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Findings of the Commission

Danny Francis Bilinski, Robert Pierre Lamblin, Leonard William Friesen, Donald Brian Gordon-Carmichael George Price, Lindy Arnot, Canadian Global Financial Group Ltd., Canadian Global Investment Corporation, Global Canadian Financial Group Ltd., Global Canadian Investment Corporation, Private Ventures Investment Limited and Columbia Ostrich (VCC) Limited

Section 161 of the of the *Securities Act*, R.S.B.C. 1996, c. 418

Hearing

Panel	Joyce C. Maykut, Q.C. John K. Graf Roy Wares	Vice Chair Commissioner Commissioner
Dates of Hearing	2000 September 11-15, 18-22, 25-27, October 10-11, 16-20, 24-27, 31, November 1, 20-22, 27-30, December 6, 8, 11-13, 19-20, 22 2001 January 3-4, February 5-6, 12-15	
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Appearing		
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Dan Bilinski Gordon Martin Marcel Parent	For Canadian Global Investment Corporation For Columbia Ostrich (VCC) Limited	

Robert Pierre Lamblin	In person
Leonard William Friesen	In person
Donald Brian Gordon-Carmichael	In person
George Price	In person
Lindy Arnot	In person

The Findings of the Commission

Table of Contents

Introduction

[para 1]

The nature of this hearing and the respondents

These are our findings in an enforcement hearing under section 161 of the *Securities Act*, R.S.B.C. 1996, c. 418, against Danny Bilinski, Robert Lamblin, Lindy Arnot, Leonard Friesen, Donald Gordon-Carmichael, George Price, Canadian Global Financial Group Ltd., Canadian Global Investment Corporation, Global Canadian Financial Group Ltd., Global Canadian Investment Corporation, Private Ventures Investment Limited and Columbia Ostrich (VCC) Limited.

[para 2]
On September 30, 1999, Commission staff issued a notice of hearing and temporary cease trade order against Canadian Global Financial and Envirosonics Technologies Inc. following a staff audit of Canadian Global Investment. At the time, Canadian Global Investment was a mutual fund dealer registered under the Act and a wholly owned subsidiary of Canadian Global Financial.

[para 3]
We extended the cease trade order of September 30, 1999, and subsequently issued several other orders and rulings in response to a variety of applications and changing circumstances. We do not intend to refer in detail to these orders and rulings here. They can be found at [1999] 42 BCSC Weekly Summary 11, [1999] 44 BCSC Weekly Summary 4, [1999] 45 BCSC Weekly Summary 17, [1999] 48 BCSC Weekly Summary 188, [2000] 5 BCSC Weekly Summary 18, 16 BCSC Weekly Summary 33, [2000] 18 and BCSC Weekly Summary 5, [2000].

[para 4]
As staff's investigation unfolded, they amended the notice of hearing, settled with some respondents and added others. Staff issued a final amended notice of hearing on December 19, 2000 naming six individuals and eight companies as respondents. Although Private Ventures Capital and Canadian Global Real Estate were named as respondents, there were no allegations in the notice of hearing against these companies and we have removed them as respondents. In addition, although there was an outstanding temporary cease trade order against the securities of Envirosonics Technologies Inc., staff did not name Envirosonics as a respondent in the amended notice of hearing. Accordingly, we revoke the cease trade order against Envirosonics.

[para 5]
The hearing took place over 50 days between September 11, 2000 and February 15, 2001. Over 30 witnesses testified and several hundred documents were entered into evidence. The parties filed written arguments and made further oral arguments on April 3 and 5, 2001. We adjourned the hearing pending these findings.

[para 6]
To make sense of the numerous allegations and the large amount of evidence, we segregated the evidence and our findings as outlined in the table of contents.

[para 7]
The allegations
In summary, the notice of hearing alleged that:

1. Bilinski, Lamblin, Friesen and Gordon-Carmichael, as registrants under the Act:

(a) failed to comply with the 'know your client', 'suitability of investment' and 'fair dealing' rules when they sold exempt[1] securities to their clients,

(b) failed to give copies of offering memoranda to their clients prior to selling the exempt securities, although offering memoranda did exist,

(c) were advising without being registered as advisers when they sold the exempt securities.

2. Canadian Global Investment, as a registrant under the Act, failed to:

   (a) establish and apply proper compliance and supervision procedures,

   (b) maintain proper books and records,

   (c) comply with conflict of interest rules concerning the exempt securities.

3. Bilinski as Canadian Global Investment's compliance officer, failed to:

   (a) ensure that Canadian Global Investment and its employees complied with the Act and the regulations,

   (b) ensure that new client accounts, including the 'know your client' forms, were approved,

   (c) supervise transactions of Canadian Global Investment and its employees.

4. Canadian Global Financial and Private Ventures Investment distributed securities to the public without filing a prospectus.

5. Canadian Global Financial, with the intention of inducing investors to buy its exempt securities, made representations in its business plan that were prohibited.

6. Columbia Ostrich (VCC) distributed securities to the public based on an offering memorandum that contained misrepresentations.

7. Bilinski, Lamblin, Friesen and Gordon-Carmichael sold securities contrary to Commission orders.

8. Through a website, Global Canadian Financial Group Ltd., Global Canadian Investment Corporation, Bilinski and Lamblin were trading in securities without registration and contrary to Commission orders. Through the website, Global

[1] Exempt securities are generally understood to be, and are referred here to mean, securities that are sold under exemptions from the prospectus and trading registration requirements of the Act and the accompanying regulatory protections.

Canadian Investment Corporation held itself out as a mutual fund dealer contrary to the Act.

[para 8]
What this case is about
This case is primarily about the failure of a mutual fund dealer and its sales representatives to fulfil their duties as registrants under the Act. These include the duty to know your client, to ensure that the securities proposed are suitable and to deal with your client fairly, honestly and in good faith.

[para 9]
In 1998 and 1999, Canadian Global Investment and some of its sales representatives sold their clients exempt securities that were speculative, illiquid and highly risky. Most clients were conservative and risk adverse investors. The exempt securities they purchased were not suitable investments for them. Bilinski and Lamblin sold most of the exempt securities. They also ran Canadian Global Investment.

[para 10]
In 1996 and 1997, Commission staff had warned Canadian Global Investment that it must set up systems and procedures to supervise its exempt market business and to ensure it, and its sales representatives, complied with their 'know your client' and 'suitability of investment' obligations. They ignored these warnings and we did not give any credence to Bilinski's and Lamblin's statement that they believed their 'suitability of investment' obligations did not apply to exempt securities.

[para 11]
Registrants are cloaked with their statutory duties regardless of the security being sold. Furthermore, registrants cannot on the one hand take advantage of the opportunities that their status as registrants gives them, as they did here, and leave behind those duties that do not suit them. Registrants are obliged to comply with all their statutory duties.

[para 12]
It was abusive for Canadian Global Investment to use its mutual fund registration status to access the public for its exempt market business — a business that brought in over 90% of the dealer's revenues — and then ignore its duties to clients. Indeed, the abuse was particularly egregious because clients of Canadian Global Investment were routinely offered no investment alternatives other than the exempt securities of companies in which Bilinski and Lamblin, indirectly or directly, held a portion or all of the equity, participated in or controlled management and stood to gain from the commissions and fees of generally 20%.

[para 13]
Bilinski and Lamblin, and consequently Canadian Global Investment, simply ignored their duties as registrants when it came to their exempt market business. Instead, they preferred to equate the risk in the exempt securities to their confidence in themselves as

men of goodwill and integrity. Risk assessment cannot be based on the registrants' optimism in the venture or in themselves. Clients are entitled to receive from registrants an objective assessment of risk. This duty is not diminished if the clients, as many did here, assessed the risks of the investment on an equally subjective standard – one based on their faith in the goodwill of Bilinski and Lamblin.

[para 14]
Similarly, clients are entitled to have their registrants deal with them fairly, honestly and in good faith. Although Bilinski and Lamblin said they had their clients' best interests at heart, their conduct belied their statements. Their disregard, and profound lack of understanding, of the regulatory standards they were obliged to meet lies at the heart of the prejudice to the public interest in this case. It led them to consistently prefer their interests to the interests of their clients when those interests conflicted. It led to the mutual fund dealer failing to establish proper compliance and supervision procedures over all securities transactions. It led to the sales representatives, including Friesen and Gordon-Carmichael, failing to understand and discharge their duties to know their clients and to ensure the exempt securities they sold were suitable for their clients. It led Bilinski and Lamblin to sell, and to cause others to sell, exempt securities in breach of the Commission orders. As a result, Canadian Global Investment clients suffered the consequences of purchasing speculative, illiquid and highly risky securities that were entirely unsuitable for them.

[para 15]
We do not know the current status of the exempt securities. What we do know is that Canadian Global Investment clients invested approximately $20 million and that many of them lost much, if not all, of their investment. Most clients could not afford to lose their investment and now find themselves in very difficult financial circumstances. Those that still hold some of these securities continue to hold speculative, illiquid and highly risky investments that are unsuitable for them.

[para 16]
As a consequence, we found that the failure of Canadian Global Investment, Bilinski, Lamblin, Friesen and Gordon-Carmichael to meet their statutory duties was not merely technical as they argued. It was substantial and seriously prejudiced their clients' interests. It is the kind of conduct that brings the integrity of the securities markets into disrepute.

[para 17]
Overview of events
The Canadian Global Financial group evolved out of Bilinski's tax and investment planning business that he started when he first began selling mutual funds in the early 1990's. By 1996 Lamblin had teamed with Bilinski and they acquired the mutual fund dealer that was renamed Canadian Global Investment. Arnot, who had been working with Bilinski since 1992, became a partner in Canadian Global Investment and Canadian Global Financial in 1997.

[para 18]
Although registered as a mutual fund dealer, Canadian Global Investment held itself out as a company of "independent financial consultants" who offered clients "a complete service from tax preparation to tax planning to investment planning to actual placement of investments". Initially it advertised that it used several investment firms to access a wide variety of high quality investments, including exempt securities. By utilizing this approach, Canadian Global Investment stated it "truly represent[ed] our clients having no special allegiance to any particular investment".

[para 19]
In 1997 Bilinski and Lamblin changed their approach. They said that many of these exempt investments failed to perform as expected because investors could not supervise the investment projects. Bilinski and Lamblin believed that if they held a significant equity interest in the investment projects it would give them the control needed to ensure that investments were well managed and well financed. To ensure diversity, they planned to acquire investment projects in various sectors of the marketplace.

[para 20]
Bilinski's vision was to create a business that would provide clients with one-stop shopping for financial services and for diversified investments. By late 1997, Canadian Global Investment was one of several wholly owned subsidiaries of Canadian Global Financial brought together to provide these services. The others included Private Ventures Capital, Private Ventures Investment, Canadian Global Real Estate and Canadian Global Insurance Corporation. They operated out of the same offices and had the same administration. For all practical purposes they operated as one organization or as Bilinski described it - a "financial conglomerate" with Bilinski at the helm. Investors viewed it much the same – one organization headed up by Bilinski and, to a lesser extent Lamblin.

[para 21]
The investments opportunities Canadian Global Investment offered its clients were in companies in which its parent, Canadian Global Financial or its principals, held a direct or indirect equity interest and participated in management. Sometimes the principals controlled the companies and their management. The companies included Canadian Global Real Estate Holdings Ltd., Eagle Court Pinnacle Lodges Ltd., Gorlan Trailer Technologies Inc., Pacific Bowling Centers Inc., and Columbia Ostrich (VCC) Limited. They were considered, and promoted, as part of the Canadian Global Financial conglomerate.

[para 22]
Clients were told they could minimize income taxes, receive monthly income and earn double-digit returns with minimal risk if they invested in these exempt securities. Clients were also told that what set the Canadian Global Financial group apart from other

businesses was their guiding philosophy that the interests of the investors would always take priority to the interests of the principals.

[para 23]
All services used to find, develop and sell investments in the investment opportunities were provided in-house by Private Ventures Capital and Canadian Global Investment. The cost of these services was generally 20% of the total exempt offering.

[para 24]
Private Ventures Capital, which was headed by George Price, held out that it provided a supply of balanced and well researched investments that had been subject to a rigorous due diligence process. Once an equity interest was acquired, Private Ventures Capital continued to supervise, manage and finance the projects. Private Ventures' motto of *"Good People, Good Ideas and Capital Management"* became the overarching marketing theme for the entire group.

[para 25]
By late 1998 Bilinski and his partners realized more capital was needed to keep operations going. Investment projects were delayed, yet investors' monthly returns needed to be paid. They decided it was time to raise capital directly through Canadian Global Financial. These funds would be pooled for the purposes of maintaining and building existing subsidiaries and investment projects and for expanding Canadian Global Investments' sales force by purchasing other investment dealers.

[para 26]
From the fall of 1998 through to the fall of 1999 selling exempt securities of the various Canadian Global Financial companies through Canadian Global Investment was in full swing. In September 1999, Commission staff audited Canadian Global Investment. It confirmed that most of Canadian Global Investment's commission income came from selling exempt securities and that mutual fund sales accounted for only a small part of its revenues. Staff became concerned that Canadian Global Investment sales representatives were selling securities contrary to the Act. Staff were particularly concerned that over $4 million had been raised from the public through the sale of securities of Canadian Global Financial and of Envirosonics without the necessary offering memoranda having been completed and delivered to investors. This precipitated the temporary cease trade orders of September 30, 1999.

[para 27]
On October 8, 1999, we considered whether to extend the temporary orders. Staff and Canadian Global Financial and its principals proposed to resolve some of the issues while staff's investigation continued. The proposal included extending the temporary cease trade order against Canadian Global Financial and Envirosonics until a proper offering memorandum and accompanying rescission offer was delivered to all persons who subscribed for their securities.

[para 28]
However, we concluded that the proposal did not adequately address the public interest. There were unresolved concerns about the suitability of the investments, the conflicts of interest and accounting for the $4 million. On October 15, 1999, we extended the existing temporary cease trade orders and restricted the registrations of Canadian Global Investment and its salespersons so they could no longer sell exempt securities.

[para 29]
The restrictions on the respondents' ability to raise investment capital through the sale of exempt securities put significant financial stress on many of the investment projects and their investors. As a consequence, from October 1999 through to the conclusion of the hearing the respondents applied several times to vary the orders to allow them to continue to raise money and keep the investment projects from collapsing. We varied our orders in response to those applications but did not vary the orders as much as the respondents wanted.

[para 30]
In addition, the parties tried but failed to negotiate a settlement, further frustrating the respondents' desire to get on with their business and deal with the financial setbacks. Thereafter, the respondents said they attempted to salvage the investment projects and stem investor losses. This included entering into an arrangement where the remaining investment assets were to be managed by another company, which specialized in venture capital financings.

[para 31]
Staff submit that in light of the allegations and the evidence, it is in the public interest for the Commission to make a variety of regulatory orders that would prohibit or restrict the respondents' ability to participate in the securities markets in British Columbia. Staff also want each respondent to pay an administrative penalty and costs of the hearing.

The Evidence

[para 32]
The exempt securities sold to clients
We have separated the exempt securities sold to Canadian Global Investment clients into two groups.

[para 33]
The first group consists of securities issued by Eagle Court, Gorlan Trailer, Pacific Bowling, Canadian Global Real Estate and Columbia Ostrich (VCC). These were private companies that sold securities relying on exemptions from the prospectus requirements of the Act. The exemptions relied on are commonly known as the '$25,000', '$97,000', and '50 purchaser' sophisticated purchaser exemptions.

[para 34]

An offering memorandum must be delivered to the purchaser before an agreement of purchase and sale is entered into when securities are sold under the $25,000 and 50 purchaser exemptions. In addition, each purchaser must sign an undertaking acknowledging that the purchaser, by virtue of net worth and investment experience or advice from a registrant, is able to evaluate the prospective investment on the basis of information provided by the issuer. Each of these five companies prepared an offering memorandum.

[para 35]
The second group consists of securities issued by Canadian Global Financial and Private Ventures Investment. These securities included shares of Canadian Global Financial and promissory notes of both Canadian Global Financial and Private Ventures Investment. Canadian Global Financial and Private Ventures Investment were private companies that sold securities, purportedly relying on certain exemptions from the prospectus and registration requirements. The securities were distributed without an offering memorandum.

[para 36]
Before providing details of each offering in the first group, it is useful to describe some characteristics that were common to the securities.

1. Each company was a startup company.

2. The securities offered were speculative and subject to significant risks.

3. The securities were subject to resale restrictions and there was no trading market for them.

4. In certain circumstances, subscribers could be eligible for tax benefits.

5. The principals of Canadian Global Investment, through Canadian Global Financial or Private Ventures Investment, participated in management and held an equity interest in each of the companies. Sometimes the principals controlled the companies and their management. The securities offered for sale to clients were non-voting while the principals held or had the rights to obtain shares with voting rights.

6. Generally 20% of each offering was used to pay for sales commissions and management and administration fees. In most of the offerings Canadian Global Investment was the exclusive sales agent and received 10% of the offering in commissions and Private Ventures Capital was the project administrator and received 10% in administration and management fees. In the Canadian Global Real Estate offering, Canadian Global Financial was the designated administrator instead of Private Ventures Capital.

[para 37]
Eagle Court Pinnacle Lodges Ltd.
Eagle Court was formed in 1996 for the purpose of developing and operating two 10-room luxury alpine inns at Sun Peaks, a resort community near Kamloops, British Columbia.

[para 38]
Eagle Court issued an offering memorandum dated April 1, 1998 to raise $3.6 million to develop and construct the project. Under the offering memorandum Eagle Court offered up to 3,000,000 redeemable non-voting Class B shares at $1.20 per share. Private Ventures Investment held 10% of the Class A voting shares. For 10% of the gross offering proceeds, Private Ventures Capital agreed to provide administrative services, which included overseeing the work progress, releasing offering proceeds and paying management. Price was also on Eagle Court's board of directors.

[para 39]
In addition to the risks disclosed in paragraph 36 above, the memorandum identified other risk factors, including those associated with investing in the real estate and ski resort industries.

[para 40]
By August 1998, at least $3.6 million was raised by selling shares to clients of Canadian Global Investment. By the fall of 1998, the Eagle Court project was facing significant cost overruns and a significant delay.

[para 41]
Bilinski put Price on notice, in the late fall of 1998, that Private Ventures Capital needed to get better control over project management. Scheduling and accountability problems continued to plague the project while demands were being made for more financing. Canadian Global Financial and Private Ventures Capital felt it was unacceptable that demands were being made for a further $1 million to complete the project when no reliable financial information was forthcoming from the principals of Eagle Court.

[para 42]
Price advised Bilinski to stop funding Eagle Court until they received a proper accounting from the principals. However, Bilinski believed the project was at a critical stage and that the project needed to be completed to protect clients' interests. Bilinski decided that funds could not be cut off. His idea was to try and obtain control of Eagle Court and its assets in order to better protect Canadian Global Investment clients.

[para 43]
Consequently, at Bilinski's direction, Canadian Global Financial provided a further $1.45 million to Eagle Court on the understanding that Canadian Global Financial was to receive a further 40% of the Class A voting shares of Eagle Court. Canadian Global Financial did not receive the A shares after the money was advanced and it commenced

legal proceedings. It appears that no security was demanded by, or given to, Canadian Global Financial for the funds advanced.

[para 44]
By mid September 1999, the project was two years behind schedule and $2 million over budget. Despite the extra funding, the Eagle Court project was not complete and the banks commenced foreclosure proceedings. At the conclusion of the hearing, Bilinski stated that the foreclosure was complete and that Canadian Global Investment clients had lost their investment.

[para 45]
Bilinski, Lamblin and Friesen sold the Eagle Court securities to clients of Canadian Global Investment. Clients invested $3.6 million directly through the purchase of non-voting B shares and $1.45 million indirectly through the purchase of Canadian Global Financial notes and shares. Some clients received monthly returns on their investment. At the end of the day clients lost close to $5 million.

[para 46]
Gorlan Trailer Technologies Inc.
Gorlan Trailer Technologies Inc. held the North American rights to develop, manufacture and market aerodynamic trailer skirts or "fairings" to be attached to the underside of transport trailers to reduce wind drag and, in turn, fuel consumption.

[para 47]
George Price was chairman and chief financial officer. There were three other directors. As of March 5, 1999, Gorlan Trailer had issued 100 million Class A voting shares, of which 50% were controlled indirectly by Private Ventures Investment.

[para 48]
Under an offering memorandum dated March 5, 1999, Gorlan Trailer offered 9 million units, each unit consisting of one Class B and one Class C non-voting share of Gorlan Trailer, at a price of $1 a unit. The financing was to further develop and market the fairings. Gorlan intended to begin its marketing program before the end of September 1999 and start general commercial sales before the end of December 1999.

[para 49]
In addition to the risks disclosed in paragraph 36 above, the memorandum identified other risk factors, including those associated with maintaining patent protection, having no introduced products and no experience in large-scale marketing or manufacturing.

[para 50]
Bilinski, Lamblin and Gordon-Carmichael raised $1.15 million from Canadian Global Investment clients. Clients purchased $800,000 of the units directly and $350,000 indirectly through Private Ventures Investment. By September 1999, the project was at

least six months behind schedule. At the conclusion of the hearing, Bilinski stated that Gorlan Trailers was receiving funding from another venture capital company.

[para 51]
Canadian Global Investment clients invested $1.15 (directly and indirectly) in Gorlan Trailers. The value of the investment is unknown, but it is clear the investment remains speculative, illiquid and highly risky.

[para 52]
Pacific Bowling Centers, Inc.
Pacific Bowling Centers Inc. was formed in 1994 for the purpose of developing a large bowling and entertainment complex in Surrey, British Columbia.

[para 53]
Canadian Global Financial directly, and indirectly through Private Ventures Investment, held 34.6% of the Class A voting shares. During the relevant period, Bilinski, Price, Lamblin were directors, along with several others, including some principals of Eagle Court.

[para 54]
Under offering memoranda dated May 6, 1998, and June 25, 1999, Pacific Bowling offered to sell up to 5,600 mortgage units, at a price of $1,000 per unit, and up to six million non-voting shares, at a price of $1 per share. As of October 31, 1999, Canadian Global Financial had purchased 1,461 mortgage units with $1,461,000 raised by selling Canadian Global Financial securities to Canadian Global Investment clients. The mortgage units bore interest at the rate of 16% a year, had a ten-year term and contained amortization provisions. Half the stated interest was payable annually, with the remainder payable on maturity or redemption. The mortgage was secured by a registered charge against the title to the real property, subject to the company's right to grant prior ranking charges of up to $4 million.

[para 55]
In addition to the risks disclosed in paragraph [36] above, the memoranda identified other risk factors including those associated with investing in the recreation and entertainment industry, the company's ability to pay amounts due on the mortgage and other charges registered against the real property.

[para 56]
By the fall of 1998, it was apparent to at least Bilinski and Price that delays and other problems were starting to surface in the Pacific Bowling project. Despite $2 million having been raised, construction of the building had not begun and the project was three to four months behind schedule. In a memo to Price in September of 1999, Bilinski noted that the Pacific Bowling project was more than a year behind schedule and $4 million over budget. As in the Eagle Court project, Bilinski was concerned about Private Ventures Capital's inability to effectively supervise the project management team and

administer the project. There were delays and cost overruns with no reliable explanations. Bilinski was concerned that the project management team (the principal voting shareholders) were mismanaging the project and incurring unjustified costs.

[para 57]
A dispute developed between Canadian Global Financial and the project management team of Pacific Bowling. Canadian Global Financial and the nonvoting shareholders joined forces and initiated a legal action against the principal shareholders of Pacific Bowling. The mortgage unit holders initiated foreclosure proceedings. At the conclusion of the hearing, Bilinski stated that the original Pacific Bowling investors, with a new group of investors, had court approval to complete the project under a new entity called Bridgeview Bowling.

[para 58]
Bilinski, Lamblin, Friesen and Gordon-Carmichael sold Canadian Global Investment clients $10 million of PacifIc Bowling securities, of which $8.2 million was invested directly through the purchase of non-voting shares and mortgage units and $1.8 million was invested indirectly through the purchase of securities of Canadian Global Financial.

[para 59]
As a result, Canadian Global Investment clients had invested directly and indirectly nearly $10 million in Pacific Bowling. Some clients received monthly returns for a brief time until the fall of 1999. The value of the investment is unknown but Canadian Global Investment clients who continue to hold Pacific Bowling securities, hold securities that are speculative, illiquid and highly risky.

[para 60]
Canadian Global Real Estate Holdings Ltd.
Canadian Global Real Estate is a wholly owned subsidiary of Canadian Global Financial. It was formed to acquire and develop real estate investments for the Canadian Global Financial group of companies. Its directors were Bilinski, Lamblin and Arnot.

[para 61]
Under an offering memorandum dated November 25, 1999, Canadian Global Real Estate offered to sell $5 million of bonds. The bonds bore interest at rates between 7% and 11% per annum, depending upon the length of time held and were repayable in full on the tenth anniversary. Holders had the right to demand repayment with three months written notice and the company could repay the bonds at any time without penalty. Payment of the bonds was guaranteed by Canadian Global Financial.

[para 62]
The offering memorandum represented that the bonds would provide investors with the benefits of a fixed interest income investment and were qualified investments for RRSPs and RRIFs. The proceeds of the offering were to be used to acquire interests in real property. The first was a 116 acre property, owned by Dan Bilinski's company, Ross-

Shayne Investments, on the Harrison River in British Columbia. Canadian Global Real Estate also had agreed to pay 10% of the gross proceeds of the offering to Canadian Global Financial for administrative services. This was in addition to the 10% commission payable to the selling agents, including Canadian Global Investment

[para 63]
In addition to the risks disclosed in paragraph 36 above, the offering memorandum identified other risk factors, including those associated with investment in a mortgage on undeveloped land, other charges registered against the title to the real property and the company's ability to pay amounts due under the charges.

[para 64]
Bilinski stated at the conclusion of the hearing that all three of the company's real estate projects are in foreclosure. Bilinski, Friesen and Gordon-Carmichael sold $469,000 of the bonds to Canadian Global Investment clients. It appears that Canadian Global Investment clients have lost their entire investment.

[para 65]
Columbia Ostrich (VCC) Ltd.
Columbia Ostrich (VCC) was registered under the *Small Business Venture Capital Act*. It participated in a Province of British Columbia tax incentive program by financing a small British Columbia based business, in this case Columbia Ostrich Farm Ltd. Columbia Ostrich (VCC) was required to have a board of directors independent from Columbia Ostrich Farm. British Columbia resident investors received a provincial tax credit equal to 30% of their investment and their (VCC) shares were eligible investments for RRSPs and RRIFs.

[para 66]
Columbia Ostrich (VCC) had its genesis when Dave Bilinski turned to his cousin Dan Bilinski for financial help in running his Alberta ostrich farm, Rocky Mountain Ostrich Ltd. Dan suggested that Dave start up a business in British Columbia to take advantage of the VCC tax incentive program. Columbia Ostrich Farm began operations in 1996 on Dave Bilinski's ranch in Edgewood, British Columbia. The plan was to work closely with the Alberta operation using VCC financing to develop genetically superior breeding stock. Dan and Dave Bilinski were directors of Columbia Ostrich Farm.

[para 67]
By 1997 Dan Bilinski decided to involve Private Ventures Capital. It was to provide administrative and management services to Columbia Ostrich (VCC) for a 10% interest. Under Price's direction Private Ventures Capital developed a new and much expanded business plan that was described in offering memoranda of August 1997 and 1998, under which Columbia Ostrich (VCC) planned to raise $3,775,000 by selling 2,836,700 common voting shares. The shares had to be sold through a licensed securities dealer to persons who qualified as sophisticated purchasers making a minimum purchase of $25,000. The proceeds were to be used to acquire Columbia Ostrich Farm Class B voting

preference shares that were, under certain conditions, convertible to Class A voting shares and redeemable and retractable in five years. Columbia Ostrich (VCC)'s directors were independent of Columbia Ostrich Farm.

