

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

TERRI MORSE BACHOW, Individually on Behalf of Herself and  
All Others Similarly Situated,

Plaintiff

v.

SWANK ENERGY INCOME ADVISERS, LP, SWANK CAPITAL,  
LLC, JERRY V. SWANK, MARK W. FORDYCE, CPA, BRIAN R.  
BRUCE, RONALD P. TROUT, and EDWARD N. McMILLAN,

Defendants

C.A. No. 3:09-CV-0262-K

**NOTICE OF PENDENCY OF CLASS ACTION AND  
PROPOSED SETTLEMENT, MOTION FOR ATTORNEYS'  
FEES AND SETTLEMENT FAIRNESS HEARING**

**TO: ALL PERSONS OR ENTITIES WHO PURCHASED OR OTHERWISE ACQUIRED SHARES OF THE CUSHING MLP TOTAL RETURN FUND (THE "FUND") BETWEEN SEPTEMBER 1, 2008, AND DECEMBER 19, 2008, INCLUSIVE (THE "CLASS PERIOD"), AND WHO SOLD THEIR SHARES AFTER DECEMBER 19, 2008, OR WHO STILL HOLD THEM (THE "SETTLEMENT CLASS").**

*A federal court has authorized this notice. This is not a solicitation from a lawyer.*

- The Settlement with the Defendants will provide a \$3.6 million settlement fund for the benefit of the Class.
- The Settlement resolves a lawsuit over whether the Fund's reports and releases misrepresented and omitted to disclose material information regarding the Fund's financial condition and future earnings.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
<b>SUBMIT A CLAIM FORM BY AUGUST 30, 2010</b>	The only way to get a payment.
<b>OBJECT BY AUGUST 30, 2010</b>	Write to the Court about why you do not like the Settlement.
<b>OPT-OUT BY AUGUST 30, 2010</b>	Exclude yourself from the Settlement.
<b>DO NOTHING</b>	Get no payment. Give up rights.

- These rights and options - **and the deadlines to exercise them** - are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

**SUMMARY NOTICE**

**Statement of Plaintiff Recovery**

A Settlement is proposed with respect to the Defendants. Under the Settlement described herein, a Settlement Fund consisting of \$3,600,000 in cash will benefit the entire Settlement Class. Plaintiff estimates that there were approximately 4.1 million shares traded during the Class Period. Plaintiff estimates that the average recovery per damaged Fund share is \$0.88 before deduction of Court-approved administrative expenses and attorneys' fees and expenses. Those Settlement Class members who submitted acceptable Proofs of Claim shall receive their *pro rata* share of a Net Settlement Fund (described below) calculated by applying the same percentage to the Settlement Class member's claim as that Settlement Class member's claim constitutes of all Settlement Class members' approved claims. Depending on the number of claims submitted and approved and whether and when a Settlement Class member sold Fund shares, an

individual Settlement Class member may receive more or less than the average gross per share recovery set forth above. See the Plan of Allocation beginning on page 10 for more information on your Recognized Claim.

Statement of Potential Outcome of Case

The parties disagree on both liability and damages and do not agree that the average amount of damages per security, if any, would be recoverable if Plaintiff was to have prevailed on each claim alleged. Defendants deny (i) any wrongdoing, (ii) that they are liable to Plaintiff or the Settlement Class; and (iii) that Plaintiff and the Settlement Class have suffered any damages.

Statement of Attorneys' Fees and Costs Sought

Plaintiffs' Counsel are moving the Court to award attorneys' fees equal to thirty percent (30%) of the Gross Settlement Fund, and for reimbursement of expenses incurred in connection with the prosecution of this Action in the approximate amount of \$89,000.00. The requested fees and expenses would amount to an average of \$0.2851 per Fund share. Plaintiffs' Counsel have expended considerable time and effort in the prosecution of this litigation on a contingent-fee basis, and have advanced the expenses of the litigation, in the expectation that if they were successful in obtaining a recovery for the Settlement Class they would be paid from such recovery. In this type of litigation it is customary for counsel to be awarded a percentage of the common fund recovery as their attorneys' fees.

