Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | P.O. Box 55, 19th Floor 20 Queen Street West Toronto ON M5H 3S8 | CP 55, 19e étage 20, rue queen ouest Toronto ON M5H 3S8

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 AND DECISION ON SANCTIONS AND COSTS
(Sections 127 and 127.1 of the *Securities Act*)

Hearing:	August 8, 2008	
Decision:	November 4, 2008	
Panel:	Wendell S. Wigle, Q.C	- Commissioner and Chair of the Panel
	Suresh Thakrar	- Commissioner
	Margot C. Howard	- Commissioner
Counsel:	Derek Ferris	- For Staff of the Ontario Securities Commission
	Allen Grossman	- On his own behalf
	Alan Marsh Shuman	- No one appeared on behalf of Alan Marsh Shuman.
	First Global Ventures, S.A.	- No one appeared on behalf of First Global Ventures, S.A.

TABLE OF CONTENTS

A. OVERVIEW 1
1. History of the Proceeding 1
2. Regulatory Orders Against the Respondents in Ontario and in Other Jurisdictions 3
3. The Merits Decision 4
B. ADDITIONAL EVIDENCE ADDUCED AT THE SANCTIONS AND COSTS HEARING 6
C. POSITION OF THE PARTIES 6
1. Sanctions and Costs Requested By Staff 6
2. Summary of Grossman's Position 7
D. THE LAW 8
1. The Purposes of the Act 8
2. Sanctioning Factors 9
E. ANALYSIS 10
1. The Appropriate Sanctions in this Case 10
(a) Seriousness of Conduct 10
(i) Staff's Submissions 10
(ii) Grossman's Submissions 11
(iii) Conclusion 11
(b) Proportionality of the Sanctions Sought by Staff Against Grossman, Shuman, and First Global 12
(i) Grossman's Submissions 12
(ii) Staff's Submissions 12
(iii) Conclusion 12
(c) The Relevance of the Alleged Negligence of Grossman's Former Counsel and the Decision of the Assessment Officer 13
(i) Grossman's Submissions 13
(ii) Staff's Submissions 13
(iii) Conclusion 14
2. Costs 14
F. CONCLUSION 15

REASONS AND DECISION ON SANCTIONS AND COSTS

A. OVERVIEW

1. History of the Proceeding

[1] This was a bifurcated hearing before the Ontario Securities Commission (the "Commission") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make an order with respect to sanctions and costs against 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").

[2] On April 17, 19 and 20, 2007, we heard the evidence in relation to the Amended Amended Statement of Allegations in this matter dated March 8, 2007 and an Amended Amended Notice of Hearing in this matter dated March 9, 2007 (the "Merits Hearing"). Grossman was represented by counsel, "Kulidjian & Associates", at the Merits Hearing. Shuman represented himself and was present only on the first day of the hearing. First Global did not participate at the Merits Hearing and did not provide any written submissions. Written submissions on the merits were received from Staff of the Commission ("Staff") on May 18, 2007, Shuman on June 29, 2007, and Grossman on July 9, 2007. Staff also provided written reply submissions on July 18, 2007.

[3] A decision on the merits was rendered on November 30, 2007 (*Re First Global et al.* (2008), 30 O.S.C.B. 10473 [the "Merits Decision"]). The Merits Decision directed the parties to file written submissions on sanctions and costs and to set a date for hearing arguments with respect to sanctions and costs. A hearing to address sanctions and costs was scheduled for April 30, 2008 at 10:00 a.m. (the "Sanctions and Costs Hearing").

[4] On January 14, 2008, Grossman appealed the Merits Decision to the Ontario Divisional Court. We were advised at the Sanctions and Costs Hearing that the appeal before the Ontario Divisional Court has not yet been perfected.

