “Consulting Agreement”).

#### **(i) The Maitland Proceeding**

[22] The Maitland Proceeding concerns allegations regarding violations of sections 25, 38 and 53 of the Act in relation to the sale of Maitland shares by Grossman and others.

[23] In the Maitland Proceeding, Maitland and a number of individual respondents, including Grossman, were cease traded by the Commission by order dated January 24, 2006 (the “Maitland Cease Trade Order”). Specifically, the Maitland Cease Trade Order provides that: (a) Maitland and its officers, directors, employees and/or agents cease all trading in Maitland securities; (b) Maitland, Grossman and others cease trading in all securities; and (c) any exemptions in Ontario securities law do not apply to Maitland, Grossman and the other respondents in the Maitland Proceeding. This cease trade order still remains in effect and will continue to be in effect until the end of the Maitland Proceeding.

[24] On May 19, 2006, a Section 122 Proceeding was commenced against Grossman, Hanoch Ulfan, and Maitland before the Ontario Court of Justice pursuant to section 122 of the Act.

[25] The Maitland Proceeding has been stayed pending the outcome of the Section 122 Proceeding commenced before the Ontario Court of Justice.

## **(ii) The Incorporation of Introvest**

[26] A month after the Maitland Cease Trade Order came into force on January 24, 2006, Grossman incorporated Introvest on February 27, 2006. Introvest's office is located at the same address as Maitland's: 161 Eglinton Ave. East, Suite 310, Toronto, Ontario.

[27] After Introvest was incorporated, the Maitland Bell Phone Account, the Maitland FedEx Account and the Maitland Purolator Account were transferred to Introvest's name, and the contact address remained the same as for Maitland.

[28] In addition, Introvest had another account with Bell Canada for business telephone lines (account no. 416-544-9292), and this account provided for at least fifteen Introvest telephone numbers, including 416-544-0220, which was Grossman's contact number for one of the Maitland Bell internet accounts.

## **(iii) Consulting Agreement Between Introvest and First Global**

[29] On behalf of Introvest, on April 1, 2006, Grossman entered into the Consulting Agreement with First Global. Shuman signed the Consulting Agreement on behalf of First Global and Grossman signed the Consulting Agreement on behalf of Introvest.

[30] The Consulting Agreement provides for the performance of "support services" for First Global. These services included:

- the design, set-up, registration and administration of First Global's website;
- the provision of office services, including the use of a boardroom and secretarial or administrative assistance;
- the arrangement for a courier to pick-up and deliver packages for First Global; and
- the provision of a lead generation service, whereby Introvest used subcontractors to conduct telephone surveys, to gather information concerning individuals' investment experience, including the likelihood to invest. A written record of the completed surveys was sent to First Global.

[31] The Consulting Agreement also sets out the fees payable by First Global to Introvest for its services. These fees include:

- a monthly "consulting fee" of \$10,000;
- a fee of \$500 per day for boardroom services;
- a fee of \$100 per lead for the introduction of potential investors to First Global;

- a fee of 20% above cost for general office services (mail, couriers, fax, telephone, and secretarial services);
- a fee of 20% above cost for website design, set-up, registration and administration; and
- a fee of 20% above cost for legal, accounting and other professional services.

[32] Introvest invoiced First Global for services from May 2006 to October 2006 totalling \$324,040.50. Of the total amount invoiced, \$67,300 was charged by Introvest for 673 investor leads. Introvest's bank records show that Introvest received payment from First Global in the amount of \$21,892.25 CAD and \$114,446.77 USD over the period of April 17, 2006 to September 29, 2006.

[33] Through the Consulting Agreement between First Global and Introvest, Grossman, the president and director of Maitland, provided First Global with the names of investors. A number of the investors were Maitland shareholders, and they were solicited to invest in First Global shares. The details of the solicitation of potential investors, including Maitland shareholders, is described below.

## **2. Solicitations by First Global and Shuman**

[34] Staff alleges that starting in April 2006, Maitland shareholders and others were contacted by phone by Shuman (who identified himself as either "Al Marsh" or "Alan Marsh") and/or a representative of First Global. Shuman advised Maitland shareholders that their Maitland shares were no longer promising and that Maitland shares could be exchanged for First Global shares by paying an additional sum per share.

[35] Staff also points out that First Global's shares were not previously issued at the time potential investors were contacted, and no prospectus receipt was issued for First Global shares.

[36] Further, Staff alleges that potential investors for First Global were contacted in Ontario and in other provinces. Specifically, Staff alleges in paragraphs 6 and 7 of the Statement of Allegations that:

At the time of the solicitations, most, if not all, of the Maitland shareholders were not accredited investors as defined in *Commission Rule 45-501 – Ontario Prospectus and Registration Exemptions* or *National Instrument 45-106 – Prospectus and Registration Exemptions* and in other Canadian jurisdictions in *National Instrument 45-106 - Prospectus and Registration Exemptions* and no effort was made to determine the investors' status [and] First Global and Shuman have solicited additional Maitland shareholders and other individuals in Ontario and in other jurisdictions to purchase shares in First Global. Most, if not all, of these shareholders were not accredited investors.

[37] At the time First Global and Shuman solicited investors to invest in First Global, the Maitland Cease Trade Order issued by the Commission in January of 2006, was still in effect.

### **3. First Global's Website**

[38] Grossman retained a Toronto web development company (the "Web Development Company"), to create a website for First Global in April 2006. On April 20, 2006, First Global had the domain name [www.firstglobalventures.com](http://www.firstglobalventures.com) registered. The First Global website was up and running on May 2, 2006. This website included the following representations: (a) First Global currently manages over \$340 million in capital; (b) First Global's partners have been involved in energy, media, technology and communications for over 8 years; and (c) First Global was founded in 1998.

[39] First Global's website has been removed from the servers of three web hosting companies, due to a number of orders that have been made by securities commissions in a number of Canadian provinces and Panama. At the time of the hearing, First Global's website [www.firstglobalventures.net](http://www.firstglobalventures.net) was still operational on a different server.

### **4. Cease Trade Orders**

#### **(i) Orders Relating to First Global**

[40] The following is a description of the chronology of orders that the Commission has issued in the First Global Proceeding.

[41] The first temporary cease trade order against First Global and its directors, officers and employees was issued on May 29, 2006 (the "First Temporary Order"). The First Temporary Order, has been extended to remain in effect until the conclusion of the First Global Proceeding, and it orders that: (a) all trading by First Global and its officers, directors, employees and/or agents in securities cease forthwith; (b) all trading cease in the securities of First Global; and (c) any exemptions in Ontario securities law do not apply to First Global.

[42] Shuman is an officer and employee of First Global, thus the First Temporary Order applied to him.

[43] The First Temporary Order was extended by subsequent orders of the Commission dated June 13, 2006, June 28, 2006, and July 13, 2006, until the end of the First Global Proceeding.

[44] After the First Temporary Order was issued, Staff received information that Maitland shareholders were still being contacted to purchase First Global Shares in exchange for Maitland shares and an additional payment of \$1 USD per share. Staff sent a letter dated June 16, 2006 to First Global and Shuman to advise that Staff would take the necessary steps if the First Temporary Order was not complied with.

[45] On June 28, 2006, the Commission issued another temporary cease trade order against Shuman, which ordered that: (a) Shuman cease trading in all securities; and (b) any exemptions in Ontario securities law do not apply to Shuman. This order also remains in effect until the conclusion of the First Global Proceeding.

[46] In addition, on September 12, 2006, the Commission issued an order requiring First Global to post a copy of the Commission Order dated September 12, 2006 prominently on the home page of First Global's website at [www.firstglobalventures.com](http://www.firstglobalventures.com).

### **(ii) Orders Relating to Maitland**

[47] The Maitland shares offered to be exchanged for shares in First Global have been subject to temporary cease trade orders issued by a number of provincial securities commissions. The Commission issued the Maitland Cease Trade Order on January 24, 2006, against Maitland, Grossman and others. This order was extended on February 8 and 28, 2006, April 19, 2006, May 29, 2006 and June 28, 2006.

