

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ⁰⁵⁸¹
OF 2008

IN THE MATTER OF THE COMPANIES LAW (2007 REVISION)

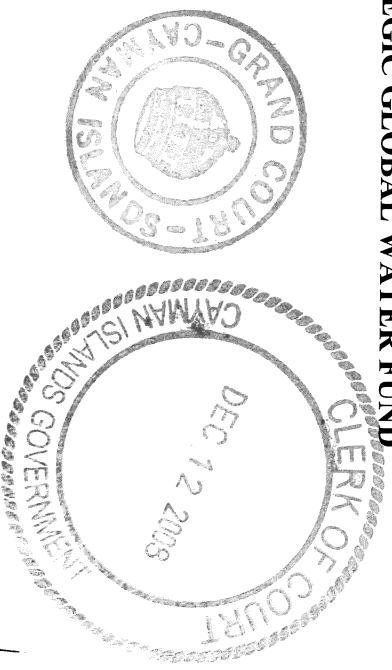
AND IN THE MATTER OF SEXTANT STRATEGIC GLOBAL WATER FUND
OFFSHORE LTD.

PETITION

To: **The Grand Court of the Cayman Islands**

The humble Petition of Barfield Nominees Limited of PO Box 71, Trafalgar Court, Les Banques, St Peter Port, Guernsey GY1 3DA (the **Petitioner**) shows that:

1. Sextant Strategic Global Water Fund Offshore Ltd. (the **Company**) was incorporated as an exempt company with registration number 164943 on 28 March 2006 under the Companies Law (2004 Revision).
2. The registered office of the Company is at Mourant Cayman Corporate Services, PO Box 1348 GT, Harbour Centre, 42 North Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies.
3. The share capital of the Company is (a) US\$1 divided into 100 Management Shares of a nominal or par value of US\$0.01 each; (b) US\$20,000 divided into 2,000,000 Participating Shares of a nominal or par value of US\$0.01 each (**Class A Shares**); and (c) €20,000 divided into 2,000,000 Participating Shares of a nominal or par value of €0.01 each (**Class F Shares**). The Company's Memorandum of Association provides that, subject to the provisions of the Companies Law and the Company's Articles of Association (the **Articles**), the



Company shall have the power, among other things, to redeem or purchase any of its shares.

4. The objects for which the Company was established are unrestricted.
5. The investment objective and strategy of the Company is to provide long-term capital appreciation while consistently generating positive absolute returns by investing in long and / or short positions in the equity securities of companies that focus on the provision of drinking water, the treatment of waste and wastewater and producing technology used in water and wastewater distribution, treatment, monitoring and resource management.
6. The Petitioner subscribed for 20,000 Class A Shares in the Company (the **Shares**), which were registered in its name with the reference A/C TOT10.
7. On 29 May 2008, the Petitioner requested the redemption of all of the Shares in accordance with the procedures set out in the Articles. The redemption date applicable to that redemption request was 30 September 2008, being the next quarterly redemption date following the 90 day notice period applicable to the redemption request.
8. On 5 June 2008, the Company (through a letter from Sextant Capital Management (the **Manager**)) notified the Petitioner that unless its redemption request was withdrawn by 9 June 2008 then (a) the Shares would be compulsorily redeemed by the Company on 30 June 2008; and (b) the applicable redemption proceeds would be paid in full within 45 working days after 30 June 2008 (i.e., by 2 September 2008).
9. The Petitioner did not withdraw its redemption request. On 20 June 2008, the Manager confirmed by email that the compulsory redemption of the Shares would proceed on 30 June 2008. Based on the NAV published for 30 June 2008, the

redemption proceeds payable in respect of the redemption of the Shares on that date were US\$6,339,352. That amount was confirmed by the Company's administrator, Harbour Financial Services Limited (the **Administrator**), in an email dated 16 July 2008.

