

**THE QUEEN'S BENCH
Winnipeg Centre**

BETWEEN:

THE MANITOBA SECURITIES COMMISSION,

Applicant,

– and –

CROCUS INVESTMENT FUND,

Respondent,

**RECEIVER'S REPORT #3
DATED: August 5th, 2005**

**DELOITTE & TOUCHE INC.
Receiver and Manager
CROCUS INVESTMENT FUND
2300 - 360 Main Street
Winnipeg, Manitoba
R3C 3Z3**

Telephone: (204) 942-0051

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Winnipeg Centre**

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THE MANITOBA SECURITIES COMMISSION,

Applicant,

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CROCUS INVESTMENT FUND,

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RECEIVER'S REPORT #3

1. Deloitte & Touche Inc. was appointed Receiver and Manager of Crocus Investment Fund (hereinafter "CIF") on June 28, 2005. The appointment was continued on July 13, 2005. Attached hereto and marked as Exhibits "A" and "B" to this my affidavit are true copies of the said Orders.
2. Prior to the appointment of Deloitte & Touche Inc. as Receiver and Manager, (hereinafter "the Receiver") there had been an investigation into CIF by the Office of the Auditor General as well as an investigation into the conduct of CIF and its directors and officers by Manitoba Securities Commission. The Office of the Provincial Auditor provided a report concerning the affairs of CIF which was released in May, 2005. The Manitoba Securities Commission formalized an ongoing investigation upon the issuance of an Investigation Order on February 17, 2005. Attached hereto and marked as Exhibit "C" to this Report is a true copy of the said Order.
3. Following the issuance of the Order, Manitoba Securities Commission has issued a Statement of Allegations dated April 4, 2005 in which it alleges improper

conduct on the part of the company and certain directors and officers. Attached hereto and marked as Exhibit "D" to this Report is a true copy of the said Statement of Allegations.

4. Prior to the appointment of the Receiver, CIF had made arrangements to pay and had in fact paid lawyers who represented directors and officers in the course of the investigation of the Office of the Auditor General and in the course of the investigation by the Manitoba Securities Commission. The Receiver, however, has seen no formal written retainer from the company to those law firms. Based upon information available to it, the Receiver believes that statements of account would have been submitted to CIF for payment in one of two ways:

- (a) a statement would have been rendered directly to the individual director or officer who in turn would have forwarded the account to CIF for payment; or,
- (b) a statement of account would have been forwarded directly to CIF to the attention of the Chief Executive Officer by the individual solicitor.

5. Upon its appointment, the Receiver forwarded a letter to counsel involved on behalf of the directors and officers in order to ascertain the size of any possible outstanding obligations of the company and to obtain some control on matters on a going forward basis. Attached hereto and marked as Exhibit "E" to this Report is a true copy of the Receiver's letter.

6. The Receiver subsequently received communications from several of the law firms acting for directors and officers which provided the Receiver with a status report as to where matters currently stood and requested the Receiver's commitment to pay their outstanding fees as well as their fees on a going forward basis.

7. On or about the 7th day of July, 2005, solicitors for the Receiver received a letter from Walsh & Company, a firm of lawyers who are acting for Mr. Bernie Bellan who at that time was in the process of commencing a class action lawsuit. That letter specifically requested that the Receiver not pay any fees of directors and officers who might be named in the within litigation. Attached hereto and marked as Exhibit "F" to this Report is a true copy of said letter.

8. Attached hereto and marked as Exhibit "G" to this Report is a true copy of the Statement of Claim which was ultimately issued by Mr. Bellan on July 12, 2005. That claim has not yet been certified.

9. The officers and directors who are named in the ongoing proceedings and the counsel believed by the Receiver to be acting on their behalf are as follows:

NAME	SECURITIES COMMISSION	CLASS ACTION	LAW FIRM
Lea Baturin	X	X	D'Arcy & Deacon LLP
Albert R. Beal	X	X	D'Arcy & Deacon LLP
Diane Beresford	X	X	D'Arcy & Deacon LLP
Charles E. Curtis	X	X	D'Arcy & Deacon LLP
Sylvia Farley	X	X	D'Arcy & Deacon LLP
Peter Olfert	X	X	D'Arcy & Deacon LLP
Robert Ziegler	X	X	D'Arcy & Deacon LLP
Wally Fox-Decent	X	X	D'Arcy & Deacon LLP
John Clarkson		X	Unknown
David Friesen		X	Unknown
Ron Waugh	X	X	Pitblado LLP
Rob Hilliard	X	X	Levene Tadman
James Umlah		X	Tapper Cuddy
Hugh Eliason		X	Unknown
Sherman Kreiner		X	Taylor McCaffrey LLP
Jane Hawkins		X	Restall & Restall
Janice Lederman		X	Unknown

10. In addition, there are former officers and directors of the company who are not named in the ongoing proceedings who are claiming re-imburement for legal

fees billed for services relating to the investigation of the Auditor General and the Securities Commission.

11. Attached hereto and marked as Exhibit "H" to this Report is a true copy of the excerpt from the By-Laws of CIF pertaining to the right of a director and/or officer to seek indemnification from CIF.

12. Furthermore, in the case of certain of the prior officers, there have been severance arrangements entered into which also contained indemnification provisions.

13. The Receiver has received advice from its solicitors that there is an obligation on the part of CIF to indemnify officers and directors in accordance with the provisions of *The Corporations Act* and any by-law which is authorized by *The Corporations Act*. This obligation may also extend to contractual indemnities such as the severance agreements referred to above. The Receiver is further advised that this indemnity, if applicable, would cover legal costs incurred by directors or officers to defend themselves. Section 119(c) of *The Corporations Act* authorizes the by-law provisions attached as Exhibit "H" hereto. The difficulty is in determining whether the conduct of the officers and directors fits within:

- (a) in the case of the class action, whether "she or he acted honestly and in good faith with a view to the best interests of the fund"; and
- (b) as regards the Manitoba Securities Commission, whether "she or he had reasonable grounds for believing that her or his conduct was lawful".

Similar considerations may also apply in regards to the relevant severance indemnity provisions.

14. There does exist a Directors and Officers Liability Insurance Policy for CIF issued by Chubb Insurance Company of Canada to a maximum of \$5 Million, inclusive of defence costs. In our solicitor's view, that policy contains coverage for directors and officers in the event that there is no indemnity by CIF. Attached hereto and marked as Exhibit "I" is a copy of the said policy forwarded to the Receiver by Marsh (hereinafter "the Chubb Policy").

15. Accordingly, the Receiver is now placed in a position wherein directors and officers have requested indemnification from the assets of CIF whereas at least one shareholder who professes to act for a number of shareholders maintains that the assets of the corporation should not be used to pay directors and officers legal fees, at least insofar as the class action is concerned.

16. The Receiver proposes the following approach to the competing claims now made against it by the directors and officers on the one hand and the class action shareholders on the other. This approach provides directors and officers with some protection while at the same time protects the Estate until it is clear that an indemnification ought to be paid. The approach is as follows:

- (a) The Receiver intends to pay the outstanding legal fees which were incurred prior to the Receiver's appointment for matters relating to the Investigation of the Auditor General and the Manitoba Securities Commission. Based upon the Receiver's investigation, these fees were incurred at a time when the various solicitors and their clients believed that the fees would be covered by CIF. Because there is no commitment as yet by Chubb that these items would be covered by the Chubb Policy, the Receiver proposes to make payment of these accounts whilst reserving its rights to ask for them back if they are not covered by the Chubb Policy and it is subsequently determined that the indemnities were not appropriately authorized by the by-laws or *The Corporations Act*.

- (b) The Receiver intends to make a claim against the Chubb Policy for reimbursement of fees which it makes pursuant to the paragraph immediately preceding and which Crocus had made prior to the receivership. This will have the effect of reducing the amount of insurance available to officers and directors for ongoing legal fees. The amount of the Receivers claim is estimated to be \$356,000.00.
- (c) The Receiver intends to try and find an arrangement with the insurer under the Chubb Policy for an equitable method of paying the legal fees of directors and officers for fees incurred after the date of appointment of the Receiver, failing which the directors and officers will have whatever claims they have against the Chubb Policy.
- (d) Upon the expiration of the policy limits, should that occur, the Receiver would not fund additional legal costs or other expenses and unfavourable verdicts pending:
 - (i) the completion of the proceedings by the Securities Commission, or
 - (ii) the completion of the class action proceeding, and
 - (iii) the issuance of an Order from this Honourable Court that the said directors and officers qualify under the provisions of the By-Law, the Corporations Act, or any relevant severance agreement to be so indemnified.

17. The form of Order therefore sought contains the following provisions, namely that:

1. An Order authorizing the Receiver to pay unpaid legal accounts of officers and directors to June 28, 2005 subject to the right to reclaim said funds if the Receiver is not indemnified for same by Chubb, and if it is subsequently determined that any indemnity promised regarding payment of these accounts is contrary to the law.
2. An Order authorizing the Receiver to submit a claim against Chubb Insurance Company of Canada Policy 7043-0036 for indemnification for monies paid by CIF to lawyers for former officers and directors of CIF in regards to matters arising from the investigation of the Office of the Auditor General into the affairs of CIF and the investigation and proceedings before the Manitoba Securities Commission relating to CIF:
3. An Order authorizing the Receiver to refrain from paying on a current basis legal fees for former directors and officers of CIF which are incurred following the date of the Receiver's appointment pending further Order of this Court;
4. An Order authorizing the Receiver to refrain from paying claims for indemnity by former officers and directors for expenses incurred after the date of the Receiver's appointment, and any resulting unfavourable judgments, arising from the investigation of the Office of the Auditor General, proceedings taken by the Manitoba Securities Commission, and Court of Queen's Bench Suit No. CI05-01-42765, if and until:
 - (a) the completion of the current proceedings by the Manitoba Securities Commission, or
 - (b) the completion of proceedings commenced in Court of Queen's Bench Suit No. CI05-01-42765, and

(c) An order issues from this Court authorizing said payment.

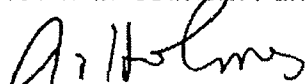
5. Such further and other Advice and Direction as to this Court may seem just.

18. It is the view of the Receiver that this approach provides a degree of balance between the parties. It must be firmly acknowledged that the allegations made in the class action are, at this stage, simply allegations. It is also acknowledged at this stage that in the minds of some, the actions of the officers and directors is deserving of some criticism. The Receiver's approach is intended to give some relief to the directors and officers on a current basis with the assistance of the Chubb liability policy whilst protecting the assets of CIF in the interim until it is determined that the company is obliged to indemnify the officers and directors.

19. The Receiver recognizes that it would have been preferable to have an arrangement worked through with Chubb as at the time of this motion. However, because of the existence of the ongoing proceedings in the Court of Queen's Bench and the Manitoba Securities Commission, the Receiver has brought this motion forward now in order to allow interested parties to have knowledge of its approach as soon as possible.

RESPECTFULLY SUBMITTED BY:

Deloitte & Touche Inc. in its capacity as
Court-Appointed Receiver and Manager of
Crocus Investment Fund


Per: A. R. Holmes
Senior Vice-President

**THE QUEEN'S BENCH
Winnipeg Centre**

BETWEEN:

THE MANITOBA SECURITIES COMMISSION,

Applicant,

– and –

CROCUS INVESTMENT FUND,

Respondent,

Application under Section 27 of the Securities Act, CCSM c. S50
and Queen's Bench Rule 14.05(2)(b)

IDENTIFIED COPY

RECEIVING ORDER

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File No. 05157 RAD

**THE QUEEN'S BENCH
Winnipeg Centre**

THE HONOURABLE)
)
MR. JUSTICE SCURFIELD)

Tuesday, the 28 of June, 2005

BETWEEN:

THE MANITOBA SECURITIES COMMISSION,

Applicant,

- and -

CROCUS INVESTMENT FUND,

Respondent,

Application under Section 27 of the Securities Act, CCSM c. S50
and Queen's Bench Rule 14.05(2)(b)

ORDER

THIS MOTION, made by the Applicant for an Order pursuant to Section 27 of The Securities Act, CCSM c. S50 and Queen's Bench Rule 14.05(2)(b) appointing DELOITTE & TOUCHE, Inc. as receiver and manager (the "Receiver") without security, of all of the assets, undertakings and properties of CROCUS INVESTMENT FUND (the "Respondent"), and for such other Orders as may be just and convenient in the circumstances was heard this day on June 28, 2005 at the Law Courts, 408 York Avenue, in the City of Winnipeg.

ON READING the affidavit of Robert B. Bouchard sworn June 27, 2005 and the Exhibits thereto and on hearing the submissions of counsel for the applicant, ~~no one for the respondent, and for the Manitoba Federation of Labour~~ appearing for the respondent although duly served, and on reading the consent of DELOITTE & TOUCHE, Inc. to act as the Receiver, and this matter coming on for final decision on this date:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to Section 27 of The Securities Act, CCSM c. S50, DELOITTE & TOUCHE, Inc. is hereby appointed Receiver, without security, of all of the Respondent's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate and carry on the business of the Respondent, including the powers to enter into any agreements, incur any

obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Respondent;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Respondent or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Respondent and to exercise all remedies of the Respondent in collecting such monies, including; without limitation, to enforce any security held by the Respondent;
- (g) to settle, extend or compromise any indebtedness owing to the Respondent;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Respondent, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Respondent;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Respondent, the Property or the Receiver, and to settle or compromise any such proceedings.

- 4 -

The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000;

(m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondent;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Respondent may have, including but not limited to the right to designate representatives of the Receiver to the board of directors of any company to which the Respondent had such right immediately preceding the granting of this order; and
- (r) to take any steps reasonably incidental to the exercise of these powers,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Respondent, and without interference from any other Person.

