Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
P.O. Box 55, 19th Floor 20 Queen Street West Toronto ON M5H 3S8
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IN THE MATTER OF THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

- AND -

GLOBAL ENERGY GROUP, LTD., NEW GOLD LIMITED PARTNERSHIPS, CHRISTINA HARPER, VADIM TSATSKIN, MICHAEL SCHAUMER, ELLIOT FEDER, ODED PASTERNAK, ALAN SILVERSTEIN, HERBERT GROBERMAN, ALLAN WALKER, PETER ROBINSON, VYACHESLAV BRIKMAN, NIKOLA BAJOVSKI, BRUCE COHEN and ANDREW SHIFF

REASONS AND DECISION
(Section 127 of the Act)

Hearing:	January 23, 24, 25, 26, 27, 30, February 1, 2, 3, 8, 21, 24, and April 17, 2012	
Decision:	December 21, 2012	
Panel:	Paulette L. Kennedy	- Commissioner and Chair of the Panel
	Judith N. Robertson	- Commissioner
Counsel:	Cameron Watson Carlo Rossi and Amanda Ramkissoon	- For Staff of the Commission
	Andrew Shiff	- For himself
	Christine Harper	- For herself
		No one appeared for the other respondents.

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REASONS AND DECISION

I. BACKGROUND

A. 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 Global Energy Group, Ltd. ("**Global Energy**"), New Gold Limited Partnerships ("**New Gold**"), Christina Harper ("**Harper**"), Vadim Tsatskin ("**Tsatskin**"), Herbert Groberman ("**Groberman**"), Nikola Bajovski ("**Bajovski**"), Bruce Cohen ("**Cohen**") and Andrew Shiff ("**Shiff**") (collectively, the "**Respondents**") breached the Act and acted contrary to the public interest.

[2] On June 8, 2010, a Statement of Allegations was filed by Staff of the Commission ("**Staff**") and a Notice of Hearing was issued by the Commission. Staff alleges that between June 1, 2007, and June 25, 2008 (the "**Material Time**"), the Respondents were involved in a scheme to market and issue securities of New Gold Limited Partnerships. New Gold securities were sold to approximately 200 investors raising a total of over US $14.7 million. The investors were primarily located in Canada, but there were also investors in the United Kingdom.

[3] Staff alleges that the Respondents were involved in fraudulent and misleading activities related to the issuance of these securities, for which registration and prospectus requirements were not met, and for which the Respondents did not claim any exemptions under Ontario securities laws relating to the sale and distribution of securities. Staff further alleges that the Respondents' conduct was contrary to the public interest.

B. HISTORY OF PROCEEDINGS

[4] On July 10, 2008, a temporary cease trade order was issued in respect of trading by Global Energy and New Gold and their officers, directors, employees and/or agents in securities of New Gold (the "Temporary Order"). The Temporary Order was extended several times and remains in effect as of the date of this Order.

[5] On June 8, 2010, the Commission issued a Notice of Hearing pursuant to sections 37, 127 and 127.1 of the Act accompanied by a Statement of Allegations of the same date issued by Staff with respect to Global Energy, New Gold, Harper, Tsatskin, Groberman, Bajovski, Cohen and Shiff, as well as Michael Schaumer ("**Schaumer**"), Elliot Feder ("**Feder**"), Oded Pasternak ("**Pasternak**"), Alan Silverstein ("**Silverstein**"), Allan Walker ("**Walker**"), Peter Robinson ("**Robinson**") and Vyacheslav Brikman ("**Brikman**").

[6] Settlement agreements were reached between Staff and each of Robinson, Pasternak, Brikman, Walker, Silverstein, Schaumer, and Feder. As a result of those settlement agreements, the Commission issued the following Orders:

> (i) On November 5, 2010, an Order was issued pursuant to sections 37 and 127 of the Act imposing sanctions against Robinson;

(ii) On September 1, 2011, an Order was issued pursuant to sections 37 and 127 of the Act imposing sanctions against Pasternak;

(iii) On September 1, 2011, an Order was issued pursuant to sections 37 and 127 of the Act imposing sanctions against Brikman;

(iv) On September 1, 2011, an Order was issued pursuant to sections 37 and 127 of the Act imposing sanctions against Walker;

(v) On November 29, 2011, an Order was issued pursuant to sections 37 and 127 of the Act imposing sanctions against Silverstein;

(vi) On November 29, 2011, an Order was issued pursuant to sections 37 and 127 of the Act imposing sanctions against Schaumer; and

(vii) On January 20, 2012, an Order was issued pursuant to sections 37 and 127 of the Act imposing sanctions against Feder.

[7] In addition to the proceedings herein, Staff initiated a prosecution against Tsatskin pursuant to s. 122 of the Act. The Information sworn by Staff described the offence as follows:

> *Between and including June 1, 2007 and June 25, 2008, in the City of Toronto, Toronto Region and elsewhere in the Province of Ontario, Vadim Tsatskin, also known as Victor Tsatskin, engaged or participated in an act, practice or course of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on persons or companies to whom he traded securities of New Gold Limited Partnerships, contrary to section 126.1(b) of the* Securities Act *and thereby did commit an offence contrary to section 122(1)(c) of the* Securities Act.

[8] On April 4, 2011, Tsatskin appeared before Justice Bigelow of the Ontario Court of Justice and pled guilty to the offence set out above. As part of his guilty plea, Tsatskin and Staff jointly filed a "Statement of Facts for Guilty Plea" which included admission of the facts necessary to support a finding that Tsatskin had committed the offence as charged.

[9] On November 24, 2011, Tsatskin was sentenced to a jail term of three years.

[10] On January 23, 24, 25, 26, 27, 30, February 1, 2, 3, 8, and 24, 2012, we heard evidence on the merits of the allegations brought by Staff. Shiff was the only Respondent present during the evidentiary portion of the hearing. He asked no questions of Staff's witnesses and gave no evidence on his own behalf.

[11] We heard closing submissions on April 17, 2012. Staff presented both written and oral closing submissions. Shiff was present and made a brief oral statement on his own behalf as his closing submissions. Harper was present and made both oral and written submissions on her own behalf.

[12] The following are our reasons and decision on the merits in this matter.

C. THE RESPONDENTS

1. Corporate Respondents

[13] Global Energy is an international business corporation registered in the Bahamas. Arthur Chase is the President. Global Energy has never been registered under Ontario securities laws.

[14] New Gold is purported to be a series of limited partnerships created by Global Energy. Global Energy purported to be the General Partner of each of the partnerships with investors making up the limited partners. However, there is no evidence that any of the purported limited partnerships were ever formally established, and therefore no evidence that New Gold was a formal legal entity. Finally, there is no record that New Gold was ever registered under Ontario securities laws, or that it was a reporting issuer in Ontario.

2. Individual Respondents

[15] The individual Respondents, namely Tsatskin, Harper, Groberman, Bajovski, Cohen and Shiff, were during the Material Time residents of Ontario. It is alleged by Staff that Tsatskin and Harper were directing minds of Global Energy, and that Tsatskin, Harper, Groberman, Bajovski, Cohen and Shiff were engaged in the sale of partnership units of New Gold on behalf of Global Energy from offices located in Ontario.

D. THE ALLEGATIONS

[16] Staff alleges that:

(a) the Respondents traded in securities of New Gold without being registered to trade in securities, contrary to section 25(1)(a) of the Act and contrary to the public interest;

(b) the actions of the Respondents related to the sale of the securities of New Gold constituted distributions of securities where no prospectus or preliminary prospectus was filed with the Commission nor receipted by the Director, contrary to section 53(1) of the Act and contrary to the public interest;

(c) Global Energy, Harper and Tsatskin engaged or participated in acts, practices or courses of conduct relating to the securities of New Gold that Global Energy, Harper and Tsatskin knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to subsection 126.1(b) of the Act and contrary to the public interest; and

(d) Harper and Tsatskin, being directors and/or officers of Global Energy, did authorize, permit or acquiesce in the commission of the violations of sections 25(1)(a), 53(1) and 126.1(b) of the Act, as set out above, by Global Energy or by the salespersons, representatives or agents of Global Energy, contrary to section 129.2 of the Act and contrary to the public interest.

II. PRELIMINARY ISSUES

A. HARPER'S MOTIONS TO DISMISS THE ALLEGATIONS

[17] Harper brought a motion before the Commission on August 18, 2010 seeking an Order stating that (i) her name be struck from the style of cause in the proceeding; (ii) she be given immunity as a victim in this matter; and (iii) the Commission "close the book on any potential form of future prosecution" against her in relation to this matter.

[18] On August 27, 2010, the Commission dismissed the motion, stating:

> "…on considering Harper's Motion Record and Staff's Motion Record and the oral submissions of Harper and counsel for Staff, it is the Commission's opinion that it would not be in the public interest to grant the Motion, considering that:
>
> (i) Harper's submissions can best be considered by the Panel dealing with the hearing on the merits in this matter, at which time Harper will have an opportunity to challenge all of Staff's allegations, to cross-examine Staff's witnesses, and to bring evidence forward about how she viewed her role in the events at issue in this matter;
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> (ii) should the Panel dealing with the hearing on the merits find that Staff's allegations against Harper have been sustained, Harper will have an opportunity, at a sanctions and costs hearing, to bring evidence forward about the effect of the events at issue on her subsequent health;
>
> (iii) the Statement of Allegations and Notice of Hearing, dated June 8, 2010, do not list Harper's name first on the style of cause; and
>
> (iv) it is not legally possible for a Panel of the Commission to grant the forward-looking immunity sought by Harper."

[19] Harper brought a further motion before the Commission on September 18, 2011 seeking substantially similar relief as that sought in her August 18, 2010 motion. On September 26, 2011, the Commission dismissed the motion stating:

> "(i) we are not satisfied that it is in the public interest to vary or revoke the August 2010 Motion Order or the Temporary Order as requested by Harper in the September 2011 Motion; and
>
> (ii) Harper's submissions can best be considered by the Panel dealing with the hearing on the merits, at which time Harper will have an opportunity to respond to all of Staff's allegations in this matter."

[20] The Merits Hearing commenced on January 23, 2012. Shortly after the commencement of the Merits Hearing Harper contacted Staff to advise that she intended to retain counsel and cross-examine

Staff's witnesses, as well as call witnesses of her own. The Panel heard evidence from Staff witnesses on January 23, 24, 25, 26, 27, 30, February 1, 2, 3, and 8. However, Harper did not attend on any of the dates on which the Panel heard evidence from the parties.

[21] On February 7, 2012, prior to the completion of the evidentiary portion of the hearing, the Panel issued an Order directing Harper to provide the Panel with the name and contact information of her counsel no later than February 10, 2012. The Order further directed Harper, or her counsel, to provide the Office of the Secretary by February 17, 2012, the dates up to April 30, 2012, on which Harper, or her counsel, would be available to attend the hearing to cross-examine Staff's witnesses and call witnesses of her own. The Order advised Harper that if she failed to provide the requested information, the Panel would conclude the evidentiary portion of the hearing and schedule a date for the hearing of final submissions.

[22] Harper did not comply with the Panel's Order of February 7, 2012. On February 29, 2012, the Panel issued an Order setting April 17, 2012, as the date for the hearing of final submissions on the merits of the allegations contained in the Statement of Allegations.

[23] Harper attended the hearing on April 17, 2012. She filed an affidavit and written submissions with the Panel styled as a motion to dismiss the allegations made against her by Staff. The motion material contained evidence which had not been presented to the Panel during the evidentiary portion of the hearing. The Panel advised Harper that her written submissions on her motion would be treated as submissions on the merits of the allegations, but no weight would be given to any new evidence contained therein. The Panel ruled that Harper had been given ample opportunity to present evidence, but had chosen not to do so.

B. FAILURE OF THE RESPONDENTS TO APPEAR

[24] With the exception of Shiff and, as outlined in the paragraph above, Harper, none of the Respondents appeared at the hearing, either personally or through a representative, nor did they present evidence or make submissions.

[25] The *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**") permits the Commission to proceed in the absence of any party who has been given adequate notice. Subsection 7(1) of the SPPA states:

> Effect of non-attendance at hearing after due notice
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> **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.

[26] Similarly, the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017 state:

> Rule 7.1 – Failure to Participate:

> If a Notice of Hearing has been served on any party and the party does not attend the hearing, the Panel may proceed in the party's absence and that party is not entitled to any further notice in the proceeding.

[27] At the outset of the hearing, Staff filed two affidavits, one dated June 11, 2010, and the other dated January 20, 2012, that set out the service and attempted service by Staff on the Respondents. We are satisfied that Staff took all reasonable steps to provide the Respondents with adequate notice of this proceeding, and as such, we were entitled to proceed with the hearing on the merits in their absence, in accordance with subsection 7(1) of the SPPA.