### **III. The Issues**

[48] This proceeding raised the following issues:

- (1) Did the Respondents trade in securities while not being properly registered with the Commission contrary to subsection 25(1) of the Act and contrary to the public interest?
- (2) Did the Respondents engage in a distribution contrary to subsection 53(1) of the Act and contrary to the public interest?
- (3) Did Grossman's activities constitute a breach of the Commission's Maitland Cease Trade Order issued against him, Maitland and others on January 24, 2006?
- (4) Did the activities of First Global and Shuman after May 29, 2006, constitute a breach of the Commission order issued against First Global and its officers and employees on May 29, 2006?
- (5) Did Shuman's activities after June 28, 2006, constitute a breach of the Commission order issued against him on June 28, 2006?
- (6) Did the Respondents use high-pressure sales tactics when selling First Global shares to the public contrary to the public interest?
- (7) Did First Global fail to comply with the Commission order dated September 12, 2006, by not posting a copy of the September 12, 2006 Commission order on the homepage of First Global's website?
- (8) Was the conduct of the Respondents contrary to the public interest and harmful to the integrity of the Ontario capital markets?

## **IV. The Evidence**

[49] Staff presented documentary evidence, including an agreed statement of facts and called nine witnesses to support their case. The witnesses called by Staff included:

- four Maitland investors solicited to purchase First Global shares: Investor #1, Investor #2, Investor #3, and Investor #4;
- two of Staff's investigators: Jody Sikora ("Sikora") and Jasmine Handanovic ("Handanovic");
- an investigator with the New Brunswick Securities Commission (the "NBSC"), Ed LeBlanc ("LeBlanc");
- the president of the Web Development Company (the "President of the Web Development Company"), the company which designed the websites of First Global and Introvest; and
- a former employee of Interactive Offices Worldwide ("Interactive Offices"), who dealt with Grossman (the "Interactive Offices Employee").

[50] No witnesses were called by any of the Respondents.

[51] Grossman and Shuman did not testify or give oral evidence during the hearing. Grossman provided an affidavit, sworn June 9, 2006, and Shuman provided an affidavit sworn June 12, 2006; however, there was no cross-examination on these affidavits.

[52] The following is a summary of the testimony of the witnesses and the evidence adduced in this matter.

### **A. The Witnesses**

#### **1. The Investors**

[53] Staff called four Maitland investors, Investor #1, Investor #2, Investor #3 and Investor #4 (the "Investors"), to testify that they were solicited over the phone to purchase First Global shares in exchange for their Maitland shares and an additional sum of money. All four Investors testified that their net assets totalled less than a million dollars, their net annual income before taxes was less than \$200,000, and their net annual income before taxes with their spouse did not exceed \$300,000. Therefore, none of these investors qualified as accredited investors. The relevant testimony from the Investors is described below.

##### **(i) Investor #1**

[54] Investor #1 testified that in April of 2006, he was contacted by Shuman to purchase First Global shares through the exchange of Maitland shares and an additional

sum of money. Investor #1 testified that at this time, “Maitland’s stocks were not going to do well [and that he] could invest [his] money from Maitland into First Global”. During the phone conversation with Shuman, Investor #1 was told that because of the Commission’s investigation relating to Maitland, his Maitland investment was not going to turn out as expected, and that by transferring his shares into First Global shares, there would be a “little higher risk but a higher profit”. He was also referred to the First Global website by Shuman.

[55] Investor #1 also testified that the price of First Global shares was higher than Maitland shares and that he had to pay the difference between the value of the two shares, that he had never met Shuman in person, and he was never asked any questions regarding his annual income and financial assets.

[56] In his testimony, Investor #1 also mentioned that the contact number he was given for First Global was a Panama number, although he did not recall the exact number.

[57] Further, Investor #1 testified that he did not invest in First Global because he did not think it would be profitable and that it was best to cut his losses at this point.

#### **(ii) Investor #2**

[58] Investor #2 testified that he met Grossman a couple of years ago through one of his contacts, and that he made an investment of \$10,000 in Maitland shares (for a total of 4000 shares at \$2.50 per share) after meeting with Grossman in person.

[59] Further, Investor #2 testified that around May of 2006, he was advised by Grossman that several companies including First Global were interested in purchasing his Maitland shares. After this initial conversation with Grossman, Investor #2 testified that he was contacted by phone, approximately 10 to 20 times, by an individual named Sam Richards to purchase First Global shares, at a price of \$3.50 per share, by exchanging his Maitland shares and making an additional payment of a dollar per share. Investor #2 also testified that he was told that he was locked in to purchase First Global shares at \$3.50 a share and that the price per share was going to rise to \$3.75.

[60] In addition, Investor #2 testified that Sam Richards was calling him from a Panamanian telephone number, and he was also referred to First Global’s website; however, Investor #2 never visited this website. After being contacted by Sam Richards, Investor #2 testified that he phoned Grossman to discuss the offer to trade in his Maitland shares for First Global shares and that he finally decided to invest in First Global after Sam Richards called him a number of times. During his testimony, Investor #2 confirmed that he sent a certified cheque in the amount of \$5,833.07 to First Global in Panama via Purolator. The Purolator invoice listed the account number 8526921.

[61] Investor #2 also testified that in the end he did not end up exchanging his Maitland shares for First Global shares because there was a problem with First Global accepting his certified cheque and First Global required the funds to be wired to them

instead. At this point, Investor #2 testified that he pulled out and had his certified cheque returned to him. With respect to Shuman, Investor #2 testified that he spoke to him once over the phone with respect to the Commission's actions regarding Maitland.

[62] During cross-examination by Shuman, Investor #2 acknowledged that Shuman addressed and discussed with him the risk factors involved in the situation.

### **(iii) Investor #3**

[63] Investor #3 testified that Grossman started phoning him in 2003, and that he met Grossman for the first time in person sometime in November or December 2004 to discuss investing in Maitland. Investor #3 also testified that an individual named Hank Ulfan was also present at this meeting, which was held at Grossman's office in North York. Further, Investor #3 testified that he decided to invest \$15,000 in Maitland shares approximately a week or two after his meeting with Grossman. Investor #3 confirmed that he received a document from Grossman entitled "Pre-IPO Opportunities" and a letter dated December 2, 2004, in which Grossman wrote, "we will make some money...as usual." Investor #3 also testified that a year later on April 29, 2005, he invested another \$10,000 in Maitland shares, bringing his total investment in Maitland to \$25,000. Investor #3 explained that he decided to invest more into Maitland because he was encouraged by Grossman. He was told that the market was going to hit and that Maitland shares would double or triple in value.

[64] With respect to First Global, Investor #3 testified that Grossman phoned him in May 2006 to inform him that he would be getting a phone call from a representative of First Global regarding transferring his Maitland shares since the Commission was "tying things up in Ontario". Moreover, Investor #3 testified that Grossman told him that he had invested a lot of money in First Global and that he was quite comfortable with it. Investor #3 testified that he was in fact contacted by phone by Shuman and Rick Lopez, and they explained that Maitland shares could be exchanged for First Global shares for an additional payment of \$1 per share. Investor #3 confirmed that he was called on a daily basis for a about a week to invest in First Global, and that he was given a contact number for First Global in Panama.

[65] Investor #3 also mentioned during his testimony that he was referred to First Global's website by Shuman or Rick Lopez. Investor #3 also testified that when he expressed uncertainty about investing in First Global, Shuman reassured him by referring him to the First Global website and told him "your best bet is to look at the website to see what we're doing, see what we're all about".

[66] According to Investor #3, Grossman also explained that because the Commission was tying up all the Maitland investments in Canada, this could be bypassed by transferring Maitland shares to First Global in Panama. On June 8, 2006, Investor #3 purchased 10,000 First Global shares. Shuman arranged for a courier to pick-up Investor #3's Maitland share certificates and gave Investor #3 instructions to transfer \$2,500 USD to the HSBC Bank (Panama) S.A. with First Global listed as the final beneficiary.

[67] Further, Investor #3 testified that about two weeks after purchasing First Global shares, he was contacted by Shuman to discuss why he was going to the Commission. Investor #3 explained that at this point, he asked Shuman questions about his investments and was informed by Shuman that the Panama Office was a virtual office. Investor #3 also testified that he asked for a copy of a First Global prospectus; however, he never received a prospectus regarding his First Global shares and he only received his share certificates on September 1, 2006.

#### **(iv) Investor #4**

[68] Investor #4 testified that he became aware of Maitland through a telephone conversation with an individual named Joe Candida (“Candida”) and that he and his brother purchased 10,000 Maitland shares for \$25,000 on behalf of Investor #4’s company. Investor #4 testified that he invested through his company because he did not have enough of his own money to invest.