4. This Court orders that the ability of the Receiver to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, other than those transactions described in paragraph 3(l) hereof, shall be the subject of future application to this Court.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) the Respondent, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related

to the business or affairs of the Respondent, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE RESPONDENT OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Respondent or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Respondent or the Property are hereby stayed and suspended pending further Order of this Court, provided that the within stay shall not apply to proceedings initiated or continued by the Applicant.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Respondent, the Receiver, or affecting the Property, including, but not limited to, the exercise of any contractual rights, including but not limited to a right to a setoff, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Respondent to carry on any business which the Respondent is not lawfully entitled to carry on, (ii) exempt the Receiver or the Respondent from compliance with statutory or regulatory provisions relating to securities, health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Respondent, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Respondent or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation

services, utility or other services to the Respondent are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Respondent's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Respondent or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Respondent who have not yet been terminated effective as of the time of this Order, shall remain the employees of the Respondent until such time as the Receiver, on the Respondent's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Receiver's Charge").

18. THIS COURT ORDERS the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of this Honourable Court.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge .

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE

24. THIS COURT ORDERS that the Receiver is directed to serve notice of its appointment as Receiver by placing advertisements regarding such appointment substantially in the form attached as Schedule "B" hereto in at least one (1) local newspaper and one (1) Canadian daily newspaper with national distribution.

25. THIS COURT ORDERS that the Receiver shall use reasonable efforts to serve notice of its appointment as Receiver within 21 days hereof, by forwarding by ordinary mail ^{or e-mail,} a copy of a notice substantially in the form attached as Schedule "B" hereto, to the shareholders of the Respondent at the addresses as last indicated in the records of the Respondent.

26. THIS COURT ORDERS that the Receiver is directed to serve notice of its appointment as Receiver within 21 days hereof by forwarding by ordinary mail a copy of this Order to all creditors who have registered a security interest against the assets of Respondent in the Personal Property Registry of Manitoba.

GENERAL

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondent.

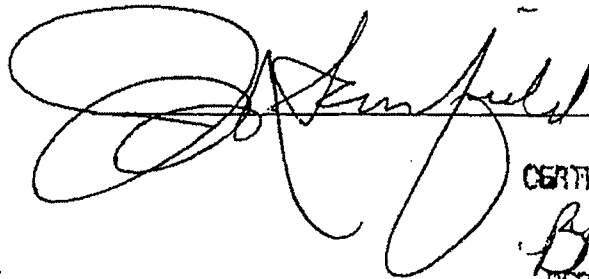
29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

32. THIS COURT DIRECTS that given the appearance before this Court by the Manitoba Federation of Labour, a hearing shall be held on Wednesday, the 13th day of July, 2005, ^{OR SOONER BY CONSENT} or such further date set by this Honourable Court, to continue the appointment of the Receiver.

SIGNED this 28th day of June, 2005, at 1:50 p.m.


CERTIFIED A TRUE COPY
By Mitchell
DEPUTY REGISTRAR

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Deloitte & Touche, Inc., the receiver and manager (the "Receiver") of all of the assets, undertakings and properties of Crocus Investment Fund appointed by Order of the Manitoba Court of Queen's Bench (the "Court") dated the ___ day of _____, 2005 (the "Order") made in an action having Court file number CI _____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded no more frequently than monthly not in advance after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at _____ [address of Lender].

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this

certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2005.

Deloitte & Touche, Inc., solely in its capacity
as Receiver of the Property (as defined in
the Order), and not in its personal capacity

Per: _____

Name:

Title:

SCHEDULE "B"

NOTICE

in respect of

CROCUS INVESTMENT FUND (the "Respondent")

Please be advised that pursuant to the Order of the Honourable Mr. Justice J.M. Scurfield of the Court of Queen's Bench dated June 28, 2005 in Court File No. _____ (the "Order"), Deloitte & Touche, Inc. has been appointed as receiver and manager (the "Receiver") of all of the Respondents' assets, undertakings and properties. The appointment of the Receiver was made under Section 27 of the *Manitoba Securities Act*.

A copy of the Order and other information regarding the Receiver's appointment are available online at www._____. The Receiver has established a helpline available at _____.

**THE QUEEN'S BENCH
Winnipeg Centre**

BETWEEN:

THE MANITOBA SECURITIES COMMISSION,

Applicant,

- and -

CROCUS INVESTMENT FUND,

Respondent,

**Application under Section 27 of the Securities Act, CCSM c. S50 and Queen's Bench
Rule 14.05(2)(b)**

ORDER

**HILL ABRA DEWAR
Litigation Counsel
2670 - 360 Main Street
Winnipeg, Manitoba
R3C 3Z3**

R.A. Dewar

**Telephone: (204) 943-6740
Fax: (204) 943-3934
File No. D5157 RAD**

**THE QUEEN'S BENCH .
Winnipeg Centre**

THE HONOURABLE)
)
MR. JUSTICE CLEARWATER)

Wednesday, the 13 of July, 2005

BETWEEN:

THE MANITOBA SECURITIES COMMISSION,

Applicant,

– and –

CROCUS INVESTMENT FUND,

Respondent,

Application under Section 27 of the Securities Act, CCSM c. S50 and Queen's Bench Rule 14.05(2)(b)

ORDER

THIS MATTER coming on this day before this Court pursuant to paragraph 32 of the Order of Mr. Justice Scurfield pronounced on June 28, 2005 and the Manitoba Federation of Labour having presented to this Honourable Court an alternate plan in regards to the Respondent (the "Plan"); and

ON HEARING the request of the Applicant to adjourn this hearing regarding the permanent order of receivership, so that the Applicant could consider the Plan and provide its comments with respect thereto; and

ON HEARING counsel for the Applicant, counsel for Manitoba Federation of Labour, and counsel for the Receiver, counsel for Bernie Bellan appearing on a watching brief, consenting to the request of the Applicant provided that all counsel will

make themselves available hereafter on a short notice basis for the matter to be determined.

1. THIS COURT ORDERS THAT the appointment of Deloitte & Touche Inc. as Receiver and Manager of Crocus Investment Fund on the terms and conditions set forth in the Order of Mr. Justice Scurfield pronounced June 28, 2005 excepting paragraph 32 thereof, be and is hereby continued, until further order of the court.

2. THIS COURT ORDERS that notwithstanding the current indefinite term of the Receiver's appointment, the Receiver be and the same is at liberty to hire or otherwise make contractual employment arrangements for a period up to three months in duration.

3. THIS COURT ORDERS that the Receiver be at liberty to continue to consider and prepare a report setting forth, to the extent possible, its proposal for achieving value for Class A shareholders of Crocus Investment Fund.

SIGNED: July 14, 2005.

R. H. Stewart
J.

APPROVED AS TO FORM:

MANITOBA SECURITIES COMMISSION

Per: *Chris Besko*

Mr. Chris Besko

PITBLADO LLP

Per: *D. G. Ward*

Mr. D. G. Ward
Solicitors for Manitoba Federation of Labour



THE SECURITIES ACT

Sections 22

)
)
)

Order No. 4684

February 17, 2005

CROCUS INVESTMENT FUND

WHEREAS:

(A) Information received by staff of The Manitoba Securities Commission ("Commission") indicates that the CROCUS INVESTMENT FUND ("Crocus") may have contravened The Securities Act ("Act") by:

- i) misrepresenting a material fact in the prospectus filed with the Commission dated January 21, 2004 and amended October 14, 2004 ("Last Prospectus") in its description of the processes followed by Crocus for valuing the Class A Shares of Crocus as of each Valuation Date; and/or
- ii) failing to file for an amendment to the Last Prospectus following a material change during the period of primary distribution to the public.

(B) Crocus is a labour-sponsored venture capital corporation created by the Crocus Act.

(C) Crocus has been subject to the reporting requirements of Parts X, XI and XII of the Act since March 24, 1994 when a receipt was issued for its prospectus. Since that time it has filed renewal prospectuses with the Commission on an annual basis including the Last Prospectus.

(D) The foregoing matters relate to a trade or trading in securities and it appears probable from information received by the Commission that Crocus may have contravened this Act, the regulations or a rule specified in a regulation under clause 149(cc) and/or failed to observe or comply with any order, direction or other requirement made under this Act or the regulations.

(E) The Commission deems it expedient for the due administration of the Act and in the public interest to order the making of an investigation into the aforesaid matters.

IT IS ORDERED:



1. **THAT**, Jason Roy, Jan Banasiak, Paula White and Chris Besko ("Investigators") are hereby jointly and severally appointed pursuant to section 22 of the Act to investigate and inquire into all circumstances surrounding the trading in securities by Crocus, or by any other person or company affiliated or associated with Crocus, and without limiting the generality of the foregoing, the scope of the investigation shall be to ascertain:

- (a) full particulars all policies, procedures, guidelines and practices of CROCUS in connection with the valuation of the Crocus investment portfolio and of the Pricing NAV of the Class A Shares of Crocus;
- (b) full particulars of all business records, including copies of banking records, and documentation, of or for CROCUS, (Note: "documentation" includes, but is not restricted to any printed, lithographed or photographed materials whatsoever, seals, deeds, agreements, title papers, letters, receipts, sound recordings, transcripts, videotape, film, corporate registrations certificates, incorporation documents, management agreements, cheques, memoranda, telex messages, telephone bills, daily diaries, investor lists, investor files, addresses, loan applications, investment or loan agreements and corresponding files, investment or loan briefings, security agreements and corresponding files, investment project descriptions, investment offerings including investment prospectus, Offering Memorandum and marketing brochures, computer programs, computer data and documentation pertaining to said computer programs, data and systems, electronic data storage devices, floppy disks, hard disks, CD rom or other magnetic storage medium, computer generated data, and information recorded or stored by means of any device whatsoever) relating to the trading activities of CROCUS, including all records relating to the valuation of the Crocus investment portfolio and of the Pricing NAV of the Class A Shares of Crocus;
- (d) what contraventions of the Act or any regulation or rule thereto or of any industry requirement, if any, have occurred relating to any and all activities conducted by or on behalf of Crocus directly or indirectly involving the valuation of each asset contained in the Crocus investment portfolio and the Pricing NAV of the Class A Shares of Crocus, and who committed such contraventions, if any;
- (e) whether any fraud or any offence under the Act or any regulation or rule thereto, has been, is being, or is about to be committed by CROCUS, or by any persons or companies associated or affiliated with CROCUS.

2. **THAT** the Investigators may exercise the powers conferred by subsections 22(3) and 22(4) of the Act.

BY ORDER OF THE COMMISSION



Director, Legal and Enforcement



THE MANITOBA
SECURITIES
COMMISSION

IN THE MATTER OF: THE SECURITIES ACT

-and-

IN THE MATTER OF: THE CROCUS INVESTMENT FUND

AND IN THE MATTER OF: Charles Curtis, Peter Olfert, Waldron (Wally) Fox-Decent, Lea Baturin, Albert Beal, Ron Waugh, Diane Beresford, Sylvia Farley, Robert Hilliard, Robert Ziegler

**STATEMENT OF ALLEGATIONS OF STAFF OF THE
MANITOBA SECURITIES COMMISSION**

STAFF OF THE MANITOBA SECURITIES COMMISSION ALLEGE, INTER ALIA, THAT:

A. BACKGROUND

The Crocus Investment Fund

1. The Crocus Investment Fund ("Crocus") is a labour-sponsored venture capital corporation created by The Crocus Investment Fund Act, C.C.S.M. c. C308 (the "Crocus Act").
2. Crocus has been a reporting issuer in Manitoba since 1992. During the relevant time, Crocus was engaged in a continuous offering of its Class A Common Shares under a Prospectus dated January 21, 2004 for which a receipt was issued by the Director (the "Crocus Prospectus"), as amended by Amendment No. 1 dated October 14, 2004 for which a receipt was issued by the Director (the "Prospectus Amendment").
3. The Crocus Prospectus contains a certificate which is signed by two officers of Crocus and by two members of the Board of Directors on behalf of all the Board of Directors, that the prospectus constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus as required by Part VII of The Securities Act (Manitoba) and the regulations thereunder and does not contain any misrepresentations.
4. The Prospectus Amendment contains a certificate which is signed by two officers of Crocus and by two members of the Board of Directors on behalf of all the Board of Directors, that the prospectus constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus as required by Part VII of The Securities Act (Manitoba) and the regulations thereunder and does not contain any misrepresentations.
5. All capitalized terms which are not defined in this document have the same meaning as in the Crocus Prospectus and the Prospectus Amendment.

The Board of Directors

6. During the material times, the Crocus Board of Directors consisted of:

Name

Elected/Appointed by

Charles Curtis	Common Shareholders
Peter Olfert	Class L Shareholders
Waldron (Wally) Fox-Decent	Class I (Series Two) Shareholders
Lea Baturin	Class L Shareholders
Albert Beal	Class L Shareholders
Ron Waugh	Class G Shareholders
Diane Beresford	Class L Shareholders
David Friesen	Common Shareholders
Paul Soubry Jr.	Appointed by Board of Directors
Sylvia Farley	Class L Shareholders
Robert Hilliard	Class L Shareholders
John Clarkson	Class G Shareholders
Robert Ziegler	Class L Shareholders

7. Of the Board members listed above:

- a) Ron Waugh replaced John Clarkson (who resigned in April 2004) as the government representative effective July 22, 2004
- b) Sylvia Farley joined the Crocus Board October 12, 2004
- c) Robert Ziegler joined the Crocus Board October 12, 2004
- d) Robert Hilliard resigned from the Crocus Board September 23, 2004
- e) Waldron (Wally) Fox-Decent resigned the Crocus Board December 9, 2004
- f) David Friesen resigned from the Crocus Board November 19, 2004
- g) Paul Soubry, Jr. resigned the Crocus Board December 14, 2004.

