

IN THE MATTER OF
The *Securities Act*
S.N.B. 2004, c. S-5.5, as amended

- and -

IN THE MATTER OF
FIRST GLOBAL VENTURES, S.A., ABRAHAM H. GROSSMAN (also known as AL GROSSMAN or ALLEN GROSSMAN) and ALAN MARSH SHUMAN (also known as AL MARSH or ALAN MARSH)

DECISION ON THE MERITS and REASONS FOR THE DECISION

Dates of Hearing: 11 May 2006, 24 May 2006, 14 June 2006, 6 February 2007,
12 April 2007, 26 April 2007 and 26 July 2007

Date of decision: 21 February 2008

Panel:

David T. Hashey, Q.C., Panel Chair
Hugh J. Flemming, Q.C., Panel Member
Donne W. Smith, Panel Member

Representatives:

Jake van der Laan

For the Staff of the New Brunswick
Securities Commission

Ari Kulidjian

For Al Grossman

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The Securities Act
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FIRST GLOBAL VENTURES, S.A., ABRAHAM H. GROSSMAN (also known as AL GROSSMAN or ALLEN GROSSMAN) and ALAN MARSH SHUMAN (also known as AL MARSH or ALAN MARSH) (together the "Respondents")

DECISION ON THE MERITS and REASONS FOR THE DECISION

1. Brief Summary of Proceedings

[1] This matter involves allegations of trades in securities without being registered and trades in shares without a prospectus having been filed with and receipted by the New Brunswick Securities Commission ("Commission"), in contravention of sections 45 and 71 of the New Brunswick *Securities Act* ("*Act*"), and allegations of prohibited representations to New Brunswick residents contrary to section 58 of the *Act*, all being activities contrary to the public interest.

[2] An *ex parte* hearing in this matter was held on 11 May 2006, at which time the Panel issued a Temporary Cease Trade Order ("11 May 2006 Order") against First Global Ventures SA ("FGV"), its officers, directors and agents and against Al Grossman ("Grossman"). After determining it was in the public interest to do so, the Commission made the 11 May 2006 Order permanent on 14 June 2006.

[3] The hearing to determine whether FGV and Grossman breached New Brunswick's securities laws was set for 28 November 2006.

[4] On 31 October 2006, Counsel for Staff of the Commission ("Staff") filed an Amended Statement of Allegations with the Commission which added Alan Marsh Shuman ("Shuman") as a respondent. Staff filed a Second Amended Statement of Allegations on 20 November 2006 which provided more detail on Staff's allegations as against FGV, Grossman and Shuman. Staff alleged the following, as set out in paragraphs 29 to 32 of Staff's Second Amended Statement of Allegations:

1. The respondents have, either directly or through their agents or representatives, made, and continue to make, misleading and untrue misrepresentations to investors on the FGV website and by other means, with the intention of effecting sales of FGV shares, contrary to section 58 of the *Securities Act*, SNB 2005 c. S-5.5 and the public interest.
2. The respondents have traded in securities, contrary to s. 45 of the *Securities Act* and contrary to the public interest.
3. None of the respondents are registered with the Commission in any capacity, contrary to s. 45 of the *Act* and contrary to the public interest.
4. No prospectus receipt has been issued to authorize the sale of FGV shares, as required by section 71 of the *Act*.

[5] On 1 November 2006, a Supplementary Notice of Hearing was issued, adding Shuman as a respondent to the proceeding. The hearing scheduled for 28 November 2006 was adjourned to 6 February 2007.

[6] The hearing proceeded on 6 February 2007 with Grossman and Shuman present and was to be continued on 12 April 2007. Counsel for Grossman was unable to proceed on 12 April 2007 and requested an adjournment. The Panel granted an adjournment until 26 April 2007 at which time the parties present concluded their case subject to the entering into evidence and marking as

exhibits of some transcripts and exhibits from a proceeding involving the Respondents before the Ontario Securities Commission held 17, 19 and 20 April 2007.

[7] Following the close of evidence, the parties provided the Commission with written submissions. The Panel received written submissions as follows:

- a. from Staff on 31 May 2007,
- b. from Shuman on 3 July 2007
- c. from Grossman on 16 July 2007,
- d. from Staff on 24 July 2007 and 16 August 2007.

[8] FGV did not provide any written submissions.

[9] On 26 April 2007, the Panel also ordered that upon request, the Commission would schedule a date for oral submissions. Counsel for Grossman requested oral submissions which were scheduled for 26 July 2007. On that day, counsel for Grossman did not appear. Staff made oral submissions. The Panel offered to counsel for Grossman, through communications with the Secretary of the Commission, to schedule an additional date for oral submissions. Grossman declined scheduling a further date.

2. Hearings on Temporary and Permanent Cease Trade Orders

Temporary Cease Trade Order

[10] The 11 May 2006 Order was granted by the Panel as deemed in the public interest following Staff's presentation of evidence of illegal trading by the respondents, FGV and Grossman. The 11 May 2006 Order provided that all trading in the securities of FGV by its officers, directors, employees and/or agents cease, that the respondents FGV and Grossman cease trading in all securities and that any exemptions in New Brunswick securities law not apply to the respondents, Grossman and FGV for a period of fifteen days.

Permanent Cease Trade Orders against FGV and Grossman

[11] On 24 May 2006, a brief hearing was held in the presence of Staff and with the participation of counsel for Grossman by conference call. Counsel for Grossman advised that he wished to file affidavit evidence to oppose the imposition of a permanent cease trade order against Grossman.

[12] Staff and counsel for Grossman agreed to an adjournment on the issue of the continuance of the order to 14 June 2006 as against Grossman. Staff and counsel for Grossman also agreed on timelines for disclosure and for the filing of affidavit evidence by Grossman. Staff noted they had advised counsel for Grossman of the intention to cross-examine any deponent to an affidavit and that Mr. Kulidjian had indicated that deponents would be available for that purpose.

