Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | P.O. Box 55, 19th Floor 20 Queen Street West Toronto ON M5H 3S8 | CP 55, 19e étage 20, rue queen ouest Toronto ON M5H 3S8

IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c. S.5, AS AMENDED

- AND -

IN THE MATTER OF CROWN HILL CAPITAL CORPORATION AND WAYNE LAWRENCE PUSHKA

STATEMENT OF ALLEGATIONS OF STAFF OF THE ONTARIO SECURITIES COMMISSION

Staff of the Ontario Securities Commission (the "Commission") makes the following allegations:

I. OVERVIEW

1. Crown Hill Capital Corporation ("CHCC") was the trustee and manager of Crown Hill Fund, an investment trust established by a declaration of trust pursuant to Ontario laws, a publicly traded non-redeemable investment fund and a reporting issuer in Ontario. Commencing in 2008, CHCC caused the Crown Hill Fund and its predecessor funds to enter into a series of transactions to have CHCC acquire, either initially or ultimately, the management contracts for other non-redeemable investment funds and bring about mergers of the funds. In doing so, CHCC and Wayne Lawrence Pushka, its President, Chief Executive Officer and indirect owner, acted primarily in their own interest rather than that of the Crown Hill Fund, contrary to s. 116 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") and/or contrary to the public interest..

2. In two instances, CHCC used the Crown Hill Fund's assets to finance CHCC's acquisition of the management contracts for other non-redeemable investment funds as a means whereby CHCC would increase the assets under management and consequently its management fees. In doing so, CHCC caused the fund to breach its investment requirements and/or exposed it to unnecessary risks and costs contrary to s. 116 of the Act and/or contrary to the public interest.

3. Staff allege that the conduct at issue transpired during the period April 2008 up to and including June 2009 ("Material Time").

II. THE RESPONDENTS

4. CHCC is a company incorporated in Ontario. It was the trustee and manager of the Crown Hill Fund or its predecessors throughout the Material Time. As trustee and manager, CHCC had exclusive authority to manage the operations and affairs of the Crown Hill Fund, to make all decisions regarding the business of the Crown Hill Fund and to bind it and accordingly was its Investment Fund Manager pursuant to the Act.

5. Wayne Lawrence Pushka ("Pushka") is a resident in Ontario. Pushka is the President and Chief Executive Officer and a director of CHCC as well as the sole shareholder of CHCC's parent company.

6. Pushka was registered as an Investment Counsel Portfolio Manager with the Commission during the Material Time.

III. INITIAL ACQUISITIONS AND CONDUCT OF CHCC

A. MACCs Fund Acquisition

(i) Summary of the Transaction

7. In 2008, CHCC managed a predecessor to the Crown Hill Fund, Crown Hill Dividend Fund ("Crown Hill Div Fund"), an investment trust established pursuant to Ontario laws by a declaration of trust dated May 19, 2004 and a publicly-traded investment fund.

8. In or around February 1, 2008, a subsidiary of CHCC purchased the management contracts for MACCs Sustainable Yield Trust ("MACCs Fund"), another investment trust established pursuant to Ontario laws by a declaration of trust dated January 28, 2005 and a publicly-traded investment fund. CHCC subsequently became the trustee and manager of the MACCs Fund.

9. CHCC managed the Crown Hill Div Fund and MACCs Fund separately until the end of 2008.

10. On June 4, 2008, CHCC sought and obtained the approval of the unit holders of MACCs Fund to make various amendments to that fund's declaration of trust including to expand its Investment Objectives and Investment Strategy to merge with, or acquire assets from, other investment funds listed on the Toronto Stock Exchange on the grounds that this would reduce the operating costs to unit holders.