Further Information

Further information regarding the Action and this Notice may be obtained by going to [www.gardencitygroup.com](http://www.gardencitygroup.com) or calling the Claims Administrator at 1-800-231-1815.

Reasons for the Settlement

For Plaintiff, the principal reason for the Settlement is the \$3.6 million cash benefit to be provided to the Class now. This cash benefit must be compared to the risk that less money or no money might be recovered from the Defendants after a contested trial and likely appeals, possibly years into the future. In particular, Plaintiff took into consideration that the maximum amount recoverable from the two individual Defendants remaining after the Court's partial dismissal is \$8-10 million, that the maximum amount of insurance coverage available is \$5 million and that it would be very difficult to recover any significant amounts of money from those individual Defendants, if Plaintiff were successful in obtaining a judgment against them after trial and all appeals.

For Defendants, who deny all allegations of wrongdoing or liability whatsoever, the principal reason for Settlement is to eliminate the expense and distraction of the litigation.

**WHAT THIS NOTICE CONTAINS**

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## BASIC INFORMATION

### 1. Why did I get this notice package?

You may have purchased Cushing MLP Total Return Fund (“Fund”) shares during the period from September 1, 2008 to December 19, 2008, inclusive, and sold those shares after December 19, 2008, or continue to hold them. If so, you may be a Settlement Class member.

The Court directed that this Notice of Settlement be sent to all Settlement Class members because they have a right to know about the proposed settlement of this class action, and about all of their options, before the Court decides whether to approve the Settlement with Defendants. If the Court approves the Settlement, and after any objections and appeals are resolved, a claims administrator appointed by the Court will make the payments that the Settlement allows. The settlement, if approved, will completely settle and resolve this class action.

This package explains the lawsuit, the Settlement, Settlement Class members’ legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Northern District of Texas, and the case is known as *Bachow v. Swank Energy Income Advisors, LP, et al.* The Judge in this case is the Honorable Ed Kinkeade. The person who sued, Terri Morse Bachow, is called the Plaintiff.

The people she sued: Swank Energy Income Advisors, LP (“Swank Energy”), Swank Capital, LLC (“Swank Capital”), Jerry V. Swank (“Swank”), Mark W. Fordyce (“Fordyce”), Brian R. Bruce (“Bruce”), Ronald P. Trout (“Trout”) and Edward N. McMillan (“McMillan”) are collectively referred to as the “Defendants.” Swank, Fordyce, Bruce, Trout, and McMillan are sometimes referred to herein collectively as the “Individual Defendants.”

The proposed Settlement will settle all of Plaintiff’s and all Settlement Class members’ Settled Claims against the Defendants.

### 2. What is this lawsuit about?

This case involves Defendants’ inclusion of a deferred tax asset (without discounting that asset with a valuation allowance) in the Fund’s net asset value (“NAV”) during the Class Period. On December 19, 2008, Defendants caused the Fund to issue a press release announcing that it had established a \$49.1 million valuation allowance against the \$49.1 million deferred tax asset, effectively reducing the value of the deferred tax asset to zero and reducing the Fund’s stated NAV by \$49.1 million.

Plaintiff sought to recover damages sustained by members of the Settlement Class from Swank and Fordyce as a result of alleged violations of Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission with respect to misstatements and omissions contained in the Fund’s financial statements and press releases made during the Class Period.

Plaintiff also sought to recover damages sustained by members of the Settlement Class from Swank Capital, Swank, Fordyce, Bruce, Trout and McMillan as a result of alleged violations of Section 20(a) of the Exchange Act with respect to misrepresentations and omissions contained in the Fund’s financial statements and press releases made during the Class Period.