[69] Further, Investor #4 testified that over a period of about a month, he was phoned to invest in Maitland and he was informed during these phone calls that the cost of Maitland shares was rising. Moreover, Investor #4 testified that he was told by Candida that once Maitland stocks hit the open stock market, then the value of the shares would rise almost automatically a dollar and a half per share.

[70] With respect to First Global, Investor #4 testified that he became aware of this company when he was telephoned by an individual named Al Marsh (a.k.a Shuman) in the Spring of 2006. Investor #4 explained that he was told by Shuman that First Global was trying to acquire Maitland and that investors in Maitland were being contacted to transfer their Maitland shares to First Global shares for an extra \$1.50 per share. Investor #4 also testified that he did not immediately transfer his shares to First Global and that for a period of a month he kept getting phone calls from Shuman and another person named Sam Richards. Investor #4 explained that in the end he chose not to purchase First Global shares.

## **2. Testimony Regarding the Websites**

### **(i) The President of the Web Development Company**

[71] The President of the Web Development Company testified that he owns and operates the Web Development Company, which deals with web services such as hosting, design and maintenance of websites.

[72] With respect to Grossman, the President of the Web Development Company testified that starting in February/March 2006, he provided Grossman with web design, web maintenance and web hosting services for Maitland’s website. The content for the website was supplied by Grossman. The President of the Web Development Company also confirmed that his company implemented two other websites for Introvest and First Global. The work done regarding the Introvest website was billed to Maitland. Also, the President of the Web Development Company confirmed that Grossman was the

administrative contact on file for the First Global website, and the work done regarding First Global was billed to Introvest.

[73] The President of the Web Development Company also testified that the First Global Website was completed on May 2, 2006, and that starting on May 15 or 16, 2006, Grossman or his assistant were able to update the website by using software tools that the President of the Web Development Company recommended to them.

[74] During his testimony, the President of the Web Development Company also explained that the majority of the email activity for First Global originated from two IP addresses: 67.71.54.151 and 69.159.199.87. At paragraph 94, an Agreed Statement of Facts between Staff and counsel for Grossman confirms that these IP addresses were assigned by Bell to Maitland for certain periods. The President of the Web Development Company provided two email logs to Commission Staff, and he testified that Bell was the internet provider associated with these two IP addresses.

[75] Further, the President of the Web Development Company testified that with respect to Maitland and Introvest, he dealt with Grossman, and with respect to First Global he dealt initially with Grossman and then later on with Shuman.

[76] In addition, the President of the Web Development Company testified that after being contacted by the Commission, he consulted with his lawyer, who recommended that he cancel the First Global account in order to protect himself.

### **3. The Investigators**

#### **(i) LeBlanc**

[77] LeBlanc is an investigator with the NBSC. He testified that he became aware of First Global after receiving a call from a potential investor, who had received a call from an individual named Al Marsh, regarding First Global and its website. LeBlanc testified further that he reviewed First Global's website, googled the website and googled series of words from First Global's website. LeBlanc confirmed that certain phrases such as "was founded in 1998 on the premise that the convergence of" were copied from another website. LeBlanc also explained that he contacted the President of the Web Development Company and the President of the Web Development Company informed him that the First Global website was registered at the instruction of Grossman.

[78] LeBlanc testified that he was the investigator from the NBSC on that file, and that he received phone calls from a number of investors located in New Brunswick, Newfoundland and Manitoba regarding being approached by First Global to purchase First Global shares by exchanging Maitland shares and making an additional payment. LeBlanc also testified that his investigation revealed that First Global's address was a virtual office located in Panama at the Ocean Business Center. The First Global Virtual Office forwarded any mail, faxes, or telephone messages for First Global to Shuman in Toronto.

[79] Moreover, LeBlanc confirmed that his investigation revealed that the Purolator account used to correspond with First Global investors was account no. 8526921 and this account number was associated with Introvest located at 161 Eglinton Avenue East, Suite 310, Toronto, Ontario. He also confirmed that his investigation of Bell telephone records revealed that the phone records also corresponded to the address 161 Eglinton Avenue East, Suite 310, Toronto, Ontario.

[80] The NBSC issued a temporary cease trade order on March 31, 2006, against Maitland, Grossman and others. This order was extended on April 11, 2006 and May 24, 2006.

### **(ii) Handanovic**

[81] Handanovic is an assistant investigator with the Enforcement branch of the Commission. Handanovic testified that she was assigned to the First Global investigation in September/October 2006.

[82] She testified that she telephoned Maitland shareholders and conducted interviews with them. She confirmed that out of the twenty Maitland investors she spoke with, ten were contacted by First Global, and these investors were contacted by either Shuman or Sam Richards. Handanovic explained that her investigation revealed that these ten Maitland investors were told that First Global was a company located in Panama and that they could trade in their Maitland shares and an additional payment “from about 25 cents U.S. per share to \$4.00 U.S. per share” for First Global shares.

### **(iii) Sikora**

[83] Sikora is a forensic accountant with the Enforcement Branch of the Commission. He testified that he became aware of First Global while investigating Maitland in early May 2006. He explained that he conducted a search on First Global’s website and found that First Global was located in Panama, that Grossman was the administrative contact for the First Global website and that the website was created by the Web Development Company.

[84] Sikora also testified that he acquired the email logs for First Global from the Web Development Company and that Bell Canada provided information regarding who was registered to the IP addresses.

[85] In his testimony, Sikora also described his communications with legal counsel from the PNSC. Sikora testified that the PNSC informed him that they did not find any proof that the offering of shares of First Global had happened and that First Global did not file for a licence as a securities intermediary to operate in Panama.

[86] On September 19, 2006, the PNSC issued an order against First Global (the “PNSC Order”) on the basis that First Global lacks the necessary licence to carry on business as a securities intermediary to or from Panama. On November 22, 2006, the Commission posted a translation of the PNSC Order on the Commission’s website.

[87] In addition, Sikora gave testimony regarding the compelled interview conducted with Shuman. In particular, reference was made to the following statement from Shuman:

I guess the most important thing was to make sure that [investors] understand the nature of the investments that they were looking at and also that any salespeople of First Global Ventures hadn't indicated to them or promised them anything that is just not something that's acceptable within the limited guidelines of procedure or, you know, qualified applicant guidelines that I was provided with.

Beyond that I was the face of First Global. [...] the ownership is, first of all, completely false and erroneous. I'm just a face. I was the one who signed documents and made arrangements with you know, various organizations for them. [...]

[88] Further, reference was also made to the following excerpt from Shuman's compelled interview:

[...] part of that face of First Global was to be a more -- what's the appropriate word -- be a voice of more responsibility I guess is the best way I can put it.

In other words, these people were talking to a salesman of sort and if the -- they had questions that the salesman couldn't answer or didn't feel comfortable in answering [...] those individuals would be passed to myself; and one of the mandates when answering questions that would come from any client was to also ensure that they understood the nature of the investment they're in.

#### **4. Testimony Regarding Interactive Offices Worldwide**

##### **(i) The Interactive Offices Employee**

[89] The Interactive Offices Employee testified that she worked as a receptionist at Interactive Offices Worldwide from January to March 2006. Her duties as a receptionist included answering the phones, booking boardrooms and forwarding mail for companies that used Interactive Offices Worldwide services.

[90] In her testimony, the Interactive Offices Employee explained that she knew Grossman because he was a client of Interactive Offices Worldwide. She testified that she would answer the phone for Grossman as "Maitland Capital" and she would inform Grossman if any mail/packages were received on his behalf. The Interactive Offices Employee also testified that in January of 2006 Grossman asked her for a fax code in order to send a fax. She testified that she gave him Interactive Offices Worldwide's fax code, since Maitland did not have its own fax code set up. Further, the Interactive Offices Employee testified that she had no knowledge of the content of the fax or where the fax was being sent.

[91] The Interactive Offices Employee also testified that about two weeks after this fax was sent, she was contacted by an investigator from the Commission, and that she realised that the fax the Commission Staff was enquiring about was the fax that Grossman sent. The Interactive Offices Employee confirmed that when she verified the fax activity report she noticed that the fax was sent to a long distance number.

[92] On cross-examination by counsel for Grossman, the Interactive Offices Employee testified that she did not know of any other company or entity associated with Grossman other than Maitland.