[13] FGV did not appear at the 24 May 2006 hearing. Staff filed affidavits of service outlining their efforts to serve FGV, in accordance with the 11 May 2006 Order in this matter. The evidence presented confirmed that the documents were successfully sent to FGV on 12 May 2006 by fax and by email, to the email addresses listed on the website for FGV. The Panel is satisfied that the evidence shows that FGV was given adequate notice of the 24 May 2006 hearing and of Staff's allegations against it, and was given an opportunity to be heard.

[14] The Panel consented to the adjournment request of Staff and Grossman and continued the temporary cease trade order of 11 May 2006 against Grossman and FGV, including FGV's officers, directors, employees and/or agents, until the conclusion of the hearing scheduled for 14 June 2006.

[15] The Panel ordered the following on 24 May 2006:

1. The hearing to determine whether the temporary order with respect to Mr. Grossman should be made permanent is adjourned to June 14, 2006 at 1:00 p.m.;
2. Staff will provide disclosure to Mr. Kulidjian in this matter no later than May 31, 2006;

3. Mr. Kulidjian will file any affidavit to be used at the June 14, 2006 hearing with the Secretary, no later than June 9, 2006;
4. All deponents to any affidavit will be available during the hearing for the purposes of cross examination on their affidavit;
5. The temporary order will remain in effect with respect to Mr. Grossman until the conclusion of the hearing scheduled to commence on June 14, 2006 at 1:00 p.m.;
6. A date for the hearing of the issue of administrative penalties and costs, if any, will be set at the June 14, 2006 hearing.

[16] Neither FGV nor Grossman appeared at the 14 June 2006 hearing. Counsel for Grossman had advised Staff's counsel by letter dated 13 June 2006 that upon receiving instructions from Grossman, neither he nor his client would be appearing on 14 June 2006. Grossman and his counsel were well aware that a hearing would take place on 14 June 2006; they had agreed to a timeline for submissions, which they did not follow; and they had confirmed the acceptability of this date for the hearing. The Panel finds that Grossman had adequate notice of the hearing and of the nature of Staff's allegations and the relief sought on that day, and considered the allegations against both FGV and Grossman.

Reasons for decision on Cease Trade Orders against FGV and Grossman

[17] At the 14 June 2006 hearing, Staff presented three affidavits sworn by Commission investigator Ed Leblanc (the "Investigator") dated 9 May 2006, 24 May 2006 and 13 June 2006 (the "Investigator's Affidavits"). Staff presented evidence that FGV and Grossman had been soliciting NB investors and effecting trades of FGV shares with NB investors; that FGV through its representatives had been making prohibited representations to NB investors contrary to section 58 of the *Act*; that neither FGV nor Grossman was at any material time registered with the Commission as required by section 45 of the *Act*; and that FGV and Grossman had not sought a receipt for a prospectus prior to engaging in a distribution of shares to NB investors, as required by section 71 of the *Act*.

[18] Staff also presented evidence through affidavits of the Investigator that Grossman was the subject of cease trade orders in other Canadian jurisdictions.

[19] After reviewing the evidence presented by Staff and being of the opinion that FGV and Grossman's conduct posed a threat to New Brunswick's investors and capital markets, the Panel held that it was in the public interest to make the cease trade order permanent as against them.

[20] The hearing to determine whether Grossman and FGV contravened New Brunswick's securities laws was scheduled for 28 November 2006.

[21] On 31 October 2006, Staff filed an Amended Statement of Allegations adding Shuman as a respondent in this matter, and a Supplementary Notice of Hearing was issued on 1 November 2006 adding a claim for a permanent cease trade order, an administrative penalty and costs against Shuman.

[22] Prior to the 28 November 2006 hearing date, Staff filed a request for an adjournment to continue its investigation. The Panel issued a Consent Order and adjourned the matter to 6 February 2007 at which time the matter proceeded with Staff of the Commission, Grossman and Shuman personally in attendance. FGV again did not attend, despite receiving adequate notice of the hearing, as evidenced by affidavits of service filed by Staff.

3. Hearing on Contravention of New Brunswick Securities Law and Imposition of Administrative Penalties

Issues

[23] Staff allege that FGV, Grossman and Shuman failed to comply with New Brunswick securities law and acted contrary to the public interest by:

- i) either directly or through their agents or representatives, making misleading and untrue representations to investors on the FGV website and by other means with the intention of effecting sales of FGV shares, contrary to section 58 of the *Act*;

ii) trading in securities without being registered, contrary to section 45 of the *Act*; and

iii) issuing shares of FGV without a prospectus contrary to section 71 of the *Act*.

Evidence Presented

[24] Staff presented a large number of exhibits including affidavits of service; the Investigator's Affidavits; and the transcripts of evidence, including related exhibits and an agreed statement of facts, from five witnesses who testified in a parallel FGV proceeding before the Ontario Securities Commission ("OSC FGV proceeding"). Staff also called the evidence of four witnesses:

- the Investigator;
- two New Brunswick Maitland investors solicited to exchange Maitland shares for FGV shares, G.D. and G.G; and
- a subject expert, James Stewart.

[25] The respondents Grossman and Shuman did not call any witnesses nor did they testify. They both filed affidavits.

[26] The following summarizes the evidence in this matter.

Background on Parties

[27] FGV was incorporated in Panama in late March 2006. The evidence presented demonstrates that Panama allows incorporation with nominee directors and has strict laws which prohibit the disclosure of the name of the person who incorporated the corporation.

[28] FGV maintains a virtual office in Panama and does not appear to have a physical presence elsewhere. It operates a website. On 19 September 2006, the Panamanian National Securities Commission ordered a suspension of trading in and advertising for FGV.

[29] FGV is not registered with the Commission, is not qualified as a reporting issuer and has filed no materials with the Commission.

[30] Grossman is a resident of Ontario and the president of Maitland Capital Ltd. ("Maitland"). He incorporated Introvest Consulting Ltd ("Introvest"), and he is president and sole director. Introvest was incorporated in Ontario on 27 February 2006 with a registered office at 161 Eglinton Avenue East, Suite 310, Toronto, Ontario, which is also Maitland's address. Staff of the Commission allege that Grossman, under the guise of Introvest, has been intimately involved in efforts to solicit and trade FGV shares.