[5] Written submissions on sanctions and costs were filed by Staff on February 8, 2008, and by Grossman through his counsel on February 20, 2008. Staff submitted Affidavits of Jasmine Handanovic, an assistant investigator with the Enforcement branch of the Commission, sworn on February 26, 2008 and February 28, 2008. Staff also submitted written reply submissions on February 28, 2008. First Global and Shuman did not provide any written submissions on sanctions and costs.

[6] On April 10, 2008, the Commission was advised by Kulidjian & Associates that they were no longer acting as counsel for Grossman. The Commission was also provided with Grossman's Notice of Intention to Act in Person.

[7] On April 30, 2008, a hearing was held before a Panel and was attended by Grossman and Staff. At this time, Grossman requested an adjournment of the Sanctions and Costs Hearing, which was to proceed on that day. Grossman submitted that an adjournment was necessary because: (1) he was waiting for information from the Law Society of Upper Canada ("LSUC") with respect to the conduct of Kulidjian & Associates who previously represented him; and (2) he was unaware that the purpose of the April 30, 2008 hearing was to address sanctions and costs. After hearing submissions from the parties on these issues, the Panel ordered that:

1. the hearing on sanctions is adjourned until June 20, 2008 at 10 a.m.;

2. by no later than June 10, 2008, Grossman shall:

    a. inform the Office of the Secretary in writing whether he wishes to withdraw the written submissions on sanctions filed by his former counsel; and

    b. file with the Office of the Secretary any new written submissions on sanctions; and

3. Staff shall file any reply written submissions on sanctions by June 16, 2008.

[8] Grossman brought a motion returnable June 18, 2008, to request another adjournment of the Sanctions and Costs Hearing. Grossman requested an adjournment on the grounds that: (1) he was still waiting for information from the LSUC with respect to his complaints against his former lawyer; (2) a decision was issued by the Alberta Court of Appeal finding that there was negligence and/or inadvertence on the part of Kulidjian & Associates in a matter before the Alberta Courts; and (3) Grossman needed time to "provide [the Panel] with the evidence as it pertains to this matter".

[9] On June 18, 2008, the Panel heard submissions from Grossman and Staff. The Panel issued an order dated June 26, 2008 ordering that:

1. the sanctions hearing in this matter is adjourned to August 8, 2008 at 10:00 a.m.;

2. Grossman shall file his written submissions on sanctions no later than July 15, 2008; and

3. Staff shall file any reply written submissions on sanctions by July 22, 2008.

[10] Grossman withdrew the submissions of his former counsel and submitted written submissions on July 14, 2008.

[11] Staff submitted written reply submissions on July 22, 2008, but Staff did not withdraw their written reply to the written submissions filed by Grossman's former counsel. Staff also submitted

two more affidavits of Jasmine Handanovic sworn on July 18, 2008 and July 25, 2008 respectively.

[12] The Sanctions and Costs Hearing was held on August 8, 2008 and was attended by Staff and Grossman. First Global and Shuman were not represented by counsel and did not participate in the Sanctions and Costs Hearing.

[13] These are our reasons and decision as to the appropriate sanctions and costs to order against the Respondents.

2. Regulatory Orders Against the Respondents in Ontario and in Other Jurisdictions

[14] Staff presented to us a series of orders made against the Respondents, both by this Commission as well as by securities commissions in other provinces and countries.

[15] The Commission issued a temporary order against Maitland, Grossman, and others on January 24, 2006, and on May 19, 2006, a section 122 proceeding was commenced against Grossman, Maitland, and Hanoch Ulfan.

[16] First Global is subject to a suspension order of the Panamanian National Securities Commission dated September 19, 2006.

[17] The New Brunswick Securities Commission ("NBSC") issued a Decision on the Merits and Reasons on February 21, 2008 as well as a Decision on Administrative Penalties and Costs on May 30, 2008 against the Respondents. The NBSC ordered permanent cease trade orders against First Global, Grossman, and Shuman, and all three parties were ordered to pay an administrative penalty in the amount of $75,000, and they were ordered to jointly and severally pay costs in the amount of $23,033.35.

