



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**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., OTTO SPORK, KONSTANTINOS
EKONOMIDIS, ROBERT LEVACK AND NATALIE SPORK**

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

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

I. OVERVIEW

1. Otto Spork (“Spork”), Sextant Capital Management Inc. (“SCMI”) and Sextant Capital GP Inc. (“Sextant GP”) perpetrated a complex investment fund fraud over the period from July 2007 to December 2008 in three ways: (a) they sold investment fund units at falsely inflated values; (b) they took millions of dollars in fees based on falsely inflated values; and (c) they directly misappropriated money from investment funds.

2. The fraud was perpetrated through three investment funds managed from Toronto – the Sextant Strategic Opportunities Hedge Fund L.P. (“Sextant Canadian Fund”) in Ontario, the Sextant Strategic Hybrid²Hedge Resource Fund Offshore Ltd. (“Sextant Hybrid Fund”) incorporated in the Cayman Islands and the Sextant Strategic Global Water Fund Offshore Ltd. (“Sextant Water Fund”) incorporated in the Cayman Islands (the three funds together, the “Sextant Funds”). Together, the Sextant Funds raised in excess of \$80 million from Canadian and offshore investors.

3. Spork invested significant amounts of money from the Sextant Funds in a company he controlled, Iceland Glacier Products S.A. (“IGP”). Spork set the share price for IGP shares and substantially inflated that price even though there was no material development of IGP’s operations and no material sales or revenue.

4. The other respondents, Konstantinos (Dino) Ekonomidis (“Ekonomidis”), Robert Levack (“Levack”) and Natalie Spork (“N. Spork”), each had a role in managing the Sextant Canadian Fund. All of the respondents breached their management duties to that fund, to the detriment of investors.

5. There is a Temporary Cease Trade Order in place against certain of the respondents, which also suspended SCMI’s registration, made on December 8, 2008, and continued until the conclusion of the hearing on the merits. Various directions freezing a custodial trading account and bank accounts related to the Sextant Canadian Fund were also issued by the Commission and continued by the Ontario Superior Court of Justice.

6. On application of the Commission dated March 5, 2009, the Sextant Canadian Fund, SCMI and Sextant GP were placed into receivership by Order of the Ontario Superior Court of Justice dated July 17, 2009.

7. On May 15, 2009, the Cayman Islands Monetary Authority appointed controllers over the Sextant Hybrid Fund and the Sextant Water Fund. The powers of the controllers were confirmed by Order of the Grand Court of the Cayman Islands dated June 16, 2009.

II. BACKGROUND

Sextant Funds

8. Spork created the Sextant Canadian Fund in early 2006. The Sextant Canadian Fund is a limited partnership formed in accordance with the *Limited Partnerships Act*, R.S.O. 1990, c. L-16.

9. Units in the Sextant Canadian Fund were sold by way of successive offering memoranda by SCMI and by Investment Industry Regulatory Organization of Canada member firms pursuant to prospectus exemptions in the *Securities Act*, R.S.O. 1990, c. S-

5 (the “Act”) and National Instrument 45-106 – *Prospectus and Registration Exemptions*. Nearly 250 investors in Ontario and elsewhere in Canada invested \$29.8 million in the Sextant Canadian Fund.

10. After establishing the Sextant Canadian Fund, Spork created the Sextant Water Fund and the Sextant Hybrid Fund, incorporated as limited liability corporations in the Cayman Islands.

11. Shares of the Sextant Water Fund and the Sextant Hybrid Fund were offered at least as early as January 2007 to investors who were not resident in Canada or the United States by way of successive confidential private placement memoranda. The Sextant Water Fund and the Sextant Hybrid Fund together raised approximately US\$56 million from investors. The management and sales activities in respect of these funds were predominantly conducted in Toronto.

Management of the Sextant Funds

12. Spork used a complex structure to manage the Sextant Funds, including corporate entities in a number of jurisdictions. Notwithstanding that structure, Spork ultimately controlled all of the entities and was at all times in control of the Sextant Funds. He largely managed and conducted his activities and those of the various entities through SCMI in Toronto.