### **B. The Agreed Statement of Facts**

[93] Staff and counsel for Grossman provided an agreed statement of facts relating to the Bell Canada search results (the “Agreed Statement of Facts”). The Agreed Statement of Facts sets out that Staff requested that Bell Canada Corporate Security review two email logs, which were provided to Staff by the President of the Web Development Company. Staff requested the names and addresses for persons with the following IP addresses: 69.159.199.87; 67.71.54.151; 65.95.108.129 and 65.23.158.63.

[94] Specifically, the Agreed Statement of Facts sets out that:

- the IP addresses 69.159.199.87; 67.71.54.151; and 65.95.108.129 belong exclusively to Bell Canada;
- Bell Canada account holders are assigned a dynamic IP address each time a directly connected computer or router (in the case of a network) is turned on or is reset;
- dynamic IP addresses may only be assigned to one account at any given time;
- dynamic IP addresses are not permanently assigned to any given account and change when the directly connected computer or router (in the case of a network) is restarted or reset;
- the account of Maitland Capital Ltd. (contact Al Grossman) 161 Eglinton Ave., rm. 603 was assigned IP Address 69.159.199.87 from June 2, 2006 at 02:53:12 EST until June 6, 2006 at 18:05:21 EST;
- the account of Maitland Capital (contact Al Grossman) 161 Eglinton Ave., rm. 603 was assigned IP address 67.71.54.151 from May 18, 2006 at 11:37:39 EST until June 5, 2006 at 13:55:00 EST;
- the account of Maitland Capital (contact Al Grossman) 161 Eglinton Ave., rm. 603 was assigned IP address 65.95.108.129 on June 5, 2006 at 15:49:38 EST and was still assigned on June 12, 2006 when the request for a Bell Canada Corporate Security search was received; and

- Bell Canada had no information on IP address 65.23.158.63.

### **C. Evidence Relating to Grossman**

[95] Staff also introduced evidence regarding Grossman and Maitland that is relevant to the First Global Proceeding:

- Grossman and Maitland salespersons contacted investors to have them purchase Maitland shares. These investors were told that Maitland was in the business of investing in oil fields and that Maitland would eventually be listed on a stock exchange;
- Grossman and Maitland set up a courier Federal Express account, no. 3046-9244-8 (the “Maitland FedEx Account”) and a Purolator account, no. 8526921 (the “Maitland Purolator Account”) to pick-up cheques and deliver documents to investors who purchased Maitland shares;
- Maitland had an account with Bell Canada for business telephone lines under the account telephone number 416-485-5701 (the “Maitland Bell Phone Account”); and
- Maitland had two Bell Sympatico Internet accounts, 416-544-0220 and 416-485-1742 under the address 161 Eglinton Ave. East, Suite 310, Toronto, Ontario (the “Maitland Bell Internet Accounts”). Grossman was the contact person for these two accounts.
- The evidence also established that the Maitland Bell Phone Account, the Maitland FedEx Account, and the Maitland Purolator Account were transferred to Introvest’s name and Grossman was still listed as the contact person for these accounts.

### **D. The Affidavits**

#### **1. The Affidavit of Grossman**

[96] Grossman provided an affidavit, sworn June 9, 2006. Grossman did not testify and thus was not cross-examined by Staff on this affidavit.

[97] Grossman’s affidavit addresses his involvement in Introvest and the Consulting Agreement. Grossman sets out in his affidavit that: he is the president of Introvest; Introvest entered into the Consulting Agreement with First Global; under the Consulting Agreement, instructions and approvals for all work performed were provided to Introvest by Shuman; Shuman gave instructions and approvals for First Global’s website content; invoices for the work on First Global’s website were addressed to First Global care of Introvest; under the Consulting Agreement First Global had the right to certain office services provided by Introvest; and Introvest arranged Federal Express courier to pick-up

and deliver packages for First Global, but Grossman did not have any knowledge of the contents of the packages.

[98] Grossman's affidavit also addresses Grossman's involvement with providing investor leads. Grossman's affidavit states that:

The final service provided by Introvest to [First Global] under the [Consulting] Agreement to date is effectively a "lead generation" service, whereby Introvest utilizes subcontractors to conduct a survey on behalf of Introvest over the telephone, according to survey questions which are contained in a script. The survey takes less than 30 seconds and contains basic questions about an individual's investment experience and style. [...] There is no mention of any particular investments and no solicitations are made. No further contact is made by Introvest or its subcontractors with these individuals. The subcontractors are paid by Introvest on a weekly basis and Introvest, in turn charges [First Global] a \$100 fee per "lead" generated from the surveys conducted, as per the [Consulting] Agreement. [...]

[99] In addition, Grossman's affidavit states that Grossman had no knowledge of First Global's capital position or corporate history. The affidavit also states that Grossman and Alan Marsh (a.k.a Shuman) are not the same individual, and that Grossman has never represented himself as "Al Marsh" (a.k.a Shuman) to investors.

## **2. The Affidavit of Shuman**

[100] Shuman provided an affidavit dated June 12, 2006. This affidavit sets out that since 1982, Shuman uses the name "Alan Marsh" for business purposes to protect his family and friends from discrimination.

[101] Shuman also stated in his affidavit that he signed the Consulting Agreement in his capacity as an officer of First Global. Under the Consulting Agreement, all instructions and approvals for the content of the First Global website were provided by Shuman, and Introvest facilitated the set-up, design, registration and administration of the website by subcontracting this work to a website company. Work on the website was invoiced to First Global care of Introvest.

[102] With respect to investor leads, Shuman's affidavit states that:

Under the [Consulting] Agreement, Introvest provides [First Global] with the results of a general telephone campaign which identifies prospective investors. [First Global] purchases the names from the campaign for a fee. Introvest does not provide individuals with any information about [First Global], nor do they solicit sales. To date, to my knowledge, [First Global] had not utilized any of the names provided on lists obtained from Introvest for any purpose whatsoever.

[103] Shuman's affidavit also states that "Alan Marsh" and "Allen Grossman" are two different individuals.

### **E. Shuman's Admissions**

[104] During Staff's investigation, Shuman made the following admissions regarding his conduct in the First Global Proceeding:

- Shuman admits that he may have spoken to 80-200 former Maitland investors;
- Shuman admits that he made telephone calls to Maitland shareholders to transfer Maitland shares in exchange for First Global shares;
- Shuman admits that he explained to investors the nature and risks of investing in First Global; and
- Shuman admits that he has never been to Panama.

### **V. Submissions**

[105] After the close of the evidence, the parties were asked to provide written submissions regarding facts and law.

[106] Staff provided written submissions on May 18, 2007.

[107] On June 29, 2007, Shuman provided us with a page and a half long letter as his submissions on the First Global Proceeding. Shuman was not represented by counsel.

[108] On July 9, 2007, written submissions were submitted on behalf of Grossman.

[109] Staff submitted reply submissions on July 18, 2007.

### **VI. Analysis**

#### **A. Preliminary Issues**

##### **1. The Failure of Some of the Respondents to Appear at the Hearing**

[110] The principle established by subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (the "SPPA"), is that a party is entitled to notice of an oral hearing; however, a tribunal may proceed in the absence of a party when that party has been given adequate notice. Specifically, subsection 7(1) of the SPPA states:

7.(1) Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing; the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

[111] This was also articulated by the Commission in *Re Allen* (2005), 28 O.S.C.B. 8541:

If an oral hearing is held, a party is entitled to notice of it and to be present at all times while evidence and submissions are being presented in order to obtain full disclosure of the case the party has to meet. However, pursuant to section 7 of the *Statutory Powers Procedure Act*, RSO. 1990, c. S.22 (the “SPPA”) where a party who has been given proper notice of a hearing fails to respond or to attend, the tribunal may proceed in the party's absence and the party is not entitled to any further notice in the proceeding. (*Re Allen, supra* at para. 9)

[112] First Global did not appear at the hearing, and Shuman only appeared for part of the first day of the hearing. We find that both First Global and Shuman were given adequate notice of the hearing date in advance and were properly served. First, the Notice of Hearing setting down the date of the First Global Proceeding for April 17, 2007, was issued in advance on March 8, 2007. Second, Staff introduced sufficient evidence in the form of affidavits of service to demonstrate that the respondents were duly served with the Notice of Hearing.