[31] Maitland, Grossman and a number of other individuals are the subjects of another proceeding currently before the Commission which was commenced in March of 2006: *In the Matter of the Securities Act, SNB 2004, c.S-5.5 and In the Matter of Maitland Capital Ltd., Al Grossman, Hanoch Ulfman, Steve Lanys and Leonard Waddingham* ("Maitland Matter").

[32] Grossman is not registered in any capacity with the Commission and was temporarily banned from trading in securities in New Brunswick by the Commission on 31 March 2006, in the Maitland Matter, an order which remained in force throughout this proceeding.

[33] Shuman is a resident of Ontario. His full name is Alan Marsh Shuman but he is also referred to as "Mr. Marsh". He is an officer of FGV. Shuman is not registered with the Commission in any capacity.

Introvest Agreement

[34] On 1 April 2006, FGV entered into a Consulting and Professional Services Agreement with Introvest ("Introvest Agreement"). The Introvest Agreement, which was signed by Shuman on behalf of FGV and Grossman on behalf of

Introvest, provides for the provision of services by Introvest to FGV. More particularly, it sets out that Introvest will provide to FGV:

- a. accounts payable administration,
- b. real estate acquisition advice,
- c. boardroom services,
- d. introduction to potential investors
- e. general office services including mail, courier, fax, telephone and secretarial services,
- f. web site design, set-up, registration and administration, and
- g. professional services.

[35] The fees payable by FGV pursuant to the Introvest Agreement are as follows:

- a. a monthly consulting fee of \$10,000,
- b. a fee of \$500 per day for boardroom services,
- c. a fee of \$100 per lead for the introduction of potential investors to FGV
- d. a fee of 20% above cost for general office services,
- e. a fee of 20% above cost for website design, set-up ,registration and administration, and
- f. a fee of 20% above cost for legal, accounting and other professional services.

[36] Introvest invoiced FGV for its services from May 2006 to October 2006. The invoices totalled over \$320,000, including over \$60,000 billed for investor leads.

[37] Grossman retained a Toronto web development company to create a website for FGV in April 2006. The domain name www.firstglobalventures.com was registered and the website became operational on 2 May 2006.

[38] Grossman, as president and director of Introvest, provided FGV with names of potential investors, which included a number of Maitland shareholders.

FGV's Solicitations

[39] Staff allege that starting in April 2006, Grossman, Shuman and other representatives of FGV contacted potential investors, including Maitland shareholders, to solicit their investment in FGV. Staff allege that Maitland shareholders were advised that the Maitland shares no longer showed potential due to regulatory interference, and could be exchanged for FGV shares, subject to the payment of additional money for each FGV share. This is despite a cease-trade order being in place against Maitland and Grossman.

Witnesses

a. The Investigator

[40] Ed Leblanc ("Investigator") is an Investigator with the Commission and is a resident of Saint John, New Brunswick. The Investigator's evidence consisted of the Investigator's Affidavits and his testimony on these affidavits before the Panel at the 6 February 2007 hearing. The following is a summary of the evidence of the Investigator that was relied upon by the Panel in this proceeding.

[41] The investigation into FGV began when a New Brunswick Maitland investor gave the Investigator a copy of a letter that the investor had received from Grossman, on behalf of Maitland. The letter addressed what Grossman calls "regulatory issues" getting in the way of Maitland's business, and advised that Maitland was in discussions with "a number of entities interested in assuming the venture capital position" required to further Maitland's projects and "therefore offset any damage resulting from the current regulatory issues".

[42] The Investigator received phone calls from other New Brunswick residents, all investors in Maitland, who had received the same letter from Grossman. One of these calls was from a New Brunswick investor, G.D., who advised that he had been contacted by representatives of FGV, who told G.D. that FGV was willing to buy G.D.'s Maitland shares at a time when Maitland was not permitted to trade.

[43] After receiving this information about FGV, the Investigator conducted an Internet search of FGV to find out more information about the company. He noted that FGV's website described FGV as a corporation with \$340M under management, which had been in business since 1998. Al Marsh, Ricky Lopez, Richard Taylor and Robert Hall were listed on the website as having various positions with FGV, and that the business coordinates for Shuman and First Global Ventures, S.A. were in Panama City.

[44] The Investigator was able to ascertain that the domain name for FGV had been registered by the owner of a web design and hosting company in Toronto ("Web Company"). The Investigator's Internet search revealed that much of the information contained on the FGV website – including the claims that the corporation had \$340M under management and had been in business since 1998 – was virtually identical to that contained on a website for a legitimate financial organization.

[45] The Investigator first became aware of Introvest through his discussions with FGV investors, who advised that Introvest was picking up the courier packages for FGV. The Investigator requested information from Grossman's counsel regarding Grossman's relationship with FGV. In his response, Grossman's counsel addressed the Introvest Agreement and provided copies of invoices sent from Introvest to FGV.

[46] These invoices were for leads, secretarial services, courier services, and introduction and completion of subscription agreements. The invoices totalled approximately \$225,000.00 for the period of June through October 2006 and the Introvest statements from Hong Kong Bank show transfers from an FGV U.S. account to a Canadian Introvest account. These transfers from FGV to Introvest total over \$161,000.00.

[47] The Investigator reviewed Introvest's telephone records, which show hundreds of calls from Introvest's offices. The Investigator testified that in one instance, there were 140 calls placed to one individual investor. The list included repeated calls from Introvest to New Brunswick residents who were solicited to purchase shares in FGV. Amongst the names on the list were those of New Brunswick residents G. D. and G.G..

[48] The Investigator also reviewed records of Introvest's courier account. These records show where packages were picked up, and where they were delivered. Introvest sent packages to, and received packages from, FGV investors.

b. Investor G.D.

[49] G.D. appeared before the Panel on 6 February 2007 as a witness for Staff. He is a resident of southern New Brunswick and has been a business owner since 1989. G.D. testified that he had invested in Maitland in April and June of 2005, and that he contacted the Investigator at the Commission after reading in the newspaper that Maitland was being investigated.

