Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
22nd Floor
20 Queen Street West
Toronto ON M5H 3S8
22e étage
20, rue queen ouest
Toronto ON M5H 3S8

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

- AND -

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 ON SANCTIONS AND COSTS
(Sections 37, 127 and 127.1 of the Act)

Hearing:	March 22, 2013	
Decision:	December 13, 2013	
Panel:	Paulette L. Kennedy	- Commissioner and Chair of the Panel
	Judith N. Robertson	- Commissioner
Counsel:	Cameron Watson Carlo Rossi	- For Staff of the Commission
	Simon Bieber	- For Herbert Groberman
	Andrew Shiff	- Self-Represented
		No one appeared for the other respondents.

TABLE OF CONTENTS

I. INTRODUCTION

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") to consider whether it is in the public interest to make an order with respect to sanctions and costs against 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**").

[2] The hearing on the merits began on January 23, 2012 and continued from time to time over a period of 13 days (the "**Merits Hearing**"). The decision on the merits was issued on December 21, 2012 (*Re Global Energy Group, Ltd. et al.* (2013), 36 O.S.C.B. 202 (the "**Merits Decision**")).

[3] Prior to the Merits Hearing, Peter Robinson ("**Robinson**"), Vyacheslav Brikman ("**Brikman**"), Oded Pasternak ("**Pasternak**"), Allan Walker ("**Walker**"), Michael Schaumer ("**Schaumer**"), Alan Silverstein ("**Silverstein**") and Elliot Feder ("**Feder**") (collectively, the "**Settling Respondents**"), also named as respondents in the Statement of Allegations filed by Staff of the Commission ("**Staff**") on June 8, 2010 in this matter, settled with the Commission (See *Re Global Energy Group, Ltd. et al.* (2010), 33 O.S.C.B. 10427; (2011), 34 O.S.C.B. 9290; (2011), 34 O.S.C.B. 9296; (2011), 34 O.S.C.B. 9302; (2011), 34 O.S.C.B. 12113; (2011), 34 O.S.C.B. 12120; and (2012), 35 O.S.C.B. 905 respectively (the "**Settlement Agreements**")).

[4] After the release of the Merits Decision, a separate hearing was held on March 22, 2013 to consider submissions from Staff and the Respondents regarding sanctions and costs (the "**Sanctions and Costs Hearing**").

[5] On March 22, 2012, Staff, Shiff and counsel for Groberman appeared, tendered evidence and made submissions at the Sanctions and Costs Hearing. Ms. Harper communicated to Staff that she would not be attending the Sanctions and Costs Hearing. None of the other Respondents appeared or made submissions. In the Merits Decision, we decided we were satisfied that Staff took all reasonable steps to provide the Respondents with adequate notice. The Panel is satisfied by the Affidavit of Peaches Barnaby, sworn March 22, 2013, that appropriate efforts were made by Staff to serve the Respondents with notice of the Sanctions and Costs Hearing and as such, we were entitled to proceed with the hearing in the absence of the Respondents that did not participate in the Sanctions and Costs Hearing, in accordance with subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended.

II. THE MERITS DECISION

[6] In the Merits Decision, we concluded that:

(a) the Respondents breached subsection 25(1)(a) of the Act by trading in securities of New Gold without registration and where no exemptions to registration apply;

(b) the Respondents traded in New Gold securities which had not been previously issued, for which no prospectus was issued and which did not qualify for any exemptions to the prospectus requirements, contrary to subsection 53(1) of the Act;

(c) Tsatskin, Harper and Global Energy perpetrated a fraud, contrary to subsection 126.1(b) of the Act;

(d) 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 of Ontario securities law by Global Energy, pursuant to section 129.2 of the Act; and

(e) the conduct of the Respondents was contrary to the public interest.

(Merits Decision, *supra* at paras. 189, 199, 229, 240 and 250)

III. SANCTIONS AND COSTS REQUESTED

[7] Staff has requested that the following sanctions and costs orders be made against the Respondents:

(a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by Global Energy, New Gold, Tsatskin, Harper, Groberman, Bajovski and Cohen cease permanently;

(b) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by Shiff cease for a period of 10 years;

(c) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities of New Gold cease permanently;

(d) pursuant to clause 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Global Energy, New Gold, Tsatskin, Harper, Groberman, Bajovski and Cohen cease permanently;

(e) pursuant to clause 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Shiff cease for a period of 10 years;

(f) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law not apply to Global Energy, New Gold, Tsatskin, Harper, Groberman, Bajovski and Cohen permanently;

(g) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law not apply to Shiff for a period of 10 years;

(h) pursuant to clause 7 of subsection 127(1) of the Act, that Tsatskin, Harper, Groberman, Bajovski, Cohen and Shiff resign all positions as director or officer of an issuer;

(i) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, that Tsatskin, Harper, Groberman, Bajovski and Cohen be prohibited permanently from becoming or acting as officer or director of any issuer, registrant or investment fund manager;

(j) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, that Shiff be prohibited for a period of 10 years from becoming or acting as officer or director of any issuer, registrant or investment fund manager;

(k) pursuant to clause 8.5 of subsection 127(1) of the Act, that Tsatskin, Harper, Groberman, Bajovski and Cohen be prohibited permanently from becoming or acting as a registrant, investment fund manager or as a promoter;

(l) pursuant to clause 8.5 of subsection 127(1) of the Act, that Shiff be prohibited for a period of 10 years from becoming or acting as a registrant, investment fund manager or as a promoter;

(m) pursuant to subsection 37(1) of the Act, that Tsatskin, Harper, Groberman, Bajovski and Cohen be prohibited permanently from telephoning from within Ontario to a residence within or outside of Ontario for the purpose of trading in any security or any class of securities;

(n) pursuant to subsection 37(1) of the Act, that Shiff be prohibited for a period of 10 years from telephoning from within Ontario to a residence within or outside of Ontario for the purpose of trading in any security or any class of securities;

(o) pursuant to clause 9 of subsection 127(1) of the Act, that Tsatskin pay $1,000,000, Harper pay $1,000,000, Groberman pay $182,000, Bajovski pay $128,000, Cohen pay $90,000 and Shiff pay $20,000 as administrative penalties, to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;

(p) pursuant to clause 10 of subsection 127(1) of the Act, that Tsatskin, Harper and Global Energy be jointly and severally liable to disgorge to the Commission US$16,197,125.02, to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;

(q) pursuant to clause 10 of subsection 127(1) of the Act, that Groberman disgorge $91,509, Bajovski disgorge $64,343, Cohen disgorge $45,736 and Shiff disgorge $10,532 to the Commission, to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and

(r) pursuant to section 127.1 of the Act, Tsatskin pay $30,430, that Harper pay $43,472 and each of Groberman, Bajovski, Cohen and Shiff pay $3,260 for hearing costs incurred by the Commission.

IV. POSITIONS OF THE PARTIES

A. Staff's submissions

[8] Staff distinguished between sanctioning factors to be considered for Tsatskin, Harper and Global Energy, who were found to have committed securities fraud, and the remaining respondents, whose activities related to unregistered trading and the illegal distribution of shares.

[9] Staff submits that the conduct of Tsatskin, Harper and Global Energy involves significant contraventions of the Act, including fraud, and that their activities were planned, prolonged and widespread. Staff emphasized that the Global Energy scheme defrauded over 200 investors of over US$16 million, which resulted in losses of approximately US$15 million. With respect to profit made or losses avoided, Staff submit that US$16,197,125 was obtained from investors, of which US$4,232,000 was transferred to accounts controlled by or for the benefit of Tsatskin and a further US$396,119.65 was transferred to accounts controlled by Harper. Harper also received $233,693.84 from funds included in the US$4,232,000 transferred to accounts controlled by or for the benefit of Tsatskin.

