

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54754 / November 15, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12479

In the Matter of

1st Global Capital Corp.,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER PURSUANT TO
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against 1st Global Capital Corp. (“1st Global” or “the Firm”).

II.

In anticipation of the institution of these proceedings, 1st Global has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, 1st Global consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of this Order and the Offer, the Commission finds that:

RESPONDENT

1st Global is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, with its principal offices in Dallas, Texas. 1st Global has a network of over 1,200 registered representatives (“RRs”) located throughout the country. The vast majority of 1st Global’s RRs are certified public accountants or tax accountants.

The Firm derives the majority of its revenue from the sale of mutual fund products, including tax-advantaged qualified tuition savings plans, commonly known as Section 529 College Savings Plans (“529 Plans”).¹ During January 2002 through September 2003, 1st Global sold 529 Plan units totaling over \$45 million. In fiscal 2003, 529 Plan unit sales represented approximately 1% of the Firm’s total revenues.

SUMMARY

1. This matter involves violations of Municipal Securities Rulemaking Board (“MSRB”) rules by 1st Global in connection with its offer and sale of investments in 529 Plans units. Between January 2001 and 2004, 1st Global recommended and sold investments in particular classes of 529 Plan units without necessarily having reasonable grounds to believe that its recommendations were suitable, based upon 529 Plan fee structures and customer needs and objectives, and by failing to deal fairly with its customers in connection with sales of 529 Plan unit investments. As a result, 1st Global willfully violated MSRB Rules G-17 and G-19, and Exchange Act Section 15B(c)(1), by making unsuitable recommendations in connection with the offer and sale of 529 Plan investments.

FACTS

529 Plan Investments

2. States generally organize their 529 Plans as trusts, either directly through legislation or by delegating authority to a state agency to form the trusts that issue 529 Plan units. Individual investors (usually called account owners) invest for their beneficiaries’ qualifying higher education costs by purchasing units issued by these trusts. In turn, these trusts generally invest their assets in pooled investment vehicles (most commonly mutual funds). Because these trusts are sponsored by state governments or agencies, the units they issue are municipal securities.

3. Under Section 529 of the Internal Revenue Code, earnings on 529 Plan contributions grow federal tax-free, and withdrawals are free of federal tax if used for qualified expenses, such as tuition, fees, room, board, textbooks and other education expenses at qualified higher-education institutions. If an account holder uses a withdrawal for non-qualified expenses, however, the account holder must pay ordinary income taxes and a 10% penalty on the earnings.

¹ Section 529 of the Internal Revenue Code provides for two types of tax-advantaged qualified tuition savings programs: prepaid tuition programs and state-sponsored tuition savings plans. Prepaid tuition programs, which involve the prepayment of tuition expenses for students at colleges and universities, have no investment options and are not addressed by this Order.

Investors therefore have significant disincentives against use of withdrawals for anything other than qualified, *i.e.* education-related, expenses.

4. 529 Plan contributions are treated as gifts to the named beneficiary for gift tax purposes, but they qualify for the annual gift tax exclusion (currently \$12,000 or less per year). As a result, investors' annual contributions to 529 Plans often are \$12,000 or less.²

5. Investors may acquire interests in 529 Plans either directly from the state trust or a state agency acting on its behalf (in which case the plan is a "direct-sold 529 Plan"), or from a financial intermediary, such as a broker, dealer, or bank municipal securities dealer, or other bank (in which case the plan is a "broker-sold 529 Plan"). 529 Plans generally invest in professionally-managed portfolios that hold shares in several mutual funds or other pooled investment vehicles. The underlying investment options in 529 Plans vary from plan to plan, with some plans offering a wide range of funds and others offering more limited choices.

529 Plan Expenses and Unit Classes

6. All 529 Plans include fees and expenses, which vary not only from plan to plan, but also within a single 529 Plan. The offering document for a 529 Plan, which is often called a program description or plan description, describes the fees and expenses associated with the 529 Plan. 529 Plan fees may include one-time enrollment or application fees, annual (fixed-dollar) account maintenance fees, sales loads, deferred sales charges, program management and administrative fees (usually asset-based),³ and asset-based distribution fees, in addition to the fees and expenses of the underlying mutual funds. In some instances, it also is necessary to review the prospectuses for the underlying mutual funds in 529 Plans to ascertain all applicable fees and expenses.