10. The Company was not obligated to redeem the Shares before 30 September 2008, either by way of compulsory redemption or by waiver of the notice requirements applicable to the Petitioner's redemption request, and it was not requested to do so by or on behalf of the Petitioner. The Company's purported explanation (given in the letter from the Manager dated 5 June 2008) for effecting of its own volition a compulsory redemption of the Shares on 30 June 2008, was that it had understood that the Petitioner intended to invest in the Company for a longer period. That explanation was counter-intuitive and did not (and still does not) make any sense to the Petitioner.

11. Following the compulsory redemption of the Shares on 30 June 2008, the net asset value of the Company's shares (the **NAV**) increased immediately and dramatically. As at 31 July 2008, the NAV was approximately 60% higher than it had been one month earlier on 30 June 2008. By 30 September 2008 (the date on which the Shares would have fallen due for voluntary redemption but for the compulsory redemption effected by the Company), the NAV was approximately 70% higher than on 30 June 2008. In the absence of any credible explanation of the decision to effect a compulsory redemption of the Shares on 30 June 2008, these sudden and substantial increases in the Company's NAV call into question whether the directors' power to effect a compulsory redemption of the Shares was exercised for a proper purpose and in accordance with the directors' fiduciary duties. The Petitioner reserves all of its rights in that regard including, without limitation, its right to claim damages in respect of the losses suffered by it as a result of its shares being compulsorily redeemed based on the NAV as of 30 June 2008 rather than voluntarily redeemed based on the NAV as of 30 September 2008.

12. That issue aside, in breach of its obligations under the Articles and the commitment reaffirmed in the letter from the Manager dated 5 June 2008, the Company has in any event failed to pay the redemption proceeds due to the Petitioner in full based on the NAV for 30 June 2008. The reason given to the Petitioner for this failure, in an email dated 15 September 2008 from Otto Spork (a director of the Company and the founder of the Manager), was that “[w]e believe that paying the full proceeds on [2 September 2008] would have significant negative consequences for the remaining unit holders in the funds, as we would be required to dispose of positions at what we believe to be a market bottom”. This statement is not reconcilable with the very substantial increases in the Company’s NAV during the period between 30 June 2008 and 30 September 2008. Even if it was correct, however, it is irrelevant. The fact that selling assets in the Company’s portfolio in order to pay the redemption proceeds due to the Petitioner might have negative consequences for its other investors does not provide the directors with any basis under the Articles or otherwise for failing to do so to create the liquidity required to pay the Petitioner for the redemption of the Shares, which redemption was brought about by the Company itself.

13. Mr Spork’s email dated 15 September 2008 then proceeded to offer to pay the Petitioner redemption proceeds based on its Shares having been redeemed at the NAV as at 30 September 2008, rather than as at 30 June 2008, on terms whereby 10% of those proceeds would be paid immediately with the balance of 90% to be paid no later than 1 December 2008. The Petitioner was subsequently requested by the Administrator to ignore that offer as it was said to have been made by Mr Spork without taking advice from Cayman counsel. The fact that the Company made an offer to pay the Petitioner approximately 70% more than the amount of the redemption proceeds to which the Petitioner would otherwise have been entitled to receive based on a 30 June 2008 redemption, reinforces the Petitioner’s suspicions as to the impropriety of the exercise of the directors’ power to effect a compulsory redemption of its shares on 30 June 2008.

14. As noted above, based on the redemption price applicable as at 30 June 2008, the redemption proceeds payable to the Petitioner in respect of the compulsory redemption of the Shares on that date were US\$6,339,352. Article 57 of the Company's Articles provides that "[u]pon... compulsory redemption under these Articles being exercised by the Company against a Shareholder, such shareholder will be entitled to receive the Redemption Price in respect of his Participating Shares". To date, the Company has paid the Petitioner the total sum of US\$4,000,000. The Petitioner is therefore owed a minimum of amount of US\$2,339,352 by the Company, based on the redemption price applicable as at 30 June 2008. Pursuant to Article 57, the Petitioner has been entitled to be paid that amount since 30 June 2008.
15. The Company continues to publish its NAV on a monthly basis, the most recent NAV per share being \$532 as of October 2008. Based on the Company's own analysis, as of October 2008 the value of its assets exceeded the amount of its liabilities by a very substantial amount. The Petitioner, as a creditor of the Company with a debt due to it in respect of the redemption price for its redeemed Shares, would therefore have a tangible interest in the Company's liquidation.
16. The Company's failure to pay the sum of US\$2,339,352 to the Petitioner demonstrates that the Company is unable to pay its debts and it should be wound up.
17. Further and / or alternatively, in all of the circumstances set out above it is just and equitable that the Company be wound up.