13. Organizational charts outlining the relationships between the Sextant Funds and their management companies are at Appendices “A” to “C” to this Amended Statement of Allegations.

(a) The Individual Respondents

14. Spork was registered under the Act as Officer and Director (Trading and Non-Advising), Designated Compliance Officer and Ultimate Responsible Person in the categories of limited market dealer, investment counsel and portfolio manager with SCMI from February 1, 2006, to June 5, 2008.

15. Ekonomidis is Spork's brother-in-law. He was Vice-President, Corporate Development, for SCMI and registered under the Act as a salesperson with SCMI. Ekonomidis was responsible for marketing the Sextant Canadian Fund and had significant and direct involvement in investor relationships for all of the Sextant Funds.

16. Levack held the Chartered Financial Analyst designation at all material times and was SCMI's Chief Compliance Officer. Levack was registered under the Act as an Officer (Advising, Non-Trading) and Chief Compliance Officer in the categories of limited market dealer, investment counsel and portfolio manager with SCMI from February 1, 2006, until June 5, 2008. On June 5, 2008, Levack's registration was modified to Officer (Advising and Trading), Chief Compliance Officer and Designated Compliance Officer.

17. N. Spork was approved under the Act as Officer and Director (Non-Advising, Non-Trading) and Ultimate Responsible Person in the categories of limited market dealer, investment counsel and portfolio manager with SCMI on July 7, 2008.

(b) The Corporate Respondents

18. Spork incorporated SCMI in Ontario in 2005. Until its registration was suspended by the Commission, SCMI was registered under the Act as an investment counsel, portfolio manager and limited market dealer. Spork was SCMI's sole director until May 28, 2008, when N. Spork replaced him in that role.

19. SCMI was the investment adviser for the Sextant Canadian Fund. SCMI was also the investment adviser for the Sextant Hybrid Fund and the Sextant Water Fund until June 2008, when another one of Spork's companies assumed that role. SCMI was at all material times the primary investor contact for the Sextant Funds.

20. Spork also incorporated Sextant GP in Ontario in 2005. Sextant GP was the general partner and manager for the Sextant Canadian Fund. Spork was the sole director of Sextant GP until May 28, 2008, when N. Spork replaced him in that role.

21. Sextant GP and SCMI both had the authority and responsibility to direct the business, operations and affairs of the Sextant Canadian Fund. In addition, both were contractually entitled to fees paid directly from the fund. In these circumstances, both Sextant GP and SCMI were investment fund managers of the Sextant Canadian Fund as defined in section 1(1) of the Act.

Value of IGP Inflated

22. A significant proportion of the assets of the Sextant Funds was invested in IGP, starting with their initial purchase of IGP shares in July 2007.

23. IGP was incorporated in Luxembourg in June 2007, shortly before the Sextant Funds' investment, and was controlled by Spork. IGP had indirect rights to a glacier in Iceland for the purpose of extracting water for sale. To date, there has been no material development of IGP's operations and no material sales or revenue.

24. Notwithstanding the absence of operations, sales or revenue, Spork instructed Investment Administration Solution Inc. ("IAS"), the bookkeeper for the Sextant Canadian Fund and net asset value calculation agent for the Sextant Hybrid Fund and the Sextant Water Fund, as to the price of the IGP shares. IAS used those values for the purpose of calculating the net asset value of the Sextant Funds.

25. The value set for the IGP shares was not justified. Despite the fact that there was no material development of IGP's operations and no material sales or revenue, Spork (either directly or indirectly) increased the value of the IGP shares rather than valuing the shares at cost. Spork inflated the value of those shares by about 1,340% from a share price of €0.170 on July 25, 2007, shortly after the funds' initial investment, to €2.450 on December 24, 2008, as reported by IAS.