[para 68]
The offering memoranda described in considerable detail the expanded breeding and marketing operations developed for Columbia Ostrich Farm. In addition to the risks disclosed in paragraph 36 above, the memoranda identified other risk factors associated with the ostrich business in Canada. Despite these risks the offering memoranda optimistically described the outlook for the ostrich industry in British Columbia.

[para 69]
However, by 1998, it was clear that the revenues projected in the 1997 business plan for Columbia Ostrich Farm, which were repeated in its 1998 plan, were not being realized. The ostrich business was in trouble and Dave Bilinski was facing serious financial problems. In addition, three mortgages that Dave Bilinski had registered against the Columbia Ostrich Farm were in default and the entire Columbia Ostrich Farm operation, including the buildings and livestock, was at risk of being seized by creditors. Again Dave Bilinski pressed his cousin to help him out.

[para 70]
At Dan Bilinski's direction, Private Ventures Investment took over Dave Bilinski's mortgage commitments (including those on the Columbia Ostrich Farm lands) and, in June 1998, bought Dave Bilinski's Alberta farm. The Alberta farm, now called Rocky Mountain II Ostrich Farms with Dan Bilinski as president, became a wholly owned subsidiary of Private Ventures Investment. Funds came directly or indirectly from Canadian Global Investment clients who had invested in Private Ventures Investment's promissory notes or Canadian Global Financial's securities. No details of the transactions involving Dave Bilinski and his companies were disclosed in the August 1998 offering memorandum.

[para 71]
In October 1998 Price told Dan Bilinski that he had serious concerns about the Columbia Ostrich Farm's operations and the involvement of Dave Bilinski. Price wanted to withdraw from the Columbia Ostrich Farm project. He told Bilinski that:

1. the dynamics of the ostrich industry had changed and it was no longer a breeder industry but was focusing on meat and product production,

2. the assumptions made to create the first budget were no longer valid and that between $12 and $15 million, and not the $3.775 million offering, would be necessary to build a viable ostrich business,

3. the Columbia Ostrich Farm property was not a suitable location,

4. the mingling of Dave Bilinski's own birds, birds he was boarding on behalf of others, and the Columbia Ostrich birds was problematic,

5. Dave Bilinski's personal financial problems were making it impossible for Columbia Ostrich VCC to purchase the land that had been set aside for the ostrich farm,

6. Dave Bilinski's personal financial problems were draining the finances of Private Ventures Capital to the point of jeopardizing its viability, and

7. the growing conflicts of interest between Dan and Dave Bilinski were serious and needed to be resolved.

[para 72]
Although Dan Bilinski acknowledged "we lost our focus on Columbia itself as we got more involved with Dave's problems, and as we spent more and more money in propping him up financially" he believed that many of the problems existed because Private Ventures Capital wasn't doing its job. In an October 5, 1998 memo, Bilinski told Price it wasn't Price's call to raise the 'white flag of defeat'. As far as Bilinski was concerned, Price was to manage the project and that meant finding solutions to problems not looking for ways out.

[para 73]
Price then directed the company's lawyers to prepare a new offering memorandum. Bilinski saw Price's intervention as a personal betrayal and accused him of being a quitter. In any event, a new offering memorandum dated August 16, 1999 was prepared. Although it referred to proposed transactions involving Columbia Ostrich Farm, Dave Bilinski and his companies, it did not disclose that loans made to Dan Bilinski's companies were in default and the banks were pressing for payment. The default in the loans, which were secured by three mortgages on the Columbia Ostrich Farm and on other properties owned by Dave Bilinski and his companies, had triggered foreclosure proceedings against the properties.

[para 74]
Instead, the offering memorandum described in some detail Columbia Ostrich Farm's new business plan. It did not provide any financial or other information about actual farm operations or ostrich production rates since the farm started operating in 1996. It simply noted that of the $2,296,000 raised so far, $1,919,750 had gone into the operation of Columbia Ostrich Farm. Only one director signed the certificate attesting to the accuracy of the disclosure in the August 1999 memorandum, although under the Act two were required to sign the certificate. He subsequently resigned in October 1999.

[para 75]

Marcel Parent, the president of Columbia Ostrich VCC, refused to sign the August 19, 1999 offering memorandum because he had serious concerns about the viability of the ostrich farm and the disclosure that was being given to investors.

[para 76]
Parent, who had been an investor in the ostrich farm since its beginning, testified that he had concerns about the farm's operations for some time. A March 1997 visit to the farm and a review of financial records received from David Bilinski increased his concerns about the viability of the business and use of Columbia Ostrich (VCC) investor funds. At the time, Dan Bilinski's proposal to have Price manage the project was not a satisfactory solution for Parent. To Parent's chagrin the shareholders dismissed his concerns. Disheartened, Parent declined appointment as a director.

[para 77]
The farm had dismal results in 1997 and 1998 and there was a dramatic decline in the ostrich market in 1999. Not wanting to lose his investment, Parent agreed to become president and was re-appointed to the board at the July 14, 1999 annual general meeting.

[para 78]
Parent testified that, despite Columbia Ostrich Farm's sorry history, he still believed that there was a way to make money ostrich farming if the business was run properly. However, he was not prepared to sign the offering memorandum dated August 16, 1999 because he did not want to bring any more investors into what he "thought was a mess".

[para 79]
Parent tried to learn more about the industry and where the investors' money went. He revisited the Columbia Ostrich Farm and visited several other ostrich operations. He met with a consultant Dan Bilinski had retained to evaluate and report on the Columbia Ostrich Farm operation. The consultant reported that lack of management and proper facilities and the distance between operations contributed to Columbia Ostrich's failure. Parent was told to forget about the $2.3 million the Columbia Ostrich (VCC) clients had invested so far if they were to move forward with the consultant's new plan. Parent was not convinced that this was the right thing to do.

[para 80]
More concerns surfaced about facts disclosed in the unaudited financial statements for the period October 1, 1998 to September 30, 1999. Parent said he could not understand how it was possible, after raising $2.3 million that the banks were in a position to foreclose against the Columbia Ostrich Farm and claim all its assets including the ostriches. He wanted to know how the farm's business and assets were at risk because of Dave Bilinski's other loans. Parent also questioned the high administration and consulting costs (over 20 % of the entire offering) and believed the equity in the balance sheet was overstated. He was very worried that if the farm was a complete business failure the Columbia Ostrich (VCC) investors would not only lose their investment but could be faced with paying back the 30 per cent tax credit to the provincial government.

[para 81]
On October 28, 1999 Parent wrote to Dan Bilinski looking for an answer to these and a number of other concerns. Dan Bilinski subsequently met with Parent and offered to have Private Ventures Investment transfer the Alberta ostrich farm over to Columbia Ostrich (VCC) to compensate investors. In the meantime, the other two directors of Columbia Ostrich (VCC) had resigned. By December 19, 1999 another offering memorandum (dated December 1) was presented to Parent for signature. Attached to it was an addendum prepared by Dan Bilinski entitled *Columbia Ostrich and Rocky Mountain II Ostrich Farms.* Again Parent refused to sign the offering memorandum.

[para 82]
As with the previous offering memoranda, it gave no history of Columbia Ostrich Farm's operations, but continued to represent that each breeding hen could produce approximately 25 to 35 eggs per year, producing an average of 15 live chicks per year. The offering memorandum stated that the intention was to have 250 breeding birds at the Columbia Ostrich Farm although it did not disclose how many breeding birds existed at the time of the offering memorandum was dated. No reference was made to the planned acquisition of 1000 hens disclosed in the previous offering memoranda. The offering memorandum instead went on to focus on the potential for Columbia Ostrich Farm to develop into a vertically integrated ostrich business by merging or joint venturing with a successful US meat sales company.

[para 83]
A new two-phase plan was proposed. Phase one involved transforming Columbia Ostrich Farm into a productive farming operation producing 1500 birds per year with a capable sales operation to market ostrich products. Potential combined revenue from the phase one operation was set to exceed $5 million annually. Phase two involved a significant expansion of the processing, breeding and manufacturing operations and depended on the results of phase one.

[para 84]
The offering memorandum referred to a series of complex and intertwined property financing and share exchange transactions involving Columbia Ostrich, Private Ventures Investment, Canadian Global Financial, Dave Bilinski and four of his companies. Although some details of the transactions were disclosed, it was virtually impossible to understand the exact nature and effect on these transactions on Columbia Ostrich Farm and Columbia Ostrich (VCC). What was clear was that the transactions came about because Dave Bilinski's companies defaulted on loans to the banks.

[para 85]
In the addendum, Dan Bilinski explained why Private Ventures Investment acquired Dave Bilinski's Alberta farm and what his new proposal was for going forward. Dan Bilinski acknowledged that Private Ventures Investment began assisting Dave Bilinski with his mortgage commitments so he wouldn't lose the farm. In explaining the

transactions with Dave Bilinski, Dan Bilinski said "there was no point in letting a premier (*sic*) ostrich facility slip into someone else's hands, rather it could be used to prop up the entire ostrich operation and help secure investor's investment."

[para 86]
Dan Bilinski then represented in the addendum that the mortgages had finally been dealt with and Columbia Ostrich Farm had purchased the 250 acres on which the Columbia Ostrich Farm had been operating. He stated that in the future, Dave Bilinski and Private Ventures Investment would join their assets with Columbia Ostrich (VCC) shareholders. Dan Bilinski stated this was to enhance the overall asset base of the joint enterprise and to protect the interests of current and future investors. Investors were told that consolidated financial statements would be issued shortly but in the meantime, Dan Bilinski stated that a cursory evaluation of the combined farms was in excess of $2 million. There were no independent appraisals to support this valuation.

[para 87]
Dan Bilinski stated the addendum as signed, would be sufficient "to insure the investors of the status of their investment", although the final legal structure had yet to be worked out by lawyers. To verify their agreement, Dan Bilinski for Rocky Mountain II Ostrich and Canadian Global Financial, Dave Bilinski for Rocky Mountain Ostrich and Columbia Ostrich Farm, Don Wilson for Private Ventures Investment and Joe Wilmot for JD Wilmot and Associates (the consultants) signed the addendum on December 18, 1999. The directors' certificate attesting to the accuracy of the disclosure in the offering memorandum was not signed at all.

[para 88]
Parent's refusal to certify the December 1999 offering memorandum was based on his belief that the farm was not viable. Parent knew the Columbia Ostrich Farm produced only three chicks in all of 1999, never mind 15 live chicks per hen. With no actual production information, Parent was concerned that investors would assume that the representation that each breeding hen could produce an average of 15 live chicks per year was an actual production record when it was not. Parent said he could not endorse the statement that the combined revenue from phase one could exceed $5 million annually without first seeing a business plan. Furthermore, without any independent appraisals, Parent believed the $2 million value attributed by Bilinski to the combined farms was overstated.

[para 89]
However, on December 22, 1999, Dan Bilinski called Parent to persuade him to sign the offering memorandum because the farm was in desperate need of cash. Bilinski told him that he had investors who were prepared to put money in to keep the birds alive knowing full well what the condition of the farm was, how many birds there were last year and how much had been paid for consulting fees. Parent was told that for investors to take advantage of the tax credits for 1999, the investments needed to be made before December 31, 1999, and there simply was no time to print a new offering memorandum.

[para 90]
Parent was persuaded that investors would be fully informed if he put his concerns in a letter that would be attached to the offering memorandum. Parent agreed, believing it was legal to do so.

[para 91]
As for Parent's concerns, Lamblin, like Bilinski, saw Parent as:

> … focusing on the negative observations that he had rather than concentrating on what in fact, if anything, could be done to not only improve the existing farm situation but what could be done to take the farm and take advantage of the industry on a going forward basis with bringing all of the components together. He just seemed to be closing his mind or his willingness to want to work to that end. I think he had already made up his mind that the farm was not viable, and that I believe I think that he honestly believed that by either shutting it down or not going forward that he was going to prevent someone else from maybe participating in what he felt was a venture that was doomed to failure.

[para 92]
Bilinski and Lamblin sold Columbia Ostrich (VCC) shares to clients of Canadian Global Investment under the 1997 and 1998 offering memoranda. Between December 24 and 30, 1999, Lamblin and Friesen sold Columbia Ostrich (VCC) shares to clients of Canadian Global Investment under the December 19, 1999 offering memorandum. No Forms 20, *Report of Exempt Distribution* were filed by Columbia Ostrich (VCC) regarding the shares sold in December 1999. These clients invested $135,000.

[para 93]
On January 12, 2000, the Commission cease traded the securities of Columbia Ostrich (VCC). That order was extended and remains in effect. Subsequently, a company that the consultant was involved with provided funds to Columbia Ostrich Farm to keep the remaining birds from starving.

[para 94]
Clients of Canadian Global Investment invested $2.3 million by buying shares of Columbia Ostrich (VCC). In addition Canadian Global Financial's consolidated financial statements for the period ended October 31, 1999 show that it advanced $345,220 to Rocky Mountain II Ostrich Farms and $124,247 to Columbia Ostrich Farm. It appears that Canadian Global Investment clients have lost most, if not all, of the $2.769 million invested directly or indirectly in Columbia Ostrich (VCC). Shares of Columbia Ostrich (VCC) held by clients continue to be speculative, illiquid and highly risky.

[para 95]
Canadian Global Financial Group Ltd.

Canadian Global Financial is not a reporting issuer nor is it registered under the Act. It had no operating history but at all relevant times was the umbrella company under which several companies carried on business. These companies included Canadian Global Financial's wholly owned subsidiaries, as well as the venture capital companies in which it held an interest. Its directors and controlling shareholders were Bilinski, Lamblin and Arnot. Bilinski was the president and directing mind of the company.

[para 96]
In the fall of 1998, Bilinski decided that Canadian Global Financial needed to create a large capital pool to help finance the venture capital companies in which it held an interest, and to acquire new ones. The plan was for Canadian Global Financial to expand its operations and raise funds directly by selling its own securities.

[para 97]
Bilinski and Don Wilson approached Bernard Poznanski in early October of 1998 for legal advice about Canadian Global Financial's intended financings. We describe the evidence concerning this issue in some detail because of the significance the respondents made of it in their defence and because of the conflicting testimony.

[para 98]
Poznanski, a senior securities solicitor had been dealing with Bilinski and Wilson in the context of giving advice to several other issuers for whom Canadian Global Investment was acting as agent. Don Wilson joined Private Ventures Capital in late August 1998 initially to assist the company with marketing its services to other registrants, primarily mutual fund dealers. He functioned as Price's right hand man and dealt with most of the regulatory issues. As Price's influence in the Canadian Global Group's business waned, more of Private Ventures Capital's functions and duties fell to Don Wilson to perform. Don Wilson was the primary contact in dealing with Poznanski.

[para 99]
When they met in October 1998, Bilinski and Wilson provided Poznanski with a copy of Canadian Global Financial's proposed business plan asking whether it could be used in connection with raising funds under the private issuer exemption. They wanted to first offer shares in Canadian Global Financial to 50 friends, associates and relatives of the directors using the proposed business plan in explaining the business. Once an offering memorandum was prepared they wanted to sell Canadian Global Financial shares to other investors. They wanted to raise at least $10 million.

[para 100]
Poznanski advised Bilinski and Wilson that, although it was not prohibited, it would be inappropriate to use the business plan as a sales document because it was not usual to use any kind of disclosure document in conjunction with the private issuer exemption. Poznanski said he specifically explained to Bilinski and Wilson that a client relationship does not give rise to the relationship of closeness but that the relationship of close friend, relative or business associate must exist separate and apart from a client relationship.

Poznanski also told them that for a company to qualify as a private issuer it could not have more than 50 shareholders (excluding employees) and could not have offered any of its securities to the public. In addition, the private issuer exemption had to close before any other securities could be offered to the public under any other exemption. Closing required a director's resolution authorizing the allotment and issuance of shares as well as the actual delivery of share certificates to the investors.

[para 101]
Poznanski said a substantial amount of work was required before the offering memorandum could be drafted. In the meantime, Poznanski provided Canadian Financial Group with a term sheet and copy of a subscription agreement that could be provided to seed investors. The term sheet described the two-part offering and who was qualified to participate. The first part was for the first 50 seed capital investors. Qualified investors had to be residents of British Columbia and could not be members of the public. Directors or officers of the company, their immediate family members, close friends and close business associates of the directors and officers qualified. Part two of the offering was for the unsold balance of the shares and required the delivery of an offering memorandum. The term sheet noted the shares were subject to resale restrictions.

[para 102]
By the third week of October 1998, Bilinski and Lamblin were selling Canadian Global Financial shares to clients of Canadian Global Investment under the private issuer exemption. Bilinski stated that, before taking subscriptions for shares of Canadian Global Financial under the private issuer exemption, he would tell investors about the full scope of the company's operations and projects and proposed projects in detail, using the proposed business plan and a corporate chart as a guide. The proposed business plan was intended to reflect the one-stop shopping for financial services and diversified investments vision Bilinski had for the Canadian Global Financial conglomerate.

[para 103]
The business plan made numerous representations, including the following:

1. "The officers and directors of CGF [Canadian Global Financial] are directly involved in key positions within Canadian Global Financial Group of Companies, and as such there does not appear to be any conflicts of interest at this time."

2. "CGF is currently in the process of development and/or acquisition of a Public Company, in preparation for a future transition of assets. It is anticipated that the process will take up to two years to complete."

3. "It is the further intention of CGF to market the public shares at approximately $2.50 per share."

[para 104]

A chart describing the corporate structure accompanied the plan. Bilinski admitted that he distributed different versions of the proposed business plan and corporate chart because they changed as the plans evolved. None of the corporate charts or the business plans gave an accurate description of the structure of the group at the time investors subscribed for shares of Canadian Global Financial. For example, in one chart Canadian Global Financial was shown as having a 100% interest in CGF Diversified Investment Strategies (Pubco) which was the publicly traded company yet to be created.

[para 105]
Despite these differences, Bilinski stated investors were not misled at all because he made clear to them that the plan was simply a vision of the company's future structure and operations. As he discussed the investment with them, he made notations of any changes in the plan on the accompanying corporate chart. Similarly Bilinski said that investors were made fully aware of the relationships between the companies and the involvement of the principals through the chart and the plan. He believed the conflicts of interest were completely disclosed. In fact he did not believe there were any real conflicts of interest. He stated that "we believed that the interests were really in common, that we were trying to gain a controlling interest over the affairs of the corporate entities that we were investing in". Indeed, the fact that Bilinski and Lamblin held interests in the investments was promoted, and consequently perceived by many investors as one of the more positive features of investing with the Canadian Global Financial group of companies.

[para 106]
By early spring 1999, Bilinski said he realized Canadian Global Financial was getting close to having 50 shareholders. Bilinski said he knew that once this threshold was crossed, Canadian Global Financial required an offering memorandum to be able to raise any more money. Some time in February or March 1999, Bilinski went to Poznanski for the offering memorandum but it wasn't ready.

[para 107]
When it was clear it was not going to be ready, Bilinski said he believed, based on Poznanski's legal advice, that they could continue to raise funds while the offering memorandum was being finalized; that is Canadian Global Financial could take in funds prior to closing the transaction as long as this was set out and agreed to in the subscription agreement. He said he also understood the legal advice to mean that investors could sign the subscription agreements and advance their subscription funds to the company prior to the delivery of the offering memorandum as long as the subscription agreements were not formally accepted by Canadian Global Financial.

[para 108]
Bilinski and Don Wilson testified that there was no doubt in their minds that this was the legal advice provided to Canadian Global Financial by Poznanski. As a result, they said everyone was aware that an offering memorandum had not been completed or delivered when Bilinski and Lamblin, and to a lesser extent Friesen, continued to raise money from

clients other than the first 50 investors. They understood that when the offering memorandum was completed it would be presented to subscribers and at that time Canadian Global Financial would formally accept the subscription agreements and close the transactions. If subscribers wanted to rescind their subscription before closing they could, and their money would be returned. Bilinski testified that Poznanski repeatedly told him that in doing this "they were to the line but not over it".

[para 109]
Bilinski testified that as far as they were concerned the documents received from Poznanski and his firm confirmed the oral advice they received. These included a fax cover note dated March 25, 1999, accompanying the subscription agreement as well as several opinion letters for Canadian Global Investment clients about whether their investment in Canadian Global Financial shares would qualify for investment by an RRSP.

[para 110]
The subscription agreement, including its terms and conditions, stated, among other things, that:

1. "A copy of the Offering Memorandum will have been delivered to the Subscriber by the date the Company formally accepts this subscription as indicated on the signature page of this Subscription Agreement, which date will be no later than the Closing Date".

2. "The Subscriber understands and acknowledges that (i) the proceeds of the Offering are to be released to the Company prior to Closing Date and will be immediately available as an advance to the Company and (ii) upon closing none of the Units will be retractable in any circumstances and the Subscriber will not be entitled to return of the Subscription Price of the Units…".

3. Except for the offering memorandum, the subscriber has not received, nor will receive, nor has requested, nor has any need to receive, any other document describing the business and affairs of the company in order to assist the subscriber in making the investment decision.

4. The subscriber's decision to tender to the subscription and purchase the shares has not been made as a result of any verbal or written representations other than as set forth in the offering memorandum.

5. The sale of the units will close on a date to be determined by the company or as stated in the offering memorandum.

6. The subscriber, subject to certain terms and conditions, ***"is concurrently irrevocably delivering"*** to Canadian Global Financial the subscription instructions and a certified cheque or bank draft payable to the company. [emphasis added]

[para 111]
The subscription agreement included a number of schedules. One schedule described in considerable detail the characteristics of the $1 units. Another schedule, the Form 20A under the Act, was the purchaser's acknowledgment that the individual had met the qualifications necessary to purchase securities under the sophisticated purchaser exemption. It included a representation that a copy of the offering memorandum had been received.

[para 112]
The March 25, 1999 fax cover accompanying the subscription agreement stated:

> An offering memorandum must be delivered to each subscriber "before an agreement of purchase and sale is entered into". Accordingly, it is extremely important to ensure that no subscription agreements are signed and accepted on behalf of Canadian Global (on the signature page of the subscription agreement) before the offering memorandum is delivered to the subscribers.
>
> As mentioned with other transactions, the Schedule 'A' with the share rights and restrictions has been included to lend some certainty to the subscription agreement. Although I have kept the language about delivery of the subscription monies and subscription documentation being irrevocable, non-delivery of the offering memorandum prior to or concurrently with the subscription documentation leaves such irrevocability uncertain and subject to challenge by a subscriber.

[para 113]
Poznanski's recollection of the legal advice given to Canadian Global Financial about continuing to raise funds beyond the private issuer exemption without an offering memorandum did not accord with that of Bilinski and Don Wilson.

[para 114]
Poznanski testified as follows. The Canadian Global Financial subscription agreement was prepared because Don Wilson had insisted that Poznanski provide him with one to show around to people that they were making progress. Wendy Lee, an associate of Poznanski's to whom Wilson made the request, was concerned about Wilson getting the subscription agreement because no offering memorandum had yet been prepared for Canadian Global Financial and the offering structure was being revised.

[para 115]
Poznanski said Lee approached him because she had concerns that, if the existing subscription document was misused, there could be problems. After speaking to Wilson, Poznanski also became concerned that Canadian Global Financial wanted to raise money without an offering memorandum. Poznanski said he also made it very clear to Wilson that the subscription agreement could not be used without an offering memorandum. Poznanski then warned Lee to make sure that appropriate caveats accompanied any

document that went out to Wilson. Eventually Lee sent the fax cover note and the subscription agreement to Canadian Global Financial.

[para 116]
Poznanski said the concept of using subscriber's funds as an advance, prior to formal closing of the share offering, came about because Price wanted immediate access to funds raised and insisted that language be included in the subscription agreement to accommodate this. This followed an earlier discussion in which Poznanski conceded that there was no law prohibiting this as long as the subscriber agreed that the funds could be used as an advance. However, Poznanski said he also made it clear to Price and Don Wilson that a company could not raise any money until an offering memorandum had been delivered to subscribers.

[para 117]
According to Poznanski, Wilson and Price were very sophisticated about securities offerings. He said Wilson was familiar with the Act and how the exemptions worked and wanted to handle a number of other things, including the closing documents. Poznanski had no doubt that Wilson understood that an offering memorandum was required before any money could be raised beyond the private issuer exemption. However, Poznanski agreed his discussions with Wilson took place before Lee's fax cover note and the subscription agreement were sent to Canadian Global Financial.

[para 118]
Bilinski and Lamblin said that once they had received Lee's cover note, they proceeded to sell Canadian Global Financial shares without an offering memorandum based on their understanding the legal advice they received. In doing so they gave Canadian Global Investment clients the Canadian Global Financial subscription agreement, the accompanying instructions, including schedule A which described the units, a Form 20A and, if an RRSP account was involved, letters of direction and indemnity to the trustee.

[para 119]
While Poznanski conceded that the subscription agreement language was not clear, he disagreed with the respondents' suggestion that the wording in the fax cover note and agreement implied that the subscription funds could be advanced prior to an offering memorandum being delivered. Poznanski was firm in stating that there was no such advice ever given to Wilson or any of the respondents. He said the reference to *irrevocability* was simply intended to protect the company from investors withdrawing their funds where the only thing left was for the transaction to close. It presumed that an offering memorandum had been delivered and that a subscription agreement had been signed.

[para 120]
Poznanski disagreed that he told Bilinski that he, Poznanski, had taken Canadian Global Financial "to the line but not over the line" in terms of regulatory compliance. Poznanski conceded he may have indicated to Bilinski where the line was to distinguish between

what was permissible and what was not under securities legislation, but at no time did he indicate to Bilinski that he took Canadian Global "to the line". Poznanski said that he did not know Canadian Global Financial had raised money beyond the private issuer exemption until September 1999, when Commission staff started their investigation into the affairs of Canadian Global Investment.

[para 121]
At the time of the cease trade order, Canadian Global Financial introduced a draft offering memorandum that was intended to qualify the shares already sold. The offering was for 5 million units at $1 a unit. The draft memorandum made some of the same representations that were made in the draft business plan. Others were at odds with some of the representations in the business plan.

[para 122]
By September 1999 Canadian Global Financial had raised over $4.4 million by selling its shares to clients of Canadian Global Investment. Canadian Global Financial recorded these transactions on two lists. The first list was entitled *Friends and Family* and represented 48 persons that had subscribed $2,628,146 for shares under the private issuer exemption. All, but one, of the sales were made by Bilinski and Lamblin. The second list entitled *Subscriptions Received* represented approximately 35 persons who had subscribed $1,781,389 for shares purportedly under other exemptions. All, but one, of the sales was made by Bilinski and Lamblin. The *friends and family* list indicate that Rudy Hintsche, a client of Canadian Global Investment, was the first investor purchasing Canadian Global Financial shares on October 19, 1998. The last person purchasing shares under the private issuer exemption was on April 12, 1999.

[para 123]
Canadian Global Financial also raised over $465,000 by Lamblin selling its promissory notes. Some of the notes had a six-month term with interest at the rate of 2% per month and a bonus amount of 5% at maturity. These notes were issued to Lamblin's in-laws ($250,000), and another investor ($165,000) between May 20, 1999 and December 23, 1999. Another promissory note with no fixed term bearing interest at 1% per month was issued to a third investor for a $50,000 loan made on December 15, 1999. Apart from Lamblin's in-laws, the noteholders were clients of Canadian Global Investment.

[para 124]
Lamblin said he believed that the notes, which he sold, were not securities and therefore were not subject to the requirements of the Act. Lamblin saw them simply as personal loans from family members or close personal friends to Canadian Global Financial when it "had some pretty serious needs". Lamblin confirmed that Bilinski made the decisions as to how the money was spent. The notes had not been repaid at the time of the hearing.