## **2. The Use of Hearsay Evidence**

[113] During the testimony of some of the witnesses, hearsay evidence was adduced. Counsel for Grossman contested the use of this hearsay evidence during the hearing. He argued that hearsay is unreliable because the original author or recipient of the document was not present to testify to the truth of the contents of the document.

[114] In response, counsel for Staff submitted that hearsay is admissible before proceedings of administrative tribunals pursuant to subsection 15 of the SPPA.

[115] The Commission has recognized that subsection 15 of the SPPA applies to Commission hearings, and that hearsay evidence is admissible in proceedings before the Commission (*Re Allen, supra* at para. 15).

[116] In *YBM Magnex International* (Ruling of the Panel in Hearing Transcript dated July 18, 2001, at pp. 1-10), the Hearing Panel addressed the admissibility of hearsay evidence and stated that threshold reliability and necessity need to be taken into account.

[117] In *Re Allen*, the Commission explained that “threshold reliability is concerned with whether the circumstances surrounding the statement itself provide circumstantial guarantees of trustworthiness. Ultimate reliability requires that the statement be corroborated by and consistent with other evidence” (*Re Allen, supra* at para. 16).

[118] Specifically, counsel for Grossman objected to hearsay evidence given by LeBlanc relating to the Manitoba Securities Commission (“MSC”). LeBlanc’s hearsay evidence dealt with the reports of investigators of the MSC, Jan Banasiak and Jason Roy, dated May 17, 2006. Counsel for Grossman raised the issue that the authors of these reports were not present to address them.

[119] These reports discuss how an individual in Manitoba was contacted by phone to trade in Maitland shares for an additional amount of \$1.00 more per share for First Global shares. We note that later, the individual discussed in the MSC investigation reports changed her mind, and did not want to cooperate with the MSC. Since we were unable to question this individual directly, and we were unable to directly question the MSC investigators as to why this individual changed her position regarding the solicitations to exchange Maitland shares for First Global shares and an additional sum of money, we have chosen to give little weight to the MSC investigation reports.

[120] We find that the hearsay evidence given by the other witnesses in this case is consistent with and is corroborated by the testimony of the other witnesses and other documents adduced into evidence. As a result, we find that the hearsay evidence adduced in this matter is admissible and reliable, with the exception of the hearsay evidence relating to the MSC.

**B. Issue 1 - Did the Respondents trade in securities while not being properly registered with the Commission contrary to subsection 25(1) of the Act and contrary to the public interest?**

**1. The Law**

[121] Subsection 25(1) of the Act states the following:

**25.** (1) No person or company shall,

(a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer; or

(b) Repealed: 1999, c. 9, s. 199 (2).

(c) act as an adviser unless the person or company is registered as an adviser, or is registered as a representative or as a partner or as an officer of a registered adviser and is acting on behalf of the adviser,

and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[122] This section is an important cornerstone of the Act because through the registration process, the Commission attempts to ensure that those who engage in the trading of securities meet the necessary proficiency requirements, are of good character and satisfy the appropriate ethical standards (*Re Gregory Co. v. Quebec (Securities Commission)*, [1961] S.C.R. 584 at p. 4).

[123] Subsection 25(1) refers to the term “trade”, which is defined in subsection 1(1) of the Act as follows:

- (a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, installment or otherwise, but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,
- (b) any participation as a trader in any transaction in a security through the facilities of any stock exchange or quotation and trade reporting system,
- (c) any receipt by a registrant of an order to buy or sell a security,
- (d) any transfer, pledge or encumbering of securities of an issuer from the holdings of any person or company or combination of persons or companies described in clause (c) of the definition of “distribution” for the purpose of giving collateral for a debt made in good faith, and
- (e) *any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing* [emphasis added]

[124] It is now necessary to determine whether the evidence and submissions presented support the allegations that Grossman, Shuman and First Global traded in securities in contravention of subsection 25(1) of the Act (i.e. while not being properly registered with the Commission).

## **2. Grossman’s Conduct Constituted Acts in Furtherance of a Trade**

[125] In written submissions, counsel for Grossman referred us to the case law relating to acts in furtherance of a trade. Counsel for Grossman also pointed out examples where the Commission declined to determine that acts in furtherance of a trade occurred.

[126] We agree with counsel for Grossman that an act in furtherance of a trade must have a sufficiently proximate connection between the act and the trade in securities. As stated in *Re Costello* (2003), 26 O.S.C.B. 1617:

There is no bright line separating acts, solicitations and conduct indirectly in furtherance of a trade from acts, solicitations and conduct not in furtherance of a trade. Whether a particular act is in furtherance of an actual trade is a question of fact that must be answered in the circumstances of each case. A useful guide is whether the activity in question had a sufficiently proximate connection to an actual trade. (*Re Costello, supra* at para. 47)

[127] However, we disagree with counsel for Grossman's position that acts in furtherance of a trade did not take place. The following conduct of Grossman constitutes acts in furtherance of a trade:

- As part of the Consulting Agreement, Grossman sold the names of 673 potential investors to First Global at a cost of \$100 USD per name. In particular, Grossman provided the names of Maitland shareholders to First Global, which permitted First Global to contact those individuals. The Commission has recognized that providing a list of prospective investors and the receipt of consideration or some other direct or indirect benefit, indicates an act in furtherance of a trade (see for example, *Re Brown* (2004), 27 O.S.C.B. 7955 at para. 34; and *Luccis & Co. – Broker Dealer*, June 1962 O.S.C.B. 1 at pp. 1-2);
- As part of the Consulting Agreement, Grossman contracted with the Web Development Company to create First Global's website and he was the administrative contact for First Global's website. The President of the Web Development Company also testified that Grossman provided him with the content for First Global's website. Also, Grossman made arrangements for First Global's new website, [www.firstglobalventures.net](http://www.firstglobalventures.net), after [www.firstglobalventures.com](http://www.firstglobalventures.com) was shut down. According to the case law, the act of setting up a website that offers securities and information about securities to investors over the Internet constitutes an act in furtherance of a trade (see for example, *Re First Capital (Canada) Corp.*, (2004), 27 O.S.C.B. 1603 at para. 45; and *Re American Technology Exploration Corp.*, 1998 LNBCSC 1 (B.C.S.C.) at p. 9);
- As part of the Consulting Agreement, Grossman provided courier accounts (i.e. the FedEx and Purolator Accounts) for First Global to use to pick up documents including subscription agreements and cheques from First Global investors;
- Grossman communicated with Maitland shareholders, such as Investor #3, about the opportunity to trade in Maitland shares for First Global shares. This constitutes solicitation, and in doing so, Grossman advised shareholders such as Investor #3, that investing in First Global was a great opportunity. Furthermore, the definition of trade in subsection 1(1) of the Act states that solicitation constitutes an act in furtherance of a trade and that it is irrelevant whether an actual trade occurs as a result of the solicitation (see for example, *Re First Federal Capital (Canada) Corp.* (2004) 27 O.S.C.B. 1603 at paras. 46-51); and
- Grossman billed First Global at least \$320,000 for the services of Introvest, including, providing office space, courier services, telephone services, fax services and internet accounts, and the provision of a list of potential investors, which helped First Global facilitate the solicitation of potential First Global investors, including Maitland shareholders.

[128] We also note that Grossman was not registered under the Act in any capacity. In such cases, a contextual approach must be taken to determine whether acts in furtherance of a trade have occurred. The primary focus of this assessment is the effect of the acts in question on the persons on whom the acts were directed (*Re Momentas Corp.* (2006), 29 O.S.C.B. 7408 at para. 77).

[129] We agree with Staff's submission that the combination and the entirety of Grossman's conduct set out above, constitutes an act or acts in furtherance of trades of First Global shares. Basically, the conduct of Grossman helped First Global contact potential investors, including Maitland shareholders, and ultimately sell First Global shares, such as the case for Investor #3. Moreover, Grossman's dealings with Maitland put him in a prior relationship with many of the potential First Global investors, and this put Grossman in a position to influence investors regarding investing in First Global.