Plaintiff also sought to recover damages sustained by members of the Settlement Class from Swank Advisors as the result of alleged violations of Section 36(b) of the Investment Company Act of 1940 (“ICA”), 15 U.S.C. § 78t(a) with respect to alleged breaches of fiduciary duty by Swank Advisors during the Class Period.

Plaintiffs allege that Defendants made a series of materially false and misleading statements and omissions concerning, among other things, the NAV of the Fund, the investments of the Fund, the deferred tax asset and the lack of a valuation allowance taken against the deferred tax asset.

All Defendants deny all allegations of misconduct contained in the Complaint, deny any liability to the Settlement Class, and deny having engaged in any wrongdoing whatsoever.

### 3. Why is this a class action?

In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. All these people are a Class or Class members. Bringing a case, such as this one, as a class action allows the resolution of many similar claims of persons and entities that might be economically too small to bring in individual actions. One court resolves the issues for all Class members, except for those who exclude themselves from the class.

The members of the Settlement Class in this Action have similar claims under the Exchange Act and the ICA against Defendants.

### 4. Why is there a settlement?

The Court granted dismissal of Plaintiff's claims under Section 20(a) of the Exchange Act and Section 36(b) of the ICA, leaving Plaintiff's claims under Section 10(b) of the Exchange Act and Rule 10(b)(5) against Swank and Fordyce. The Court has not ruled upon the merits of those claims against Swank and Fordyce. If the case had not settled, Plaintiff intended to appeal the dismissal of her other claims.

Subsequent to the Court's ruling on Defendants' Motion to Dismiss, Plaintiff received written disclosures and over 16,000 pages of documents from Swank and Fordyce. Those documents revealed that Swank and Fordyce may have relied upon the advice of the Fund's accounting firm in treating the deferred tax asset as they did, potentially offering a defense that they did not have the necessary mental state required to be liable. Discovery also revealed that the maximum amount of insurance coverage for Defendants is \$5 million.

Plaintiff filed a motion with the Court seeking to have it certify this case to proceed as a class action. Plaintiff and Defendants reached agreement on the main points of the Settlement prior to the deadline for Swank and Fordyce to respond to the class certification motion. The Stipulation and Agreement of Settlement subsequently was entered into by the parties on May 17, 2010.

From Plaintiff's perspective, \$3.6 million is a very good settlement considering that: (a) there would be a significant chance that the Settlement Class would recover nothing if it proceeded through trial and appeals, (b) according to the extensive analysis done by Plaintiff's financial expert, the maximum recoverable damages would be in the range of \$8-10 million, (c) a judgment for that amount might take many years to achieve, (d) there is only \$5 million of potential insurance coverage, and (e) there is significant doubt that significant amounts of money could be recovered from Swank and Fordyce above and beyond the insurance coverage if a judgment was obtained against them. From Defendants' perspective, the settlement reduces any risk of having to pay in excess of the settlement amount and avoids the further inconvenience, distraction and expense of litigation.

## WHO IS PART OF THE SETTLEMENT?

To see if you will get money from the Settlement, you first have to see if you are a Settlement Class member.

### 5. How do I know if I am part of the Settlement?

The Settlement Class includes all persons or entities who purchased or otherwise acquired Fund shares between September 1, 2008, and December 19, 2008, inclusive, (the "Class Period") and who sold their shares after December 19, 2008, or who still hold them. Excluded from the Settlement Class are Defendants, their officers, directors, employees, partners, members of their immediate families and their legal representatives, heirs, predecessors, successors or assigns and any entity in which any of the foregoing has or had a controlling interest. If you purchased Fund shares during the Class Period, and sold your shares after December 19, 2008, or you still hold them, then unless you are excluded, you are a member of the Settlement Class and may participate in the Settlement.

6. Are there exceptions to being included?

Yes, as indicated above, excluded from the Settlement Class are Defendants, their officers, directors, employees, partners, members of their immediate families and their legal representatives, heirs, predecessors, successors or assigns, and any entity in which any of the foregoing has or had a controlling interest.

