

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

**- and -**

**IN THE MATTER OF  
SEXTANT CAPITAL MANAGEMENT INC., SEXTANT CAPITAL GP INC.,  
SEXTANT STRATEGIC OPPORTUNITIES HEDGE FUND L.P.,  
OTTO SPORK, ROBERT LEVACK AND NATALIE SPORK**

**STATEMENT OF ALLEGATIONS  
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (the “Commission”) make the following allegations:

**Corporate Respondents**

1. Sextant Capital Management Inc. (“SCMI”) is registered under the *Securities Act*, R.S.O. 1990, c. S-5, as an investment counsel, portfolio manager and limited market dealer. SCMI is also registered as a commodity trading manager under the *Commodity Futures Act*, R.S.O. 1990, c. C-20. SCMI manages securities and futures contracts and is the principal distributor of the Sextant Strategic Opportunities Hedge Fund L.P. (the “Sextant Fund”).
2. The Sextant Fund is a mutual fund in Ontario with about 240 investors across Canada, made up largely of Ontario residents, which had a net asset value of \$53 million at November 28, 2008.
3. Sextant Capital GP Inc. (“Sextant GP”) is the fund manager and general partner for the Sextant Fund.
4. SCMI, the Sextant Fund and Sextant GP (together, “Sextant Canadian Entities”) are all resident in Canada.

**Individual Respondents**

5. Otto Spork (“Spork”) is the ultimate driving force behind the Sextant Canadian Entities and behind Sextant Iceland, the Sextant Offshore Funds, IGP and IGW, all as described below. Spork is a resident of Iceland, although Toronto was at one time his principal residence and he now spends up to 40 days per year in Ontario.

6. Spork was the president, secretary, Ultimate Responsible Person ("URP") and sole director of SCMI from inception until May 28, 2008. Spork is also the sub-adviser to the Sextant Fund. Spork wholly owns Sextant Iceland and is its managing director and portfolio manager, and has significant interests in IGP and IGW.
7. Robert Levack ("Levack") is an individual living in Toronto and is the chief compliance officer and portfolio manager at SCMI. As portfolio manager for the Sextant Fund, Levack approved the investments in securities of IGP and IGW.
8. Natalie Spork is Spork's daughter. On May 28, 2008, she was appointed president, secretary and URP of SCMI. Natalie Spork is also the sole director for SCMI. She works for SCMI on a full time basis.
9. As URP, Natalie Spork is the individual with ultimate responsibility for discharging SCMI's obligations under Ontario securities law.

### **Related Entities**

10. The Sextant Fund has a sub-adviser, Sextant Capital Management a Islandi ehf ("Sextant Iceland"). Sextant Iceland is resident in Iceland. It is not registered with the Commission or with any regulatory authority in Iceland.
11. Sextant Iceland owns both SCMI and Sextant GP. Sextant Iceland is also manager and investment adviser for two off-shore mutual funds, the Sextant Strategic Hybrid<sup>2</sup> Hedge Resource Fund Offshore Ltd. and Sextant Strategic Global Water Fund Offshore Ltd. (together, the "Sextant Offshore Funds").
12. The Sextant Offshore Funds are domiciled in the Cayman Islands and have approximately US\$100 million in assets under management. There are no Canadian investors in the Sextant Offshore Funds.

### **Investment and Fees**

13. Units of the Sextant Fund are sold by SCMI and by Investment Industry Regulatory Organization of Canada member firms pursuant to prospectus exemptions, relying primarily on the accredited investor exemption. Investors have contributed in excess of \$22 million to the Sextant Fund since its inception.
14. The Sextant Fund pays a monthly advisory fee at a rate of up to 2% of assets under management per year to SCMI. The Sextant Fund also allocates 20% of its profits to Sextant GP. That 20% is paid to Sextant GP monthly in the form of performance fees.