C. THE APPROPRIATE STANDARD OF PROOF

[28] The standard of proof for proceedings before the Commission is proof on a balance of probabilities. This standard was recently affirmed by the Supreme Court of Canada in its decision in *F.H. v. McDougall*, [2008] 3 S.C.R. 41. The Supreme Court explained at paragraphs 45-49 of the judgment:

> … I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.
>
> Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency…
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> …
>
> In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[29] Accordingly, we will decide this matter on a balance of probabilities, and we must be satisfied that there is sufficiently clear, convincing and cogent evidence to support our findings. This is the standard we have applied in this proceeding.

D. THE USE OF HEARSAY EVIDENCE

[30] Staff relies on evidence from their investigation, primarily evidence obtained through searches conducted at Global Energy's offices in Toronto. Staff also seeks to admit evidence from the compelled examinations of Tsatskin, Harper and Groberman, each of whom gave evidence under oath during Staff's investigation of this matter, pursuant to section 13 of the Act, but did not testify in person at the hearing. All of this evidence is, in essence, hearsay evidence.

[31] The SPPA permits the Commission to use its discretion to allow hearsay evidence in an administrative proceeding. Subsection 15(1) states:

> **15.** (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
>
> (a) any oral testimony; and
>
> (b) any document or thing,
>
> relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[32] In *Re Sunwide Finance Inc.* (2009), 32 O.S.C.B. 4671 ("***Sunwide***"), the Commission made the following findings regarding the admissibility of hearsay evidence in a hearing before the Commission at paragraph 22:

> Although hearsay evidence is admissible under the SPPA, the weight to be accorded to such evidence must be determined by the panel. Care must be taken to avoid placing undue reliance on uncorroborated evidence that lacks sufficient indicia of reliability (*Starson v. Swayze*, [2003] 1 S.C.R. 722 at para. 115). In the circumstances, we admitted the hearsay evidence tendered by Staff, subject to our consideration of the weight to be given to that evidence.

[33] *Sunwide* further states at paragraph 24:

> One of the concerns with respect to the introduction of hearsay evidence is that it may infringe on the rights of a party to cross-examine a witness or to introduce contradictory evidence. This engages the rules of procedural fairness. In the case before us, none of the Respondents appeared before us, were represented or present to object to the use of the hearsay evidence, to cross-examine on it or to introduce contradictory evidence of their own. As a result, the Respondents have waived their right to do so.

[34] Staff submits that the statements made by Tsatskin, Harper and Groberman in their compelled examinations are tendered solely as evidence against Tsatskin, Harper and Groberman respectively. To the extent that portions of each of their statements touched upon the conduct of other Respondents, Staff submits that such portions are only intended to provide context. We agree with Staff's submission regarding the use of the compelled examinations.

[35] As in *Sunwide*, the Respondents whose compelled testimony was tendered did not appear at the hearing. They were not present to object to the use of hearsay evidence, to cross-examine on it, or to introduce contradictory evidence. They have effectively waived their right to do so. In the case of Harper, we find that she was given adequate opportunity to appear during the evidentiary portion of the hearing, but declined to do so. We therefore find that she too has effectively waived her right to object to the use of her compelled testimony.

[36] Furthermore, we were presented with documentary evidence introduced by Staff that was consistent with the hearsay evidence presented at the hearing.

[37] In the circumstances, we admitted the hearsay evidence tendered by Staff, including the compelled evidence of Tsatskin, Harper and Groberman, subject to our consideration of the weight to be given to that evidence.

III. ISSUES

[38] Staff's allegations raise the following issues in this matter:

(a) Did the Respondents trade in securities, contrary to subsection 25(1)(a) of the Act?

(b) Did the Respondents engage in distributions of securities, contrary to subsection 53(1) of the Act?

(c) Were any registration or prospectus exemptions available to the Respondents?

(d) Did the Respondents, directly or indirectly, engage or participate in acts, practices or a course of conduct relating to securities of New Gold that they knew or ought to have known would perpetrate a fraud, contrary to subsection 126.1(b) of the Act?

(e) Did Harper and Tsatskin, as directors or officers of Global Energy, or *de facto* directors or officers of Global Energy, authorize, permit or acquiesce in contraventions of the Act by Global Energy, contrary to section 129.2 of the Act?

(f) Was the Respondents' conduct contrary to the public interest and harmful to the integrity of Ontario's capital markets?

IV. EVIDENCE

A. ADMISSIONS BY TSATSKIN IN HIS CRIMINAL PROCEEDING

[39] Tsatskin was not present at the hearing and made no submissions to the Panel. However, Staff filed a statement made by Tsatskin in the criminal proceedings brought against him under s. 122 of the Act. In the statement, titled "Statement of Facts for Guilty Plea" Tsatskin made the following admissions:

> (i) Global Energy operated an unregistered securities sales office trading units of a series of limited partnerships called New Gold Limited Liability Partnerships to members of the public;
>
> (ii) Tsatskin was one of the persons controlling the operations of Global Energy in Ontario;
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> (iii) Global Energy offices were located at 2727 Steeles Avenue West in Toronto and on Tandem Road in Concord;
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> (iv) Tsatskin provided direction and supervision to Global Energy sales staff who sold New Gold Securities to members of the public using deceit, falsehood and other fraudulent means;

(v) Tsatskin has never been registered with the Commission in any capacity;

(vi) Global Energy was not registered in any capacity to trade securities with the Commission;

(vii) The New Gold securities were not qualified by a prospectus to permit their sale nor were they eligible for any exemption to permit their trading in Ontario;

(viii) Tsatskin acted as a de facto "director" within Global Energy;

(ix) As a director of Global Energy, Tsatskin authorized, permitted or acquiesced in the Global Energy agents engaging or participating in an act, practice or course of conduct related to securities that he knew or reasonably ought to have known perpetrated a fraud on persons or companies to whom the Global Energy agents traded the New Gold Securities;

(x) Tsatskin, together with Brian [sic] Coffman and Gary Milby, established Global Energy in 2007;

(xi) Tsatskin, with the assistance of Mark Grinshpun, arranged for the recording of hundreds if not thousands of sales calls from the Global Energy agents to members of the public (the "Sales Recordings"); and

(xii) The Sales Recordings disclose the use of aliases, the dissemination of false information about the nature and quality of the underlying assets of the New Gold securities, false information about the revenue generated from the alleged producing assets of New Gold securities, false information about the location of the Global Energy offices and false information about the directing minds of Global Energy.

[40] The admissions of Tsatskin in his criminal proceeding are relevant to this proceeding because, under s. 127(10) of the Act, the Commission may make an Order under s. 127(1) where "[t]he person or company has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives." [s.127(10)(1)] or where "[t]he person or company has been found by a court in any jurisdiction to have contravened the laws of the jurisdiction respecting the buying or selling of securities or derivatives." [s. 127(10)(3)]. Tsatskin was found by the Ontario Court of Justice to have contravened the Act, and was convicted of an offence under the Act. As a result, the facts underlying his convictions are relevant to this proceeding. However, we have only considered these facts in respect of the allegations against Tsatskin, and not in respect of any allegations against any of the other Respondents.

B. EVIDENCE TENDERED AT THE HEARING

1. Witnesses

[41] Staff called 13 witnesses during the hearing: five New Gold investors; five of the former co-respondents to the original Statement of Allegations; Mr. Chad Harlan, a Certified Financial Institutions Examiner with the Commonwealth of Kentucky Division of Securities; Mr. Cory Fotheringham, a forensic accountant with the firm Deloitte & Touche (hereafter "**Deloitte**"); and Staff investigator Tom Anderson.

a. Investor #1

[42] Mr. D. A. of Edmonton, Alberta (hereafter "Investor #1") testified that in September 2007 he was contacted by telephone by Michael Simon, a Global Energy representative in Lexington Kentucky. Mr. Simon told Investor #1 about an investment opportunity with Global Energy – a three-well oil drilling program called New Gold 9.

[43] Mr. Simon told Investor #1 New Gold 9 was a partnership with 30 partners. Mr. Simon suggested that a partnership unit in New Gold 9, at a unit cost of approximately US$50,000, would return approximately $1,200 to $1,800 per month for between 10 to 20 years. Mr. Simon advised that there would be 30 partnership units in New Gold 9, raising a total of US$1.5 million in capital that would be used for drilling operations.

[44] After his initial conversation with Michael Simon, Investor #1 was contacted (by telephone) by Ms. J. C. Maxwell. Ms. Maxwell identified herself as the Vice-President of Global Energy. Ms. Maxwell confirmed the information given by Mr. Simon with respect to the anticipated oil production for New Gold 9 and the projected returns on investment. Investor #1 testified that the discussion he had with Ms. Maxwell, and the manner in which she explained the details of the investment, made him more comfortable about investing with Global Energy.

[45] In October 2007, Investor #1 purchased a ¼ partnership unit of New Gold 9 for US$12,500. Investor #1 wired the US$12,500 to the Central Bank of Lexington Kentucky, in accordance with instructions he had received via e-mail from Global Energy [info@g-energygroup.com]. Shortly thereafter he received a phone call from Ms. Maxwell confirming receipt of his funds and welcoming him to "the Global Energy Group of Companies".

[46] During his discussions with Mr. Simon and Ms. Maxwell with respect to New Gold 9, there was no mention of commissions to be paid to anyone at Global Energy.

[47] In November 2007, Investor #1 was contacted by Mr. Simon with an offer to invest in New Gold 10, a five-well drilling substantively similar to New Gold 9. Mr. Simon advised that each partnership unit in New Gold 10 would sell for US$75,000, and only 30 partnership units would be sold. Investor #1 provided Staff with a copy of a brochure sent to him by Global Energy with respect to the New Gold 10 program. The brochure contained the following statements:

- Under the heading "The Geology Report", the brochure states "Multiple reservoirs (potentially productive 'pay zones') enhance returns and reduces the risk of a non-producer."

- Also under the heading "The Geology Report", the brochure further states "Company-owned drilling rigs, heavy machinery, and service equipment shorten the time to production."

- Under the heading "A Message From The Global Energy Team Of Professionals", the brochure states "Our approach is focused on drill-bit driven growth in production and reserves utilizing risked rate of return economics to evaluate projects. We manage our drilling risk by allocating capital between our portfolio of higher and lower risk projects" and "We rely heavily on our organization of Geoscientists to generate our drilling prospects.

We employ leading edge Geo-sciences and other advanced technologies identifying oil and gas prospects which generate maximum capacity to establish substantial returns for our investors and to finance continued growth and development in quality product."

- Under the heading "Why Invest in Oil and Gas Drilling Ventures?", the brochure states "1. High Financial Rewards: - Return of Capital in as little as 6 to 18 months. – Can offer better than a 10-to-1 Return on Investment. – Greater than 50% Annual Rate of Return Possible."

[48] The brochure contained photographs of oil drilling and refinery facilities, including a tanker truck displaying the "Global Energy Group" name and corporate logo.

[49] The brochure also included a chart titled "Pro Forma Financial Information" containing projected earnings during year one of the program, expressed in US dollars, using estimated oil prices of $50, $60 and $70 per barrel and estimated production of 100, 150 and 200 barrels per day. According the chart, investors could expect capital returns in year one of between 45% (based on $50 per barrel price and 100 barrel per day production) and 125% (based on $70 per barrel price and 200 barrel per day production). Adjacent to the chart was a quote attributed to "Jim Rogers, Commodities Expert" which stated that the price of oil would soon exceed $100 per barrel and could, in the next 2 to 6 years, exceed $150 per barrel.

[50] Investor #1 testified that subsequent to the phone call from Mr. Simon concerning New Gold 10, he received a phone call from Ms. Maxwell. Ms. Maxwell informed Investor #1 that things were going well for New Gold 9, and he was invited to invest in New Gold 10.

[51] Investor #1 provided Staff with a copy of a letter dated October 30, 2007, signed by J.C. Maxwell, Executive Vice President, Global Energy Group. The letter contains the following statements:

"Welcome to the Global Energy Group Limited and the new gold standard in oil and gas drilling programs offering above average returns.

We formed Global Energy Group Limited five years ago to position ourselves…..

Our experienced management and technical teams have been making the most of the opportunity and we are proud to say that 2006 was another successful year executing our strategy. The first quarter of 2007 is proving to be our best and highest production in the field to date.

…

Attached for your immediate interest and attention are the full details on our latest program release, New Gold 11, offering 30 high potential units at USD$ 49,000 per unit. It is a three well program, returning a two percent (2%) net revenue interest per well per month."