[para 125]
Canadian Global Financial's auditor of its consolidated financial statements for the year ended October 31, 1999, confirmed that, although $4.5 million had been advanced to the

investment projects, most funds were advanced without proper documentation evidencing the loans. In addition, when one company owed money, on occasion, that company's debt would be paid by one of the related companies.

[para 126]
The auditor testified that, when the Commission restricted the group's ability to raise funds in October 1999, the financial situation of the various issuers became extremely precarious. The company's ability to continue as a going concern was dependent upon its ability to obtain new sources of revenue. Without additional funding Canadian Global Financial and all its projects were at risk of insolvency.

[para 127]
Canadian Global Financial had raised almost $5 million through the sale of its shares and promissory notes from approximately 80 clients of Canadian Global Investment. Bilinski and Lamblin raised nearly all of this money. It appears that Canadian Global Financial is insolvent and the clients will lose their entire investment.

[para 128]
Private Ventures Investment Limited
Private Ventures Investment is a wholly owned subsidiary of Canadian Global Financial. It was formed to hold the investments and assets (other than real estate) of Canadian Global Financial and its wholly owned subsidiaries. It was a startup company with no operating history. It was not a reporting issuer or registered under the Act. Its directors were Bilinski, Lamblin, Arnot and Price. Bilinski was president.

[para 129]
Between August 1998 and October 1999, Private Ventures Investment raised over $1.7 million by issuing promissory notes to over 30 Canadian Global Investment clients. Nearly all of the money was raised by Lamblin and Bilinski. The notes were signed by Price. The notes were for a six month term with 2% interest per month and an additional 5% bonus at maturity.

[para 130]
Most of the money (over $1.5 million) was raised on the representation that it was going to acquire and develop certain patented technology used in processing waste products and industrial pollutants. Arc Sonics International Ltd. purportedly held the patent rights to the technology.

[para 131]
Envirosonics was a wholly owned subsidiary of Private Ventures Investment. It was formed to hold Private Ventures Investment's interest in the Arc Sonics technology. Arc Sonics was in danger of losing its patent technology because a creditor was pressing to be paid out. Price believed, and convinced Bilinski and Lamblin, that the technology had great promise and was worth pursuing as an investment project.

[para 132]
However, money was needed immediately to pay out the creditor in order to acquire the technology and develop it further. Price said preparing a traditional offering memorandum would have taken too long, so it was decided to raise funds by selling promissory notes. He believed, and advised Bilinski, that this was legal as long as an offering memorandum followed shortly thereafter. This belief was based not on a legal opinion but on a conversation Price said he had with someone indirectly involved in the project. No prospectus or offering memorandum for Envirosonics, Arc Sonics or Private Ventures Investment was prepared.

[para 133]
Poznanski testified that he received a telephone call from Price "out of the blue" sometime in May to July of 1999, (Poznanski understood that by this time Price was no longer actively involved in the group's business) asking him whether a promissory note was a security under the Act. Poznanski told him that it was. The issue of promissory notes was not raised with Poznanski again until September 1999 following the Commission's investigation. At that time Don Wilson called Poznanski to inquire whether he was aware that Private Ventures Investment had sold promissory notes in excess of $1 million. Poznanski confirmed he was not aware of this nor had he given any advice to Private Ventures about raising money by selling promissory notes.

[para 134]
Although over $1.5 million was raised for the Arc Sonics project, Price said only half that was necessary to pay out the creditor and acquire the rights to the technology. The extra money would be used to develop the technology. Price acknowledged that he signed the promissory notes, but said he had no involvement as to how the money was used.

[para 135]
The related declaration of trust, which was a complicated document attached to the promissory note, indicated on its face that it was between Arc Sonics and Private Ventures Investment. It showed the investor noteholder as the beneficiary of Private Ventures Investment's general security agreement over Arc Sonics' assets and undertakings. No shares of Envirosonics or Arc Sonics were ever issued to the noteholders.

[para 136]
Some clients of Canadian Global Investment were sold Private Ventures Investment promissory notes on the basis that the money would be invested in Gorlan Trailer. Price sold one $100,000 promissory note on this basis. Although the note was not issued until June 1999 the client had given the money to Price in April 1999.

[para 137]
Canadian Global Financial's auditor testified that Private Ventures Investment's obligation to pay the monthly interest on the notes was "very steep" and eventually Private Ventures Investment could not service the loans. As a result, money was

transferred from other companies in the Canadian Global Financial group to service the monthly payments although there were no loan agreements with the companies.

[para 138]
Bilinski, Lamblin, Friesen and Price sold $1.7 million of Private Ventures Investment promissory notes to clients of Canadian Global Investment. It appears that Private Ventures Investment is insolvent and clients still holding notes will lose their investment.

[para 139]
Exempt securities sold after the Commission issued its orders
Following the initial cease trade order issued by the Executive Director on September 30, 1999, the Commission issued a series of orders against various respondents. Staff alleged that Bilinski, Lamblin, Friesen and Gordon-Carmichael breached these orders by selling exempt securities to their clients in November and December 1999. The first group concerned the sale of Canadian Global Real Estate securities by James Edwards, Bilinski, Gordon-Carmichael and Friesen. The second concerned Columbia Ostrich (VCC) shares sold by Lamblin and Friesen.

[para 140]
The relevant Commission order is dated November 4, 1999. It stated as follows:

> … the Commission, considering that to do so would not be prejudicial to the public interest, varies under section 171 of the *Act* the orders initially made October 15, 1999, and as subsequently varied, to permit each of the New Respondents [which included Bilinski Lamblin, Friesen and Gordon-Carmichael] to use the exemptions described in sections 44 to 47, 74, 75, 98 and 99 of the *Act* in connection with the distribution of the securities of Canadian Global Real Estate Holdings Ltd., Columbia Ostrich (VCC) Ltd., Gorlan Trailer Technologies Inc. and Pacific Bowling Centers, Inc., provided that:
>
> - the New Respondents do so in accordance with the requirements of the Act, including the requirements relating to the 'know your client' and suitability of investment rules as described in Commission Notice 98/56; and
>
> - where an investment in any of the securities of Canadian Global Real Estate Holdings Ltd., Columbia Ostrich (VCC) Ltd., Gorlan Trailer Technologies Inc. and Pacific Bowling Centers, Inc., has been determined by a New Respondent to be unsuitable for an investor and the investor nonetheless wishes to purchase the security, the distribution of that security must be made through a registered dealer under the *Act* other than Canadian Global Investment Corporation.

[para 141]
In November and December 1999, Doug Wilson, the compliance officer for Canadian Global Investment, initiated certain procedures to ensure Canadian Global Investment's sales representatives complied with staff reporting requirements and the Commission's

orders. As of November 15, 1999, clients and representatives were required to sign a Canadian Global Investment new *Exempt Product Client Acknowledgement* for each transaction. It confirmed, among other things, that:

1. the representative considered whether the proposed investment was in accordance with the know you client' and the 'suitability of investment' rules,

2. if the sales representative had advised the investment was unsuitable for the client the trade had to be completed through another dealer, and

3. the compliance officer had supervised the transaction.

[para 142]
Doug Wilson testified that while Bilinski complied with these requirements it became increasingly clear to him that Bilinski and Lamblin both were very frustrated with the orders that were in place. Wilson said Bilinski told him that life would be an awful lot simpler if he simply dropped his registration so that he would not be bound by the orders of the Commission. According to Wilson, the tack Bilinski intended to take was to find someone who was prepared to act on his behalf and do his bidding. Bilinski would not be an employee of the mutual fund dealer or in any way visibly connected. On November 19, 1999, Bilinski and Lamblin tried to resign from Canadian Global Investment and surrender their registrations. However, Bilinski and Lamblin testified that they resigned from Canadian Global Investment because they believed that, with the Commission orders and the attendant negative publicity, it would be better for the investors if they disassociated themselves completely from the dealer.

[para 143]
In any event, on November 19, 1999 Doug Wilson took over managing Canadian Global Investment, and Bilinski and Lamblin transferred all of their clients over to Gordon-Carmichael. According to Gordon-Carmichael this angered Wilson who subsequently fired Gordon-Carmichael and several others, including Arnot.

[para 144]
With Bilinski and Lamblin gone, Wilson, as compliance officer, required Canadian Global Investment sales representatives to sign a December 6, 1999 notice describing the new procedures that had to be followed concerning exempt securities transactions. The notice confirmed that the management of Canadian Global Investment had changed and representatives could no longer take instructions from previous management. It also confirmed representatives had to complete the new exempt transaction forms and provide a written report every week listing all the persons they had contacted for the purposes of selling exempt securities.

[para 145]
In November and December 1999, James Edwards sold exempt securities of Canadian Global Real Estate to four clients of Canadian Global Investment. Edwards held himself

out as a consultant who specialized in tailored investments and insurance through Canadian Global Insurance, which was in the same offices as Canadian Global Investment.

[para 146]
Edwards had not met any of the clients prior to these transactions and left all records of the transactions, including the cheques, with Arnot or at Canadian Global Investment's office. Edwards testified that he facilitated each of these transactions as an independent person and not as an employee or director of Canadian Global Investment or Canadian Global Financial. As a consequence, Edwards did not assess whether the investments were suitable for these clients.

[para 147]
The sales commissions Edwards received varied, with Bilinski and Lamblin determining the percentage. Edwards said he did not share his commissions, which he said he received from Canadian Global Financial, with anyone. However, both Gordon-Carmichael and Friesen testified that Edwards gave each of them a portion of his sales commission from the Kreisz and McGavin transactions, which are described in the next section, *The Investors*.

[para 148]
Edwards testified that Bilinski discussed the status of the Commission orders with him but denied that he was instructed to make the trades because of the outstanding orders. Bilinski agreed that he approached Edwards to raise money in Canadian Global Real Estate because of the Commission's orders. However, Bilinski denied that he breached the orders. We do not find either Edwards' or Bilinski's testimony about these transactions to be credible.

[para 149]
In late December 1999, Lamblin and Friesen sold Columbia Ostrich (VCC) shares to clients of Canadian Global Investment. The shares were sold under the December 1999 offering memorandum and sold under exemptions requiring a minimum investment of $25,000.

[para 150]
Four of the five clients were Lamblin's. They invested a total of $125,000 in circumstances where the offering memorandum did not comply with the Act, the clients' *Exempt Product Client Acknowledgement* forms were completed incorrectly and the 'suitability of investment' rule was not met.

[para 151]
On December 30, 1999, Friesen sold $10,000 Columbia Ostrich (VCC) shares to a client of Canadian Global Investment in circumstances where the offering memorandum did not comply with the Act, the client's *Exempt Product Client Acknowledgement* form was completed incorrectly and the 'suitability of investment' rule was not met.

[para 152]
The Investors
There were approximately 200 clients of Canadian Global Investment who invested $20 million in securities of companies under the umbrella of the Canadian Global Financial. We refer to these securities simply as the exempt securities, unless it is necessary to be specific.

[para 153]
The investors became clients in a variety of ways. Some became clients through Bilinski and Lamblin's tax strategy seminars. Others became clients because they were friends and acquaintances from a common community or church. Almost all were clients of Canadian Global Investment before they purchased the exempt securities. Most have lost their investment. If the investment has not been lost, it continues to be speculative, illiquid and highly risky.

[para 154]
Bilinski and Lamblin sold most of the exempt securities. There were a handful of other sales representatives, including Friesen and Gordon-Carmichael who sold a relatively small percentage of the exempt securities to a limited number of clients. From the $20 million raised, Canadian Global Investment received $2 million in commissions and a further $2 million was paid to Private Ventures Investment and Canadian Global Financial for administrative services.

[para 155]
Staff introduced many of the documents relating to the clients but called only some of them to testify. Several clients wrote letters expressing their support of Bilinski and Lamblin, their belief in their honesty and integrity and their satisfaction with the investments and service they received. Many of them believed that Bilinski and Lamblin would take care of them and their investments if only the Commission would stop interfering and let them get on with doing their business.

[para 156]
There were common factors that emerged when we heard the clients' stories and reviewed the documents. It is useful to set these out first, before moving on to specifics.

1. Most of the clients were conservative, risk-averse investors with a strong desire to protect their capital.

2. Most clients trusted and relied on their representatives for their expertise and expected them to act in their best interests. Clients expected their representatives to protect them from any risk beyond the level with which they were comfortable.

3. Bilinski, Lamblin and Friesen, and to a lesser extent Gordon-Carmichael, did not properly determine and record on their clients' 'know your client' forms (KYC)

the essential and current financial and personal circumstances and investment objectives of their clients. Despite what was noted on the KYC forms, most clients had modest financial circumstances, limited investment experience and a low risk tolerance.

4. Bilinski, Lamblin, Friesen and Gordon-Carmichael failed to ensure that each of their clients met the conditions of the exemption that would allow issuers to sell securities to them. They described some clients as being sophisticated investors when it was clear they were not. Although many of these clients acknowledged that they were able to evaluate the risks and merits of the securities because of their financial, business or investment experience many had little or minimal investment experience and could not independently evaluate the risks and merits of the exempt securities. On the advice of their representatives, they made the acknowledgement simply to meet the conditions of the exemption. Other clients had limited investment experience or conservative investment needs, but were assumed to be sophisticated purchasers because their purchase met the prescribed $97,000 threshold. Clients were described as having a moderate risk tolerance when it was obviously low. Bilinski, Lamblin and Friesen had clients who purchased less than the prescribed amounts required for the exemption relied upon. On the advice of Bilinski and Lamblin, clients who purchased Canadian Global Financial shares under the private issuer exemption, identified themselves as close personal friends of Bilinski and Lamblin when they were not.

5. Bilinski, Lamblin, Friesen, and Gordon-Carmichael had clients who did not have sufficient funds to invest in the exempt securities. These clients were advised to borrow against the equity in their home and to sell more conservative investments. Several clients followed this advice. For many, the equity in the family home comprised most of their net worth.

6. Lamblin and Friesen calculated net worth to include estimated inheritances from persons still living. As a consequence some clients' net worths were pushed over the $400,000 threshold allowing them to purchase the exempt securities under the sophisticated investor exemption.

7. Bilinski, Lamblin, Friesen and Gordon-Carmichael told their clients that the exempt securities were backed by Canadian Global Financial's assets, and because investors would be given priority over the principals, there was little risk of clients losing their capital. Several of these clients were told Canadian Global Financial's assets were worth from $15 to $20 million. There was no independent valuation supporting this representation. These were material considerations for these clients.

8. Bilinski, Lamblin and Friesen seldom, if at all, presented to their clients any material negative information concerning the exempt securities. The absence of material negative information was a material consideration for these clients.

9. Bilinski and Lamblin did not offer their clients any investment alternatives to their recommendation to invest in the exempt securities. They perceived, and represented to clients, that a selection from the exempt securities alone could provide clients with a completely diversified portfolio of investments because Canadian Global Financial's business strategy was to diversify in different companies and different industries. This was a material consideration for these clients.

10. Some clients of Bilinski, Lamblin and Friesen did not receive an offering memorandum for the exempt securities although they indicated on their exempt purchaser forms that they had. One client of Gordon-Carmichael's did not receive an offering memorandum until after he had made the investment.

11. Most, if not all, of the clients were told that by investing in the exempt securities they could minimize their income tax, receive monthly income and earn double-digit returns with minimal risk. These were material considerations for the clients.

12. Bilinski and Lamblin did not explain to their clients the nature, or significance, of their conflicts of interest in dealing with the Canadian Global Financial group of companies or that the conflicts were significant risks. Rather the interests that Bilinski and Lamblin held in, and the benefits that they would acquire through fees and commissions, were represented as a benefit for clients. This was a material consideration for these clients.

13. Bilinski, Lamblin and Friesen frequently failed to explain to clients the documents the clients were asked to complete and sign for the purchase of the exempt securities. These included the Form 20A, the subscription form, the declaration of trust and the exempt purchaser client acknowledgement form. Often these representatives completed the forms incorrectly.

[para 157]
Bilinski's clients
Bilinski and Lamblin sold over 80% of the exempt securities. When Bilinski recommended the exempt securities to his clients, he believed they were not risky investments but were investments of significant merit. He believed they were suitable investments for his clients based not on the clients' circumstances or investment objectives, but rather on his perception of the inherent merit of the investment itself and of his ability to control its development. His assessment of risk was based on the belief that he had the ability to eventually make the investment project successful. His fierce loyalty to his clients, which was often returned, contributed to his belief that Canadian Global Investment clients would face minimum risk because of the preferential treatment he planned to give them.

[para 158]

Bilinski was an eternal optimist as far as describing to his clients the future he envisioned for the investment projects. He did not believe clients needed to know about problems in the investment projects because he believed they could be solved. The investment projects were invariably described as how he intended them to perform – or as he said on a "going forward basis". He seldom if ever disclosed to his clients any negative material information about the exempt securities.

[para 159]
While receiving the benefits of the administration fees and sales commissions, Bilinski, Lamblin, Price and Arnot often owned an equity interest in the investment projects indirectly through Canadian Global Financial and participated in management. In some cases they controlled the company invested in as well as being its management. In Bilinski's view, these conflicts of interest were completely resolved by the kind of disclosure he, and Lamblin, made to clients. This involved Bilinski and Lamblin representing to clients that these conflicts of interest were benefits because they allowed them to control and manage the investment projects to the benefit of the clients.

[para 160]
The story of Elizabeth Scholten is an example of how Bilinski dealt with his clients when he sold them the exempt securities. Scholten and her husband had been clients of Canadian Global Investment for several years before Mr. Scholten died in 1994. They initially met Bilinski through his tax seminars and thereafter began investing through him. Scholten said she relied on her husband, who dealt with Bilinski, to make their investment decisions. After he died, she simply relied on Bilinski to make investment decisions for her. "Basically, I left it up to Dan and I trusted him, so I totally trusted him. My husband did, so I didn't have any reason for not trusting his judgment and that's basically it."

[para 161]
At the time, Scholten was in her mid 50's and retired. A year after her husband died, her daughter was killed and Scholten was obliged to raise her three young grandchildren, the oldest of whom was seven. She did so until 1998. From the time of her husband's death, she depended on her investment income to live. With her limited investment experience, she also depended on Bilinski to take care of her investments. Despite these circumstances, her 1996 KYC indicated a net worth of $650,000, investment experience as good, risk tolerance as moderate and investment objectives as tax savings and monthly income. Scholten's obligations to raise her grandchildren were not noted on her KYC form, although Bilinski said he was aware of them. Scholten testified that although she signed the KYC form she believed her investment experience at that time was poor and her risk tolerance was low.

[para 162]
Despite these circumstances, between May 1997 and June 1999, Bilinski sold Scholten over $182,000 in the exempt securities: $20,000 in Columbia Ostrich (VCC) in May 1997; $50,000 in Eagle Court in February 1998; $50,000 in Pacific Bowling in April

1998; $25,000 in Gorlan Trailer in June 1999; and $37,025 in Canadian Global Financial in February 1999. This represented over 25% of her net worth.

[para 163]
Scholten's testimony showed that Bilinski did not explain to her the nature of, and risks associated with, her investments or the documents she was asked to complete and sign. Scholten's Form 20A indicates that she had received an offering memorandum for Canadian Global Financial even though she did not. Bilinski told her that the company had expanded into a number of different businesses and that he was actively involved in all of them. Bilinski did not disclose to her the nature of his conflicts of interests or what this meant to her as an investor.

[para 164]
Despite Bilinski's suggestion in cross examination, Scholten does not recall him telling her that because of his involvement in those businesses he could only give her information on the investments and no advice. In assessing her ability to make her own business decisions on information left with her, she replied to Bilinski that "When you were involved with my husband, he — he knew what he was doing. I didn't know what I was doing. I left it up to you."

[para 165]
Bilinski eventually conceded that Scholten was not able to assess the risks and the merits of the investments based on her own financial and investment experience. However, as the following answer to staff's question indicates, Bilinski considered that the investments he put her in were suitable despite her circumstances and risk tolerance.

> "Q: So you're saying that after her husband died, after her daughter was [killed] and after she had the three children come to live with her, her risk tolerance remained moderate?"
>
> "A: Yes. What we had been doing with Mrs. Scholten all along, she was quite content with, it wasn't until B.C. Securities Commission met with her and pointed out all of these quote risky investments that she had any reason whatsoever to be concerned, and personally, I didn't see the quote risky investments in the same light that other people would see it, because I'm involved in them all the time and I understand them."

[para 166]
Although she could not afford to lose any of her capital, it appears that Scholten lost most of the $182,000 she invested in the exempt securities. Exempt securities she holds continue to be speculative, illiquid and highly risky.

[para 167]
Lamblin's clients

Lamblin said that when he sold the exempt securities he was very careful in presenting them to his clients. He said he understood his clients' investment objectives and financial history and took time to explain to them the risks and advantages of each investment, its structure and rate of return. He said this was the way he made sure the investments were suitable for his clients even though he said he did not believe the suitability rule applied to the sale of exempt securities. The following two investors' stories, which we accept as credible, indicate otherwise. They illustrate Lamblin's understanding of his duties to his clients and how he dealt with them.

[para 168]
Elizabeth Raymond was 65 in 1998 when she began investing with Lamblin. She and her husband, who was 73 at the time, are retired and live off their investment income. She met Lamblin as result of receiving a letter at her home inviting her to a Canadian Global Investment tax seminar. Raymond had no previous dealings with anyone from Canadian Global Investment but decided to attend the seminar, which was led by Bilinski and Lamblin, because it focused on tax saving strategies.

[para 169]
At the time Raymond's investments were managed by another investment advisor. She said most of her investments were in mortgages, mutual funds and blue chips securities, which gave a monthly return upon which she depended. Lamblin convinced her that Canadian Global Investment could obtain better returns on her investments and save income tax as well.

[para 170]
The Raymond's 1998 KYC indicated a net worth of $1,086,169, investment experience as good, investment objectives as growth and tax savings, and risk tolerance as low to moderate. The Raymond's combined income in 1997 was $75,000. Raymond was primarily interested in saving taxes and increasing investment income while keeping risk low to moderate. She said Lamblin spent a considerable amount of time with her and was aware of every aspect of her financial circumstances. He knew she could not afford to lose her investments. Raymond considered Lamblin to be, and she told him on several of occasions that he was, her only investment advisor.

[para 171]
On Lamblin's advice, Raymond moved her investments over to Canadian Global Investment for reinvestment as they matured. Lamblin presented no investment options to Raymond other than the exempt securities. She said that she knew they involved some risk but she believed the risk was low because Lamblin always presented them in such a positive manner. Between June 1998 and August 1999 on Lamblin's advice Raymond invested $907,063, which was over 83% of her net worth, in the exempt securities. These included securities of Eagle Court, Pacific Bowling, Gorlan Trailers, Canadian Global Financial and Private Ventures Investment.

[para 172]

Although she said she did not have a good understanding of the business interests of Canadian Global Financial, Raymond knew that it was the umbrella company of the group. She understood the proceeds it raised from investors were directed to, and ultimately backed up by, various businesses in which Canadian Global Financial held an interest. Lamblin told her that it was a growing company and they were planning to go public. It was a low risk investment as far as he was concerned. Based on these representations Raymond believed it was a good investment. On November 25, 1998 she invested $100,000 in Canadian Global Financial.

[para 173]
Raymond said that when she signed the Canadian Global Financial subscription agreement she indicated that she was a close personal friend of Lamblin's even though she was not. She did this because Lamblin advised her that it was the only way she could invest. As a result, she became one of the Canadian Global Financial's first 48 investors under the private issuer exemption. Raymond subsequently invested a further $121,873 in Canadian Global Financial. Her exempt purchaser form indicated that she had received Canadian Global Financial's offering memorandum when she had not.

[para 174]
When Raymond purchased the exempt securities, she said she acknowledged on the required forms that she was able to evaluate the risks and merits of the securities because of her financial business or investment experience. However, Raymond said she relied on Lamblin's expertise and believed his representations that these investments were good opportunities. She "trusted him" and stated that "I really didn't want to do these business kind of things. I just wanted someone to invest my money for me and look after it."

[para 175]
When Raymond invested $140,000, of which $115,000 was borrowed, in Pacific Bowling on September 15, 1998 Lamblin noted on her file that, "client requires cash flow from day one". Raymond said that Lamblin did not discuss with her the risks associated with borrowing money to invest. Lamblin referred her to two financial institutions but he negotiated the terms on a line of credit, which was secured by a mortgage against her house and against her recreational vehicle. Although Raymond recalls signing the Private Ventures Investment's declaration of trust, she said Lamblin did not take her through it in any detail so she knew into what she was putting her money.

[para 176]
Raymond could not afford to lose any of the capital she invested — over $900,000. As it turned out, she lost most of it. In addition she must repay with interest the $115,000 she borrowed to invest in Pacific Bowling. Any exempt securities she may still hold continue to be speculative, illiquid and highly risky.

[para 177]
Kaarle Kielinen was 50 years old and his wife, Sherry, a few years younger, when they began investing in the exempt securities in 1999. They have two dependent children and

a joint annual income of approximately $80,000. Lamblin determined their combined net worth at $421,654, which included $190,000 of equity in the family home and estimated inheritances of $110,000 the Kielinens might receive upon their parents' death. Both of the Kielinen's parents were still alive and relatively healthy at the time Kaarle testified.

[para 178]
The Kielinens' KYC form indicated investment objectives of monthly income, growth, tax and retirement savings. Lamblin described Sherry's risk tolerance as low to moderate, while he described Kaarle's as high. Lamblin noted on their KYC that Sherry did not want to risk the house and that "her world would collapse if she lost her money". Kaarle's investment experience was noted as moderate.

[para 179]
In September 1999, the Kielinens invested $36,000 in Gorlan Trailers, $40,000 in Pacific Bowling and $40,000 in Canadian Global Financial. On Lamblin's advice they relied on the sophisticated investor exemption and borrowed $116,000 against their house to finance their investments. Lamblin told them that there would be monthly payments coming in to cover the mortgage payments. When they invested in Pacific Bowling, they understood that the building was part of the investment. This was based on Lamblin's statement that if the bowling alley doesn't take off, the Kielinen's would still have money in the building, which could be used for other purposes like warehousing, and their investment would be safe and secure. In fact, their investment was not secured by the property.

[para 180]
The Kielinen's never received an offering memorandum for Gorlan Trailer or Canadian Global Financial. They also did not know about the 20% commission and administration fees although Kaarle said he was aware that Lamblin was receiving some form of commission for his services. They were aware, but not particularly concerned, that Lamblin was involved in the businesses shown on the Canadian Global Financial corporate chart. The Kielinens were not told how the money raised was to be spent, but Lamblin told them that it was a growing company. Although they invested primarily for tax reasons, they took comfort from Lamblin's assurance that all investors would be paid out before any principals.

[para 181]
The Kielinens testified that they could not afford to lose all of the money they invested. Kaarle testified that he told Lamblin several times that he really could not afford to invest in something he was not getting anything back on. Lamblin presented the investments in such a way that he, Kaarle, felt that there was really not a big risk involved "one way or the other. Like I mean if worst case scenario was that I would just get my initial investment back and that was it. I was not once led to believe that I am looking at possibly losing everything." Sherry also understood that there was little risk in losing all of their investment by the positive things that Lamblin said.

[para 182]
It appears that the Kielinens lost most of the money they invested in the exempt securities. Furthermore, they must repay, with interest, the $116,000 they borrowed to purchase the exempt securities. Any securities they may still hold, continue to be speculative, illiquid and highly risky. Dealing with their losses has been very difficult for them. As Kaarle said " I'll tell you how tough it is. I had to borrow money to make those [mortgage] payments. So I'm paying interest on interest…you might say".