[10] Staff further submits that Tsatskin and Harper have demonstrated a lack of regard for Ontario securities law and failed to recognize the seriousness of their improprieties. Also, Staff argues there are no mitigating factors available to them and the risk to the public warrants the serious sanctions proposed by Staff to remove them permanently from the capital markets. Staff submits the sanctions sought are proportionate to the misconduct and will provide specific and general deterrence.

[11] With respect to Groberman, Bajovski, Cohen and Shiff (the "**Salesperson Respondents**"), Staff submits that they breached key provisions of Ontario securities law by using high pressure sales tactics and aliases when communicating with investors. Staff further submits that Bajovski and Cohen have shown indifference to the proceedings and that Groberman, despite his advanced age and health concerns, made no admissions. Shiff, Staff argues, only participated in the Global Energy scheme for a short period of two months, Shiff acknowledged that he failed to conduct due diligence and has expressed some remorse for his conduct.

[12] Staff also indicated that Groberman received $91,509.02, Bajovski received $64,343.29, Cohen received $45,736.33 and Shiff received $10,532.27 as a result of their conduct in breach of Ontario securities law.

[13] Staff relied on *Sabourin Sanctions*, *Limelight Sanctions* and *Al-Tar Sanctions*, among other cases, in support of their submission that fraudulent conduct has attracted the imposition of permanent prohibitions and substantial monetary penalties (*Re Sabourin* (2010), 33 O.S.C.B. 5299 ("***Sabourin Sanctions***"); *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("***Limelight Sanctions***"); and *Re Al-Tar Energy Corp.* (2011), 34 O.S.C.B. 447 ("***Al-Tar***

Sanctions")). Staff took the position in its written submissions that no carve-outs for personal trading should be granted to Tsatskin, Harper or Global Energy because they cannot be trusted to participate in the capital markets, not even in a limited capacity.

[14] On the matter of administrative penalties, Staff took the position that Tsatskin and Harper should each be ordered to pay $1,000,000 and that the remaining respondents should pay double the amount they earned as commission or, in other words, roughly two times the amount sought as disgorgement from each. Staff relies on *Rowan* for the proposition that an administrative penalty should be of a magnitude sufficient to ensure effective specific and general deterrence (*Re Rowan* (2009), 33 O.S.C.B. 91 ("***Rowan***") at para. 158). Further Staff notes that in *Al-Tar Sanctions* the Commission imposed higher sanctions than those requested by Staff because the administrative penalty "must be more than a fee for or cost of carrying out a fraudulent scheme" (*Al-Tar Sanctions, supra* at para. 47).

[15] Staff argued that the panel has the discretion to order Tsatskin, Harper and Global Energy to disgorge US$16,197,125.02, representing the full amount raised from investors, and that it is open to the panel to direct Staff not to exceed that amount of recovery, by taking into account recoveries received from other Respondents or in other proceedings. Staff submits that, similar to the direction of the *Suman and Rahman Sanctions* panel, Staff would coordinate with U.S. authorities to ensure that there is no double recovery (*Re Shane Suman and Monie Rahman* (2012), 35 O.S.C.B. 11218). Staff argued that any amount of commissions disgorged by the remaining salesperson respondents would be deducted from the whole amount to be disgorged by Tsatskin, Harper and Global Energy. Furthermore, Staff agreed that it is the Commission's practice to deduct from the amount to be disgorged monies returned to investors. However, in *Limelight Sanctions,* the panel found that while Staff has the onus on a balance of probabilities of proving the amounts obtained by the Respondents as a result of non-compliance, any risk in calculating disgorgement falls on the wrongdoer whose non-compliance with the Act caused the uncertainty (*Limelight Sanctions, supra* at para. 53). Therefore, Staff argues, it would be open to the panel to deduct either the approximate US$900,000 that was directed to Global Energy in the Bahamas or, at the very least, the amounts referred to in evidence has having been returned to investors.

[16] Staff also noted in its submissions that settlement agreements arrived at with co-respondents are not binding, but that the Supreme Court of Canada has found that settlements "are among the relevant factors to consider" (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 ("***Cartaway***") at paras. 67-69). Staff submitted that with the exception of Schaumer, who settled on the basis of fraud, all other Settling Respondents had dollar for dollar disgorgement and administrative penalties, which Staff argued were the lowest administrative penalties appropriate in the circumstances and reflected early resolution of the matter.

[17] Costs sought for a total amount of $86,942 include the costs of two Staff counsel and an investigator beginning December 1, 2011, at which time litigation preparation began and all settlements were substantively completed. Staff did not request disbursement costs. Staff argued that Tsatskin and Harper should be responsible for the majority of the costs as a result of their central roles in the Global Energy scheme and that Harper's conduct throughout the proceedings should result in her paying a more significant amount.

B. Groberman's Submissions

[18] In his written submissions, counsel for Groberman requested that the panel consider several factors when deciding on the imposition of sanctions on Groberman. Those factors include: Groberman is 79 years old and in poor health, he had no experience in the marketplace, he does not need specific deterrence because he quit the scheme voluntarily and this is an isolated incident on his otherwise unblemished record.

[19] Counsel for Groberman made oral submissions on the administrative penalty and costs sought against Groberman. Specifically, he argued that Groberman should not be ordered to pay an administrative penalty and that Staff's dockets on costs did not allow Groberman to adequately assess the amounts incurred with respect to Groberman.

[20] With respect to the administrative penalty sought by Staff, counsel for Groberman argued that nonmonetary sanctions against Groberman amounted to a lifetime ban due to Groberman's advanced age. This, Groberman's counsel submitted, served the purpose of specific deterrence and was harsh for a respondent that was not involved in fraud. His submission was that Groberman's administrative penalty should be zero given the effective lifetime bans and disgorgement sought. In support of his proposition counsel relied upon the *Maitland Sanctions* decision, a matter which included sanctioning of salespersons in a boiler room. Groberman's counsel specifically directed the panel to sanctions imposed on Lanys, a salesperson who made admissions of fact and was ordered to pay disgorgement and given three year bans, but was not ordered to pay an administrative penalty (*Re Maitland Capital et al.* (2012), 35 O.S.C.B. 6500 ("***Maitland Sanctions***") at paras. 31 and 36). Counsel argued that Groberman's conduct was almost identical to that of Lanys, but a key difference, which weighs in favour of Groberman, is that Groberman was less experienced in the securities market.

[21] Counsel also submitted that an administrative penalty in the amount of two times the disgorgement sought against Groberman crossed the line from prevention to punishment. Groberman's counsel argued that there was no difference between the Settling Respondents and Groberman, other than the fact that they settled. However, he also noted that another difference was that Groberman left Global Energy voluntarily when he realized that investors were unhappy and not getting what they wanted.

[22] Groberman's counsel argued that Groberman's inability to attend the proceeding should be treated as a neutral factor and tendered evidence with respect to Groberman's medical condition to support his submissions (*Re Goldpoint Resources Corp.* (2013), 36 O.S.C.B. 1464 ("***Goldpoint Santions***") at para. 55). He also submitted that limited time was spent dealing with allegations against Groberman at the Merits Hearing and in support of that submission he directed the panel to portions of Groberman's compelled testimony, in which Groberman admitted to trading without a license. Further, the panel was directed to Staff's docket, which allocated three hours of Staff's time to settlement discussions, but did not otherwise detail specific time spent dealing with his involvement. With that in mind, counsel for Groberman argues, the Commission should not order Groberman to pay costs.

C. Shiff's Submissions

[23] Shiff began by conveying his remorse stating "I wanted to express, once again, that I am absolutely remorseful, that I have experienced tremendous embarrassment, loss of business and especially reputation" (Shiff – Hearing Transcript of March 22, 2013 at p. 91). Shiff requested that no sanctions be imposed and indicated he was the director of his own company and needed to be able to offer shares of his company for growth with a potential partner.