[130] Counsel for Grossman pointed out in his written submissions that in *Re Tibollo* (2006), 29 O.S.C.B. 303, the Commission found that the conduct of a respondent did not amount to an act in furtherance of a trade because the respondent only provided information and his actions were in the capacity of a business consultant. However, we do not find that Grossman's role was merely to provide information. Instead, the evidence demonstrates that Grossman not only provided information, but he also provided services beyond information services, through the Consulting Agreement with Introvest. Grossman counselled investors about the appeal of investing in First Global, and he allowed Shuman and others to telephone investors from Introvest's premises. In addition, Grossman had a prior relationship with many of the potential investors (through Maitland) and was in a position to influence their investment decisions. In particular, Grossman provided assistance with setting up the First Global website, arranging courier services to collect the cheques of First Global investors and Grossman even phoned investors, such as Investor #3, to influence them to invest in First Global shares. This enabled First Global to solicit potential investors. As a result, we find that *Re Tibollo* does not apply in this case.

[131] After considering all the facts, evidence and written submissions, we have concluded that Grossman is not registered under the Act and Grossman's conduct qualifies as acts in furtherance of trades of First Global shares, and thus subsection 25(1) of the Act was violated.

### **3. Shuman's Conduct Constituted Acts in Furtherance of a Trade**

[132] Shuman was not registered in any capacity under the Act.

[133] Shuman made a number of admissions that fulfill the criteria of an act in furtherance of a trade relating to First Global shares. Specifically: (1) Shuman admits that he may have spoken to 80-200 former Maitland investors; (2) Shuman admits that he made telephone calls to convince Maitland shareholders to purchase First Global shares in exchange for their Maitland shares, plus an additional sum of money; and (3) Shuman admits that he explained to investors the nature and risks of investing in First Global. In our view, communicating with investors regarding investing in securities, advising

regarding the appropriateness of securities and convincing investors to purchase securities constitute acts in furtherance of trades of securities.

[134] As explained by the Commission in *Re Anderson* (2004) 27 O.S.C.B. 7955:

For a person to act in furtherance of a sale or disposition of a security that is in fact being sold or disposed of by someone else, *there must be at a minimum something done by that person for the purpose of furthering or promoting the sale or disposition* of the security by the one engaged in that activity [...]. [emphasis added] (*Re Anderson, supra* at para. 34)

In the present matter, we find that Shuman's admissions are clearly acts that were done for the purpose of promoting the sale of First Global shares. In particular, Shuman communicated with investors to discuss the attractiveness of First Global shares. This was more than a minimal involvement. By communicating with potential investors of First Global, Shuman took a direct approach to personally promote and sell First Global shares. For instance, Shuman contacted Investor #3 to discuss exchanging Maitland shares for First Global shares, and Investor #3 did in fact purchase First Global shares.

[135] In view of Shuman's admissions, we find that Shuman was not registered under the Act in any capacity and engaged in acts in furtherance of trades of First Global shares. Thus, subsection 25(1) of the Act was violated.

#### **4. First Global Engaged in Acts in Furtherance of a Trade**

[136] We have also found that First Global, through its officer Shuman, and its employees/representatives, such as Sam Richards and Rick Lopez, engaged in acts in furtherance of trades of First Global. We note that Sam Richards and Rick Lopez are both listed as contacts on First Global's website. It is also evident from the testimony of the investors that these two individuals made phone calls to promote the sale of First Global shares, and thus, worked for First Global.

[137] In particular, Investor #3 testified that he was contacted by phone by Rick Lopez and Shuman regarding exchanging his Maitland shares for First Global shares, and Investor #2 testified that he was contacted by Sam Richards for this same purpose. Therefore, First Global through its employees/representatives engaged in conduct to influence investors to purchase First Global shares.

[138] Also, First Global was not registered in any capacity under the Act. As a result, we find that First Global violated subsection 25(1) of the Act by engaging in conduct for the furtherance of the trade of First Global shares while not being properly registered under the Act.

#### **5. The Respondents do not Qualify for Exemptions**

[139] Subsection 2.3(1) of National Instrument 45-106 provides an exemption from the registration requirements for trades in securities if the purchaser is an "accredited

investor”. The term, “accredited investor” is defined in section 1.1 of National Instrument 45-106 as follows:

1.1 [...]

(j) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds \$1,000,000,

(k) an individual whose net income before taxes exceeded \$200,000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,

(l) an individual who, either alone or with a spouse, has net assets of at least \$5,000,000,

[...]

[140] None of the investors who testified before us were accredited investors. All four Investors testified that their net annual assets totalled less than a million dollars, their net annual income before taxes was less than \$200,000 and their net annual income before taxes with their spouse did not exceed \$300,000. Therefore, they do not fulfill the definition of an “accredited investor” as defined in section 1.1 of National Instrument 45-106.

[141] Counsel for Grossman argued that since the investors, such as Investor #1, signed the form “Purchaser’s Representation, Warranties and Covenants”, the purchaser represented that they were an accredited investor. While some of the Investors, such as Investor #1, did sign the form, which contained a clause stating that they met the requirements of the exemptions, we are of the view that this does not exonerate Grossman or the other Respondents. The responsibility for ensuring that the requirements of an exemption are met is the responsibility of the person seeking to rely on the exemption. As a result, the Respondents should have inquired directly with the Investors regarding their financial history and background. They should not have simply relied on a signed boiler-plate form to determine whether the Investors satisfied the criteria for an “accredited investor”. As stated by the Alberta Securities Commission in *Re InstaDial Technologies Corp.* (2005) ABASC 965 (A.S.C.):

In short, the seller of securities seeking to rely on the accredited investor exemption has a duty to make a reasonable, serious effort to ensure that the purchaser is indeed an accredited investor. (*Re InstaDial Technologies Corp.*, *supra* at para. 61)

[142] We are of the view that the Respondents did not ensure that investors were “accredited investors”. The testimony from Investors revealed that no financial background questions regarding their income or assets were asked of them. Consequently, we have determined that the Respondents did not ensure that the Investors were “accredited investors”, and as such, the Respondents cannot benefit from the exemptions in National Instrument 45-106.

**C. Issue 2 - Did the Respondents engage in a distribution contrary to subsection 53(1) of the Act and contrary to the public interest?**

**1. The Law**

[143] Subsection 53(1) of the Act sets out that:

Prospectus required

- 53.** (1) No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

Filing without distribution

- (2) A preliminary prospectus and a prospectus may be filed in accordance with this Part to enable the issuer to become a reporting issuer, despite the fact that no distribution is contemplated.

[144] The term distribution is defined in subsection 1(1) of the Act as follows:

“distribution”, where used in relation to trading in securities, means,

- (a) a trade in securities of an issuer that have not been previously issued,
- (b) a trade by or on behalf of an issuer in previously issued securities of that issuer that have been redeemed or purchased by or donated to that issuer,
- (c) a trade in previously issued securities of an issuer from the holdings of any control person,
- (d) a trade by or on behalf of an underwriter in securities which were acquired by that underwriter, acting as underwriter, prior to the 15th day of September, 1979 if those securities continued on that date to be owned by or for that underwriter, so acting,

(e) a trade by or on behalf of an underwriter in securities which were acquired by that underwriter, acting as underwriter, within eighteen months after the 15th day of September, 1979, if the trade took place during that eighteen months, and

(f) any trade that is a distribution under the regulations,

and on and after the 15th day of March, 1981, includes a distribution as referred to in subsections 72 (4), (5), (6) and (7), and also includes any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution and “distribute”, “distributed” and “distributing” have a corresponding meaning; (“placement”, “placer”, “placé”)

[145] The requirement to comply with section 53 of the Act is important because a prospectus ensures that prospective investors have full information on which to properly assess the risks of certain investments, and it enables them to make informed investment decisions. As the Canadian securities regulatory system is primarily disclosure-based, the prospectus requirements of the Act play a significant role in the overall scheme of investor protection. As explained by the court in *Jones v. F.H. Deacon Hodgson Inc.* (1986), 9 O.S.C.B. 5579 (H.C.), “there can be no question but that the filing of a prospectus and its acceptance by the Commission is fundamental to the protection of the investing public who are contemplating purchase of the shares” (at p. 5590).

[146] Therefore, it is important that when shares are sold to the public that the prospectus requirements under the Act are adhered to. The next section addresses whether First Global, Shuman and Grossman complied with section 53 of the Act.

## **2. The Evidence Demonstrating that the Respondents Engaged in Conduct Contrary to Subsection 53(1) of the Act**

[147] Subsection 53(1) of the Act, set out above, establishes the principle that no person or company shall trade in a security on his, her or its own account or on behalf of any other person or company where such trade would be a distribution of such security, unless a preliminary prospectus and a prospectus have been filed and receipts have been obtained from the Director.