[52] Investor #1 provided Staff with a document titled "Private Placement Memorandum New Gold No. 11" which was attached to the October 30, 2007 letter described above. Investor #1 testified that he was sent similar documents with respect to New Gold 9 and New Gold 10, but he was unable to find those specific documents. Investor #1 testified that the information in the "Private Placement

Memorandum" with respect to New Gold 11 was substantially similar to that provided with respect to New Gold 9 and New Gold 10. The "Private Placement Memorandum" contained the following statements:

- The initial investment of $49,000 per Unit is for DRILLING, COMPLETION AND EQUIPPING COSTS. Each Unit holder will not be responsible for an additional capital contribution assessment.

- Deposit of Funds. Subscription monies will be deposited into a segregated non-interest bearing account established for the benefit of the Partnership at a bank chosen by the Managing Partner.

- Under the Heading "Arthur R. Chase, President": Arthur R. Chase, Managing Director of Global Energy Group, Ltd., will act as the Managing General Partner for New Gold #11, LLP. Mr. Chase has worked directly in the oil and gas industry since 1986 as a marketing executive and vice president of other independent oil and gas field related companies. Mr. Chase has experience in numerous oil and gas fields in Texas, Oklahoma, Mississippi and Kentucky.

[53] The "Private Placement Memorandum" indicates that there will be no "Selling Fees" included in the price of each unit of New Gold 11. It further states that "Units may be sold by officers, directors and employees of the Program Manager [Global Energy], who will not be paid commissions in connection with the Offering, except as permitted by applicable law".

[54] In November 2007, Investor #1 purchased a ⅓ share in New Gold 10 for US$25,000. Investor #1 testified that he was given similar payment instructions with respect to this investment as he was given with respect to his earlier purchase of New Gold 9. He testified that he wired the funds to the same bank account, in the same bank in Lexington, Kentucky. He submitted a wire transfer receipt dated November 5, 2007 confirming the transfer of US$25,000 from his bank account at a branch in Edmonton, Alberta to account #10477144 at the Central Bank in Lexington, Kentucky. The beneficiary of the account is listed as American Oil and Gas Resources Inc. The receipt states, next to the heading "Payment details", that the payment is in respect of "New Gold 10".

[55] Investor #1 testified that on January 3, 2008, he was advised by Mr. Simon by phone that New Gold 9 was producing between 50 to 60 barrels per day. Based on those production amounts, Investor #1 was expecting royalty cheques in the amount of approximately $1,400 per month. However, his royalty cheque for January and February 2008 were in the amount of $131.75 and $182.66 respectively.

[56] Over the next several months, Investor #1 sent numerous e-mails to Mr. Simon (through Global Energy's main e-mail address info@g-energygroup.com) seeking to obtain information from with respect to the production on wells under the New Gold 9 and New Gold 10 programs. On June 11, 2008, Mr. Simon advised Investor #1 by e-mail that all three of the New Gold 9 wells were dry. Mr. Simon expressed optimism about 4 of the 5 wells in the New Gold 10 program, and directed Investor #1 to refer to Global Energy's website for further information.

[57] In the e-mail sent June 11, 2008, Michael Simon offered Investor #1 a credit of US$25,000 against the purchase of a full unit of New Gold 17, which was selling for US$79,000 per unit.

[58] Investor #1 testified that he made numerous attempts in late 2008 and early 2009 to contact Global Energy to inquire about his investments. In April 2009, Investor #1 spoke by telephone with Arthur R. Chase, President of Global Energy. Mr. Chase advised that he had nothing to do with Global Energy, apart from establishing them as a business in the Bahamas. Investor #1 also attempted, without success, to contact Victor Tsatskin, who Mr. Simon and Ms. Maxwell advised was Global Energy's Field Supervisor.

[59] Investor #1 testified that he received a total return of US$796.08 in royalties in respect of his US$12,500 investment in New Gold 9. He received a total return of US$400.86 in royalties in respect of his US$25,000 investment in New Gold 10.

b. Investor #2

[60] Ms. M. K. of Edmonton, Alberta (hereafter "Investor #2") testified that in the summer of 2007 she and her husband were contacted by telephone by J.C. Maxwell, who identified herself as the Executive Vice-President of Global Energy. Ms. Maxwell advised Investor #2 that Global Energy, a company with offices in the Bahamas and Lexington, Kentucky, were soliciting for partners in a three-well oil venture in Kentucky – New Gold 9. Ms. Maxwell explained that the oil produced from the three-well program would be sold, and each partner would receive a monthly royalty cheque representing their share of the proceeds, with each full partnership unit entitling the holder to 2% of the proceeds of the sale of the oil. Ms. Maxwell advised Investor #2 that Global Energy had experienced a great deal of success already in Kentucky, and that investors could expect a return of 50% annually, and could expect to earn a steady stream of returns for up to 15 to 20 years.

[61] Investor #2 was concerned about potential liability attaching to her as a partner in New Gold 9. Investor #2 was provided with a letter signed by Mr. Arthur R. Chase, Managing Member, advising her that the venture would be established as a limited liability partnership, so initial investors would not be liable for any loss beyond their original investment. The letter further confirmed that no partners would be called upon to make any additional contributions of capital to the partnership for any reason. Investor #2 further received a document titled "Private Placement Memorandum – New Gold #9, LLP" which contained, among other things, a "Limited Liability Partnership Agreement" signed by Mr. Chase. The Agreement stated that New Gold #9, LLP would be "a Kentucky registered Limited Liability Partnership, under the laws of the Commonwealth of Kentucky".

[62] Investor #2 purchased ½ partnership unit in New Gold 9 LLP in August 2007 for US$24,500.

[63] Investor #2 received her first royalty cheque in January 2008 in the amount of US$263.50, an amount far less than she had anticipated. When Investor #2 inquired as to why her royalties from New Gold 9 were significantly smaller than expected, she received a telephone call from a representative of Global Energy who identified himself as Mark Roberts, who told her that New Gold 9 had been a great disappointment, and advised her to "roll her investment" in New Gold 9 into a new investment in New Gold 17. Mr. Roberts advised that the test wells for New Gold 17 were very promising.

[64] On January 23, 2008, Investor #2 received an e-mail from Ms. Maxwell explaining that a well on a property leased by Global Energy for two other programs, New Gold 15 and New Gold 18, had produced 4920 barrels of oil in the month of November 2007, resulting in net revenue per partnership unit in the amount of US$20,422 for a single month.

[65] On March 12, 2008, Investor #2 purchased one partnership unit of New Gold 17. The purchase was made by effectively converting her interest in New Gold 9 into a unit of New Gold 17, requiring an additional investment by Investor #2 in the amount of US$54,500.

[66] On April 23, 2008, Investor #2 purchased ½ partnership unit of New Gold 20 for US$49,500.

[67] Investor #2 received monthly cheques for royalties in respect of New Gold 9 from January 2008 until May 2008, for a total of US$1,211.06. She received only one royalty cheque in respect of New Gold 17 in November 2008, in the amount of US$117.03. She received no royalties at all in respect of New Gold 20.

[68] Investor #2 does not recall having any discussions with Ms. Maxwell, or anyone else at Global Energy, about how Ms. Maxwell was paid by Global Energy or, more specifically, whether Ms. Maxwell earned a commission on the sale of New Gold partnership units.

[69] Investor #2 submitted copies of Subscription Agreements for New Gold 9, New Gold 17, and New Gold 20. On the Subscription Agreement for New Gold 17 Investor #2 identifies herself as an "accredited investor". On a "Confidential Investor Information Sheet" attached to the Subscription Agreement, Investor #2 describes her net worth to be between $5-10,000,000. She also describes her total family income in 2005 as $250,000, 2006 as $300,000, and estimates her family income for 2007 would be approximately $400,000.

c. Investor #3

[70] Mr. T. K. of Sicamous, British Columbia (hereafter "Investor #3") testified that in or about July or August 2007 he began receiving phone calls from Mark Roberts of Global Energy offering investment opportunities in the oil and gas industry. In addition to the phone calls, Mr. Roberts sent Investor #3 a DVD about Global Energy and newspaper clippings concerning some of Global Energy's oil producing wells.

[71] Investor #3 understood, based on the telephone numbers listed on the material he had received, that the telephone calls he received from Mr. Roberts originated from Global Energy's offices in Kentucky.

[72] After several phone calls from Mr. Roberts, Investor #3 decided to purchase a partnership unit in New Gold 11. He was informed by Mr. Roberts that New Gold 11 was a three-well program operating on leased fields in Kentucky. According to Mr. Roberts, two wells in the New Gold 11 program were already drilled and producing oil, and his investment would be used to drill the third well. He was not informed that any of his investment would be used to pay commissions to Mr. Roberts. Based on the information provided by Mr. Roberts, Investor #3 expected to receive monthly royalty cheques from Global Energy in amounts sufficient to recover his investment in four to eight months.

[73] In October 2007, Investor #3 purchased one partnership unit in New Gold 11 for a price of US$49,000. On October 22, 2007, he received a letter signed by J.C. Maxwell, Executive Vice-President, Global Energy, welcoming him as a new partner in New Gold 11, LLP. Investor #3 explained that this was his only contact with Ms. Maxwell.

[74] Investor #3 received his first royalty cheque in April 2008, although it was in an amount far less than he expected. He received several additional royalty cheques between April and November 2008, but always in amounts less than anticipated. He received no further royalty cheques from Global Energy after November 2008.

[75] Investor #3 testified that the total value of the royalties he received was approximately US$3,800. He sent numerous e-mails to Global Energy in an attempt to determine why payments ceased in November 2008 but received no satisfactory response. He testified that his last contact from Global Energy was in or about August 2009, and he has received no further communication or compensation from Global Energy in respect of his investment in New Gold 11.

d. Investor #4

[76] Mr. E. F., a resident of Manitoba (hereafter "Investor #4"), testified that in or about October 2007 he was contacted by telephone by a representative of Global Energy concerning an opportunity to invest in an oil exploration project. The representative identified himself as Mr. Richard Steele. Mr. Steele explained that the exploration project consisted of a three well program in rural Kentucky named New Gold 11. Mr. Steele advised that the proposed wells in the New Gold 11 program could produce between 70 to 150 barrels of oil per day for as many as 15 years or more. Investor #4 was advised that an investment of US$49,000 would entitle him to 2% of the earnings generated by the monthly sale of the oil pumped from the New Gold 11 wells.

[77] In December 2007, Investor #4 purchased one partnership unit of New Gold 11 for US$49,000.

[78] In March 2008, Investor #4, jointly with his brother H., purchased a partnership unit of New Gold 18 for approximately US$49,000.

[79] Investor #4 testified that he and his brother travelled to Kentucky to tour Global Energy's oil fields. Investor #4 flew into Nashville, Tennessee, and was picked-up by a limousine and taken to Bowling Green, Kentucky. When they arrived at Bowling Green, Investor #4 was met by a man named Gary Milby. Investor #4 had anticipated meeting Mr. Steele, but was advised that Mr. Steele was not available. Instead, Mr. Milby took Investor #4 and his brother on a tour of oil fields in the area around Bowling Green. Investor #4 asked whether they would be taken to Global Energy's office in Lexington, but Mr. Milby advised that Global Energy's operations took place in the oil fields, so there was no need to visit the office. Investor #4 testified that he saw numerous wells, some of which were actively pumping oil, but there were no signs on any of the wells, and Mr. Milby was unable to identify which were owned by Global Energy.

[80] After the tour of the oil fields, Investor #4 and his brother were taken out for dinner by a woman who identified herself as J. C. Maxwell. Ms. Maxwell described herself as being "senior" to Richard Steele within Global Energy. Over the course of the dinner, Ms. Maxwell told Investor #4 that she had worked in the oil industry in both Switzerland and Texas.

[81] Investor #4 submitted a copy of a royalty cheque and four Statements of Account received from Global Energy in respect to his partnership units in New Gold 11 and New Gold 18. The royalty cheque was in the amount of US$886.27. It was drawn on an account at the First Caribbean International Bank, Bahamas. The cheque number is printed at the bottom of the cheque along with the

following account identifier "026005092 2000192005416". The name of the remitter is listed as "Global Energy". The cheque is signed, but the signature is illegible.