[50] G. D. testified that at some point after he had contacted the Commission about Maitland, he was contacted by Shuman on behalf of FGV. Shuman called him and offered to "take these [Maitland] shares at face value for an additional fee [...]". G.D. could not recall whether "it was \$3.50 or \$4 American money".

[51] G.D. testified that he communicated verbally with Shuman and that in order to reach Shuman, he had to call a number for "Ocean Plaza", a business complex in Panama. In G.D.'s testimony, he indicated that "Ocean Plaza" would contact Shuman who would return his calls.

[52] G.D. also testified he contacted Maitland to obtain information on what was happening with Maitland, and was advised by a representative that the

Commission had given Maitland a “hard time” and that “basically things were at a standstill [...]”.

[53] G.D. testified that when he asked about their relationship, Grossman and Shuman did not acknowledge any connection between them beyond knowing who the other was. G.D. testified that in his last conversation with Shuman, he told Shuman that he would not be buying stock from FGV.

[54] In cross-examination, G.D. testified that he did not know the meaning of “accredited investor”, that his net worth was in excess of a million dollars but that his annual income was not in excess of \$200,000 and that the first time he had met Grossman and Shuman in person was at the hearing on 6 February 2007.

c. *Investor G.G.*

[55] G.G., a New Brunswick resident, also appeared before the Panel on 6 February 2007 as a witness for Staff. He invested in Maitland and testified that he received between 12 and 15 phone calls from a Sam Richards from Panama, on behalf of FGV, who wanted to buy his Maitland shares and trade them for FGV shares, subject to the payment of an additional \$2.50 US for each share.

[56] G.G. indicated that the initial phone call was received approximately a year prior to the 6 February 2007 hearing date, and that he continued to receive calls up to three to four months prior to this hearing date. G.G. called FGV at some point to advise that he may be interested in going ahead; at this time he received a subscription order invoice by fax. One of the faxes he received relating to the subscription and containing an invoice was from Shuman. G.G. also testified that he spoke directly with Shuman, who he called “Mr. Marsh”, about the purchase of FGV shares.

[57] Shuman and other representatives of FGV spoke to G.G. for the purpose of providing G.G. with information about the investment in FGV. Shuman gave

G.G. information, including a courier account, about how and where to send his money for the purchase of FGV shares.

[58] G.G. also noted that in all of the discussions with individuals from FGV, including Shuman, he was advised that “it was a money making deal and it was going to go on the market for a lot more money...”. G.G. decided not to invest in FGV.

d. Subject Expert

[59] James Stewart (“Stewart”), who on the agreement of the parties was qualified as an expert capable of explaining the Internet and Internet-related technologies, also testified on behalf of Staff on 6 February 2007.

[60] Stewart testified that based on computer records he reviewed regarding the activities of FGV’s email addresses, one computer was used to check six of FGV’s email accounts, those for “amarsh”, “rtaylor”, “rshall”, “rlopez”, “info” and “sales”, and all six email accounts were checked at the exact same time. Stewart also testified that the records showed that the one computer that was used to check all of FGV’s email accounts only ever sent emails from the “amarsh” FGV account.

[61] Stewart testified that in his opinion, records showed a second computer was used to automatically check the “info” and “sales” email accounts, and to send emails from the “info” account.

[62] Stewart testified that the IP addresses, as shown in the computer records, are used to identify specific computers. There were two IP addresses in the records which identified the first computer, the one used to check six of FGV’s email accounts and send email from the “amarsh” account. These two IP addresses are 67.71.54.151 and 65.95.108.129. There was one IP address, 69.159.199.87, used to identify the second computer, which was used to

automatically check FGV's "info" and "sales" accounts and to send emails from the "info" account.

Ontario Evidence

[63] On 26 April 2007, the Panel heard a motion brought by Staff for the introduction of certain evidence from the OSC FGV proceeding. In the course of discussions at the hearing of the motion, Staff and counsel for Grossman agreed on which additional documentation would be entered as evidence in this matter. This evidence consists of transcripts of the examination and cross-examination of certain Ontario witnesses at the OSC FGV proceeding, and any accompanying exhibits. An order reflecting legal counsels' agreement was issued. Despite notice, Shuman and FGV did not appear at the hearing of this motion.

[64] The following paragraphs summarize some of the evidence from the OSC FGV proceeding which was introduced in, and relevant to, this New Brunswick proceeding.

- ***J. Sikora ("Sikora")***

[65] Sikora is a forensic accountant with the Enforcement Branch of the Ontario Securities Commission. He testified that he became involved in the investigation of FGV in early May 2006. He conducted web searches of FGV as part of his involvement in the investigation. His web searches revealed that FGV's website was registered through the Web Company on 20 April 2006 with the administrative contact being Allen Grossman of Toronto and the technical contact being the owner of the Web Company.

[66] Sikora testified that he obtained from the owner of the Web Company email logs from the FGV website account which showed the Internet addresses accessing the FGV emails. He then obtained from Bell Canada information that the IP addresses were registered to Maitland and Al Grossman of 161 Eglinton Ave. East in Toronto.

[67] He testified that the FGV website contained statements that FGV managed over \$340 million in capital and has an investment team that thoroughly tracks market trends and fast growing industry segments for compelling investment opportunities. He indicated that a request had been sent to Shuman of FGV in Panama to support these statements, but that no response had been received.

[68] Sikora testified about a cease trade order of the Ontario Securities Commission which had been served upon Shuman; an exchange of emails with the Panama National Securities Commission, which issued an order against FGV on 19 September 2006; the fees covered by the Introvest Agreement; and some of the work performed by Introvest.

[69] Sikora also testified about the Ontario Securities Commission's compelled interview of Shuman, at which Shuman presented himself as the face of FGV who made sure that investors understood the nature of the investments they were considering.

▪ *J. Handanovic ("Handanovic")*

[70] Handanovic is an assistant investigator with the Enforcement Branch of the Ontario Securities Commission, and was assigned to the OSC FGV proceeding in the fall of 2006.