7. Broker-sold 529 Plans often use load-waived shares of mutual funds as their underlying investments, and impose sales charges and asset-based distribution fees (virtually identical to Rule 12b-1 fees paid by many mutual funds) at the 529 Plan level. These 529 Plans usually offer classes of units that emulate the share classes at a load mutual fund (*e.g.*, Class A units that charge a front-end load, Class B units that charge a deferred sales charge, Class C units that charge no load but feature relatively higher asset-based distribution fees, etc.). As a result of these sales loads and additional fees, broker-sold 529 Plans often cost more than direct-sold plans.

8. Many broker-sold 529 Plans also emulate the "breakpoints" offered by mutual fund complexes (usually following the breakpoint schedule of the fund complex that manages the

² Account holders may contribute up to \$60,000 per beneficiary and treat the contribution as made over a five calendar-year period.

³ Generally, "program management" fees are additional asset-based fees charged by a 529 Plan's program manager, which is usually a mutual fund complex that manages a state's 529 Plan pursuant to a contract with the state. "Administrative" fees are also asset-based fees, but are generally paid to the state agency charged with administering the 529 Plan in order to defray its costs. Both of these fees are generally deducted at the 529 Plan level, rather than coming from the underlying mutual funds.

underlying funds available through the particular 529 Plan).⁴ In reaching a breakpoint, an investor is often permitted to aggregate transactions made by certain family members and transactions in certain other related accounts, e.g., 529 Plan accounts held by the same account owner, but with different beneficiaries.⁵ 529 Plans generally disclose the schedule of available breakpoints and how an investor may qualify for breakpoints in their offering documents. The prospectuses for the mutual funds underlying a 529 Plan, which are incorporated by reference in the 529 Plan offering documents, may also contain relevant breakpoint information.

9. The class of 529 Plan units that an investor purchases determines the selling RR's compensation structure and may materially affect the up-front costs and/or long-term investment returns of the investor. Sales loads, deferred sales charges, and other fees and expenses vary widely not only from plan to plan, but also among the classes of units offered by a single plan.

10. Additional fees and expenses associated with 529 Plans, such as program or administrative fees, also may vary based on unit class. For example, under one 529 Plan sold by 1st Global, annual program fees for Class B and Class C units were 85 basis points higher than the program fees for Class A units.

11. Typically, units denominated as Class A charge a front-end load, while other classes, such as Class B and Class C, have different sales charge and expense characteristics. A "front-end load" is a sales charge that certain principal underwriters or distributors charge to the investor at the time an investor buys units. When the purchase is through a broker-dealer, the fund's principal underwriter or distributor pays a part of the front-end load amount to the broker-dealer.

12. Unlike Class A units, Class B units do not carry a front-end load. Rather, Class B units generally carry "contingent deferred sales charges" ("CDSCs"), which means that a gradually declining "load" is charged to investors if units are redeemed within a certain number of years, generally five to nine, after purchase. 529 Plan underwriters pay brokers a concession at the point of sale for Class B units, just as they do for sales of Class A units. So that the underwriter can recover the cost of the concession, Class B units impose a higher asset-based distribution fee. Many Class B units convert to Class A units, but typically not until after seven to nine years.

⁴ "Breakpoints" is a term that usually refers to the discounts to the front-end loads or deferred sales charges (depending on the share class) many mutual funds offer at certain pre-determined levels of investment. Generally, an investor can procure a breakpoint discount through either a single purchase large enough to reach a breakpoint or multiple purchases in a single mutual fund or any of the funds in a fund complex the aggregate value of which is large enough to reach a breakpoint. An investor may aggregate purchases over time to meet applicable breakpoint thresholds through a "right of accumulation" ("ROA") or "letter of intent" ("LOI"). An investor may be eligible for a discount through an ROA by aggregating the amount of his or her current purchase with the amount of certain prior purchases. An LOI is a written statement of intent by the investor to purchase a certain amount of mutual fund shares over what is usually a thirteen-month period. Loads and breakpoints can vary among funds within a fund complex or between fund complexes, as do the specific terms and conditions under which breakpoint discounts may become available.

⁵ In addition, certain mutual funds also allow investors to aggregate shares purchased through various other accounts (such as retirement accounts and shares purchased as the underlying investment in a 529 Plan) in reaching breakpoints.