[18] On June 7, 2007 the Alberta Securities Commission ("ASC") ordered a twenty year trading ban, a twenty year director and officer ban, an administrative penalty of $250,000 and costs in the amount of $50,000 against Grossman, in relation to the Maitland proceeding.

[19] We note that these orders were presented to us by Staff during the hearing and we have summarized them in our decision for the purpose of providing a complete background and chronology; however, we did not rely on these orders in coming to our decision on appropriate sanctions and costs.

3. The Merits Decision

[20] The Merits Decision related to conduct whereby investors were solicited by phone to purchase First Global shares in exchange for their Maitland shares and an additional sum of money.

[21] The findings of the Panel are described briefly below.

[22] The Panel found that the Respondents engaged in acts in furtherance of a trade in relation to First Global and therefore traded in First Global shares, contrary to subsection 25(1) of the Act and contrary to the public interest as none of the Respondents were registered under the Act. With respect to each respondent, the Merits Decision found that:

(i) Grossman's conduct was found to have sufficient proximity to the trades of First Global shares. The Commission found that Grossman engaged in acts in furtherance of trades because Grossman sold the names of 673 potential investors to First Global which included the names of Maitland shareholders, he contracted with the Web Development Company to create First Global's website, he provided courier accounts and he communicated with Maitland shareholders about the opportunity to trade in Maitland shares for First Global shares by paying an additional sum of money for First Global shares (Merits Decision, *supra* at paras. 125 -138);

(ii) Shuman's actions 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. (Merits Decision, *supra* at para. 134); and

(iii) "First Global, through its officer Shuman, and its employees/representatives, such as Sam Richards and Rick Lopez, engaged in acts in further of trades of First Global" (Merits Decision, *supra* at para. 136).

[23] The Panel also found that the Respondents did not qualify for exemptions under the Act; none of the investors were "accredited investors" as per section 1.1 of National Instrument 45-106. Furthermore, the Commission rejected counsel for Grossman's submission that the form that the Respondents made the investors sign stating that they met the requirements of the exemptions was sufficient. The Merits Decision states that the "responsibility for ensuring that the requirements of an exemption are met is the responsibility of the person seeking to rely on the exemption" (Merits Decision, *supra* at para. 141).

[24] Further, the Panel concluded that First Global was not a reporting issuer, and the conduct of the Respondents violated 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, and this was contrary to the public interest (Merits Decision, *supra* at para. 148).

[25] In addition, Grossman's acts in furtherance of trades of First Global shares violated the terms of the Maitland Cease Trade Order (as defined in the Merits Decision), dated January 24, 2006, which ordered Grossman to cease trading in all securities (Merits Decision, *supra* at para. 151). First Global's conduct breached the Commission order of May 29, 2006. However, there was insufficient evidence to establish that Shuman's conduct breached the Commission orders of May 29, 2006 and June 28, 2006 (Merits Decision, *supra* at para. 155 and 156).

[26] The Panel also concluded that Shuman, Grossman and First Global (through its employees and representatives) engaged in high-pressure sales tactics when selling First Global shares to the public, contrary to the public interest. The Commission stated that comments made to investors:

> 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. (Merits Decision, *supra* at para. 165)

[27] First Global also failed to comply with the Commission's order dated September 12, 2006 requiring it to post a copy of the order on its website (Merits Decision, *supra* at para. 166).

