

**Must be Postmarked  
No Later Than  
August 30, 2010**

**Cushing MLP Litigation  
c/o The Garden City Group, Inc.  
PO Box 9349  
Dublin, OH 43017-4249  
1(800) 231-1815**

CSH



Claim Number:

Control Number:

## **PROOF OF CLAIM AND RELEASE**

LEAD PLAINTIFF TERRI MORSE BACHOW HAS BROUGHT A CLASS ACTION AGAINST DEFENDANTS SWANK ENERGY INCOME ADVISERS, 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") (COLLECTIVELY "DEFENDANTS") IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION, NO. 3:09-CV-0262-K. THE SETTLEMENT OF THIS CLASS ACTION MAY ENTITLE YOU TO RECEIVE A PAYMENT IN CONNECTION WITH YOUR PURCHASE OF CUSHING MLP TOTAL RETURN FUND ("CUSHING") SHARES DURING THE CLASS PERIOD (FROM SEPTEMBER 1, 2008, THROUGH DECEMBER 19, 2008, INCLUSIVE). PLEASE COMPLETE THIS PROOF OF CLAIM AND VERIFICATION SO THAT THE PARTIES MAY DETERMINE WHETHER YOU ARE A CLASS MEMBER. TO BE VALID, YOUR COMPLETED PROOF OF CLAIM AND VERIFICATION MUST BE POSTMARKED NO LATER THAN AUGUST 30, 2010.

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**QUESTIONS? CALL TOLL-FREE 1(800) 231-1815 OR VISIT [WWW.GARDENCITYGROUP.COM](http://WWW.GARDENCITYGROUP.COM)**



**SECTION A - CLAIMANT INFORMATION**

**Claimant Name(s)** (as you would like the name(s) to appear on the check, if eligible for payment):

**Account Number:** (not required)

**Last 4 digits of Claimant Social Security Number/Taxpayer ID Number:**

**Name of the Person you would like the Claims Administrator to Contact Regarding This Claim** (if different from the Claimant Name(s) listed above):

**Claimant or Representative Contact Information:**

The Claims Administrator will use this information for all communications relevant to this Claim (including the check, if eligible for payment). If this information changes, you **MUST** notify the Claims Administrator in writing at the address above.

**Street Address:**



**City:**

**State and Zip Code:**

**Country (Other than U.S.):**

**Daytime Telephone Number:** (     )     -    

**Evening Telephone Number:** (     )     -    

**E-mail Address:**

*(E-mail address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim.)*

Check this box if you would like to receive payment (if you are eligible to receive a cash award under the Plan of Allocation) via electronic transfer. Please note: the Settlement Administrator will request your banking information at the appropriate time. If you check this box, you **MUST** provide your email address.

IF YOU FAIL TO SUBMIT A COMPLETE CLAIM BY AUGUST 30, 2010, YOUR CLAIM IS  
SUBJECT TO REJECTION OR YOUR PAYMENT MAY BE DELAYED.

**NOTICE REGARDING ELECTRONIC FILES:** Certain claimants with large numbers of transactions may request to, or may be requested to, submit information regarding their transactions in electronic files. To obtain the mandatory electronic filing requirements and file layout, you may visit the website at [www.gardencitygroup.com](http://www.gardencitygroup.com) or you may e-mail the Claims Administrator at [eClaim@gardencitygroup.com](mailto:eClaim@gardencitygroup.com). Any file not in accordance with the required electronic filing format will be subject to rejection. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email after processing your file with your claim numbers and respective account information. Do not assume that your file has been received or processed until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the electronic filing department at [eClaim@gardencitygroup.com](mailto:eClaim@gardencitygroup.com) to inquire about your file and confirm it was received and acceptable.

**NOTE:** Separate Proofs of Claim should be submitted for each separate legal entity (for example, a claim from Joint Owners should not include separate transactions of just one of the Joint Owners, an Individual should not combine his or her IRA transactions with transactions made solely in the Individual's name). Conversely, a single Proof of Claim should be submitted on behalf of one legal entity including all transactions made by that entity no matter how many separate accounts that entity has (for example, a corporation with multiple brokerage accounts should include all transactions made in Cushing MLP shares during the Class Period on one Proof of Claim, no matter how many accounts the transactions were made in.)



**SECTION B - TRANSACTIONS IN CUSHING SHARES**

1. **BEGINNING HOLDINGS:** At the close of business on **August 31, 2008**, I owned the following number of Cushing shares. (If none, write "zero" or "0".)
2. **PURCHASES DURING THE CLASS PERIOD:** I made the following purchases of Cushing shares between **September 1, 2008**, and **December 19, 2008**, inclusive. (Must be documented.)

Trade Date(s) of Purchases (list chronologically) (Month/Day/Year)	Number of Cushing Shares Purchased	Purchase Price Per Share	Aggregate Cost (excluding commissions, taxes, and fees)
/ /		\$ .	\$ .
/ /		\$ .	\$ .
/ /		\$ .	\$ .
/ /		\$ .	\$ .