13. Class C units typically do not charge a front-end load, and generally impose a significantly lower CDSC than Class B units (or none at all). Like Class B units, Class C units generally charge relatively high asset-based distribution fees. Class C units, however, typically do not convert to Class A units and therefore continue to impose higher distribution fees for as long as the investor holds the units.

14. Because of the unique cost structures associated with 529 Plan units, which may not correspond to sales of mutual fund shares, careful analysis of the costs of differing classes of 529 Plan units is necessary. For example, Class C mutual fund shares typically are expensive to own over a long period because of the relatively high distribution fees, but in one popular 529 Plan sold by 1st Global in mid-2002, Class C 529 Plan units were the least expensive alternative for certain plan investments for over 17 years. Under another 529 plan, Class C units were the least expensive investment in some funds for the first four years, and Class B units were the least expensive unit class thereafter; Class A units were never the least expensive class of unit class for this plan investment, even with a very lengthy holding period. Broker-dealers recommending a 529 Plan investment to a customer must analyze the plan carefully to compare the relative costs of the different classes of units before recommending that a customer purchase a particular unit class.

Withdrawal Dates and Unit Class Selection

15. The anticipated number of years until withdrawal is a critical factor in determining the appropriate class of units class for a 529 Plan investment. See MSRB Fair Practice Notice, *Application of Fair Practice and Advertising Rules to Municipal Fund Securities* (May 14, 2002) (noting, in discussing the application of MSRB rules to sales of 529 Plans, the importance of the number of years until withdrawal in determining which unit class would be suitable for a particular customer) (“MSRB 529 Plan Notice”).

16. 529 Plan investors typically have a relatively precise time horizon for their investment, because the age of the beneficiary and their likely college entry date are known. As a result, a broker-dealer making recommendations to customers concerning 529 Plan units can determine with relative precision the class of units offered of the particular fund [or funds] that is more economically beneficial to a particular customer.

17. In recommending 529 Plan investments, broker-dealers implicitly represent to their customers that the recommended class of units class is suitable, given, among other things, the age of the child. Where the beneficiary of a 529 Plan is a young child, the effect of higher annual, ongoing expenses on the performance of the investment may be significant, even where the initial investment is relatively small.

1st Global’s Sales of 529 Plan Investments

18. 1st Global recommended and sold to its customers classes of 529 Plan units where it lacked reasonable grounds for believing that the investment in the particular unit class was suitable, based upon 529 Plan fee structures and customer needs, particularly the beneficiary’s age. The Commission staff analyzed 101 accounts (from over 4,000 529 Plan accounts), and in 69 of the accounts analyzed, 1st Global RRs failed to recommend the lowest-cost class of units

that 1st Global offered of the particular fund [or funds] in the customer's 529 Plan. The difference between the value of the class of units purchased and the value of the lowest-cost unit class available, at the end of the expected holding period, ranged from less than 1% to over 10%. In 33 of the 69 accounts analyzed, the additional cost to investors (including foregone earnings) equaled or exceeded 5% of the amount of the initial investment (assuming 10% growth).⁶

19. In some instances, 1st Global sold classes of units other than the lowest-cost unit class that 1st Global offered of the particular fund [or funds] in the customer's 529 Plan at least in part because 1st Global failed to evaluate adequately the substantial effect of an anticipated lengthy holding period on comparative unit class costs, particularly for small investments. For example, one 1st Global customer invested \$11,000 each for five-month old twins in Class C units of a popular 529 Plan investment. If he had purchased Class A units in the same investment, his investment for each child would be worth an estimated \$4,100, or 9%, more than the value of Class C units when the children reach college age, or over 37% of the initial investment amount (based on 10% earnings growth assumptions). Similarly, another customer invested \$6,000 each for two and a half year old triplets in Class B units of a different Alliance College Bound Fund mutual fund. Had this customer purchased Class A units in the same investment, each child's account would have been worth almost \$400, or 1.75%, more than the value of Class B units when the children reach college age, or over 6.3% of the initial investment amount. A third customer invested \$4,000 for a nineteen-month old in Class C units of a different 529 Plan. If this customer had purchased Class A units in the same investment instead, it would be worth an estimated \$1,200, or almost 9%, more than the value of Class C units when the child reaches college age, or over 29% of the initial investment amount. Such differences in performance may be significant, particularly to parents with limited resources.