11. On August 28, 2008, CHCC similarly sought and obtained the approval of the unit holders of the Crown Hill Div Fund to make various amendments to that fund's declaration of trust also on the grounds that this would reduce the operating costs to unit

holders. The amendments were to give CHCC as trustee the authority to merge or otherwise combine or consolidate that fund with one or more funds managed by CHCC or an affiliate without seeking unit holder approval provided that the merging fund met certain merger criteria The merger criteria included the following:

a. the funds being merged had similar investment objectives as set out in their declarations of trust;

b. CHCC, as trustee, had determined in good faith that there would be no increase in the management expense ratio borne by the Crown Hill Div Fund unit holders; and

c. the merger would be capable of being accomplished on a tax-deferred "rollover" basis for the Crown Hill Div Fund unit holders.

12. The operating costs of both funds included:

a. costs which were relatively fixed; and

b. the trustee and management fees payable to CHCC which were calculated as a percentage of the net asset value of the funds.

13. In the fall of 2008, CHCC authorized certain amendments to the declaration of trust for the MACCS Fund, including to allow an increase in the management fees payable to CHCC by the MACCs Fund to more than double to 1%.

14. Following the amendments, the MACCs Fund's declaration of trust as compared with the Crown Hill Div Fund's declaration of trust:

a. had less restrictive investment requirements;

b. provided broader powers to CHCC; and

c. authorized higher management fees for CHCC.

15. On December 30, 2008, Crown Hill Div Fund merged with the MACCs Fund to form one fund. The merged fund's net asset value as of December 31, 2008 was approximately $10,210,504.

16. While the new fund was named the "Crown Hill Fund", the Crown Hill Div Fund merged into the MACCs Fund and the latter fund's declaration of trust as amended became the declaration of trust of the Crown Hill Fund (the "Amended Declaration of Trust"). Consequently, the management fees previously payable to CHCC by Crown Hill Div Fund of 0.6% increased to 1%.

(ii) Breaches of the Act and Conduct Contrary to the Public Interest

17. CHCC's actions in increasing its management fees were inconsistent with its stated rationale for causing the predecessor funds to merge and reduced the benefits to unit holders that the mergers were supposed to achieve. CHCC did not act honestly, in good faith and in the best interests of the unit holders of the predecessors to the Crown Hill Fund contrary to s. 116 of the Act in increasing the management fees payable by the funds to CHCC, loosening the investment requirements or restrictions and/or broadening CHCC's powers.

B. Fairway Merger and Loan

(i) Summary of the Transaction

18. In the summer of 2008, CHCC had entered into discussions with a third party to purchase the management contracts for some of its investment funds including the Fairway Diversified Income and Growth Trust (the "Fairway Fund") with the aim of merging them with the MACCs Fund and Crown Hill Div Funds.

19. In the fall of 2008, CHCC decided to acquire the management contract for the Fairway Fund. In order to fund that acquisition, CHCC decided to borrow approximately $1 million from the Crown Hill Fund.

20. The acquisition of the management contract and merger of the Fairway Fund into the Crown Hill Fund was completed in January 2009 within a month of the merger of the MACCs Fund and Crown Hill Div Funds.

21. Section 118(2) of the Act at the time prohibited a portfolio manager from causing an investment portfolio managed by it to make a loan to the portfolio manager or its affiliates. Since the existing portfolio manager of the Crown Hill Fund was an affiliate of CHCC, CHCC retained Robson Capital Management Inc. ("Robson") on January 16, 2009 pursuant to its powers under the Crown Hill Fund's Amended Declaration of Trust to act as the Crown Hill Fund's portfolio manager.

22. On January 20, 2009, in accordance with CHCC's plan Crown Hill Fund loaned the parent of CHCC $995,000 to fund CHCC's purchase of 2193322 Ontario Inc., a numbered company which owned the management contract for the Fairway Fund.

23. On the same day, CHCC amalgamated 2193322 Ontario Inc. into it and became the manager of the Fairway Fund. On January 23, 2009, CHCC caused the Fairway Fund to merge with and into the Crown Hill Fund. Following the merger, the Crown Hill Fund had approximately $42 million in assets.

24. Following CHCC's appointment of Robson, CHCC began to charge the Crown Hill Fund an additional portfolio management fee of 0.25% of the net asset value of the Crown Hill Fund.