B. DETAILS

1. Crocus offers Class A Common Shares (the "A Shares") to the public by prospectus.

2. The subscription process for A Shares is described in the Crocus Prospectus.

3. On every Valuation Date (every Friday), Crocus calculates a Pricing NAV per Common Share (the "A Share Price") as at 3:00 pm on the Valuation Date. The A Share Price is the price at which one A Share can be purchased or redeemed on the Valuation Date. All subscriptions for A Shares and requests for redemption of A Shares which have been received since the last valuation date are processed on the Valuation Date using the A Share Price. All purchases, including purchases made through payroll deductions or pre-arranged purchase plans, are processed in this manner.

4. The Crocus Prospectus discloses the manner in which the A Share Price is established starting at p.27. Appendix A sets out the relevant portions of the prospectus. The process in brief is:

a) On each Valuation Date the Board is required to determine the fair value of the A Shares.

b) The Board must follow a specific set of rules for determining the fair value of the Shares. This requires the Board to determine the value of the investment assets of the Fund on each valuation date.

c) There are specific rules for determining the value of the investment assets based upon whether or not the investment assets have a public market (e.g. are listed on a stock exchange).

d) If, on a valuation date the Board has determined there is a change which may have a material effect on the value of any investment asset the Board shall cause a revaluation of that investment asset or investment assets as at the valuation date.

e) The Board in 1999 delegated the setting of the A Share Price to any two directors of the Board who were authorised to sign a share price valuation certificate on behalf of the board as a whole.

5. The prospectus disclosure is consistent with the requirements in The Crocus Investment Fund Act. The relevant provision is section 15 and reproduced in Appendix B.

Valuation Process

6. The Board established a process for determining the value of the investee companies to establish a Net Realizable Value for the portfolio.
7. The staff valuation committee prepared the valuation for each investee company in the portfolio. Valuations were prepared at least annually where there was no public market for the securities of the investee company.
8. A valuation was not accepted unless all the members of the staff valuation committee agreed on a value.
9. Once valuations were completed they would go the Valuation Sub-committee of the Board which consisted of two or three board members and an external valuator who would do a limited review of the valuations and advise the Valuation Sub-committee.
10. The Valuation Sub-committee was scheduled to meet monthly. If valuations were not available to be considered the meeting would be cancelled.
11. Between April, 2004 and September 2004 there were no meetings of the Valuation Sub-committee. Meetings which were scheduled during this time were cancelled as valuations were not completed or available for consideration until September 14, 2004. The Board of Directors expressed no concerns that the Valuation Sub-committee had no meetings during this time.

September 2004 Portfolio Writedown

12. In September 2004, the senior officers of Crocus were in a position to bring forward valuations 23 of the 50 investee companies. Based upon the valuations and the wide ranging review, certain senior officers were of the view that the net realizable value of the portfolio needed to be adjusted downward by approximately \$15 million.
13. Valuations which supported this writedown were brought forward at meetings of the Valuation Sub-committee on September 14, September 20 and September 23, 2004. The recommendations of the senior officers were accepted by the Valuation Sub-committee, which in turn made a report to the meeting of the full board on September 23, 2004 recommending the board accept the valuations as presented.
14. At the Board meeting on September 23, 2004, the senior officers indicated that the valuations presented at that time were fair based upon the information they had, but that the portfolio had other risks which were still being reviewed.
15. The Board members were advised of significant risks managing the portfolio as well as the actual investee companies. The Board however took no specific steps, nor did it give specific directions to Crocus staff on what was expected in dealing with these issues.

November 2004 Risk Analysis

16. The Board did not turn any attention to the further risks in the portfolio until a special meeting of the Board on Thursday, November 18, 2004.
17. Prior to the Board meeting on Thursday, November 18, 2004, certain of the senior officers completed and provided a summary of a risk analysis done on the portfolio to the other officers of Crocus. The risk analysis suggested another significant writedown was necessary. However, as valuations were not completed for various investees the senior officers could not agree as to the extent of the potential writedown, other than to know it would be significant.
18. On Monday, November 15, 2004 the Finance & Audit committee of the Board met to discuss finalizing the annual audited financial statement. At this meeting the Finance & Audit Committee of the Board was advised that there was an issue on valuations, but the extent of the issue or any potential writedown was not yet known.
19. On that same date, Albert Beal and Charles Curtis, two of the Board members who attended the meeting of the Finance & Audit committee of the Board, signed share valuation certificates to approve the staff prepared valuations dated September 24, 2004, October 1, 2004, October 8, 2004, October 15, 2004, October 22, 2004, October 29, 2004, November 5, 2004 and November 12, 2004.

Share Sales And Redemptions Using A Price Which Had Not Been Approved By The Board

20. Prior to the Board approval of the share price, the following sales and redemptions of A Shares occurred at the indicated price which had been set by Crocus employees:

Date	Share Price	Sales	Redemptions
September 24, 2004	10.61	26,395.62	35018.79
October 1, 2004	10.61	46,539.76	40,133.93
October 8, 2004	10.59	20,765.24	40,988.30
October 15, 2004	10.58	55,216.89	25,655.88
October 22, 2004	10.56	36,152.80	52,619.30
October 29, 2004	10.55	31,853.66	34,529.06
November 5, 2004	10.54	9,186.72	44,498.06
November 12, 2004	10.53	29,256.53	75,341.24
TOTAL		\$255,367.22	\$348,784.56

21. On Thursday, November 18, 2004, at a special meeting of the Board, the board received a summary of the risk analysis which suggested a further writedown of at least \$23.5 million was imminent. The senior officers of crocus had differing views as to the size of the writedown and the timing of when it would become incorporated into the portfolio value.

22. The Board was aware that certain senior officers believed a substantial writedown was required to properly value the portfolio. Other senior officers felt a writedown was likely, but did not agree on the amount.

23. On Friday, November 19, 2004, the A Shares were valued at \$10.50 by Crocus employees. Based on that price, there were sales of \$46,684 and redemptions of \$38,051.52 of A Shares. This did not take into account the information which had been presented to the Board on November 18, 2004. The price for the A Shares was not approved by the Board until some time after December 3, 2004.

24. A further presentation was made to interested board members on Tuesday, November 23, 2004 during a meeting of the Investment Sub-committee which gave greater detail to the information presented on November 18, 2004 to the full board.

25. On Friday, November 26, 2004, the A Shares were valued at \$10.48 by Crocus employees. Based on that price, there were sales of \$35,969.55 and redemptions of \$33,378.83 of A Shares. This did not take into account the information which had been presented to the Board on November 18, 2004 or November 23, 2004. The price for the A Shares was not approved by the Board until some time after December 3, 2004.

26. On Tuesday, November 30, 2004 a full board meeting was held to discuss various options going forward. A presentation was made by one of the senior officers which presented a different view on the valuation of the portfolio and other issues identified at the Board meeting of November 18, 2004 and the Investment Committee meeting on November 23, 2004.

27. The Board held an in camera meeting after this presentation. It was determined at that time they needed to resolve the valuation issues which had been raised and gave directions to the Valuation Sub-committee and a senior officer of Crocus to look into retaining an independent valuator. There were no discussions concerning whether to suspend trading.

28. On Thursday, December 2, 2004 a full board meeting was held in camera to discuss various issues including the roles of senior management. The Board was advised that fee quotes would be sought out for independent valutors and brought back to a December 8, 2004 meeting of the Valuation Sub-committee. There was discussion that re-pricing of the A Shares be considered for the following Friday. There was no discussion concerning whether to suspend trading. Rather, the Board was concerned about the upcoming sales season and the impact of any potential writedown on sales.

29. On Friday, December 3, 2004, the A Shares were valued at \$10.45 by Crocus employees. Based on that price, there were sales of \$27,067.25 and redemptions of \$67,249.75 of A Shares. This did not take into account the information which had been presented to the Board on November 18, 2004 or November 23, 2004, nor any board discussions after those dates. The price for the A Shares was not approved by the Board until some time after

December 3, 2004.

30. On Saturday, December 4, the Board tasked the Executive & Personnel Committee to talk to two of the senior officers to determine what their intentions were concerning the fund going forward.

31. On Sunday, December 5, 2004 a conference call was held between the Executive & Personnel Committee and two of the senior officers. During the course of the call one board member (Wally Fox-Decent) indicated that the Board members were not comfortable with the size of the proposed devaluation and asked whether the senior officers would sign the prospectus if the valuation was a lesser amount that the board was more comfortable with. The senior officers indicated they would not.

32. On Monday, December 6, 2004 the Board met in camera. Amongst other things, the Executive & Personnel Committee reported on their telephone call with the two senior officers on December 5, 2004. The report indicated that the senior officers were committed to the fund and would not sign a prospectus until they felt that the valuation of the portfolio was fair.

33. Peter Olfert expressed concerns that valuations and a renewal prospectus would not be ready for the sales season. He confirmed these matters needed to be moved forward as quickly as possible. There was some concern that if the valuations were not completed on a timely basis that the Commission would direct the fund to stop selling shares until a share price was determined.

34. On Wednesday, December 8, 2004 there was a meeting between senior officers and Board members relative to how to proceed. There was discussion at this time that it would be appropriate to request a suspension of trading after the senior officers confirmed they were not prepared to sign certificates on the renewal prospectus until valuations had been determined.

35. On Thursday, December 9, 2004 the Board confirmed that a change of share price was imminent and it would be irresponsible to continue sales and redemptions until a share price was calculated. The Board directed a delegation meet with Crocus' underwriters, Crocus' auditors and the Commission concerning the intention to stop trading the A Shares.

Actual Process For Board Approval Of A Share Prices

36. During the period that the Crocus Prospectus was current, the procedure for setting the A Share Price was as follows:

- a) The calculation to determine price was prepared by the Controller or Assistant Controller each Friday (the Valuation Day) prior to 3 p.m.
- b) Once determined by the Controller or Assistant Controller, the share price was disseminated by e-mail to Crocus staff and financial information providers.
- c) A share valuation certificate was prepared for signature of two directors.
- d) The certificate and a spreadsheet supporting the calculations was sent the week following the Valuation Date by regular mail to Robert Hilliard, the Chairman of the Board until September 2004, to his offices at the Manitoba Federation of Labour (the "MFL") with a request to sign it and forward it to Peter Olfert, who also had an office at the MFL for the second signature. A reply envelope was provided to mail the certificate and the supporting calculations to Crocus.

37. Prior to receiving the certificate and supporting spreadsheet for signing, the board member would not know what the A Share Price was for the Valuation Date, nor the basis of the calculation.

38. Between September 28, 2004 and December 3, 2004 the Crocus staff person who normally prepared the certificates and sent them for signature was absent.

39. The certificates for November 19, November 26 and December 3 were likewise not prepared for signature until after December 3, 2004, after which time arrangements were made to have them signed by two Directors, Peter Olfert and Sylvia Farley.

40. Between January 23, 2004 and December 3, 2004, Crocus had gross sales of \$16,539,060.29 A Shares, and gross redemptions of \$8,039,217.21.

C. ALLEGATIONS

1. Staff of the Commission allege that:

- a) The Crocus Prospectus did not contain full plain and true disclosure concerning the A Share Price, in that the Board routinely and consistently failed to determine the fair value of the Class "A" Common Shares of the Fund as at each valuation date.
- b) The Board of Crocus acted in a manner contrary to the public interest in failing to comply with its statutory obligations, as disclosed in the prospectus, that the fair value of the Class "A" Common Shares of the Fund shall be determined by the Board as at each valuation date.
- c) The Crocus Prospectus did not contain full plain and true disclosure concerning the A Share Price, in that contrary to the disclosure in the Crocus Prospectus, Crocus accepted subscriptions and paid out redemptions for A Shares using an A Share Price which had not been approved by the Board as at each valuation date.
- d) Crocus acted in a manner contrary to the public interest in accepting subscriptions and paying out redemptions for A Shares using an A Share Price which had not been approved by the Board as at each valuation date.
- e) The Board of Crocus acted in a manner contrary to the public interest in failing to establish appropriate procedures to ensure compliance with its statutory obligations, as disclosed in the prospectus, that the fair value of the Class "A" Common Shares of the Fund shall be determined by the Board as at each valuation date.
- f) The Board of Crocus acted in a manner contrary to the public interest when, between the April, 2004 and September 2004, it failed to ensure valuations were completed in a timely manner.
- g) The Board of Crocus acted in a manner contrary to the public interest in failing seek a suspension of trading for the A Shares on November 18, 2004 when they became aware of a change which may have a material effect on the value of any investment asset of the Fund.
- h) The Board of Crocus acted in a manner contrary to the public interest when they became aware of a change which may have a material effect on the value of any investment asset of the Fund, and took no steps to cause a revaluation of the investment asset or investment assets affected by the change as at that valuation date (being Friday November 19, 2004).
- i) Robert Hilliard, Peter Olfert, Charles Curtis, Sylvia Farley and Albert Beal, all members of the board, acted in a manner contrary to the public interest when they executed share valuation certificates to signify the Board approved the A Share Price after the Valuation date in question and after the price had been set by Crocus staff and used for the purposes of sales and redemptions of A Shares which were completed prior to the Board Members approving the share price.
- j) Charles Curtis and Albert Beal, both members of the Board, acted in a manner contrary to the public interest in executing 8 share valuation certificates indicating Board approval of the A Share Price on November 15, 2004 after the price had been set by Crocus staff and used for the purposes of sales and redemptions of A Shares which were completed prior to the Board Members approving the share price.
- k) Charles Curtis and Albert Beal, both members of the Board, acted in a manner contrary to the public interest in executing 8 share valuation certificates indicating Board approval of the A Share Price on November 15, 2004 after being told at a Finance and Audit Committee meeting that there was a material change to the valuation of the portfolio.
- l) Peter Olfert and Sylvia Farley, both members of the Board, acted in a manner contrary to the public interest by signing 3 share valuation certificates indicating Board approval of the A Share Price of November , 2004 after being aware that there was a material change to the valuation of the portfolio.

m) Waldron Fox-Decent a member of the Board, acted in a manner contrary to the public interest in asking senior officers whether they would sign the certificates to the prospectus using a valuation for the portfolio which did not reflect a fair valuation of the Fund's portfolio.