20. In addition, the difference in investment returns was exacerbated for some 1st Global 529 Plan customers where the amount they invested, either in an individual purchase or in aggregated purchases, was sufficient to qualify for breakpoints, but the RR recommended that they invest in either Class B or Class C shares, thus forfeiting the breakpoints. For example, a 1st Global customer invested \$100,000 for a one-month old child in Class C units of a 529 Plan. Had this customer purchased the Class A units under the same plan instead, his investment would have qualified for a breakpoint and would be worth an estimated \$48,000, or over 10%, more than the value of Class C units when the child reaches college age, or 48% of the initial investment amount. Another 1st Global customer invested \$100,000 for five of her grandchildren, whose ages ranged from three to 11, in Class C 529 Plan units. If the customer had purchased Class A units instead, her investment would be worth an estimated \$14,200, or 5.6%, more than the value of Class C units when the children reach college age, or over 14% of the initial contribution, in part because of the breakpoints associated with \$100,000 in purchases in the plan in which she invested.⁷

⁶ As a result of the 529 Plan commission structures, 1st Global did not necessarily receive greater commissions from these transactions than it would have earned had it sold the most economical unit class to its customers.

⁷ The grandmother's \$5,000 investment for her oldest grandchild was appropriately invested in Class C units, which were the most economical share class given the grandchild's age.

1st Global's Policies and Procedures

21. Prior to July 2002, 1st Global's written supervisory procedures simply advised RRs that in the recommendation of mutual funds, they "should match the customer's objectives with the stated objective and investment strategy of the recommended fund."

22. Beginning in July 2002, 1st Global's written supervisory procedures advised RRs that, in recommending mutual funds in general, they are charged with assisting the client in determining what investment vehicle best meets their needs and objectives. The written supervisory procedures specified that the RRs should keep in mind, among other things, the customer's investment time horizon and the charges associated with the fund. In a section on mutual fund share class distinctions, the written supervisory procedures advised RRs that they were obligated to know the specifics regarding any mutual fund they sold, and that they should ensure that they discussed the different mutual fund share classes in detail with the client. The 1st Global written supervisory procedures section on 529 Plans stated that, in recommending such investments, the RR was obligated to determine suitability, and that they should consider and discuss with the customer, among other things, the associated fees and expenses.

23. Beginning in approximately September 2002, 1st Global issued specific 529 Plan Suitability Guidelines that advised RRs to "[m]ake sure the client is fully informed of the various fees and expenses and how they can affect performance of the investment."

24. 1st Global's policies and procedures generally advised RRs of their responsibility to recommend suitable investments, including 529 Plan investments. At least until early 2004, however, the Firm's policies and procedures failed to explain adequately the economic impact of ongoing expenses and breakpoint discounts associated with purchases of different classes of 529 Plan units. Further, at least until early 2004 1st Global did not provide adequate guidelines on comparing the costs of the respective classes of 529 Plan units and evaluating the effect of those differing costs on the performance of the investment.

25. 1st Global's supervisory procedures were inadequate to determine whether its RRs were evaluating the suitability of their recommendations of particular classes of 529 Plan units in light of the 529 Plan structure and fees and the customers' objectives and needs, particularly the beneficiary's age. Further, to the extent the Firm had procedures, they were ineffectively implemented for this purpose.

26. 1st Global relied primarily on two procedures to detect and prevent unsuitable recommendations of unsuitable classes of 529 Plan units. First, the Firm relied on supervisory reviews of each 529 Plan unit purchase for suitability. 1st Global's written supervisory procedures, however, failed to provide adequate guidance on when suitability reviewers should perform steps such as calculating comparative expenses or contacting RRs or customers in analyzing 529 Plan unit class and other issues. The 1st Global reviewers, moreover, had limited training and experience for this function, and the reviews were perfunctory. In fact, the primary reviewer failed to understand that 529 Plans have offering documents separate from, and generally in addition to, the prospectuses for the underlying mutual funds. As a result, on some

occasions he did not utilize the appropriate information concerning fees and costs in reviewing 529 Plan transactions for suitability. As a result, 1st Global suitability reviews were ineffective in preventing and detecting unsuitable unit class transactions.

27. The second procedure that 1st Global relied upon to prevent and detect unsuitable recommendations of classes of 529 Plan units was a Mutual Fund Disclosure Form (“MFDF”). After August 31, 2002, 1st Global procedures required that a MFDF be provided to each customer opening a new account and to customers whose aggregate purchases of Class B or C units equaled or exceeded \$100,000.⁸ These requirements applied to 529 Plan investments. The MFDF included a “cost to purchase” section that generally described the features of Class A, B and C shares and had blanks for the RR to fill in with the specific fees and expenses of the share class.