26. The IGP shares made up an increasingly significant proportion of the Sextant Funds' portfolios, so the net asset value of the Sextant Funds increased over time as a result of the inflated value of the IGP shares.

27. In total, the Sextant Canadian Fund paid approximately \$6 million for IGP shares between July 2007 and December 2008 which were valued at \$52 million in December 2008. Over the same period, the Sextant Hybrid Fund and the Sextant Water Fund paid approximately US\$17 million for IGP shares which were valued at US\$106 million in December 2008.

III. FRAUD (SECTION 126.1 OF THE ACT)

28. Spork, SCMI and Sextant GP perpetrated a fraud against the Sextant Funds' investors in three ways: (a) they sold units in the Sextant Funds at falsely inflated values; (b) they took millions of dollars in fees from the Sextant Funds based on falsely inflated values; and (c) they directly misappropriated money from the Sextant Funds.

(a) Sextant Funds' Units Sold at Inflated Values

29. As a direct result of the inflated net asset values of the Sextant Funds, based on the inflated value of IGP shares, everyone who invested in the Sextant Funds after July 2007 overpaid for their investments and was wrongfully deprived of their money in the amount of the overpayment.

(b) Millions of Dollars in Fees from Sextant Funds Based on Inflated Values

30. Management and performance fees were paid by the Sextant Funds to SCMI, Sextant GP and other Spork-controlled entities. Those fees were calculated in accordance with the value of the Sextant Funds and were also affected by the inflated net asset values. The Sextant Funds paid: (i) management fees equal to 2% of the net asset value of each funds, paid $1/12^{\text{th}}$ monthly in arrears; and (ii) performance fees, paid monthly, equal to 20% of the fund's increase in net asset value over the previous month subject to a 'high water mark' provision.

31. Of the \$29.8 million invested in the Sextant Canadian Fund, the fund paid approximately \$6.9 million in management and performance fees between July 2007 and December 2008. Of the US\$56 million invested in the Sextant Hybrid Fund and the

Sextant Water Fund together, those funds together paid over US\$14 million in management and performance fees from March 2006 to April 30, 2009.

32. As a direct result of the inflated net asset values, management and performance fees were inflated and excessive. Investors in the Sextant Funds paid millions of dollars in inflated and excessive fees and were wrongfully deprived of their money in those amounts.

(c) Money Misappropriated from the Sextant Funds

33. Money was misappropriated from the Sextant Funds for Spork's benefit in two ways: (i) Spork caused the Sextant Funds to transfer money to Riambel Holding S.A. ("Riambel"), Spork's holding company; and (ii) Spork took money from the Sextant Canadian Fund from time to time.

(i) Payment to Riambel

34. In October 2007, Spork instructed the custodian for the Sextant Funds to transfer US\$1,257,500 from the Sextant Water Fund custodial trading account to Riambel, Spork's holding company. Spork also instructed the custodian to transfer US\$414,975 from the Sextant Canadian Fund account and US\$421,263 from the Sextant Hybrid Fund account into the Sextant Water Fund account to cover their respective portions of the transfer to Riambel.

35. The payment to Riambel was not approved by anyone other than Spork; the Sextant Funds did not receive any additional IGP shares in connection with the payment (although the stated book value of the IGP shares already held by each of the Sextant Funds was increased); there are no documented terms of any loan by the Sextant Funds to IGP; and there was no repayment to the Sextant Funds.

36. Investors in the Sextant Funds were wrongfully deprived in the amount of the payment to Riambel.

(ii) Payments Without Basis

37. Spork frequently caused the Sextant Canadian Fund to transfer money to SCMI and Sextant GP amounts in excess of the management and performance fees and the operating expenses. There is no legal basis for those payments and investors were wrongfully deprived in those amounts.

IV. BREACHES OF DUTY TO INVESTORS AND FAILURE TO KEEP PROPER BOOKS AND RECORDS (SECTIONS 116 AND 19 OF THE ACT)

Fund Manager Duties

38. As described above, both Sextant GP and SCMI were investment fund managers for the Sextant Canadian Fund. Spork, Ekonomidis, Levack and N. Spork, in turn, were all persons who directed the business, operations and affairs of the Sextant Canadian Fund. As such, they were also investment fund managers for the Sextant Canadian Fund.