DATED at Winnipeg, Manitoba this 4th day of April, 2005.

Director, Legal and Enforcement

**TO: Fillmore Riley LLP
Peter Davey
Counsel to Crocus Investment Fund**

**And to: D'Arcy & Deacon LLP
Ken Filkow, Q.C.
Special Counsel to the Board Members**

**And to: Tadman & Tadman
Martin Tadman
Counsel to Robert Hilliard**

Appendix A

5. VALUATION

5.01 Introduction.

The largest source of the Fund's capital has and is expected to continue to come from the issue of Common Shares. The Fund also will be the principal purchaser of issued Common Shares. Since the Fund will be both selling and redeeming Common Shares on a regular basis, the manner in which shares are sold and redeemed is an important aspect of the Fund's business operation. It is also important that the price at which the Common Shares are sold and redeemed is a fair price for both the Fund and its shareholders.

The Fund is required to issue Common Shares and to redeem Common Shares pursuant to Permitted Redemptions at the Pricing NAV Per Common Share determined as of the relevant Valuation Date. Generally, the Pricing NAV Per Common Share at any particular Valuation Date will be the quotient obtained by dividing the net asset value of the Fund plus the amount of unamortized deferred sales charges (less any amount that would be paid in priority to the other classes of shares on a liquidation, dissolution or winding-up) by the aggregate number of Common Shares and Class I Shares other than Series Three Shares outstanding at such time. Due to the nature of the Fund's Investment Assets, however, the Pricing NAV Per Common Share will be an approximation that is subject to uncertainty. See Section 15.09 "Risk Factors - Valuations".

The Fund calculates its Pricing NAV Per Common Share in accordance with its valuation methodology as detailed in the prospectus, in accordance with the rules set out in the Crocus Act and in the Valuation Policies.

...
To ensure the consistent application of a fair mechanism for determining the Pricing NAV Per Common Share and the NAV, the Fund has adopted procedures for determining these values and has adopted the Valuation Policies with respect to the valuation of its Investment Assets that are sufficiently flexible to allow any unusual circumstances to be taken into account by the Board of Directors.

5.02 Valuation of Fund Assets.

General. The net asset value of the Fund generally represents an amount equal to the difference between the value of the assets of the Fund and the amount of the debts of the Fund. The net asset value of the Fund will be determined as at each Valuation Date. For this purpose, the value of the Fund's assets generally will be the aggregate of:

- in respect of Investment Assets for which a published market value exists, except in certain circumstances discussed below, the published market value as at the relevant Valuation Date;
- in respect of Investment Assets for which no published market value exists, the net realizable value of such

Investment Assets determined in accordance with the Crocus Act and the Valuation Policies (which, in the first twelve months following the acquisition of an Investment Asset is the cost of such Investment Asset to the Fund, subject to the requirement to revalue such asset in certain circumstances as discussed below); and

- in respect of any asset that is not an Investment Asset, the cost of such asset less any accumulated depreciation or amortization applicable to it as determined by the Board of Directors in consultation with the auditors of the Fund.

In each case where an Investment Asset is to be valued at its net realizable value determined in accordance with the Crocus Act and the Valuation Policies, net realizable value means the amount which would be received by the Fund from the sale of the Investment Asset on an orderly basis over a reasonable period of time in an arm's length sale between the Fund and an informed, knowledgeable and willing purchaser, acting without restraint.

...
Valuation of Investment Assets for Which No Published Market Exists. An Investment Asset for which there is no published market value will be valued at its cost for the first twelve months following the date such Investment Asset was acquired by the Fund. The Board of Directors will require a revaluation to be made of an Investment Asset within this twelve month period if it is of the opinion that there has been a change which may have a material effect on the value of the Investment Asset. After the initial twelve month period, such Investment Asset will be valued at its net realizable value, as determined by the Board of Directors annually in accordance with the Crocus Act and the Valuation Policies.

In order to assist the Board of Directors in valuing Investment Assets for which no published market exists, or for which a published market exists but the Board of Directors has determined that such Investment Assets could not be readily disposed of through such market at the applicable Valuation Date, it will obtain a report by such qualified person as the Board of Directors has approved, which may be the staff valuation committee, giving an opinion of the fair value of such Investment Assets as of the respective anniversary dates of the acquisition of such Investment Assets or, if approved by the Board of Directors, as of the financial year end of each respective investee company. Where on any Valuation Date the Board of Directors determines that there has been a change which may have a material effect on the value of any Investment Asset, it shall cause a revaluation of any such Investment Asset.

...
The Valuation Policies provide that the Board of Directors may cause a qualified person, which may be the auditor of the Fund, to review from time to time as the Board of Directors may deem appropriate the methodologies used by the Fund in valuing its Investment Assets to ensure that the Fund has appropriate systems in place to properly value its Investment Assets in the manner contemplated by the Valuation Policies.

...
5.04 Calculation of Pricing NAV Per Common Share.

Subject to Section 5.05 below, the Pricing NAV Per Common Share on each Valuation Date will be the fair value of a Common Share determined in accordance with the Crocus Act and the Valuation Policies. To assist in determining the fair value of a Common Share at a Valuation Date, the Board of Directors will have an independent qualified person (the "valuator") prepare a report setting out an opinion as to the manner in which the fair value of a Common Share should be calculated by the Fund's internal accountants as at such date. Presently, the valuator retained for this purpose is KPMG LLP. Such report is to be prepared at each Valuation Date, unless the Board of Directors determines that since the preceding Valuation Date there has been no change in the assets or liabilities of the Fund which could have a material effect on the manner of calculating the fair value of a Common Share, in which case the preparation of the report may be dispensed with for such Valuation Date and the calculation determining the value of the Common Shares as at such Valuation Date shall be done by the internal accountants of the Fund in accordance with the previous report.

Appendix B

Valuation

15(1) The fair value of the Class "A" Common Shares of the Fund shall be determined by the Board as at each valuation date.
Asset valuation

15(2) For the purpose of determining the fair value of the Class "A" Common Shares of the Fund as at any valuation date, the value of the investments assets of the Fund on that valuation date shall be determined by the Board in

accordance with the following rules:

- (a) investment assets held by the Fund for which there is a published market value shall be valued at their published market value as at the valuation date;
- (b) if, despite the existence of a published market value for particular investment assets of the Fund,
 - (i) in the opinion of the Board such investment assets could not readily be disposed of through such market at the valuation date, the Board may adjust the value of those assets to reflect the amount which would likely be realized from their sale, or
 - (ii) it was the intention of the Board at the time such assets were acquired to hold them as a fixed income security until maturity, the Board may value those assets at cost, adjusted to reflect the amortized portion of the discount or premium, as the case may be;
- (c) for each valuation date preceding the first anniversary of the date on which it was acquired by the Fund, an investment asset held by the Fund for which there is no published market value shall be valued at its cost unless the Fund is required by subsection (6) to revalue the assets prior to the expiration of that one year period;
- (d) for each valuation date following the first anniversary of the date on which it was acquired by the Fund, each investment asset held by the Fund for which there is no published market value shall be valued at its net realizable value as at that date;
- (e) assets of the Fund other than investment assets shall be valued at cost less any depreciation applicable to them as determined by the Board in consultation with the auditors of the Fund.

Definition of "net realizable value"

15(3) In this section, "net realizable value", means the amount which would be received by the Fund from the sale of the investment asset on an orderly basis over a reasonable period of time in an arm's-length sale between the Fund and an informed, knowledgeable and willing purchaser, acting without restraint.

Report of valuation

15(4) For the purpose of determining the net realizable value of an investment asset, the Board shall cause a person qualified to make an evaluation of the investment asset to prepare a report annually, as at each anniversary date of the acquisition of the investment asset, giving his or her opinion as to the fair value of the investment asset.

Duty of Board in determining value

15(5) In determining the net realizable value of an investment asset the Board shall have regard to the report under subsection (4), to any other bona fide arm's-length transactions respecting the investment asset which in the opinion of the Board provide a valid indication of the net realizable value of the investment asset and to such other factors as the by-laws of the Fund may provide.

Revaluation

15(6) If on any valuation date the Board determines that there has been a change which may have a material effect on the value of any investment asset of the Fund, the Board shall cause a revaluation of the investment asset or investment assets affected by the change as at that valuation date.

Duty of the Board in determining value

15(7) Subject to subsection (8), for the purpose of assisting it in determining the value of the Class "A" Common Shares at a valuation date, the Board shall cause a person qualified to make an evaluation of the Fund to prepare a report stating his or her opinion as to the manner in which the value of the Class "A" Common Shares should be calculated by the accountants to the Fund at such valuation date on the assumption that the values of the investment assets of the Fund at that valuation date are the values determined in accordance with the rules set out in this section.

Exception

15(8) If on any valuation date the Board determines that since the preceding valuation date there has been no change in the assets or liabilities of the Fund which could have a material effect upon the manner of calculating the value of the Class "A" Common Shares of the Fund, the Board may dispense with the report as to the manner in which the value of the Class "A" Common Shares should be calculated, and, when it does so, the calculation determining the value of the Class "A" Common Shares shall be done by the accountants to the Fund in accordance with the last report prepared by the person qualified to make an evaluation of the Fund.

Exhibit E

Deloitte & Touche Inc.
360 Main Street
Suite 2300
Winnipeg MB R3C 3Z3
Canada

Tel : (204) 944-3602
Fax : (204) 947-2689
ruholmes@deloitte.ca
www.deloitte.ca

June 29, 2005

DELIVERED

COPY

Dear

Re: Crocus Investment Fund ("Crocus")

As you may be aware, pursuant to an Order of the Manitoba Court of Queen's Bench dated June 28, 2005, Deloitte & Touche Inc. ("Deloitte") was appointed Receiver/Manager of Crocus Investment Fund. A copy of the Order is available at www.deloitte.com/ca/crocusfund.

Would you kindly advise us by return as to the status of any matters which you are currently handling for which you would intend to render an account to Crocus. Further in that regard, we would also ask that a current statement of account be provided to the Receiver as at June 28th, 2005, for the Receiver's consideration.

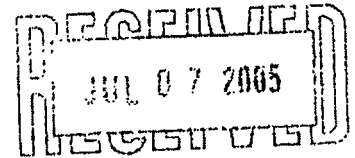
Until the Receiver has had an opportunity to understand these matters, no further work should be performed without the prior written approval of the Receiver, or its receivership counsel, other than to notify us immediately of any matters requiring urgent action. We will not guarantee payments of accounts on a go forward basis should you choose to carry on any additional work without our prior written approval.

Yours truly,

DELOITTE & TOUCHE INC., in its
capacity as Receiver/Manager of Crocus
Investment Fund and not in its personal
capacity.

Per: A. R. Holmes
Senior Vice-President

/bjf



WALSH & COMPANY
BARRISTERS AND ATTORNEYS-AT-LAW

426 PORTAGE AVENUE
WINNIPEG, MANITOBA R3C 0C9
TELEPHONE: (204) 947-2282
FAX: (204) 943-0211

July 6, 2005

Hill, Abra, Dewar
2760 - 360 Main Street
Winnipeg, Manitoba
R3C 3Z3

Via Courier

Attention: Mr. Robert A. Dewar, Q.C.

Dear Mr. Dewar:

Re: Crocus Investment Fund - List of Shareholders

We understand that you are counsel for Deloitte Touche LLP, who have been appointed interim receivers of the Crocus Investment Fund ("Crocus").

We enclose herewith an affidavit sworn by Mr. Bellan, a shareholder of Crocus. Kindly consider this letter to be an application pursuant to the provisions of subsection 21(3) of *The Corporations Act*, C.C.S.M. c. C225 (the "Act") for a "Basic List" of the shareholders of Crocus as that term is defined in subsection 21(3) of the Act.

As you know, our firm along with Mr. Harvin Pitch and Mr. Colin Stevenson of Stevensons Professional Corporation, act for the Crocus Investors Association and Mr. Bernie Bellan. We will be filing shortly a class action suit against Crocus on behalf of Mr. Bellan and those who invested in Crocus.

In addition to the Basic List of shareholders, we ask that Walsh & Company and Stevensons Professional Corporation be added to the list of counsel who receive notice of all further proceedings concerning the appointment of a Receiver for Crocus. It is our intention to appear and seek leave to address the Court when the matter concerning the appointment of a Receiver is next heard.

We also ask that you confirm on behalf of your client, that no legal fees will be paid on behalf of directors, officers, or employees of Crocus with respect to any proceedings involving Crocus including, but not limited to, proceedings before the Manitoba Securities Commission, any civil

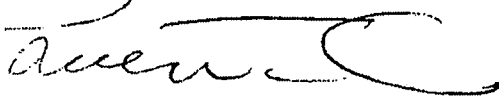
claims made against the directors, officers of employees, and any criminal proceedings that may be initiated against the directors, officers, or employees.

We look forward to hearing from you at your very early convenience concerning the above matters.

Yours truly,

WALSH & COMPANY

Per:

A handwritten signature in black ink, appearing to read 'Paul Walsh', written over a horizontal line.

PAUL WALSH, Q.C.

PW/ar

Enclosure (1)

cc - Mr. B. Bellan
Mr. H. Pitch
Mr. Colin Stevenson

AFFIDAVIT OF BERNARD W. BELLAN

I, Bernard W. Bellan, of the City of Winnipeg, in the Province of Manitoba, letter carrier,

MAKE OATH AND SAY:

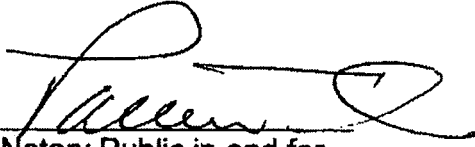
1. I own 350 Class A shares of the Crocus Investment Fund ("Crocus"). I reside at 979 Queenston Bay, in the City of Winnipeg, in the Province of Manitoba.