[148] The evidence establishes that First Global is not a reporting issuer and has never filed a preliminary prospectus or a prospectus with the Commission. Therefore, the issuance of any First Global shares is a distribution because these securities were never previously issued.

[149] In addition, the evidence shows that a prospectus was never provided to potential investors who were solicited to invest in First Global. This is evident from the testimony of Investor #3. Investor #3 purchased shares of First Global, and testified that he had asked for a prospectus but was never given one.

[150] As established in our Analysis, Grossman, Shuman and First Global all engaged in acts in furtherance of a trade of First Global shares. We find that Grossman, Shuman and First Global, by engaging in acts in furtherance of trades of First Global shares, contravened subsection 53(1) of the Act, because at the time the acts in furtherance of trades of First Global shares took place, First Global shares were not previously issued, and therefore constituted a distribution.

**D. Issue 3 - Did Grossman's activities constitute a breach of the Commission order issued against him, Maitland and others on January 24, 2006?**

[151] The Maitland Cease Trade Order issued by the Commission on January 24, 2006, ordered, among other things, that all trading in Maitland securities cease and ordered Grossman to cease trading in all securities.

[152] As we have concluded above, Grossman's acts constituted acts in the furtherance of a trade. As a result, Grossman traded in securities contrary to the Maitland Cease Trade Order.

**E. Issue 4 - Did the activities of First Global and Shuman after May 29, 2006, constitute a breach of the Commission order issued against First Global and its officers and employees on May 29, 2006?**

[153] Pursuant to the Commission's order on May 29, 2006, Shuman and First Global were prohibited from trading in First Global shares and trading in securities. This order also applied to First Global's other officers, directors, employees and/or agents.

[154] The evidence shows that acts in furtherance of trades of First Global shares were made after May 29, 2006:

- First Global issued a subscription order invoice to Investor #2 for First Global shares on June 5, 2006;
- First Global issued a subscription order invoice to Investor #3 for First Global shares on May 30, 2006;
- First Global made arrangements to pick up Investor #3's Maitland share certificates (to exchange for First Global shares) on June 6, 2006;
- First Global received the money transfer from Investor #3 for the difference in the value of the share prices on June 8, 2006;

[155] As a result, First Global's conduct (through its employees and representatives), breached the Commission order of May, 29, 2006.

[156] With respect to Shuman, we find that there is insufficient evidence to establish that Shuman breached the May 29, 2006 Commission order.

**F. Issue 5 - Did Shuman's activities after June 28, 2006, constitute a breach of the Commission order issued against him on June 28, 2006?**

[157] Pursuant to the Commission order on June 28, 2006, Shuman was ordered to cease trading in all securities. We find that there is insufficient evidence to establish that Shuman breached the June 28, 2006 Commission order.

**G. Issue 6 - Did the Respondents use high-pressure sales tactics when selling First Global shares to the public contrary to the public interest?**

[158] High pressure sales tactics encompass a broad range of activity that has the effect of persuading individuals to invest inappropriately. A key characteristic of high pressure sales tactics is that these tactics put individuals in a position where they are pressured to make a decision quickly because the investment opportunity may disappear. High pressure sales tactics include, but are not limited to, selling tactics designed to induce, and having the effect of inducing, clients to purchase securities inappropriate to their situation on the basis of inadequate investment information and/or misinformation as to the issuers of the securities, the value of the securities, and the prospects of the issuer and the securities. Comments that give the impression that shares are attractive and quick action is needed because an investment opportunity will expire in a short time frame and repeatedly calling investors to get them to make an investment decision quickly based on misleading information also qualify as high pressure sales tactics.

[159] In our view, the Respondents in this case have used these kinds of tactics to influence individuals to purchase First Global shares, and we find that the testimony of Investor #2 and Investor #3 demonstrate that high-pressure sales tactics were used when they were solicited to purchase First Global shares.

[160] First, Investor #2 testified that he was told by Sam Richards of First Global that he was locked in to purchase First Global shares at a price of \$3.50 per share and that the price per share was soon going to rise to \$3.75 per share. Therefore, through a representative, First Global used the potential rise in price of First Global stocks to entice Investor #2 to invest in First Global. Furthermore, Shuman (along with other individuals associated with First Global) phoned Investor #3 frequently.

[161] Moreover, all four Investors testified that they were contacted many times by First Global, or Shuman over a period of time ranging from a week to a month, regarding investing in First Global shares. In particular, Staff presented evidence that:

- Investor #1 was phoned on 5 occasions on or between May 3 and May 8, 2006;
- Investor #2 was phoned on 30 occasions on or between May 25 and November 28, 2006; and
- Investor #4 was phoned on 24 occasions on or between May 9 and September 26, 2006.

[162] We find that this persistent conduct was used by First Global and Shuman to convince, persuade and put pressure on investors to purchase First Global shares. In our view, persistently phone calling investors multiple times is a form of a high pressure sales tactic to induce individuals to invest.

[163] In addition, we find that in the case of Investor #2 and Investor #3, high pressure sales tactics were used to make First Global's shares look and sound attractive. For instance, comments regarding the potential increase in the price of First Global's shares were used as a tactic to influence investors to act fast and to buy First Global shares before they missed the opportunity. Grossman also told Investor #3 that he had "a lot of dollars invested in First Global Group, and [...] felt comfortable with it", and that First Global was a safe place to invest money, and that the value of First Global shares would double or triple.

[164] Further, Grossman told Investor #3 that he could bypass the Commission's cease trade order regarding Maitland's shares by transferring his Maitland shares to First Global with the payment of an additional sum of money.

[165] We find that all of these comments were made in order to influence individuals to purchase First Global shares, and together these comments gave an impression to investors that First Global shares were attractive and were good investments that had to be acted on quickly otherwise, an investment opportunity would be lost. In our view, these are high pressure sales tactics used by the Respondents to persuade potential investors including Maitland shareholders to invest in First Global shares, and this conduct is contrary to the public interest.

**H. Issue 7 - Did First Global fail to comply with the Commission order dated September 12, 2006, by not posting a copy of the September 12, 2006 Commission order on the homepage of First Global's website?**

[166] The Commission order dated September 12, 2006, ordered First Global to post a copy of the Commission order dated September 12, 2006 prominently on the homepage of First Global's website. This order was never posted on First Global's original website [www.firstglobalventures.com](http://www.firstglobalventures.com). Further, this order is not posted on First Global's current website [www.firstglobalventures.net](http://www.firstglobalventures.net). As a result, First Global remains in breach of the Commission order dated September 12, 2006.

**I. Issue 8 - Was the conduct of the Respondents contrary to the public interest and harmful to the integrity of Ontario's capital markets?**

**1. The Law**

[167] Pursuant to section 1.1 of the Act, it is the Commission's mandate to:

- (a) provide protection to investors from unfair, improper or fraudulent practices; and

- (b) foster fair and efficient capital markets and confidence in those capital markets.

[168] In addition, section 2.1 of the Act sets out the means for achieving the purposes of the Act, which include:

- (a) requirement for timely, accurate and efficient disclosure of information;
- (b) restrictions on fraudulent and unfair market practices and procedures; and
- (c) requirements for the maintenance of high standards of fairness and business conduct to ensure honest and responsible conduct by market participants.

[169] Clearly, sections 1.1 and 2.1 are protective in nature and this enables the Commission to prevent likely future harm to Ontario's capital markets (*Re Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 42). As a result, the Commission has a broad public interest jurisdiction to intervene in activities related to Ontario's capital markets. As stated by the Commission in *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600:

[...] the role of this Commission is to protect the public interest by removing from the capital markets --- wholly or partially, permanently or temporarily, as the circumstances may warrant --- those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of [the] capital markets. [...] We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. [...] And in so doing, we may well conclude that a person's past conduct has been so abusive of the capital markets as to warrant our apprehension and intervention, even if no particular breach of the Act has been made out. (*Re Mithras Management Ltd.*, *supra* at p. 1610 and 1611)

[170] The Commission need not find that a specific provision of the Act has been violated in order to make a finding of conduct contrary to the public interest. This was articulated in *Re Canadian Tire Corp.*:

Equally clear in our view, the Commission should act to restrain a transaction that is clearly abusive of investors and of the capital markets, whether or not that transaction constitutes a breach of the Act, regulations or a policy statement. (*Re Canadian Tire Corp.* (1987), 10 O.S.C.B. 857 at p. 933 *aff'd* (1987), 59 O.R. (2d) 79 (H.C.))