[24] It was submitted to the panel that Shiff could not make restitution. Shiff gave evidence about his financial situation and inability to pay. He testified with respect to four accounts: a VISA credit card, a personal account, a business account and a VISA debit card. Shiff's evidence was that in August 2012 his credit rating dropped and his VISA credit card was no longer renewed. As at the date of the hearing, Shiff testified that the VISA credit card account had $5,700 outstanding and the maximum credit limit was supposed to be $5,000. Shiff also testified that the VISA debit card had a balance of $100 and his personal account balance was in the negative, approximately $700.

[25] Shiff stated he had a first-aid health and safety company in the business of teaching people how to save lives. Shiff gave evidence that his business account had approximately $100. He also testified that one of his suppliers would not continue to work with him unless he dealt with a balance owing of $1,000. More generally, Shiff testified that his income fluctuated, he could not say what his actual annual income was, but stated that it was not very high and "[a] lot of stuff goes back into the business" (Shiff – Transcript of March 22, 2013 at p. 98). Shiff's evidence was that he had no significant assets and was behind on his rent, which added to the pressure. Given the opportunity to testify at the Sanctions and Costs Hearing about his income, Shiff did not answer directly, nor did he tender documentary evidence that would support his testimony in that respect.

D. Reply Submissions

[26] Staff argued that ability to pay is one relevant sanctioning factor, but not a predominant or determinative one (*Sabourin Sanctions*, *supra* at para. 60). Staff submitted that the panel could not give much weight to Shiff's testimony on ability to pay without knowing his total income or the worth of his business. Staff also acknowledged that Shiff participated in the scheme for a shorter period of time, but nonetheless lied about his location and name, which should be aggravating factors. On the matter of whether the panel should narrow the scope of prohibitions to permit Shiff to be an officer or director of a non-reporting issuer, Staff submitted that it was not appropriate given the aggravating circumstances, and stated that Shiff is not in a position to be trusted to sell securities or issue his own.

[27] In response to Groberman's submissions on the inadequacy of Staff's dockets, Staff relied upon the Commission's decision in *Ochnick*, which considered Staff's dockets and found them to be sufficient to support the requested costs (*Re Ochnick* (2006), 29 O.S.C.B. 3929 ("***Ochnick***")).

[28] Staff also reiterated that no settlement was reached and no agreed facts were entered which could provide the basis of mitigating factors for Groberman. Staff submitted that less

weight should be given to Groberman's compelled testimony which was not tested by cross-examination with the same scrutiny that could be provided at a hearing. Further, Staff argued that the suggestion that Groberman left Global Energy because he felt something was wrong is self-serving and in fact contradictory in the sense that he also admits in his compelled testimony that he stayed for several months after complaints started coming in every day or every other day.

[29] In terms of the application of *Maitland Sanctions*, Staff distinguished the case for three reasons. First, Lanys agreed to a statement of facts, which could have been considered a mitigating factor. Second, Staff did not seek an administrative penalty in that matter and therefore the panel did not consider whether it was appropriate. Third, while his counsel argued that Groberman had less market experience than Lanys, Groberman still lied about his name and his location while selling securities and should have known better.

[30] In response to Staff's reply with respect to Groberman's compelled testimony, Counsel for Groberman directed the panel to the portions of Groberman's compelled testimony which he submitted were relevant and argued that this was not hearsay evidence which commented on the conduct of other respondents, and therefore did not raise the same concerns of fairness on ability to cross-examine the evidence. Groberman's counsel submitted that Staff was the party conducting the compelled interview and it would have had the opportunity to ask whatever questions it saw fit at the time of the interview. He agreed that the weight to be given to the evidence is at the discretion of the panel.

V. THE LAW ON SANCTIONS

[31] Pursuant to section 1.1 of the Act, the Commission's mandate is to: (i) provide protection to investors from unfair, improper or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets. As stated by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, [2001] 2 S.C.R. 132 ("***Asbestos***") at para. 42, the Commission's public interest mandate in making an order under section 127 of the Act is neither remedial nor punitive; instead, it is protective and preventive, and it is intended to prevent future harm to Ontario's capital markets.

[32] The purpose of an order under section 127 of the Act is "to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets" and the role of the Commission under section 127 of the Act is "to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets" (*Asbestos, supra* at para. 43).

[33] The Commission must ensure that the sanctions imposed in each case are proportionate to the circumstances and conduct of each of the particular respondents. Some of the factors the Commission has considered in determining appropriate sanctions include:

(a) the seriousness of the allegations;

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

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

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

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

(f) any mitigating factors;

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

(h) the size of any financial sanctions or voluntary payment when considering other factors;

(i) the effect any sanction might have on the livelihood of a respondent;

(j) the restraint any sanctions may have on the ability of a respondent to participate without check in the capital markets;

(k) the reputation and prestige of the respondent;

(l) the shame or financial pain that any sanction would reasonably cause to the respondent; and

(m) the remorse of the respondent.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 ("***Belteco***") at paras. 23-26; *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 ("***MCJC Holdings***") at paras. 18-19 and 26).

[34] Deterrence is an important factor that the Commission may consider when determining appropriate sanctions. In *Cartaway*, *supra* at paragraph 60, the Supreme Court of Canada stated that: "…it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative".

[35] The Commission has held that an administrative penalty "may not act as a sufficient deterrent if its magnitude is inadequate compared with the benefit obtained by non-compliance" *(Rowan*, *supra* at para. 74). The panel in *Limelight Sanctions, supra* at para. 67, stated:

> The purpose of an administrative penalty is to deter the particular respondents from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants that the conduct in question will not be tolerated in Ontario capital markets.

[36] There is no formula for determining an administrative penalty. Factors to be considered in determining an appropriate administrative penalty include: the scope and seriousness of the misconduct; whether there were multiple and/or repeated breaches of the Act; whether the respondent realized a profit as a result of the misconduct; the amount of money raised from

investors; and the level of administrative penalties imposed in other cases (*Rowan, supra* at para. 67; and *Limelight Sanctions Decision, supra* at paras. 71 and 78).

[37] Subsection 127(1)10 of the Act provides that a person or company that has not complied with Ontario securities law can be ordered to disgorge to the Commission "any amounts obtained" as a result of the non-compliance. When determining the appropriate disgorgement orders, we are guided by a non-exhaustive list of factors set out in ***Limelight Sanctions*** at para. 52, including:

a) whether an amount was obtained by a respondent as a result of non-compliance with the Act;

b) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;

c) whether the amount that a respondent obtained as a result of non-compliance with the Act is reasonably ascertainable;

d) whether the individuals who suffered losses are likely to be able to obtain redress; and

e) the deterrent effect of a disgorgement order on the respondents and other market participants.

VI. SPECIFIC SANCTIONING FACTORS APPLICABLE IN THIS MATTER

[38] In determining appropriate sanctions, the Commission is guided by the factors set out in *Belteco* and *M.C.J.C. Holdings*. We have considered those factors summarized in the following paragraphs to be specifically applicable in this matter.

A. Seriousness of Misconduct and Breaches of the Act

[39] Registration is one of the cornerstones of securities law which serves as a gate-keeping function to ensure only properly qualified individuals are permitted to trade with, or on behalf of, the public (*Goldpoint Sanctions, supra* at para. 48; *Re Richvale Resource Corp.* (2012), 35 O.S.C.B. 10699 ("***Richvale Sanctions***") at para. 15(a); and *Re Lyndz Pharmaceuticals Inc.* (2012), 35 O.S.C.B. 7257 ("***Lyndz Sanctions***") at para.63). All of the Respondents engaged in unregistered trading contrary to subsection 25(1)(a) of the Act and engaged in the distribution of securities without a prospectus or a prospectus exemption contrary to subsection 53(1) of the Act.

[40] Fraud is among the most egregious securities law violations; it decreases confidence in the fairness and efficiency of the capital markets (*Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 ("***Al-Tar Merits Decision***") at para. 214). In the Merits Decision *supra*, we found that Global Energy, Tsatskin and Harper perpetrated and participated in a fraud on investors contrary to subsection 126.1(b) of the Act.