[82] Investor #4 testified that the amount of each royalty cheque he received from Global Energy was far less than he anticipated based on his discussions with Mr. Steele. He testified that the total royalties he received from New Gold 11 and New Gold 18 were approximately US$4,300. He further testified that apart from the royalties, he received no other compensation in respect of his investments with Global Energy.

e. Investor #5

[83] Mr. O. B. of Richmond Hill, Ontario (hereafter "Investor #5"), testified that he was contacted by telephone by Michael Simon of Global Energy in May 2007 offering an investment opportunity in an oil exploration project in the area of Lexington, Kentucky. Mr. Simon told Investor #5 that Global Energy had wells in that area that were already producing oil, that it was potentially a very lucrative investment. He was advised that his investment would be used to pay the exploration costs.

[84] Investor #5 made five separate investments with Global Energy between May and November 2007, three in his own name and two in the names of corporations which he owned. The total amount invested by Investor #5 was US$136,250.

[85] Investor #5 testified that he received royalty cheques sporadically from Global Energy, but the amounts were far less than the projected earnings outlined in the documentation initially provided by Mr. Simon. He submitted copies of several royalty cheques. Each cheque was drawn on an account at the First Caribbean International Bank, Bahamas. The cheque number is printed at the bottom of each cheque along with the following account identifier "026005092 2000192005416". The name of the remitter on each cheque is listed as either "Global Energy", "Global Energy Group Ltd." or "Global Energy Group Limited". Each cheque is signed, but the signatures are not legible.

[86] Over the course of his dealings with Investor #5, Mr. Simon admitted that he real name was in fact Michael Schaumer. Investor #5 asked Mr. Schaumer why he was not using his real name, but Mr. Schaumer did not provide an answer.

f. Chad Harlan, Commonwealth of Kentucky Division of Securities

[87] Mr. Harlan is Certified Financial Institutions Examiner with the Commonwealth of Kentucky Division of Securities. He testified that his office began receiving inquiries from Canadian citizens in November 2007 about an oil and gas company, Global Energy, operating out of Lexington, Kentucky that was seeking investors in Canada. The callers had been advised that Global Energy was drilling oil wells in Kentucky, and was seeking investors in programs marketed as "New Gold Limited Partnerships". Potential investors in New Gold had been directed by Global Energy to send money to a bank account in Kentucky.

[88] Mr. Harlan's office investigated and determined there was no company called "Global Energy" registered to sell securities or make any other securities related filings in Kentucky. His office also determined that there were no salespersons registered to sell "New Gold" securities in Kentucky.

[89] Based on his investigation of Global Energy, Mr. Harlan believed the Global Energy investment scheme operated as follows:

(i) Global Energy salespersons would contact potential investors in Canada offering investment opportunities in oil and gas drilling programs. Each of the drilling programs was called "New Gold", and each New Gold program was assigned a number (New Gold #8, New Gold #9, etc.);

(ii) Investors were advised that Global Energy was a Bahamian corporation headed by Mr. Arthur Chase. In the promotional material sent to investors, Mr. Chase was described as having years of experience in the oil and gas industry. When interviewed by Mr. Harlan's office, Mr. Chase stated that he had no knowledge of the oil and gas business;

(iii) Investors were directed to send funds to an escrow agent, American Oil and Gas Resources LLC, where the funds would be held in an escrow account;

(iv) The investor funds were initially sent to an account at the Central Bank of Lexington, account #10477144 in the name of American Oil and Gas Resources Inc. Later, in 2008, the investor funds were moved to an account at the Central Bank and Trust in Lexington, account #10478382, in the name of American Oil and Gas Resources. After the Central Bank and Trust account was established, subsequent investors were directed to send their funds to that account. Both these accounts (hereafter "**the American Oil and Gas accounts**") were controlled by Mr. Bryan Coffman, a lawyer in Lexington;

(v) Mr. Coffman had established a "virtual office" for Global Energy in Lexington. No employees of Global Energy worked at the "virtual office". The office was operated by Office Suites PLUS, a third-party contractor whose business included providing mail collection services, and provided Global Energy with a mailing address in Lexington. Any mail sent to the "virtual office" was retrieved by Mr. Coffman; and

(vi) Promotional material advised potential investors that American Oil and Gas would act as an escrow agent for Global Energy. They were advised that funds would be held by American Oil and Gas, and ultimately used by Global Energy. In fact, a large amount of the funds deposited into the American Oil and Gas accounts was being directed to Bryan Coffman's personal use and that of his family, while a very small portion was actually being forwarded to Global Energy in the Bahamas or used to pay for drilling related expenses.

[90] Mr. Harlan testified that a total of US$16,197,125.02 was deposited into the American Oil and Gas accounts from investors in the Global Energy scheme (the "**Investor funds**"). Mr. Harlan testified that he examined the records pertaining to the American Oil and Gas accounts to determine what happened to the Investor funds after they had been deposited into the accounts.

[91] Mr. Harlan testified that the following Investor funds were transferred from the American Oil and Gas accounts to accounts controlled by, or for the behalf of, persons or entities who are respondents in this proceeding:

GVC Marketing	US$2,891,000.00
Global Energy Group (Bahamas)	US$902,000.00
International Portfolio Investments ("**IPI**")	US$421,119.50

Faina Tsatskin	US$439,000.00

[92] Mr. Harlan testified that the Global Energy Group account in the Bahamas to which funds were transferred from the American Oil and Gas accounts was the only bank account he located in the name of Global Energy.

[93] Mr. Harlan testified that he was advised by Tsatskin that Faina Tsatskin is Tsatskin's mother, and that the US$439,000.00 transferred to Faina Tsatskin from the American Oil and Gas accounts was to repay funds Tsatskin had borrowed from his mother.

[94] Mr. Harlan testified that most of the remaining US$11.5 million of Investor funds that had been deposited into the American Oil and Gas accounts were distributed by Mr. Coffman to other accounts controlled by Mr. Coffman or accounts controlled by other persons or entities who are not respondents in this proceeding. Mr. Harlan testified that the funds directed to the benefit of Mr. Coffman were the subject of a prosecution in the State of Kentucky against Mr. Coffman, his wife Megan Coffman and Gary Milby [*The United of America v. Bryan Coffman, Megan Coffman and Gary Milby*].

g. Oded Pasternak

[95] As outlined above, an Order was issued on September 1, 2011, imposing sanctions against Pasternak pursuant to sections 37 and 127 of the Act in respect of his conduct associated with Global Energy.

[96] Pasternak testified that he first learned of Global Energy from Bruce Cohen, who Pasternak understood to be a salesperson at Global Energy. Cohen introduced Pasternak to a woman Cohen described as his boss, Julia Maxwell. Pasternak testified that he later learned that Julia Maxwell's real name was Christina Harper. Pasternak testified that he was hired by Harper to work as a salesperson at Global Energy's offices at 2727 Steeles Avenue West in Toronto. He began by selling a product referred to as "New Gold #9". All sales were conducted via telephone.

[97] Pasternak testified that following his interview with Harper, Harper introduced him to Tsatskin. Pasternak testified that he understood Tsatskin to be the owner of Global Energy.

[98] Pasternak testified that Harper also used the alias "J.C. Maxwell" in her dealings at Global Energy. He further testified that Harper directed him to use the alias "Richard Steele" when dealing with potential investors.

[99] Pasternak testified that Harper supervised the sales staff of Global Energy. He explained that Harper provided scripts to be used during calls to prospective investors, and provided brochures and other promotional material to be sent to those prospective investors.

[100] The script instructed him to advise the potential investor that he was calling from Lexington, Kentucky. The script stated that the wells to be drilled could produce oil for between 10 and 20 years, and that the funds raised by the investors would be used pay the cost of drilling the wells.

[101] Pasternak testified that he was paid 19% commission on each new sale. The commissions were paid by GVC Marketing Inc. ("**GVC**"). Between October 12, 2007, and June 25, 2008, GVC paid Pasternak a total of $156,152.52.

[102] Pasternak testified that Shiff also worked as a salesperson at Global Energy. Pasternak recalled that Shiff used an alias when dealing with potential investors. To the best of Pasternak's recollection, the alias used by Shiff was Winfield.

h. Alan Silverstein

[103] As outlined above, an Order was issued on November 29, 2011, imposing sanctions against Silverstein pursuant to sections 37 and 127 of the Act, in respect of his conduct associated with Global Energy.

[104] Silverstein testified that he was hired by Harper to work as a salesperson at Global Energy. Silverstein began by selling a product referred to as New Gold 11 and later sold New Gold 12 and New Gold 13.

[105] Silverstein testified that Harper managed the sales staff at Global Energy. He stated that Harper provided him with a script to use when calling potential investors. He also stated that Harper instructed him to use an alias when dealing with investors, and he chose the name Eric Anderson.

[106] Silverstein was paid a commission of 19% on all new sales. The commissions were paid by GVC, a company Silverstein believed was owned by Tsatskin. While at Global Energy, Silverstein was paid $114,000.00 in commissions. Most of his commissions were paid to his company, Revlis Sales and Service, but some of the commissions were paid to him personally.

[107] Finally, Silverstein confirmed that Shiff worked at Global Energy, although Silverstein could not recall what job Shiff performed.

i. Vyacheslav Brikman

[108] As outlined above, an Order was issued on September 1, 2011, imposing sanctions against Brikman pursuant to sections 37 and 127 of the Act in respect of his conduct associated with Global Energy.

[109] Brikman testified that he first learned of Global Energy through a newspaper advertisement seeking salespersons. He was interviewed for the position at an office located at 2727 Steeles Avenue West, Toronto, by a person who identified herself as Julia Maxwell. He subsequently learned that Ms. Maxwell's real name was Chris or Christina, although he called her Julia or J.C. throughout his time at Global Energy.

[110] Brikman testified that he was hired as a salesperson, selling partnership units in oil exploration projects in Kentucky referred to as New Gold. While at Global Energy, Brikman sold partnership units in New Gold 8, New Gold 9 and New Gold 11.

[111] Brikman testified that as a salesperson, he took day-to-day direction from Julia. He testified that Julia instructed him to use an alias when dealing with potential investors, and Brikman used the name David Fine.

[112] Brikman testified that Julia provided him with a script containing information about projected oil production per well and the anticipated revenue to be generated by such production. He was instructed to inform potential investors that the proposed wells would, on average, continue to pump oil for 20 years.

[113] Brikman testified that Julia provided updates on the productivity of certain wells, with the expectation that the information would be passed-on to potential investors. He specifically recalled one instance when Julia returned from Kentucky and informed him that a certain well was producing 100 barrels a day. Julia also provided newspaper articles from local papers in Kentucky concerning the production at Global Energy's wells.

[114] Brikman testified that Julia instructed him to advise potential investors that he was calling from Kentucky.

[115] Brikman testified that he was paid commission for each new sale of a partnership unit (or a fraction thereof). He confirmed that the commissions were paid by cheque drawn from a bank account in the name of GVC. He further confirmed that he was paid $82,000 in commissions.

[116] Brikman testified that after he had sold a unit of New Gold, the investor's name and contact information would be provided to a "loader". Brikman explained that the loader would contact the investor and try to get them to purchase more partnership units. He testified that Julia was the only loader when he joined Global Energy, although Michael Schaumer also later worked as a loader. Brikman testified that when a loader sold additional units to a salespersons existing client, the salesperson would earn a residual commission. He testified that he earned residual commissions on some of Julia's sales to his existing clients.

j. Allan Walker

[117] As outlined above, an Order was issued on September 1, 2011, imposing sanctions against Walker pursuant to sections 37 and 127 of the Act in respect of his conduct associated with Global Energy.

[118] Walker testified that he worked as a salesperson at the Global Energy office in Toronto from August 2007 to June 2008. He testified that he learned about Global Energy from a friend and was introduced to a woman who identified herself as Julia Maxwell, VP Sales for Global Energy. Ms. Maxwell interviewed him for the position of salesperson, explaining that Global Energy was selling partnership units in an oil drilling program in Kentucky.

[119] Walker testified that Ms. Maxwell provided him sales training, including a script to use with potential investors. Ms. Maxwell also provided Walker with sample rebuttals to objections raised by potential investors. Walker testified that he was instructed by Julia Maxwell to use a pseudonym when dealing with potential investors. Walker used the name Alex Williams. He also testified that Ms. Maxwell instructed him to advise potential investors that he was calling from Lexington, Kentucky.

[120] Walker testified that he sold partnership units in programs called New Gold 8, New Gold 9 and New Gold 14. He received 19% commission on his sales, a fact that was not disclosed to potential investors. Walker's commissions were paid by GVC, a company he believed was owned by Tsatskin. Walker was paid a total of approximately $80,000 in commissions while at Global Energy.