2. This affidavit is sworn in support of an application made pursuant to subsection 21(3) of *The Corporations Act*, C.C.S.M. c. C225 (the "Act") requiring Crocus to furnish a list of shareholders setting out the names of all of the shareholders of Crocus, the number of shares owned by each shareholder, and the address of each shareholder as shown on the records of Crocus (the "Basic List") within 10 days from the receipt of this affidavit.

3. The Basic List will not be used for any purpose save those expressly permitted by subsection 21(9) of the *Act*.

4. I make this Affidavit *bona fide* and in support of the application to receive a Basic List from Crocus.

Sworn before me at
the City of Winnipeg
in the Province of Manitoba
this 6 day of July, 2005


A Notary Public in and for
The Province of Manitoba

)
)
)
)
)
)
)
)
)
)
)


Bernard W. Bellan

**THE QUEEN'S BENCH
Winnipeg Centre**

BETWEEN:

BERNARD W. BELLAN

Plaintiff,

- and -

CHARLES E. CURTIS, PETER OLFERT, WALDRON (WALLY)
FOX-DECENT, LEA BATURIN, ALBERT R. BEAL, RON WAUGH,
DIANE BERESFORD, SYLVIA FARLEY, ROBERT HILLIARD,
ROBERT ZIEGLER, JOHN CLARKSON, DAVID G. FRIESEN,
HUGH ELIASSON, SHERMAN KREINER, JAMES UMLAH,
JANE HAWKINS, JANICE LEDERMAN,
PRICewaterHOUSECOOPERS LLP, NESBITT BURNS INC.,
WELLINGTON WEST CAPITAL INC.,
CROCUS CAPITAL INC., THE MANITOBA SECURITIES COMMISSION
and THE CROCUS INVESTMENT FUND

Defendants

STATEMENT OF CLAIM

WALSH & COMPANY

426 Portage Avenue
Winnipeg, Manitoba
R3C 0C9

204-947-2282
204-943-0211 (fax)

Paul V. Walsh, Q.C./J. David L. Soper
File No.

**STEVENSONS PROFESSIONAL
CORPORATION**

144 Front Street West, Suite 400
Toronto, Ontario
M5J 2L7

416-865-5310/416-599-7900
416-365-7702/416-599-7910 (fax)

Harvin D. Pitch (counsel)/Colin P. Stevenson
File No. 01050118

Service 2017/10/25
3:20 PM
JUL 1 2017
RECEIVED
COURT

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

BERNARD W. BELLAN

Plaintiff,

- and -

CHARLES E. CURTIS, PETER OLFERT, WALDRON (WALLY)
FOX-DECENT, LEA BATURIN, ALBERT R. BEAL, RON WAUGH,
DIANE BERESFORD, SYLVIA FARLEY, ROBERT HILLIARD,
ROBERT ZIEGLER, JOHN CLARKSON, DAVID G. FRIESEN,
HUGH ELIASSON, SHERMAN KREINER, JAMES UMLAH,
JANE HAWKINS, JANICE LEDERMAN,
PRICEWATERHOUSECOOPERS LLP, NESBITT BURNS INC.,
WELLINGTON WEST CAPITAL INC.,
CROCUS CAPITAL INC., THE MANITOBA SECURITIES COMMISSION
and THE CROCUS INVESTMENT FUND

Defendants

Proceedings under *The Class Proceedings Act*, C.C.S.M. c. C130

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Queen's Bench Rules*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office,

WITHIN 20 DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is 40 days. If you are served outside Canada and the United States of America, the period is 60 days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

A. FOULKE
DEPUTY REGISTRAR
COURT OF QUEEN'S BENCH
WINNIPEG

July 12, 2005

Issued by

Registrar

TO: CHARLES E. CURTIS
596 South Drive
Winnipeg, Manitoba
R3T 0B1

AND TO: PETER OLFERT
432 Dunrobin Avenue
Winnipeg, Manitoba
R3K 0T8

AND TO: WALDRON (WALLY) FOX-DECENT
4553 Roblin Boulevard
Winnipeg, Manitoba
R3R 0G2

AND TO: LEA BATURIN
26 Bramton Street
Winnipeg, Manitoba
R2M 4P8

AND TO: ALBERT R. BEAL
R.R. 2
Box 15
Lorette, Manitoba
R0A 0Y0

- AND TO: RON WAUGH
c/o 10th Floor, 155 Carlton Street
Winnipeg, Manitoba
- AND TO: DIANE BERESFORD
P.O. Box 373
Notre Dame de Lourdes, Manitoba
R0G 1M0
- AND TO: SYLVIA FARLEY
c/o 503-275 Broadway
Winnipeg, Manitoba
- AND TO: ROBERT HILLIARD
155 Borebank Street
Winnipeg, Manitoba
R3N 1E1
- AND TO: ROBERT ZIEGLER
22 Ramblewood
Winnipeg, Manitoba
- AND TO: JOHN CLARKSON
42 Harradence Close
Winnipeg, Manitoba
R3Y 1K5
- AND TO: DAVID G. FRIESEN
Highway 30
P.O. Box 720
Altona, Manitoba
R0G 0B0
- AND TO: HUGH ELIASSON
86 Tamarack Bay
Winnipeg, Manitoba
R2R 0G2
- AND TO: SHERMAN KREINER
180 West Gate
Winnipeg, Manitoba
R3C 2E1

AND TO: JAMES UMLAH
609 South Drive
Winnipeg, Manitoba
R3C 0C1

AND TO: JANE HAWKINS
87 Brencliffe Drive
Winnipeg, Manitoba
R3P 2B7

AND TO: JANICE LEDERMAN
181 Ridgedale Crescent
Winnipeg, Manitoba
R3R 0B4

AND TO: PRICEWATERHOUSECOOPERS LLP
Richardson Building
1 Lombard Place
Suite 2300
Winnipeg, Manitoba
R3B 0X6

AND TO: NESBITT BURNS INC.
Commodity Exchange Tower
360 Main Street
Suite 1400
Winnipeg, Manitoba
R3C 3Z3

AND TO: WELLINGTON WEST CAPITAL INC.
200 Waterfront Drive
Suite 400
Winnipeg, Manitoba
R3B 3P1

AND TO: CROCUS CAPITAL INC.
211 Bannatyne Avenue
5th Floor
Winnipeg, Manitoba
R3B 3P2

AND TO: THE MANITOBA SECURITIES COMMISSION
1130-405 Broadway
Winnipeg, Manitoba
R3C 3L6

AND TO: THE CROCUS INVESTMENT FUND
275 Broadway
Suite 303
Winnipeg, Manitoba
R3C 4M6

CLAIM

1. The plaintiff claims, on his own behalf and on behalf of each and every person, wherever resident, who dealt in shares of the Crocus Investment Fund (the Crocus Fund) between October 1, 2000 to December 10, 2004 (the Class Period) and suffered a loss as a result thereof, except those persons hereinafter excluded (the Class Members):

- (a) an order certifying this proceeding as a class proceeding and appointing the plaintiff as representative plaintiff;
- (b) a declaration that the defendants, Charles E. Curtis, Peter Olfert, Waldron (Wally) Fox-Decent, Lea Baturin, Albert R. Beal, Ron Waugh, Diane Beresford, Sylvia Farley, Robert Hilliard, Robert Ziegler, John Clarkson, David G. Friesen and Hugh Eliasson, Sherman Kreiner, James Umlah, Jane Hawkins and Janice Lederman (collectively hereinafter referred to as the Insiders) or any of them, or persons acting under their direction and control, priced the Crocus Fund at inflated values, overstated the Crocus Fund share price valuations and issued or caused to be issued prospectuses which were materially false because they contained the Representation (described in paragraph 8 below);
- (c) a declaration that the Representation made by the Insiders, were made oppressively and in breach of s. 141 of *The Securities Act*,

C.C.S.M. c. S50 (the *Securities Act*) and s. 234 of *The Corporations Act*, C.C.S.M. c. C225 (the *Corporations Act*);

- (d) a declaration that the Insiders, by making the Representation, breached s. 52(1) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the *Competition Act (Canada)*), and are liable for damages under s. 36;
- (e) a declaration that the defendants, Wellington West Capital Inc. (Wellington West) and Nesbitt Burns Inc. (Nesbitt Burns), breached s. 141 of the *Securities Act* and s. 52(1) of the *Competition Act (Canada)*;
- (f) a declaration that PricewaterhouseCoopers LLP (PWC) breached its duty of care to the plaintiff and the other class members and negligently represented in its auditors' reports which were incorporated into the Crocus Fund prospectuses that the Crocus Fund financial statements were materially accurate and that the share price valuation was reasonable and accurate and did not contain any misrepresentation of material facts (the PWC Opinion), which opinion was given in part for the purpose of allowing the Crocus Fund to offer shares to the public and with the expectation and knowledge that investors would rely on it and was negligent in the performance of the professional services it provided as auditor of the Crocus Fund;
- (g) a declaration that PWC breached s. 52(1) of the *Competition Act (Canada)* by representing in its PWC Opinion that the financial

statements were fairly presented and that the share price valuation was reasonable and accurate, and is liable for damages under s. 36;

- (h) a declaration that The Manitoba Securities Commission (MSC) owed a duty of care to the plaintiff and to the other class members to ensure the Crocus Fund prospectuses contained full, true and plain disclosure of all material facts relating to the value of the Crocus Fund and its class A shares and to undertake a reasonable and prudent investigation of complaints concerning the valuation of the Crocus Fund and the MSC has breached its duty of care and has thereby acted in a grossly careless and reckless manner, amounting to bad faith;
- (i) an order compensating the plaintiff and plaintiff class as aggrieved persons pursuant to s. 234 of *The Corporations Act* (Manitoba) for oppression;
- (j) a declaration that the business or affairs of the Crocus Fund have been carried on or conducted in a manner that is oppressive, unfairly prejudicial or which unfairly disregards the interests of the plaintiff and the plaintiff class;
- (k) a declaration that the powers of the directors of the Crocus Fund have been exercised in a manner that is oppressive or unfairly prejudicial or which unfairly disregards the interests of the plaintiff and the plaintiff class;

- (l) damages in the sum of \$150,000,000 for oppression, negligence, (gross negligence and recklessness as against MSC), breach of s. 141 of the *Securities Act*, s. 234 of the *Corporations Act* and ss. 36 and 52 of the *Competition Act (Canada)*;
- (m) punitive and exemplary damages in the sum of \$50,000,000 or such other sum as this Honourable Court may find appropriate;
- (n) a reference or such other directions as may be necessary to determine issues relating to liability and damages not determined in the trial of the common issues;
- (o) prejudgment and post-judgment interest pursuant to *The Court of Queen's Bench Act*, C.C.S.M. c. C280;
- (p) an order granting leave to have the issues in this action tried by a jury in accordance with s. 64(2) of *The Court of Queen's Bench Act*, C.C.S.M., c.C280;
- (q) costs of this action pursuant to *The Court of Queen's Bench Act*, C.C.S.M. c. C280 and s. 36 of the *Competition Act (Canada)* as between a solicitor and his own client, including any applicable taxes; and,
- (r) such other relief as this Honourable Court may deem just.

2. Excluded from the class membership are the defendants, members of the immediate family of each of the individual defendants, subsidiaries or affiliates

of the corporate defendants, corporations or entities controlled by any person referred to above and the legal representatives, heirs, successors and assigns of any person referred to above.

3. The plaintiff has joined the defendants, the Crocus Fund and Crocus Capital Inc., in order to be bound by the orders issued by way of judgment in this action.

DEFINED TERMS

4. The defined terms used throughout this statement of claim are attached in schedule 1 and hereby incorporated by reference into this claim.

OVERVIEW

5. The Crocus Fund is a labour sponsored venture capital corporation created by *The Crocus Investment Fund Act*, C.C.S.M. c. C308 (the *Crocus Act*). The Crocus Fund has been a reporting issuer in Manitoba since 1992.

6. The Crocus Fund engaged in a continuous offering of its class A common shares under a prospectus which did not change in any material respect from the commencement of the class period on October 1, 2000. The most recent

prospectus is dated January 21, 2004, amended October 14, 2004. The 1999 prospectus was used to sell the class A common shares in 1999 and 2000. Prospectuses which were identical in all material respects, except as provided otherwise below, were issued in 2001, 2002, 2003 and 2004. They are collectively referred as "the prospectus".

7. The prospectus, at all material times, contained a certificate signed by two officers of the Crocus Fund and two members of the board of directors on behalf of all of the board of directors that the prospectus constituted full, true and plain disclosure of all material facts relating to the securities offered by the prospectus in accordance with part VII of the *Securities Act* and the regulations thereunder and does not contain any misrepresentation.

8. Throughout the class period the Insiders continually made the Representation, namely, that the Crocus Fund was properly valued at fair value and that the share price was not overstated (the Representation). This single Representation was made by the Insiders or any of them and persons acting under their direction and control and by Wellington West and Nesbitt Burns (the latter is liable for the period 1999-2001 only) through the prospectus.

PARTIES AND BACKGROUND

Plaintiff

9. The plaintiff, Bernard W. Bellan (Bellan), lives in the City of Winnipeg, in the Province of Manitoba, and is a letter carrier. He owns 350 class A common shares of the Crocus Fund, the particulars of which are as follows:

DATE	NUMBER OF SHARES	PURCHASE COST PER SHARE	REDEMPTION COST PER SHARE	TOTAL COST (PROCEEDS)
September 1993	350 bought	\$10.00		\$3,500.00
February 1996	255.755 bought	\$11.73		\$3,000.00
January/February 2001	350 reinvestment	\$13.98		\$4,893.00
March 2003	(255.755) sold		\$12.64	(\$3,232.74)

10. As set out above, the Crocus Fund offers class A common shares (the A shares) to the public by prospectus. The subscription process for A shares is described in the prospectus.