[41] We also note that the Respondents misappropriated, or assisted in the misappropriation of investor funds paid to enrich themselves, the directing minds and salespersons of Global Energy (Merits Decision, *supra* at paras. 170, 172 and 187).

[42] While the conduct of Tsatskin, Harper and Global Energy, who were found to have committed securities fraud, can be distinguished from that of the Salesperson Respondents, we consider the use of aliases to sell securities to investors a deceitful course of conduct that cannot and should not be ignored when considering the seriousness of the Respondents' breaches. The use of aliases, high pressure sales tactics and misrepresentations, are aggravating factors.

B. The Respondents' Experience in the Marketplace

[43] Counsel for Groberman submitted that Groberman's lack of experience in the marketplace should be taken into account in imposing sanctions. There was no evidentiary support for this submission. In fact, we have no evidence on any of the Respondents' activities in the market from which to draw a conclusion, aside from the conduct in question and that there is no record that Tsatskin, Harper, Groberman, Bajovski and Shiff have been registered with the Commission in any capacity (Merits Decision, *supra* at para. 141). We do not find Groberman's submissions to be of assistance in our determination.

C. Level of Activity in the Marketplace

[44] We found that US$16,197,125 of investor funds were obtained through the Global Energy investment scheme through the sale of New Gold partnership units (Merits Decision, *supra* at para. 168). This is a substantial sum of money obtained through high pressure solicitation of investors over the course of one year. Tsatskin paid commissions to at least eleven others, aside from the directing minds of Global Energy, to assist in executing the fraudulent scheme (Merits Decision, *supra* at paras. 171-172).

D. Respondents' Recognition of the Seriousness of their Conduct and Remorse

[45] Shiff is the only respondent who repeatedly expressed remorse for his involvement in this matter. We accept his submissions in this respect to be genuine. Groberman also recognized the seriousness of his conduct in his compelled testimony by admitting to misconduct and not disputing the non-monetary sanctions sought to be imposed upon him. None of the other Respondents took responsibility for their actions or presented evidence of remorse or that they recognized the seriousness of their offenses.

E. Specific and General Deterrence

[46] Given the seriousness of the conduct, it is important that the Respondents and like-minded individuals engaging in deceitful conduct such as fraud, use of aliases or high pressure sales tactics, should be deterred from doing so in the future by imposing appropriate sanctions which reflect the harm done to investors.

[47] Groberman's counsel argued that he did not need specific deterrence because he left the scheme on his own. We agree with Staff that the transcript of Groberman's compelled testimony is telling in that it confirms Groberman continued to work for several months, using an alias to

sell securities, even with the knowledge of the daily or near daily complaints from investors. We find that specific deterrence is necessary for Groberman in this case.

[48] Staff referred to Shiff's short term of involvement in the Global Energy scheme. However, we note that Shiff did not cease unregistered trading out of his own accord. Shiff's misconduct terminated when the entire Global Energy scheme was brought to a halt. We find that specific deterrence is necessary for Shiff in this case.

F. Mitigating Factors

[49] We found no mitigating factors to be applicable for Tsatskin, Harper, Bajovski or Cohen.

[50] As stated above, we accept Shiff's repeatedly expressed remorse to be genuine. Further, Groberman also recognized the seriousness of his conduct in his compelled testimony by admitting to misconduct and not disputing the non-monetary sanctions sought to be imposed upon him. We consider these to be mitigating factors for Shiff and Groberman.

G. Size of Profit Gained or Loss Avoided from Illegal Conduct

[51] Of the US$16,197,125 obtained from investors, we had evidence that US$4,232,000 was transferred to accounts controlled by or for the benefit of Tsatskin and a further US$396,120 was transferred to accounts controlled by Harper. Of the US$4,232,000 transferred to accounts controlled by or for the benefit of Tsatskin, the merits panel accepted that:

a) Harper received $233,694;

b) Groberman received $91,509;

c) Bajovski received $64,343;

d) Cohen received $45,736;

e) Shiff received $10,532; and

f) the Settling Respondents received further amounts.

(Merits Decision, *supra* at paras. 170, 172 and 187).

The Salesperson Respondents and Harper obtained the above noted amounts listed in a) through e) in Canadian currency.

[52] The Salesperson Respondents obtained the above noted values as commissions for their sales of New Gold securities, and thus as a result of their conduct in breach of Ontario securities law. Likewise, amounts obtained by Tsatskin, Harper and Global Energy were obtained a result of their activities in breach of the Act. None of the Respondents should be allowed to profit from breaches of Ontario securities law.

H. Respondent's Ability to Pay

[53] The panel was given inadequate evidence of Shiff's ability to pay. We found his testimony to be vague and unpersuasive. Although Shiff provided some information on his financial situation, when Shiff was given the opportunity to tender evidence of his income he did not do so. In the absence of information with respect to the value of Shiff's business and income, we cannot give much weight to Shiff's testimony. No evidence was presented with regard to any of the other Respondents' ability to pay.

I. Sanctions Imposed on Settling Respondents

[54] The Settling Respondents agreed and were ordered to permanently cease trading and acquiring securities and that exemptions contained in Ontario securities law would not apply to them permanently, subject to certain exceptions for personal trading for some of the Settling Respondents. They were further prohibited from becoming or acting as directors or officers of any issuer, registrant or investment fund manager or from becoming or acting as registrants, investment fund managers or promoters permanently, with the exception of Feder whose director and officer prohibition specified any "reporting" issuer or issuer that distributes to the public (See *Re Global Energy Group, Ltd. et al.* (2010), 33 O.S.C.B. 10412; (2011), 34 O.S.C.B. 9261; (2011), 34 O.S.C.B. 9262; (2011), 34 O.S.C.B. 9264; (2011), 34 O.S.C.B. 12072; (2011), 34 O.S.C.B. 12073; and (2012), 35 O.S.C.B. 891 (collectively, the "**Global Energy Settlement Orders**")).

[55] The Settling Respondents who settled only on the basis of contraventions of sections 25 and 53 of the Act, were further ordered to pay administrative penalties (Global Energy Settlement Orders, *supra*). Further, the Settling Respondents were ordered to disgorge amounts admitted to have been obtained as commissions for sales of New Gold securities. In most cases, the Settling Respondents administrative penalties matched dollar for dollar with their disgorgement amount (Global Energy Settlement Orders, *supra*). Robinson was ordered to disgorge $22,000, Brikman was ordered to disgorge $82,748, Pasternak was ordered to disgorge $171,856, Walker was ordered to disgorge $82,521, Schaumer was ordered to disgorge $640,000, Silverstein was ordered to disgorge $114,186 and Feder was ordered to disgorge $230,447 (Global Energy Settlement Orders, *supra*). In total, the Commission has ordered that $1,343,758 be disgorged by the Settling Respondents.

[56] We find that the Salesperson Respondents' involvement is comparable to that admitted by the Settling Respondents (Settlement Agreements, *supra*). The Salesperson Respondents, like the Settling Respondents, solicited investors through the use of high pressure sales tactics and used aliases for that purpose. We also recognize that the sanctions imposed in the Global Energy Settlement Orders reflect mitigating factors for the Settling Respondents' acknowledgement of wrongdoing and cooperation with Staff. This factor was not determinative, but we found it a consideration with respect to proportionality.

J. Effect of Sanctions on Livelihood of Respondents

[57] Shiff submitted that sanctions would make it more difficult for him to make a living, worsen an already precarious position and make operation of his company more difficult. We could not give the submission much weight due to lack of an evidentiary basis for his claim.