[121] Walker was instructed to inform potential investors that the average production at the proposed wells would be between 40 and 120 barrels of oil per day. He was further instructed to advise potential investors that the wells would produce at that level, on average, for anywhere between 15 and 20 years. Investors were advised that they would receive monthly cheques representing the proceeds of the oil produced by the well. Investors were advised that the monthly cheques begin to arrive within 90 days of commencement of the drilling, and would provide a full return on the investment in as little as 24 months.

[122] Walker testified that it was not until the Commission had issued a cease trade Order against Global Energy that he learned that the name "Julia Maxwell" was actually an alias, and Ms. Maxwell's real name was Christina Harper.

k. Michael Schaumer

[123] As outlined above, an Order was issued on November 29, 2011, imposing sanctions against Schaumer pursuant to sections 37 and 127 of the Act in respect of his conduct associated with Global Energy.

[124] Schaumer testified that he was employed as a salesperson at Global Energy from June 2007 to June 2008. He first learned of Global Energy from an advertisement in the Sun newspaper. He was interviewed by a woman who identified herself as Julia or J.C. Maxwell. Ms. Maxwell advised him that Global Energy was looking for people to sell investments in oil wells in Kentucky.

[125] Schaumer testified that Ms. Maxwell, who he later came to know as Christina Harper, ran the sales room, which included handling customer relations, and organizing and supervising the sales staff. He testified that Ms. Maxwell provided him with a script to use when speaking with prospective investors.

[126] In addition to his dealings with Ms. Maxwell, Schaumer explained that he also had dealings with Tsatskin while at Global Energy. He believed Tsatskin was the owner of Global Energy. According to Schaumer, Tsatskin would provide day-to-day information about the productivity of the wells, and the sales staff would relay that information to prospective clients. Tsatskin also visited Kentucky and returned with information on specific wells and whether they were producing oil. Schaumer testified that Ms. Maxwell accompanied Tsatskin on some of his trips to Kentucky and she too would pass on information to the sales staff concerning production at the wells.

[127] Schaumer testified that Ms. Maxwell told him to use an alias when dealing with prospective investors. The name he used when dealing with prospective investors was Michael Simon.

[128] Schaumer testified that he told potential investors that Ms. Maxwell had 40 years of experience in the oil industry, when in fact he believed she had no such experience. He claims he made those false statements to create an image of Ms. Maxwell as the experienced matriarch of the company. He testified that both Tsatskin and Harper knew such false representations were being made to potential investors.

[129] Schaumer explained that he was involved in the sale of units of New Gold 8 through New Gold 17. He was paid a commission on each new sale. He also earned a commission when he sold additional units to his existing clients, a process Schaumer described as "loading". He did not advise

potential clients that he earned commission on each new investment. In total, Schaumer was paid $255,272 in commission by GVC plus approximately US$384,000 directly from American Oil and Gas Resources, at Tsatskin's direction, for commissions and the generation of leads and prospective clients.

2.Evidence obtained by Staff through the execution of search warrants

a. Anderson, Staff Investigator

[130] Mr. Anderson is an Investigator with the Commission. He was assigned to investigate Global Energy in the spring of 2008, following the referral by the Commonwealth of Kentucky Division of Securities of several inquiries by Canadian investors concerning investments they had made in Global Energy. Mr. Anderson determined that Global Energy was conducting operations from offices at 2727 Steeles Avenue West, Toronto.

[131] On June 25, 2008, Mr. Anderson oversaw the execution of a search warrant on three units at 2727 Steeles Avenue West. Staff seized computer systems and numerous documents which provided the identities of the people who worked at Global Energy.

[132] During the search, Staff became aware of an additional Global Energy office at 29 Tandem Road in Concord. Staff immediately went to that address, where they found Tsatskin and Mark Grinshpun loading a box of documents into a car. Staff obtained an additional warrant, and conducted a search of the Tandem Road offices later that day. Staff seized further computers and documents from the Tandem Road office.

[133] The computer systems seized by Staff were turned over to Deloitte where Mr. Fotheringham conducted an analysis of the contents. From the computer hard drives, Staff obtained additional documents pertaining to the operations of Global Energy.

[134] Mr. Anderson obtained banking records from several individuals and entities involved with Global Energy. Based on his analysis of the banking records, Mr. Anderson testified that between June 14, 2007 and June 17, 2008, the following funds were transferred from an account in the name of American Oil and Gas Resources to persons or entities involved in this proceeding:

US$2,891,000.00 to account in the name of GVC;

US$902,000.00 to an account in the name of Global Energy Group in the Bahamas

US$396,119.65 to accounts in the name of IPI; and

US$384,030.00 to accounts in the name of Michael Schaumer or members of his family.

[135] Mr. Anderson acknowledged that his evidence with respect to the amount received by IPI from American Oil and Gas Resources differs from the evidence of Mr. Harlan of the Kentucky Division of Securities. Mr. Anderson explained that in his review of IPI's banking records he was unable to account for a transfer of US$25,000.00 which Mr. Harlan testified was made on October 2, 2007. As a result, Mr. Anderson did not include that amount in his total of the funds transferred to IPI from American Oil and Gas Resources, which roughly accounts for the discrepancy between his evidence and that of Mr. Harlan.

[136] Based on his review of the banking records, as well as documents seized by Staff at the offices of Global Energy, Mr. Anderson testified that the following payments were made from accounts in the name of GVC to individuals or entities who are, or were, respondents to proceedings before the Commission with respect to their activities with Global Energy :

$145,384.49	to Tsatskin or members of his family
$233,693.84	to Harper and IPI
$255,272.40	to Schaumer
$313,461.61	to entities controlled by Howard Rash or members of his family
$288,407.67	to entities controlled by Feder
$156,152.52	to Pasternak
$114,186.69	to Silverstein or a corporation controlled by Silverstein
$91,509.02	to Groberman
$82,521.76	to Walker
$82,748.34	to Brikman
$64,343.29	to Bayovski
$45,736.33	to Cohen
$11,700.00	to Robinson
$10,532.27	to Shiff
==========	
$1,895,650.23	**Total**

[137] Mr. Anderson reviewed numerous payments made from accounts held by GVC to third party contractors providing services to GVC related to the activities of Global Energy.

[138] Mr. Anderson testified that US$902,000.00 was transferred from the American Oil and Gas accounts to an account in the name of Global Energy at the First Caribbean International Bank, Bahamas. Mr. Harlan had earlier testified that he could not find any other accounts in the name of Global Energy. Mr. Anderson testified that all the royalty cheques distributed by Global Energy were drawn from that Global Energy account in the Bahamas.

[139] Mr. Anderson filed certificates issued under section 139 of the Act certifying that the records of the Commission disclose that the following entities are not and have never been registered as reporting issuers in the province of Ontario, nor have they filed prospectuses with the Commission with respect to any offerings:

> Global Energy Group, Ltd.; Global Energy Group; New Gold #8, LLP; New Gold #9, LLP; New Gold #10, LLP; New Gold #11, LLP; New Gold #12, LLP; New Gold #14, LLP; New Gold #15, LLP; New Gold #16, LLP; New Gold #17, LLP; New Gold #18, LLP; New Gold #20, LLP; and New Gold #21, LLP

[140] Mr. Anderson further testified that no exempt offerings have ever been filed with the Corporate Finance Branch of the Commission with respect to the New Gold Limited Partnerships.

[141] Mr. Anderson filed certificates issued under section 139 of the Act certifying that there is no record of the following persons having been registered under the Act:

Vadim Tsatskin, Christina Harper, Eliot Feder, Oded Pasternak, Alan Silverstein, Herbert Groberman, Nikola Bajovski and Andrew Shiff

[142] Mr. Anderson filed a certificate issued under section 139 of the Act certifying that the records of the Commission indicate that Peter James Robinson was registered as a salesperson under the category of securities dealer with Gordon-Daly Grenadier Securities from May 1, 1989 to January 8, 1992.

[143] Mr. Anderson filed a certificate issued under section 139 of the Act certifying that the records of the Commission indicate that Vyacheslav (Steve) Brikman was registered as a salesperson under the category of mutual fund dealer with CIBC Securities Inc. from February 1, 1994 to March 13, 1995.

[144] Mr. Anderson filed a certificate issued under section 139 of the Act certifying that the records of the Commission indicate that Michael Schaumer was registered as a salesperson under the category of securities dealer with Pacific Rim Container Sales Ltd. from July 24, 1989 to December 27, 1989.

[145] Mr. Anderson filed a certificate issued under section 139 of the Act certifying that the records of the Commission indicate that Allan Walker was registered as a salesperson under the category of securities dealer with Marchment & Mackay Limited from August 15, 1995 to July 30, 1999.

[146] Mr. Anderson referred the Panel to several documents seized by Staff during the execution of the search warrants on the offices of Global Energy, including documents retrieved from the computer hard drives seized on the premises. One of the documents referred to by Mr. Anderson was an e-mail identified as being from J.C. Maxwell, Executive V.P., which was sent to numerous e-mail addresses on August 3, 2007. The subject line of the letter reads "Welcome to the Global Energy Group Limited". The text of the e-mail reads, in part:

> Welcome to the Global Energy Group Limited and the new gold standard in oil and gas drilling programs offering above average returns.
>
> We formed the Global Energy Group Limited five years ago to position ourselves to take advantage of the unique opportunity that presented itself in the resource rich Appalachian Basin oil and gas sector.
>
> Our experienced management and technical teams have been making the most of the opportunity and we are proud to say that 2006 was another successful year executing our strategy. The first quarter of 2007 is proving to be our best and highest production in the field to date….

[147] The August 3, 2007 e-mail is substantively similar to a letter provided to the Panel by Investor #1. The letter, dated October 30, 2007, is written on Global Energy letterhead and bears a signature over the name "J.C. Maxwell, Executive Vice-President". The letter reiterates verbatim the information in the first three paragraphs of the August 3, 2007, e-mail.

[148] Mr. Anderson filed a Corporation Profile Report dated March 6, 2008, for Ontario Corporation Number 1737572 with the corporation name International Portfolio Investments Inc. The Report lists Christina Harper as the only Director of the corporation. He also provided banking records from

HSBC Canada and RBC Canada relating to accounts in each of those institutions held in name of International Portfolio Investments Inc. The signature forms for each account show Harper is the only person with signing authority on these accounts.

[149] Staff filed copies of digital audio recordings found on the computers seized by Staff during the execution of the search warrants on the Global Energy offices in Toronto. The recordings were made by Tsatskin, a fact that Tsatskin admitted in the Statement of Facts in a Guilty Plea filed with the court in his criminal prosecution.. The recordings were contained in digital audio files, each with a distinct file name that appears to reflect the date and time of the recording.

[150] Mr. Anderson played recordings of several calls during the hearing. The callers identify themselves in the calls as "J.C. Maxwell", "Nick Bay", "Mark Roberts", "Michael Simon", "Scott Leno", "Bruce", "Nathan Winfield" and "Andrew". In the recordings, the callers appear to be either selling units of New Gold programs to potential investors or addressing concerns raised by existing investors.

[151] Mr. Anderson filed the following documents seized by Staff from the Global Energy offices in Toronto:

(i) A hand-written list of names under the heading "The Big Boys" which reads:

Slava – David Fine

Alex – Alex Williams

Alan – Eric Anderson

Ed – Richard Steele

Michael – Mike Simon

Elliot – Mark Roberts

Howard – David Wells

Nick – Nick Bay

Bruce – Scott Leno

(ii) A hand-written list of names which includes the names:

"Nick Bay → Nick Bayovski"; and

"Scott Leno → Bruce Cohen";

(iii) A series of hand-written notes with various dates, each with the title "Commissions". The notes list amounts under various names that include "Terry Jones", "Nick Bay", "Bruce Leno", "Scott Leno", "Bruce Cohen", "IPI Inc.", "Herbie" and "Herbert Groberman";

(iv) An invoice dated December 21, 2007, from Nick Bayovski to GVC Marketing Ltd. in the amount of $6248.97 for "Marketing Services". Mr. Anderson testified the banking

records of GVC indicate that on December 21, 2007, a cheque in the amount of $6248.97 was drawn on the GVC bank account in favour of "Nick Bayovski";

(v) A signature card and customer information print-out from the Bank of Nova Scotia, in respect of an account in the name of "Nikola Bajovski". The GVC banking records obtained by Staff indicate that most of the cheques written to "Nick Bayovski" were deposited into the account at Bank of Nova Scotia in the name of "Nikola Bajovski";

(vi) A "Customer Information Enquiry" obtained from the Toronto Dominion Bank, providing details of an account at a branch of the TD Bank in Toronto in the name of "Bruce Cohen". The GVC banking records obtained by Staff indicate that most of the cheques written to Cohen were deposited into this account;

(vii) A series of e-mails from Harper to Bryan Coffman seeking confirming Coffman's receipt of investor funds, including funds related to purchases made by Investor #5;

(viii) A memorandum to "All Staff" from "J.C. Maxwell" dated May 29, 2007 with the subject line "Leads". The memorandum reads:

> Here is a quick list of companies or businesses we do not call. There may be a few leads in our database.
>
> Please disqualify these leads on your desktop if they appear.
>
> Accountants
> Advertising Agencies
> Banks
> Brokerage
> Insurance
> Investment Companies
> Lawyers
> Media
> Publishers
> Radio Stations
> Television Stations
> Any level of Government
>
> Thank you
>
> Julia

b. Cory Fotheringham, Forensic Investigator

[152] Cory Fotheringham, a forensic investigator with Deloitte gave evidence with respect to the continuity of the evidence seized by Staff. Deloitte was hired by the OSC on August 11, 2008, to provide support with respect to material seized during the investigation.