Valuation Process

11. On every Valuation Date (every Friday), the Crocus Fund calculates a pricing NAV (net asset value) per common share (the A share price) as at 3:00 p.m. on the Valuation Date. The A share price is the price at which one A share can be

purchased or redeemed on the Valuation Date. All subscriptions for A shares and requests for redemption for A shares which have been received since the last Valuation Date are processed on the Valuation Date using the A share price. All purchases and redemptions are processed in this manner.

12. The Crocus Fund prospectus sets out the manner in which the A share price is established starting at page 27, in its most recent iteration. In summary, the process is:

- (a) on each Valuation Date the board of directors (the board) is required to determine the fair value of the A shares;
- (b) the board must follow a specific set of rules for determining the fair value of the A shares. This requires the board to determine the value of the investment assets of the Crocus Fund on each Valuation Date;
- (c) there are specific rules for determining the value of the investment assets based upon whether or not the investment assets have a public market (e.g., are listed on a stock exchange);
- (d) if, on a Valuation Date, the board has determined there is a change which may have a material effect on the value of any investment asset the board shall cause a reevaluation of that investment asset or investment assets as at the Valuation Date;
- (e) the board, in 1999, delegated the setting of the A share price to any two directors of the board who were authorized to sign a share price valuation certificate on behalf of the board as a whole.

13. The board established a process for determining the value of the investee companies to establish a net realizable value for the portfolio.
14. The staff valuation committee prepared the valuation for each investee company in the portfolio. Valuations were to be prepared at least annually where there was no public market for the securities of the investee company.
15. A valuation was not to be accepted unless all the members of the staff valuation committee agreed on a value.
16. Once valuations were completed they were to go to the valuation subcommittee of the board which comprised two or three board members and an external valuator who was to do a limited review of the valuations and advise the valuation subcommittee.
17. The valuation subcommittee was scheduled to meet monthly. If valuations were not available to be considered the meeting was to be cancelled.
18. On October 1, 2000 there were approximately 30,000 shareholders with approximately 11,000,000 outstanding shares. At the end of the class period (December 10, 2004) there were approximately 35,000 shareholders with approximately 13,500,000 outstanding shares. The publicly announced value of the

Crocus Fund on October 1, 2000 was \$14.93. On October 1, 2004 the publicly announced value of the Crocus Fund was approximately \$190,000,000 and the price per share was \$10.61.

2002 Solidarité Transaction

19. Under the *Crocus Act*, the Crocus Fund is required to maintain a minimum reserve account equal to the greater of:

- (a) 15% of the fair market value of its investment assets; and
- (b) 50% of the total of its outstanding guarantees.

20. Under the *Crocus Act*, in the event that the Crocus Fund fell below its minimum reserve requirements for a period of more than 60 days, the Minister responsible for the Crocus Fund could declare the common shares of the Crocus Fund ineligible for tax credits. If that happened, the ability of the Crocus Fund to raise additional capital would be seriously curtailed or precluded.

21. In 2002, the Crocus Fund prepared an internal cashflow projection analysis covering the period July 2002 to September 2004. That analysis showed that without significant additional capital the Crocus Fund could fall short of its minimum reserve requirements by October 2002 and would stay below its minimum requirements until December 2002 – a 90 day period.

22. In order to prevent a shortfall in its minimum reserve requirements, the Crocus Fund negotiated a short term institutional "investment" of \$10,000,000 from the Fonds de Solidarité FTQ (Solidarité) a Québec-based labour sponsored investment fund.

23. Prior to receiving the funds from Solidarité, the Crocus Fund had fallen below its minimum reserve requirement. Without the Solidarité funds, the Crocus Fund would have been in breach of its minimum reserve requirements and would have been unable to raise additional capital.

24. In the summer of 2002, the Crocus Fund arranged with Solidarité for Solidarité to make a \$10,000,000 "investment" in institutional shares (class I) of the Crocus Fund, a special class of preferred shares created by the Crocus Fund especially for the transaction. On November 15, 2002, a final agreement was signed for the issuance of 790,513.83 series 3 class I special shares for consideration of \$10,000,000. The shares carried a 10% guaranteed annual dividend rate.

25. The agreement was highly restrictive and one-sided in favour of Solidarité. The plaintiff pleads that the transaction, rather than being an "investment" was in effect an onerous loan and was improperly and inaccurately characterised in the relevant financial statements of the Crocus Fund as an investment. The agreement further provided that Solidarité could require the Crocus Fund to purchase all or any part of said shares after May 15, 2004 and that the Crocus Fund

was required to purchase any remaining outstanding shares at November 15, 2004. The agreement provided as well for a 10% penalty (in addition to the annual dividend) on any shares outstanding after November 15, 2004 and 10% interest on unpaid dividends. Under the agreement, Solidarité had a guaranteed right to the dividend payment and it was not discretionary. Had the Crocus Fund not paid dividends (which were paid even when the Crocus Fund was in a loss and deficit position), Solidarité could have taken action to collect the principal investment amount, outstanding dividends and any interest penalties from the Crocus Fund. These characteristics are fundamental characteristics of a liability rather than an investment. The unconditional requirement to repay demonstrates that the transaction was a loan.

26. The plaintiff pleads that the mis-characterisation of the "investment" in the financial statements referred to in this pleading, constitutes a part of the Representation in that the effect inflated the value of the shares of the Crocus Fund.

27. The plaintiff pleads that the conduct of the Insiders in participating and consenting to or in failing to disclose the true nature of that arrangement constitutes oppression.

Regulatory Intervention

28. The defendant, the MSC, issued a cease trading order and the Crocus Fund ceased redeeming its shares on December 10, 2004. In April 2005 the acting CEO of the Crocus Fund suggested that the current value of its shares was just below \$7.00, almost a third less than their supposed value when trading was halted. The devaluation amounts to a \$46,000,000 decrease in the Crocus Fund's net asset value. Trading remains halted and more than 30,000 Manitoba investors are still unable to access their investments which total more than \$150,000,000. An interim receiver of the Crocus Fund was appointed on the motion of the MSC on or about June 27, 2005. In fact, the net asset value of the Crocus Fund is now substantially less than \$7.00 per share and the plaintiff and plaintiff class will likely recover less than 20% of their investment.

29. In a May 2005 report Manitoba's Auditor General identified several issues concerning the Crocus Fund, including:

- (a) a lack of oversight by the Crocus Fund's board of directors;
- (b) flaws in the Crocus Fund's investment procedures;
- (c) abuse of the Crocus Fund's travel and expense policy;
- (d) the value of the Crocus Fund's assets appeared to have been overstated;
- (e) the implementation of the valuation process was flawed.

30. In a statement of allegations dated April 4, 2005, the MSC alleged, among other things that:

- (a) the most recent Crocus Fund prospectus did not contain plain and full disclosure concerning the A share price;
- (b) the board of the Crocus Fund acted contrary to the public interest in numerous ways.

The Defendants and Other Related Individuals

The Insiders

31. The defendant, Charles E. Curtis (Curtis), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from 1992 until 2005.

32. The defendant, Peter Olfert (Olfert), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from 1995 until 2004. He also executed a certificate attached to the 1999, 2001, 2002 and 2004 prospectuses attesting to the disclosure of all material facts relating to the distribution of the class A shares.

33. The defendant, Waldron (Wally) Fox-Decent (Fox-Decent), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from

1999 until 2004. He also executed a certificate attached to the 2002 and 2003 prospectuses attesting to the disclosure of all material facts relating to the distribution of the class A shares.

34. The defendant, Lea Baturin (Baturin), currently resides in the Province of Manitoba. She was a director of the Crocus Fund from 1999 until 2004.

35. The defendant, Albert R. Beal (Beal), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from 1999 until 2004.

36. The defendant, Ron Waugh (Waugh), currently resides in the Province of Manitoba. He was a director of the Crocus Fund in 2004.

37. The defendant, Diane Beresford (Beresford), currently resides in the Province of Manitoba. She was a director of the Crocus Fund from 1998 until 2004.

38. The defendant, Sylvia Farley (Farley), currently resides in the Province of Manitoba. She was a director of the Crocus Fund

39. The defendant, Robert Hilliard (Hilliard), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from 1992 until 2004. He also executed a certificate attached to the 1999, 2001, 2002 and 2004

prospectuses attesting to the disclosure of all material facts relating to the distribution of the class A shares.

40. The defendant, Robert Ziegler (Ziegler), currently resides in the Province of Manitoba. He was a director of the Crocus Fund until 2004.

41. The defendant, John Clarkson (Clarkson), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from 2002 until 2004. He also executed a certificate attached to the 2002 and 2003 prospectuses attesting to the disclosure of all material facts relating to the distribution of the class A shares.

42. The defendant, David G. Friesen (Friesen), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from 1998 until 2004.

43. The defendant, Hugh Eliasson (Eliasson), currently resides in the Province of Manitoba. He was a director of the Crocus Fund until 2002.

44. The defendant, Sherman Kreiner (Kreiner), currently resides in the Province of Manitoba. He was president and CEO of the Crocus Fund from 1993 until December 2, 2004. He also executed a certificate attached to the 1999, 2001, 2002, 2003 and 2004 prospectuses attesting to the disclosure of all material facts relating to the distribution of the class A shares.

45. The defendant, James Umlah (Umlah), currently resides in the Province of Manitoba. He was president of Crocus Capital Inc. and chief investment officer of the Crocus Fund from 1993 until summer 2004. He also executed a certificate attached to the 1999, 2001, 2002, 2003 and 2004 prospectuses attesting to the disclosure of all material facts relating to the distribution of the class A shares.

46. The defendant, Janice Lederman (Lederman), currently resides in the Province of Manitoba. She was vice president of corporate development of the Crocus Fund until approximately 2002, when she left the Crocus Fund. She also executed a certificate attached to the 1999 prospectus attesting to the disclosure of all material facts relating to the distribution of the class A shares.

47. The defendant, Jane Hawkins (Hawkins), currently resides in the Province of Manitoba. She was vice president and CFO of the Crocus Fund until March 2005. She also executed a certificate attached to the 2001, 2002, 2003 and 2004 prospectuses attesting to the disclosure of all material facts relating to the distribution of the class A shares.

Liability

48. The plaintiff alleges that each of Charles E. Curtis, Peter Olfert, Waldron (Wally) Fox-Decent, Lea Baturin, Albert R. Beal, Ron Waugh, Diane Beresford, Sylvia Farley, Robert Hilliard, Robert Ziegler, Sherman Kreiner, James

Umlah, Jane Hawkins, John Clarkson, David G. Friesen, Hugh Eliasson and Janice Lederman breached s. 141 of *The Securities Act*, s. 234 of the *Corporations Act* and s. 52 of the *Competition Act (Canada)*.

Oppression

49. The plaintiff alleges that the acts and omissions of each of the Insiders described herein breached s. 234 of the *Corporations Act* and caused the business or affairs of the Crocus Fund to be carried on or conducted in a manner that was oppressive, unfairly prejudicial or which unfairly disregarded the interests of the plaintiff and the plaintiff class.

50. The plaintiff also alleges that, as set out herein, the powers of the directors of the Crocus Fund have been exercised in a manner that was oppressive or unfairly prejudicial or which unfairly disregarded the interests of the plaintiff and the plaintiff class contrary to s. 234 of the *Corporations Act*.

The *Competition Act (Canada)*

51. The Insiders and the Financial Advisor breached s. 52(1) of the *Competition Act (Canada)* by issuing to the public the prospectus containing the Representation.

52. The prospectus was made for the purpose of promoting the supply or sale of the Crocus Fund shares and directly or indirectly the business activities or interest of the Crocus Fund, the Insiders and the Financial Advisor.

53. The prospectus contained the Representation which the Insiders, Wellington West and Nesbitt Burns (the latter only for the period 1999-2001) made to the public. The Representation was false or misleading in a material respect, namely, the A share price was not fairly valued and was overstated and the Crocus Fund was not fairly valued and was overstated.

54. The plaintiff and other class members relied upon the Representation and purchased or held shares of the Crocus Fund and suffered loss or damage as a result.

The Auditor

55. PWC are chartered accountants with offices in Winnipeg and elsewhere. Throughout the class period PWC was engaged as auditors of the Crocus Fund for each fiscal year. Each of the audits prepared by PWC was done in part to further its own business interests.

56. PWC issued unqualified audit opinions in respect of the financial statements of the Crocus Fund for each year in the class period. PWC consented

to the inclusion of these financial statements, together with its unqualified audit opinion thereon, in each prospectus.

57. In each applicable year PWC provided its clean or unqualified audit opinion in accordance with Canadian GAAS applying Canadian GAAP with respect to the consolidated statements of net assets of the Crocus Fund as at September 30, 2000, 2001, 2002 and 2003, and the related consolidated statements of investment portfolio and of deficit (two statements), consolidated statements of changes in net assets and consolidated statements of cashflow.

58. PWC was negligent in the performance of its duties and obligations. PWC also breached s. 52 of the *Competition Act* (Canada).

The Financial Advisor

59. Wellington West and Nesbitt Burns are investment dealers and registrants under the *Securities Act*. They are referred to in this claim, both together and separately, as the Financial Advisor. They carry on business in Manitoba and elsewhere.

60. Some time prior to 1999, the Crocus Fund engaged Wellington West as agent of the Crocus Fund for the financing described in this claim.

61. Nesbitt Burns also acted as agent of the Crocus Fund but only for the financings described herein for the period 1999-2001. All claims made against Nesbitt Burns are only for this period.

62. Wellington West and Nesbitt Burns are liable for breach of s. 141 of the *Securities Act*, and s. 52 of the *Competition Act* (Canada). In addition, Wellington West, as a recipient of investment funds from the Crocus Fund, was in a conflict of interest.