[171] The next sections address the Respondents' conduct contrary to the public interest.

## **2. Information Posted on First Global's Website is Contrary to the Public Interest**

[172] We note that First Global's current website also contains a letter, dated May 23, 2006, addressed to First Global shareholders, written by Shuman (however, Shuman signed it using his alternative name Alan Marsh). This letter has been posted at the bottom of the webpage address: <http://www.firstglobalventures.net/bulletin.htm>. This letter states the following:

Recently, one of the many Canadian securities commissions have seen fit to make frivolous allegations about FGV and its business practices and to issue their version of a cease trade order. Those of you that have been with us for sometime know that these types of allegations are without merit and not worthy of a response. We anticipate the redundancy of the Canadian securities regulatory system to have a ripple effect and therefore we expect all of their other jurisdictions to follow the same misguided directions.

[...]

This is not the first time we have had these kinds of intrusive information requests made under the guise of a regulatory body or a foreign jurisdiction. These types of outlandish demands regarding investor's private information are made by bureaucrats whose sole function and purpose is to undermine and eventually eliminate your democratic right to privacy.

[...]

[173] We find that this letter misleads First Global investors and potential investors regarding the regulatory proceedings commenced against First Global by provincial securities commissions in Canada. This is contrary to the public interest because it undermines public confidence in the capital markets.

## **3. Disregard for Commission Orders**

[174] We find that all the Respondents blatantly disregarded Commission orders. The cease trade orders issued in both the First Global Proceeding and the Maitland Proceeding were not complied with by the Respondents. Despite these cease trade orders, Grossman, Shuman and First Global were involved with soliciting investors to purchase First Global shares in exchange for their Maitland shares and an additional sum of money. The Respondents ignored Commission orders and this is contrary to the public interest.

[175] In addition, First Global did not comply with the Commission order of September 12, 2006, to post a copy of the Commission order on their website. Instead, First Global posted and retained on its website a letter criticizing the Commission. This

shows deliberate disregard for the Commission and its processes, and is contrary to the public interest.

[176] We find that the Respondent's repetitive disregard for multiple Commission orders is egregious conduct.

#### **4. Misrepresentations Contrary to the Public Interest**

[177] The Respondents also made misrepresentations contrary to the public interest to convince individuals to invest in First Global shares. The evidence adduced at the hearing shows that the Respondents made a number of misrepresentations, including:

- Shuman led investors to believe that he was in Panama by using virtual office services from a company in Panama, when in fact, he had never been to Panama;
- Shuman promoted First Global's shares and spoke to the nature and risks of these shares; however, Shuman admitted making no effort to inquire into First Global before promoting it;
- Shuman told investors that they did not need to worry about the regulatory proceeding against First Global in Canada because First Global was a Panamanian company;
- Grossman told Investor #3 that the value of First Global shares would double or triple.
- Grossman told investors that he was trying to get Maitland going, but that the Commission was interfering and preventing investors from getting any return on their investment;
- Grossman told Investor #3 that investing in First Global, a Panamanian company, was a way of bypassing the jurisdiction of the Commission;
- The testimony of the Investors demonstrates that Grossman made representations regarding Maitland's shares being eventually listed on an European stock exchange;
- Sam Richards told Investor #2 that the price of First Global shares was going to increase from \$3.50 per share to \$3.75 per share;
- First Global's website states that First Global was founded in 1998 and its office is in Panama City, Panama. In reality, First Global was incorporated in March of 2006, and its location in Panama was only a virtual office.
- First Global's website also represents that First Global specializes in investing in emerging energy companies, enterprise services, technology services and

communications companies, and that First Global holds substantial positions in such companies. However, we were not given any evidence regarding First Global's holdings or positions in any such companies. In addition, the evidence adduced during the hearing demonstrated that First Global's website contained numerous false or misleading statements that were copied from other websites.

[178] All three Respondents made misrepresentations. No evidence was presented by any of the Respondents at the Hearing to refute the testimony of the Investors and the investigators. Grossman and Shuman did not testify on their own behalf and First Global did not appear at the hearing. As a result, we find that the testimony tendered by Staff's witnesses is credible, consistent with other witnesses and cogent, and should be accepted.

[179] The Commission has previously established that making misleading statements to investors is contrary to the public interest and egregious conduct:

What concerned us most about Mr. Koonar's conduct was not just the fact that he failed to register as a registrant or that he issued securities without a prospectus, but that *some of his statements to investors were untrue, some of the statements he made to staff were untrue; those parts of his conduct, we believe, show bad ethics and morality*, as opposed to ignorance of the law. For these reasons also *we consider his conduct to be an egregious violation of the public interest*. [Emphasis added.] (*Re Koonar* (2002), 25 O.S.C.B. 2691 ("Koonar") at p. 4)

[180] We find that the misrepresentations made by the Respondents are corroborated by the Agreed Statement of Facts and the testimony of the Investors, investigators and other witnesses, and that they fall into the category of misleading statements as described in the *Koonar* case. As a result, we find that all three Respondents made misrepresentations contrary to the public interest.

[181] We find that these misrepresentations are contrary to the public interest because they misled investors with inaccurate and false information. First Global investors were provided inaccurate, false and misleading information, and consequently, these investors invested in First Global, lost money and suffered a prejudice.

## **5. Conclusion on Public Interest**

[182] The efficient functioning of the capital markets relies on investors making informed choices based on accurate information. Indeed, this is also one of the purposes of the Act pursuant to section 1.1, "to foster fair and efficient capital markets and confidence in capital markets." When investors base their choices on false and/or misleading information this harms the capital markets because investors can lose money and the public will lose confidence in the proper functioning of the capital markets. Transparency and efficiency in the markets is diminished when inaccurate information is disseminated in the market place. In this case numerous misrepresentations were made by the Respondents as part of a plan to entice individuals to invest in First Global. We

find that the combination of these misrepresentations, misleading information published on First Global's website and the disregard of Commission Orders amounts to egregious conduct on behalf of the Respondents.

[183] The evidence further demonstrates that: (1) the Respondents traded in securities while not being properly registered with the Commission contrary to subsection 25(1) of the Act; (2) the Respondents violated subsection 53(1) of the Act; (3) the Respondents failed to comply with numerous Commission orders; and (4) the Respondents used high pressure sales tactics when selling First Global shares to the public.

[184] We find that the Respondents engaged in conduct contrary to the public interest and harmful to Ontario's capital markets.

## **VII. Conclusion**

[185] In conclusion, we have made the following findings regarding Staff's allegations:

- We find that First Global, Shuman and Grossman engaged in acts in furtherance of a trade relating to First Global, and therefore traded in First Global shares, contrary to subsection 25(1) and contrary to the public interest;
- We find that the conduct of First Global, Shuman and Grossman violated subsection 53(1) of the Act and was contrary to the public interest;
- We find that Grossman's acts in furtherance of trades of First Global shares, violated the terms of the Maitland Cease Trade Order, which ordered Grossman to cease trading in all securities;
- We find that First Global's conduct breached the Commission order of May 29, 2006;
- We find that there is insufficient evidence to establish that Shuman's conduct breached the Commission orders of May, 29, 2006 and June 28, 2006;
- We find that Shuman, Grossman and First Global (through its employees and representatives), used high-pressure sales tactics when selling First Global shares to the public, contrary to the public interest;
- We find that First Global failed to comply with the Commission order dated September 12, 2006, because it did not post this order on First Global's website; and
- We find that the conduct of First Global, Shuman and Grossman was harmful to the integrity of Ontario's capital markets and contrary to the public interest.

[186] As a result of this Decision, the parties are directed to contact the Secretary's Office within the next 10 days in order to set time limits for the filing of written submissions on sanctions and to set a date for a hearing relevant to the matter of sanctions, failing which, a date will be set by the Office of the Secretary of the Commission.

DATED at Toronto this 14<sup>th</sup> day of December, 2007.

*"Wendell S. Wigle"*

---

Wendell S. Wigle

*"Suresh Thakrar"*

---

Suresh Thakrar

*"Margot C. Howard"*

---

Margot C. Howard