39. As investment fund managers, each of the respondents had duties pursuant to section 116 of the Act to: (a) exercise the powers and discharge the duties of their offices honestly, in good faith and in the best interests of the Sextant Canadian Fund, and (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

40. In addition, as a registered adviser and dealer, SCMI had a duty to deal fairly, honestly and in good faith with its clients pursuant to section 2.1(1) of *OSC Rule 31-505 – Conditions of Registration* (“Rule 31-505”). As representatives of SCMI, each of Spork, Ekonomidis and Levack also had a duty to deal fairly, honestly and in good faith pursuant to section 2.1(2) of Rule 31-505 and Levack and N. Spork had duties pursuant to section 1.3 of Rule 31-505 as it was in force at all relevant times.

Breach of Fund Manager Duties

41. Spork, SCMI and Sextant GP breached their duties pursuant to section 116 of the Act by their conduct as described above, as well as by investing the assets of the Sextant

Canadian Fund outside of its stated investment objectives and contrary to its contractual investment restrictions.

42. Ekonomidis breached his duties pursuant to section 116 of the Act by misrepresenting the nature and value of the fund and its assets to investors and other parties.

43. Levack breached his duties pursuant to section 116 of the Act by failing to ensure that identified instances of regulatory non-compliance, including capital deficiencies, self-dealing by the fund and over-concentration in the fund's investment portfolio, were remedied and by failing to supervise the trading in the Sextant Canadian Fund.

44. N. Spork breached her duties pursuant to section 116 of the Act by failing to take any steps to inform herself in respect of her roles managing the Sextant Canadian Fund, failing to meet the obligations attendant in those roles and by continuing to report and defer to Spork in respect of the operations and investments of the Sextant Canadian Fund.

Failure to Keep Proper Books and Records

45. Sextant GP was obligated to keep or cause to be kept appropriate books and records with respect to the Sextant Canadian Fund and to distribute audited financial statements for the fund no later than March 31 of the following year. SCMI was contractually obligated to maintain the accounting records for the fund and arrange for the preparation of the annual audited financial statements, among other things.

46. Both Sextant GP and SCMI were also obligated pursuant to section 19 of the Act to keep such books, records and other documents as are necessary for the proper recording of their business transactions and financial affairs and the transactions executed on behalf of the Sextant Canadian Fund.

47. Sextant GP and SCMI failed to meet their book and record keeping obligations both in respect of their own books and records and in light of the deficient, inconsistent and unreliable records relating to the assets of the fund.

48. The book and record keeping deficiencies have caused the net asset value of the Sextant Canadian Fund, and therefore the value of individual investors' investments, to be uncertain. They may also have caused the net asset value of the Sextant Canadian Fund to have been further inflated and management and performance fees to have therefore been correspondingly excessive.

V. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

49. The foregoing conduct engaged in by the respondents constituted breaches of Ontario securities law and/or was contrary to the public interest:

(a) by engaging in the conduct described above, Spork, SCMI and Sextant GP perpetrated a fraud on investors contrary to section 126.1 of the Act;

(b) by engaging in the conduct described above, all of the respondents breached their duties as investment fund managers contrary to section 116 of the Act;

(c) by engaging in the conduct described above, SCMI and Sextant GP failed to maintain proper books and records contrary to section 19 of the Act

(d) by engaging in the conduct described above, SCMI, Spork, Ekonomidis, Levack and N. Spork, breached their duties pursuant to Rule 31-505; and