7. What if I am still not sure if I am included?

If you are still not sure whether you are included, you can ask for free help. You can call 1-800-231-1815 or visit [www.gardencitygroup.com](http://www.gardencitygroup.com) for more information. Or you can go ahead and fill out and return the Proof of Claim form described in question 10 below, to see if you qualify.

### THE SETTLEMENT BENEFITS — WHAT YOU GET

8. What does the settlement provide?

In exchange for the Settlement and dismissal of the Action against them, Defendants have agreed to create a \$3.6 million fund to be divided, after fees and expenses, among all Settlement Class members who send in valid Proof of Claim forms.

9. How much will my payment be?

If you are a member of the Settlement Class, your share of the \$3.6 million fund will depend on: (a) the total amount of fees and expenses, (b) how many valid Proof of Claim forms that Settlement Class members send in, (c) how many Fund shares you bought during the Class Period and still held at the end of the Class Period; (d) how many Fund shares you sold during the 90 days following the Class Period; (e) whether you still owned the Fund shares at the end of the 90 day period; and (f) the prices for which you bought and sold Fund shares.

You can calculate your Recognized Claim in accordance with the formulas shown below in the Plan of Allocation. It is unlikely that you will receive a payment for the full amount of your Recognized Claim, because it is likely that the total amount of Recognized Claims will exceed the amount of the Net Settlement Fund. After all Settlement Class members have sent in their Proof of Claim forms, the payment you will receive will be the same percentage of your Recognized Claim that your Recognized Claim constitutes of the total of all the Recognized Claims of all Settlement Class members who filed Proofs of Claim that are approved. Under no circumstances will you receive more than the full amount of your Recognized Claim. See the Plan of Allocation beginning on page 10 for more information on your Recognized Claim.

### HOW YOU GET A PAYMENT — SUBMITTING A PROOF OF CLAIM FORM

10. How can I get a payment?

To qualify for a payment, you must send in a Proof of Claim form. A Proof of Claim form is included with this Notice of Settlement. You may also get a Proof of Claim form on the Internet at [www.gardencitygroup.com](http://www.gardencitygroup.com) or by calling 1-800-231-1815. Read the instructions carefully, fill out the Proof of Claim form, include all the documents the form asks for, sign it, and mail it postmarked no later than **August 30, 2010**.

11. When would I get my payment?

The Court will hold a hearing on September 13, 2010, to decide whether to approve the Settlement. If the Court approves the Settlement after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. It also takes time for all the Proofs of Claim to be processed. Please be patient.

12. What am I giving up to get a payment?

Upon the “Effective Date” of the Settlement, Settlement Class members will release all “Settled Claims” against the “Released Parties” (as those terms are defined in the Stipulation and Agreement of Settlement).

As defined in the Settlement, “Settled Claims” collectively means any and all claims, debts, demands, rights, actions or causes of action, obligations, losses, damages, judgments, suits, or liabilities, matters and issues of any kind or nature whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation (including, without limitation, Sections 10 and 20 of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j, 78t, and Rule 10b-5 promulgated thereunder, the Investment Company Act of 1940, 15 U.S.C. §§ 80a-29, 80a-35 & 80a-36, other state or federal securities laws, rules or regulations, and any and all claims involving allegations of fraud, breach of any duty, negligence or otherwise), whether fixed or contingent, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class, representative or individual in nature, including both known claims and Unknown Claims (as defined below), (i) that have been asserted in this Action by Plaintiff or any other Settlement Class member against any of the Released Parties, or (ii) that could have been asserted in any forum by Plaintiff or any other Settlement Class member against any of the Released Parties, arising out of, in connection with or directly or indirectly relating in any way to the allegations, transactions, facts, events, acts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint or any of the complaints filed in this Action and which relate in any way to the purchase or other acquisition of shares of the Fund during the Class Period. “Settled Claims” shall also include any and all claims arising out of, in connection with or relating in any way to the settlement or resolution of the Action, other than claims to enforce the terms of the Stipulation.