THE PETITIONER THEREFORE PRAYS THAT:

- (1) The Company may be wound up by the Court under the provisions of the Companies Law (2007 Revision).
- (2) Geoffrey Varga and Nicholas Matthews of Kinetic Partners Cayman LLP be appointed as Joint Official Liquidators of the Company with power to act jointly and severally (the **Official Liquidators**).
- (3) The Official Liquidators shall not be required to give security for their appointment.
- (4) The Official Liquidators shall have power:
 - (a) to bring or defend any action, suit, prosecution or other legal proceedings, whether criminal or civil, by way of court process or arbitration, in the name and on behalf of the Company.
 - (b) to take possession of, collect and get in all property or assets (of whatever nature) to which the Company is or appears to be entitled;
 - (c) to do all things as may be necessary or expedient for the protection of the Company's assets;
 - (d) to do all things (including the carrying on of the business of the Company) as may be necessary or expedient for the beneficial realisation of the property or assets of the Company (including borrowing money);
 - (e) to appoint attorneys, solicitors and other professional qualified persons both in the Cayman Islands and elsewhere to assist them in the performance of their duties;

- (f) to appoint agents both in the Cayman Islands and elsewhere to do any business which they are unable to do themselves or which can more conveniently be done by an agent, and to employ and dismiss officers and employees of the Company;
- (g) to exercise any power which is necessary or incidental to the performance of their duties;
- (h) to open and maintain bank accounts in the name of the Company or themselves anywhere in the world as may be necessary for the better performance of their duties;
- (i) to exercise and execute all the powers set out in Section 109 of the Companies Law (2007 Revision) without sanction or intervention of the Court and unprejudiced by the generality hereof;
- (j) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the Company and any contributory or alleged contributory or alleged contributory or other debtor or person apprehending liability to the Company, upon receipt of such sums payable at such times and generally on such terms as may be agreed upon, with power to take securities for the discharge of such debts or liabilities and to give complete discharges in respect of all or such calls debts, or liabilities; and
- (k) to do and execute all such other things as may be necessary for winding-up the affairs of the Company and distributing its assets;

and for the avoidance of doubt the powers bestowed on the Official Liquidators may be exercised by them within and outside the Cayman Islands.

(5) The Official Liquidators be at liberty to and do pay themselves, their agents, employees, attorneys, solicitors and whomsoever else they may employ or instruct, remuneration and costs in priority to all other debts of the Company pursuant to section 123 of the Companies Law (2007 Revision), and:

(a) the Official Liquidators shall be entitled to receive remuneration for their services by reference to the time properly given by them and their staff in attending to matters arising in the winding-up or by reference to a percentage of the assets realized or distributed by them in the winding-up or a combination of the foregoing and the hourly rates and the amount of remuneration shall be determined in accordance with Practice Direction No. 1 of 2006; and

(b) the Official Liquidators be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties; and for the avoidance of doubt all payments made pursuant to paragraphs 5(a)-(b) above shall be made as and when they fall due out of the assets of the Company and shall be expenses in the Liquidation.

(6) The Official Liquidators be at liberty to apply for further directions relating to the winding up of the affairs of the Company and the distribution of its assets.

(7) The costs of the Petitioner of and incidental to the Petition be paid forthwith from the assets of the Company.

This Petition is filed by Campbells, Attorneys-at-Law for the Petitioner, whose address for service is that of its Attorneys-at-Law at Fourth Floor, Scotia Centre, George Town, Grand Cayman, Cayman Islands B. W.I. (Ref: JRM/GM/15746)