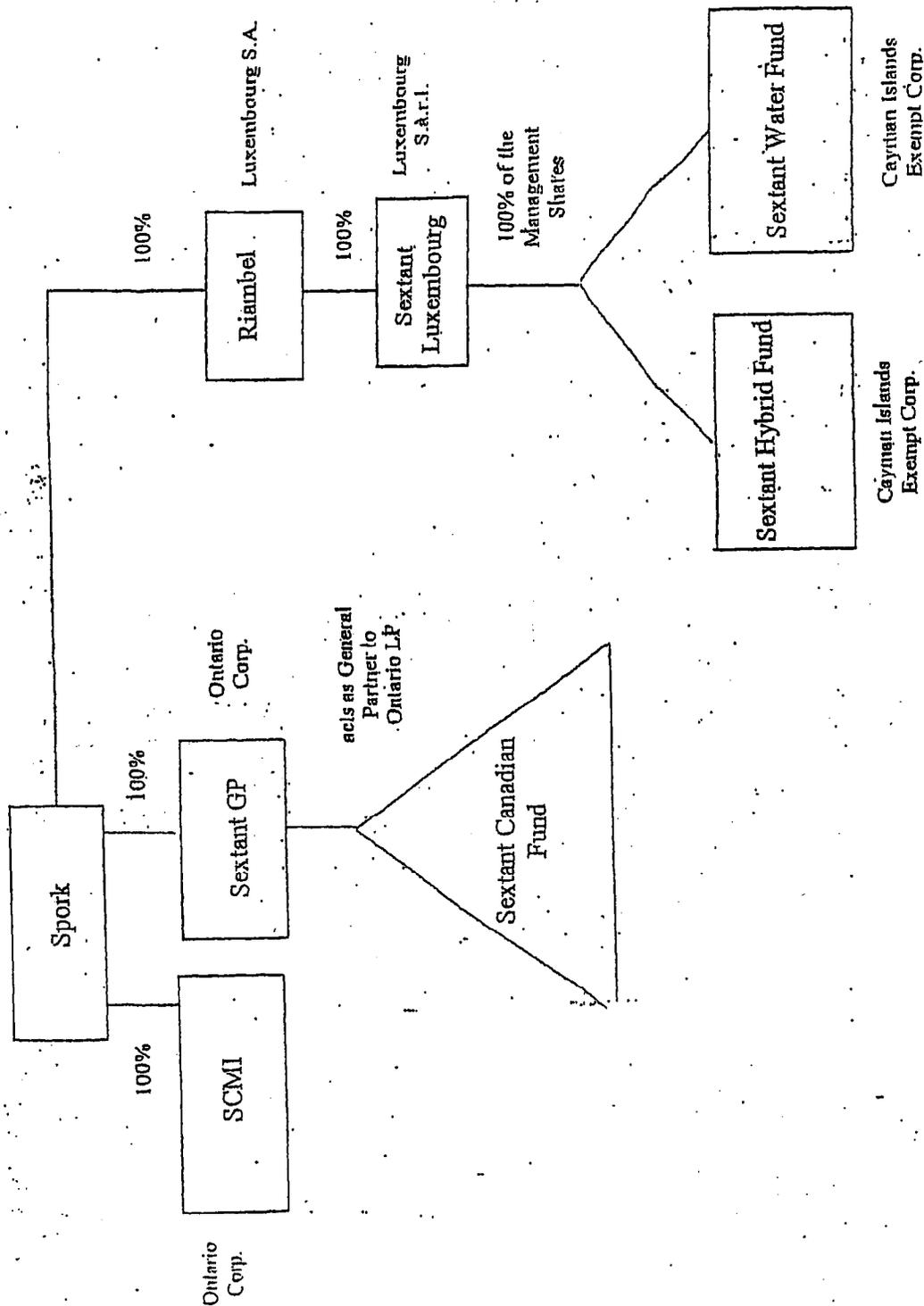
(e) by engaging in the conduct described above, all of the respondents acted contrary to the public interest.

50. Staff of the Commission will make such further and other allegations as staff may advise and the Commission may permit.