[28] In the Panel's view, the Respondents engaged in conduct contrary to the public interest and harmful to the integrity of Ontario's capital markets. In coming to this conclusion, aside from the key findings listed above, the Commission noted that First Global's website contained information which misled investors in regards to proceedings against First Global commenced by provincial securities commissions in Canada, that the Respondents blatantly disregarded Commission orders, and that the Respondents made a series of misrepresentations to investors contrary to the public interest (Merits Decision, *supra* at paras. 172 to 184). The Commission specifically found that:

> 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. (Merits Decision, *supra* at para. 182)

B. ADDITIONAL EVIDENCE ADDUCED AT THE SANCTIONS AND COSTS HEARING

[29] During the Sanctions and Costs Hearing, Staff submitted new evidence to the Panel, specifically, the Affidavits of Jasmine Handanovic sworn on February 26 and 28, 2008 and July 18, 2008 and July 25, 2008. Grossman was given the opportunity to cross-examine Jasmine Handanovic; however, he did not choose to do so.

[30] The evidence from the July affidavits purported to show that Grossman made additions and changes to the First Global website beginning on March 16, 2008, after the Merits Decision was issued. Consequently, Staff took the position that Grossman continued to be involved with First Global and had again breached the cease trade order issued against him on January 24, 2006.

[31] We note that Staff's new evidence was filed, but there was no cross-examination by the Respondents. Furthermore we note that the sanctions requested by Staff on February 8, 2008 and July 22, 2008 are the same; that is unchanged by the new evidence. We did not consider the new evidence in coming to our decision on the appropriate sanctions in this matter.

C. POSITION OF THE PARTIES

1. Sanctions and Costs Requested By Staff

[32] Staff requested that the following sanctions and costs should be imposed on the Respondents:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by or of First Global will cease permanently;

(b) pursuant to paragraph 2 of subsection 127(1) of the Act, Grossman and Shuman will cease trading in securities for a period of twenty (20) years with the exception that Grossman and Shuman are permitted to trade securities for the account of their registered retirement savings plans (as defined in the *Income Tax Act* (Canada));

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Shuman and Grossman for a period of twenty (20) years, except for the exemptions needed to trade in securities in the manner specified in paragraph (b) above;

(d) pursuant to paragraph 8 of subsection 127(1) of the Act, Grossman and Shuman are prohibited for a period of twenty (20) years from becoming or acting as a director or officer of any issuer;

(e) pursuant to subsection 37(1) of the Act, the Respondents are for a period of twenty (20) years prohibited from telephoning residences within or outside Ontario for the purpose of trading in securities;

(f) pursuant to paragraph 9 of subsection 127(1) of the Act, each of Grossman and First Global will pay an administrative penalty of $200,000 and Shuman will pay an administrative penalty of $20,000 for failing to comply with Ontario securities law;

(g) pursuant to subsection 127.1(2) of the Act, Grossman and First Global jointly will pay costs of Staff's investigation and the hearing in the amount of $50,000 plus $6,208.08 in disbursements, and Shuman will pay $10,000 in costs inclusive of disbursements.

[33] Staff referred us to the sanctioning factors set out in *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 ("*Re Belteco Holdings Inc.*"), and *Re M.C.J.C. Holdings Inc. and Michael Cowpland*, (2002), 25 O.S.C.B. 1133 ("*Re M.C.J.C. Holdings*"). Specifically, Staff considered the seriousness of the conduct, the Respondents' previous experience in the capital markets, the Respondents' recognition of the seriousness of the conduct, the harm suffered by investors, the damage to the integrity of the capital markets, the need to deter others, past conduct and prior sanctions, previous decisions made in similar circumstances, and mitigating and aggravating factors to support ordering the proposed sanctions.

2. Summary of Grossman's Position

[34] Grossman withdrew the submissions provided by his former counsel, Kulidjian & Associates, and filed his own submissions. Grossman principally submitted that: (*a)* his former counsel was grossly ineffective and the Panel should consider this a mitigating factor when considering sanctions; *(b)* the Panel should wait for the assessment officer at the Ontario Superior Court of Justice, whose purpose is to assess the value of the services performed by the solicitor on behalf of the client (the "Assessment Officer") to reach a decision with respect to his former counsel's conduct before ordering sanctions; and *(c)* the sanctions proposed by Staff against Grossman are not proportionate to the sanctions proposed against the other Respondents.