The Manitoba Securities Commission (MSC)

63. The defendant, MSC, is responsible for the administration of the *Securities Act*. It is a corporation whose members are appointed by the Lieutenant Governor in Council.

64. It owed a duty of care to the plaintiff and members of the plaintiff class who were purchasers of shares of the Crocus Fund to ensure that the prospectuses filed were accurate and not misleading and to investigate complaints and ensure that the Crocus Fund was carrying on its operations in compliance with the *Securities Act* and in particular with respect to the obligation to provide accurate valuations as the Crocus Fund indicated would be undertaken as set out in the prospectuses.

The Value of the Crocus Fund was Overstated

65. The plaintiff alleges that throughout the Class Period the defendants (the definition of defendants hereafter shall not include MSC against whom separate allegations are pleaded) overstated the Crocus Fund's assets and overstated the value of its shares. In part, this resulted from the failure of the Insiders to exercise proper oversight with respect to the business and affairs of the Crocus Fund. The Crocus Fund's shareholders were, therefore, misled into purchasing shares at inflated prices. The non-disclosure of the true value of the shares and the continuation of trading in the Crocus Fund shares created a real monetary loss for innocent shareholders.

66. Had the board of directors and other Insiders applied reasonable skill and diligence they would have discovered and disclosed the material adverse facts or the risk of material adverse facts. The defendants who are officers and directors failed to apply reasonable skill and diligence and failed to discover and disclose the material adverse facts.

67. The plaintiff does not allege that the defendants were intentionally actively dishonest. Rather, the plaintiff alleges that the defendants' conduct, when coupled with their immediate pecuniary interests, were such as to make them liable

in damages for breach of s. 141 of the *Securities Act*, negligence (PWC only), oppression and under the *Competition Act* (Canada).

68. The Financial Advisor, the directors and the other Insiders asked no proper questions, did not observe applicable securities law, applied no common prudence and were reckless in their conduct.

69. The defendants, in their various capacities and in their varying degrees, represented the Crocus Fund as a major success story, a business enterprise benefiting Manitoba with the expectation of growth in the future. The picture thus created was a sham.

Non-Disclosure

70. The Crocus Fund prospectus contained the Representation that the Crocus Fund would be properly priced at fair value and that the share price would not be overstated and expressly incorporated the PWC Opinion. The prospectus failed to make full, true and plain disclosure concerning the A share price in the following respects:

- (a) the board routinely and consistently overstated the class A share price valuations and priced the Crocus Fund at inflated values;

- (b) the board routinely and consistently failed to determine the fair value of the class A common shares of the Crocus Fund as at each Valuation Date;
- (c) the Crocus Fund accepted subscriptions and paid out redemptions for A shares using an A share price which had not been approved by the board as at each Valuation Date;
- (d) the board failed to establish appropriate procedures to ensure compliance with its statutory obligations and the other obligations disclosed in the prospectus, i.e., that the fair value of the class A common shares of the Crocus Fund shall be determined by the board as at each Valuation Date;
- (e) the board failed to ensure valuations were completed in a timely manner;
- (f) the board failed to seek a suspension of trading for the A shares as soon as they knew or ought to have known of changes which might have had a material effect on the value of any investment asset of the Crocus Fund;
- (g) the board knew or ought to have known as early as October 1, 2000 that there was an overvaluation of the share price and failed to cause a revaluation of the investment asset or assets affected by such changes as at the earliest possible Valuation Date, being October 1, 2000;

- (h) the Insiders executed or are bound by share valuation certificates thereby signifying the board approved the A share price after the appropriate Valuation Date and after the price had been set by the Crocus Fund staff and used for the purposes of sales and redemptions of A shares which were completed prior to the board members approving the share price;
- (i) valuations were issued which did not reflect a fair valuation of the Crocus Fund's portfolio and specifically did not reflect net realizable value.

71. The plaintiff also states that the statements to the contrary in the prospectus in general and the Representation in particular were lacking a reasonable basis when they were made.

72. At all material times the defendants knew or ought to have known that the statements to the contrary in the prospectus and the Representation in particular were lacking in a reasonable basis when they were made.

73. By virtue of their position of authority and responsibility within the Crocus Fund, each of the Insiders as well as Wellington West and Nesbitt Burns had access to material information respecting the business and affairs of the Crocus Fund. Each of the Insiders and Wellington West and Nesbitt Burns reviewed,

approved, ratified and/or authorized, whether explicitly or implicitly, the statements in the prospectuses.

74. By virtue of their positions of authority and responsibility within the Crocus Fund, each of the Insiders as well as Wellington West and Nesbitt Burns had a duty to disseminate promptly, or to ensure the prompt dissemination of, truthful, complete and accurate statements, i.e., to make full, plain and true disclosure regarding the Crocus Fund's business and affairs and promptly to correct previously issued materially incorrect information so that the share price and the value of the Crocus Fund would be based upon complete, accurate and truthful information.

75. In certifying that each prospectus contained no material misrepresentations or omissions, Wellington West and Nesbitt Burns, as well as the directors and the officers who certified the prospectus participated in or facilitated the wrongdoing described herein as they knew or ought to have known that it did contain such misrepresentations and/or omissions.

S. 141 of the *Securities Act*

76. Wellington West, Nesbitt Burns, the directors, and the other Insiders who signed the certificates attached to the prospectus, are liable to the plaintiff and the plaintiff class by virtue of s. 141 of the *Securities Act*. These defendants are

liable to pay compensation for all loss or damage sustained as a result of the purchase by the plaintiff and the plaintiff class of shares in the Crocus Fund.

PWC's Negligence

77. PWC audited the financial statements of the Crocus Fund and expressed its opinions and specifically the PWC Opinion about the Crocus Fund's operations for the financial years in the class period.

78. PWC delivered its audit opinions and specifically the PWC Opinion in the course of business deliberately in part for the purpose of permitting the Crocus Fund to obtain access to the Manitoba capital market.

79. PWC intended, expected and knew that prospective purchasers of shares of the Crocus Fund would reasonably rely upon PWC's audit of the financial statements, and specifically the PWC Opinion in making the personal investment decision of whether to purchase, hold or sell Class A shares of Crocus Fund.

80. PWC knew the plaintiff and other class members would rely and were relying on PWC's special skill and knowledge and PWC's audit opinions and financial statements and the PWC Opinion in making the personal investment decision of whether to purchase, hold or sell the Crocus Fund shares.

81. As a result of its status as Crocus' auditor, the issuance of PWC's audit opinions and the PWC Opinion and PWC's intention, expectation and knowledge that members of the public would rely upon the PWC audit opinions and the PWC Opinion in making the personal investment decision to purchase, hold or sell class A shares of the Crocus Fund and to scrutinize the conduct of the Crocus Fund affairs, PWC owed a duty of care to prospective shareholders and shareholders under the law of the Province of Manitoba.

82. PWC was negligent in the following respects:

- (a) PWC "signed off" that the Crocus Fund investments in Manitoba companies were appropriately valued, year after year, when such was not the case;
- (b) PWC signed unqualified audit reports that failed to explain that Crocus' financial statements were materially misleading to shareholders and, in particular, to buyers and sellers of the Crocus Fund's shares;
- (c) PWC permitted the inclusion of these misleading annual audited financial statements in prospectuses for the Crocus Fund and thereby facilitated the solicitation that the public should purchase and the shareholders not sell the Crocus Fund's shares;
- (d) PWC audit opinions and the financial statements were not prepared in accordance with GAAP as described below;
- (e) PWC audit opinions and the financial statements were not prepared on a consistent basis;

- (f) PWC audit opinions and the financial statements were not audited in accordance with GAAS as described below;
- (g) PWC audit opinions and the financial statements contained material misstatements of the Crocus Fund's financial position and results, including:
 - (i) an overstatement of the value of the company's investments in Manitoba corporations;
 - (ii) an overstatement of assets;
 - (iii) an understatement of losses;
 - (iv) an overstatement of equity of the owners;
- (h) in fiscal year 2003 PWC failed to disclose or, in the alternative, failed to identify that a \$10,000,000 transaction in 2002 between Fonds de Solidarité FTQ and the Crocus Fund had been materially misstated to give the impression of a share or equity investment when it was in reality a short term loan that should have been viewed as a "bailout" as discussed in more detail above;
- (i) the following additional allegations of negligence against PWC apply with respect to the Solidarité transaction:
 - (i) the Crocus Fund's September 30, 2003 audited consolidated financial statements reflected the proceeds received from Solidarité as shareholders' equity on the balance sheet. This classification of the investment as equity did not comply with s.

3860 of the CICA handbook (financial instruments) and was in fact a financial liability;

- (ii) the loss for the year ended September 2003 was understated by \$875,000 or 16%. Thus, a better financial picture of the Crocus Fund than actually existed was set out in that financial statement;
 - (iii) the notes to the 2003 and 2004 financial statements did not fully disclose all of the significant covenants of the agreement between Solidarité and the Crocus Fund. As a result, readers were not provided with sufficient information to be able to assess the nature of the transaction between Solidarité and the Crocus Fund. Thus, the transaction was misrepresented in the prospectus as an equity investment while the fundamental characteristics were those of a liability. Because of these factors, a reader of the prospectus would not have been able to adequately assess the risk of investing in the shares of the Crocus Fund. PWC was aware, or ought to have been aware, of all of these shortcomings and failed to take any action to correct same
- (j) PWC's equity valuation methodology did not comply with the requirements in s. 15 of the *Crocus Act* in that the net realizable value per share was not properly determined.

83. PWC failed for fiscal years 2000 to 2003 to ensure that GAAP were followed by the Crocus Fund, in the following respects:

- (a) investments were valued at other than net realizable value;
- (b) the exigible value of specific loans was uncertain and doubtful and no proper allowance was made;
- (c) under the circumstances of how the trading prices of the Crocus Fund shares were computed, accounting materiality should have approximated zero, and all detected differences and errors should have been recorded;
- (d) losses were recorded in improper periods;
- (e) inadequate disclosure was given to how specific groups of investments were valued;
- (f) owners' equity valuations were materially overstated; and
- (g) operating expenses, including selling expenses, were capitalized.

84. PWC failed to comply with GAAS in that the audits for the years ended September 30, 2000 to September 30, 2003:

- (a) were not planned, executed, reviewed, and finalized in accordance with the auditing firm's standards and with Canadian standards;
- (b) were deficient because internal control weaknesses were not compensated for by gathering sufficient, appropriate, external corroborative evidence;

- (c) failed to design and execute audit procedures that responded to the nature and risks of the client's business, especially the holding of private company investments, and the manner in which the Crocus Fund shares were being traded and how prices were directly linked to accounting numbers;
- (d) were deficient because audit staff were not adequately trained and supervised;
- (e) were deficient because excessive reliance was placed on management instead of on sufficient and appropriate audit evidence;
- (f) did not display a level of scepticism that was necessary given the nature of the company's investments and the uncertainty that surrounded specific companies;
- (g) did not reflect the utilization of knowledgeable experts to assist in identifying appropriate values and risks inherent in assets;
- (h) did not recognize and respond to the existence of scope limitations given the absence of asset values that were appropriate in determining net asset values, which in turn determined the buying and selling prices of the Crocus Fund's shares;
- (i) failed to result in audit reports that disclaimed responsibility for the financial position and results of operations of the Crocus Fund;
- (j) inadequately responded to the Crocus Fund's control weaknesses, which enabled management to override principles and valuations and interpretations of what constituted net realizable value;

- (k) failed to result in warning the Crocus Fund's investors of the magnitude of management optimism that was inherent in the chosen asset values of the Crocus Fund and the corresponding overstated share price; and
- (l) failed to respond to indicators of non-compliance with applicable legislation regarding use of cash.

85. PWC was fully aware that its equity valuation methodology, as reflected in its annual auditing of asset and liability valuations, was the cornerstone of valuing the Crocus Fund and setting purchase and sale prices of the Crocus Fund's A shares.

86. The plaintiff and other class members suffered damage and loss because of PWC's negligence. Had PWC met the requisite standard of conduct expected of it in the circumstances the Crocus Fund would either not have continued trading as a public company or, alternatively, its shares would only have been publicly traded at proper values.

87. Had PWC met the requisite standard of conduct expected of it in the circumstances, the plaintiff and other class members would not have purchased shares of the Crocus Fund and would not have suffered losses and damages.

88. By expressing the PWC audit opinions PWC also represented that the Crocus Fund prospectus contained full, plain and true disclosure concerning the A share price and thereby gave the PWC Opinion. The PWC Opinion was made negligently knowing that the plaintiff and the class members relied upon the PWC Opinion, which they did to their detriment, by purchasing and holding the Crocus Fund shares. The plaintiff pleads that, as a matter of law, each member of the class who purchased the Crocus Fund shares is deemed to have relied upon the PWC Opinion and pleads and relies upon s. 141 of the *Securities Act*.

89. The plaintiff and other class members suffered loss and damage as a result of relying upon the PWC Opinion.

The Competition Act

90. PWC breached s. 52(1) of the *Competition Act* (Canada) by issuing the PWC audit opinions to the public.

91. The PWC audit opinions and the PWC Opinion were made for the purpose of promoting, directly or indirectly, the supply or sale of the Crocus Fund shares, and directly or indirectly the business interests of the Crocus Fund and PWC.

92. The PWC audit opinions contained the PWC Opinion which it provided to the public. The PWC Opinion was false or misleading in material respects as set out above. As a result, the prospectus did not make full, plain and true disclosure concerning the A share price in that the fair value of the Crocus Fund and the price of the class A common shares were overstated at all material times.

93. The plaintiff and other class members relied upon the PWC audit opinions and the PWC Opinion and purchased or held shares of the Crocus Fund and suffered loss and damage. In this regard, the plaintiff pleads and relies upon s. 141 of the *Securities Act*.