VII. APPROPRIATE SANCTIONS IN THIS MATTER

[58] In determining the appropriate sanctions for each of the Respondents, we have remained cognizant of the role and conduct of each respondent in the Global Energy investment scheme. We have also taken into account the Merits Decision findings of contraventions of the Act, which differ between certain of the Respondents, the submissions of the parties and the sanctioning factors considered above.

A. Trading, Acquiring and Exemption Prohibitions

[59] We agree that the Respondents cannot be trusted to participate in the capital markets. We found that US$16,197,125 was obtained from investors through the Global Energy investment scheme through the sale of New Gold partnership units, in contravention of the Act (Merits Decision, *supra* at para. 168). The scheme was found to be fraudulent and affected many Canadian investors. Furthermore, Global Energy and Tsatskin and Harper, as controlling minds, were found to have perpetrated a fraud contrary to subsection 126.1 (b) of the Act and to have authorized, permitted or acquiesced in Global Energy's breaches of Ontario securities law. Accordingly, Tsatskin and Harper are deemed to have not complied with Ontario securities law, pursuant to section 129.2 of the Act (Merits Decision, *supra* at para. 240).

[60] Specifically, Tsatskin admitted that investors were misled about the true ownership and control of Global Energy, investor funds were comingled despite representations in subscription agreements that the funds would be held in escrow accounts and used for the purpose of a specific drilling project, and that oil wells in Kentucky were not all drilled and those that were produced little or no oil at all, contrary to the estimates and representations made by Global Energy salespersons (Merits Decision, *supra* at para. 221). Further, Harper knowingly misled investors about the length of time that Global Energy had been in operation, made false statements about Global Energy's performance, used an alias and made false and misleading statements about her past experience in the oil and gas industry, clearly knowing them to be false (Merits Decision, *supra* at para. 223-225).

[61] We are guided by the Commission's practice of applying permanent cease trade bans, acquisition bans and exemption application bans in circumstances where respondents were found to have engaged in fraudulent conduct (*Al-Tar Sanctions*, *supra* at para. 82; *Richvale Sanctions*, *supra* at para. 15(a); *Lyndz Sanctions*, *supra* at para. 63; and *Goldpoint*, *supra* at para. 48). Therefore, we find permanent bans are appropriate for Tsatskin, Harper and Global Energy. We also agree that Tsatskin, Harper and Global Energy should not be granted any exception for personal trading because they cannot be trusted to participate in Ontario's capital markets even in a limited capacity.

[62] Staff made no submissions with respect to New Gold, other than seeking certain sanctions against it. We find that it would not serve the public interest to order sanctions against

New Gold, which appears to be a fictitious entity. However, given that we found in the Merits Decision at paragraph 166 that the partnership units of New Gold constituted 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 (the "**New Gold securities**"), it is necessary to ensure that such securities do not continue to be sold to the public. Therefore, we find that trading in any New Gold securities should cease permanently, without exception.

[63] The Salesperson Respondents deceived investors, used aliases and lied about their location to solicit potential investors by telephone. Given this misconduct, we agree with Staff that the Salesperson Respondents should not be permitted to trade in or acquire securities or rely on exemptions contained in Ontario securities law, however we disagree that this sanction should be permanent.

[64] The Commission in *Sabourin Sanctions*, considered a similar matter where investors were sold sham investments through salespersons who were found to have contravened sections 25 and 53 of the Act (*Sabourin Sanctions, supra* at para. 7). In that decision, the panel decided the salespersons should permanently cease trading securities, be prohibited from acquiring securities and that there should be a permanent removal of exemptions against each of them, subject to a carve-out for RRSPs with respect to trading and acquiring securities (*Sabourin Sanctions, supra* at para. 7).

[65] The Panel was also directed to the *Maitland Sanctions* decision, in which the Commission considered the agreed facts of respondent Lanys, who participated as a salesperson in a fraudulent investment scheme (*Maitland Sanctions, supra* at para. 33). In that matter, the Commission ordered Lanys to cease trading securities, be prohibited from acquiring securities and that exemptions from securities law would not apply to him for a period of 3 years, subject to a carve-out for RRSPs once his disgorgement order was paid in full (*Maitland Sanctions, supra* at para. 73). The *Maitland Sanctions* matter can be distinguished from the current proceeding on the basis that the panel had only limited agreed facts on which to base its decision and there was no indication that Lanys used an alias or high pressure sales tactics to solicit investors. Further, the agreed facts in that matter stipulate that Lanys was contacting existing investors whom he had understood to have already signed a document signifying they were accredited investors (*Maitland Sanctions, supra* at para. 31).

[66] In *Limelight Sanctions* the salesman, Daniels, received 10 year prohibitions with respect to trading and removal of exemptions, subject to a carve-out for RRSPs (*Limelight Sanctions, supra* at para. 42). In that matter, the panel noted that the respondents engaged in cold calling and used misleading representations and high pressure sales tactics (*Limelight Sanctions, supra* at para. 41).

[67] We consider it appropriate in the circumstances to impose 10 year prohibitions on Bajovski and Cohen's ability to trade securities, acquire securities or benefit from exemptions contained in Ontario securities law, subject to the carve-out described in paragraph 68. Shiff has shown, and the panel has accepted, his remorse for involvement in this scheme. He has shown recognition of the seriousness of the breaches through his participation, which coupled with his remorse are mitigating factors in favour of Shiff. We find that in Groberman's admission in his compelled testimony he accepted responsibility for his actions, stated that he did not know he

had to be licensed and later accepted the non-monetary sanctions requested by Staff. For these reasons, we consider it appropriate to impose 5 year prohibitions on Shiff and Groberman's ability to trade securities, acquire securities or benefit from exemption application under Ontario securities law, subject to the carve-out described in paragraph 68.

[68] We have also decided that the Salesperson Respondents should be granted an exception for personal trading once amounts ordered to be paid for the administrative penalty and disgorgement of the respective respondent are paid. The exception would be for an account in which the Salesperson Respondent has sole legal and beneficial ownership, provided that certain conditions are met. Also, given his misconduct, we do not find it appropriate to allow Shiff to trade in or distribute securities of his own company prior to expiry of his specific prohibition period.

B. Other Market Prohibitions

[69] In considering the circumstances of this case, including the fact that salespersons engaged in high pressure sales tactics and that Tsatskin, Harper, Groberman, Bajovski, Cohen or Shiff (the "**Individual Respondents**") all engaged in deceitful conduct for the purpose of trading or acting in furtherance of trading securities, none of the Individual Respondents should be allowed to call at a residence or telephone from a location in Ontario to a residence located in or out of Ontario for such purposes.

[70] The Individual Respondents should not be entitled to become or act as a registrant, investment fund manager or as a promoter. To protect the public, we find that it is appropriate to impose these market prohibitions on the Individual Respondents on a permanent basis.

[71] There will be no differentiation between Shiff or Groberman and the other the Salesperson Respondents with respect to these other market prohibitions. We find that all the Salesperson Respondents engaged in deceitful conduct, Shiff just participated for a shorter period of time and Groberman took no issue with any of the non-monetary prohibitions. Further, neither Shiff nor Groberman indicated they planned to work in the investment industry or that registration was important to their livelihood.

C. Director and Officer Bans

[72] We agree that permanent director and officer bans, coupled with permanent trading, acquisition and exemption prohibitions, are necessary where a respondent has violated sections 25 and 53 and engaged in misleading and deceptive behaviour (*Ochnik, supra* at paras. 92, 108-113).