As defined in the Settlement, “Unknown Claims” means any and all Settled Claims which any Plaintiff or Settlement Class member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, which, if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiff shall expressly waive and relinquish to the fullest extent permitted by law, and each Settlement Class member shall be deemed to have waived and relinquished, and by operation of the Judgment shall have expressly waived and relinquished, any and all provisions, rights and benefits conferred by federal law, any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

It is the intention of Plaintiff and Defendants that, notwithstanding the provisions of Section 1542 or any similar provisions, rights and benefits conferred by law, and notwithstanding the possibility that Plaintiff, the Settlement Class members or their counsel may discover or gain a more complete understanding of the facts, events or law that, if presently known or fully understood, would have affected the decision to enter into this Stipulation, any and all Settled Claims, including Unknown Claims, shall be fully, finally and forever settled. Plaintiff acknowledges, and Settlement Class members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Settled Claims were separately bargained for and was a key element of the Settlement.

As defined in the Settlement, “Released Parties” means any and all of Defendants, and any of their family members, heirs, assigns, executors, administrators, trustees, legal or personal representatives, successors in interest, general or limited partners or partnerships, estates, past or present subsidiaries, parents, predecessors, affiliates, owners, officers, directors, managers, agents, employees, and insurers.

The “Effective Date” will occur when an Order entered by the Court approving a Settlement becomes final and not subject to appeal.

## EXCLUSION FROM THE SETTLEMENT CLASS

13. Can I exclude myself from the Settlement Class?

Yes, if you do not wish to participate in the Settlement, you can exclude yourself or “opt-out” of the Settlement Class. If you do so, you will not be entitled to receive anything from the Net Settlement Fund. Correspondingly, you will not release any claims that you may have against the Defendants.

14. How do I exclude myself?

In order to exclude yourself from this Settlement, you must mail such request in written form by First Class Mail, postmarked no later than August 30, 2010, to the following address: Cushing MLP Litigation, Exclusions, c/o The Garden City Group, Inc., P.O. Box 9349, Dublin, OH 43017-4249. The notice must clearly indicate the name, address and telephone number of the person seeking exclusion, that the sender requests to be excluded from the Settlement Class in *Bachow, et al. v. Swank Energy Income Advisors, LP, et al.*, Civil Action No. 3:09-CV-0262K, and it must signed by the person requesting exclusion. The exclusion must also state: the date(s), price(s), and number(s) of shares of all purchases, acquisitions and sales of Fund shares during the Class Period and the ninety (90) day period thereafter. A request for exclusion will not be effective unless it provides the required information and is postmarked by August 30, 2010.

## THE LAWYERS REPRESENTING YOU

15. Do I have a lawyer in this case?

The law firms of Wolf Haldenstein Adler Freeman & Herz LLP and Beckham & Mandel will represent all members of the Settlement Class. These lawyers are called Co-Lead Counsel. You will not be separately charged for these lawyers. The Court will determine the amount of Plaintiffs’ Counsel’s fees and expenses, which will be paid from the Gross Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

16. How will the lawyers be paid?

Plaintiffs’ counsel are asking the Court to award them attorneys’ fees equal to thirty percent (30%) of the Gross Settlement Fund and for reimbursement of their expenses in the approximate amount of \$89,000.00, plus interest on such fees and expenses at the same rates as may be earned by the Settlement Fund.

Plaintiffs’ counsel are also asking the Court to award Plaintiff a class representative incentive award of \$10,000 to compensate her for her time and effort directly related to her representation of the Settlement Class.

Plaintiffs’ counsel, without further notice to the Settlement Class, will subsequently apply to the Court for payment of the Claims Administrator’s fees and expenses incurred in connection with giving notice, administering the Settlements and distributing the Settlement proceeds to the members of the Settlement Class.

## OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement, the Plan of Allocation, the proposed attorneys’ fees and expenses, or the proposed class representative incentive award.

17. How do I tell the Court that I do not like the proposed settlement?

If you are a Settlement Class member, you can object to the Settlement or any of its terms, the proposed Plan of Allocation, the application by Plaintiffs’ counsel for an award of fees and expenses and/or the application by Plaintiff for a class representative incentive award.

Your objection must be in writing and received by the Clerk of the Court, United States District Court for the Northern District of Texas, Dallas Division, United States Courthouse, 1100 Commerce Street, Room 1452, Dallas, Texas 75242 by no later than August 30, 2010. In addition, copies of what you submitted to the Clerk must be received by the following attorneys by no later than August 30, 2010:

Roger Mandel  
Beckham & Mandel  
3400 Carlisle, Avenue Suite 550  
Dallas, Texas 75204

Mark C. Rifkin  
Wolf Haldenstein Adler Freeman & Herz LLP  
270 Madison Avenue, 10<sup>th</sup> Floor  
New York, New York 10016

Rodney Acker  
Karl G. Dial  
Fulbright & Jaworski L.L.P.  
2200 Ross Avenue, Suite 2800  
Dallas, Texas 75201-2784

Attorney for Plaintiffs

Attorney for Plaintiffs

Attorneys for Defendants

All objections must demonstrate the objector's status as a Class member by providing a schedule of all purchases, acquisitions and sales of shares of the Fund during the Class Period and of all sales of such shares after the Class Period and must be accompanied by adequate supporting documentation for the transactions reported in the objection, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in the broker confirmation slip or such other documentation as may be deemed adequate by the Court.

The objection must state that the Class member objects to the settlement in *Bachow, et al. v. Swank Energy Income Advisors, LP, et al.*, Civil Action No. 3:09-CV-0262-K, and be signed by the objector. The objection must also set forth each and every ground of objection in detail and set forth any and all legal authorities in support which the objector wishes the Court to consider. The Court will not consider any objection which does not substantially comply with these requirements.

You do not need to go to the Settlement Fairness Hearing to have your written objection considered by the Court. At the Settlement Fairness Hearing, any Settlement Class member who has complied with the procedures set out in this question 17 and question 20 below for filing with the Court and providing to the counsel for Plaintiffs and Defendants a statement of an intention to appear at the Settlement Fairness Hearing may also appear and be heard, to the extent allowed by the Court, to state any objection to the Settlement, the Plan of Allocation, Plaintiffs' Counsel's request for an award of attorneys' fees and reimbursement of expenses, and/or Plaintiff's request for a class representative incentive award. Any such objector may appear in person or arrange, at that objector's expense, for a lawyer to represent the objector at the Hearing.

### THE COURT'S SETTLEMENT FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the proposed Settlement. You may attend and you may ask to speak, but you do not have to do so.

18. When and where will the Court decide whether to approve the proposed settlement?

The Court will hold a Settlement Fairness Hearing at 9:30 a.m. on Monday, September 13, 2010, at the United States District Court for the Northern District of Texas, Dallas Division, United States Courthouse, 1100 Commerce Street, Room 1627, Dallas, Texas 75242. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. At the Settlement Fairness Hearing, the Court also will consider the proposed Plan of Allocation for the proceeds of the Settlement, the application of Plaintiffs' Counsel for attorneys' fees and reimbursement of expenses and the Plaintiff's request for a class representative incentive award. The Court will take into consideration any written objections filed in accordance with the instructions at question 17. The Court also may listen to people who have properly indicated, within the deadline identified above, an intention to speak at the hearing; but decisions regarding the conduct of the hearing will be made by the Court. See question 20 for more information about speaking at the hearing. After the hearing, the Court will issue its decision. We do not know how long that will take.

You should be aware that the Court may change the date and time of the Settlement Fairness Hearing. Thus, if you want to come to the hearing, you should check with the Claims Administrator before coming to be sure that the date and/or time has not changed.