[153] Mr. Fotheringham testified that Staff provided Deloitte with forensic images of 56 computers/hard drives seized in the searches of 2727 Steeles Ave. W. and 29 Tandem Rd. Deloitte analysed the images and, once those images were verified as exact copies of the originals, Deloitte analysed them and advised the OSC of the contents (with reference to key words provided by the OSC). Mr. Fotheringham explained that he only worked from the copies of the hard drives which had been verified as perfect copies of the originals.

[154] Mr. Fotheringham testified that during his analysis of the contents of the hard drives, he did not alter any of the data files, documents, e-mails or digital audio files contained on the hard drives. He further testified that Deloitte did not alter the names assigned to any of the digital files contained on the hard drives. Mr. Fotheringham made particular reference to the names assigned to the digital audio files. He explained that these file names contain the names of some of the Respondents in this matter. Mr. Fotheringham testified that those file names existed on the hard drives that were seized by Staff, and were not altered by himself or anyone else at Deloitte.

[155] Throughout the hearing, Staff filed documents as exhibits that were obtained from the hard drives seized during the search. None of the Respondents took issue with the authenticity of the documents seized during the search.

C. EVIDENCE FROM COMPELLED TESTIMONY

1.Tsatskin

[156] Staff read into the record evidence given by Tsatskin during a compelled examination conducted on October 29, 2009. The Panel informed Staff that Tastskin's compelled evidence would only be considered with respect to the allegations against Tsatskin, and would be given no weight as evidence against any of the other respondents. The relevant portions of the compelled evidence is as follows:

(i) Tsatskin stated that Faina Tsatskin is his mother;

(ii) Tsatskin stated that Alexandre Tsatskin ("Alexandre"), who is listed as the President of GVC Marketing Inc. on the Corporation Profile Report for that corporation, is Tsatskin's father. Tsatskin stated that that Alexandre was President in name only, while he, Harper and Bryan Coffman were actually responsible for the operation of GVC Marketing Inc.;

(iii) Tsatskin stated that there was no New Gold #1 LLP through New Gold #7 LLP. He explained that Global Energy started with New Gold #8 strictly for marketing purposes;

(iv) Tsatskin explained that monthly royalty cheques were prepared in the Bahamas, based on information provided by the Global Energy offices in Toronto, and forwarded by Arthur Chase to Global Energy's offices in Toronto for distribution to investors; and

(v) Tsatskin stated that Global Energy had no tanker trucks to transport oil.

2.Harper

[157] Staff read into the record evidence given by Harper during a compelled examination conducted on August 10 and 11, 2009. The relevant portions of the evidence are as follows:

(i) Harper stated that she met Tsatskin in December 2006 at offices located at 2727 Steeles Avenue West, in Toronto. She began working at Global Energy in January 2007;

(ii) Harper stated that she used the names J.C. Maxwell and Julia Maxwell while working at Global Energy, and referred to her position as "Executive Vice-President";

(iii) Harper assisted in running the office and conducted some sales activities;

(iv) Harper received 5% "override" on all sales at Global Energy until approximately December 2007. She explained that the "override" was compensation for her work in "setting up" the sales operations and "being present in the room if anybody needed to ask any questions";

(v) Harper stated that her duties included passing information from Tsatskin concerning the operations in Kentucky on to the salespersons;

(vi) Harper stated that she was aware that the sales staff were using aliases when dealing with investors and potential investors;

(vii) Harper stated that she was aware that Tsatskin was recording all the calls made from the Global Energy offices;

(viii) Harper confirmed that, for part of her time at Global Energy, she kept track of the sales made by the salespersons and the commissions payable as a result of those sales;

(ix) Harper confirmed that International Portfolio Investments, which is also referred to as merely "IPI", is a corporation that she created;

(x) Harper stated that as early as December 2007 she had concerns that the initial returns from the wells were far lower than the returns represented to the investors;

(xi) Harper sent an e-mail on February 7, 2008, under the name J.C. Maxwell, Executive V.P., to Investor #4, stating that one of Global Energy's wells had produced gross revenue of US$427,692.44 in the month of November 2007;

(xii) Harper confirmed that one of the voices on one of the recorded sales calls was her voice, although the evidence does not indicate which recording or recordings Harper was played during the examination; and

(xiii) Harper stated that she met and had discussions with Investor #4 and his brother in Kentucky. She stated that her meeting and discussions with Investor #4 took place immediately after the investor had met with Gary Milby in the oil fields in Green County, Kentucky.

3. Groberman

[158] Staff read into the record evidence given by Groberman during a compelled examination conducted on August 24, 2009. The relevant portions of the evidence are as follows:

(i) Groberman worked as a salesperson at Global Energy for 6 to 8 months;

(ii) Groberman was hired following an interview with both Harper and Tsatskin;

(iii) Groberman sold interests in oil well drilling programs based in Kentucky. His sales were conducted over the telephone, predominantly to investors in Saskatchewan, Alberta and British Columbia. He was provided with a sales "pitch" which directed him to advise potential investors, depending on the amount of oil produced, they would receive substantial returns;

(iv) Groberman was paid a commission for each sale. His commission cheques were drawn on an account under the name "GVC Marketing Inc.";

(v) Groberman used the alias "Terry Jones" when dealing with investors or potential investors; and

(vi) Groberman stated that persons calling Global Energy's offices in Toronto would have thought they were calling Kentucky because the office phone number was a local Kentucky phone number.

V. ANALYSIS AND FINDINGS

A. DID THE RESPONDENTS TRADE IN SECURITIES CONTRARY TO SUBSECTION 25(1)(A)?

[159] Staff submits that the Respondents traded in securities without being registered, contrary to subsection 25(1)(a) of the Act.

[160] Harper submits that she believed that the New Gold securities were exempt securities that would be properly registered in Kentucky.

[161] Shiff submits that he was not aware that anything he did while working at Global Energy was unlawful in any way.

1.The Law

[162] Subsection 25(1)(a) of the Act prohibits trading in securities without being registered. At the material time, subsection 25(1)(a) read as follows:

> **25. (1) Registration for trading –** 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;
>
> **…**

[163] Under subsection 1(1) of the Act, a "trade" in securities includes:

> (a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment 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,

…

(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

2.Findings and Analysis

[164] The following are our findings regarding breaches of subsection 25(1)(a) of the Act based on the evidence presented at the hearing.

[165] We find that between June 2007 and June 2008, the Respondents, acting on behalf of Global Energy, sold units purporting to be limited liability partnership units in oil drilling programs based in Lexington, Kentucky, to members of the public from offices located in Toronto. Each drilling program was marketed as a separate limited liability partnership consisting of thirty (30) partnership units. There were sixteen limited liability partnerships with names ranging from New Gold #8 LLP through New Gold #24 LLP. Investors could purchase full or part (¼ or ½) units. Investors were advised that each unit, or part thereof, would constitute a registered interest in the oil wells, and would entitle the owner to a share of the oil revenues generated by the wells.

[166] We find that the partnership units were documents constituting evidence of an interest in the royalties generated by the New Gold drilling programs, and therefore constituted securities for the purposes of subsection 1(1) the Act.

[167] None of the Respondents has ever been registered with the Commission in any capacity, and as discussed below, no registration exemptions were available to the Respondents.

a. Global Energy

[168] We find that US$16,197,125.02 of Investor funds was obtained through the Global Energy investment scheme through the sale of New Gold partnership units. The sales operations were conducted from offices in Toronto. The Investor funds were collected, at the direction of Global Energy, in the American Oil and Gas accounts in Lexington, Kentucky controlled by Bryan Coffman. Approximately US$4,000,000 was transferred from the American Oil and Gas accounts to the benefit of the Respondents to this proceeding. These funds are addressed in the paragraphs below. Mr. Coffman also transferred in excess of US$11,000,000 of the Investor funds in the American Oil and Gas Accounts to other accounts in his name, his wife's name, or in the names of other individuals or entities who are not respondents in this proceeding. Staff has provided no evidence as to who ultimately received those Investor funds.

b. Tsatskin

[169] There is no evidence that Tsatskin directly conducted sales of New Gold partnership units, however we find that Tsatskin engaged in the following conduct which constituted acts in furtherance of trades of New Gold partnership units:

(i) Tsatskin provided direction and supervision to sales staff who sold New Gold partnership units to members of the public;

(ii) Tsatskin participated in hiring of sales staff, particularly Groberman; and

(iii) Tsatskin oversaw the distribution of commissions to sales staff through GVC, a corporation which he controlled.

[170] We find that the following amounts of Investor funds were transferred from the American Oil and Gas accounts to accounts controlled by or for the benefit of Tsatskin:

GVC	US$2,891,000
Global Energy Group (Bahamas)	US$902,000
Faina Tsatskin	US$439,000

[171] Based on his compelled testimony, we find that Tsatskin effectively controlled GVC, although his father was the nominal director and officer of the corporation. We therefore find that investor funds transferred to GVC (US$2,891,000.00) were effectively controlled by Tsatskin. The funds were used by Tsatskin to fund the Global Energy sales operations in Toronto, including the payment of commissions.

[172] We find that the following amounts of Investor funds were paid out from the GVC account:

$233,693.84	to Harper and IPI
$255,272.40	to Schaumer
$288,407.67	to entities controlled by Feder
$156,152.52	to Pasternak
$114,186.69	to Silverstein or a corporation controlled by Silverstein
$91,509.02	to Groberman
$82,521.76	to Walker
$82,748.34	to Brikman
$64,343.29	to Bayovski
$45,736.33	to Cohen
$11,700.00	to Robinson
$10,532.27	to Shiff
$1,436,804.13	**Total**

[173] In addition to the amounts listed in the paragraph above, Staff allege that $313,461.61 was transferred from the GVC account to accounts in the entities controlled by Howard Rash or members of his family. Mr. Rash is not a party to this proceeding, but he is the subject of other proceedings before the Commission arising from his alleged conduct in connection with Global Energy. Without making any determination as to the conduct of Mr. Rash, or even whether Mr. Rash actually obtained the funds allegedly transferred to him by GVC, we find that $313,461.61 was transferred from the GVC account to an account which was not controlled by Tsatskin.

[174] We find that Faina Tsatskin played no role in the operations, management of financing of Global Energy. Therefore there is no reasonable explanation for the payment of $439,000.00 from the American Oil and Gas accounts to Faina Tsatskin other than the fact that she is Tsatskin's mother. We conclude that the payment to Faina Tsatskin was, in essence, a gift of Investor funds conferred by Tsatskin on his mother for which Tsatskin should be held accountable

[175] We find that US$902,000 in Investor funds was transferred to an account in the name of Global Energy Group in the Bahamas. The only Global Energy Group bank account identified in the evidence before us is the account at the First Caribbean International Bank in the Bahamas. This was the account from which the royalty cheques submitted by Investor #4 and Investor #5 were drawn. Unfortunately, Staff provided no banking records with respect to this account, so we do not know who had signing authority. The signatures on the royalty cheques submitted by the Investor witnesses were illegible. However, we may conclude from Tsatskin's compelled testimony that the account was effectively controlled by the directing minds of Global Energy, because the royalty cheques were prepared at the direction of Global Energy staff in Toronto. For reasons set out below, we find the directing minds of Global Energy were Tsatskin and Harper. Regrettably, Staff did not provide an accounting of the royalty cheques written on this account, so we are unable to determine how much of the Investor funds were returned to investors as royalties and how much, if any, was effectively taken by Tsatskin and Harper.

c. Groberman

[176] Groberman admitted in his compelled testimony that he actively participated in the sale of New Gold partnership units on behalf of Global Energy using the alias Terry Jones. Groberman further admitted that he received commission on his sales of New Gold securities, and that the commissions were paid by GVC.