(ii) Breaches of the Act and Conduct Contrary to the Public Interest

25. CHCC and Pushka, as the indirect owner of CHCC, stood to benefit, and did benefit, from the acquisition of the management contracts for the Fairway Fund as they would entitle CHCC to earn the management fees payable by the Fairway Fund until its merger into the Crown Hill Fund. As a result of that merger, the assets of the Crown Hill Fund under management would significantly increase, consequently increasing CHCC's management fees payable by the Crown Hill Fund.

26. CHCC as a trustee and manager had a conflict of interest in causing the Crown Hill Fund to lend money to CHCC's parent so that CHCC could acquire for its benefit the management contract for the Fairway Fund. Moreover, CHCC unnecessarily created a continuing conflict of interest as CHCC was in substance the debtor of the Crown Hill

Fund and the one responsible for repaying a significant loan contrary to s.116 of the Act and contrary to public interest.

27. In causing the Crown Hill Fund to provide a loan to CHCC's parent company, CHCC failed to act honestly, in good faith and in the best interests of the Crown Hill Fund and/or did not act with the degree of care, diligence and skill of a reasonably prudent person in the circumstances contrary to s.116 of the Act in that *inter alia* it:

a. failed to assess the results of the prior acquisition and merger, that of the MACCs Fund and Crown Hill Div Fund;

b. failed to fully explore sources of financing for the purchase of the management contracts for the Fairway Fund other than the Crown Hill Fund so as to avoid the unnecessary and continuing conflicts referred to above;

c. failed to consider and evaluate all the risks, costs and expenses associated with the proposed transaction including the additional costs of retaining additional portfolio managers; and/or

d. appointed Robson despite the fact that the sole registered Investment Counsel Portfolio Manager at Robson had little or no experience in managing a portfolio of securities of the size and nature of the Crown Hill Fund.

28. CHCC did not have written policies in place to address conflicts of interest contrary to National Instrument 81-107 s. 2.2 and the public interest.

IV. CITADEL TRANSACTION AND CONDUCT OF CHCC

A. Summary of the Transaction

29. Approximately three months after the acquisition of the management contract for the Fairway Fund and its merger into the Crown Hill Fund, Pushka entered into discussions with the owners of the management contracts for thirteen investment funds with approximately $1 billion in assets under administration regarding the acquisition of those management contracts. In or around May 8, 2009, the parties agreed on a price of $28 million.

30. The funds in question were the Citadel Diversified Investment Trust, the Citadel Premium Income Fund, the Equal Weight Plus Fund, the Citadel HYTES Fund, the Citadel S-1 Income Trust Fund, the Citadel SMaRT Fund, the Citadel Stable S-1 Income Trust, the Energy Plus Income Fund, the Financial Preferred Securities Corporation, the Series S-1 Income Fund, the Sustainable Production Energy Trust, the CGF Mutual Funds Corporation and the CGF Resources 2008 Flow-Through LP (the "Citadel Funds").

31. CHCC and Pushka, as the indirect owner of CHCC, would personally benefit if CHCC acquired the management contracts for the Citadel Funds as they would entitle CHCC to earn the management fees payable by the Citadel Funds until the mergers. As a result of the mergers of the Citadel Funds into the Crown Hill Fund, the assets under management of the Crown Hill Fund would significantly increase, consequently increasing the management fees payable by the Crown Hill Fund to CHCC. However, CHCC did not have the funds to acquire the management contracts.

32. In order to fund the acquisition of the management contracts for the Citadel Funds, CHCC decided to use over 60% of the assets of the Crown Hill Fund and structured a transaction, which it began to implement, to effect in substance a loan of $28 million from the Crown Hill Fund to CHCC.

33. On June 3, 2009, CHCC caused the Crown Hill Fund to acquire indirectly the management contracts for the Citadel Funds. CHCC caused the Crown Hill Fund to form a limited partnership named CH Fund Administration LP ("CH LP") with as general partner, 2206687 Ontario Inc., a wholly-owned subsidiary of the Crown Hill Fund. The Crown Hill Fund invested $28 million and took back senior participating limited partnership units.