[71] She testified that she telephoned 20 Maitland shareholders who were Ontario residents between mid-October 2006 and the beginning of February 2007 to conduct interviews with them. She testified that ten of the twenty had been contacted by FGV through either Shuman or Sam Richards. Handanovic explained that her investigation revealed that these ten Maitland investors were told that FGV was a company located in Panama and that they could exchange their Maitland shares subject to an additional payment from about 25 cents U.S. per share to \$4.00 U.S. for FGV shares.

▪ *Ontario Investor: M. F.*

[72] M.F. is a business owner from Ontario. M.F. testified that his prior investment experience was with mutual funds and a few equity investments. He testified that his net annual income had been less than \$200,000 for the past two years and that his net annual income, including income from his spouse, would be close to \$300,000. He also testified that he never had discussions with anyone at FGV about his financial assets or annual net income or the annual income of his spouse. He testified that he had known Allen Grossman since 2004 through his dealings on Maitland.

[73] M.F. testified that Grossman started calling him in 2003 “about some investments that I didn’t get involved with. And so through his frequent calls and encouragement, in 2004, I think November/December, we arranged to meet at his office” in North York. He testified meeting with Grossman and Hank Ulfan to discuss Maitland and the oil industry for half an hour and having invested \$10,000 for shares at \$2.50.

[74] M.F. testified to receiving by fax a pre-IPO opportunities letter from Grossman and an email from Michele, per Al Grossman, encouraging him to invest in Maitland and indicating “We will make some money... as usual”. M.F. invested another \$10,000 on 25 April 2005 following calls from someone at Grossman’s office who made statements that this was a good opportunity and that if he had more funds he should invest. M.F. also testified that from time to time, Grossman would say that the shares would double or triple in value and that they were going on the European market.

[75] M.F. testified that around May 2006 he heard of FGV through Grossman who said a representative from FGV would be giving him a call to provide information on how to transfer his shares. Shortly thereafter he started getting calls on a daily basis for about a week from Al Marsh and Ricky Lopez who advised M.F. could transfer his shares to obtain FGV shares. He indicated he

talked to Grossman in between these conversations to get his views. M.F. testified that Grossman indicated he had invested a lot of money in FGV and felt quite comfortable with his investment and that he later told him that FGV could be used to bypass the hurdles put on by the Ontario Securities Commission on Canadian investments.

[76] M.F. testified he was advised by Al Marsh or Rick Lopez that the FGV shares had gone up to \$3.75 a share when he transferred his Maitland shares on 8 June 2007. M.F. testified that he asked Shuman for a copy of the FGV prospectus but never received one.

▪ ***Web Company Owner and Operator (“Website Operator”)***

[77] The Website Operator testified that he had been the owner and operator of the Web Company since 2001. He testified that his company has three employees, provides hosting services to approximately 110 clients and typically has three or four design projects on the go.

[78] The Website Operator testified that his relationship with Grossman started in the February/March 2006 timeframe. Initially, the service provided was web site hosting for Maitland’s site. Toward the end of March 2006, Grossman contacted him to secure a domain name for Introvest. The Introvest website was provided to the Website Operator by Grossman.

[79] The Website Operator also testified about work done at Grossman’s request for FGV. He testified that the work done for FGV was very similar to the work done for Introvest, which basically consisted of creating a web hosting site. Grossman sent the Website Operator a template for the FGV site along with its content. The Web Company developed the site for Grossman and set up email accounts for A. Marsh, Carl Lopez and R. Hall.

[80] The Website Operator testified that the domain name for FGV was registered on 20 April 2006, and Grossman was listed as the “administrative

contact". He testified to the exchanges of email between himself and Grossman on amendments made to the site before its going live on or around 2 May 2006. At some point, Grossman asked to have two additional email addresses added: businessplan@firstglobalventures.com and resume@firstglobalventures.com which would forward emails to info@firstglobalventures.com. Later, after the site was live, changes to the site were made by Grossman and his assistant.

[81] The Website Operator testified that email logs for FGV show that the majority of email activity was coming from two IP addresses: 67.71.54.151 and 69.159.199.87. He advised that Bell Canada could provide the details of which clients these IP addresses were assigned to.

[82] The Website Operator testified that all his dealings for FGV were with Grossman, except very few communications by email with Shuman toward the end of the relationship.

▪ ***Bell Agreed Statement of Facts***

[83] The agreed facts relating to the Bell Canada Search Results provide that:

- a. the results of the Bell Canada Corporate Security search demonstrates that the IP addresses 69.159.199.87; 67.71.54.151 and 65.95.108.129 belong exclusively to Bell Canada;
- b. Bell Canada account holders are assigned a dynamic IP address each time a directly connected computer or router (in the case of a network) is turned on or is reset;
- c. Dynamic IP addresses may only be assigned to one account at any given time;
- d. Dynamic IP addresses are not permanently assigned to any given account and change when the directly connected computer or router (in the case of a network) is restarted or reset;
- e. the account of Maitland Capital Ltd. (contact: Al Grossman 161 Eglinton Ave., rm. 310) was assigned IP address 69.159.199.87

from June 2, 2006 at 02:53:12 EST until June 6, 2006 at 18:05:21 EST;

- f. the account of Maitland Capital (contact: Al Grossman 161 Eglinton Ave., rm. 603) was assigned IP address 67.71.54.151 from May 18, 2006 at 11:37:39 EST until June 5, 2006 at 13:55:00 EST;
- g. the account of Maitland Capital (contact: Al Grossman 161 Eglinton Ave., rm. 603) was assigned IP address 65.95.108.129 on June 5, 2006 at 15:49:38 EST and was still assigned on June 12, 2006 when the request for a Bell Canada Corporate Security Search was received.

4. Analysis

Evidentiary Issues

a. Ontario Evidence

[84] The Panel admitted the transcript and exhibit evidence from the OSC FGV proceeding on the basis of an agreement between Staff and counsel for Grossman. Counsel for Grossman, however, did raise the issue of weight to be given to the Ontario evidence.