[para 183]
Friesen's clients
Friesen sold the exempt securities to approximately 10 clients of Canadian Global Investment. Although Friesen sold a small percentage of the exempt securities compared to Bilinski and Lamblin, the evidence indicates that he followed their example by not assessing suitability and in representing the exempt securities as low risk investments.

[para 184]
Friesen became aware after he joined Canadian Global Investment that investments other than mutual funds were available to clients. Friesen testified that in spite of the lack of training he did his best to service his clients based on information he learned in the mutual funds course and information gained from his colleagues and all the principals in the Canadian Global Financial group of companies. He said Arnot was an invaluable source of administrative and project information. Friesen also relied on the compliance officer, Doug Wilson. With all of this industry and business experience around him, Friesen said that he had no reason to question the information he received about the exempt securities.

[para 185]
Eventually Friesen came to believe that the exempt securities were "excellent opportunities for investors". As far as he was concerned all of the investments were suitable for his clients because of the tax benefits and investment returns. He said he believed that every investment project that Canadian Global participated in, given time and money, would come to fruition.

[para 186]
Friesen stated that borrowing against equity was often used as an investment strategy. He said that when his clients borrowed money to invest, he was careful to point out the risks and how losses can be enhanced. He had each sign a form acknowledging the risks in leveraging. Friesen said Doug Wilson approved all his trades as suitable.

[para 187]
The story of Carla Spry is typical of how Friesen dealt with his clients.

[para 188]
In September 1999, Spry was in her early 50's when she invested $97,000 in Pacific Bowling on Friesen's recommendation. Her KYC form indicated her investment

objectives were growth, tax and retirement savings. She had limited investment experience and her risk tolerance was stated to be moderate. She had an annual income of $37,000 and a net worth of $223,000, which included $160,000 of equity in her home. Using her home as collateral, Spry borrowed $97,000 in order to make this investment. This represented 43% of her net worth.

[para 189]
Nonetheless, Friesen said that Spry's investment was a suitable investment for her at the time. In explaining how he came to conclude this he said: "Well, I considered all our projects suitable investments for one thing".

[para 190]
Friesen said that Canadian Global Investment, which regularly provided the information on the projects, gave no indication when Spry invested in Pacific Bowling "that any of the projects were in jeopardy. There was no reason to believe that she would not receive monthly dividends".

[para 191]
It is not clear whether Spry has lost her entire investment of $97,000 in Pacific Bowling. If she holds securities in Pacific Bowling they continue to be speculative, illiquid and highly risky. She is still must repay, with interest, the $97,000 she borrowed to make the investment. Friesen concedes that she's having a very difficult time.

[para 192]
Barry McGavin was another of Friesen's clients. The circumstances of his investment are mentioned here because, in addition to staff alleging McGavin's investment was unsuitable for him, they alleged Friesen's recommendation to McGavin was made in the face of Commission orders prohibiting the investment.

[para 193]
McGavin became a client of Bilinski's in 1992 when he invested in mutual funds, which he still holds through Canadian Global Investment. In the summer of 1999, Bilinski approached McGavin to invest in Canadian Global Financial. McGavin was unwell and deferred the discussion. Some time later in the summer of 1999, Bilinski sent Friesen to talk to McGavin. After going over the exempt securities, Friesen suggested Pacific Bowling might be the best possibility because it offered the highest rate of return (12%) and was expected to complete soon and open in the fall. Again McGavin deferred making any commitment to invest because he was unwell.

[para 194]
In November 1999, McGavin contacted Canadian Global Investment to say that he was ready to invest in Pacific Bowling. Following Friesen's recommendation, McGavin had taken out a line of credit on his home so he could put $10,000 into an RRSP and $88,000 into Pacific Bowling. By then the Commission had issued its orders.

[para 195]
Edwards testified that he received a call from the front desk at Canadian Global Investment to say that McGavin wanted to invest. He called McGavin and arranged a meeting. At Edwards' request, Arnot provided McGavin's KYC form, which Friesen had completed. It disclosed a net worth of over $500,000 and a low risk tolerance. McGavin was in his 50's when he made the investment and was expecting to retire from teaching in a couple of years.

[para 196]
On December 2, 1999 McGavin met Edwards at the Canadian Global Investment's Surrey office. Before the meeting took place, with Edwards present, McGavin spoke to Bilinski and Friesen about the Pacific Bowling project. Bilinski told McGavin that they were having a dispute with the Pacific Bowling contractor about cost overruns and until that was resolved, Bilinski suggested McGavin invest his $88,000 in Canadian Global Real Estate. Bilinski also told McGavin that Canadian Global Investment was under investigation by the Commission, but he, Bilinski, believed that they had done nothing wrong. Bilinski told McGavin that once the dispute with the contractor was resolved, his investment would be transferred from Canadian Global Real Estate to Pacific Bowling. McGavin agreed. Edwards agreed that the conversation between Bilinski and McGavin was a big factor in McGavin's decision to invest in Canadian Global Real Estate.

[para 197]
Bilinski and Friesen then left the meeting so McGavin could deal with Edwards. McGavin assumed he was the lawyer for the company. Edwards gave McGavin the offering memorandum and the subscription form he had completed. The subscription form indicated that McGavin was purchasing bonds for $88,000 under the private issuer exemption and that he was a close friend of a director or officer. This was inconsistent with McGavin's exempt purchaser Form 20A, which indicated he purchased the bonds under the $400,000 net worth sophisticated investor exemption. Edwards left McGavin's documents and cheque with the Canadian Global office.

[para 198]
The offering memorandum of Canadian Global Real Estate disclosed that a 10% sales commission would be paid to agents who sold the bonds. It also disclosed that an agency agreement had been entered into with Canadian Global Investment. Edwards said he received an 8% sales commission from Canadian Global Financial, which he did not share with anyone. However Friesen testified that because he was in financial difficulties, Edwards "gifted" him a portion of the sales commission. On this point we do not find Edwards' evidence to be credible and prefer the evidence of Friesen.

[para 199]
McGavin was expecting to receive monthly payments that represented a 7% interest return on his investment. He has not received any payments so far and, with the payments he makes on his line of credit, a third of his pay cheque goes to interest. McGavin

testified that "this is killing me financially" and that if he lost this investment it would be "devastating" to his financial health.

[para 200]
No only has McGavin lost his entire $88,000 investment he is also faced with repaying the money he borrowed to make the investment. He has had to defer his early retirement plans.

[para 201]
Gordon-Carmichael's clients
Gordon-Carmichael sold the exempt securities to six clients of Canadian Global Investment. In selling these securities, Gordon-Carmichael understood and approached the issue of suitability differently than Bilinski, Lamblin and Friesen. This was so despite his concession that he, like the other sales representatives, believed Bilinski when he told them that they could sell exempt securities to their clients as long as they did not advise clients in the process.

[para 202]
Following Bilinski's direction, Gordon-Carmichael said he instructed his clients to make their own decision about whether to invest in the exempt securities once he gave the information to them. Gordon-Carmichael said he tried to do this but believed it created an artificial and unrealistic situation. He knew his clients relied on his credentials and extensive experience in the industry when they considered investing in the exempt securities.

[para 203]
As a result, Gordon-Carmichael resorted to the practices he had established over the many years that he was selling mutual funds. Before recommending any investments, he conducted his own independent due diligence on the securities and the issuers, became familiar with the offering memorandum, pointed out the risks of the investment to his clients and understood his clients' current financial circumstances and investment objectives. When clients borrowed money to invest, Gordon-Carmichael provided them with a written document disclosing the risks of borrowing money to invest.

[para 204]
Gordon-Carmichael testified extensively about his knowledge of the mutual fund industry and the financial markets generally. He referred to many of the economic factors or trends that he, and other market observers, believed were relevant at the time. Gordon-Carmichael said he talked to his clients about these factors and took them into account when considering whether to put his clients into mutual funds or the exempt securities.

[para 205]
Gordon-Carmichael believed that as a sales representative, he was entitled to rely on Bilinski, Price and the other officers and directors for information about the investment projects. Gordon-Carmichael also relied on Canadian Global Financial's representations,

which he passed on to clients, that its investment projects were backed by $15 to $20 million in assets and that investors would take priority if any of the projects were to fail. Furthermore, Gordon-Carmichael said that neither Bilinski nor Doug Wilson told him that the exempt securities his clients purchased were unsuitable.

[para 206]
Gordon-Carmichael said that he went a step further and did his own investigation and checked out each of the projects, to ensure he understood and communicated the risks and advantages of investing in the exempt securities.

[para 207]
For example, Gordon-Carmichael said he conducted substantial independent due diligence on the Pacific Bowling project, which led him to believe it involved substantially less risk than any of the other exempt securities. Despite some accounted for delays and increased costs, there was nothing at the time he recommended the investment to his clients that suggested it was not going to develop as indicated in an independent consultant's report. It had proper management in place, it had the right location, it had the right facilities, and its bowling lanes already had been substantially booked.

[para 208]
Based on all these reasons, he said he did not consider Pacific Bowling to be a high-risk investment and he recommended it to some of his clients, including the Kreiszs, Arlyss Peters and the Strileskys.

[para 209]
Their circumstances are described below.

[para 210]
Arlyss Peters was 57 years old in 1999, married and with an annual income of $44,000. Peters had a heart problem and he wanted to retire within five years. He hoped to find an investment that would substantially increase his retirement savings and provide a monthly income until he retired. The Peters' net worth was $177,000, which included $75,000 of equity in their home in Revelstoke, British Columbia. Peters risk tolerance was described as low to moderate and his investment experience as moderate.

[para 211]
After meeting Gordon-Carmichael in April 1999, Peters pressed Gordon-Carmichael to help him with his investments. Gordon-Carmichael was very concerned about getting the right investment for Peters because of his peculiar circumstances. Gordon-Carmichael approached Doug Wilson in compliance for advice. Wilson told Gordon-Carmichael that the Pacific Bowling investment was suitable for Peters.

[para 212]
Still nervous about placing Peters in the right investment, Gordon-Carmichael said he personally checked construction at the Pacific Bowling site before visiting Peters in July

1999. By then the lanes were already 68% booked and it was within months of opening. Gordon-Carmichael was reassured that the risk for Peters had substantially diminished.

[para 213]
However, by the time Gordon-Carmichael visited Peters he had not yet received the offering memorandum, which Gordon-Carmichael had instructed be sent. Gordon-Carmichael refrained from taking any money from Peters although he had Peters sign the necessary forms for the purchase on July 19,1999.

[para 214]
Gordon-Carmichael said that he presented all of the information he had about the Pacific Bowling investment to Peters, taking care to explain the risks and advantages. This included Price's representation that there was a fund, similar to an interest reserve, set aside to pay investors their monthly returns until the centre was operational and returning a cash flow. Gordon-Carmichael understood Peters was well educated and able to assess the information. He purposely left Peters to decide on his own whether to invest in Pacific Bowling indicating he would send up the offering memorandum.

[para 215]
When Gordon-Carmichael returned to his office, only Pacific Bowling's previous offering memorandum was available. He told Peters that as soon as he received the current version he would send it to him, in the meantime Gordon-Carmichael sent Peters a copy of the old version of the offering memorandum as well as a summary of how Peters investment would work for him.

[para 216]
Subsequent conversations led Gordon-Carmichael to understand that on Peters' next visit to Vancouver, he would call Gordon-Carmichael, pick up the correct offering memorandum and give him a cheque. When Peters came to Vancouver on August 31, 1999, he did not call Gordon-Carmichael but went directly to the Canadian Global Investment office in Abbotsford and left a cheque for $100,000, which he had borrowed on Gordon-Carmichael's recommendation against his home. This was nearly 60% of his net worth. When Gordon-Carmichael became aware of this several days later, he sent a copy of Pacific Bowling's new offering memorandum to Peters.

[para 217]
Gordon-Carmichael believed the increased risk in borrowing money to invest was diminished for Peters because of the stage of development of Pacific Bowling and because there were sufficient assets in the Canadian Global Financial group to back the guarantee. He believed that by borrowing money against the equity in the Peters' property, the Peters could work at maximizing their return, keeping in mind their investment objectives and risks associated with the investment.

[para 218]

Peters testified that when he did get the offering memorandum he believed that some of the information in it did not correspond to the information Gordon-Carmichael gave to him. Peters was also disturbed to learn upon reading the offering memorandum that 20% of the offering went to fees for administration and commission.

[para 219]
At the time of investing, Peters understood that there were some delays and increased costs but the centre was expected to open sometime in November 1999. Peters said he believed Gordon-Carmichael's representation that a lot of the risk in the Pacific Bowling investment had been eliminated because of its stage of development. He also relied on Gordon-Carmichael's statement that if the Peters really needed to get their money back, Canadian Global Financial would do whatever was necessary to make that happen.

[para 220]
Peters testified that he simply was in no position to lose his $100,000 investment. If he still holds securities in Pacific Bowling they continue to be speculative, illiquid and highly risky. In addition, he must repay, with interest, the $100,000 he borrowed against his family home to make the investment.

[para 221]
The Kreiszs were a young couple with three, and soon to be four, young children. After meeting Gordon-Carmichael the year before, Kreisz approached Gordon-Carmichael in the summer of 1999 to help him with some tax planning and investment strategies to pay for the education of his children. The Kreiszs' KYC form indicated an annual income of $48,000, a net worth of $283,000, which included $200,000 of equity in the family home, a moderate risk tolerance, moderate investment experience and investment objectives of monthly income, growth, tax savings and retirement savings.

[para 222]
First Gordon-Carmichael arranged for Kreisz to get life insurance followed by education funds for the children. The life insurance was obtained through James Edwards at Canadian Global Insurance. Then Gordon-Carmichael and Kreisz talked about other investment options, including Pacific Bowling.

[para 223]
Kreisz visited the Pacific Bowling centre several times. He became very keen to invest and called Gordon-Carmichael. Because they needed to use the equity in their home to invest, the Kreiszs, at Gordon-Carmichael's suggestion, borrowed $121,500 against the family home. Kreisz understood that he needed to invest at least $97,000 in order to qualify for Pacific Bowling and get the accompanying tax savings. However by the time his loan was approved the Commission had issued its orders. Gordon-Carmichael told Kreisz that he couldn't invest because of the Commission orders and because Pacific Bowling needed to fix certain building problems and issue a new offering memorandum.

[para 224]

Kreisz, who was concerned about paying interest on the loan, pressed Gordon-Carmichael to place his investment. After several calls Gordon-Carmichael relented and told Kreisz that while he personally could not put Kreisz into Pacific Bowling, he would find out if Kreisz could invest some other way.

[para 225]
Gordon-Carmichael took Kreiszs' KYC form to Doug Wilson on November 10, 1999 and asked him if the Kreiszs' could legally invest in Pacific Bowling in light of the Commission orders. Gordon-Carmichael testified that Wilson said he could not do anything considering the restrictions, but that Bilinski might be able to assist. Nonetheless, Wilson, as compliance officer, signed off on the KYC form.

[para 226]
Gordon-Carmichael approached Bilinski with the Kreiszs' KYC form to see if anything could be done in light of the Commission's orders. Bilinski spoke to Edwards, who agreed to meet with the Kreiszs' to facilitate their investment. Kreisz was comfortable in dealing with Edwards, as he had already arranged his insurance.

[para 227]
In the meantime, Gordon-Carmichael suggested to Kreisz that he consider investing in Canadian Global Real Estate. When the problems with Pacific Bowling's offering memorandum were fixed, Kreisz could transfer his investment from Canadian Global Real Estate to Pacific Bowling. Kreisz said that Gordon-Carmichael assured him that if he still wanted to invest in Pacific Bowling then he, Gordon-Carmichael, had a personal guarantee from Bilinski that he would transfer Pacific Bowling shares from Canadian Global Financial's holdings and exchange them for Kreisz' real estate bonds.

[para 228]
Edwards said that before he met Kreisz in early December 1999, Bilinski assured Edwards that it was possible to put Kreisz into Canadian Global Real Estate and later transfer his investment to Pacific Bowling. By the time Kreisz saw Edwards, Kreisz knew that he could not invest in Pacific Bowling even though that was his preference.

[para 229]
On December 1, 1999, Edwards met Kreisz and provided him with the Canadian Global Real Estate offering memorandum. After reading it, Kreisz invested $120,000 in Canadian Global Real Estate bonds. This was over 42% of his net worth — a net worth that was largely comprised of the equity in the family home. He believed that his investment was just for "a carry-over period" and was reassured that there was land value in the company and that Canadian Global Financial was standing behind all its projects. Edwards forwarded the cheque and transaction documents to Arnot. When Kreisz did not receive the bonds or any monthly payments he called Edwards. Edwards did not return his calls so Kreisz pursued Gordon-Carmichael. Gordon-Carmichael told him that the bonds could not be issued because of the Commission's proceedings.

[para 230]
Kreisz was very concerned about not having any bonds or other document securing his investment. Again he pressed Gordon-Carmichael to help him. Eventually Lamblin and Bilinski, for Canadian Global Real Estate and Canadian Global Financial, sent Kreisz a letter dated June 12, 2000 and entitled "Pledge Letter & Assignment of a Security". In it Canadian Global Financial acknowledged the Kreiszs' investment of $120,000 in Canadian Global Real Estate and pledged 120 Canadian Global Real Estate mortgage bonds to the Kreiszs. It also stated that the document will "serve as a security" until the bonds are issued and will be forwarded to the company's lawyer who has agreed to act as trustee. The Kreiszs have not received any bonds or interest nor has their money been returned.

[para 231]
Although Canadian Global Investment had the Kreiszs' KYC form on file there was no record of this transaction in the books of Canadian Global Investment. Although Edwards denied that he shared his 8% sales commission, he clearly did.

[para 232]
Gordon-Carmichael testified that, around Christmas time, Edwards gave him $9,000. Although nothing was said about receiving a commission, Gordon-Carmichael expected to receive something for setting up the financing and because initially Kreisz was his client. However, he was surprised to receive $9,000. When he asked Edwards why it was so much Edwards said that it was not commission but a gift from him as a pastor. Edwards said that he was aware that Gordon-Carmichael was having some financial problems at the time and because it was near Christmas, Edwards wanted to help him out. Gordon-Carmichael had never received money from Edwards in any other circumstance and Gordon-Carmichael considered the $9,000 to be commission for the sale. Gordon-Carmichael agreed that the sale was placed through Edwards because of the Commission's orders.

[para 233]
Doug Wilson recalls the events differently. He testified that on November 10, 1999 Gordon-Carmichael brought the Kreiszs' proposed investment in Pacific Bowling to him for review in his capacity as compliance officer. He said he told Gordon-Carmichael that he considered the Kreiszs' investment in Pacific Bowling to be absolutely unsuitable and it was not to be done. Wilson said it entered his mind at the time as a concern that one way to get around the Commission orders in place was merely to go to someone who wasn't registered and have them act on your behalf. Wilson testified that he immediately went to Edwards, who was in the next office selling insurance, and cautioned him about doing such a trade even though he was not a registrant. Edwards testified that Wilson did not speak to him at any time about the Kreiszs' investment.

[para 234]
Wilson agreed that he did not tell Gordon-Carmichael or Edwards that the Kreisz investment in Canadian Global Real Estate was unsuitable. However, Wilson said he

fired Gordon-Carmichael when he subsequently became aware that Gordon-Carmichael had facilitated the Kreisz's investment in Canadian Global Real Estate.

[para 235]
Gordon-Carmichael strongly disputes Doug Wilson's testimony that Wilson told him that the Kreisz investment was unsuitable. Gordon-Carmichael was emphatic in stating that many of the statements Wilson made about him were simply not true. He said they were motivated because Wilson was unhappy that Bilinski and Lamblin were transferring their accounts to Gordon-Carmichael when Wilson took over managing Canadian Global Investment in late November 1999. Gordon-Carmichael expected to receive an annual income of approximately $75,000 to $100,000 from these clients. This made Wilson angry and he fired Gordon-Carmichael and several others, including Arnot.

[para 236]
Although it does not address the substantive issue of suitability, we found Gordon-Carmichael's testimony to have the ring of truth as to how the Kreisz transaction unfolded. We note that Wilson signed off the Kreiszs' KYC form on November 10, 1999, the day he purportedly told Gordon-Carmichael in no uncertain terms that the investment in Pacific Bowling was unsuitable because of the Kreiszs' financial and family circumstances. There is no notation on the KYC to this effect. Nor is there any notation about the $120,000 loan the Kreiszs had to take out to make to invest in the exempt securities. In keeping with what was happening at the time, it seemed more plausible that Wilson would have referred Gordon-Carmichael over to Bilinski to see if anything lawfully could be done for Kreisz in light of the Commission orders. It appeared to us that Wilson's testimony was coloured by his animosity towards Gordon-Carmichael. As a consequence, where Gordon-Carmichael's version of events differs from that of Doug Wilson's, we preferred the evidence of Gordon-Carmichael.

[para 237]
However at the end of the day, the Kreiszs still lost their entire investment of $120,000, which was over 42% of their net worth — a net worth largely comprised of the equity in the family home. In addition they are faced with repaying the $120,000 they borrowed to make the investment — all on an annual income of less than $50,000, which must also support a family of six.

[para 238]
Gordon-Carmichael met the Strileskys in 1999, when they were in the process of liquidating their mutual fund portfolio because they were concerned about market volatility expected at the turn of the millennium. Their KYC indicated they were a retired couple in their 60's, with a net worth of $460,000, ($200,000 of which was the equity in their home) limited investment experience and low to moderate risk tolerance. Their investment objective was to have a monthly income.

[para 239]

They asked Gordon-Carmichael what he had to offer besides mutual funds. Gordon-Carmichael said he gave them the Pacific Bowling offering memorandum right away. At the time Gordon-Carmichael went through the risks identified in the offering memorandum and left them with all the information he had about the investment. Then the Strileskys viewed the centre several times to assess its development. After that they called Gordon-Carmichael several times to see if they could invest. Gordon-Carmichael believed they were capable of assessing what he told them and they made their own decision to invest.

[para 240]
The Strileskys invested $200,000 in Pacific Bowling mortgage units in July and August 1999. This represented over 43% of their net worth. Nonetheless Gordon-Carmichael remained firmly of the view that Pacific Bowling was a suitable investment for the Strileskys when they invested in it. Doug Wilson, as trading director, signed off on the Strileskys' transaction. We do not know the status of the Strileskys' investment. If they continue to hold securities in the Pacific Bowling project, their investment is still speculative, illiquid and highly risky.

[para 241]
The operations of Canadian Global Investment as a registrant
This section describes the operations of Canadian Global Investment as a mutual fund dealer from November 7, 1997 forward, which is the relevant period for considering the allegations in the notice of hearing. During this time, Bilinski, Lamblin, Arnot and Doug Wilson were directors of Canadian Global Investment. Canadian Global Investment was a wholly owned subsidiary of Canadian Global Financial.

[para 242]
On November 7, 1997, Canadian Global Investment and Bilinski signed a settlement and agreed statement of facts with staff. In it, Bilinski and Canadian Global Investment admitted Canadian Global Investment failed to maintain a complete and accurate record of its business transactions and financial affairs and failed to properly supervise transactions made by representatives on behalf of clients. The statement of facts was based primarily on the findings of staff in a routine audit of Canadian Global Investment's business in June 1997.

[para 243]
From 1996 until November 19, 1999, Bilinski was Canadian Global Investment's registered trading director. After Bilinski tendered his resignation as trading director on November 19, 1999, he said he did not perform any of the duties relating to his compliance and trading director functions. Staff accepted the surrender of Bilinski's registration on May 5, 2000.

[para 244]
On May 12, 1999 Doug Wilson became registered as a trading director and compliance officer. After November 19, 1999, Wilson performed all of the compliance functions. On

September 1, 2000, Wilson signed a settlement and agreed statement of facts. In it Wilson admitted, among other things, that he failed to ensure that Canadian Global Investment established and applied proper compliance and supervision procedures.

[para 245]
In September 1999 staff began another audit of Canadian Global Investment. On January 7, 2000, Wendy Sullivan, the Chief Examiner of the Registration Division of the Commission prepared a report for the Commission further to her appointment under section 153 of the *Act*. The information in the report came primarily from staff's audit of September 1999.

[para 246]
It confirmed that although Canadian Global Investment was registered as a mutual fund dealer, the sale of exempt securities accounted for 92% of it's gross revenues in 1999. The average commission payable to Canadian Global Investment for the sale of exempt securities was 10% compared to the usual sales commission on mutual funds of 4%-8%.

[para 247]
Sullivan testified that Canadian Global Investment had been put on notice after the 1997 audit that all sales, including sales of exempt securities, had to appear on the books and records of the registrant and be subject to a suitability review by the registrant's compliance officer.

[para 248]
Sullivan also testified that the audit indicated that Canadian Global Investment:

1. did not establish and apply proper compliance and supervision procedures.

2. failed to ensure that its compliance officers supervised transactions to ensure that representatives knew their clients and that the investments they sold to them were suitable.

3. did not establish and apply written prudent business procedures for dealing with clients. Although a manual had been prepared there were no written procedures established for the sale of exempt securities. The 1997 audit put Canadian Global Investment on notice that a procedures manual was a crucial element of internal control in a decentralized environment.

4. did not maintain a complete and accurate set of records at its chief place of business, in particular:

    (a) the blotter did not provide sufficient detail to perform a suitability review;

    (b) the blotter did not distinguish between sales and purchases;

(c) the blotter did not contain information that would enable ready detection of large dollar value transfers between funds;

(d) the sales of Canadian Global Financial and Envirosonics (actually Private Ventures Investment securities) were recorded on a separate exempt securities spreadsheet, which according to Bilinski, inaccurately included sales of Envirosonics securities.

5. repaid subordinated debt without obtaining prior written permission from the Commission contrary to section 5 of the standard subordination agreement it had filed with the Commission.

6. failed to notify the Commission, contrary to section 72(2) of the Act, that it had appointed a new audit firm to act as auditors for the year ended May 31, 1999.

[para 249]
Sullivan testified that the audit also revealed that Bilinski and Doug Wilson, as Canadian Global Investment's trading directors and compliance officers:

1. did not review the blotter on a daily basis;

2. did not approve all new client account opening documentation, including client KYC forms;

3. did not perform suitability reviews of the exempt securities transactions; and

4. allowed unsuitable investments to proceed.

[para 250]
Arnot did not conduct any compliance functions but determined with Bilinski and Wilson what procedures should be in place to ensure the proper functioning of the dealer. She said she ran the back office and took responsibility for ensuring the paper flowed appropriately. She said she made sure representatives provided the dealer with their documents and that regular meetings were organized to update representatives on various compliance issues and the investment projects being offered through Canadian Global Investment. At the time of staff's audit, Canadian Global Investment was implementing a comprehensive upgrade for the computer systems to help meet its compliance responsibilities. Arnot said she and her support staff were very dedicated and committed to complying with the legislation and staff's demands. She did her very best to ensure that Canadian Global Investment kept complete records at head its office and that it was timely in all its regulatory filings.

[para 251]
Despite Arnot's efforts, Lamblin and Bilinski confirmed to Sullivan that they and many other representatives had multi-page KYC forms and other documents in their personal

files disclosing significant information about their clients' financial circumstances and investment objectives. This additional information was not kept in the dealer's head office. Bilinski and Lamblin, who later brought in many of these extra documents to Sullivan, acknowledged that often only one page of the KYC form was available for a compliance review.

[para 252]
Arnot testified that the exempt securities transactions were maintained on a separate blotter or spreadsheet, according to Sullivan's earlier request. Apart from the occasional errors that occur in any system, Arnot said the records were well maintained and complete. Arnot said she was aware that Canadian Global Investment's procedures manual needed to be completed so that it was clear to representatives what procedures needed to be followed. Consultants were retained to develop the policy and procedures manual, but the manual had not been completed and the section dealing with the exempt market was empty.