34. The CH LP then formed a wholly-owned subsidiary named 1472278 Alberta Ltd. that acquired the rights to the management contracts for the Citadel Funds at a purchase price of $28 million. 1472278 Alberta Limited (the "Citadel Funds Manager") thereby obtained authority to manage the operations and affairs of the Citadel Funds and became its Investment Fund Manager pursuant to the Act.

35. As of June 4, 2009, Pushka was a director and officer of 2206687 Ontario Inc., the CH LP general partner and also the President and a director of 1472278 Alberta Ltd.

36. On June 4, 2009, CHCC had the Crown Hill Fund issue a press release announcing the acquisition of the management rights to all of the Citadel Funds and that it intended to effect a reorganization in order to facilitate a merger of the Crown Hill Fund with certain Citadel Funds with investment objectives similar to those of the Crown Hill Fund.

37. CHCC advised the Crown Hill Fund unit holders in its Management Information Circular dated June 3, 2009 and filed June 9, 2009 for a meeting to be held June 29, 2009 (the "June 2009 MIC") of the further steps in the transaction, indicating in part the following:

    a. the Crown Hill Fund would enter into a joint venture with CHCC through a joint venture entity (**"**the JV**"**);

    b. CHCC would assign to the JV its manager trustee rights with respect to the Crown Hill Fund and its outstanding loan agreement with the Crown Hill Fund in exchange for subordinated interest in the JV;

    c. the Crown Hill Fund would transfer the management rights with respect to the Citadel Funds to the JV in return for senior interest in the JV;

    d. the JV would become the trustee and manager of the Crown Hill Fund and also the trustee and manager of the Citadel Funds; and

    e. the Crown Hill Fund would then merge with certain Citadel Funds over time relying on permitted merger provisions.

38. CHCC advised its unit holders in the June 2009 MIC that the Crown Hill Fund would be entitled to receive the management fees earned by the JV until it had recovered all the expenses of acquiring the management rights to the Citadel Funds, an initial $4 million return from the JV plus a return of approximately 6% on both such expense recovery amount and the $4 million return, collectively referred to as the "Preferred Return". CHCC further advised that the repayment of the investment along with the $4 million and the 6% interest was expected to take approximately four years.

39. The Crown Hill Fund's Preferred Return was to be capped. In contrast, once the Crown Hill Fund received its fixed return, CHCC would receive all of the management fees for the assets of the funds under management going forward.

40. While CHCC referred to the $4 million as a "return", the purpose and nature of the payment concerned a tax liability for the Crown Hill Fund unit holders. CHCC had recognized that by causing the Crown Hill Fund to acquire for $28 million the indirect interest in management contracts for the Citadel Funds, the Crown Hill Fund would receive an active income stream from the management fees for those funds on which tax would be payable by the Crown Hill Fund unit holders. CHCC estimated that a payment of approximately $3.68 million to the Crown Hill Fund would address the tax liabilities created, leaving the unit holders prior to the mergers in a neutral position in that regard on an-after tax basis.

41. CHCC structured the Citadel Funds transaction so that the amount owing to the Crown Hill Fund would increase by $4 million at the time of the creation of the JV and would be recorded as an increase in the net asset value of the Crown Hill Fund prior to the mergers. Over time, as certain Citadel Funds gradually merged into the Crown Hill Fund, the unit holders for those former Citadel Funds would join the existing Crown Hill Fund unit holders in bearing the tax liabilities payable on the active income stream from the management fees for the Citadel Funds.

42. The reorganization did not proceed as planned as of June 4, 2009 and the Crown Hill Fund did not receive the Preferred Return set out in the June 2009 MIC.

43. Staff of the Ontario Securities Commission raised certain concerns regarding the acquisition and planned reorganization and merger. Brompton Administration Limited along with Bloom Investment Counsel, Inc., the portfolio manager for six of the Citadel Funds, also raised concerns with respect to the proposed mergers and took action seeking the support of unit holders of several of the Citadel Funds to take over their management contracts and proceed with their own plans for those funds.

44. On July 20, 2009, CHCC appointed an additional portfolio manager with responsibility for a portion of the assets of the Crown Hill Fund who was entitled to its portfolio management fees of 0.33% on the net asset value of the assets it managed payable by the Crown Hill Fund.