[85] Though not as direct as the testimony adduced by the Investigator, G.D., G.D. and the subject expert before the Panel, the Ontario transcript and exhibit evidence is reliable and credible. The individuals were subject to cross-examination before the OSC Panel, and the exhibits admitted in this proceeding were all directly alluded to in the testimony of the Ontario witnesses. Further, the Ontario evidence is consistent with the evidence given directly by the witnesses in this proceeding.

[86] For these reasons, the Panel finds that the Ontario evidence is reliable and helpful in this proceeding, and weights it accordingly.

b. *Affidavits of Grossman and Shuman*

[87] Both Grossman and Shuman filed affidavits in this proceeding. Both of these respondents attended at the hearing, though not every hearing date, yet neither testified and did not make themselves available for cross-examination on their affidavits.

[88] Counsel for Grossman, when filing Grossman's affidavit, indicated that Grossman would be testifying. However, despite being in attendance on several dates of the hearing, Grossman did not testify.

[89] In his affidavit, Grossman acknowledges being president of Introvest, which he describes as a private limited corporation incorporated in the province of Ontario. He refers to and attaches the Introvest Agreement whereby Introvest agreed to perform various services for FGV.

[90] During the hearing, objections were made by Grossman's counsel to the introduction by Staff of affidavits without the deposed individuals being available for cross-examination. To remedy this situation, the matter was adjourned to allow for the deposed individuals (OSC staff) to be summoned to testify. However, prior to their testifying in front of the Panel, an agreement was reached between Staff and counsel for Grossman (with no objection from FGV or Shuman) about filing transcript and affidavit evidence from the OSC FGV proceeding as exhibits in this proceeding. As stated above, the Panel finds this evidence to be reliable and credible.

[91] In contrast to the Ontario evidence, the majority of the evidence contained in the affidavits of Grossman and Shuman was not corroborated before this Panel, and the affidavits were not subject to cross-examination. Though present at certain points during the hearing, and having received adequate notice of the proceedings, both Grossman and Shuman declined to testify.

[92] For these reasons, the Panel gives little weight to the affidavits of Grossman and Shuman, beyond the corroborated evidence in Grossman's affidavit regarding the existence of a written agreement between Introvest and FGV.

Jurisdiction and Mandate of the Commission

[93] It is the mandate of the Commission to provide protection to New Brunswick investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets in New Brunswick.

[94] The Commission's public interest jurisdiction is neither remedial nor punitive, but rather protective and preventative. As stated by the OSC in *Re Mithras Management Ltd*, (1990), 12 O.S.C.B. 1600, the purpose of an order granted by the Commission is to restrain future conduct that is likely to be prejudicial to the public interest. *Re Mithras* confirms that the role of securities commissions under their public interest jurisdiction 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".

[95] As stated by this Commission in *Limelight Capital Management Ltd. et al.*, issued 17 August 2007 at paragraph 91, the Panel's role is to render relief appropriate to the infraction. The purpose of any order granted by the Panel is the protection of investors and the future prevention of harmful conduct. As also stated in *Limelight*, general deterrence is another important factor for the Panel to consider.

[96] The Panel is concerned with any activities which damage investor confidence and consequently negatively impact New Brunswick's capital markets. As set out in *Limelight, supra* at paragraph 150, the Commission takes seriously its mandate to protect New Brunswick's capital markets, and is

prepared to send a strong message to those who abuse New Brunswick's investors and capital markets that fraudulent behaviour will not be tolerated.

Law

[97] Staff allege that FGV, Grossman and Shuman have engaged in the following conduct, and that this conduct is contrary to the public interest:

- Making misrepresentations to investors with the intention of effecting sales of FGV shares, contrary to section 58 of the *Act*;
- Trading in securities without being registered, contrary to section 45 of the *Act*; and
- Trading in securities without filing a prospectus, contrary to section 71 of the *Act*.

a. s.58 – Misrepresentations

[98] Staff allege that the Respondents made prohibited representations to investors on the FGV website and by other means, with the intention of effecting sales of FGV shares, in contravention of section 58 of the *Act*. At the time of the alleged prohibited conduct by the Respondents, subsections 58(2), 58(3) and 58(4) read:

58(2) No person, with the intention of effecting a trade in a security, shall make any representation, orally or in writing, relating to the future value or price of the security that is not in accordance with the regulations.

58(3) No person, with the intention of effecting a trade in a security, shall make any representation, orally or in writing, that the security will be listed on any exchange or quoted on any quotation and trade reporting system or that application has been or will be made to list the security on any exchange or quote the security on any quotation and trade reporting system unless:

- (a) application has been made to list or quote the securities being traded, and securities of the same issuer are currently listed on any exchange or quoted on any quotation and trade reporting system,

- (b) the exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation,
- (c) the written permission of the Executive Director has been obtained by the person, or
- (d) the representation is exempted under the regulations from the application of this subsection.

58(4) No person, with the intention of effecting a trade in a security, shall make a statement, orally or in writing, that the person knows or ought reasonably to know is a misrepresentation.

b. s.45 & s.71 – Illegal Distributions

[99] Staff allege that the Respondents traded in securities for and on behalf of New Brunswick investors without being registered to do so, contrary to section 45 of the *Act*, and without a prospectus receipt being issued for the distribution of securities, contrary to section 71 of the *Act*.

[100] The registration and prospectus requirements are an integral part of securities laws in the province. Registration requirements attempt to ensure that market participants have a minimum level of proficiency and integrity, while prospectus requirements aim to assist investors in becoming fully apprised of the risks before undertaking an investment.

[101] At the time of the alleged illegal distributions, section 45 the *Act* read:

45 Unless exempted under this Act or the regulations, no person shall

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

partner or as an officer of a registered adviser and is acting on behalf of the adviser.”

[102] At the time of the alleged illegal distributions, subsection 71(1) of the *Act* read:

71(1) Unless exempted under this Act or the regulations, no person shall trade in a security on the person’s own account or on behalf of any other person where the trade would be a distribution of the security unless

- (a) a preliminary prospectus and a prospectus that are in the form prescribed by regulation have been filed with the Executive Director in relation to the security, and
- (b) the Executive Director has issued receipts for the preliminary prospectus and prospectus.