[35] Accordingly, Grossman submits that the following sanctions would be adequate:

(a) an order that trading in any securities by Grossman will cease until such time as the Commission has received the decision of the Assessment Officer, at which time the Commission will make its final decision on sanctions;

(b) an order that any exemptions contained in Ontario securities law do not apply to Grossman pending the decision of the Assessment Officer, at which time the Commission will render its final decision on sanctions;

(c) an order that Grossman is prohibited from telephoning residences within or outside of Ontario for the purpose of trading in securities pending the decision of the Assessment Officer, at which time, the Commission will render its final decision on sanctions.

[36] In Grossman's view, these sanctions are consistent with the purpose of the Commission's public interest jurisdiction, which is neither remedial or punitive, but is protective and preventative.

D. THE LAW

1. The Purposes of the Act

[37] In considering appropriate sanctions, the Commission is guided by the underlying purposes of the Act. The purposes as set out in section 1.1 of the Act are:

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

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

[38] In making an order under section 127 of the Act, the Commission is to exercise its public interest jurisdiction in a protective and preventative manner, as described in *Re Mithras Management Ltd.*:

> … 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 those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. 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. In doing so we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all. (*Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at 1610-1611).

2. Sanctioning Factors

[39] In determining the appropriate sanctions in this matter, we must consider the specific circumstances of this case to ensure that the sanctions are proportionate (*Re M.C.J.C. Holdings Inc.*, *supra* at para. 26).

[40] Further, sanctions should be determined by taking into account the specific circumstances of each case. As set out in *Re Belteco Holdings Inc.*, the Commission may consider a number of factors in determining the nature and duration of sanctions, including but not limited to:

(a) the seriousness of the allegations;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been recognition of the seriousness of the improprieties;

(e) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered but any like-minded people from engaging in similar abuses of the capital markets;

(f) any mitigating factors;

Re Belteco Holdings Inc., *supra* at paras. 25 and 26.

[41] Additional factors that the Commission may consider were also established in *Re M.C.J.C. Holdings Inc.*:

(a) the remorse of the respondent;

(b) the size of any profit (or loss avoided) from the illegal conduct;

(c) the size of any financial sanction or voluntary payment when considered with other factors;

(d) the effect any sanction might have on the livelihood of the respondent; the restraint any sanction may have on the ability of the respondent to participate without check in the capital markets;

(e) the respondent's experience in the marketplace; the reputation and prestige of the respondent; and

(f) the shame, or financial pain, that any sanction would reasonably cause to the respondent; and the remorse of the respondent.

Re M.C.J.C. Holdings Inc., *supra* at para 26.

[42] The Commission has observed that these are only some of the factors to consider. Depending on the case, any number of these factors may be relevant (*Re M.C.J.C. Holdings Inc.*, *supra at* para. 26).

[43] The Supreme Court of Canada has affirmed that the Commission may impose sanctions which function as a general deterrent, stating that "it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative" (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60, Le Bel J.).

E. ANALYSIS

1. The Appropriate Sanctions in this Case

(a) Seriousness of Conduct

(i) Staff's Submissions

[44] Staff submitted that the conduct engaged in by the Respondents was of a serious nature. Staff noted that the Merits Decision found that the Respondents used high pressure sales techniques to sell First Global shares over the telephone, solicited investors who, in many cases, had previously purchased Maitland shares (as described in the Merits Decision at paragraphs 34 to 37), made misrepresentations to investors over the telephone as well as through First Global's website, repeatedly breached Commission orders, Grossman sold the contact information of 673 potential investors to First Global through his consulting company, and Grossman used his prior relationship with Maitland investors to influence their investment decisions with regards to First Global.