[73] In the Merits Decision, the panel found that Global Energy, of which Tsatskin and Harper were the directing minds, conducted a fraudulent scheme resulting from: (a) the use of aliases to solicit potential investors; (b) misleading investors; (c) high pressure sales tactics; and (d) the misappropriation of investors' funds (Merits Decision, *supra* at paras. 170, 172, 187, 221 and 246). In *Al-Tar Sanctions*, the Commission ordered permanent director or officer bans for a fraudulent scheme where $648,109.03 was raised from sales of shares and investors were harmed (*Al-Tar Sanctions***,** *supra* at paras. 12 and 82). In *Sabourin Sanctions*, the Commission ordered the salespersons and directing mind to resign and be permanently banned from becoming or

acting as a directors or officers of an issuer, in which approximately $33.9 million was obtained in an investment scheme that was found to be a sham (*Sabourin Sanctions***,** *supra* at para. 64). In *Limelight Sanctions*, a matter in which $2.75 million was raised from investors through unregistered trading and an illegal distribution, the directing minds were also permanently banned, and the salespersons were banned for a period of 10 years, from becoming or acting as a directors or officers of an issuer (*Limelight Sanctions*, *supra* at para. 87(d) and (e)).

[74] In our view, the orders for resignation and imposition of director and officer bans requested by Staff will ensure that the Individual Respondents will be not be placed in a position of control or trust with respect to issuers, registrants or investment fund managers in the near future, or permanently in the case of Tsatskin and Harper. For Shiff and Groberman, we find it to be sufficient general and specific deterrence for the ban to be qualified to a director or officer of a reporting issuer or any issuer that engages in a distribution to the public, for a period of 5 years, but permanent bans from becoming or acting as directors or officers of a registrant or investment fund manager. For Bajovski and Cohen, we find that a 10 year ban from becoming or acting as director or officer of any issuer and a permanent ban from becoming or acting as director or officer of a registrant or investment fund manager would be more appropriate general and specific deterrence.

D. Disgorgement

[75] In determining appropriate disgorgement, we are guided by the Commission's decision in *Limelight Sanctions*, which states that in determining disgorgement the panel should consider whether the amount obtained by a respondent was a result of non-compliance with the Act and whether that amount is reasonably ascertainable (*Limelight Sanctions*, *supra* at para. 52).

[76] The Global Energy investment scheme raised US$16,197,125 of investor funds through the the illegal distribution of New Gold securities (Merits Decision, *supra* at paras. 168 and 199). Sales were effected as a result of the Individual Respondents' acts of deceit or falsehood including making false statements to investors about salesperson identities, the success of the business, and the allocation of investor funds (Merits Decision, *supra* at paras. 221). The conduct of the Respondents, particularly the commission of securities fraud and deceitful representations, was very serious and resulted in substantial harm to investors. We find it highly unlikely that the investors of the Global Energy investment scheme who suffered losses will be able to obtain redress.

[77] The amounts obtained from investors were directed by the Individual Respondents to a company by the name of American Oil and Gas. A portion of those funds was in turn paid to the Individual Respondents either directly or through accounts controlled by or for the benefit of Tsatskin, one of the directing minds of this investment scheme.

[78] We acknowledge that Mr. Chad Harlan, a Certified Financial Institutions Examiner with the Commonwealth of Kentucky Division of Securities, testified that US$11.5 million of the obtained investor funds had been distributed by Bryan Coffman ("**Coffman**") to other accounts controlled by Coffman or by other persons or entities who are not respondents in this proceeding. Mr. Harlan further testified that the funds directed to the benefit of Mr. Coffman were the subject of a prosecution in the State of Kentucky against Coffman, his wife Megan Coffman and Gary

Milby. It was not disputed in this proceeding that approximately US$11.5 million was obtained by Coffman into accounts in his name, his wife's name, or in the names of other individuals or entities who are not respondents in this proceeding (Merits Decision, *supra* at paras. 94 and 168).

[79] We recognize that the Global Energy investment scheme impacted Canadian investors, that operations were carried out from an office in Ontario and that investors were directed by Global Energy and its agents to send their funds to accounts controlled by individuals or entities who are not respondents to this proceeding. We further recognize that the Commission has found it appropriate that a respondent disgorge all of the funds that were obtained by the respondent as a result of illegal activity and not just profit (*Limelight Sanctions, supra* at para. 49).

[80] Further, the Commission has found that where a scheme was wholly fraudulent and the respondent was a director or officer of the company, it is not necessary for the individual respondent to have obtained the funds personally for the Commission to order disgorgement (*Limelight Sanctions, supra* at paras. 59-62). The panel in that matter found that the individual respondents were jointly and severally responsible for the disgorgement of funds resulting from illegal actions that were carried out through a corporation which they directed and controlled and which received the investor funds. In *Sabourin Sanctions*, the panel ordered joint and several disgorgement of the total $33.9 million obtained from investors less $6 million that appeared to have been returned to investors (*Sabourin Sanctions, supra* at paras. 70 and 93(g)). The panel in that matter found that joint and several liability of Sabourin and the corporate respondents was appropriate, despite the fact that Sabourin did not personally receive all of the funds, because he was the directing and controlling mind of all of the companies which received investor funds and therefore it would impossible to treat them differently (*Sabourin Sanctions, supra* at para. 70).

[81] We distinguish our findings regarding the Global Energy investment scheme from both *Sabourin Sanctions* and *Limelight Sanctions* in one important respect. While we found that US$16,197,125 was raised from investors through the Global Energy investment scheme, we also found that approximately US$11.5 million of those funds were directed to accounts over which none of Global Energy, Tsatskin or Harper appear to have exercised control or authority. Therefore, while we agree that US$16,197,125 was obtained from investors through fraudulent means and ought to be subject to a disgorgement order as requested by Staff, we did not have sufficient evidence upon which to conclude that the total amount of US$16,197,125 was obtained by Global Energy, Tsatskin and/or Harper. We did, however, have evidence that an individual who is not a respondent obtained and directed the disposition of a large portion of the investor funds. Given these circumstances, it would be consistent with previous Commission decisions to only order the disgorgement of the funds obtained by the Respondents as opposed to the total amount of funds obtained from investors, as requested by Staff. We are not able to make findings or orders against Coffman, American Oil and Gas or others who are not respondents in this proceeding.

[82] An amount of US$4,232,000 of investor funds was transferred to accounts controlled by or for the benefit of Tsatskin (Merits Decision, *supra* at paras. 170). For the purpose of calculations in these reasons, we have converted the amount of US$4,232,000 to $4,274,320 in Canadian currency based on the Bank of Canada’s exchange rate of $1.01 on June 25, 2008, the last date of the material time in the Merits Decision.

[83] Commissions obtained by the Salesperson Respondents were paid from accounts controlled by or for the benefit of Tsatskin and are directly related to their non-compliance with sections 25 and 53 of the Act. Specifically, as accepted by the merits panel, Groberman received $91,509, Bajovski received $64,343, Cohen received $45,736 and Shiff received $10,532 for unregistered sales of New Gold securities (Merits Decision, *supra* at para. 172). Given the reasonably ascertainable value of funds obtained by Salesperson Respondents, we find that they shall individually disgorge the amounts obtained as commissions from sales of New Gold securities, which total $212,120. We also find that Tsatskin, through whom the funds flowed, and Global Energy shall be jointly and severally liable for the $212,120 obtained by the Salesperson Respondents as a result of non-compliance with the Act.

[84] Of the $4,274,320 transferred to accounts controlled by or for the benefit of Tsatskin, Harper received $233,694 (Merits Decision, *supra* at para. 170). Harper also received a further US$396,120 of investor funds directly from the American Oil and Gas accounts, which was transferred to accounts controlled by Harper (Merits Decision, *supra* at para. 187). We have converted the amount of US$396,120 to $400,081 in Canadian currency based on same methodology used above at paragraph 82. We find that Harper shall be liable for the $400,081 and $233,694 obtained by her, as a directing mind of Global Energy and as a result of her non-compliance with the Act. We also find that Tsatskin, through whom the funds flowed, and Global Energy shall be jointly and severally liable for the $233,694 obtained by Harper as a result of non-compliance with the Act.