19. Do I have to come to the hearing?

No. Plaintiffs' Counsel will answer any questions the Court may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you filed your written objection on time and it complies with the Court's requirements, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary. Settlement Class members do not need to appear at the hearing or take any other action to indicate their approval.

20. May I speak at the hearing?

If you object to the Settlement, Plan of Allocation, Plaintiff's Counsel's request for attorneys' fees and reimbursement of expenses and/or the Plaintiff's request for a class representative incentive award, you may ask the Court for permission to speak at the Settlement Fairness Hearing by stating in your written objection that you intend to speak at the Settlement Fairness Hearing. If you desire to present evidence at the Settlement Fairness Hearing, you must include in your written objection a list of any witnesses you may call to testify, a list of any exhibits you intend to introduce into evidence at the Settlement Fairness Hearing, and copies of those exhibits. Unless otherwise ordered by the Court, you cannot speak at the hearing if you excluded yourself from the Settlement Class or if you have not provided written notice of your intention to speak at the Settlement Fairness Hearing by the deadline identified, and in accordance with the procedures described in question 17 above and this question.

#### IF YOU DO NOTHING

21. What happens if I do nothing at all?

If you are a Settlement Class member and do nothing, you will get no money from the Settlement and you will be precluded from starting a lawsuit, continuing with a lawsuit, or being part of any other lawsuit against the Defendants and the other Released Parties about the Settled Claims in this case, ever again. To share in the Net Settlement Fund, you must submit a Proof of Claim form (see question 10).

#### GETTING MORE INFORMATION

22. Are there more details about the proposed settlement?

This notice summarizes the proposed Settlement. More details are in the Stipulation and Agreement of Settlement dated May 17, 2010. You can get a copy of the Stipulation by writing to **Cushing MLP Litigation, c/o The Garden City Group, Inc., P.O. Box 9349, Dublin, OH 43017-4249** or by calling the Claims Administrator at 1-800-231-1815 or by visiting [www.gardencitygroup.com](http://www.gardencitygroup.com).

From these same places, you can also obtain a Proof of Claim form, plus other relevant documents.

23. How do I get more information?

The sources set forth above in No. 22 should have all the documents you would need to obtain information about the Settlement. A complete set of all items filed with the Court can be found at the office of the Clerk of the Court, United States District Court for the Northern District of Texas, Dallas Division, United States Courthouse, 1100 Commerce Street, Room 1452, Dallas, Texas 75242. However, the Clerk cannot make copies and send them to you. If you want to look at anything in the file, you will have to appear in person at the Clerk's office.

#### PLAN OF ALLOCATION OF THE NET SETTLEMENT FUNDS

The following proposed Plan of Allocation reflects the proposition that the price of Cushing MLP Total Return Fund ("Cushing") shares was inflated artificially by reason of Defendants' failure during the Class Period to disclose the true facts regarding Cushing's deferred tax asset, its failure to apply a valuation allowance to that deferred tax asset and its Net Asset Value. The alleged inflation was eliminated on December 22 and 23, 2008, following the disclosure after the close of the market on Friday, December 19, 2008, that Cushing's Net Asset Value had decreased \$3.49 per share as a result of a review of its accounting treatment of a deferred tax asset and the consequential write-off of that asset.

Specifically, Cushing's share price dropped \$3.59 over the following two trading days from a closing price of \$7.40 per share on December 19, 2008, to a closing price of \$3.81 per share on December 23, 2008.

The \$3.6 million Cash Settlement Amount and the interest earned thereon shall be the Gross Settlement Fund. The Gross Settlement Fund, less all taxes and approved costs, fees, and expenses, including Notice and Administration Costs, attorneys' fees and expenses, class representative incentive award, and other administrative expenses (the "Net Settlement Fund"), shall be distributed to members of the Settlement Class who submit acceptable Proofs of Claim ("Authorized Claimants").