[45] Staff submitted that First Global's absence from the hearing on the merits and Shuman's attendance on a portion of only the first day of the hearing on the merits speaks to their lack of recognition as to the seriousness of their conduct. Staff further submitted that Shuman's written submissions blamed others including Staff, and he did not accept responsibility for his actions.

[46] First Global and Shuman's breach of Commission Orders was also cited by Staff as an indication of their lack of recognition of the seriousness of their conduct.

(ii) Grossman's Submissions

[47] Throughout the hearing, and in his written submissions, Grossman did not address the nature of his conduct and seriousness of the findings of the Merits Decision. With respect to the findings in the Merits Decision, Grossman argued that "counsel for Grossman [Kulidjian & Associates] provided grossly ineffective assistance of [sic] counsel, which in turn led the Commission to find against Grossman". We address Grossman's arguments relating to the conduct of his counsel separately below.

(iii) Conclusion

[48] In our view, general and specific deterrence are important factors to consider in this case because the Respondents engaged in conduct that was serious in nature and egregious and requires a clear message from the Commission that such conduct will not be tolerated.

[49] For example, the use of telephone solicitations by non-registered salespersons to sell shares, misleading and fraudulent representations made by salespersons as well as postings on the First Global website, high pressure sales techniques, selective solicitation of vulnerable investors who had previously purchased Maitland shares, sales and solicitations made without regard to the investor's needs and without regard to the requirements of the Act, and the use of pseudonyms by salespersons, damages the integrity of the capital markets. This activity is contrary to the public interest.

[50] In the Merits Decision, we found that First Global was intimately connected to Grossman and Introvest. Specifically, Introvest sold 673 investor leads to First Global for $67,300, thousands of telephone calls were made by First Global from Introvest's office, between May 27, 2006 and June 5, 2006, First Global's email accounts were being accessed from computers with unique IP addresses assigned to Maitland Bell accounts, Introvest FedEx and Purolator accounts were used by First Global, that First Global and Maitland used the same fax machine, that a fax dated January 16, 2007 from First Global to the Panamanian National Securities Commission originated from Interactive offices in North York, and that one of the investors was told that he would be treated as a preferred client of First Global because he was a friend of Grossman's.

[51] In addition, the posting made by First Global on its website informing investors that ongoing investigations by various Canadian securities commissions were frivolous and without merit, undermines the integrity of capital markets by questioning the authority and competence of Canadian securities regulators.

[52] For these reasons, we find that it is appropriate to restrict the activities of the Respondents in the capital markets for a lengthy period.

(b) Proportionality of the Sanctions Sought by Staff Against Grossman, Shuman, and First Global

(i) Grossman's Submissions

[53] Grossman submitted that the sanctions sought by Staff against him implied that he was an equal participant of First Global and was responsible for the conduct of First Global and Shuman. Grossman submitted that the Commission "made no finding that Grossman operated in any official capacity" for First Global in the Merits Decision, and that thus the sanctions sought against him by Staff were improper. Grossman did not address the Commission's finding that he acted in furtherance of trades in regards to First Global shares.

(ii) Staff's Submissions

[54] In their written submissions Staff reviewed a series of illegal distribution cases by various provincial securities commissions, and the sanctions imposed in each case. Staff asserted that the cases confirm that those who intentionally mislead investors should be removed from the capital markets for a significant length of time and that significant administrative fines and/or disgorgement orders should be imposed for serious breaches of the registration and prospectus requirements of the Act (See: *Re Allen* (2006), 29 O.S.C.B. 3944, *Re Ochnik* (2006), 29 O.S.C.B. 3929, *Re Momentas Corporation* (2007), 30 O.S.C.B. 6475, *Re Marchment & MacKay Ltd. et al.* (1999), 22 O.S.C.B. 6446, and *Re Euston Capital Corp.*, 2007 ABASC 338) We find that these cases are important to keep in mind to ensure that similar sanctions are imposed in similar circumstances.