[103] “Trade” is defined in the *Act* to include “a sale or disposition of a security for valuable consideration or an attempt to sell or dispose of a security for valuable consideration”, and “an act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified” in the definition.

Application of Law to Facts

a. FGV

[104] FGV was not, and never has been, registered with the Commission in any capacity. FGV has not filed a prospectus or any other materials with the Commission.

[105] Two New Brunswick residents, G.D. and G.G., testified that they were directly contacted by representatives of FGV who were attempting to sell G.D. and G.G. shares in FGV. At least one of the investors, G.D., testified that at no time did anyone from FGV attempt to ascertain whether or not he was an accredited investor.

[106] G.G. testified that he received 12-15 calls from FGV representatives soliciting his purchase of FGV shares. These calls spanned a period of almost one full year. G.G. also received a subscription agreement via fax, and instructions about sending funds.

[107] "Trade" is defined in the *Act* to include an attempt to sell a security for valuable consideration. The Panel finds that FGV's solicitations (through its representatives) of G.D. and G.G. were clearly acts in furtherance of a trade in securities.

[108] The Panel also finds that FGV's trades also constituted distributions, as they were an attempt to sell securities in an issuer that were not previously issued.

[109] The Panel has determined that FGV contravened section 45 of the *Act* by trading in securities without being registered with the Commission, and that FGV contravened section 71 of the *Act* by trading – where the trade would be a distribution – without having filed a prospectus.

[110] Further, FGV's representatives, when speaking with G.G., made prohibited representations with the intention of effecting sales of FGV shares. These representations were repeated, and included statements that "it was a money making deal" and that "it was going to go on the market for a lot more money".

[111] The Panel finds that the information contained on FGV's website, including false claims about the time FGV has been in business and claims that were never verified about the amount of funds under management, was misleading and intended to promote the sale of FGV shares. The Panel is of the opinion that the content of the website was copied directly from the site of another financial business, for which the information was legitimate. There was clear intent to mislead investors about the nature and extent of FGV's business.

[112] The Panel finds that FGV, through the direct misrepresentations of its sales agents and through misrepresentations on its website, both made with the intention of effecting sales of FGV shares, contravened subsections 58(2), 58(3) and 58(4) of the *Act*.

b. Shuman

[113] Shuman was not, and never has been, registered with the Commission in any capacity. Shuman is listed on the FGV website as an officer of FGV. Shuman also presented himself to the OSC as the face of FGV, and as an individual who made sure that investors understood the nature of the FGV investments.

[114] New Brunswick resident G.G. testified that he received telephone calls and a fax from Shuman soliciting G.G.'s purchase of shares of FGV. New Brunswick resident G.D. also testified that he spoke with Shuman in relation to the sale of FGV shares. Shuman sent letters on behalf of FGV to New Brunswick investors soliciting their purchase of shares in FGV.

[115] The Panel finds that Shuman contravened sections 45 and 71 of the *Act*. The Panel finds that Shuman, along with his direct solicitations of New Brunswick residents, was directly involved with the sales process at FGV.

[116] The Panel has also determined that Shuman contravened subsections 58(2), 58(3) and 58(4) of the *Act*. FGV had misleading information on its website, and its salespeople made prohibited representations to New Brunswick residents both of an increase in the value of shares and their being soon on the market. These misleading and prohibited representations were made with the intention of effecting trades in the securities of FGV.

[117] Along with his direct solicitations of – and claims made to – New Brunswick investors, Shuman presented himself as the individual responsible for providing information to potential investors. The Panel finds that he contravened

subsections 58(2), 58(3) and 58(4) of the *Act* through his involvement as an officer of FGV and his role in the solicitations.

c. Grossman

[118] Grossman is not, and has never been, registered with the Commission in any capacity. Along with being the subject of a permanent cease trade order issued in this proceeding, he is subject to a temporary cease trade order of this Commission which was issued in the Maitland matter, and which remained in effect throughout this proceeding.

[119] In the Panel's opinion, Grossman was clearly involved in FGV's solicitations. Although there was no direct evidence presented to the Panel of Grossman personally speaking with New Brunswick investors in an attempt to solicit their purchase of FGV shares, there is substantial evidence to support his connection to FGV and his furthering FGV's solicitations in New Brunswick.

[120] Based on the evidence, the Panel is of the opinion that Grossman, not Shuman, was the driving force behind FGV's illegal activities. In fact, Shuman advised the Investigator that he – despite Grossman's claims that he was the main contact for FGV – had no access to the administrative records of FGV. Along with being actively involved in all aspects of FGV's fraud, the evidence shows that Grossman profited from FGV's activities.

[121] Grossman, through the guise of Introvest, provided investor leads; created and maintained FGV's website; sent and received FGV's courier packages; checked and sent emails from FGV's email accounts; provided Introvest's telephone line to contact potential FGV investors to solicit the sale of FGV shares; and received over \$161,000.00 from FGV.

[122] Grossman, on behalf of Maitland, sent letters to New Brunswick investors addressing "regulatory issues" that Maitland was facing, and introducing the prospect of other companies stepping up to fund Maitland. Very soon after this

letter was sent, New Brunswick investors like G.G. began receiving solicitations from representatives of FGV, who indicated that FGV wanted Maitland's shares so that they could obtain the interests that Maitland was holding. Basically, FGV was to be one of the companies Grossman referred to in his letter, who was going to step in and save Maitland investors from the effects of Maitland's regulatory issues. In New Brunswick, it appears that only Maitland investors were targeted to purchase shares in FGV.

[123] Grossman dealt with the Web Company to set up FGV's website. Grossman provided the website content, which was strikingly similar to that of another financial institution. No evidence was presented by any of the Respondents to support any of the claims set out on FGV's website, and many of the claims were blatantly false. The Website Operator dealt almost exclusively with Grossman in relation to FGV's website. The sole purpose of FGV's website was to excite potential investors about the company's activities. The material on the FGV website is an advertisement attempting to further the trades in FGV's shares. As held in *Re American Technology Exploration Corp.*, 1998 LNBCSC 1 (B.C.S.C.), the setting up of such a website is deemed an act in furtherance of a trade.