The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's "Recognized Claim." The Recognized Claim formula is not intended to be an estimate of the amount of what a Settlement Class member might have been able to recover after a trial; nor is it an estimate of the amount that will be paid to Authorized Claimants pursuant to the settlement.

A "Recognized Claim" will be calculated for purposes of the Settlement as follows:

- (a) For shares purchased during the period September 1, 2008, through December 19, 2008, inclusive, that were sold at a loss from December 22, 2008, through March 19, 2009, an Authorized Claimant's "Recognized Claim" shall mean **the lesser of** (i) \$3.59 per share, or (ii) the difference between the purchase price paid (excluding commissions, etc.) and the actual sales proceeds received (excluding commissions, etc.).
- (b) For shares purchased during the period September 1, 2008, through December 19, 2008, inclusive, that were still held at the close of trading on March 19, 2009, an Authorized Claimant's "Recognized Claim" from such shares shall mean **the lesser of** (i) \$3.59 per share, or (ii) the difference between the purchase price paid (excluding commissions, etc.) and \$5.26 per share (the 90-day average price of the shares following the December 19, 2008 disclosures consistent with Section 21D(e) of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. 78u-4(e)).

In the event a Settlement Class member had more than one purchase or sale of Cushing shares, all prior holdings, purchases and sales shall be matched on a First In First Out ("FIFO") basis. A purchase or sale of Cushing shares shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date.

To the extent a Claimant had a gain from his, her or its purchases of Cushing shares during the Class Period, the value of the Recognized Claim will be zero. To the extent that a Claimant suffered an overall loss on his, her or its overall purchases of Cushing shares during the Class Period, but that loss was less than the Recognized Claim calculated above, then the Recognized Claim shall be limited to the amount of the actual loss.

Settlement Class members who do not submit acceptable Proofs of Claim will not share in the settlement proceeds. Distributions will be made to Authorized Claimants after all claims have been processed and after the Court has finally approved the settlement.

To the extent the Net Settlement Fund exceeds the total of all Recognized Claims, the remainder may be donated to a 501(c)(3) organization.

To the extent the total of all Recognized Claims exceed the amount of the Net Settlement Fund, each Authorized Claimant shall receive his or her or its *pro rata* share of the Net Settlement Fund. That *pro rata* share shall be the same percentage of the Authorized Claimant's Recognized Claim as his, her or its Recognized Claim constitutes of the total of all of the Recognized Claims.

If any funds remain in the Net Settlement Fund by reason of uncashed distributions or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Settlement Class members who are entitled to participate in the distribution of the Net Settlement Fund cash their distributions, any balance remaining in the Net Settlement Fund six months after the initial distribution of such funds shall be re-distributed to Settlement Class members who received and cashed initial distributions less than the full amounts of their Recognized Claims and who would receive at least \$10.00 from such re-distribution, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such re-distribution. In no event, however, shall the total distributions to any Authorized Claimant exceed the amount of his, her or its Recognized Claim. If after such re-distribution any funds still remain in the Net Settlement Fund, then such balance may be contributed to a 501(c)(3) organization.

**SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

If you purchased Fund shares during the Class Period for the beneficial interest of a person or organization other than yourself, then the Court has directed that, WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS NOTICE, you either (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which, during the Class Period, you purchased Fund shares, or (b) request additional copies of this Notice of Settlement and the Proof of Claim form, which will be provided to you free of charge, and mail the Notice of Settlement and Proof of Claim form directly to the beneficial owners of those securities. You are entitled to reimbursement from the Settlement Funds of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of beneficial owners. Those expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator:

**Cushing MLP Litigation  
c/o The Garden City Group, Inc.  
PO Box 9349  
Dublin, OH 43017-4249**

**1-800-231-1815**

Dated: July 12, 2010  
Dallas, TX

By Order of the Court  
CLERK OF THE COURT