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May 31, 2011

Via Facsimile Transmission: 416.593.2318

Mr. John Stevenson
Secretary to the Ontario Securities Commission
PO Box 55, 19th Floor
20 Queen Street W.
Toronto, ON M5H 3S8

Dear Mr. Stevenson:

**Re: Citadel Income Fund and Energy Income Fund -
Application for a hearing and review of the decision of the Director**

As you are aware, we act for Wayne Pushka, who is the President and Chief Executive Officer of Crown Hill Capital Corporation ("CHCC" or the "Manager"). CHCC is the investment manager to the Citadel Income Fund and the Energy Income Fund (collectively, the "Funds"). Melissa MacKewn of Heenan Blaikie LLP is counsel for CHCC and Shahen Mirakian of McMillan LLP is counsel for the Funds.

On March 4, 2011, the Funds proposed to complete a warrant offering to their unitholders. Further to that process, the Funds filed preliminary prospectuses with Staff of the Investment Funds Branch, who declined to issue a receipt for the prospectuses. The Funds exercised their right to be heard by the Director, who adopted Staff's submissions in their entirety and refused a receipt by decision dated May 27, 2011 due to concerns under section 61(2)(e).

By way of this letter, Mr. Pushka, CHCC and the Funds jointly request a formal hearing and review of the decision of the Director pursuant to section 8(2) of the *Securities Act*, R.S.O. 1990 c. S.5 (the "Securities Act").

The Application is for:

1. An Order quashing the decision of the Director, Susan Silma, dated May 27, 2011;
2. An Order granting a receipt for the prospectus filed by the Citadel Income Fund;
3. An Order granting a receipt for the prospectus filed by the Energy Income Fund; and
4. Such further and other relief as may seem just to this Honourable Commission.

The grounds for the Application are:

1. The Energy Income Fund is the result of a merger of funds on October 4, 2010;
2. The Citadel Income Fund is the result of the merger of several of the Citadel Group of Funds with Crown Hill Fund that took place in December 2009. It is the merger of the funds, which was initiated by Crown Hill Capital Corporation as the Manager and Trustee of the Crown Hill Fund, which is the main subject of this application;
3. Crown Hill Fund (the "Fund") is the result of a merger between MACCs Sustainable Yield Trust and Crown Hill Dividend Fund on December 28, 2008;
4. As outlined above, Crown Hill Capital Corporation (the "Manager") was the manager of the Fund at the material time. The directors of the Manager, at the material time, comprised Mr. Pushka, Terry Jackson and Tom Allen. Mr. Jackson and Mr. Allen were independent directors;
5. Throughout late 2008 and early 2009, as part of a general strategy to grow the asset base of the Fund in order to lower the Management Expense Ratio ("MER") and increase liquidity for unitholders, which strategy was disclosed to and approved by unitholders, the Fund undertook a series of mergers with other closed-end investment funds;
6. As a result of these mergers, the size of the Fund increased from approximately \$7 million to approximately \$40 million, MER for the Fund decreased and unit liquidity increased;
7. In May 2009, the Manager proposed a transaction, in accordance with this growth strategy, whereby the Fund would acquire the

management contracts for the Citadel Funds, a group of funds totalling approximately \$1 billion in assets under management, with a view to a merger with certain of the Citadel Funds;

8. The acquisition was to be completed through an investment of capital by the Fund. Before the acquisition was completed, the transaction was approved by the Funds' various corporate governance bodies, including the independent directors of the Manager, who had a fiduciary duty to the Fund, and the Independent Review Committee ("IRC") of the Fund;
9. The members of the IRC at the relevant time were John N. Campbell, Andrew Fleming and Mark L. Maxwell;
10. On June 3, 2009, having obtained approval and/or the necessary recommendations from the board of directors of the Manager, the IRC and the independent portfolio manager, the acquisition of the management contracts was completed;
11. In the fall of 2009, after a number of changes were made to the transaction as a result of the (unwarranted) intervention of Staff of the Investment Funds branch, the unitholders of the Fund and the unitholders of several of the Citadel Funds approved the mergers, and the Citadel Income Fund was created;
12. On October 4, 2010, Energy Plus Income Trust, Sustainable Production Energy Trust and CGF Resource 2008 Flow-Through Limited Partnership, former Citadel Funds, merged to form Energy Income Fund. As part of the unitholder meeting approving these mergers, the Manager sought and received approval from unitholders to issue warrants;
13. On March 4, 2011, the Funds proposed to complete a warrant offering to their unitholders. The warrant offering mirrored the form of warrant offering already completed by several closed-end funds;
14. Having harbored their disapproval of the mergers since June 2009, Staff of the Investment Funds branch objected to the warrant offering in 2011. Their primary assertion was that Mr. Pushka and CHCC lack integrity as a result of their "concerns" with the Citadel Transaction for the same reasons they expressed in 2009. As a result, Staff refused to recommend to the Director that receipts be issued;
15. The Funds exercised their right to be heard by the Director pursuant to section 61(3) of the Securities Act. After the Director of Investment Funds recused herself due to her prior involvement in the file, on May 11, 2011, the applicants were allowed a one and a half