45. In December 2009, five of the Citadel Funds merged into the Crown Hill Fund and renamed it the Citadel Income Fund. CHCC also caused the Crown Hill Fund to sell its indirect interest in the management contracts to CHCC in return for $28.645 million, approximately $10 million of which was borrowed. CHCC had the Crown Hill Fund provide a loan to an intermediary, 2195422 Ontario Inc., for the $10 million which the company in turn lent to CHCC. The interest rate on the loans, which remain outstanding in part, is prime plus 2% and the loans have an initial term of seven years and may be extended for a further seven years.

B. CHCC's Breaches of the Act and Conduct Contrary to the Public Interest

(i) Inappropriate Use of Assets

46. The management contracts for the Citadel Funds were fee-for-service contracts whose purchase required the performance of management and other services pursuant to the

contracts as well as the obligation to fulfil the duties of an Investment Fund Manager under the Act, responsibilities which the Crown Hill Fund was incapable of providing.

47. By causing the Crown Hill Fund to indirectly acquire the management contracts, CHCC put the Crown Hill Fund in the position of having control over, and indirect responsibility for, the management of the Citadel Funds in accordance with the underlying contracts and the Act. This was inconsistent with the general nature of a non-redeemable investment fund as provided by the definition in s.1(1) of the Act and s.1.2 of the Companion Policy to National Instrument 81-106 and was contrary to the public interest.

(ii) Lack of Timely and Accurate Disclosure to Crown Hill Fund Unit Holders

48. At the time that CHCC caused the Crown Hill Fund to indirectly purchase the management contracts for the Citadel Funds, CHCC knew that it would be necessary to seek the approval of the Crown Hill Fund unit holders to proceed with the JV and effect the mergers. Nevertheless, CHCC caused the Crown Hill Fund to pay $28 million, 60% of its assets at the time, to acquire indirectly the management contracts for the Citadel Funds before any unit holders' meeting took place and even before CHCC gave any notice to the Crown Hill Fund unit holders of any meeting. In doing so, CHCC did not act honestly, in good faith and in the best interests of the Crown Hill Fund and its unit holders contrary to s. 116 of the Act.

49. CHCC did make disclosure of the acquisition in early June 2009 and scheduled a meeting for Crown Hill Fund unit holders to vote on the further steps involved in the Citadel Fund transaction. However, CHCC's June 2009 MIC was misleading in the circumstances at the time and thereby inconsistent with the duties of CHCC as Crown Hill Fund's

manager, contrary to Ontario securities laws including s. 116 of the Act and contrary to the public interest, *inter alia*, in failing to accurately:

a. explain the unusual nature of the acquisition of the management contracts for the Citadel Funds already made and the associated risks and tax implications of that acquisition; and/or

b. explain the purpose and nature of the $4 million payment as well as the associated risks in not actually achieving benefits on an after-tax basis.

(iii) Violations of the Crown Hill Fund's Investment Requirements

50. In causing the Crown Hill Fund to enter into the CH Admin LP and directing Robson to pay $28 million or 60% of its assets to acquire indirectly the management contracts for the Citadel Funds, CHCC caused the Crown Hill Fund to use 60% of its assets to acquire the management contracts for the Citadel Funds contrary to its Investment Strategy and its Investment Restrictions as set out in s. 5.2 and s. 5.3 of the Amended Declaration of Trust.

51. CHCC knew or should have known the terms of Crown Hill Fund's Investment Strategy and Investment Restrictions as set out in Amended Declaration of Trust. In causing the Crown Hill Fund to violate its Investment Strategy and Investment Restrictions, CHCC failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances as required and/or failed to act honestly, in good faith and in the best interests of the Crown Hill Fund and its unit holders, contrary to s. 116 of the Act and/or the public interest.

(iv) Failure to Avoid or Minimize Risks and Costs to the Fund

52. The transaction as planned and initiated by CHCC was novel and created risks of objections from regulators and other parties in the market place including the existing portfolio managers for the Citadel Funds and their unit holders.