[para 253]
Doug Wilson said he reviewed the daily mutual funds blotter on a frequent, but not daily, basis. Occasionally he conducted random checks and often he approved trades after the trade had completed. Doug Wilson and Bilinski testified that they reviewed the exempt securities transactions only to ensure that the sale qualified for the appropriate exemption and not for suitability generally.

[para 254]
Doug Wilson testified that the Canadian Global Financial transactions were not recorded on the blotter but rather in a 'suspense file'. This was because the trades could not formally close without the offering memorandum being completed and delivered to investors. In addition, the Private Ventures Investment promissory notes were not recorded on the exempt market blotter. However the Envirosonics sales were. Bilinski said this was a mistake as there were no sales of Envirosonics securities and no commissions were paid on these transactions. However, Envirosonics' financial statements for the year ended October 31, 1999 show an expense of $198,436 in commissions to Canadian Global Investment.

[para 255]
Bilinski, Lamblin and Doug Wilson said that they were not aware until the Commission's orders in the fall of 1999 that they were required to apply the suitability rule to exempt securities. However, in the summers of 1996 and 1997, after examinations of Canadian Global Investment's operations, staff wrote to Canadian Global Investment describing their findings and concerns. In letters dated July 26, 1996 and August 6, 1997, staff told Canadian Global Investment that it was obliged to set up proper systems and procedures to enable it to supervise its exempt securities transactions and to ensure compliance with its 'know your client' and 'suitability of investment' obligations.

[para 256]

Despite this warning, Bilinski and Lamblin said they understood that they could not provide any advice to their clients, including advice about suitability, unless they were registered to do so. Because they were not registered as advisers they told the sales representatives that they could not advise clients about the exempt securities but could only provide information leaving the decision to invest solely with the client. However, they conceded that for many of their clients they presented the information about the exempt securities in such a way that the clients, as they testified, construed it as a recommendation to invest in the exempt securities.

[para 257]
Following the resignation of Bilinski, Lamblin and Arnot as directors, in November 1999, a group of Canadian Global Investment sales representatives and others began negotiations to acquire the business of Canadian Global Investment. According to Bilinski the sale did not proceed because the purchasers did not meet certain terms and conditions. At the commencement of the hearing there still was a dispute over whether there was a legally binding agreement for sale of the business. Canadian Global Investment's registration as a mutual fund dealer was not active at the conclusion of the hearing. It appears its clients have been transferred to another mutual fund dealer.

[para 258]
The Global Canadian Financial website
On December 19, 2000, staff amended the notice of hearing to allege that Bilinski and Lamblin contravened outstanding Commission orders by commissioning an Internet website for the Global Canadian Financial Group of Companies in February 2000.

[para 259]
Bilinski testified that he commissioned the website in February of 2000 at a time when he was restricted from trading and in the process of negotiating a settlement with staff. He said the information from the old web site of Canadian Global Investment was simply copied to the new website and renamed Global Canadian Financial. Bilinski said his intention was to only use this site on a going forward basis once the proceedings were resolved. When there was no settlement, Bilinski testified that he had forgotten about the site. Bilinski said that the website was not complete and not used by anyone at Canadian Global Financial to solicit business. Among other things, the website held out that Global Canadian Investment Corporation was a mutual fund dealer.

[para 260]
When the new website was brought to his attention by staff on December 15, 2000, Bilinski said that he immediately deleted its content. Although Bilinski was aware an individual had been commissioned to create the website for them, he had no idea that it was up and running until it was brought to his attention by staff. As far as Bilinski was concerned these allegations are completely unfounded and are, he says, indicative of staff's bias and blind determination to put him and Canadian Global Financial out of business.

[para 261]
The contents of the website were copied virtually verbatim from the Internet website of the Canadian Global Financial Group. The business address for Global Canadian Financial Group provided on the website was the same address of Canadian Global Financial Group and Canadian Global Investment.

[para 262]
The contact persons listed in the website were Bilinski, Lamblin, and Jason Bilinski. None of Global Canadian Financial Group, Global Canadian Investment Corporation and Jason Bilinski is registered under the *Act* to trade or advise in securities.

[para 263]
The testimony of the respondents
This section contains the testimony from, and about, the respondents that has not been referred to elsewhere.

[para 264]
Dan Bilinski
Bilinski is the founder and directing mind of the Canadian Global Financial group of companies. He characterized himself as the person with the "vision." Those he dealt with, including the other respondents and most investors, also saw him as the driving force behind Canadian Global Financial group of companies. He was a principal shareholder, officer and director of Canadian Global Financial, Canadian Global Investment, the other subsidiaries and several of the related companies.

[para 265]
Bilinski testified that he is 46 years old, married with two grown children and two grandchildren. He has been involved in the investment and insurance industry for approximately 13 years, of which the last eight involved the sale of exempt securities. Prior to that he was a Senior Deputy Sheriff with the British Columbia Court Services for 10 years. Bilinski said that throughout his work and business history he demonstrated an exemplary character and work ethic.

[para 266]
By all accounts Bilinski participates actively in his church and local community. Several witnesses, some of whom were investors, testified that they believed Bilinski to be trustworthy, honest, and a man of his word. They characterized him as someone who genuinely cared about, and acted to improve, the well being of others, particularly those in need.

[para 267]
He agreed that he was the man with the vision who was principally responsible for leading and developing the business of the Canadian Global Financial group of companies. He agreed that he made the final decision as to how funds raised were allocated to the investment projects.

[para 268]
Bilinski said his guiding philosophy was that that if you put investors first and took care of them, they would take care of you. He said he tried to incorporate this principle into the business. He said it was what made the Canadian Global Financial group unique and attractive to investors.

[para 269]
He said that despite staff's attempt to characterize him as a renegade, the testimonies from witnesses demonstrate otherwise. Many of those who invested with him in the Canadian Global Financial group of companies believe he had their best interests at heart. Many of them continue to stand behind him, Lamblin and Arnot, and believe the financial troubles the investors and the Canadian Global Financial group of companies now face are due to the unwarranted intervention of the Commission.

[para 270]
Bilinski testified that these proceedings have devastated him and the Canadian Global Financial group of companies' investments. He said he told clients that he would do everything in his power to protect their interests over his own. At the same time he believes that the effect on him of shutting down these businesses has been ignored. He said he has not had any income since the beginning of this year. His house is being foreclosed and his two vehicles had to be returned because he couldn't make the payments. He said "I'm in the same boat that our investors have been placed in" because everything that he has is in the business or in these projects, including his RRSPs. He believes and continues to tell investors that the Commission was not fair in their approach to the respondents and that the greatest risk for investors was the action of the Commission.

[para 271]
He conceded that mistakes were made along the way but he said he was prepared to acknowledge those mistakes. He believes it was unfair for the Commission not to allow him and his partners to protect the interests of the investors by going forward with the right compliance people. He believes that everything that he "had to say thus far has been used against him rather than trying to rectify this".

[para 272]
Robert Lamblin
Lamblin was registered as a mutual fund salesperson with Canadian Global Investment from 1996 until May 5, 2000 when the Executive Director accepted his surrender of registration. He has been Bilinski's partner and a principal shareholder and director of Canadian Global Financial and a number of its related companies for the past six years. Although Lamblin was Bilinski's principal partner, he focused on sales and left the strategic decision making for the business up to Bilinski. Lamblin confirmed that although he was a director and officer of many of the companies, including Canadian Global Investment and Canadian Global Financial, he deferred to Bilinski on managerial

issues. He saw his strength and primary role to be in sales. He sold the largest percentage of the exempt securities.

[para 273]
Lamblin testified that he is 56 years old and married with five children and five grandchildren. Prior to entering into the financial services industry, Lamblin was involved in the carpet industry for 27 years, operating his own carpet business for 10 of those years. Lamblin has been extensively involved with the Full Gospel Businessmen's Fellowship over the past 17 years. He said that his career and layman's ministry participation has earned him a reputation of being a man of strong character and integrity, and one who is honourable and trustworthy.

[para 274]
As with Bilinski, several witnesses testified that they believed Lamblin was a man of integrity – one who is honourable, trustworthy and generous in helping others in all aspects of their lives.

[para 275]
Lamblin said he and his family had a large financial stake in the Canadian Global Financial group of companies, much of which has been lost. His personal and family assets have been severely depleted and what remains is still at risk of being lost because of these proceedings. Despite his personal losses he believes, as he has always done, that the investors should come first and he will work hard to help recoup their losses. He said these proceedings have caused him considerable emotional and financial stress.

[para 276]
Lindy Arnot
Arnot was an officer, director and principal shareholder of Canadian Global Financial, Private Ventures Investment and Canadian Global Investment, where she was registered as a mutual fund salesperson from February 26th, 1997 to July 25, 2000, when her registration lapsed. She resigned as a director of Canadian Global Investment shortly after Bilinski's and Lamblin's resignations in November 1999. Her principal role was as the vice president of administration and as office manager for Canadian Global Investment and Canadian Global Financial. She did not sell mutual funds or any of the exempt securities.

[para 277]
Arnot is married and has four children. She has spent nine years working in the financial services industry as an administrative assistant and office administrator.

[para 278]
By all accounts she has been an active participant and volunteer in her local church and community. Witnesses who testified about Arnot's character, without exception, described her as a self-effacing, kind, and even-tempered person who always tried to do the right thing. Her conduct over the years demonstrated to those she came in contact

with was that she went out of her way to solve problems for the benefit of others and that she truly cared about improving the lot of the less fortunate.

[para 279]
As an officer and director of Canadian Global Investment, Canadian Global Financial, and Private Ventures Investment, she said she tried to keep informed and act with integrity based on her understanding of the information at the time. She tried to set up systems for Canadian Global Investment so that it would operate within the rules. She did not see herself as a nominee director. She said she had no reason not to rely on statements made to her by Price and Don Wilson and on advice she understood came from Koffman Kalef.

[para 280]
She said that it is contrary to her nature to disregard policies or procedures that she is expected to follow. She said she was very eager and worked diligently at all times to comply with the requests of Commission staff. She communicated with the Commission's registration department to provide information required and also encouraged her staff to do the same to ensure that procedures were followed.

[para 281]
Although she did not have any support staff or operating computer systems after the business collapsed, Arnot said she has been looking after client accounts as her registration permitted. She and the other principals have worked willingly doing this without any remuneration or time off since these proceedings started. She said she cares greatly for the investors, many of whom are friends. She is very upset for them at the losses they incurred. She and her family have suffered a great deal of duress, financial and emotional because of these proceedings.

[para 282]
Arnot said that she that is a responsible citizen and has spent most of her adult life giving back to society. She would like to continue to help the investors by being a part of the solution that recreates value lost.

[para 283]
George Price
Price was a director of Private Ventures Capital, Private Ventures Investment, Envirosonics, Pacific Bowling, Eagle Court, Gorlan Trailer, and Columbia Ostrich Farm. Price was never registered under the Act.

[para 284]
Price said that his primary responsibility was to make sure that Private Ventures Capital fulfilled its due diligence functions properly. This meant identifying the risks of the investment projects and preparing economic evaluations on them. Price also supervised the spending of capital raised for specific projects once they had been approved for investment. He believed that it was his responsibility to communicate information about

the projects to Bilinski, but not to investors directly. He did provide information on the projects to Canadian Global Investment sales representatives.

[para 285]
In 1998 and 1999, Private Ventures Capital held out that Price was an experienced auditor, business educator, entrepreneur and business leader. A company brochure said he was a specialist in providing investment due diligence and project management. Price is a certified general accountant and at one time had been qualified as a chartered accountant but he let his designation lapse. He said he was not involved in any of the accounting functions of any of the companies or of Canadian Global Investment.

[para 286]
Despite being president of Private Ventures Capital, Price said that Bilinski did not give him the authority to effectively carry out that role. When Price raised problems, he said that he had no authority to correct them. The final decision always rested with Bilinski. Price said he did nothing without Bilinski's approval. Price disagreed with Bilinski's suggestion that the problems they were having with the projects existed because Price was not properly managing the investment projects. Information about the use of funds supplied by the Canadian Global Financial group simply was not forthcoming, particularly from the Pacific Bowling and Eagle Court projects. Many concerns Price raised were often not acted upon.

[para 287]
Price described Bilinski as "a people person and he likes to help them. He finds it very hard to say no to people or to be criticized". Price said his biggest problem with Bilinski's management style was that Bilinski had difficulty relinquishing authority to act after he had given someone responsibility to do the job.

[para 288]
Price said that his relationship with Bilinski became complicated and strained when Price had a car accident in November 1997. Price acknowledged that the accident changed his personality, interfered with his relationship with Bilinski and impaired his ability to recollect certain of the events. He conceded that after his accident, he was difficult to get along with. However, he said some of his frustration arose because Bilinski did not act upon his concerns. Price believed their relationship deteriorated more after he raised the conflicts of interest issue on the Columbia Ostrich (VCC) project.

[para 289]
Price's role also changed when Bilinski wanted to market the Canadian Global Financial group of investments to other financial agencies. This was when Don Wilson was hired to help Price prepare marketing materials and to organize all the due diligence information that had been collected on the projects.

[para 290]

Price said that he became less and less involved in Private Ventures Capital and the due diligence function. He was no longer perceived as part of the inner circle and, as a result, it was harder for him to obtain information. By the fall of 1999 the Canadian Global Financial group had taken over Private Ventures Capital and Price was no longer getting paid. Price was, when he testified, working with a humanitarian agency in Europe. He still hopes to recoup the Private Ventures Investment promissory note holders' money by selling the Envirosonics technology.

[para 291]
Donald Gordon-Carmichael
Gordon-Carmichael had been registered with Canadian Global Investment from 1997 to June 22, 2000, when his registration lapsed. Except for a period from 1994 to 1997, Gordon-Carmichael has been a mutual fund salesperson since 1958.

[para 292]
Gordon-Carmichael testified that he has been unemployed ever since Doug Wilson fired him following the Commission's intervention. The fact that he has been unemployed since then has been financially and emotionally very hard on him and his family.

[para 293]
He believed the degree to which the Commission intervened in the business of the Canadian Global Financial group, in particular Pacific Bowling, has been excessive. Indeed Gordon-Carmichael was firm in his belief that but for the Commission's intervention, Pacific Bowling would have proved to be a solid, safe investment. He found the whole process to be unwarranted and very stressful.

[para 294]
Leonard Friesen
Friesen was registered as a mutual fund salesperson with Canadian Global Investment for two years from April 24, 1998 to April 23, 2000, when his registration lapsed. Friesen had been in the dairy business for 24 years before joining Canadian Global Investment in 1998.

[para 295]
As far as Friesen was concerned, all of the exempt investments were suitable for his clients because of the tax benefits and investment returns. Indeed, he believed in these investment projects so much that, as he said, he was one of his own best customers with a total investment of $105,000.

[para 296]
Friesen experienced a major business and financial set back when the Canadian Global Investment representatives were restricted in selling exempt securities. What he had planned to be a long and successful career in the financial services industry ended prematurely. However, it was his choice not to renew his registration because, at that point, he said he had not had any income for many months and he had to find other

means to support his family. Because of the dire financial circumstances that he found himself in, his wife had to return to work. It has been a struggle for them to maintain their good credit rating.

Findings and Analysis

[para 297]
Was there an abuse of process?
Before proceeding with the issues related to the allegations in the notice of hearing, it is appropriate to deal with the respondents' argument concerning abuse of process.

[para 298]
The individual respondents made a series of arguments described as abuse of process, abuse of power, exaggerated and misrepresented fact, slander and libel, extreme bias, invasion of privacy and lack of good faith.

[para 299]
In support, these respondents in their written submissions included a detailed chronology of examples they say demonstrate unreasonable and abusive conduct and process by staff. While we have carefully considered this chronology and their submissions, in our view it is not necessary to repeat them here. Although not specifically stated, we have assumed these examples and arguments were made in support of an application for a stay of proceedings based on an abuse of process, including a reasonable apprehension of bias and bad faith on the part of staff.

[para 300]
The respondents have alleged that staff exhibited extreme bias against them, to their prejudice. The extension of their argument is that staff's alleged bias influenced the panel. It is not unusual for staff to have preconceived conclusions about the culpability of the respondents. Their conclusions often lead them to issue a notice of hearing. However, this is not a basis for concluding that the panel will not bring an impartial mind to bear upon the allegations.

[para 301]
Our duty is to consider evidence that is relevant to the allegations in the notice of hearing. Staff's conduct is only relevant to the extent that it may affect the credibility or weight of any of the evidence presented.

[para 302]
The respondents have not produced any evidence to show that the panel will not be a disinterested and unbiased adjudicator.

[para 303]
Similarly, despite the respondents' litany of misconduct alleged against Commission staff during their investigation, we did not find evidence that showed that staff abused their

powers or acted in bad faith in relation to these proceedings. The evidence and our findings confirm, for the most part, that staff's concerns that led to the original cease trade order and allegations in the notice of hearing were well founded.

[para 304]
We reject the argument that staff acted in bad faith when they performed their duties and exercised their powers under the Act.

[para 305]
While we recognize that these proceedings have been long and stressful, we cannot find in fact, or in law, any reason to stay the proceedings because of an abuse of process. Accordingly, we dismiss the respondents' submissions on this issue.

[para 306]
The issues in the notice of hearing
Our analysis and findings are focused on the following key issues:

1. Did Bilinski, Lamblin, Friesen and Gordon-Carmichael, as registrants:

   (a) fail to comply with the 'know your client' and 'suitability of investment' rules and 'fair dealing' rules when they sold the exempt securities to their clients?

   (b) advise without registration when they sold the exempt securities to their clients?

2. Did Canadian Global Investment, as a registrant, fail to:

   (a) establish and apply proper compliance and supervision procedures?

   (b) maintain proper books and records?

   (c) comply with conflict of interest rules when it sold the exempt securities to clients?

3. Did Bilinski, as Canadian Global Investment's compliance officer, fail to:

   (a) ensure Canadian Global Investment and its employees complied with the Act and the regulations?

   (b) ensure that new client accounts, including the 'know your client' forms, were approved?

   (c) supervise transactions of Canadian Global Investment and its employees?

4. Did Canadian Global Financial improperly distribute its shares:

   (a) under the private issuer exemption?

   (b) under the sophisticated purchaser exemptions?

5. Were promissory notes issued by Canadian Global Financial and Private Ventures Investment securities and were they distributed to the public without a prospectus?

6. Did Canadian Global Financial, with the intention of inducing potential investors to buy its securities, make representations in the business plan that were prohibited?

7. Did Columbia Ostrich (VCC) distribute securities to the public based on an offering memorandum that contained misrepresentations?

8. Did Bilinski, Lamblin, Friesen and Gordon-Carmichael trade securities contrary to Commission orders?

9. Did Global Canadian Financial Group Ltd., Global Canadian Investment Corporation, Bilinski and Lamblin, through a website, trade in securities without registration and contrary to Commission orders? Did Global Canadian Investment Corporation in the website hold itself out as a mutual fund dealer contrary to the Act?

[para 307]
Did Bilinski, Lamblin, Friesen and Gordon-Carmichael fulfil their duties as registrants?
Staff alleged that:

1. Bilinski, Lamblin, Friesen and Gordon-Carmichael, as registrants, failed to comply with the 'know your client' and 'suitability of investment' rules when they sold the exempt securities of Eagle Court, Gorlan Trailer, Pacific Bowling, Canadian Global Real Estate, Columbia Ostrich (VCC), Private Ventures Investment and Canadian Global Financial to their clients, contrary to sections 48(1) and (2) of the Rules.

2. Bilinski, Lamblin, Friesen and Gordon-Carmichael failed to deal fairly, honestly and in good faith with their clients, contrary to section 14 of the Rules and the public interest by:

   (a) advising clients to purchase unsuitable investments,

   (b) failing to recommend against the investment where it was unsuitable,

(c) failing to properly understand the client's net worth and in some cases, calculating the net worth of the investor in such a manner that the client could then claim to be a "sophisticated investor", in particular, Lamblin and Friesen considered the value of a future inheritance and the value of a potential pension to be relevant to the calculation of a client's net worth,

(d) failing to act in accordance with the client's investment objectives,

(e) failing to inform adequately the client concerning the nature, return on and risks of the investments.

3. By exercising control of the related issuers while continuing to act as agents in the sale of the their securities, Bilinski and Lamblin put themselves in a position where their interests were in conflict with their duties to their clients and to the issuers. They did nothing to resolve the conflicts, but rather acted in their own interests and not in the best interests of their clients and the related issuers contrary to section 14 of the Rules and the public interest.

4. Some investors did not receive the offering memorandum at the time they purchased the exempt securities although the offering memorandum did exist.

5. Bilinski, Lamblin, Friesen and Gordon-Carmichael advised clients to invest in the exempt securities without being registered as advisers contrary to section 34(1)(c) of the Act.

[para 308]
Staff argued that Bilinski, Lamblin, Friesen and Gordon-Carmichael advised their clients to purchase the highly risky exempt securities without any regard for the investment objectives and needs of their clients contrary to sections 14 and 48 of the Rules. As a consequence the clients were severely prejudiced by purchasing securities that were entirely unsuitable for them.

[para 309]
Staff argued that these four respondents could not rely on the advising exemption contained in section 44(2)(e) of the Act because the advice they gave was not reasonably in fulfilment of their duty to ensure the suitability of the proposed investment as required by section 44(3)(b). Rather the advice was given to induce the investors to make the investment.

[para 310]
These respondents said they did not know the ‘suitability of investment’ rule applied to exempt securities. They argued that the rule requiring them to advise about suitability was contrary to the rule prohibiting them from advising. They argued that the advising rules were contradictory, confusing and impossible to comply with. They said that the

rule against advising was at the root of their understanding that they did not need to apply the suitability rule to exempt securities transactions. However, they argued that the majority of exempt investments they sold to their clients were in fact suitable investments.

[para 311]
The 'know your client', 'suitability of investment' and 'fair dealing' rules
The 'know your client' and 'suitability of investment' rules are sometimes referred to as simply the 'know your client' rule. However, they are two distinct requirements as section 48(1) of the Rules reflects. Section 48(1) states a registrant must make inquiries concerning each client:

(a) to learn the essential facts relative to every client, including the identity and, if applicable, creditworthiness of the client and the reputation of the client if information known to the registrant causes doubt as to whether the client is of good business or financial reputation, and

(b) to determine the general investment needs and objectives of the client, the appropriateness of a recommendation made to that client and the suitability of a proposed purchase or sale for that client.

[para 312]
Section 48(2) goes on to state that if a registrant considers that a proposed purchase or sale is not suitable for the investment needs and objectives of a client that is an individual, the registrant must make a reasonable effort to so advise the client before executing the proposed transaction.

[para 313]
Section 14(1) of the Rules provides that a registrant, including a registered salesperson, trading partner, director or officer of the registrant, must deal fairly, honestly and in good faith with the clients of the registrant. The duty in section 14 is often referred to as the 'fair dealing' rule. Section 14 of the Rules came into effect in June 1997.

[para 314]
Because the issues of suitability and fair dealing in this case overlap, and are inextricably tied to the sale of exempt securities, we felt it was useful to first discuss the exemptions relied upon and how they work. Then we discuss the nature of the exempt securities before proceeding to determine whether these respondents breached their statutory duties as registrants under sections 14 and 48 of the Rules.

[para 315]
The exemptions relied on here that bear on the issues are those commonly known as the '$25,000' sophisticated purchaser and '$97,000' exemptions and the private issuer exemption.

[para 316]
Section 74(2)(4) of the Act provides a prospectus exemption where the purchaser buys as principal and the sale is in a security that has an aggregate acquisition cost to the purchaser of not less than $97,000. When there is advertising, an offering memorandum must be delivered to the purchaser in compliance with section 133 of the Rules.

[para 317]
Section 130 of the Rules requires an issuer that distributes a security under section 74(2)(4) of the Act to obtain an *Acknowledgment of Individual Purchaser* 20 A (IP) form from the purchaser, if the purchaser is an individual. The Form 20A requires purchasers to acknowledge that they have limited rights and that they satisfy the requirements for the exemption. If individuals are purchasing securities that have an aggregate acquisition cost of $97,000 or more they are assumed to be sophisticated and do not have to specifically acknowledge that fact in the Form 20A (IP).

[para 318]
Section 128(b) of the Rules provides an exemption from prospectus requirements for a trade by an issuer of a security of its own issue where the purchaser purchases as principal, the aggregate acquisition cost to the purchaser is not less than $25,000 and an offering memorandum is delivered to the purchaser in compliance with section 133 of the Rules. The exemption in section 128(b) of the Rules can be used only where the purchaser is a sophisticated purchaser who signs an acknowledgment in the required form, Form 20 A (IP).

[para 319]
Under section 1 of the Rules, a sophisticated purchaser includes an individual who:

1. is able, on the basis of information about the investment furnished by the issuer, to evaluate the risks and merits of the prospective investment either because of the purchasers financial, business or investment experience, or because of advice the purchaser receives from a qualified registrant, and

2. has a net worth of not less than $400,000, or an annual net income before tax of not less then $75,000 (with spouse not less than $125,000).

[para 320]
In determining the nature of the securities issued under these exemptions we considered the following factors. For all practical purposes, each issuer of the securities was a startup company, with no operating history. In the case of Canadian Global Financial, its holdings included for the most part its investments in the other issuers. The exempt securities of each issuer were speculative, often complex and subject to significant risks peculiar to that issuer's business. Further, there was no trading market for the exempt securities and the securities were subject to resale restrictions. Consequently, the securities were also illiquid.

[para 321]
In addition, the sale of the exempt securities to Canadian Global Investment clients involved serious conflicts of interest. By selling the exempt securities, Bilinski and Lamblin received the benefits of sales commissions, directly as salespersons and indirectly through ownership of the dealer. They also received the benefits of administration fees, paid directly or indirectly to Canadian Global Financial by the issuers of the exempt securities. At the same time, Bilinski and Lamblin owned a portion of the equity interest in the issuers indirectly through Canadian Global Financial and participated in management. In some cases they, with Arnot and Price, controlled the company invested in as well as being its management.

[para 322]
Accordingly, we find that the exempt securities issued by Eagle Court, Gorlan Trailer, Pacific Bowling, Canadian Global Real Estate, Columbia Ostrich (VCC), Private Ventures Investment and Canadian Global Financial were speculative and illiquid and, as a consequence, highly risky.

[para 323]
Before proceeding further, it is useful to deal with the issue of whether sections 14 and 48 of the Rules apply to exempt securities transactions. In *Foerster* [1997] 18 B.C.S.C. Weekly Summary 6, the Commission considered a registrant's duties in light of facts that were similar to the facts in this case. Foerster was a registrant who advised his clients to purchase risky exempt securities. The Commission confirmed that a registrant's duty to comply with the 'know your client' and 'suitability of investment' obligation is not affected by the nature of the security being traded. The Commission concluded that just because "… Foerster was selling securities pursuant to exemptions under the Act, it did not relieve him of his responsibility to determine the suitability of those investments for his clients".

[para 324]
Furthermore, in light of staff's warnings to Canadian Global Investment in 1996 and 1997 that it was required to apply its 'know your client' and 'suitability of investment' obligations to its exempt securities transactions, and staff's 1998 notice to the industry, we do not believe Bilinski and Lamblin when they say, and argue, that they did not know these obligations applied to exempt securities.

[para 325]
This takes us to the "know your client', 'suitability of investment' and 'fair dealing' rules in section 14 and 48 of the Rules.

[para 326]
Dealing first with section 14 — the duty to deal fairly, honestly and in good faith with clients. In large part, the 'fair dealing' rule, parallels the fiduciary duty the common law places on a registrant when the client reposes trust and confidence in the registrant and relies on the registrant's advice in making an investment or business

decision. The common law fiduciary duty requires the registrant to advise the client fully, honestly and in good faith. See *Hodgkinson v. Simms* (1994), 97 B.C.L.R. (2d) 1 and *Re Foerster (supra)*.