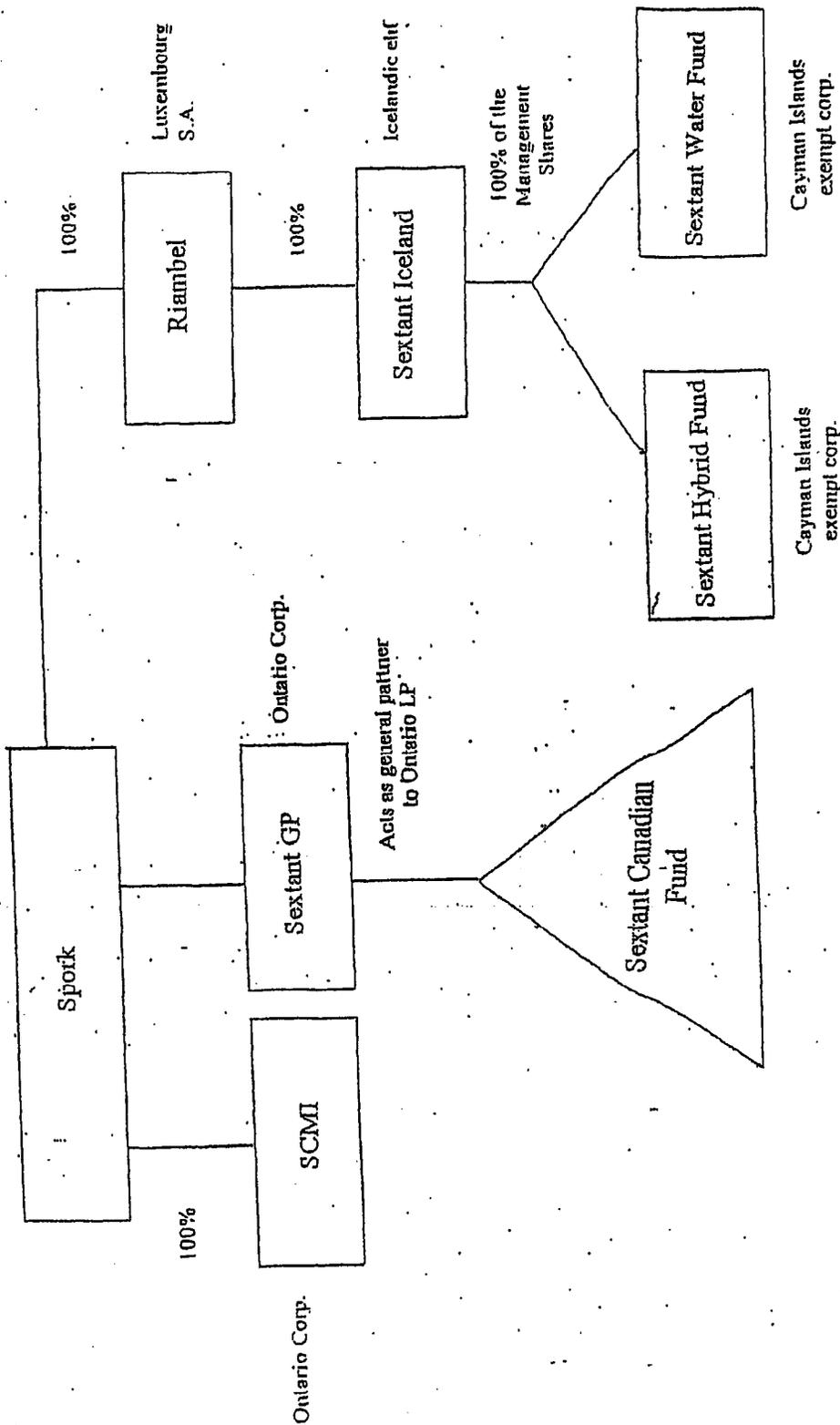
DATED AT TORONTO this 11th day of June, 2010.

APPENDIX "A"

January 01-December 07



APPENDIX "B"



January 08 - May 08

APPENDIX "C"

May 30/08 - Present