28. 1st Global, however, did not require its RRs to complete blanks on the MFDF regarding the fees and expenses of 529 Plan unit classes that the client did not purchase. As a result, the MFDF, even if completed as required by 1st Global, did not establish that 1st Global RRs were identifying, evaluating and disclosing to the customer the comparative costs of the 529 Plan unit classes or the impact of ongoing fees and expenses on the performance of the recommended investments. Further, 1st Global RRs sometimes failed to obtain an MFDF as required, failed to fill in *any* of the blanks in the cost-to-purchase section of the form, or incorrectly disclosed the amounts of fees and expenses in that section. The MFDF thus was ineffective to detect and prevent the sale of unsuitable classes of 529 Plan units.⁹

LEGAL ANALYSIS

29. MSRB Rule G-17 requires municipal securities dealers to deal fairly with all persons and not to engage in any deceptive, dishonest or unfair practice.

30. MSRB Rule G-19 provides that, in recommending a municipal securities transaction, a dealer shall have reasonable grounds for believing that the recommendation is suitable, based upon information about the security that is available from the issuer of the security or otherwise, and based upon the facts disclosed by or otherwise known about the customer.

⁸ Prior to August 31, 2002, 1st Global only required an MFDF to be completed where a customer was switching from one mutual fund investment to another. 1st Global continued to require that an MFDF be completed under these circumstances.

⁹ Beginning in August 2003, 1st Global adopted monthly compliance reports to review certain mutual fund transactions. None of the monthly compliance reports, however, was specifically designed to review 529 Plan unit purchases, and most such purchases were not included in the compliance reports because they were smaller than the threshold monetary amounts. Further, the compliance reports were inadequately designed and implemented to identify and evaluate B and C mutual fund share or 529 Plan unit transactions for breakpoint implications. Thus, the monthly reports begun in August 2003 were inadequate to detect and prevent the sale of unsuitable 529 Plan unit classes.

31. Section 15B(c)(1) of the Exchange Act provides that no broker, dealer or municipal securities dealer, using the instrumentalities of interstate commerce, shall effect transactions in, or induce or attempt to induce the purchase or sale of, any municipal security in contravention of any MSRB rule.

32. Because 1st Global and its RRs did not adequately understand and evaluate the comparative costs of the various classes of 529 Plan units they sold, they lacked reasonable grounds to believe that their recommendations were suitable, based upon 529 Plan fee structures and customer needs and objectives. 1st Global willfully violated MSRB Rules G-17 and G-19 and Exchange Act Section 15B(c)(1) by recommending 529 Plan units to the Firm's customers when it did not necessarily have reasonable grounds to believe that the recommendations were suitable and by failing to deal fairly with its customers in connection with sales of 529 Plan units. *See MSRB 529 Plan Notice; In the Matter of Wheat, First Securities, Inc.*, Admin. Proc. File Nos. 3-9688 and 3-9794, Exchange Act Release No. 48378 (August 20, 2003); *In the Matter of Joseph H. Stafford*, Admin. Proc. File No. 3-6626, Exchange Act Release No. 23366 (June 22, 1986); *see generally In the Matter of the Application of Wendell D. Belden*, Admin. Proc. File No. 3-10888, Exchange Act Release No. 47859 (May 14, 2003).

UNDERTAKINGS

1st Global has undertaken the following:

33. Notice to Customers. Within 45 days after entry of the Order, 1st Global shall prepare letters not unacceptable to the Commission's staff to be sent to each of its 529 Plan customers (those who still hold their entire initial 529 Plan units and those who sold some or all of the units prior to the entry of the Order) notifying them of the findings in this Order and providing them with a copy of the Order.

34. Independent Consultant. Within 45 days after entry of the Order, 1st Global shall retain the services of an Independent Consultant not unacceptable to the Commission's staff, and thereafter exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant. 1st Global shall retain the Independent Consultant to conduct a comprehensive review of, and recommend corrective measures concerning, the Firm's policies and procedures relating to recommendations to customers of 529 Plan units.

35. Cooperation. 1st Global shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to 1st Global's files, books, records and personnel as reasonably requested.