[124] Calls to investors, including New Brunswick investors G.G. and G.D., appear on Introvest's telephone records. FGV courier packages were sent to and from Introvest, whose office location is the same as that of Maitland.

[125] Introvest's invoices show that Introvest, whose president and sole director is Grossman, billed FGV over \$320,000.00 for these services. The invoices show over \$60,000.00 billed for investor leads, at \$100 per lead. Banking records show that money was flowing from FGV to Introvest; FGV paid at least \$161,000.00 to Introvest.

[126] The computer records and Bell Canada's search results show that FGV's email accounts were being checked and used by computer accounts registered to Maitland, whose contact was listed as Grossman.

[127] In *Re Momentus Corp.* (2006), 29 O.S.C.B. 7408 (O.S.C) at paragraph 77, the OSC stated that in order to determine whether non-registrants have acted in furtherance of a trade, securities regulators must adopt a contextual approach and "assess the totality" of the respondent's conduct "and the setting in which the acts have occurred". The Alberta Securities Commission, in *Re Hampton Court Resources Inc.* 2006 A.B.A.S.C. 1345 (A.S.C.) at paragraph 132, confirms that when assessing the conduct of respondents, "the totality of their conduct is important", and their conduct cannot be assessed by "splitting up into little bits what they did". Findings must be based on the totality of the facts before the Panel.

[128] In assessing the totality of Grossman's activities, the Panel is of the opinion that Grossman's actions in relation to FGV constitute acts in furtherance of trades and trading activities, as contemplated in section (e) of the definition of "trade" contained in the *Act*.

[129] The Panel finds that Grossman not only showed a calculated intent to attempt to defraud investors through the FGV scheme, but also made an elaborate attempt to cover his actions and distance his involvement in FGV through the establishment of Introvest.

[130] The Panel finds that Grossman contravened sections 45 and 71 of the *Act* through his direct and ongoing involvement with FGV and its solicitations.

[131] The Panel also finds that Grossman contravened subsections 58(2), 58(3) and 58(4) of the *Act*. Grossman provided the content for and maintained the FGV website, which contained false and misleading information intended to

effect trades in securities; and he – through the guise of Introvest – provided numerous services to support the solicitations of the sale of FGV shares.

d. Breach of Cease Trade Order

[132] Not only did the FGV, Grossman and Shuman intentionally attempt to defraud New Brunswick investors, the evidence presented shows that these attempts to defraud continued beyond the 11 May 2006 Temporary Cease Trade Order (which was made permanent on 14 June 2006). Shuman, as an officer of FGV, is subject to the cease trade order against FGV, its officers, directors and agents. G.G. testified that he continued to be solicited by FGV and Shuman months after 11 May 2006.

[133] The contravention of this Order shows a clear disregard on the part of all three Respondents for the jurisdiction of this Commission and for the investors and capital markets of this province.

5. Findings of Contravention of New Brunswick Securities Law and Imposition of Administrative Penalties

[134] In summary, the Panel finds that FGV, Shuman and Grossman breached sections 45, 58 and 71 of the *Act*. The Panel also finds that FGV, Shuman and Grossman breached the 14 June 2006 Order of this Commission, by continuing to solicit trades in the shares of FGV. The Panel finds that these illegal actions of FGV, Shuman and Grossman were contrary to the public interest.

[135] The Commission's mandate is to protect investors and to foster fair and efficient capital markets and confidence in capital markets. The fraudulent practices employed by the Respondents were detrimental not only to specific New Brunswick investors, but also to a broader confidence in New Brunswick's capital markets. The Commission takes these actions seriously and will not tolerate such illegal activities occurring within this province.

[136] Section 186 of the *Act* reads as follows:

186(1) The Commission, after a hearing, may order a person to pay an administrative penalty of not more than \$750,000 if the Commission

(a) determines that the person has contravened or failed to comply with New Brunswick securities law, and

(b) is of the opinion that it is in the public interest to make the order.

186(2) The Commission may make an order under this section notwithstanding the imposition of any other penalty on the person or the making of any other order by the Commission related to the same matter.

[137] The Panel has determined that FGV, Shuman and Grossman have contravened New Brunswick securities law. The Panel must now consider whether it is in the public interest in the context of the Commission's mandate to impose an administrative penalty.

[138] The Panel has received written submissions on administrative penalties from Staff and Grossman, and received oral submissions from Staff on administrative penalties. These submissions on administrative penalties have not been considered by this Panel pending the release of this decision on the merits.

[139] Before rendering any decision on the appropriateness of administrative penalties, the Panel will consider the parties' submissions on administrative penalties. The Panel also offers Staff and the Respondents an opportunity to make further written submissions after the release of these Reasons. Any further written submissions addressing the issue of the imposition of administrative penalties and costs must be filed with the Office of the Secretary no later than 30 days from the date of these Reasons. The Panel will sit on 21 April 2008 at 10:00 a.m. to hear oral submissions, if any, of the parties.

6. Costs

[140] Section 185 of the Act provides that the Commission can order payment of investigation and hearing costs if the Commission:

- (a) is satisfied that the person has not complied with, or is not complying with, New Brunswick securities law, or
- (b) is of the opinion that the person has not acted in the public interest.

[141] The Panel has found that all three Respondents contravened New Brunswick securities law. The Panel is also of the opinion that the Respondents did not act in the public interest. The Panel finds it appropriate to order that the Respondents pay hearing and investigation costs in this matter.

[142] Any further written submissions addressing the quantum of investigation and hearing costs claimed by Staff must be filed with the Office of the Secretary no later than 30 days from the date of these Reasons. The Parties will have the opportunity to make oral submissions on the subject of the quantum of costs at the 21 April 2008 hearing date.

Dated at the City of Saint John this 21st day of February, 2008.

"original signed by"

David T. Hashey, Q.C., Panel Chair

"original signed by"

Donne W. Smith, Panel Member

"original signed by"

Hugh J. Flemming, Q.C., Panel Member

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