[para 327]
The point to be made here is that under section 14 all registrants have a statutory duty to deal with clients fairly, honestly and in good faith, regardless of whether a fiduciary relationship exists.

[para 328]
However, the clients in this case confirmed that they placed a considerable degree of trust and confidence in, and relied heavily on, advice they received from their representatives in making their decision to buy the exempt securities. Therefore, each of Bilinski, Lamblin, Friesen and Gordon-Carmichael also had a fiduciary relationship with their clients.

[para 329]
While a plain reading of the sections 14 and 48 of the Rules indicates that each is a separate and distinct obligation, it is impossible to describe all of the conduct that falls within or outside each rule. There may be situations where there has been a breach of the 'know your client' or 'suitability of investment' rules and not necessarily a breach of the 'fair dealing' rule. By the same token, there may be breaches of the 'know your client' or 'suitability of investment' rules that are so egregious that they are also appropriately characterized as breaches of the 'fair dealing' rule. There were many instances of these in this case.

[para 330]
The first step involves registrants making reasonable inquiries to know their client. The registrant must determine and understand the client's essential and current financial (income, liquid assets and net worth) and personal circumstances, financial sophistication and investment experience, investment objectives and risk tolerance. In order to facilitate this, registrants use the KYC forms, which are designed to uncover all the circumstances of the client that are material to the client's investment decisions. The KYC form must be updated as the client's circumstances, investment objectives and risk tolerance change.

[para 331]
The second step involves the registrant determining whether a proposed investment is suitable for the client. Will it achieve the investment objectives of the client while keeping within the client's risk tolerance? The registrant must complete this step prior to recommending the investment to the client. To properly assess suitability the registrant must also understand the nature and risks of the investment.

[para 332]
Registrants also have a particular obligation, when the proposed investment is an exempt security, to ensure that all of the conditions for using the exemptions are met. This means

that if a client relies on the sophisticated investor exemption to purchase the securities, the registrant must make sure the client meets all conditions of the exemption. It is not sufficient for a client to simply meet the minimum net worth threshold. Clients must not only have the prescribed minimum net worth, clients must also be able to evaluate the risks and merits of the prospective investment because of their financial, business or investment experience. In addition, clients must purchase the aggregate minimum prescribed amount required under the exemption.

[para 333]
Only after applying sound professional judgment to the information obtained from the 'know your client' inquiries and only after concluding that an investment in a particular security in a particular amount would be suitable for a particular client, is it appropriate for the registrant to recommend the investment to that client. This is when the registrant must make the client aware of the negative and positive material factors concerning the investment. As the Commission said in *Foerster (supra)*, clients must be "made aware of all salient material, such as positive and negative factors involved in a transaction, prior to executing a trade on the client's behalf. A balanced presentation must be offered to the client in the interest of complete disclosure and relative objectivity".

[para 334]
It is useful to refer to another case similar to this one that expanded the discussion on how registrants are obliged to comply with their duties to their clients. In *Marc Lamoureux* (Alberta Securities Commission, August 10, 2001) the Alberta Commission stated as follows:

> The obligation to ensure that recommendations are suitable or appropriate for the client rests solely with the registrant. This responsibility cannot be substituted, avoided or transferred to the client, even by obtaining from the client an acknowledgment that they are aware of the negative material factors or risks associated with the particular investment.
>
> The obligation on a registrant to ensure that each investment recommended to a client is suitable is a particularly important protection for those clients whose investment experience and sophistication may be insufficient to enable them to fully recognize or assess the risks inherent in an investment. As noted below, disclosure to the client of the negative material factors of an investment, however important, is not necessarily relevant to a suitability determination and cannot replace a registrant's obligation to assess suitability. Acknowledgment on the part of an investor of awareness of the material negative factors or risk does not convert an unsuitable investment into a suitable one.
> …
> The suitability of an investment product for any prospective investor will be determined to a large measure by comparison of the risks associated with the investment product with the risk profile of the investor. This comparison is probably the most critical element in the registrant's suitability obligation.

The Commission went on to state that:

> [A] registrant's obligation is to "know his client" and to ensure that any recommendations made by them are appropriate for the client based on the factors, both negative and positive, reasonably known to a diligent registrant at the time the investment is contemplated. Only those factors that are reasonably foreseeable at the time the investment is contemplated are relevant to the suitability determination. If a suitable investment actually fails due to some unforeseeable circumstance, that does not retroactively make it an unsuitable investment. If an unsuitable investment is recommended by a registrant, the fact that the investment is in fact proven to be successful does not retroactively make it suitable. It would be improper and unreasonable to assess a registrant's performance of his duties, which arise at the outset, in light of subsequent unforeseeable events.

[para 335]
We agree with the Alberta Securities Commission.

[para 336]
With all of the above in mind, did Bilinski, Lamblin and Friesen and Gordon-Carmichael discharge their statutory duties? Clearly we could find that they did not, simply based on the litany of factors described in paragraph 157 above, their admission that they did not apply the 'suitability of investment' rule when dealing with their clients and the fact that they facilitated exempt securities transactions to circumvent the Commission's orders. However, we believe it is useful and more appropriate to consider these factors along with some specific comments about how these four registrants breached their duties to their clients.

[para 337]
Because Bilinski and Lamblin were selling their own exempt securities, they dealt with their clients as though their duties as registrants did not exist. For the most part, Bilinski led and Lamblin followed. They consistently failed to properly determine and record on their clients' KYC forms the clients' essential and current financial and personal circumstances, financial sophistication and investment experience, investment objectives and risk tolerance. For example, both Scholten's and Raymond's KYC forms inaccurately state their investment experience as good and risk tolerance as moderate, when it ought to have been clear to Bilinski and Lamblin these statements were not true. We find that these examples are clear breaches of the 'know your client' rule as well as the 'fair dealing' rule.

[para 338]
Similarly, we find that Bilinski and Lamblin consistently breached their 'fair dealing' obligations when they failed to meet their 'suitability' obligations. We based this finding on the following examples.

[para 339]
In determining whether clients met the conditions of the sophisticated purchaser exemptions, Bilinski and Lamblin categorized some clients as being sophisticated purchasers when it was clear they were not. In addition, on the advice of Bilinski and Lamblin, clients who purchased Canadian Global Financial shares under the private issuer exemption, identified themselves as close personal friends of Bilinski and Lamblin when they were not. Lamblin often overvalued a client's net worth by inappropriately including estimated inheritances from persons still living. Although clients acknowledged that they were able to evaluate the risks and merits of the securities because of their financial, business or investment experience many had little or minimal investment experience and could not independently evaluate the risks and merits of the exempt securities. Bilinski and Lamblin counselled clients to sign forms acknowledging they had received offering memoranda when the clients had not. They advised clients to borrow against the equity in their home and to sell more conservative investments when it was not in the clients best interests to do so.

[para 340]
Bilinski and Lamblin ought to have known the exempt securities were speculative, illiquid and highly risky yet they consistently recommended the securities to clients who had modest financial circumstances, limited investment experience and a low risk tolerance. By doing so they also ignored their clients' investment objectives. They consistently failed to provide to clients material negative information about the investments or inform them about the real risks associated with the investments.

[para 341]
This leads us to that aspect of this case that we find particularly abusive — Bilinski's and Lamblin's conflicts of interest. Their clients simply were not given any investment alternatives other than the exempt securities of the issuers under the umbrella of Canadian Global Financial. Bilinski and Lamblin were driven to promote and sell their own product. They had a vested interest to not make any other investments available. They had long left behind their initial approach to "truly represent our clients [by] having no special allegiance to any particular investment, but simply providing tax and investment information in a well planned format". Their new approach, which was influenced by their self-interest and perception of themselves, circumscribed their ability to act in the best interests of their clients. As a consequence, their clients were severely prejudiced even though Bilinski and Lamblin said they had their clients' best interests at heart.

[para 342]
Indeed in our view, the conflicts here were so egregious that disclosure would not ensure compliance with the 'fair dealing' rule. However, not only were the conflicts not adequately disclosed, the conflicts of interest were turned inside out and held out to be a distinct advantage to clients for having all their investment needs met in-house. As principals of Canadian Global Investment, Canadian Global Financial, Canadian Global

Real Estate and Private Ventures Investment, Bilinski and Lamblin were incapable of providing, and did not provide, a balanced and objective assessment of any of the exempt securities to their clients. Lamblin's view that his clients could achieve a diversified portfolio by investing in a variety of exempt securities of companies under the umbrella of Canadian Global Financial makes this abundantly clear.

[para 343]
Bilinski's own evidence indicates the degree to which he failed to understand the concept of conflict of interest. In our view, his lack of understanding leads us to conclude that he did not even consider the issue as it related to his duties as a registrant. For example, the Canadian Global Financial proposed business plan represented that although directors and officers of Canadian Global Financial were directly involved in key positions within the Canadian Global Financial group of companies "as such there does not appear to be any conflicts of interest at this time".

[para 344]
In explaining this, Bilinski said investors were made fully aware of the relationships between the companies and the involvement of the principals through the schematic chart and the plan itself. To this extent he said the conflicts of interest were completely disclosed. In fact he didn't believe there were any real conflicts of interest. He stated that, "we believed that the interests were really in common, that we were trying to gain a controlling interest over the affairs of the corporate entities that we were investing in". This statement underscores his profound lack of understanding of the duties of a registrant.

[para 345]
We find that Bilinski and Lamblin, as registrants and principals of Canadian Global Investment, did not act fairly, honestly and in the best interests of their clients. In recommending to their clients to invest in the exempt securities, Bilinski and Lamblin put themselves in a position where their interests were in conflict with their duties to their clients. By consistently preferring their own interests to the prejudice of those to whom they owed a duty to act fairly, honestly and in good faith, they breached their fiduciary duties to their clients, acted contrary to section 14 of the Rules and contrary to the public interest.

[para 346]
Furthermore, it was clear that Bilinski and Lamblin were equating the risk in these investments to their confidence in themselves as men of goodwill and integrity. Risk assessment cannot be based on the principal's or the registrant's optimism in the venture or themselves. Assessment of risk must be based on a realistic and objective assessment of the circumstances of the investment and of the investor. Clients are entitled to receive from their registrant an objective assessment of risk. This duty is not diminished if the clients, as many did here, assessed the risks of the investment on an equally subjective standard – one based on their faith in the goodwill of Bilinski and Lamblin.

[para 347]
As a matter of course Bilinski and Lamblin improperly assessed the risk in these investments on a subjective standard. As Bilinski's response about the risks in Elizabeth Scholten's investment indicates, he "didn't see the quote risky investments in the same light that other people would see it, because I'm involved in them all the time and I understand them".

[para 348]
Scholten's story typifies how Bilinski viewed his registrant's duties and dealt with his clients. Although Scholten trusted and relied on Bilinski, he failed to deal with her fairly, honestly and in good faith. He did this when he allowed her to complete her KYC form inaccurately stating her investment experience was good and her risk tolerance was moderate when he knew, or ought to have known, that these statements were false. He did this when he allowed her to sign a Form 20A stating she had received an offering memorandum for Canadian Global Financial when she had not. He did not explain to her what these forms meant. These were not simply breaches of the 'know your client' rule, these were also clear breaches of the 'fair dealing' rule. On the basis of these false statements, Bilinski sold $182,000 of the exempt securities to Scholten. This represented 25% of her net worth.

[para 349]
Furthermore, we find it outrageous that Bilinski in his testimony tried to suggest to Scholten that, because of his conflicts, he told her that he could not advise her when he represented in Canadian Global Financial's proposed business plan that, although directors and officers of Canadian Global Financial were directly involved in key positions within the Canadian Global Financial group of companies, "as such there does not appear to be any conflicts of interest at this time".

[para 350]
Bilinski should not have even offered Scholten, or any of his clients, any of the exempt securities. (This of course applies to Lamblin.) This was not just because the securities were speculative, illiquid and highly risky in their own right, it was because of Bilinski's and Lamblin's conflicts of interest and their fiduciary relationship with their clients. While Bilinski and Lamblin received the benefits of the sales commissions for the exempt securities through the mutual fund dealer and the benefits of administration fees through Canadian Global Financial (generally 20% of the offering), they also owned, indirectly through Canadian Global Financial, an equity interest in the issuers of the exempt securities and participated in their management. In some cases they controlled the company invested in as well as being its management. In Bilinski's view, these conflicts of interest were completely resolved by the kind of disclosure he, and Lamblin, made to clients. This involved Bilinski and Lamblin representing to clients that these conflicts of interest were benefits because they allowed them to control and manage the companies that were issuing the exempt securities to the benefit of the clients. In our view, these conflicts were so egregious that disclosure alone could not ensure that any of Bilinski's

and Lamblin's clients would be dealt with fairly and that the clients' best interests would take precedence.

[para 351]
In these circumstances, we find that just by selling the exempt securities, Bilinski and Lamblin breached their 'fair dealing' obligations to their clients. It goes without saying that Bilinski did not disclose to, or discuss with, Scholten in a meaningful way, any of the negative material information or risks, including the conflicts of interest, concerning the exempt securities.

[para 352]
This deliberate withholding of negative information and the providing of unrealistic and optimistic descriptions of the highly risky investments instead, was a pattern for Bilinski. It was particularly evident in his statements to Columbia Ostrich (VCC) investors when clearly the investment was failing miserably. Here it was driven by his desire to help his cousin and his inability to acknowledge defeat or failure, rather than by his duty to deal with his clients fairly, honestly and in good faith.

[para 353]
Unfortunately, Lamblin followed Bilinski's lead. This was apparent when he echoed Bilinski's sentiments and described Parent's concerns as "focusing on the negative observations that he had rather than concentrating on what in fact, if anything, could be done to not only improve the existing farm situation but what could be done to take the farm and take advantage of the industry on a going forward basis with bringing all of the components together".

[para 354]
It was also apparent in his dealings with Mrs. Raymond and the Kielinens. Indeed, Mrs. Raymond's case, more than any other, illustrates how Lamblin dealt with his clients. When reviewing her story, it defies belief that Lamblin could say he believed that he was careful to understand and meet his clients' financial circumstances, investment needs and objectives. It seems that he believed that, because he was solicitous in his dealings with his clients, he met his duties as a registrant. Unfortunately for his clients, he fell far short of meeting those duties.

[para 355]
Raymond, who was retired with her husband, needed her investment income to live. Although her risk tolerance was described as low to moderate, on Lamblin's recommendation she invested over $900,000, which was 80% of her net worth, in these speculative, illiquid and highly risky exempt securities. Clearly, none of the securities were suitable investments for her.

[para 356]
To compound the risk she faced, Lamblin told Raymond to sell all her conservative investments as they matured and invest in the exempt securities. He even advised her to

borrow more money in order to invest and negotiated on her behalf the terms on a line of credit. He provided her with no other investment alternatives than the exempt securities because he believed a selection of exempt securities from the companies under the Canadian Global Financial umbrella alone could provide her with a completely diversified portfolio of investments. He did not disclose to her any of the real risks associated with these investments nor did he provide to her any material negative information concerning them. Instead, he led her to believe that by investing in the exempt securities she could minimize her taxes, receive monthly income and earn double-digit returns — all with minimal risk. She followed his advice completely because she trusted him.

[para 357]
He also counseled her to sign forms acknowledging she had received an offering memorandum when she had not and that she was Lamblin's close friend, when she was not. He knew, or ought to have known, that these statements were false. On the basis of these false statements she purported to qualify for the exemptions under which she invested in the exempt securities. He simply did not deal, with her fairly, honestly or in good faith.

[para 358]
Raymond is now faced with the horrific loss of over 82% of her net worth with little opportunity of rebuilding her finances. In addition to losing $900,000 she must also repay a loan of over $100,000, with interest.

[para 359]
The circumstances the Kielinens now face are remarkably similar. Lamblin's assessment of Sherry Kielinen's risk tolerance as low, while describing her husband's as high is one of the many factors that illustrate the depth of his lack of understanding of some of the most basic principles of investing — principles that all registrants should know and understand.

[para 360]
The Kielinens could not afford to put their capital at risk at all, yet were advised by Lamblin to do so. Furthermore, Lamblin had inflated their net worth by including future inheritances from persons still living. This allowed the Kielinens to inappropriately rely on the sophisticated investor exemption. They also borrowed a significant amount of money to invest when it was clear they could not afford to. They followed Lamblin's advice because he assured them there was little risk in losing their investment. They testified Lamblin presented the investments in such a positive light, that they believed the worst scenario they faced was getting only their initial investment back.

[para 361]
We find that Lamblin did not provide the Gorlan Trailer offering memorandum to them when the offering memorandum existed. Clearly he did not disclose to them any of the

real risks or material negative information concerning these investments. It was not any different for any of Lamblin's other clients.

[para 362]
Like most of Lamblin's clients, the Kielinens' lives are in turmoil. They lost a significant portion of their net worth by investing in speculative, illiquid and highly risky securities that were entirely unsuitable for them. They too are faced with repaying, with interest, the $116,000 they borrowed to make the investments.

[para 363]
In the circumstances, we find that Bilinski and Lamblin failed to comply with the 'know your client', 'suitability of investment' and 'fair dealing' rules in sections 48 and 14 of the Rules, when they sold the exempt securities to their clients.

[para 364]
We also find that Bilinski and Lamblin failed to comply with the 'fair dealing' rule in section 14 because their interests conflicted with their duty to their clients and they, Bilinski and Lamblin, consistently preferred their own interests to those of their clients.

[para 365]
This takes us to Friesen who simply followed Bilinski's and Lamblin's lead. As a consequence we do not intend to repeat our comments in describing the instances when Friesen failed to meet his 'know your client' and 'suitability' obligations and breached his 'fair dealing' obligations.

[para 366]
Friesen's dealings with Carla Fry typify Friesen's dealings with his clients and his understanding of his duties as a registrant. Although Spry had limited investment experience, an annual income of $37,000 and a net worth of $223,000, which included $160,000 of equity in her home, Friesen described her risk tolerance as moderate.

[para 367]
Even though it was apparent that she could not afford to invest, Friesen advised her to invest at least $97,000 in Pacific Bowling because she could not meet any of the conditions that would have allowed her to purchase under the $25,000 sophisticated purchaser exemption. If that wasn't bad enough, he recommended that she borrow the money. He clearly failed to understand her financial and personal circumstances and could not have assessed the risks of the investment against her specific investment needs and objectives.

[para 368]
Unfortunately Spry followed Friesen's advice and borrowed $97,000 against the equity in her house. This represented 43% of her net worth. As to why he believed this was suitable Friesen could only reply, "Well, I considered all our projects suitable

investments for one thing". His testimony confirms that he still has no appreciation for the duties of a registrant.

[para 369]
His participation with Edwards in the sale of Canadian Global Real Estate securities to McGavin, underscores his profound lack of understanding of his duties as a registrant and his willingness to stick by and follow Bilinski's direction regardless of his duties to his clients or his duty to comply with the Commission orders. Furthermore, it is astounding to us that, following the Commission orders, Friesen sold Columbia Ostrich (VCC) exempt securities to a client for considerably less that the prescribed amount under the exemption.

[para 370]
Accordingly we find that Friesen failed to comply with the 'know your client', 'suitability of investment' and 'fair dealing' rules in sections 48 and 14 of the Rules, when he sold the exempt securities to his clients.

[para 371]
Despite Gordon-Carmichael's many years of experience in the mutual fund industry, the investments made by the three clients we described, but particularly by the Kreiszs and the Peters, indicate that he either forgot or ignored some of the most basic principles of investing as well as his duties as a registrant. At best we conclude he lost his objectivity and was blinded by his optimism in the future of the Pacific Bowling project. His clients could not afford to put their capital at risk and yet Gordon-Carmichael recommended that they do so.

[para 372]
The Kreiszs, whose net worth was only $283,000 of which $200,000 was equity in the family home, borrowed $120,000 to invest. This was over 42% of their net worth in one speculative, illiquid and highly risky investment — all on an annual income of $48,000 supporting a family of six! Even though they could not afford to invest, their reliance on the $97,000 exemption no doubt was driven by the fact that they could not qualify for any other exemption. In these circumstances, it is hard to fathom how Gordon-Carmichael determined that their risk tolerance was moderate. The Kreiszs' $120,000 investment in Canadian Global Real Estate was an absolute dereliction of duty by Gordon-Carmichael to know his clients and ensure the investment he sold to them was suitable.

[para 373]
What exacerbates the situation is that the Kreiszs, who wanted to invest in Pacific Bowling, invested in Canadian Global Real Estate through Edwards. Although this clearly was an attempt to get around the Commission orders, none of this, including Gordon-Carmichael's participation in the sales commission, was brought home to the Kreiszs. On this front we find Gordon-Carmichael did not discharge his duty to deal fairly, honestly and in good faith with the Kreiszs.

[para 374]
Apart from Edwards' involvement, the Peters' circumstances were practically the same as the Kreiszs. Both were described as having a moderate risk tolerance when clearly it was not. Neither couple ought to have borrowed money to make the investment and yet they not only borrowed, they each borrowed a significant amount relative to their net worth. While leveraging can be a useful investing technique, Gordon-Carmichael ought to have known that it was not appropriate for the Kreiszs or Peters, where it was clear neither couple could afford, under any circumstances, to put their capital at risk. Despite this, the Peters invested nearly 60% of their net worth in one speculative and highly risky investment. With an annual income of $44,000 and retirement looming, the Peters had a very limited ability to rebuild their capital or repay the loan if it was lost. This investment was completely unsuitable for Peters.

[para 375]
The Strileskys, who were retired with limited investment experience and a low risk tolerance, invested 43% of their $460,000 net worth in Pacific Bowling. We wonder how Gordon-Carmichael could allow this retired, risk adverse couple to invest such a disproportionate amount of their capital in one speculative, illiquid and highly risky investment.

[para 376]
It does Gordon-Carmichael no good to say the Peters or Strileskys were determined to invest and made the decision on their own with the information he left them. As the Alberta Commission concluded in Lamoreaux, "The obligation on a registrant to ensure that each investment recommended to a client is suitable is a particularly important protection for those clients whose investment experience and sophistication may be insufficient to enable them to fully recognize or assess the risks inherent in an investment ... disclosure to the client of the negative material factors of an investment, however important, is not necessarily relevant to a suitability determination and cannot replace a registrant's obligation to assess suitability."

[para 377]
Accordingly, we find that Gordon-Carmichael failed to comply with the 'know your client', 'suitability of investment' and 'fair dealing' rules in sections 48 and 14 of the Rules.

[para 378]
Were the individual respondents advising without registration?
Staff alleged that Bilinski, Lamblin, Friesen and Gordon-Carmichael advised clients to invest in the exempt securities without being registered as advisers contrary to section 34(1)(c) of the Act.

[para 379]

Section 1(1) of the Act defines adviser to mean "a person engaging in, or holding himself, herself or itself out as engaging in, the business of advising another with respect to investment in or the purchase or sale of securities or exchange contracts".

[para 380]
Section 34(1)(c) of the Act provides a person cannot act as an adviser unless that person is registered as an adviser in British Columbia or can rely on an exemption from the adviser registration requirement.

[para 381]
Section 8 of the Rules provides that a person registered as an adviser must be classified in one or more of the following categories:

(a) portfolio manager: a person that manages or holds itself out as managing the investment portfolio, consisting of securities, exchange contracts or both, of one or more clients through discretionary authority granted by the clients;

(b) investment counsel: a person that engages or holds itself out as engaging in the business of advising others about investing in or buying or selling specific securities, exchange contracts or both, or that is primarily engaged in giving continuous advice on the investment of funds on the basis of the particular objectives of each client;

(c) securities adviser: a person that engages or holds itself out as engaging in the business of advising others through direct advice or through publications about investing in, or buying or selling, specific securities, exchange contracts or both, not purporting to tailor that advice or publication to the needs of specific clients.

[para 382]
Section 44(2) (e) of the Act provides that a registered dealer or a person that is registered under this Act as a partner, director, officer or salesperson of a registered dealer may act as an adviser without registration under section 34 (1) (c) of the Act. Section 44(3)(b) of the Act goes on to provide that the exemption in section 44(2)(e) of the Act does not apply where the advice the person gives is not reasonably in fulfillment of the person's duty to ensure the suitability of a proposed purchase or sale for a client.

[para 383]
Staff argued that Bilinski, Lamblin, Friesen and Gordon-Carmichael could not rely on the exemption from registration as advisers contained in section 44(2)(e) of the Act because the advice they gave was not reasonably in fulfilment of their duty to ensure the suitability of the proposed purchases for clients as required by section 44(3)(b) of the Act. Staff argued that these respondents admitted that they did not consider suitability. Therefore it was clear that the advice given was solely to induce clients to make the investment and that this reflected a business purpose because of the large commissions

and management fees these respondents stood to gain. Therefore the exemption contained in section 44(2)(e) from registration as an adviser under section 34(1)(c) of the Act was not available because the advice given did not fit within the exemption in section 44(2)(e) of the Act.

[para 384]
This case is not about advising without registration. It is about the failure of registrants to comply with their duties as registrants under sections 14 and 48 of the Rules. In a nutshell, we have found that Bilinski, Lamblin, Friesen and Gordon-Carmichael, as registrants, did not meet their obligations under the 'know your client', 'suitability of investment' and 'fair dealing' rules when they sold the exempt securities to their clients.

[para 385]
For staff to succeed in its argument that the advice Bilinski, Lamblin Friesen and Gordon-Carmichael gave was not reasonably in fulfilment of their duty to ensure the suitability of proposed purchases by their clients and therefore registration as an adviser was required under section 34(1)(c), staff must show what advice Bilinski, Lamblin Friesen and Gordon-Carmichael gave that would have required registration.

[para 386]
A review of the adviser categories in section 8 the Rules illustrates what conduct requires registration. Section 8 provides that a person registered as an adviser must be classified as a portfolio manager, investment counsel or securities adviser.

[para 387]
We find that the evidence is not sufficient for us to conclude that Bilinski, Lamblin, Friesen and Gordon-Carmichael were advising beyond the exemption so that registration as an adviser was required. Just because the advice was bad and the investments sold were unsuitable, does not mean that the exemption in section 44(2)(e) was unavailable to these registrants.

[para 388]
Accordingly we dismiss staff's allegation that these respondents were advising without being registered as advisers contrary to section 34(1) of the Act.

[para 389]
Did Canadian Global Investment fulfil its duties as a registrant?
Staff alleged that:

1. Canadian Global Investment, as a registrant under the Act, failed to:

    (a) establish and apply proper compliance and supervision procedures (including written prudent business procedures) contrary to sections 44(1) and 47 of the Rules,

(b) maintain proper books and records, including records of exempt sales at its chief place of business contrary to sections 27 and 29 of the Rules.

2. Bilinski, as Canadian Global Investment's compliance officer, failed contrary to sections 47 and 65 of the Rules to:

(a) ensure Canadian Global Investment and its employees complied with the Act and the Rules,

(b) ensure that new client accounts, including the 'know your client' forms, were approved, and

(c) to supervise transactions of Canadian Global Investment and its employees.

[para 390]
Canadian Global Investment admitted staff's allegations that it:

1. repaid subordinated debt without obtaining prior written permission from the Commission contrary to section 5 of the standard subordination agreement it had filed with the Commission; and

2. failed to notify the Commission, contrary to section 72(2) of the Rules, that it had appointed a new audit firm to act as auditors for the year ended May 31, 1999.

However we did not find evidence to support the allegation in item 1 and accordingly dismiss it.

[para 391]
Bilinski argued, on behalf of himself and on behalf of Lamblin and Arnot, as principal shareholders, directors and senior management during the relevant period that while Canadian Global Investment might not have technically complied with all the requirements, there was substantial compliance. They said these technical breaches should be viewed in light of the considerable efforts Canadian Global Investment made to improve and work with Commission staff to ensure compliance.