[177] Groberman's name, and the corresponding alias "Terry Jones", appear on sales records seized by Staff at the offices of Global Energy. Furthermore, banking records obtained by Staff show that Groberman received $91,509.02 directly from GVC.

d. Bajovski

[178] The sales records seized by Staff during the search of the offices of Global Energy contain references to a sales representative by the name "Nick Bayovski". However, the banking records obtained by Staff show that the commission payments made to "Nick Bayovski" were deposited into an account in the name of "Nikola Bajovski".

[179] On the basis of the evidence presented by Staff, we find that "Bayovksi" and "Bajovski" are the same person. We further find that Bajovski actively participated in the sale of New Gold partnership units on behalf of Global Energy using the alias Nick Bay. We find that Bajovski obtained $64,343.29 from GVC in respect of his sales activities at Global Energy.

e. Cohen

[180] The evidence shows that Cohen actively participated in the sale of New Gold partnership units on behalf of Global Energy using the alias Scott Leno. His name, and the corresponding alias, appears on sales records seized by Staff at the offices of Global Energy. Furthermore, banking records obtained by Staff show that Cohen received funds directly from GVC. We find that the funds transferred by

GVC to Cohen were commissions paid by Global Energy in respect of Cohen's sales of New Gold securities. We find that Cohen obtained $45,736.33 from GVC in respect of his sales activities at Global Energy.

f. Shiff

[181] The evidence shows that Shiff actively participated in the sale of New Gold partnership units on behalf of Global Energy using the alias Andrew Winfield. Furthermore, banking records obtained by Staff show that Shiff received funds directly from GVC. We find that the funds transferred by GVC to Shiff were commissions paid by Global Energy in respect of Shiff's sales of New Gold securities. We find that Shiff obtained $10,532.27 from GVC in respect of his sales activities at Global Energy.

[182] In his brief closing submissions, Shiff stated that he had no knowledge that his activities at Global Energy were contrary to Ontario securities law. For the purposes of the allegations against Shiff, subjective knowledge of wrong-doing is not a material consideration.

g. Harper

[183] We have given no weight to Harper's submission that she believed the New Gold securities were exempt and would be properly registered in Kentucky by Mr. Coffman. There is no evidence before the Panel to support these submissions. Furthermore, Harper did not submit to cross-examination during the hearing, and therefore the veracity of her claims with respect to whether she believed the securities were exempt has not been properly tested in this proceeding.

[184] We find that Harper actively participated in the sale of New Gold partnership units on behalf of Global Energy using the alias J.C. Maxwell. The evidence shows that Harper had direct contact with many investors, including Investor #1, Investor #2 and Investor #4.

[185] Harper's name, and her corresponding alias J.C. Maxwell, appears on sales records seized by Staff at the offices of Global Energy. In her compelled testimony, Harper admitted to earning 5% commission (which she referred to as an "override") on all sales of New Gold until approximately December 2007.

[186] We further find that Harper engaged in the following conduct which constituted acts in furtherance of trades of New Gold partnership units:

(i) Harper hired sales staff to sell New Gold partnership units to members of the public;

(ii) Harper provided direction and supervision to sales staff who sold New Gold partnership units to members of the public; and

(iii) Harper kept track of the sales made by the salespersons and the commissions payable as a result of those sales.

[187] Based on the banking records obtained by Staff, we find that American Oil and Gas Resources Inc. transferred US$396,119.65 from the American Oil and Gas accounts to an account in the name of IPI. We find that Harper controlled IPI and had signing authority over the bank account into which the Investor funds were transferred.

[188] We further find that GVC transferred to Harper, either personally or through IPI, a further $233,693.84. These funds represent Investor funds which can be traced from GVC back to the American Oil and Gas accounts.

3.Conclusion

[189] Based on the evidence discussed above, we conclude that all of the Respondents breached subsection 25(1)(a) of the Act by trading in securities of New Gold without registration and, for reasons outlined below, where no exemptions to registration apply.

B. DID THE RESPONDENTS ENGAGE IN DISTRIBUTIONS OF SECURITIES WITHOUT A PROSPECTUS, CONTRARY TO SUBSECTIONS 53(1)?

[190] Staff submits that the sale of New Gold partnership units constituted distributions of securities without a preliminary prospectus being filed and receipts obtained from the Director, contrary to subsection 53(1) of the Act.

[191] As stated above with respect to the issue of registration, Harper submits that she believed that the New Gold securities were exempt securities that would be properly registered in Kentucky by Mr. Coffman.

1.The Law

[192] Subsection 53(1) of the Act prohibits distributions of securities where no prospectus has been filed. It states:

> **53. (1) Prospectus required –** 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.

[193] Subsection 1(1) of the Act defines "distribution" 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;
>
> **…**

[194] Therefore, for a breach of subsection 53(1), there must be a trade in securities of an issuer that have not been previously issued, and no filing of the preliminary prospectus and prospectus with the Commission.

[195] The prospectus requirement is essential in protecting investors. In *Jones v. F.H. Deacon Hodgson Inc.* (1986), 9 O.S.C.B. 5579 (H.C.), the court stated: "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" (as quoted in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 at 1741). The prospectus requirement is integral to ensuring that prospective investors have sufficient information to ascertain the risk level of their

investment and to make informed investment decisions (*Re First Global Ventures S.A.* (2007) 30 O.S.C.B.10473 at 10491).

2.Findings and Analysis

[196] We concluded in the previous section that all the Respondents traded in New Gold partnership units which constituted securities for the purposes of the Act.

[197] No prospectus or preliminary prospectus was ever filed with the Commission by Global Energy. There is no evidence that any investors were provided with a copy of a New Gold prospectus.

[198] We have given no weight to Harper's submission that she believed the securities were exempt and would be properly registered in Kentucky by Mr. Coffman. There is no evidence before the Panel to support these submissions. Furthermore, Harper did not submit to cross-examination during the hearing, and therefore the veracity of her claims with respect to whether she believed the securities were exempt has not been properly tested in this proceeding.

3.Conclusion

[199] All the Respondents traded in New Gold securities which we find had not been previously issued, for which no prospectus was issued and which, for reasons outlined below, did not qualify for any exemptions to the prospectus requirements. We therefore conclude that all the Respondents breached subsection 53(1).

C. WERE ANY REGISTRATION OR PROSPECTUS EXEMPTIONS AVAILABLE?

[200] Staff submit that the onus for proving the availability of an exemption from the registration and prospectus requirements of the Act lie with the Respondents. Staff submits that the Respondents have failed to demonstrate that any such exemptions would apply to the sale of New Gold partnership units.

1.The Law

[201] National Instrument 45-106 – *Prospectus and Registration Exemptions* ("**NI 45-106**") provides exemptions to the registration and prospectus requirements of the Act if certain conditions are met.

[202] Section 2.3 of NI 45-106 provides an exemption to the subsection 25(1)(a) and subsection 53(1) requirements for trades in a security if the purchaser is an "accredited investor" and is purchasing the security as principal.

[203] "Accredited investor" is defined in section 1.1 of NI 45-106:

> "accredited investor" means
>
> **…**
>
> (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,

…

[204] The Commission noted in *Limelight, supra* at paragraph 142 that once Staff has shown that the respondents have traded without registration and distributed securities without a prospectus, the onus shifts to the Respondents to prove an exemption was available to them in the circumstances.

2.Findings and Analysis

[205] There was no evidence led by the Respondents with respect to the availability of any exemptions to the registration and prospectus requirements in the Act. The only evidence before the Panel relevant to the question of exemptions is found in the questionnaires completed by the investors and returned to Global Energy with the subscriptions agreements. One of those questionnaires, completed by Investor #2, indicated that the investor is an accredited investor. Section 2.3 of NI 45-106 provides an exemption to the subsection 25(1)(a) and subsection 53(1) requirements for trades in a security if the purchaser is an "accredited investor " and is purchasing the security as principal. The indication on a single questionnaire that an investor is "accredited" is insufficient evidence on which to base a finding of an exemption. In addition, the evidence indicates that no exempt offerings have ever been filed with the Corporate Finance Branch of the Commission with respect to New Gold partnership units.

[206] The registration and prospectus requirements in the Act are meant to protect investors by ensuring they have adequate information pertaining to their investments, particularly with respect to any risks associated with those investments. Rather than having been provided with adequate disclosure through a prospectus, the New Gold investors were given false and misleading information about what would be done with the funds they invested.

[207] Under section 6.1 of NI 45-106, issuers must file reports of any exempt distributions with the Commission within 10 days of the distribution. There is no evidence of any such filings in this case.

[208] Given the evidence, we find that the Respondents did not meet the burden of showing that any exemption, including the accredited investor exemption, was available.

3.Conclusion

[209] We conclude that no exemptions to the registration or prospectus requirements under Ontario securities law were available to the Respondents.

D. DID GLOBAL ENERGY, TSATSKIN AND HARPER ENGAGE IN ACTS, PRACTICES OR COURSES OF CONDUCT RELATING TO SECURITIES THAT THEY KNEW OR REASONABLY OUGHT TO HAVE KNOWN PERPETRATED A FRAUD, CONTRARY TO SECTION 126.1(B) OF THE ACT?

[210] Staff submit that Global Energy, Tsatskin and Harper engaged in conduct that they knew, or reasonably ought to have known, perpetrated a fraud on Global Energy investors, including the following:

(i) Although only formed in 2007, Global Energy was held out to be a successful company in existence for five years;

(ii) The New Gold series of partnerships began with New Gold #8 to imply prior success with previous oil wells;

(iii) The success rate in striking oil was grossly overstated at 70-80%;

(iv) Arthur Chase was held out as the President and Managing Director of Global Energy, despite having no involvement in its operations and no experience in the oil and gas business;

(v) The New Gold partnerships were never registered despite representations to the contrary;

(vi) Members of the public were told that the representatives of Global Energy were calling from Kentucky when in fact they were calling from Toronto;

(vii) The return on investment, in the form of royalty cheques, was grossly overstated by representatives of Global Energy;

(viii) The amount and duration of production of oil was grossly overstated;

(ix) They told investors that their funds would be held in escrow, knowing this was not true;

(x) The majority of funds from investors were ultimately transferred into accounts controlled by the Respondents despite representations that the funds would be used for operation purposes only; and

(xi) Investors suffered substantial losses.

[211] Staff submit that Tsatskin and Harper had knowledge of the fraud underlying the sale of New Gold Securities to the public, as evidenced by the following:

(i) Tsatskin and Harper provided the representatives of Global Energy with false information to relay to members of the public;

(ii) Neither Tsatskin nor Harper had any experience in the oil business, contrary to what was stated to investors;

(iii) Tsatskin established Global Energy;

(iv) Tsatskin arranged for the virtual office of Global Energy in Kentucky;

(v) Tsatskin controlled the bank account from which the sales staff was paid;

(vi) Harper established the sales office of Global Energy and trained and hired the staff;

(vii) Harper used an alias when contacting members of the public and investors;

(viii) Harper played a significant role in creating the Global Energy website and promotional materials;

(ix) Harper provided the staff with scripts to use when contacting members of the public and instructed them to use aliases and to tell members of the public that they were calling from Kentucky;

(x) Harper communicated directly with New Gold investors to solicit additional investments and repeatedly misrepresented Global Energy's business history; and

(xi) Harper handled investor complaints, and tracked sales and commissions.

[212] Harper submits that she was deceived by Tsatskin, Mr. Coffman and Mr. Milby with respect to the operations of Global Energy in Kentucky. She asked that the allegations against her be dismissed.

1.The Law

[213] The basis for an allegation of fraud involving securities is found under subsection 126.1(b) of the Act, which states:

> **126.1 Fraud and market manipulation –** A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,
>
> …
>
> (b) perpetrates a fraud on any person or company.

[214] "Fraud" is not a defined term in the Act,. In *Re Al-Tar Energy Corp*. (2010), 33 O.S.C.B. 5535 ("*Al-Tar*"), the Commission adopted the British Columbia Court of Appeal's interpretation of the substantially identical fraud provision in the British Columbia Securities Act, R.S.B.C. 1996, c. 418, as amended in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 ("*Anderson*"), leave to appeal denied by the Supreme Court ([2004] S.C.C.A. No. 81).

[215] The British Columbia Court of Appeal approach to the legal test for securities fraud as set out in Anderson was adopted in Re Capital Alternatives Inc., 2007 ABASC 79, which was affirmed in *Alberta (Securities Commission) v. Brost*, [2008] A.J. No. 1071 (C.A.).

