



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 CITADEL INCOME FUND AND
ENERGY INCOME FUND**

**ORDER
(Section 8)**

WHEREAS:

A. The Application

[1] Crown Hill Capital Corporation (the “**Manager**”), the manager of the Crown Hill Fund (the “**Fund**”), Wayne Pushka (“**Pushka**”), the President of the Manager, and the Citadel Income Fund and the Energy Income Fund (“collectively, the “**Citadel Funds**”) applied for a hearing and review of the decision of the acting director of the Investment Funds Branch (the “**Director**”) of the Ontario Securities Commission (the “**Commission**”) in respect of the Director’s decision pursuant to subsection 61(2)(e) of the *Securities Act*, R.S.O. 1990, c. S.5 (the “**Act**”), refusing to issue a receipt for a preliminary short form prospectus of the Citadel Funds offering warrants (the “**Prospectus**”); the Prospectus was filed with the Commission on March 4, 2011;

[2] This application was heard on July 12, 13 and 14, 2011;

B. Background

[3] On June 3, 2009, the Manager and Pushka caused the Fund to invest approximately 64% of its assets in the purchase for \$28 million of the management rights to 13 funds in the Citadel Group of Funds (the “**Acquisitions**”);

[4] Staff submit that, as a policy matter, the assets of an investment fund should never be used to acquire the management contracts of other investment funds, either by way of loan or as an investment, because that acquisition primarily benefits the fund manager by increasing the management fees payable to the fund manager;

[5] By decision dated May 27, 2011, the Director refused to issue a receipt for the Prospectus on the basis that, because of Pushka’s role in connection with the Acquisitions and as President

of the Manager, the business of the Citadel Funds may not be conducted with integrity and in the best interests of the security holders of the Citadel Funds (the “**Director’s Decision**”);

[6] On or about May 31, 2011, the Citadel Funds, the Manager and Pushka requested a hearing and review of the Director’s Decision pursuant to subsection 8(2) of the Act;

[7] As a separate proceeding, on July 7, 2011, the Commission issued a Notice of Hearing, and Staff of the Commission (“**Staff**”) issued a Statement of Allegations, alleging that, in connection with the Acquisitions, the Manager breached its fiduciary duties under section 116 of the Act as trustee of the Fund and acted contrary to the public interest (the “**Enforcement Proceeding**”);

C. Commission Hearing and Review of the Application

[8] This application for a hearing and review of the Director’s Decision was conducted as a trial *de novo* with evidence submitted by the Manager and with a cross-examination of Pushka on his affidavit that was submitted in evidence;

[9] The effect of the Director’s Decision is to prevent the Citadel Funds from making a prospectus qualified distribution until the Enforcement Proceeding is concluded, so long as Pushka is the President of the Manager; it is not known when the Enforcement Proceeding will proceed on the merits or when that proceeding will be concluded;

[10] In their application, the Manager and Pushka submitted that the Acquisitions were carried out (i) in accordance with legal advice received, (ii) with the approvals of the board of directors of the Manager and the Independent Review Committee of the Fund, and (iii) on the basis of a general authorization previously given by unitholders of the Fund authorizing the Manager to enter into transactions such as the Acquisitions;

[11] The Manager and Pushka submitted that the Acquisitions did not contravene any provision of the Act and were not contrary to the public interest;

[12] While subsection 61(2)(e) of the Act grants a broad discretion to the Director, Staff has the onus of establishing that there are sufficient grounds to conclude in the circumstances that the business of the Citadel Funds may not be conducted with integrity;

[13] After considering the submissions of Staff and counsel for the Manager and Pushka, the allegations set forth in the Statement of Allegations, and the previous decisions of the Commission made under subsection 61(2)(e) of the Act, it is not apparent to us that there is sufficient evidence in these circumstances to justify a refusal to issue a receipt for the Prospectus on the grounds that, because of Pushka’s position with the Manager, the business of the Citadel Funds may not be conducted with integrity (in accordance with subsection 61(2)(e) of the Act);

[14] In reaching this decision, we have not come to any view or conclusion with respect to any of the allegations made by Staff in the Statement of Allegations and this Order shall not in any way restrict the discretion of the panel of the Commission hearing the Enforcement Proceeding on the merits (the “**Merits Panel**”);

[15] The Merits Panel shall be entitled in its discretion, at the conclusion of the hearing on the merits of the Enforcement Proceeding, to vary or revoke this Order on such terms and conditions as the Merits Panel considers appropriate; and

[16] We have concluded in all of the circumstances that the making of this Order is in the public interest;

IT IS HEREBY ORDERED THAT:

1. The Director shall issue a receipt for the Prospectus, provided the Director is satisfied that, except as a result of the circumstances described in this Order, there are no other grounds under subsection 61(2) of the Act for the Director to refuse to issue a receipt for the Prospectus;
2. The issue of a receipt for the Prospectus as required by this Order is conditional upon:
 - (a) the delivery by the Manager and Pushka of an undertaking to Staff not to use the assets of the Citadel Funds in the future to acquire, directly or indirectly, the management contracts of any other fund or for or in connection with the merger of the Citadel Funds with or into any other investment fund until such time as:
 - (i) a final decision on the merits is issued by the Commission in connection with the Enforcement Proceeding; or
 - (ii) the Commission otherwise orders or consents;
 - (b) appropriate disclosure being made in the Prospectus of the Enforcement Proceeding; and
 - (c) there being no change in the portfolio manager of the Citadel Funds except with the prior approval or consent of Staff or the Commission.

DATED at Toronto this 4th day of August, 2011.

“James E. A. Turner”

James E. A. Turner

“Christopher Portner”

Christopher Portner

“Paulette L. Kennedy”

Paulette L. Kennedy