36. Report of Independent Consultant. 1st Global shall further retain and require the Independent Consultant to submit to 1st Global and to the Commission's staff an initial written report within 120 days after entry of the Order and a final written Report within 160 days after entry of the Order. Both the initial report and the final report shall describe, at a minimum:

- a. the review performed by the Independent Consultant;
- b. the conclusions reached by the Independent Consultant;

- c. the adequacy of the Firm's policies and procedures respecting RRs' recommendations of 529 Plan units;
- d. the Independent Consultant's recommendations for policies and procedures to address any deficiencies identified;
- e. an effective system for implementing the recommended policies and procedures;
- f. an effective system for verifying and recording compliance with the recommended policies and procedures.

37. Firm's Response to Recommendations.

- a. Within 135 days after entry of the Order, 1st Global shall in writing advise the Independent Consultant and the Commission's staff which recommendations from the Independent Consultant's initial report the Firm has determined to accept, and which recommendations it considers to be unnecessary or inappropriate.
- b. With respect to any recommendation that 1st Global considers unnecessary or inappropriate, 1st Global shall either explain why the objective or purpose of the recommendation is unnecessary or inappropriate, or provide in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.
- c. 1st Global shall attempt in good faith to reach an agreement with the Independent Consultant within 150 days of entry of the Order as to any recommendation that 1st Global considers unnecessary or inappropriate.
- d. In the event the Independent Consultant and 1st Global are unable to agree on an alternative proposal not unacceptable to the Commission's staff within that time, 1st Global shall abide by the recommendation of the Independent Consultant.
- e. Within 175 days of entry of the Order, 1st Global shall in writing advise the Independent Consultant and the Commission's staff of the recommendations and proposals that it is adopting.

38. For good cause shown, and upon receipt of a timely application from the Independent Consultant or 1st Global, the Commission's staff may extend any of the procedural dates set forth above.

39. To ensure the independence of the Independent Consultant, 1st Global: (i) shall not have authority to terminate the Independent Consultant, without the prior written approval of the Commission's staff; (ii) shall compensate the Independent Consultant, and persons engaged to assist the Independent Consultant, for services rendered pursuant to the Order at their reasonable and customary rates; (iii) shall not be in and shall not have an attorney-client relationship with the Independent Consultant, and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports, or documents to the Commission or the Commission's staff.

40. To further ensure the independence of the Independent Consultant, 1st Global shall require the Independent Consultant to agree that, for the period of the engagement and for a period of two years after completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with 1st Global, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which the Independent Consultant is affiliated, or of which the Independent Consultant is a member, and any person engaged to assist the Independent Consultant in performance of his or her duties under the Order, shall not, without prior written consent of the Commission's staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with 1st Global, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest, to impose the sanctions agreed to in the Offer of 1st Global.

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 15(b) of the Exchange Act, 1st Global is censured;
- B. Pursuant to Section 21C of the Exchange Act, 1st Global shall cease and desist from committing or causing any violations and any future violations of Section 15B(c)(1) of the Exchange Act, including (1) failing to deal fairly with all persons and not engage in any deceptive, dishonest or unfair practice under MSRB Rule G-17, and (2) recommending a municipal securities transaction without reasonable grounds for believing that the recommendation is suitable, based upon information about the security that is available from the issuer of the security or otherwise, and based on the facts disclosed by or otherwise known about the customer, in violation of MSRB Rule G-19;
- C. Within 10 days of the entry of this Order, 1st Global shall pay a civil money penalty in the amount of \$100,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies 1st Global Capital Corp. as a respondent in these proceedings and the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Rose L. Romero, District Administrator, Fort Worth District Office, Securities and Exchange Commission,

Burnett Plaza, Suite 1900, 801 Cherry Street, Unit #18, Fort Worth, Texas,
76102-6882;

- D. 1st Global shall comply with the terms of the undertakings set forth in paragraphs 33 through 40, and not later than 200 days after the date of the Order, unless otherwise extended by the staff of the Commission for good cause shown, 1st Global's chief executive officer shall certify in writing to the staff of the Commission that 1st Global has: (1) implemented procedures, and a system for applying such procedures, that can reasonably be expected to prevent and detect recommendations of unsuitable 529 Plan units; and (2) taken all necessary and appropriate steps to adopt and implement all recommendations and proposals of the Independent Consultant.

By the Commission.

Nancy M. Morris
Secretary