[para 392]
Compliance, supervision and record keeping
Divisions 1 to 11 (sections 1 to 85) in Part 5 of the Rules provide a detailed description of the obligations of a registrant. Sections 27 and 29 of the Rules mandate that a complete set of trading records must be kept in the head office so as to be readily available for the compliance officer's review. Specifically, they provide as follows:

27 (1) A dealer, underwriter or adviser must keep at its head office or, if its head office is out of British Columbia, at its chief place of business in British Columbia a

complete and accurate record of its business transactions and financial affairs that are conducted
(a) in British Columbia if its head office is out of British Columbia, and
(b) in or out of British Columbia if its head office is in British Columbia.
(2) The records required under subsection (1) include the records referred to in sections 29 to 41 that the executive director considers relevant to the registrant's category of registration.

29 Itemized daily blotters or other records of original entry must show
(a) all purchases and sales of securities or exchange contracts,
(b) all receipts and deliveries of securities including certificate numbers,
(c) all receipts and disbursements of cash,
(d) all other debits and credits, and
(e) for each transaction described in (a) to (d) of this section
(i) the account for which the transaction was effected,
(ii) the name of the securities or exchange contracts,
(iii) any particulars necessary to identify the securities or exchange contracts,
(iv) the number or value of the securities or exchange contracts,
(v) the unit and aggregate purchase or sale price, if any,
(vi) the date on which the transaction took place,
(vii) the name of any other dealer used by the registered dealer as its agent to effect the transaction, and
(viii) the name of any person from whom securities or cash were received or to whom securities or cash were delivered.

[para 393]
Section 44 (1) of the Rules requires every registrant to establish and apply written prudent business procedures for dealing with clients in compliance with the Act and the Rules. This includes the 'know your client', 'suitability' and 'fair dealing' rules under sections 14 and 48 of the Rules. Section 47 of the Rules requires every registrant to designate a compliance officer to approve the opening of new client accounts and to supervise transactions made on behalf of clients. Section 65 of the Rules provides that every registered dealer must designate at least one individual as a compliance officer to ensure compliance with the legislation.

[para 394]
Commission staff's notice to the industry, NIN 98/56 *Trading by Registrants under Certain Prospectus and Registration Exemptions*, which was effective from September 9, 1998 through 2000, reiterated these obligations. It confirmed that registrants, both dealers and registered individuals, must comply with the 'know your client' and 'suitability of investment' rules when selling securities to clients under the '$97,000', '50 purchaser' and '$25,000' exemptions. The notice stated that a dealer whose registered salespersons trade under these exemptions must supervise those transactions to ensure compliance with securities legislation and with the written business procedures established by the

dealer. It stated that:

> Dealers are required to establish and apply written prudent business procedures for dealing with clients in compliance with securities legislation. These procedures should include steps to ensure that the dealer:
>
> - thoroughly understands any securities offered to clients under the exemptions,
> - offers the securities only to clients for whom they are suitable,
> - complies with all of the conditions of the exemption,
> - supervises all registered individuals trading on behalf of the dealer, and
> - maintains adequate records of all transactions.

[para 395]
Furthermore, in 1996 and again in 1997, Canadian Global Investment was warned by staff in writing that it was obliged to set up proper systems and procedures to enable it to supervise its exempt securities transactions and to ensure compliance with its 'know your client' and 'suitability of investment' obligations.

[para 396]
Canadian Global Investment admitted that it had not established and implemented procedures to ensure sales representatives complied with the Act regarding exempt securities transactions. The part of the procedures manual that was to deal with procedures concerning exempt transactions was simply blank.

[para 397]
Furthermore, Bilinski conceded the exempt transactions were reviewed only to ensure the requirements of the appropriate exemption were met. Even on this limited basis, these reviews were totally inadequate. They should have uncovered those clients who were incorrectly designated as close friends or as sophisticated investors. While Bilinski conceded that Canadian Global Investment and its compliance officers did not review the exempt transactions to assess whether they were suitable for the clients, he nonetheless argued that he did not believe the suitability rule applied to these transactions. This, he said, was because Canadian Global Investment was not registered as an adviser and therefore it and its salespersons were precluded from giving any advice to a client about the suitability of a proposed investment.

[para 398]
However, we find Bilinski's argument to be specious. This argument flies in the face of warnings staff had given to him and Canadian Global Investment in 1996 and 1997 that the dealer was obliged to set up proper systems and procedures to enable it to supervise its exempt securities transactions and ensure compliance with its 'know your client' and 'suitability of investment' obligations.

[para 399]

Bilinski simply ignored, and for all practical purposes directed Canadian Global Investment's salespersons to ignore, the detailed requirements of the Rules, staff's warnings to Canadian Global Investment and the notice to the industry.

[para 400]
We find that during the relevant period Canadian Global Investment and Bilinski, as Canadian Global Investment's compliance officer, failed to:

1. approve new client account opening documentation, including complete and accurate KYC forms,

2. review and supervise all transactions made on behalf of clients to ensure the 'know your client' and 'suitability' rules were applied by salespersons,

3. ensure that their clients met the requirements in the exemptions,

4. ensure the blotter provided sufficient detail to perform a suitability review,

5. review the blotter on a consistent basis,

6. ensure complete and accurate records of its business transactions and financial affairs, including KYC forms and records of the exempt sales of Canadian Global Financial and Private Ventures Investment, were kept at its head office, and

7. establish and apply written prudent business procedures for dealing with clients in compliance with all requirements of the legislation.

[para 401]
Accordingly, we find that Canadian Global Investment, as a registrant under the Act, failed to:

1. establish and apply proper compliance and supervision procedures (including written prudent business procedures) contrary to sections 44(1) and 47 of the Rules, and

2. maintain proper books and records, including records of exempt sales at its chief place of business contrary to sections 27 and 29 of the Rules.

[para 402]
We also find that Bilinski, as Canadian Global Investment's compliance officer, failed contrary to sections 47 and 65 of the Rules, to:

1. ensure Canadian Global Investment and its employees complied with the Act and the Rules,

2. ensure that new client accounts, including the 'know your client' forms, were approved, and

3. supervise transactions of Canadian Global Investment and its employees.

[para 403]
Despite the detailed requirements in the Rules, staff warnings to Canadian Global Investment in 1996 and 1997 and the notice to the industry in 1998, Canadian Global Investment failed to have effective systems in place to discharge its supervisory and compliance obligations over that portion of its business that produced nearly all of its revenues — the exempt market. These were not mere technical breaches. This was a serious systemic failure of Canadian Global Investment's duties as a registered mutual fund dealer, to its clients and to its sales representatives. It included Bilinski's failure to discharge his duties as its compliance officer. It is clear to us that Canadian Global Investment failed to comply with its registrant's obligations primarily because Bilinski simply chose to ignore these statutory obligations — obligations he knew existed and needed to be met.

[para 404]
It is the duty of the directors and senior management of a registrant to ensure that it has systems in place so that it can comply with its regulatory duties. Although not specifically alleged in the notice of hearing, (but alleged in staff's opening statement and responded to) we find that Bilinski, Lamblin and Arnot failed to discharge their duties as officers and directors and were responsible for Canadian Global Investment's failure to meet its duties as a registrant.

[para 405]
We must again emphasize that registrants are obliged to comply with all of their statutory duties. They cannot on one hand take advantage of the opportunities that their status as registrants gives them and ignore those responsibilities that do not suit them. We find that it was abusive for Canadian Global Investment, under Bilinski's direction, to use its mutual fund dealer registration to access the public for its exempt market business and then ignore its duties to clients.

[para 406]
If registrants fail to discharge their statutory duties, the Commission is obliged to intervene to protect the public interest, as it did here.

[para 407]
Conflicts of interest
Staff alleged that:

1. Canadian Global Financial, Canadian Global Real Estate, Private Ventures Investment, Pacific Bowling, Gorlan Trailer, Columbia Ostrich (VCC) and Eagle Court (the Issuers) had a relationship with Canadian Global Investment and with

Bilinski, Lamblin, Friesen and Gordon-Carmichael who were related parties of Canadian Global Investment, such that a reasonable prospective purchaser would question whether Canadian Global Investment and the Issuers were independent of each other. The Issuers and Canadian Global Investment were connected parties, within the meaning of section 75 of the Rules.

2. Canadian Global Investment traded in securities of the Issuers, who were related parties of Canadian Global Investment. The securities of the Issuers were issued in the course of an initial distribution, without disclosing, orally or otherwise, substantially all the information required by sections 77(1) and 77(3)(a) of the Rules, in breach of section 79 of the Rules.

3. Canadian Global Investment did not file the written confirmation of transactions required by section 36 of the Rules and therefore did not disclose that the securities of the Issuers were issued by related parties of Canadian Global Investment, and Canadian Global Investment thereby failed to comply with the requirements of section 80(1)(a) of the Rules in connection with initial distributions by the Issuers.

4. Canadian Global Investment made recommendations to its clients that they purchase the Issuers' securities in the circumstances where in some cases the Issuers were connected parties of Canadian Global Investment, contrary to section 83(1)(a) of the Rules.

[para 408]
Staff also alleged that Canadian Global Investment, as an adviser, acted contrary to section 81(1) of the Rules. We have found that Canadian Global Investment had an exemption from the requirement to register as an adviser. Therefore we dismiss this allegation**.**

[para 409]
Canadian Global Investment, Bilinski, Lamblin and Arnot argued that all conflicts of interest were disclosed in the offering memoranda of Canadian Global Real Estate, Pacific Bowling, Gorlan Trailer, Columbia Ostrich (VCC) and Eagle Court. They argued that investors in Canadian Global Financial were provided with adequate disclosure of the potential conflicts by way of the business plan, corporate chart and Bilinski's accompanying explanation. They argued that while disclosure of the conflicts might not have been in the correct form, in substance there was adequate disclosure of the conflicts of interest.

[para 410]
We disagree. Sections 75 to 85 in Division 11 of the Rules *Registrants' Conflicts of Interest* include a series of requirements that are intended to specifically draw attention to the registrant's conflicts of interest so that the clients may properly consider the issue of, and risks associated with, the conflicts in a particular securities transaction.

[para 411]
Section 75(1) begins by defining those relationships that create the conflicts that involve these provisions. The relevant ones are defined as follows:

> "connected party" means, in respect of a registrant,
> (a) a person that has any indebtedness to, or other relationship with,
> (i) the registrant,
> (ii) a related party of the registrant,
> (iii) a partner, director or officer of the registrant or of a related party of the registrant, or
> (b) any related party of the person first referred to in paragraph (a),
> if, in respect of an initial distribution of securities issued by or held by the person first referred to in paragraph (a) or the related party referred to in paragraph (b), the indebtedness or other relationship may under the circumstances lead a reasonable prospective purchaser of the securities to question whether the registrant and the person or the registrant and the related party, as the case may be, are independent of each other, whether or not the indebtedness or other relationship is a material fact…
> …
>
> "related party" means, in respect of a person, any other person that is
> (a) related to that person under subsections (2) to (4),
> (b) deemed to be a related party under subsection (5), or
> (c) designated under section 76 to be a related party;
>
> (2) For the purposes of this Part, each of 2 persons is related to the other if
> (a) either influences the other,
> (b) both influence the same third person, or
> (c) both are influenced by the same third person.
>
> (3) For the purposes of subsection (2), a person influences another person if, through the beneficial ownership of or exercise of control or direction over, or through a combination of such ownership of or control or direction over,
> (a) voting securities of that other person,
> (b) securities currently convertible or exchangeable into voting securities of that other person, or
> (c) securities carrying a currently exercisable right to acquire voting securities of that other person or to acquire convertible or exchangeable securities referred to in paragraph (b),
> whether directly or indirectly and whether alone or in combination with one or more persons, the person exercises a controlling influence over the management and policies of that other person.

(4) For the purposes of subsection (2) and without limiting the generality of subsection (3), a person, in the absence of evidence to the contrary, is deemed to influence another person if the first person

(a) beneficially owns or exercises control or direction over securities that constitute in the aggregate more than 20% of the outstanding securities of any class or series of voting securities of that other person, or

(b) would, upon conversion, exchange or exercise of any security or right referred to in subsection (3) (b) or (c), beneficially own or exercise control or direction over securities that would constitute in the aggregate more than 20% of the outstanding securities of any class or series of voting securities of that other person,

whether directly or indirectly and whether alone or in combination with one or more other persons.

(5) For the purposes of this Part, if any 2 persons are related parties of the same other person, those 2 persons are deemed to be related parties of each other.

[para 412]
Under these provisions we find Canadian Global Financial, Private Ventures Investment, Canadian Global Real Estate and Columbia Ostrich (VCC) were related parties of Canadian Global Investment and that Pacific Bowling, Gorlan Trailer and Eagle Court were connected parties of Canadian Global Investment.

[para 413]
Under section 77(1) and (3)(a) of the Rules, every registrant must file a *Conflict of Interest Rules Statement,* Form 69, that clearly discloses these defined relationships. The section and the *Statement* describe when, and manner by which, disclosure must be made of a conflict of interest relating to a particular securities transaction.

[para 414]
Section 79(1) of the Rules, *Limitations on Trading,* provides that registrants must not buy or sell a security on behalf of any client if the security is issued by the registrant or a related party of the registrant, or is being issued in an initial distribution by a connected party of the registrant, unless the registrant has, before entering into an agreement of purchase and sale for the security, delivered the registrant's current *Conflict of Interest Rules Statement* to the client or orally informed the client of all of the information and changes that are required to be disclosed in the *Statement.*

[para 415]
Canadian Global Investment did not deliver, or orally provide all of the information in, a current *Conflict of Interest Rules Statement* to any of its clients who purchased the securities of Canadian Global Financial, Private Ventures Investment, Canadian Global Real Estate, Columbia Ostrich (VCC), Pacific Bowling, Gorlan Trailer and Eagle Court as required under section 79(1) of the Rules.

[para 416]
Section 36 of the Rules requires a registrant, when it buys or sells securities on behalf of a client, to promptly send to the client a written confirmation of the trade, including prescribed particulars describing the trade. Section 80(1) of the Rules, *Confirmation and Reporting of Transactions*, provides that when a registrant, on behalf of a client, buys or sells securities issued by the registrant or a related party of the registrant, or issued in an initial distribution by a connected party of the registrant, the registrant must disclose this in the confirmation of trade that is sent to the client under section 36 of the Rules.

[para 417]
Canadian Global Investment did not send to any of its clients who purchased the securities of Canadian Global Financial, Private Ventures Investment, Canadian Global Real Estate, Columbia Ostrich (VCC), Pacific Bowling, Gorlan Trailer and Eagle Court, a confirmation of trade that disclosed the information as required under section 80(1) of the Rules.

[para 418]
Section 83(1) of the Rules provides that a registrant must not recommend a client buy or sell a security if the security is issued by the registrant or related party, or is being issued in an initial distribution by a connected party of the registrant. However, section 83(3) of the Rules provides that the prohibition in 83(1) does not apply unless the recommendation is in writing and made in a public medium of communication.

[para 419]
In our view, staff did not provide evidence to prove that Canadian Global Investment made written recommendations in a public medium of communication that clients purchase securities of related or connected parties. Accordingly, we dismiss the allegation that Canadian Global Investment breached section 83(1) of the Rules.

[para 420]
In the circumstances we find that Canadian Global Investment contravened sections 79(1) and 80(1) of the *Rules*. These breaches were not isolated or technical breaches of the Act by a generally compliant registrant but part of a consistent pattern of non-compliance.

[para 421]
Again, we find that although not specifically alleged in the notice, but alleged in staff's opening statement and responded to, Bilinski, Lamblin and Arnot as directors and senior management must take responsibility for Canadian Global Investment's failure to comply with the conflict of interest rules.

[para 422]
Did Canadian Global Financial distribute its shares without a prospectus?
Staff alleged that:

1. Canadian Global Financial did not qualify its shares for distribution to the public under section 61 of the *Act*. Rather, the shares were sold under various exemptions from the registration and prospectus requirements of sections 34 and 61 of the *Act*.

2. The Canadian Global Financial shares were sold in reliance upon the private issuer exemption contained in sections 46(j) and 75(a) of the *Act*, as well as in reliance on exemptions from the registration and prospectus requirements that required the use of an offering memorandum.

3. However, the Canadian Global Financial shares were offered for sale to the public without an offering memorandum. In the result, there was no exemption from the registration and prospectus requirements available to allow the distribution of the Canadian Global Financial shares to the public.

4. As a result, Bilinski, Lamblin and Friesen sold the Canadian Global Financial shares to clients of Canadian Global Investment contrary to sections 34 and 61 of the Act.

[para 423]
Staff alleged that in selling Canadian Global Financial shares to the public, Bilinski, Lamblin and Friesen breached the registration provisions in section 34(1) of the Act. We disagree. Bilinski, Lamblin and Friesen were registrants and therefore did not need an exemption from registration under section 34(1) of the Act. Accordingly, we dismiss the allegation.

[para 424]
Canadian Global Financial does not dispute that it did not file a prospectus to distribute its Class B and Class C common shares. Instead, Canadian Global Financial argued it sold and distributed these securities in two stages under various exemptions from the prospectus requirements in section 61 of the Act.

[para 425]
In the first stage, which we deal with first, Canadian Global Financial said it relied on the private issuer exemption contained in sections 46(j) and 75(a) of the Act. In the second stage it sold its shares relying on exemptions from the prospectus requirements that required the use of an offering memorandum. Canadian Global Financial admitted that while it distributed its shares in this second stage without an offering memorandum, it did so based on legal advice. The third stage concerns promissory notes issued by Canadian Global Financial. We will deal with these when we deal with the promissory notes issued by Private Ventures Investment.

[para 426]
Did Canadian Global Financial improperly distribute shares under the private issuer exemption?

Bilinski and Lamblin argue that they were entitled to, and did, rely on the private issuer exemption when they sold Canadian Global Financial shares to the first 48 purchasers. They argue that these 48 purchasers were close friends and should not be categorized as members of the public. Furthermore they argue that these investors were given all the necessary information by way of the proposed business plan and various corporate charts to decide whether to invest in Canadian Global Financial.

[para 427]
Staff argue that the private issuer exemption cannot apply where the securities offered for sale are being sold to persons who are members of the public, in this case clients of Canadian Global Investment. Staff argue that Canadian Global Financial lost its private issuer status when it made its first trade to Rudi Hintsche on October 19, 1998. Hintsche was a member of the public requiring the protection of the Act.

[para 428]
The relevant legislation follows.

[para 429]
"Distribution" is defined in section 1(1) of the Act to include "(a) a trade in a security of an issuer that has not been previously issued".

"Private issuer" is defined in section 1(1) of the Act as an issuer that is not a reporting issuer, does not have more than 50 shareholders and has not distributed any of its shares to the public.

[para 430]
"Security" is defined in section 1(1) of the Act to include

(a) a document, instrument or writing commonly known as a security,
…
(c) a document evidencing an option, subscription or other interest in or to a security,
(d) a bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate…
…

[para 431]
"Trade" is defined in section 1(1) of the Act to include:

(a) a disposition of a security for valuable consideration whether the terms of payment be on margin, instalment or otherwise
. . .
(f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e).

[para 432]

Section 46(j) of the Act provides that, subject to the regulations, a person may, without being registered under section 34(1)(a) of the Act, trade in the securities of a private issuer if the securities are not offered for sale to the public.

[para 433]
Section 61 (1) of the Act provides that:

> Unless exempted under this Act or the regulations, a person must not distribute a security unless a preliminary prospectus and a prospectus respecting that security
>
> (a) have been filed with the executive director, and
>
> (b) receipts obtained for them from the executive director.

[para 434]
Section 75 of the Act provides that section 61 does not apply to:

> (a) a distribution of a security described in section 46 (a) to (l)…

[para 435]
Section 133 of the Rules provides:

> An offering memorandum required to be delivered in connection with a distribution under section 128 (a), (b) or (c) of these rules, or delivered in connection with a distribution under section 128 (h) of these rules, must
>
> (a) be delivered to the purchaser before an agreement of purchase and sale is entered into, …

[para 436]
In essence a private issuer is a private company with less than 50 shareholders. Private issuer status is lost when an issuer exceeds 50 security holders or when the issuer distributes voting or equity securities (other than debt securities) to the public. Once the first trade is made to a member of the public, the issuer can no longer use the private issuer exemption.

[para 437]
The term ‘public’ is not defined in the Act. However, the Commission discussed who is the ‘public’ for the purposes of the private issuer exemption in section of 4.2 of Local Policy 3-24, now BCP 45-601. The policy stated that the “common law interpretation of the public, in the context of securities trading, is very broad. Whether a person is a member of the public must be determined on the facts of each case based on the "need to know" and "common bonds" tests that have developed in the common law.

[para 438]
The policy went on to provide a list of persons who, for the purposes of the definition of private issuer in section 1(1) of the Act and the exemption in section 46(j) of the Act, would not be considered to be members of the public. Close friends were not included on the list whereas existing shareholders, directors and officers and immediate family members were.

[para 439]
By not including close friends the Commission determined that this term is not precise enough to identify persons that, for the purposes of the private issuer exemption, would not be considered as members of the public in any circumstances. Therefore, whether a person whom a director of the issuer considers a close friend is not a member of the public depends on the facts involved and to what extent the "need to know" and "common bonds" tests have been met.

[para 440]
The "need to know" test is met when persons have access to the kind of information that would normally be disclosed in an offering document or when persons have a certain amount of sophistication about making investment decisions enabling them to fend for themselves. These kinds of persons do not need the statutory protections a prospectus would provide. The "common bonds" test focuses on the relationship between the seller of the securities and the persons to whom the securities are being offered. Frequently the "common bonds" test is met when the person:

1. has known the officer or director for a number of years,

2. through personal knowledge and friendship, is in a position to assess the capabilities and the trustworthiness of the officer or director, and

3. is likely to receive the same moral commitment from the officer or director as would a family member of the officer or director.

[para 441]
Staff referred us to the case *SEC* v. *Ralston Purina Co.* (1953), 316 U.S. 159 (USSC) for its analysis of what is meant by the "public" in the context of the private issuer exemption and application of the "need to know" test.

[para 442]
In that case, Ralston Purina permitted certain key employees to purchase its treasury stock if, upon their own initiative, they sought to make such a purchase. The legislation provided an exemption from the filing requirements for securities transactions by an issuer not involving any public offering. The question before the Court was whether the sales of the securities to the key personnel fit within the exemption, as sales not made to the "public". On appeal to the U.S. Supreme Court, the Court held that the transactions did not fit the exemption, as the employees were members of the "public" based on the facts of the case.

[para 443]
The Supreme Court stated at para.18:

> The exemption, as we construe it, does not deprive corporate employees, as a class, of the safeguards of the *Act*. We agree that some employee offerings may

> come within section 4 (1), e. g., one made to executive personnel who because of their position have access to the same kind of information that the Act would make available in the form of a registration statement [the equivalent of a prospectus in B.C.]. Absent such a showing of special circumstances, employees are just as much members of the investing "public" as any of their neighbours in the community.

And further at para. 19 it stated:

> … once it is seen that the exemption question turns on the knowledge of the offerees, the issuer's motives, laudable though they may be, fade into irrelevance. The focus of inquiry should be on the need of the offerees for the protections afforded by registration. The employees here were not shown to have access to the kind of information which registration [a prospectus] would disclose. The obvious opportunities for pressure and imposition make it advisable that they be entitled to compliance with [the prospectus requirements].

[para 444]
A purpose of securities legislation is to protect the public. When the persons to whom the offer is being made do not have, or do not have access to, the kind of information that an offering document would provide, then they are considered to be the public. *Ralston Purina* suggests that in view of the broadly protective purposes of securities legislation, it is reasonable for the issuer who relies on the exemption to prove that the purchasers had access to the kind of information that an offering document would disclose. We agree. We also agree with staff that Canadian Global Financial has not discharged this burden.

[para 445]
First of all, Canadian Global Financial did not call any evidence to show that the trade with Hintsche was something other than a trade with a member of the public. He was an existing client of Canadian Global Investment. There was no suggestion that he was a relative of the directors or that he had access to the kind of information that an offering document would disclose. The only information Bilinski said was given to clients like Hintsche who purchased shares under the private issuer exemption, was the ever-changing corporate chart and proposed business plan, which Bilinski conceded contained inaccuracies.

[para 446]
We find that Hintsche was a member of the public who was entitled to the protections of the Act. Canadian Global Financial shares were not previously issued securities. We find that Canadian Global Financial lost its private issuer status with the sale of its shares to Hintsche on October 19, 1998, and could no longer rely on the private issuer exemption.

[para 447]
Secondly, although it is not necessary to go beyond the Hintsche sale, it is useful to look at who invested under the private issuer exemption. Most of the other 47 investors were also retail clients of Canadian Global Investment. None of them were close friends or family of Bilinski and Lamblin. They were precisely the kind of persons that required the protection of the Act. We need only to refer to the case of Mrs. Raymond. Bilinski and Lamblin said they believed that Canadian Global Financial could continue to rely on the private issuer exemption for its first 50 shareholders as long as the investors were "close friends and family". Indeed this was how they were described on their internal list. However, as Mrs. Raymond testified, the characterization of her as Lamblin's close friend was not true but done to show she met the conditions of the exemption. Most of these investors trusted Bilinski and Lamblin as their registered representatives to "do the right thing" for them. Their characterization of these clients as "close friends and family" was a clear abuse of the exemption.

[para 448]
The "obvious opportunities for pressure and imposition" referred to in *Ralston* are substantially more pronounced and egregious here considering the conflicts of interest of Bilinski and Lamblin and the fiduciary relationship they had with these clients. Beginning with Hintsche, Canadian Global Financial used the private issuer exemption in a way that deprived investors of the safeguards of the Act.

[para 449]
Accordingly, we find that Canadian Global Financial when it purportedly relied on the private issuer exemption, distributed shares to these 48 investors contrary to section 61 of the Act. We also find that Bilinski, Lamblin and Friesen in participating in the same acts as Canadian Global Financial contravened section 61 of the Act.

[para 450]
Did Canadian Global Financial improperly distribute shares under the sophisticated purchaser exemptions?
Bilinski and Lamblin admitted that when Canadian Global Financial had exhausted the private issuer exemption, they continued to sell its shares relying on the prospectus exemptions in section 128(a) and (b) of the Rules. They admit they did so without providing an offering memorandum to investors. They said that this was done based on legal advice.

[para 451]
Staff argue that reliance on legal advice can never be a defence to liability considering the relevant legislative provisions. Staff argue that Canadian Global Financial and its principals, either did not receive the legal advice they claim to have received, or having received it, they chose to ignore it.

[para 452]

Under sections 128 (a) and (b) and 133 of the Rules it is mandatory for an issuer to deliver an offering memorandum to the purchasers before an agreement of purchase and sale is entered into. This is a strict liability provision for which there is no due diligence defence.

[para 453]
Bilinski, Lamblin and Friesen, had their clients sign the subscription agreement (the agreement of purchase and sale) and pay for the shares in advance. Bilinski, Lamblin and Friesen told clients that they would receive their shares and an offering memorandum in due course. Canadian Global Financial did not deliver an offering memorandum to these purchasers before the purchasers signed the agreement of purchase and sale. Furthermore Canadian Global Financial did not sign the agreement of purchase and sale confirming it had accepted the purchasers' subscriptions although it proceeded to spend the funds the purchasers advanced to pay for their shares.

[para 454]
In our ruling of November 26, 1999, we stated that using this structure was *prima facie* abusive and contrary to the public interest. No evidence has been introduced in this hearing that would cause us to come to a different conclusion. Indeed, now that we have heard from several investors and the respondents and reviewed the documentary evidence, we confirm that our initial concerns were well founded. Investors were severely prejudiced. It is useful to repeat some of our preliminary conclusions, which in light of the evidence, we adopt here.