[55] Staff submitted that in this case a higher level of sanctions were requested against Grossman because Grossman was intimately involved in the scheme. He helped First Global contact potential investors, including Maitland shareholders, to ultimately sell First Global shares. 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. The evidence also demonstrates that Grossman's company, Introvest, for which he was the sole officer and director, invoiced First Global $324,0404.78 and was paid at least $149,760.47. In contrast, there was little evidence as to what Shuman was paid.

(iii) Conclusion

[56] We do not agree with Grossman's submission that he was not responsible for the conduct at issue relating to First Global. His consulting company, Introvest, invoiced First Global for $324,040.78 in consulting fees, as evidenced by six invoices covering May 2 to October 2, 2006. Introvest's bank records indicate that Introvest received payments from First Global in the amounts of US $21,892.25 and US $114,446.77 from April 17 to September 29, 2006. Grossman was intimately involved in the conduct. Since Grossman was more intimately

involved with First Global and Introvest with respect to collecting money from investors and collecting the profits, we find that it is appropriate to impose an administrative penalty on him in the amount of $200,000.

[57] We find that each of First Global and Grossman must pay an administrative penalty of $200,000.

[58] Shuman had a lesser role with respect to the scheme and as a result, we have imposed an administrative penalty of $20,000 on him.

[59] In our view, the sanctions sought against each of the Respondents are appropriate and proportionate in these circumstances considering the criteria set out in *Re Belteco Holdings Inc.* and *Re M.C.J.C. Holdings Inc*.

(c) The Relevance of the Alleged Negligence of Grossman's Former Counsel and the Decision of the Assessment Officer

(i) Grossman's Submissions

[60] Grossman submitted that the representation provided to him by counsel during the Merits Hearing was "grossly ineffective", which "in turn led the Commission to find against" him. Grossman submitted that his former counsel, Kulidjian & Associates, has a "history of misconduct" in its representation of Grossman in various matters. To support his position Grossman referred the Panel to the Alberta Court of Appeal's decision which found that his counsel's inadvertence in another matter (Maitland Capital) was the cause of the failure to file an appeal in time. In that case the court extended the time to allow Grossman to file an appeal. Grossman also referred the Panel to alleged failures on the part of his counsel to provide effective assistance on the Maitland matter, as well as at the hearing on the merits in this matter.

[61] Further, Grossman submitted that the Panel should wait for the Assessment Officer dealing with the assessment of the account rendered by Grossman's former counsel to reach a decision, before making a final order on sanctions. Grossman did not elaborate on how the Panel would be aided in waiting for the decision.

(ii) Staff's Submissions

[62] In reply, Staff asserted that the findings of fact by the Commission were based on (i) the evidence of nine witnesses; and (ii) an Agreed Statement of facts. According to Staff, Grossman's "attempts to blame" his former counsel "for the Commission's decision on the merits is misguided and demonstrates a lack of remorse". Staff further noted that the conduct of Grossman's former counsel "is irrelevant to the sanctions to be imposed by the Commission", and that the "sanctions decision should not be based on allegations of negligence for which no

evidence has been introduced and which, if proved, would only be relevant to a civil action or as a possible new ground of appeal".

[63] Staff also submitted that the decision of the Assessment Officer is not relevant to these proceedings. Staff stated in its written submissions that "while one of the considerations applicable to an assessment is the degree of skill and competence demonstrated by the solicitor, a finding of negligence is not needed to determine the value of the services performed by the solicitor".

(iii) Conclusion

[64] In our view, a sanctions decision should not be based on allegations of negligence for which no evidence has been introduced.

[65] In order to render our order on sanctions and costs, we must base it on:

(a) the evidence filed at the merits and sanctions hearing in this matter;

(b) the agreed statement of facts; and

(c) the Panel's findings in the Merits Decision.

[66] These are the factors that we considered in this case to make our Order on sanctions and costs.