3. **PURCHASES:** Number of Cushing shares purchased between **December 20, 2008**, and **March 19, 2009**. (If none, write "zero" or "0".)
4. **SALES DURING THE CLASS PERIOD AND SUBSEQUENT 90 DAYS:** I made the following sales of Cushing shares between **September 1, 2008**, and **March 19, 2009**, inclusive. (Must be documented.)

Trade Date(s) of Sales (list chronologically) (Month/Day/Year)	Number of Cushing Shares Sold	Sale Price Per Share	Amount Received (excluding commissions, taxes, and fees)
/ /		\$ .	\$ .
/ /		\$ .	\$ .
/ /		\$ .	\$ .
/ /		\$ .	\$ .

5. **UNSOLD HOLDINGS AT END OF BUSINESS ON MARCH 19, 2009:** At the close of business on March 19, 2009, I owned the following number of Cushing shares. (If none, write "zero" or "0". If other than zero, the number of shares must be documented.)

**IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS YOU MUST  
PHOTOCOPY THIS PAGE AND CHECK THIS BOX   
IF YOU DO NOT CHECK THIS BOX, THESE ADDITIONAL PAGES WILL NOT BE REVIEWED**



**SECTION C - RELEASE AND SIGNATURE**

1. I affirm that I purchased or acquired CUSHING shares between September 1, 2008, and December 19, 2008, inclusive. (Do not submit this Proof of Claim if you did not purchase or acquire CUSHING shares during this period).

2. By submitting this Proof of Claim, I state that I believe in good faith that:
- I am a Settlement Class Member as defined in the Notice of Pendency and Proposed Settlement of Class Action (the "Notice"); or
  - I am acting for such person (Note: If you are acting in a representative capacity on behalf of a Settlement Class Member (e.g., as an executor, administrator, trustee, or other representative), you must submit evidence of your current authority to act on behalf of that Settlement Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.)

I further state that I believe in good faith that:

- I may be a Settlement Class Member; and
- I am not a Defendant in the litigation that is the subject of this settlement or anyone excluded from the Net Settlement Fund; and
- I have read and understand the Notice and believe that I am entitled to receive a share of the Net Settlement Fund; and
- I elect to participate in the proposed settlement described in the Notice and have not filed a request for exclusion.

3. I consent to the jurisdiction of the Court with respect to all questions concerning the validity of this Proof of Claim. I understand and agree that my claim may be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to my status as a Settlement Class Member and the validity and amount of my claim. No discovery shall be allowed on the merits of the litigation or settlement in connection with processing of the Proofs of Claim.

4. Where requested above, I have set forth all relevant information regarding each of my purchases or sales of CUSHING shares during the relevant periods. I agree to furnish additional information (including transactions in other CUSHING shares) to the Claims Administrator, if requested to do so.

5. In support of my claim, I have enclosed photocopies of the stockbroker's confirmation slips, stockbroker's statements, or other documents evidencing each relevant purchase, sale or retention of CUSHING shares. (IF ANY SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN A COPY OR EQUIVALENT DOCUMENTS FROM YOUR BROKER BECAUSE THESE DOCUMENTS ARE NECESSARY TO PROVE AND PROCESS YOUR CLAIM.)

6. I understand that the information contained in this Proof of Claim is subject to such verification as required by the Claims Administrator or directed by the Court, and I agree to cooperate in any such verification. (The information requested herein is designed to provide the minimum amount of information necessary to process most claims. The Claims Administrator may request additional information to efficiently and reliably calculate your Recognized Claim. The Claims Administrator may condition acceptance of the claim upon the production of additional information, including, where applicable, information concerning transactions in any derivatives of the subject securities, e.g. option contracts.)

7. By operation of law, upon the Effective Date as defined in the Stipulation and Agreement of Settlement, I will be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Settled Claims against the Released Persons, whether or not my claim is accepted.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information supplied by the undersigned is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ in \_\_\_\_\_ (City) (State/Country)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Joint owner sign your name here)

\_\_\_\_\_  
(Joint owner type or print your name here)

\_\_\_\_\_  
(Capacity of persons signing, e.g., Beneficial Purchaser, Executor or Administrator)

## REMINDER CHECKLIST

1. Please sign the Certification Section of the Proof of Claim and Release form.
2. If this claim is made on behalf of joint claimants, then both must sign.
3. Please remember to attach supporting documents.
4. DO NOT SEND ORIGINALS OF ANY SUPPORTING DOCUMENTS.
5. Keep a copy of your Proof of Claim and Release form and all documentation submitted for your records.
6. The Claims Administrator will acknowledge receipt of your Proof of Claim and Release by mail, within 30 days. Your claim is not deemed filed until you receive an acknowledgment postcard. If you do not receive an acknowledgment postcard within 30 days, please call the Claims Administrator toll free at **1(800) 231-1815**.
7. If you move, please send us your new address.
8. **Do not use highlighter on the Proof of Claim and Release form or supporting documentation.**

THIS PROOF OF CLAIM MUST BE POSTMARKED NO LATER THAN  
**AUGUST 30, 2010** AND MUST BE MAILED TO:

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