[85] We find that Tsatskin and Global Energy shall be jointly and severally liable for the $2,484,748 obtained by Tsatskin, as a directing mind of Global Energy, as a result of non-compliance with the Act. We arrived at the $2,484,748 disgorgement value by reducing the amount of $4,274,320 that was transferred to accounts controlled by or for the benefit of Tsatskin less: (i) $212,120, the total of amounts ordered to be disgorged by the Salesperson Respondents, jointly and severally with Tsatskin and Global Energy; (ii) $1,343,758, the total of amounts ordered to be disgorged by the Settling Respondents, to be jointly and severally disgorged with Tsatskin and Global Energy; and (iii) $233,694 that Tsatskin transferred to Harper and ordered to be disgorged by her jointly and severally with Tsatskin and Global Energy. To be consistent, Tsatskin and Global Energy shall be jointly and severally liable for the disgorgement amounts ordered against the Settling Respondents as well, as cited in paragraph 55 above. While both Tsatskin and Harper were controlling minds of Global Energy, we find that Tsatskin had more overall control of the funds and therefore he should be held accountable together with Global Energy for the funds obtained from investors which flowed to the other Individual Respondents.

[86] We agree that Staff has the onus of proving the amounts obtained by the Respondents as a result of non-compliance, and that once proven the risk in calculating disgorgement falls on the wrongdoer whose non-compliance with the Act caused an uncertainty *(Limelight Sanctions*, *supra* at para. 53). We did not have conclusive evidence on amounts that may have been returned to investors, whether these amounts came from the funds received by the Respondents and are uncertain whether amounts may be ordered in other proceedings. Therefore, no further deductions were made in those respects.

[87] In summary, we conclude that Harper shall disgorge $400,081. Further, Harper and Tsatskin and Global Energy shall be jointly and severally liable for the $233,694, transferred by Tsatskin to Harper. Finally, Global Energy and Tsatskin shall be jointly and severally liable for the $2,484,748 obtained as a result of non-compliance with the Act. A total of $212,120 shall be ordered to be disgorged by the Salesperson Respondents, jointly and severally with Tsatskin and Global Energy. Tsatskin and Global Energy shall be jointly and severally liable for the disgorgement amounts ordered against the Settling Respondents.

[88] Recognizing that Tsatskin and Harper were found to be directing minds of Global Energy, and committed the very serious offense of fraud, we will now turn our attention to the administrative penalties for each.

E. Administrative Penalties

[89] We find that orders for administrative penalties against Tsatskin and Harper in the amount of $1 million each are appropriate in the circumstances because they committed multiple and repeated violations of the Act, including fraud, which caused serious harm to investors of the Global Energy investment scheme. Such conduct requires a clear deterrent message.

[90] We are not persuaded by Staff's submission that the Salesperson Respondents should be ordered to pay administrative penalties that amount to double the amounts disgorged. While the Salesperson Respondents violated several key provisions of the Act, we consider an administrative penalty that mirrors the amount to be disgorged is more appropriately linked to their misconduct in these circumstances. Furthermore, this treatment of the Salesperson Respondents delivers consistent and proportionate deterrence.

[91] Under the circumstances, we find that it would be appropriate to order Groberman to pay $91,509, Bajovski to pay $64,343, Cohen to pay $45,736 and Shiff to pay $10,532 as administrative penalties for each respondent's failure to comply with Ontario securities law.

VIII. COSTS

[92] Pursuant to subsections 127.1(1) and 127.1(2) of the Act, the Commission has discretion to order a person or company to pay the costs of an investigation and hearing if the Commission is satisfied that the person or company has not complied with the Act or has not acted in the public interest. Rule 18.2 of the *OSC Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "***Rules of Procedure***") sets out a number of factors a panel may consider in exercising its discretion to order costs.

[93] We consider the costs of $86,942 sought by Staff to be reasonable and conservative. These total costs include the time of two Staff litigators and one investigator from December 1, 2011 to April 17, 2012. Staff does not seek any costs related to the investigation, time sent preparing or attending the sanctions hearing or disbursements for the Merits Hearing or Sanctions and Costs Hearing. Further, costs are requested as incurred from the point that the Settling Respondents were no longer a part of the proceeding, and after which amounts incurred were attributable to the hearing against the Respondents.

[94] In support of this request, Staff provided written submissions, an affidavit of Laura Fisher, sworn March 6, 2013, supported by a summary statement of hours and fees and a weekly docket summary, as required by Rule 18.1(2)(b) of the *Rules of Procedure*. The weekly docket summary timesheet provided dates, numbers of hours worked and details of the tasks performed by each of the Staff members listed. We reject the submissions of counsel for Groberman that the supporting documents lacked clarity. We are satisfied that the evidence supports an adequate reflection of costs as a whole. Further, we accept Staff's submission that Groberman did not settle or agree to facts, which could have expedited the Merits Hearing. Groberman contributed no more than any of the other Salesperson Respondents to the efficiency of the hearing.

[95] We reject Staff's submissions that Harper's conduct throughout the proceedings should result in her paying a higher amount relative to Tsatskin. However, we find that Tsatskin's admissions for the purpose of the criminal proceeding in his "Statement of Facts for Guilty Plea" made the Merits Hearing more efficient and therefore reduced costs for Tsatskin reflect that fact.

[96] We agree that Staff's estimate of costs is reasonable in the circumstances and that allocation was appropriate. We find that it would be appropriate to order Tsatskin to pay $30,430, Harper to pay $43,472 and each of the Salesperson Respondents to pay $3,260 for hearing costs incurred by the Commission.

IX. CONCLUSION

[97] We consider that it is important in this case to impose sanctions that reflect the seriousness of the securities law violations that occurred in this matter and that will deter the Respondents and like-minded individuals from engaging in future conduct that violates securities law. Accordingly, we make the following orders:

1. With respect to Global Energy, Tsatskin, Harper and New Gold:

    (a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any New Gold securities cease permanently;

    (b) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by Global Energy, Tsatskin and Harper cease permanently;

    (c) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Global Energy, Tsatskin and Harper cease permanently;

    (d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law not apply to Global Energy, Tsatskin and Harper permanently;

    (e) pursuant to clause 7 of subsection 127(1) of the Act, Tsatskin and Harper shall resign all positions as director or officer of an issuer;

(f) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Tsatskin and Harper shall be prohibited permanently from becoming or acting as officer or director of an issuer, registrant or investment fund manager;

(g) pursuant to clause 8.5 of subsection 127(1) of the Act, Tsatskin and Harper shall be prohibited permanently from becoming or acting as a registrant, investment fund manager or as a promoter;

(h) pursuant to subsection 37(1) of the Act, Tsatskin and Harper shall be prohibited permanently from telephoning from within Ontario to a residence within or outside of Ontario for the purpose of trading in any security or any class of securities;