2. Costs

[67] Staff submits that they incurred total costs of $120,395.58 since October 2006. In their factum at paragraph 72, Staff explains that this number includes investigation fees in the amount of $61,983.75, litigation fees in the amount of $52,203.75 and disbursements in the amount of $6,208.08. Staff only claimed costs against the Respondents for the lead litigation counsel and the lead investigator.

[68] Staff also explained at paragraph 73 of their factum that the disbursements relating directly to Shuman totaled $3,634.34.

[69] According to Staff, Grossman and First Global should be jointly ordered to pay a portion of Staff's costs, specifically fees of $50,000 and disbursements of $6,208.08, and Shuman should be ordered to pay costs in the amount of $10,000 inclusive of disbursements (in the amount of $3,634.34).

[70] Staff states that disbursements relating directly to Shuman total $3,634.34, and that Shuman's total of $10,000 is inclusive of disbursements, which leaves a difference of $2,573.74 of disbursements left to be paid by First Global and Grossman. As a result, we find that First Global and Grossman should pay the balance of $2,573.74 of the total amount of disbursements.

[71] With respect to First Global and Grossman, we find that the amount of $50,000 in costs sought by Staff is reasonable. With respect to Shuman, we also find that the amount of $10,000, inclusive of disbursements, is a reasonable amount. Staff did not claim costs for the assistant investigator, law clerk, articling student and assistant involved in the file. No investigation costs or hearing costs were claimed for the period of May to September 2006, as such time was docketed to the ongoing Maitland proceeding.

[72] We find that Grossman and First Global should be jointly and severally ordered to pay $50,000 in costs and $2,573.74 in disbursements instead of just jointly as requested by Staff.

F. CONCLUSION

[73] For the reasons discussed above, we find that the sanctions and costs imposed by our Order are proportionately appropriate to the circumstances before us. We consider that it is important in this case to impose sanctions that not only deter the Respondents but also like-minded people from engaging in future conduct that violates securities law. Accordingly, we are of the opinion that it is in the public interest to order that:

(1) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by or of First Global shall cease permanently;

(2) pursuant to paragraph 2 of subsection 127(1) of the Act, Grossman and Shuman shall cease trading in securities for a period of twenty (20) years with the exception that Grossman and Shuman are permitted to trade securities for the account of their registered retirement savings plans (as defined in the *Income Tax Act* (Canada));

(3) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Shuman and Grossman for a period of twenty (20) years, except for the exemptions needed to trade in securities in the manner specified in paragraph (2) above;

(4) pursuant to paragraph 8 of subsection 127(1) of the Act, Grossman and Shuman are prohibited for a period of twenty (20) years from becoming or acting as a director or officer of any issuer;

(5) pursuant to subsection 37(1) of the Act, First Global is permanently prohibited from telephoning residences within or outside Ontario for the purpose of trading in securities;

(6) pursuant to subsection 37(1) of the Act, Grossman and Shuman are for a period of twenty (20) years prohibited from telephoning residences within or outside Ontario for the purpose of trading in securities;

(7) pursuant to paragraph 9 of subsection 127(1) of the Act, each of Grossman and First Global shall pay an administrative penalty of $200,000, to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act;

(8) pursuant to paragraph 9 of subsection 127(1) of the Act, Shuman shall pay an administrative penalty of $20,000, to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act;

(9) pursuant to section 127.1 of the Act, Grossman and First Global shall jointly and severally pay the costs of Staff's investigation and the hearing in the amount of $50,000, plus $2,573.74 in disbursements;

(10) pursuant to section 127.1 of the Act, Shuman shall pay the costs of Staff's investigation and the hearing in the amount of amount of $10,000, which is inclusive of disbursements, which amounted to $3,634.34.

Dated this 4th day of November 2008.

"*Wendell S. Wigle*"

Wendell S. Wigle, Q.C.

"*Suresh Thakrar*"

Suresh Thakrar

"*Margot C. Howard*"

Margot C. Howard