- hour hearing before Susan Silma, acting as Director of the Investment Funds branch for the purposes of the hearing;
16. The Funds tendered evidence through an affidavit sworn by Mr. Pushka, which attached, among other things, relevant minutes of meetings of the Manager's board of directors and the IRC, which had considered and approved the various transactions. Staff tendered no evidence in support of its position;
 17. By decision dated May 27, 2011, the Director accepted Staff's recommendation that a receipt not be granted for the prospectuses;
 18. In order to justify following Staff's recommendation, the Director made a number of unsubstantiated factual findings by drawing a series of unsupported adverse inferences from the limited record;
 19. The underlying assumption upon which the Director's decision is based is that the interests of the Manager and the Fund were in conflict with respect to the acquisition of the Citadel contracts for the purposes of NI 81-107. However, no explanation for this important conclusion is provided by the Director. In fact, although there was the potential for a conflict of interest, in this case the interests of the Manager were clearly aligned with the Fund;
 20. The Director compounded this fundamental error by finding that CHCC had failed to identify and address the "conflict of interest" between itself and the Fund. To support this palpably incorrect conclusion the Director relied on a number of unreasonable inferences;
 21. First, the Director made findings designed to discount the fact that the transaction was reviewed by the IRC, which recommended that the terms of the transaction that raise a conflict of interest achieve a fair and reasonable result for the Fund. The Director erroneously inferred from the minutes of the IRC meetings provided as part of Mr. Pushka's affidavit evidence that the IRC had not identified or considered the conflict of interest. This inference is false and will be shown to be false on this hearing and review;
 22. Second, the Director speculated that the IRC was not presented with sufficient information to identify or address a conflict of interest. There was no basis for the Director to make this inference. A full review of the evidence on this hearing and review will demonstrate that the Director's speculation is false;
 23. Third, the Director erred by making the extraordinary finding that the approval by the independent directors of CHCC was "not relevant";



24. Finally, and equally remarkably, the Director held that the portfolio manager's review and approval of the acquisition of the Citadel administration contracts by the Fund is "not relevant";
25. The Director chose to ignore the fact that Mr. Pushka and the Manager took all the appropriate steps to vet and approve the transaction in question. They were at all times advised by experienced legal counsel. If there had really been a conflict of interest, one or all of the Manager's board, the IRC or the portfolio manager would have objected. They did not for the simple reason that there was no conflict and the transaction was being conducted with the primary objective of benefiting the unitholders;
26. The Director dismissed the achievement of the intended benefits to unitholders as "20/20 hindsight";
27. In the result, the Director misapprehended the process and ignored the results;
28. The Director erred by speculating that the acquisition of the management services contracts was contrary to the "expectations" of the Fund's unitholders;
29. The Director added to the above errors by finding that the Management Information Circular dated June 3, 2009 contained insufficient disclosure of the purported conflict of interest to the Fund's unitholders. In the context of this transaction, this is both an incorrect and an irrelevant consideration;
30. The Director erred in finding, without any legal authority, that the IRC's decision that the terms of the transaction that raise a conflict of interest achieve a fair and reasonable result for the Fund was insufficient to satisfy corporate governance procedures (unidentified) and that approval by the unitholders was required;
31. The Director erred by finding that the purported conflict of interest was of the Manager's "own choosing" and by weighing that as a relevant factor in assessing Mr. Pushka's integrity;
32. The Director erred in her interpretation of subsection 61(2)(e) by stating that "concerns" of Staff, taken alone, were sufficient to satisfy the standard under that section;
33. The Director erred in considering the Enforcement investigation as a relevant factor to the refusal of the receipt. In this case the investigation was initiated by Staff of the Investment Funds branch and concerns the identical conduct raised by Staff in their recommendation. It is unreasonable for the Staff to rely on the "red

- flag" that they raised and an obvious error for the Director to rely on the simple fact of the investigation or enforcement notice to the prejudice the applicant in this case;
34. The Director erred by finding, without any legal authority, that directors of an investment fund manager owe a "unique", and higher, duty to unitholders than the director of another issuing corporation;
 35. The Director erred in creating "degrees" of fiduciary duties that would heighten the duties owed by an investment fund manager to the fund it manages. That proposition is unheard of at law;
 36. It cannot be ignored that the acting Executive Director of the Commission, to whom the Director has a direct reporting relationship, appeared for and made submissions on behalf of Staff of the Investment Funds Branch. This had the effect of creating a reasonable apprehension of bias on the part of the Director;
 37. The Director erred in finding that the Manager's actions impugned Mr. Pushka's integrity and that Mr. Pushka intentionally acted contrary to the best interest of unitholders. In fact, the only evidence available to the Director was that the Manager's intent was to act in the best interests of the Fund's unitholders;
 38. Both CHCC and Mr. Pushka are directly affected by the decision of the Director, as are the Funds. The effect of the decision is that Mr. Pushka cannot take any action as a directing mind of the Manager, nor can the Manager take any action while Mr. Pushka is a directing mind, that requires the approval of OSC Staff;
 39. The administrative position taken by OSC Staff, including the decision of the Director, amounts to the imposition on Mr. Pushka of an enforcement-type 'lifetime ban' from the Ontario capital markets, which is an order that is normally reserved for the Commission itself, without the requisite due process;
 40. A finding that impugns a registrant's integrity is an extremely serious finding. It is incumbent on the Commission to make such serious findings only on a full evidentiary record and only when proven on a balance of probabilities; and
 41. Such further and other grounds as counsel may advise.

Counsel anticipate that proper resolution of the issues on this application will require a full hearing *de novo*, including *viva voce* evidence from Mr. Pushka, members of CHCC's board of directors, and members of the IRC at the material time. We request that this matter be heard on an expedited basis.

Should you have any questions respecting this Notice, please do not hesitate to contact either Clarke Tedesco, myself, counsel to CHCC or counsel to the Funds.

Yours truly,

 
Alistair Crawley

Copy: Melissa MacKewn – counsel to CHCC
Stephen Ganttner – counsel to Citadel Income Fund and Energy Income Fund
Vera Nunes – Investment Funds, OSC