[216] The decision in Anderson reviews the legal test for criminal fraud found in *R. v. Théroux*, [1993] 2 S.C.R. 5 ("*Théroux*"). In *Théroux*, Justice McLachlin (as she then was) summarized the elements of fraud at paragraph 27:

> … the actus reus of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and

2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.

Correspondingly, the mens rea of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and

2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

[217] The British Columbia Securities Act fraud provision is substantially similar to subsection 126.1(b) of the Act. The British Columbia Court of Appeal, in addressing the application of the fraud provision in *Anderson* at paragraph 26, states that:

> … s.57(b) does not dispense with proof of fraud, including proof of a guilty mind. … Section 57(b) simply widens the prohibition against participation in transactions to include participants who know or ought to know that a fraud is being perpetrated by others, as well as those who participate in perpetrating the fraud. It does not eliminate proof of fraud, including proof of subjective knowledge of the facts constituting the dishonest act, by someone involved in the transactions.

[218] The British Columbia Court of Appeal's decision in *Anderson* also addressed the standard of proof for securities fraud in the regulatory context:

> Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal law standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element.
>
> (*Anderson*, supra at paragraph 29)

[219] Our interpretation of subsection 126.1(b) of the Act is consistent with the decisions referred to above and the Commission's decision in *Al-Tar*.

[220] For a corporation, it is sufficient to show that its directing minds knew that the acts of the corporation perpetrated a fraud to prove a breach of subsection 126.1(b).

2.Findings and Analysis

[221] The following facts were admitted by Tsatskin in the "Statement of Facts for Guilty Plea" and were subsequently proven through the evidence presented by Staff at the hearing:

> (i) The individual partner's units of ownership in the well projects were never registered in the Commonwealth of Kentucky, despite representations in the Subscription Agreement to the contrary;

(ii) Investors were told that Arthur Chase had a long history of successful drilling in the oil and gas industry. This was false;

(iii) Global Energy salespersons used aliases when selling New Gold securities;

(iv) Investors were misled as to the true ownership and control of Global Energy;

(v) Investor funds from the numerous series of New Gold Limited Liability Partnerships were comingled despite representations in the Subscription Agreement that the funds would be held in individual escrow accounts and used for the purpose of a specific drilling project;

(vi) Investors were informed or led to believe that the Global Energy sales offices were in Kentucky when in fact they were in Toronto; and

(vii) The oil wells in Kentucky that were actually drilled produced little or no oil at all, contrary to the estimates and representations made by Global Energy salespersons.

[222] We have given no weight to Harper's submission that she was deceived by Tsatskin, Mr. Coffman and Mr. Milby with respect to Global Energy's operation in Kentucky. Harper did not submit to cross-examination during the hearing, and therefore the veracity of her claims with respect to what she was told by Tsatskin, Mr. Coffman and Mr. Milby has not been properly tested in this proceeding. Furthermore, Harper's claims are entirely inconsistent with the other evidence before the Panel in this proceeding which shows Harper as a willing participant in the web of deception that was Global Energy.

[223] In the letter to Investor #1 dated October 30, 2007, and the similarly worded e-mail sent to numerous potential investors on August 3, 2007, Harper stated that Global Energy had been in business for five years. However, Global Energy was not formed until 2007, a fact that Harper was clearly aware of when she sent this correspondence. On this basis, we find that Harper knowingly misled investors about the length of time that Global Energy had been in operation.

[224] In the same correspondence, Harper states that "2006 was another successful year" and "The first quarter of 2007 is proving to be our best and highest production in the field to date". These facts are also false. The evidence demonstrates that Global Energy had no business operations in 2006 and no oil production in the first quarter of 2007. Furthermore, given Harper's participation in the establishment of Global Energy's sales and marketing operations, we find that Harper knew that her statements about Global Energy's performance in 2006 and 2007 were false.

[225] We find that Harper met with Investor #4 in Kentucky to address the investor's concerns about the productivity of the oil wells and the lack of return on the investment, using the alias J.C. Maxwell. During the meeting, Harper made false and misleading statements about her past experience in the oil and gas industry, clearly knowing them to be false.

[226] Global Energy investors were led to believe they were purchasing a registered interest in specific oil wells in Kentucky. They were led to believe that Global Energy had a five-year track record of producing returns for investors. They were told that Global Energy was managed by individuals, such as Arthur Chase and J.C. Maxwell, who possessed extensive experience in the oil and

gas industry. None of it was true. It was a series of lies perpetuated by Tsatskin and Harper to entice members of the public to purchase units of New Gold limited liability partnerships.

[227] We find that the Global Energy investment scheme was solely created to defraud investors. The scale and magnitude of the impact on investors was significant at over US $16,000,000, only a fraction of which was returned to investors in the guise of royalties. In fact, the funds purported to be royalties were not generated through the production of oil, as claimed by the Respondents, but were merely re-directed Investor funds in a manner similar to a common Ponzi scheme.

[228] We find that Tsatskin and Harper knew or reasonably ought to have known of this given the nature of their roles as integral players in the fraudulent investment scheme. We find that investors were deceived by Tsatskin and Harper about the true nature of the investment they were making and as a result they have been deprived of the funds they invested in the scheme.

3.Conclusion

[229] We conclude that Tsatskin and Harper perpetrated a fraud and breached subsection 126.1(b) of the Act. As Tsatskin and Harper were the controlling minds of Global Energy, and Global Energy was the means by which Tsatskin and Harper perpetrated the fraud, we conclude that Global Energy also breached subsection 126.1(b) of the Act.

E. DID TSATSKIN AND HARPER, AS DIRECTORS AND/OR OFFICERS OF GLOBAL ENERGY AUTHORIZE, PERMIT OR ACQUIESCE IN THE BREACHES OF ONTARIO SECURITIES LAW BY GLOBAL ENERGY, CONTRARY TO SUBSECTION 129.2 OF THE ACT?

[230] In addition to their breaches of Ontario securities law in their individual capacities, Staff alleges that, pursuant to subsection 129.2, the Individual Respondents are liable for breaches of securities laws by the Corporate Respondents in their capacity as directors and/or officers of the Corporate Respondents.

1.The Law

[231] Subsection 129.2 of the Act assigns liability to directors or officers who authorize, permit or acquiesce in commission of an offence by a company under subsection 129.2. It states:

> **129.2 Directors and officers –** For the purposes of this Act, if a company or of a person other than an individual has not complied with Ontario securities law, a director or officer of the company who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

[232] Directors and officers are defined in the Act under subsection 1(1) as follows:

> "**director**" means a director of a company or an individual performing a similar function or occupying a similar position for any person;
>
> …

"**officer**", with respect to an issuer or a registrant, means

(a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager,

(b) every individual who is designated as an officer under a by-law or similar authority of the registrant or issuer, and

(c) every individual who performs functions similar to those normally performed by an individual referred to in clause (a) or (b);

[233] The language of subsection 122(3) requires that the officer or director "authorize", "permit" or acquiesce" in the commission of the offence. "Acquiesce" means to agree or consent quietly without protest. "Authorize" means to give official approval or permission, to give power or authority or to give justification. "Permit" means to allow, consent, tolerate, give permission or authorize permission particularly in writing.

[234] Individuals who are not directors or officers of a corporation, but are *de facto* directors or officers of an entity, performing functions similar to the functions of officers and/or directors as contemplated in the definitions found in subsection 1(1), can nonetheless be found liable for breaches of securities law they permitted, authorized or acquiesced in under subsection 122(3).

2.Findings and Analysis

a. Tsatskin

[235] Tsatskin was a controlling mind of Global Energy. Tsatskin and Coffman established Global Energy Group, Ltd. in 2006 as a Bahamian corporation with Arthur Chase as President. Mr. Chase had no role at Global Energy other than as a nominee director and officer for the purposes of incorporating the company and maintaining bank accounts in the Bahamas.

[236] Tsatskin admitted to providing supervision and direction to the Global Energy sales staff. He was also the controlling mind of GVC Marketing Ltd., which was used by Global Energy to distribute Investor funds back to Global Energy salespersons as commissions.

[237] As a *de facto* director and officer of Global Energy, we find that Tsatskin authorized, permitted or acquiesced in Global Energy's contraventions of Ontario securities law.

b. Harper

[238] Harper was a controlling mind of Global Energy. Harper assisted Tsatskin to establish an office for Global Energy in Toronto. Harper was responsible for the sales operations in Toronto. Harper recruited, hired and trained salespeople to work from the offices in Toronto. She provided sales staff with prepared scripts for use in sales calls with potential investors. She also created and distributed marketing material to be sent to potential investors.

[239] As a *de facto* director and officer of Global Energy, we find that Harper authorized, permitted or acquiesced in Global Energy's contraventions of Ontario securities law.

3.Conclusion

[240] In their capacities as *de facto* directors or officers of Global Energy Tsatskin and Harper authorized, permitted or acquiesced in Global Energy's breaches of Ontario securities law and accordingly, they are liable for the contraventions by Global Energy, pursuant to subsection 129.2 of the Act.

F. WAS THE CONDUCT OF THE RESPONDENTS CONTRARY TO THE PUBLIC INTEREST?

1.The Law

[241] Section 1.1 of the Act states that the Commission's mandate is 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.

[242] Section 2.1 of the Act states that the Commission must consider fundamental principles in pursuing these purposes. The relevant parts of section 2.1 of the Act state:

i. requirements for timely, accurate and efficient disclosure of information;

ii. restrictions on fraudulent and unfair market practices and procedures; and

iii. requirements for the maintenance of high standards of fairness and business conduct to ensure honest and responsible conduct by market participants.

2.Findings and Analysis

[243] Staff alleges that the conduct of the Respondents is contrary to the public interest.

[244] The Respondents breached key provisions of Ontario securities law which are intended to protect investors. The Respondents traded in securities without registration (contrary to subsection 25(1)(a)) and engaged in distribution of securities without satisfying the distribution requirements under the Act (contrary to subsection 53(1)). The Respondents' actions with respect to these breaches were contrary to the public interest because registration and distribution requirements are essential to protect investors and ensure the integrity of the capital markets. Through their conduct, the Respondents failed to maintain the required high standards of fairness and business conduct.

[245] The investment scheme was characterized by high pressure sales tactics. In *Re First Global Ventures S.A., supra* at paragraph 158, the Commission made the following comment with respect to high pressure sales tactics:

> 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.

[246] These high pressure sales tactics were used in this case. Investors were called by individuals using aliases to purchase partnership units of New Gold. Representations that the partnership units would generate significant income resulting in a full return on the investment in mere months were made to entice them to invest or re-invest. Investors testified that they were influenced by such statements when making their decision to purchase units and, in some cases, to purchase additional units. We find that these kinds of high pressure sales tactics are improper and unacceptable and contrary to the public interest.

[247] Based on the evidence, it does not appear that Global Energy carried on a legitimate business, as communicated to investors. Their promotional material, websites and press releases contained false and misleading information about fictitious activities.

[248] To give the investment scheme legitimacy and to entice investors to invest or re-invest, virtual offices were established in the U.S. and the Bahamas. As a result, investors were deceived into believing they were dealing with an established, reputable, U.S.-based company.

[249] This matter deals with egregious conduct involving significant contraventions of the Act, including fraud. The conduct of the Respondents caused significant harm to investors. Over US $16 million was raised from investors who deposited their funds directly into the American Oil and Gas accounts. Only a fraction of those funds were returned to investors as so-called royalties.

3.Conclusion

[250] The Commission's mandate is to protect investors from improper and fraudulent practices. As we described above, this matter involved several serious contraventions of the Act on a repeated basis, including fraud. We find that the investment scheme was created to perpetrate a fraud and misappropriate investor funds in an egregious manner. In this regard, the investment scheme and the conduct of the Respondents undermine the integrity of and the confidence in the Ontario capital markets, which is contrary to the public interest.

[251] We therefore conclude that all the Respondents engaged in conduct contrary to the public interest.

VI. CONCLUSION

[252] For the reasons set out above, the Panel concludes that the Respondents have breached Ontario securities law and engaged in conduct contrary to the public interest. It is in the public interest to make an Order against the Respondents under subsection 127(1) of the Act.

[253] For the reasons outlined above, we will issue an interim order directing the parties to appear before the Panel on January 15, 2013, at 3:00 p.m., for the purpose of scheduling a date for a sanctions and costs hearing. The interim Order will also extend the Temporary Order until the conclusion of the sanctions and costs hearing.

[254] To protect the personal information of all investors, we have required that Staff provide a redacted version of the record.

DATED at Toronto on the 21st day of December, 2012.

"Paulette L. Kennedy"	*"Judith N. Robertson"*
Paulette L. Kennedy	Judith N. Robertson