

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**

**Release No. 8763 / December 20, 2006**

**INVESTMENT ADVISERS ACT OF 1940**

**Release No. 2573 / December 20, 2006**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-12512**

---

**In the Matter of Spinner Asset  
Management, LLC and Spinner  
Global Technology Fund, Ltd.,**

**Respondents.**

---

**: ORDER INSTITUTING**  
**: ADMINISTRATIVE AND CEASE-AND-**  
**: DESIST PROCEEDINGS, MAKING**  
**: FINDINGS, AND IMPOSING**  
**: REMEDIAL SANCTIONS AND A**  
**: CEASE-AND-DESIST ORDER**  
**: PURSUANT TO SECTION 8A OF THE**  
**: SECURITIES ACT OF 1933 AND**  
**: SECTION 203(e) OF THE INVESTMENT**  
**: ADVISERS ACT OF 1940**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) against Spinner Asset Management, LLC and Spinner Global Technology Fund, Ltd. (collectively, “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, Respondents consent 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 Section 8A of the Securities Act of 1933 and Section 203(e) of the Investment Advisers Act of 1940 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents’ Offers, the Commission finds that:

1. Spinner Asset Management, LLC (“Spinner Asset Management”), a New York limited liability company that registered with the Commission as an investment adviser on or about February 6, 2006, serves as the investment adviser for Spinner Global Technology Fund, Ltd. (“SGTF” or “Fund”), an international business company chartered in the British Virgin Islands in 1993 and qualified as a professional fund. SGTF is governed by a seven-member board of directors, a majority of whom are independent from the investment adviser that manages SGTF. As an international business company, SGTF issues shares to investors and the value of those shares is quoted on the Irish Stock Exchange, where SGTF maintains a listing (although there is no secondary market for SGTF shares).

2. During 2002, a former portfolio manager employed by Spinner Asset Management through 2003 invested SGTF in three unregistered securities offerings, which are commonly referred to as “PIPEs” (Private Investment in Public Equities). The three PIPE investments were in Hypercom Corp., Novatel Wireless, Inc., and Tripath Technology, Inc. (collectively, “the PIPE Issuers”). During the relevant period, the common stock of each PIPE Issuer was registered with the Commission pursuant to either Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934 and either was quoted on the NASDAQ or traded on the New York Stock Exchange. In connection with these PIPE offerings, the portfolio manager executed a series of trades that violated the federal securities laws. As a result of the portfolio manager’s unlawful conduct, SGTF realized \$361,437 in ill-gotten gains.

3. Issuers utilize the PIPEs market when more traditional means of financing are for various reasons impractical. PIPE securities are generally issued pursuant to Section 4(2) of the Securities Act or Regulation D under the Securities Act, which provide an exemption from registration for a non-public offering by an issuer. Because PIPEs are unregistered offerings, PIPE investors receive restricted securities when a transaction closes. Before investors can trade those restricted securities, the issuer must file, and the Commission must declare effective, a resale registration statement, a process that may take 60 to 120 days to complete. PIPE investors therefore must wait a certain period of time before they can freely trade the securities that they received in the PIPE. The sale of the securities to the PIPE investor is typically conditioned upon effectiveness of the resale registration statement. To compensate investors for this temporary illiquidity, PIPE issuers customarily offer the restricted securities at a discount to market price.

4. Many PIPE investors “hedge” their investment by selling short the PIPE issuer’s securities before the resale registration statement is declared effective. There is nothing per se illegal about “hedging” a PIPE investment by selling short the issuer’s securities. Such short

sales do not violate the registration provisions of the Securities Act if, among other things, the investor closes out the short position with shares purchased in the open market. An investor violates Section 5 of the Securities Act, however, when it covers its pre-effective date short position with the actual shares received in the PIPE. This is because shares used to cover a short sale are deemed to have been sold when the short sale was made.

5. In SGTF's case, the former portfolio manager's conduct resulted in SGTF and Spinner Asset Management violating Section 5 of the Securities Act in this manner. The former portfolio manager had trading discretion over a portion of SGTF's holdings, including primary responsibility for the Canadian brokerage account in which SGTF maintained most of its short holdings. In connection with the three PIPE offerings, the portfolio manager sold short the issuer's stock through a Canadian broker-dealer. Using that broker-dealer, the portfolio manager executed "naked" short sales — i.e., selling shares without owning and without borrowing or arranging to borrow, a practice that was permissible in Canada during the relevant period. Later, once the Commission declared the resale registration statement for the offering effective, the portfolio manager used SGTF's PIPE shares to close out, or "unwind," some or all of the pre-effective date short positions in violation of the registration provisions of the federal securities laws.

6. To accomplish this "unwind," the former portfolio manager engaged in pre-arranged trades with SGTF's Canadian broker to make it appear that he was covering the short positions with open market shares. In fact, the portfolio manager did not cover the short positions with open market shares because SGTF was on both sides of the trades. The portfolio manager would contact his Canadian broker to inform him that SGTF intended to sell a certain number of its PIPE shares from its domestic prime brokerage account at a particular time and price using a particular broker and/or exchange, and would instruct the broker to enter a buy order for SGTF's Canadian account for the same number of shares at the same time and price and using the same broker and/or exchange. Most or all of the buy and sell orders would meet, and the Canadian broker would use the PIPE shares that he had just purchased from SGTF's domestic account to close out some or all of SGTF's pre-effective date Canadian short positions.

7. As a result of the former portfolio manager's conduct, Spinner Asset Management willfully violated Sections 5(a), 5(b), and 5(c) of the Securities Act and SGTF violated Sections 5(a), 5(b), and 5(c) of the Securities Act, in that, by causing SGTF to establish pre-effective date short positions that it later covered with the PIPE shares, SGTF and Spinner Asset Management offered and sold restricted securities without qualifying for an exemption from registration, and therefore also failed to deliver a valid prospectus when the securities were sold.

8. In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff.

#### IV.

On the basis of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

- (i) Respondent Spinner Asset Management, LLC shall be, and hereby is, censured;
- (ii) Respondents Spinner Asset Management, LLC and Spinner Global Technology Fund, Ltd. shall cease and desist from committing or causing any violations and any future violations of Section 5 of the Securities Act;
- (iii) Respondent Spinner Asset Management, LLC shall, within thirty (30) days from the date of the entry of the Order, pay a \$60,000 civil penalty 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 U.S. Securities and Exchange Commission; (c) hand-delivered or mailed to the Office of Financial Management, U.S. Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (d) submitted under cover letter that identified Spinner Global Technology Fund, Ltd. as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Scott W. Friestad, Associate Director, U.S. Securities and Exchange Commission, Division of Enforcement, 100 F Street, NE, Washington, DC 20549-5631; and
- (iv) Respondent Spinner Global Technology Fund, Ltd. shall, within thirty (30) days from the date of the entry of the Order, pay \$435,596, consisting of \$361,437 in disgorgement and \$74,159 in prejudgment interest, 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 U.S. Securities and Exchange Commission; (c) hand-delivered or mailed to the Office of Financial Management, U.S. Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (d) submitted under cover letter that identified Spinner Global Technology Fund, Ltd. as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Scott W. Friestad, Associate Director, U.S. Securities and Exchange Commission, Division of Enforcement, 100 F Street, NE, Washington, DC 20549-5631.

By the Commission.

Nancy M. Morris  
Secretary