53. The Citadel Funds management contracts included provisions which permitted a change in managers on the payment by the fund of break fees to the existing manager. CHCC knew that the break fees which would be payable to 1472278 Alberta Ltd., and indirectly the Crown Hill Fund, were only approximately $18.8 million, exposing the fund to a risk that it could lose more than $8 million, representing more than a quarter of its investment and approximately 18% of its assets at the time.

54. In causing the Crown Hill Fund to indirectly acquire the management contracts for the Citadel Funds for $28 million, CHCC failed to consider, avoid and/or minimize the risks of significant losses as well as the costs and expenses associated with the Citadel transaction, contrary to s. 116 of the Act and/or the public interest.

(v) Summary of Breaches and Conduct Contrary - Interests of CHCC Paramount

55. In structuring the Citadel transaction as it did and taking the initial steps in that regard by causing the Crown Hill Fund to indirectly acquire the management contracts, CHCC acted primarily in its own interests (and those of Pushka) rather than the interests of the Crown Hill Fund, contrary to s. 116 of the Act and contrary to the public interest.

56. CHCC failed to act honestly, in good faith and in the best interests of the Crown Hill Fund and/or did not act with the degree of care, diligence and skill of a reasonably prudent person in the circumstances contrary to s.116 of the Act and/or the public interest in that *inter alia* it:

a. failed to assess the results of the prior acquisition and mergers and consider the current situation of the Crown Hill Fund and the need for these mergers with the Citadel Funds and the purported benefits of such mergers;

b. failed to consider the appropriateness of causing the Crown Hill Fund to acquire the management contracts for the Citadel Funds so as to use fund assets as a means of financing CHCC's ultimate acquisition of those contracts;

c. failed to consider financing alternatives for the acquisition of the management contracts and/or to determine fair and reasonable terms for such financing;

d. failed to properly assess and seek to avoid or minimize the risks of significant losses to the Crown Hill Fund as well as all the costs and expenses associated with the acquisition, the JV and mergers;

e. caused the Crown Hill Fund to spend 60% of its assets to acquire the indirect interest in the management contracts, without first making timely and accurate disclosure to the Crown Hill Fund unit holders; and/or

f. provided inadequate and misleading disclosure in the June 2009 MIC as described above.

V. CONDUCT OF PUSHKA

57. Pushka as President and Chief Executive Officer and a director of CHCC and, indirectly its owner, authorized, permitted or acquiesced in the conduct of CHCC described above that constituted breaches of section 116 of the Act. In so doing and pursuant to s. 129.2 of the Act, Pushka breached the Act and acted contrary to the public interest.

58. In June 2009, Pushka was a director of the Citadel Fund Manager which owed obligations to those funds pursuant to s. 116 at the same time that CHCC was seeking to bring about the mergers of certain Citadel Funds into the Crown Hill Fund. In authorizing, permitting or acquiescing to CHCC's conduct described above while also a director of the Citadel Fund Manager, Pushka failed to act honestly, in good faith and in the best interests of the Citadel Funds and/or did not act with the degree of care, diligence and skill of a reasonably prudent person in the circumstances contrary to s. 116 of the Act and/or the public interest *inter alia* in:

a. seeking to bring about the mergers without seeking and obtaining the approval of the unit holders of the Citadel Funds in advance;

b. failing to consider the current situation of the Citadel Funds and whether there were any benefits for each of those funds of merging with and into the Crown Hill Fund; and/or

c. failing to evaluate and seek to minimize all the risks, costs and expenses associated with the mergers for the Citadel Funds and their unit holders including any tax implications.

VI. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND CONTRARY TO THE PUBLIC INTEREST

59. The conduct engaged in by the Respondents as set out above violated Ontario securities laws as specified. In addition, that conduct compromised the integrity of Ontario's capital markets, was abusive to Ontario's capital markets and was contrary to the public interest.

60. Staff reserves the right to make such other allegations as Staff may advise and the Commission may permit.

Dated at Toronto this 7th day of July, 2011