(i) pursuant to clause 9 of subsection 127(1) of the Act, Tsatskin and Harper shall each pay $1,000,000 as administrative penalties for their failure to comply with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(j) pursuant to clause 10 of subsection 127(1) of the Act, Global Energy and Tsatskin shall be jointly and severally liable to disgorge to the Commission the amount of $2,484,748 obtained as a result of their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(k) pursuant to clause 10 of subsection 127(1) of the Act, Harper, Global Energy and Tsatskin shall jointly and severally disgorge to the Commission the amount of $233,694 obtained as a result of their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(l) pursuant to clause 10 of subsection 127(1) of the Act, Harper shall disgorge to the Commission the amount of $400,081 obtained as a result of her non-compliance with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(m) pursuant to clause 10 of subsection 127(1) of the Act, Bajovski, Global Energy and Tsatskin shall jointly and severally disgorge to the Commission $64,343 obtained as a result of their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(n) pursuant to clause 10 of subsection 127(1) of the Act, Cohen, Global Energy and Tsatskin shall jointly and severally disgorge to the Commission $45,736 obtained as a result of their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(o) pursuant to clause 10 of subsection 127(1) of the Act, Groberman, Global Energy and Tsatskin shall jointly and severally disgorge to the Commission $91,509 obtained as a result of their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(p) pursuant to clause 10 of subsection 127(1) of the Act, Shiff, Global Energy and Tsatskin shall jointly and severally disgorge to the Commission $10,532 obtained as a result of their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(q) pursuant to clause 10 of subsection 127(1) of the Act, Global Energy and Tsatskin shall be jointly and severally liable with Robinson to disgorge to the Commission $22,000 obtained as a result of Global Energy and Tsatskin's non-compliance with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(r) pursuant to clause 10 of subsection 127(1) of the Act, Global Energy and Tsatskin shall be jointly and severally liable with Brikman to disgorge to the Commission $82,748 obtained as a result of Global Energy and Tsatskin's non-compliance with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(s) pursuant to clause 10 of subsection 127(1) of the Act, Global Energy and Tsatskin shall be jointly and severally liable with Pasternak to disgorge to the Commission $171,856 obtained as a result of Global Energy and Tsatskin's non-compliance with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(t) pursuant to clause 10 of subsection 127(1) of the Act, Global Energy and Tsatskin shall be jointly and severally liable with Walker to disgorge to the Commission $82,521 obtained as a result of Global Energy and Tsatskin's non-compliance with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(u) pursuant to clause 10 of subsection 127(1) of the Act, Global Energy and Tsatskin shall be jointly and severally liable with Schaumer to disgorge to the Commission $640,000 obtained as a result of Global Energy and Tsatskin's non-compliance with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(v) pursuant to clause 10 of subsection 127(1) of the Act, Global Energy and Tsatskin shall be jointly and severally liable with Silverstein to disgorge to the Commission $114,186 obtained as a result of Global Energy and Tsatskin's non-

compliance with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(w) pursuant to clause 10 of subsection 127(1) of the Act, Global Energy and Tsatskin shall be jointly and severally liable with Feder to disgorge to the Commission $230,447 obtained as a result of Global Energy and Tsatskin's non-compliance with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and

(x) pursuant to section 127.1 of the Act, Tsatskin shall pay $30,430 and Harper shall pay $43,472 for hearing costs incurred by the Commission;

2. With respect to Bajovski and Cohen:

(a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by Bajovski and Cohen cease for a period of 10 years with the exception that, upon full payment of the administrative penalty and disgorgement orders imposed against them, each shall be permitted to trade securities in a personal account in which he has sole legal and beneficial ownership, provided that:

(i) the securities traded are listed and posted for trading on an exchange recognized by the Commission or registered by the SEC or are issued by a mutual fund which is a reporting issuer;
(ii) he does not own legally or beneficially more than one percent of the outstanding securities of the class or series of the class in question; and
(iii) he carries out any permitted trading through a registered dealer (who has been given a copy of this Order) and in accounts opened in his name only, and he must close any accounts that are not in his name only;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Bajovski and Cohen cease for a period of 10 years with the exception that, upon full payment of the administrative penalty and disgorgement orders imposed against them, each shall be permitted to acquire securities in accordance with the terms specified in paragraphs (a)(i)-(iii) above;

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law not apply to Bajovski and Cohen for a period of 10 years with the exception that, upon full payment of the administrative penalty and disgorgement orders imposed against them, each shall be permitted to trade and acquire securities in accordance with the terms specified in paragraphs (a)(i)-(iii) above;

(d) pursuant to clause 7 of subsection 127(1) of the Act, Bajovski and Cohen shall resign all positions as director or officer of any issuer;

(e) pursuant to clause 8 of subsection 127(1) of the Act, Bajovski and Cohen shall be prohibited for a period of 10 years from becoming or acting as officer or director of a reporting issuer or any issuer that engages in a distribution to the public;

(f) pursuant to clauses 8.2 and 8.4 of subsection 127(1) of the Act, Bajovski and Cohen shall be prohibited permanently from becoming or acting as officer or director of a registrant or investment fund manager;

(g) pursuant to clause 8.5 of subsection 127(1) of the Act, Bajovski and Cohen shall be prohibited permanently from becoming or acting as a registrant, investment fund manager or as a promoter;

(h) pursuant to subsection 37(1) of the Act, Bajovski and Cohen shall be prohibited permanently from telephoning from within Ontario to a residence within or outside of Ontario for the purpose of trading in any security or any class of securities;

(i) pursuant to clause 9 of subsection 127(1) of the Act, Bajovski shall pay $64,343 and Cohen shall pay $45,736 as administrative penalties for their failure to comply with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(j) pursuant to clause 10 of subsection 127(1) of the Act, Bajovski, Global Energy and Tsatskin shall jointly and severally disgorge to the Commission $64,343 and Cohen, Global Energy and Tsatskin shall jointly and severally disgorge to the Commission $45,736 obtained as a result of their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act, as determined at paragraphs 1(m) and 1(n) above; and

(k) pursuant to section 127.1 of the Act, Bajovski and Cohen shall each pay $3,260 for hearing costs incurred by the Commission;

3. With respect to Groberman and Shiff:

(a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by Groberman and Shiff cease for a period of 5 years with the exception that, upon full payment of the administrative penalty and disgorgement orders imposed against them, each shall be permitted to trade securities in a personal account in which he has sole legal and beneficial ownership, provided that:

(i) the securities traded are listed and posted for trading on an exchange recognized by the Commission or registered by the SEC or are issued by a mutual fund which is a reporting issuer;
(ii) he does not own legally or beneficially more than one percent of the outstanding securities of the class or series of the class in question; and

(iii) he carries out any permitted trading through a registered dealer (who has been given a copy of this Order) and in accounts opened in his name only, and he must close any accounts that are not in his name only;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Groberman and Shiff cease for a period of 5 years with the exception that, upon full payment of the administrative penalty and disgorgement orders imposed against them, each shall be permitted to acquire securities in accordance with the terms specified in paragraphs (a)(i)-(iii) above;

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law not apply to Groberman and Shiff for a period of 5 years with the exception that, upon full payment of the administrative penalty and disgorgement orders imposed against them, each shall be permitted to trade and acquire securities in accordance with the terms specified in paragraphs (a)(i)-(iii) above;

(d) pursuant to clause 7 of subsection 127(1) of the Act, Groberman and Shiff, shall resign all positions as director or officer of a reporting issuer or any issuer that engages in a distribution to the public;

(e) pursuant to clause 8 of subsection 127(1) of the Act, Groberman and Shiff shall be prohibited for a period of 5 years from becoming or acting as officer or director of a reporting issuer or any issuer that engages in a distribution to the public;

(f) pursuant to clauses 8.2 and 8.4 of subsection 127(1) of the Act, Groberman and Shiff shall be prohibited permanently from becoming or acting as officer or director of a registrant or investment fund manager;

(g) pursuant to clause 8.5 of subsection 127(1) of the Act, Groberman and Shiff shall be prohibited permanently from becoming or acting as a registrant, investment fund manager or as a promoter;

(h) pursuant to subsection 37(1) of the Act, Groberman and Shiff shall be prohibited permanently from telephoning from within Ontario to a residence within or outside of Ontario for the purpose of trading in any security or any class of securities;

(i) pursuant to clause 9 of subsection 127(1) of the Act, Groberman shall pay $91,509 and Shiff shall pay $10,532 as administrative penalties for their failure to comply with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(j) pursuant to clause 10 of subsection 127(1) of the Act, Groberman, Global Energy and Tsatskin shall jointly and severally disgorge to the Commission $91,509 and

Shiff, Global Energy and Tsatskin shall jointly and severally disgorge to the Commission $10,532 obtained as a result of their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act as determined at paragraphs 1(o) and 1(p) above; and

(k) pursuant to section 127.1 of the Act, Groberman and Shiff shall each pay $3,260 for hearing costs incurred by the Commission.

[98] We will issue a separate order giving effect to our decision on sanctions and costs.

Dated this 13th day of December, 2013.

Judith N. Robertson

Paulette L. Kennedy