> It is clear that not only did the investor make a decision to invest his funds without the benefit of the required disclosure afforded in an offering memorandum prepared in accordance with the *Act*, the investor's right to the return of the funds advanced was for all practical purposes non-existent.
>
> Such a structure obviously defeats the clear purpose of the *Act*, which is to ensure investors have before them the required disclosure about the securities before they commit and deliver up their money to purchase the securities. The terms allowing the company to "finalize " the subscription by "formally" accepting it at the time of closing is a crude attempt to rationalize an ill-founded belief that no trade of a security has occurred until the company "formally" accepts the subscription agreement and therefore no offering memorandum need be delivered to the investor until that time. Treating these subscription funds as "advances" to allow the company to spend the funds immediately and yet purporting to preserve the investor's right to an offering memorandum prior to a formal 'closing' of the subscription is illusory. This approach ignores the plain meaning of 'security' and 'trade' as defined in the *Act* and undermines the protective purpose of section 133 of the *Rules*, B.C. Reg. 194/97, which is to deliver the offering memorandum to prospective investors **before** a decision is made to subscribe to the issue so that the decision to commit an investor's money is an informed one. In our view such a structure is *prima facie* abusive and prejudicial to the public interest.

[para 455]
Accordingly, we find that Canadian Global Financial breached section 61(1) of the Act each time when, relying on the prospectus exemptions in section 128(a) and (b) of the Rules, it distributed previously unissued securities without having delivered an offering memorandum to purchasers before an agreement of purchase and sale was entered into. In addition to its failure to deliver an offering memorandum which resulted in this breach, Canadian Global Financial had no legal right to spend the purchasers' subscription funds without having first signed the purchase agreement. As a result of Bilinski, Lamblin and Friesen participating in the distribution of Canadian Global Financial shares, we find that they breached section 61(1) of the Act.

[para 456]
However this does not end the matter. The question left is — can the board of directors be held responsible for Canadian Global Financial's breach of section 61(1) of the Act in light of the legal advice given?

[para 457]
Canadian Global Financial and its directors Bilinski, Lamblin and Arnot, have argued throughout these proceedings that they specifically sought and received the advice of a senior securities lawyer when Canadian Global Financial started selling its own exempt securities because they wanted to make sure that they were doing things right. They argue that it was prudent for them to do so and they should not be held to account for relying in good faith on advice they say was wrong. As a consequence, they say Canadian Global Financial and its directors and senior management should not be liable for any consequent breaches founded on that advice nor should its investors suffer for the negligence of counsel.

[para 458]
In our view, Poznanski was very firm and unequivocal in stating that at no time did he, or his firm, advise the respondents that once the private issuer exemption was exhausted, Canadian Global Financial could continue to distribute securities without an offering memorandum having been first delivered to potential investors. He did not back off from this position even though he conceded that the subscription agreement was not drafted as carefully as it could have been. We found Poznanski to be a credible witness.

[para 459]
We also heard from each of the respondents and Don Wilson. They understood the legal advice from Poznanski and his firm to mean that investors could sign the subscription agreements and advance their subscription funds to the company prior to the delivery of the offering memorandum as long as the subscription agreements were not formally accepted by Canadian Global Financial.

[para 460]
We can see why the respondents came to this understanding when we review the documents, including the Canadian Global Financial subscription agreement with the

attached schedules and the cover fax with Lee's enclosed note. Their testimony also seemed credible on this point.

[para 461]
Whether there was a breakdown in communication or whether there was simply a misunderstanding as to what the actual legal advice was, is not entirely clear and we make no finding in that regard. What was clear was that fact that Canadian Global Financial used the subscription agreements to raise, and use, money from investors without delivering an offering memorandum to them.

[para 462]
It is also clear to us, and we find, that Bilinski, Lamblin and Arnot had an honest belief that Canadian Global Financial received legal advice confirming that it could raise money by selling shares to investors without first giving them an offering memorandum. This was based on their belief that investors could sign the subscription agreements and advance subscription funds to Canadian Global Financial prior to the delivery of the offering memorandum as long as the subscription agreements were not formally accepted by Canadian Global Financial.

[para 463]
We find that Bilinski, Lamblin and Arnot took reasonable and prudent steps as directors when they engaged a senior securities lawyer to help Canadian Global Financial with its intended financings. In our view they are entitled to rely on the advice they believed they received as a defence to allegations against them as directors and officers responsible for Canadian Global Financial's breach of section 61(1) of the Act relating to shares issued relying on the exemptions in section 128(a) and (b) of the Rules.

[para 464]
Were the promissory notes issued by Canadian Global Financial and Private Ventures Investment securities and were they distributed without a prospectus?
Staff alleged that:

1. the promissory notes issued by Canadian Global Financial and Private Ventures Investment were securities distributed contrary to sections 34 and 61 of the Act.

2. Canadian Global Financial and Private Ventures Investment could not rely on the private issuer exemption and the trading exemptions in sections 89 (a) and (b) and the corresponding prospectus exemptions in sections 128(a) and (b) of the *Rules* to distribute the promissory notes.

3. Lamblin sold Canadian Global Financial promissory notes to clients of Canadian Global Investment contrary to sections 34 and 61 of the Act.

4. Bilinski, Lamblin, Friesen and Price sold Private Ventures Investment promissory notes to clients of Canadian Global Investment contrary to sections 34 and 61 of the Act.

5. Bilinski, Lamblin, Friesen and Price sold Private Ventures Investment promissory notes to clients of Canadian Global Investment and represented that the funds raised would be used to finance related issuers, including Envirosonics, Gorlan and Arc Sonics International Ltd. In some cases the respondents misrepresented to Private Ventures Investment noteholders that their investment was in Envirosonics, Gorlan or Arc Sonics, when it was not, contrary to section 50(1)(d) of the Act.

[para 465]
The respondents named in these allegations conceded that no prospectus or offering memorandum was prepared in relation to the promissory notes. They considered the promissory notes to be short term loans to Canadian Global Financial and Private Ventures Investment and not securities. In the alternative, they argued that they could rely on the private issuer exemption.

[para 466]
The definition of security in section 1(1) includes a note or other evidence of indebtedness. Based on this definition alone we find that Canadian Global Financial and Private Ventures Investment's promissory notes were securities. The case law referred to us by staff also comes to the same conclusion without the benefit of a specific statutory definition of security that includes a promissory note. See *Pacific Coast Coin Exchange* v. *O.S.C.*, [1978] 2 S.C.R. 112. (S.C.C.) and *Reves* v. *Ernst & Young* 494 U.S. 56 (Supreme Court of the United States).

[para 467]
With the exception of the person to whom Price sold a promissory note and Lamblin's in-laws, all of the Private Ventures Investment and Canadian Global Financial promissory noteholders were clients of Canadian Global Investment. Bilinski, Lamblin, Friesen and Price did not produce any evidence, to show that the noteholders were not the public, except for Lamblin's in-laws who we find meet the 'common bonds' test referred to earlier. All others were members of the public requiring protection of the Act. We find that Private Ventures Investment and Canadian Global Investment could not rely on the private issuer exemption in issuing the promissory notes.

[para 468]
Canadian Global Financial and Private Ventures Investment also argue that they were entitled to rely on the trading exemptions in section 89 (a) and (b) of the Rules and the corresponding prospectus exemptions in section 128(a) and (b) of the Rules. However these exemptions require that an offering memorandum be delivered to prospective investors. No offering memorandum was prepared for either of these two issuers.

[para 469]
According to Price, Private Ventures Investment decided to raise funds by promissory note because there was no time to prepare a 'traditional offering memorandum'. He believed, and advised Bilinski, that this was legal as long as an offering memorandum, which he understood was being prepared for Envirosonics, followed shortly thereafter. This belief was based not on a legal opinion but on a conversation Price had with a certified financial planner indirectly involved in the project. In light of the discussions the respondents were having with counsel about how the issuers they were involved with were raising financing under the statutory exemptions, we are surprised that Poznanski was not asked about promissory notes until sometime in the summer of 1999. It is interesting, at best, to note that once Price was told that a promissory note was a security under the Act he made no further inquiry as to whether it was appropriate to raise funds by promissory note without an offering memorandum. He of course knew that this was what Private Ventures Investment was in the process of doing.

[para 470]
Rather than lose the opportunity to raise money quickly and lose the rights to the Envirosonics technology, Price and Private Ventures Investment were prepared to cut corners to the serious prejudice of the investors. Their approach was to get the money first because it was believed to be urgent and worry about the paper later.

[para 471]
As a consequence, no prospectus or offering memorandum for Envirosonics, Arc Sonics or Private Ventures Investment was prepared and delivered to investors before they gave up their money. This understanding of convenience was carried over to Canadian Global Financial when it used promissory notes to raise funds.

[para 472]
However, because Canadian Global Financial and Private Ventures Investment did not deliver an offering memorandum to investors before selling the promissory notes, the prospectus exemptions in sections 128(a) and (b) of the *Rules* were not available.

[para 473]
The Canadian Global Financial and Private Ventures Investment promissory notes, with the exception of a Private Ventures Investment note sold by Price, were sold by registrants. The Canadian Global Financial and Private Ventures Investment promissory notes were not previously issued securities.

[para 474]
We find that Private Ventures Investment distributed its promissory notes contrary to sections 34(1) and 61(1) of the Act. We find that Price distributed Private Ventures Investment promissory notes contrary to sections 34(1) and 61(1) of the Act. Finally we find that Bilinski, Lamblin and Friesen distributed Private Ventures Investment promissory notes contrary to section 61(1) of the Act.

[para 475]
We find that Canadian Global Financial distributed promissory notes contrary to 61(1) of the Act. We also find that Lamblin distributed promissory notes contrary to section 61(1) of the Act.

[para 476]
Staff's final allegation in this section is that "In some cases the respondents misrepresented to Private Ventures Investment noteholders that their investment was in Envirosonics, Gorlan or Arc Sonics, when it was not, contrary to section 50(1)(d) of the Act."

[para 477]
We find that staff did not produce the evidence to prove the allegation and we dismiss it.

[para 478]
Did Canadian Global Financial make misrepresentations in its business plan?
Staff allege in the notice of hearing that the following statements made in Canadian Global Financial's business plan were prohibited representations made contrary to section 50(1)(c) of the Act:

> "[Canadian Global Financial] is currently in the process of development and/or acquisition of a Public Company, in preparation for a future transition of assets. It is anticipated that the process will take up to two years to complete" and "It is the further intention of [Canadian Global Financial] to market the public shares at approximately $2.50 per share."

[para 479]
Staff subsequently argued in their final submissions that these statements were also misrepresentations under section 50(1)(d) of the Act. We do not intend to consider the allegation concerning section 50(1)(d) as it was not in the notice of hearing and the respondents first had notice of it in staff's final submissions.

[para 480]
Section 50 (1)(c) of the Act provides:

> A person, while engaging in investor relations activities or with the intention of effecting a trade in a security, must not do any of the following:
>
> (c) represent, without obtaining the prior written permission of the executive director,
>
> (i) that the security will be listed and posted for trading on an exchange or quoted on any quotation and trade reporting system, or
>
> (ii) that application has been or will be made to list and post the security for trading on an exchange or quote the security on any quotation and trade reporting system;
>
> …

[para 481]
We find that Canadian Global Financial's statements in its business plan that it "is currently in the process of development and/or acquisition of a Public Company" and that its intention was "to market the public shares at approximately $2.50" cannot be interpreted to fit within the meaning of the words in either of sub sections 50(1)(c)(i) or (ii). We conclude this because the statements do not refer in particular to Canadian Global Financial securities being listed and posted for trading on an exchange, and those were the securities being sold. Accordingly, we find that these statements were not misrepresentations within the meaning of section 50(1)(c) of the Act and therefore dismiss the allegation.

[para 482]
Did the Columbia Ostrich (VCC) offering memorandum contain misrepresentations?
Staff allege that:

1. the Columbia Ostrich (VCC) offering memorandum dated December 1, 1999, was not in the required form as required by section 133 of the *Rules* and therefore, any distribution made under it was contrary to sections 34 and 61 of the *Act* and was in breach of the Commission orders that required the distribution to be in accordance with the Act.

2. form 20 reports of exempt distribution were not filed by Columbia Ostrich (VCC) as required by sections 135 and 139 of the Rules.

3. the Columbia Ostrich (VCC) offering memorandum dated December 1, 1999, contained misrepresentations and contradictions, including inaccurate statements about the number of livestock on the farm, the potential revenues of the farm, the associations of Columbia Ostrich (VCC) with related parties, the use of funds raised by Columbia Ostrich (VCC) and a related issuer, Rocky Mountain II Ostrich Farms and the valuation of the ostrich farms owned by Rocky Mountain II and Columbia Ostrich Farm.

4. in December 1999, Friesen and Lamblin sold Columbia Ostrich (VCC) securities to clients of Canadian Global Investment knowing of the deficiencies in the the offering memorandum and therefore they participated in an illegal distribution of those shares contrary to section 61 of the Act and contrary to the Commission orders

5. Bilinski, as a *de facto* director of Columbia Ostrich (VCC), failed to ensure that the offering memorandum was in proper form and thereby participated in an illegal distribution of those shares contrary to section 61 of the Act

[para 483]

Bilinksi argued that with the exception of the addendum to the December 1999, Columbia Ostrich (VCC) offering memorandum, the offering memorandum was “in order”.

[para 484]
Section 1(1) of the Act defines "misrepresentation" to mean

(a) an untrue statement of a material fact, or
(b) an omission to state a material fact that is
    (i) required to be stated, or
    (ii) necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made;

and defines "material fact" to mean

where used in relation to securities issued or proposed to be issued, a fact that significantly affects, or could reasonably be expected to significantly affect, the market price or value of those securities;

[para 485]
Section 133 of the Rules provides the offering memorandum must be in the required form and certified by at least two directors confirming that it contains no misrepresentations.

[para 486]
The Columbia Ostrich (VCC) offering memorandum did not contain a certificate of at least two directors certifying that it did not contain any misrepresentations. The failure to have such a certificate attesting to the truth and accuracy of the statements made in the offering memorandum is a serious deficiency that goes to the very validity of the offering memorandum. We find that an offering memorandum without a proper certificate is not an offering memorandum in the required form as prescribed under section 133 of the Rules.

[para 487]
The unusual addendum attached to the offering memorandum Bilinski said was simply to “clarify information already in the offering memorandum but deemed not to be as understandable as it could or should be” could not act as a substitute for the certificate nor could it rectify an already deficient offering memorandum.

[para 488]
We find that Columbia Ostrich (VCC) did not file any Form 20 reports of exempt distribution under sections 135 and 139 of the Rules as required. We find Columbia Ostrich (VCC)’s December 1999 offering memorandum was not in the required form as required by section 133 of the Rules because it did not contain the required directors’ certificate attesting to its accuracy. We find that as a consequence there was an illegal distribution of Columbia Ostrich VCC shares contrary to section 61(1) of the Act and contrary to the outstanding Commission’s orders, which required that any distribution comply with the Act.

[para 489]
However, Columbia Ostrich (VCC)'s regulatory problems do not end here. Dan Bilinski's obvious conflicts of interest, manifested in his dealings with his cousin Dave Bilinski, operated to the prejudice of the Columbia Ostrich (VCC) investors. By his own admission, Bilinski appears to have acted as a *de facto* director of Columbia Ostrich (VCC). In our view, the evidence overwhelmingly supports this admission. A review of the company's origins and history, including Price's version of events, can lead to no other reasonable conclusion other than he was the company's directing mind right through to the preparation of the ill-fated December 1999 offering memorandum. There too he directed, in large part, what kind of disclosure was to be made. He convinced Parent to proceed with it because money was desperately needed for the farm.

[para 490]
One of the consequences of this was that the disclosure in the offering memorandum was entirely inadequate. For the most part it was misleading by omission of material facts. Reflecting Bilinski's general approach, disclosure for investors in December 1999 was focused entirely on his optimistic vision of the future on a 'going forward basis' as opposed to reality. This approach was echoed by Lamblin when he believed Parent was doing the investors a disservice by "focusing on the negative observations that he had rather than concentrating on what in fact, if anything, could be done to … take the farm and take advantage of the industry on a going forward basis".

[para 491]
However, Parent's initial refusal to certify the December 1999, offering memorandum based on his belief that the memorandum did not adequately disclose the true state of the ostrich farm's affairs was well founded. On these points we found him to be a credible witness and where his evidence differed from the testimony of Dan Bilinski, we preferred the testimony of Parent. Unfortunately Parent was persuaded by Bilinski to allow the unorthodox offering memorandum to go forward.

[para 492]
The inadequate disclosure could not be remedied by Bilinski's assurance that investors, who were prepared to put money in to keep the birds alive, knew full well what the condition of the farm was, how many birds there were last year and how much had been paid for consulting fees. Nor could investors become adequately informed about the business and affairs of the farm simply by attaching Parent's itemized concerns. Bilinski's optimistic and rosy vision of the farm's future in his addendum was at odds with what was in the offering memorandum and reality. The addendum was not as Bilinski stated, sufficient "to insure the investors of the status of their investment". Nor was Parent's attached letter.

[para 493]
The cut and paste approach did not come close to providing investors with the level of disclosure to which they were entitled. There were material omissions concerning

Columbia Ostrich Farm's operating history, the number of live birds produced over the years, the costs in operating the farm and raising these birds and the costs to Columbia Ostrich (VCC) investors as a result of the financial assistance given to Dave Bilinski and his companies.

[para 494]
Furthermore, the description of the transactions involving Dave Bilinski and four of his companies was virtually impossible to understand. There was no meaningful description of the exact nature and effect on these transactions on Columbia Ostrich Farm and Columbia Ostrich (VCC). There was no independent support for the $2 million valuation of the ostrich farms owned by Rocky Mountain II and Columbia Ostrich Farm. These were material facts that needed to be disclosed to prevent the statements made from being misleading.

[para 495]
We find that there were misrepresentations about the number of livestock on the farm, the ability of the farm to produce live birds, the costs of raising the birds, the nature of the transactions involving Dave Bilinski and his companies and, because the figures were without foundation, the valuation of the ostrich farms owned by Rocky Mountain II and Columbia Ostrich Farm.

[para 496]
Accordingly, we find that the offering memorandum contained misrepresentations about the business and affairs of Columbia Ostrich (VCC) contrary to section 133 of the Rules.

[para 497]
We find Bilinski as a *de facto* director was in large part responsible for these misrepresentations and that he failed to ensure that Columbia Ostrich (VCC)'s offering memorandum was in the required form. As a consequence we find that he distributed Columbia Ostrich (VCC) shares contrary to section 61(1) of the Act.

[para 498]
However, we do not find that staff have proved the allegation that Friesen and Lamblin sold Columbia Ostrich VCC shares to clients on the basis of an offering memorandum they "knew to be deficient". Accordingly this allegation is dismissed.

[para 499]
Did the individual respondents breach the Commission's orders?
Staff alleged that:

1. in November and December 1999, Bilinski, Friesen and Gordon-Carmichael, breached the orders of the Commission by facilitating the sale of Canadian Global Real Estate securities to three residents of British Columbia.

2. in December 1999 Friesen and Lamblin breached the orders of the Commission by selling securities of Columbia Ostrich (VCC) to residents of British Columbia.

3. Global Canadian Financial Group, Global Canadian Investment Corporation, Bilinski, and Lamblin directly solicited prospective clients inside and outside of British Columbia through a website for the purpose of effecting a trade in securities, contrary to section 34(1) of the Act and in breach of Commission orders.

4. Global Canadian Investment Corporation through a website held itself out as being a mutual fund dealer, contrary to sections 50(1)(d) of the *Act* and contrary to section 11 of the Rules.

[para 500]
Section 50 (1)(d) of the Act provides that:

> A person, while engaging in investor relations activities or with the intention of effecting a trade in a security, must not do any of the following:
> …
> (d) make a statement that the person knows, or ought reasonably to know, is a misrepresentation.

[para 501]
Section 11 of the Rules provides that:

> A person must not use
> ….
> (b) any other words in connection with the business of a person, in a way likely to
> (c) deceive or mislead the public about the proficiency and qualifications of the person to undertake the business of advising another with respect to investment in or the purchase or sale of securities or exchange contracts

[para 502]
The effect of Commission orders when the trades for Canadian Global Real Estate took place was that none of the individual respondents and Canadian Global Investment could rely on the exemptions contained in the Act unless all of the requirements of the Act were met, including sections 14 and 48 of the Rules and further, if a trade was not suitable, the trade had to be effected through a dealer other than Canadian Global Investment.

[para 503]
The evidence shows that soon after the Commission issued its orders, the corporate respondents became extremely pressed for money. With no money coming in they were on the brink of insolvency by December 1999. Bilinski and Lamblin were frustrated by the restraints in the orders and Edwards was recruited to help them. We find that the purpose was to try and take advantage of Edwards' lack of registration status and avoid the application of the suitability of investment rule. Bilinski attempted to isolate his and Canadian Global Investment's involvement from Edwards and these trades.

[para 504]
We find that he did not in fact, nor could he in law, isolate Canadian Global Investment from these transactions. These clients came to Edwards through Canadian Global Investment. We find the trades of Canadian Global Real Estate despite, being superficially effected through Edwards, were made under the umbrella of Canadian Global Investment's registration as a mutual fund dealer.

[para 505]
Edwards' and Bilinski's suggestions that he, Edwards, was totally independent from Canadian Global Investment were specious. The persons he sold Canadian Global Real Estate securities to were clients of Canadian Global Investment when they purchased the exempt securities through him. As such they were entitled to the protections afforded by a registrant fulfilling its duties under section 14 and 48 of the Rules. None of them were dealt with according to the standards described in sections 14 and 48 of the Act nor were the transactions conducted according to Canadian Global Investment's new compliance regime. The consequences of this can be seen in the McGavin and Kreisz transactions, which we already determined were unsuitable. As such they ought to have been referred to a registered dealer other than Canadian Global Investment. They were not.

[para 506]
We find that Gordon-Carmichael's participation in the Kreisz transaction was an act in furtherance of a trade for which he received a significant portion of Edwards' sales commission. We find that Friesen's participation in the McGavin transaction was an act in furtherance of a trade for which he received a portion of Edwards' sales commission. We find that Bilinski facilitated both of these trades.

[para 507]
Although Bilinski tried to resign as a director and had tried to surrender his registration, the Director of Registration had not accepted it as surrendered until May 2000. Contrary to what he may have thought, neither he nor Canadian Global Investment could walk away from their duties as registrants. Accordingly, we find that Bilinski, Gordon-Carmichael and Friesen sold Canadian Global Real Estate securities to clients of Canadian Global Investment contrary to the Commission's orders.

[para 508]
The Columbia Ostrich (VCC) offering memorandum disclosed that the sale of the VCC shares had to be made through a licensed securities dealer. This probably explains why these transactions were not effected through Edwards. In any event, these investors were clients of Canadian Global Investment and we find that they were entitled to the protections afforded by a registrant fulfilling its duties under section 14 and 48 of the Rules and further to the Commission's orders.

[para 509]

This meant that these trades had to be suitable and had to be completed in accordance with the Act and the new compliance and supervision procedures Canadian Global Investment's designated compliance officer had implemented in November and December 1999. First of all, we already found that the Columbia Ostrich (VCC) offering memorandum was so deficient that it resulted in an illegal distribution contrary to the Act. Furthermore, we have found Lamblin and Friesen sold these securities in circumstances where the required forms for the purchases were not completed in accordance with the Act and where they did not comply with the 'suitability of investment' rules.

[para 510]
Accordingly, we find that Lamblin and Friesen breached the Commission's orders when they sold Columbia Ostrich (VCC) shares in December 1999 to clients of Canadian Global Investment.

[para 511]
We accept in large part Bilinski's explanation about how the Canadian Global website was created and the use to which it was put. In our view, staff have not produced the evidence to prove that Global Canadian Financial Group, Global Canadian Investment Corporation, Bilinski, and Lamblin directly solicited prospective clients inside and outside of British Columbia through this website for the purpose of effecting a trade in securities.

[para 512]
Accordingly, we dismiss this allegation and the allegation that Bilinski and Lamblin, by creating the website, breached the Commission's orders.

[para 513]
Similarly staff have not proved that Global Canadian Investment Corporation's statement, that it was a mutual fund dealer, was a breach of section 11 of the Rules or section 50(1)(d) of the Act. Therefore we dismiss this aspect of the allegation as well.

Conclusion

[para 514]
Summary of key findings
In summary we found that:

1. Bilinski, Lamblin, Friesen and Gordon-Carmichael, as registrants, failed to comply with the 'know your client', 'suitability of investment' and 'fair dealing' rules when they sold their clients speculative, illiquid and highly risky securities of companies under the umbrella of Canadian Global Financial.

2. Bilinski and Lamblin, as registrants, failed to comply with the 'fair dealing' rule because their interests conflicted with their duty to their clients and they, Bilinski

and Lamblin, preferred their own interests to those of their clients when they sold them the exempt securities.

3. Canadian Global Investment, as a registrant, failed to:

   (a) establish and apply proper compliance and supervision procedures

   (b) maintain proper books and records

   (c) comply with conflict of interest rules when it sold clients the exempt securities

   Bilinski, Lamblin and Arnot, as directors and senior management, were responsible for Canadian Global Investment's failure to meet its regulatory duties under the Act and Rules.

4. Bilinski, as Canadian Global Investment's compliance officer, failed to:

   (a) ensure that Canadian Global Investment and its employees complied with the Act and the Rules,

   (b) ensure that new client accounts, including the 'know your client' forms, were approved, and

   (c) supervise transactions of Canadian Global Investment and its employees.

5. Canadian Global Financial distributed its shares and promissory notes to the public without a prospectus or an appropriate exemption, contrary to the Act and Rules. Bilinski, Lamblin and Arnot as directors and senior management were responsible for the failure of Canadian Global Financial to comply with the Act and Rules. Bilinski, Lamblin and Friesen distributed Canadian Global Financial shares contrary to the Act. Lamblin distributed Canadian Global Financial promissory notes contrary to the Act.

6. Private Ventures Investment distributed promissory notes to the public without a prospectus or an appropriate exemption, contrary to the Act and Rules. Bilinski, Lamblin, Price and Arnot as directors and senior management were responsible for the failure of Private Ventures Investment to comply with the Act and Rules. Bilinski, Lamblin, Friesen and Price distributed Private Ventures Investment promissory notes contrary to the Act.

7. Columbia Ostrich (VCC) distributed securities to the public based on an offering memorandum that contained misrepresentations and did not contain the required directors' certificate attesting to its accuracy. Columbia Ostrich (VCC) distributed securities contrary to the Act, Rules and a Commission order. Bilinski

distributed Columbia Ostrich (VCC) securities contrary to the Act. Bilinski as a *de facto* director was responsible for Columbia Ostrich (VCC)'s failure to comply with the Act and Rules.

8. Bilinski, Lamblin, Friesen and Gordon-Carmichael sold the exempt securities contrary to Commission orders.

[para 515]
This takes us to the next stage.

[para 516]
Submissions on orders in the public interest
As indicated at the conclusion of the hearing, the parties will have the opportunity to make further submissions before the Commission renders a decision as to what, if any, orders ought to be made in the public interest. The temporary orders referred to at the beginning of these findings remain in effect.

[para 517]
We direct staff to file their written submissions on sanctions with the Secretary of the Commission and to send a copy to each of the respondents on or before February 28, 2002. Respondents wishing to make submissions are directed to file those submissions with the Secretary of the Commission and send a copy to counsel for staff on or before March 29, 2002. Any party that wishes to make oral submissions in addition to its written submissions must request the same of the Secretary on or before February 22, 2002, and a date for oral submissions will be fixed.

January 29, 2002

[para 518]
For the Commission

Joyce C. Maykut, Q.C.
Vice Chair

John K. Graf
Commissioner

2002 BCSECCOM 102

Roy Wares
Commissioner