### **Investment Structure and IGP/IGW**

15. At November 28, 2008, approximately 5% of the assets of the Sextant Fund were invested in a portfolio of cash, stocks and futures contracts, including stocks of

- private companies. The portfolio is held in accounts with Newedge Canada Inc. ("Newedge"), the custodian and prime broker for the Sextant Fund.
16. The balance of the assets in the Sextant Fund are invested in two private Luxembourg companies: Iceland Glacier Products S.a.r.l. ("IGP") and Iceland Global Water 2 Partners SCA ("IGW").
  17. At November 28, 2008, 92% of the assets of the Sextant Fund were invested in IGP and 2.5% of the assets were invested in IGW. These investments are not recorded or valued on Newedge's books and records.
  18. IGP and IGW both purportedly own rights to glaciers in Iceland and intend to use those rights for the purpose of developing and selling bottled water. Neither IGP or IGW have earned any revenue and there are no indications that they will do so in the immediate future. Neither is currently operating.
  19. Despite having earned no revenue and having no immediate prospect of doing so, IGP's shares have purportedly increased in value from an initial average cost of €0.226 to €2.45, or approximately 984% since initial investment by the Sextant Fund. This has contributed to the increase in value of the Sextant Fund by 730.7% over the less than three years between its inception in February 2006 and November 28, 2008.
  20. There are no third party valuation reports that support the monthly, material upward revisions in value of IGP, and therefore there is inadequate support for the claimed rate of return of the Sextant Fund.
  21. Significant performance fees, in excess of \$3 million dollars have flowed out of the Sextant Fund based entirely on its purported rate of return. Fees for the month of November 2008 alone were assessed at over \$1.5 million.
  22. IGP and IGW are owned almost entirely by the Sextant Fund, the Sextant Offshore Funds and Spork.

### **Breach of Ontario Securities Law**

23. The Sextant Fund is in breach of section 111 of the Act on the following grounds:
  - (a) The Sextant Fund has made advance payments to Sextant GP against anticipated future performance fees. Such payments in actuality constitute a loan to Sextant GP which is an associate of Sextant Iceland, a management company of the Sextant Fund, and are in breach of section 111(1)(a) of the Act.
  - (b) The Sextant Fund invested in IGP knowing that, together with the related Sextant Offshore Funds, they would own in excess of 20% of the companies. The Sextant Fund and its related mutual funds thereby

invested in a company in which they together constitute a substantial security holder, contrary to section 111(2)(b) of the Act.

- (c) The Sextant Fund invested in IGP and IGW knowing that, from time to time while the fund was making those investments, Spork was an officer and director of SCMI and held a significant interest in both IGP and IGW. Such investments were made contrary to section 111(2)(c)(i) of the Act.
  - (d) The Sextant Fund invested in IGP and IGW knowing that Spork has a significant interest in the companies and that Spork is also a substantial security holder of SCMI, the management and distribution company for the fund. Such investments were made contrary to section 111(2)(c)(ii) of the Act.
  - (e) The Sextant Fund continues to hold investments made contrary to the provisions of section 111(1) and (2). Continuing to hold such investments is contrary to section 111(3) of the Act.
24. Accordingly, approximately 95% of the assets of the Sextant Fund have been invested illegally and in breach of protections in the Act against self-dealing by mutual funds. Substantial fees have been paid to Sextant GP and SCMI out of the funds contributed by investors to the Sextant Fund, based on its illegal investments.
25. The Sextant Fund has not prepared and delivered audited financial statements for 2007 to its investors, in breach of National Instrument 81-106.
26. Both Spork and Sextant Iceland provide investment advice to the Sextant Fund without being registered to do so and without a valid registration exemption.

#### **Conduct Contrary to Ontario Securities Law and to the Public Interest**

27. The conduct described above constitutes conduct contrary to Ontario securities law and/or contrary to the public interest and harmful to the integrity of the Ontario capital markets.
28. Such additional allegations as Staff may advise and the Commission may permit.

Dated at Toronto this 8<sup>th</sup> day of December, 2008.