Liability of MSC

94. Starting in 1999, MSC received and approved the prospectus with respect to the Crocus Fund as detailed herein. This prospectus, to the knowledge of MSC, was used by the Crocus Fund to solicit sales in 2000-2004.

95. The plaintiff states, and the fact is, that MSC knew or ought to have known, commencing in or about October 2000, of the valuation irregularities as detailed in this statement of claim. In approving the prospectus and failing to undertake any or any adequate investigation until 2003 as detailed below, of the valuation or irregularities and in approving the prospectuses for the years 1999 and

thereafter, MSC acted with such carelessness and/or recklessness so as to constitute bad faith and gross negligence.

96. In or about 2002, the plaintiff brought to the attention of MSC the irregularities (as set out in detail in the statement of claim), including, without limitation, information pertaining to the misleading valuation of the Crocus Fund.

97. On or about April 28, 2003, MSC purported to conduct a continuous disclosure review of the Crocus Fund. Notwithstanding this "review", MSC failed to:

- (a) arrive at any conclusions on the quality of the continuous disclosure documents reviewed;
- (b) utilize a program or checklist in carrying out its investigation;
- (c) identify the true nature of the 2002 Solidarité transaction;
- (d) require the Crocus Fund to cease trading.

98. The plaintiff states, and the fact is, that in approving the prospectus and in failing to conduct its investigation in a reasonable and prudent manner, MSC acted with serious carelessness or recklessness and otherwise carried out an investigation of such poor quality as to constitute bad faith and gross negligence. In the alternative, MSC acted in bad faith in that it failed or neglected to carry out a proper or reasonable review of the prospectus or a proper and reasonable investigation at all.

99. The plaintiff states that MSC owed a duty of care to the plaintiff and to the other class members to comply with the provisions of the *Securities Act* in authorizing the prospectus with respect to the Crocus Fund and to act with reasonable care and diligence in issuing receipts for the prospectus. In failing to do so and in acting with gross carelessness and recklessness, MSC acted to the detriment of the plaintiff and the other class members and is thereby liable for all damages suffered.

100. In or about the years 1999-2004, MSC provided exemption orders pursuant to s. 20 of the *Securities Act* allowing individuals who were designated by Crocus Capital Inc. as work site coordinators, to market Crocus Fund shares. It was a condition of the exemption orders that the work site coordinators would be supervised by Crocus Capital Inc.

101. The plaintiff states, and the fact is, that after 2000, when MSC knew or ought to have known of the accounting and valuation irregularities as particularized in the statement of claim herein, it ought not to have allowed exemption orders during that period without ensuring that steps were taken to correct the valuation irregularities. MSC knew or ought to have known that work site coordinators were acting in an unsupervised manner, marketing Crocus Fund shares during RRSP season using prospectuses that were deficient in the manner as pleaded herein. MSC's conduct amounted to serious carelessness and recklessness

which amounts to bad faith for which it is liable to the plaintiff and the members of the plaintiff class, all of whom suffered damages as a result.

DAMAGES

102. The plaintiff pleads that by virtue of the defendants' actions described herein the plaintiff and other class members suffered loss and damages and the defendants or any or more of them are liable for special damages and general damages to the plaintiff and the other class members which are in excess of \$150,000,000.

COSTS (INCLUDING THE COST OF INVESTIGATION)

103. Pursuant to s. 36 of the *Competition Act* (Canada), the plaintiff and plaintiff class are entitled to recover their full costs of investigation and their solicitor and own client costs paid in accordance with *The Class Proceedings Act*.

104. The plaintiff and the other class members are also entitled to recover, as damages or costs in this action, the cost of administering the plan to distribute the recovery in this action which will probably exceed \$1,000,000.

PUNITIVE AND EXEMPLARY DAMAGES

105. The plaintiff pleads that the defendants' conduct was highhanded, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in disregard of the rights of each class member, indifferent to the consequences, and motivated by economic considerations and as such render them liable to pay punitive damages in the amount of \$50,000,000.

RELEVANT STATUTES

106. The plaintiff pleads and rely upon *The Class Proceedings Act*, *The Securities Act*, the *Corporations Act* and the *Competition Act*, R.S.C. 1985, c. C-34, as amended, and, in particular, ss. 36(1) and 52(1) thereof.

July 12, 2005

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SCHEDULE 1

1. **Crocus Fund:** Crocus Investment Fund.
2. **Class Period:** October 1, 2000 to December 10, 2004.
3. **Class Members:** Every person, wherever resident, who dealt in shares of the Crocus Investment Fund (Crocus) between October 1, 2000 to December 9, 2004 (the Class Period) and suffered a net loss as a result thereof, except those persons hereinafter excluded.
4. **Insiders:** Charles E. Curtis, Peter Olfert, Waldron (Wally) Fox-Decent, Lea Baturin, Albert R. Beal, Ron Waugh, Diane Beresford, Sylvia Farley, Robert Hilliard, Robert Ziegler, John Clarkson, David Friesen, Hugh Eliasson, Sherman Kreiner, James Umlah, Jane Hawkins and Janice Lederman.
5. **Representation:** That Crocus Fund was properly valued at fair value and that the share price was not overstated.
6. **Securities Act:** *The Securities Act, C.C.S.M. c. S50.*
7. **Competition Act (Canada):** *The Competition Act, R.S.C. 1985, c. C-34, as amended.*
8. **Corporations Act:** *The Corporations Act, C.C.S.M. c. C225.*
9. **PWC:** PricewaterhouseCoopers LLP.
10. **PWC Opinion:** PWC negligently represented in its auditors' reports which were incorporated into the Crocus Fund prospectuses that the Crocus Fund financial statements were materially accurate and that the share price valuation was reasonable and accurate and did not contain any misrepresentation of material facts, which opinion was given in part for the purpose of allowing the Crocus Fund to offer shares to the public and with the expectation and knowledge that investors would rely on it.

11. *Crocus Act:* *The Crocus Investment Fund Act, C.C.S.M. c. C308.*
12. *GAAS:* Canadian generally accepted auditing standards.
13. *GAAP:* Canadian generally accepted accounting principles.
14. *Financial Advisor:* Wellington West or Nesbitt Burns or both of them.
15. *The Class Proceedings Act:* *The Class Proceedings Act, C.C.S.M. c. C130.*
16. *2002 Solidarité Transaction:* The loan described in paragraphs 19-27.

COPY

be members of the Board of Directors. At all meetings of the Fund, the President shall be Chairperson; In her or his absence from a Directors' meeting, any Director may be elected Chairperson by the meeting; In her or his absence from a Shareholders' meeting, any Shareholder may be elected Chairperson by the meeting.

1.6 Salaries and Contracts of Directors and Officers: The Board shall have power to fix the remuneration to be paid to Directors and Officers for their services to the Fund, which remuneration paid to a Director may be in addition to the salary or remuneration she or he receives as an Officer or employee of the Fund. Subject to the provisions of the Act, no Director shall be liable or accountable for any profits or salary or fees made from or in connection with any contract made by her or him, or a firm, corporation or syndicate, in which she or he may be a partner or shareholder or otherwise interested with the Fund, or from or in connection with any office held by her or him in the Fund. The Board may also award special remuneration or indemnity to any Director or Officer of the Fund undertaking any special services on the Fund's behalf other than the routine work ordinarily required of such Director or Officer by the Fund. Notwithstanding any of the foregoing, no Director of the Fund who is also an employee of The Government of Manitoba shall receive nor be entitled to receive any salary or remuneration from the Fund.

1.7 Indemnity of Officers and Directors: Each Officer and each Director of the Fund and each former Officer and each former Director of the Fund and each person who acts and/or has acted at the Fund's request as a Director or Officer of a body corporate of which the Fund is or was a Shareholder or creditor and her or his heirs and legal representatives shall be indemnified against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by her or him in respect of any civil,

criminal or administrative action or proceeding to which she or he is made a party by reason of being or having been a Director or Officer of the Fund, if

- (a) she or he acted honestly and in good faith with a view to the best interests of the Fund; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, she or he had reasonable grounds for believing that her or his conduct was lawful.

ARTICLE 2
SHAREHOLDERS

2.1 Annual Meetings: The Annual Meeting of the Shareholders shall be at such place in Manitoba and on such date in each year as the Board of Directors may, by Resolution, determine.

2.2 Other Meetings: Other meetings of the Shareholders may be convened at any time and at any place by order of the President or a Vice-President or by the Board on their own motion or on requisition of Shareholders as provided for by the Act.

2.3 Quorum:

- (a) Prior to the issue of Class "A" Common Shares of the Fund the quorum for the transaction of business at meetings of the Shareholders shall consist of not less than one (2) Shareholders;

MARSH

Larry G. Watson Exhibit I
Managing Director

Marsh Canada Limited
Suite 1420
One Lombard Place
Winnipeg, Manitoba R3B 0X3
204 982 6502 Fax 204 947 2662
larry.g.watson@marsh.com
www.marsh.com

July 12, 2005

Russell Holmes
Senior Vice President
Deloitte & Touche Inc.
2300 - 260 Main Street
Winnipeg, Manitoba
R3C 3Z3

COPY

Dear Sir:

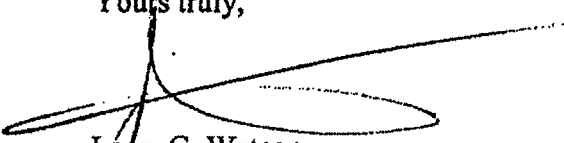
Re: Crocus Investment fund –
Directors' & Officers' Liability Policy #7043 0036

In response to your request attached is a copy of the policy and recent correspondence in respect of the extension to May 1st, 2006.

Please note that we are still awaiting formal binders from Chubb Insurance Company evidencing the extension. Upon receipt a copy of the formal binder will be sent to your attention.

Please call me should you require anything further or have any questions.

Yours truly,



Larry G. Watson
Managing Director

Encl.

MARSH

Tania M. Kowalchuk, B.A., C.A.B., C.R.M.
Client Executive

Marsh Canada Limited
Suite 1420
One Lombard Place
Winnipeg, Manitoba
R3B 0X3
204 982 6515 Fax 204 947 2662
Tania.M.Kowalchuk@marsh.com
www.marsh.com

June 28, 2005

Crocus Investment Fund
5th Floor – 211 Bannatyne Avenue
Winnipeg, Manitoba
R3B 3P2

Attention: Mr. Glen Gowryluk

RE: INSURER: Chubb Insurance Company of Canada
POLICY NO.: 7043 0036
COVERAGE DESCRIPTION: VCAP / D&O Liability Policy
TERM: July 1, 2005 to May 1, 2006

Dear Mr. Gowryluk,

We have received written confirmation from the underwriter at Chubb Insurance Company of Canada that the extension for the above captioned Venture Capital Asset Protection Policy has been bound for a 10-month term effective July 1, 2005 to expire May 1, 2006.

Included is our Invoice No. 12-518067-1 in the amount of \$162,500.00 processing the premium for this extension. **Payment is due upon receipt of the attached invoice.**

Per our previous correspondence and discussions, the Limit of Liability and Aggregate of \$5,000,000 is extended, with no additional limit or aggregate provided. The Corporate Retention remains at \$100,000, except with respect to Outside Directorships wherein the deductible is \$250,000.

The Shared Aggregate Limits Endorsement (Crocus Fund Policy No. 7043 0037) is still applicable to the policy.

MARSH

Page 2
June 28, 2005

All terms and conditions of the extension remain per the expiring coverage, with the exception of the Government of Manitoba Exclusion, which the underwriter has agreed to amend to more appropriately reflect the intention of excluding any claims by the Government of Manitoba as a major shareholder. This endorsement must be drafted by Chubb, and we will provide the same for your review once it is issued.

As you are aware, this Directors' & Officers' Liability is a CLAIMS MADE policy which requires that all claims against you or circumstances which could give rise to a claim during the policy period must be reported immediately to Insurers. Failure to comply with the claims reporting provisions of the policy could result in the Insurer denying coverage for the claim under your policy. Your employees should be made aware of the claims reporting requirements. Special attention must be given prior to expiry to ensure that all incidents which may give rise to a claim and all actual claims are reported to insurers prior to the expiry date of the policy.

The formal binder of insurance will follow shortly under separate cover.

We will do our best to keep you informed of topics of interest by mailings, e-mailings and client meetings. You can also keep informed of current insurance and risk management topics, as well as market conditions either through our Canadian website www.marsh.ca or our corporate site www.marsh.com.

Trusting this will be found in order. Please do not hesitate to contact our office should you have any questions or concerns regard.

Regards,



Tania M. Kowalchuk, B.A., CAIB, CRM
Client Executive

Encl.



ENDORSEMENT

Effective date of
this endorsement: May 1, 2005

Company: Chubb Insurance Company of Canada

Endorsement No. 18

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

EXTENSION OF POLICY PERIOD ENDORSEMENT

It is agreed that:

1. ITEM 8. of the Declarations, **Policy Period**, is deleted in its entirety and replaced with the following:

ITEM 8.	Policy Period:	from:	12:01 a.m. on May 1, 2004
		to:	12:01 a.m. on July 1, 2005
			Local time at the address shown in ITEM 1.
2. The Limits of Liability set forth in the Declarations and provided during the period from May 1, 2005 to July 1, 2005 shall be the remaining portion, if any, of the Aggregate Limit of Liability from May 1, 2004 to May 1, 2005.

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

Authorized Representative



ENDORSEMENT

Effective date of
this endorsement: May 1, 2004

Company: Chubb Insurance Company of Canada

Endorsement No. 17

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

SCHEDULED PORTFOLIO COMPANY ENDORSEMENT

It is agreed that Section 31., Definitions, is amended by adding the following Portfolio Company to the definition of Outside Entity:

Portfolio Company

Flo-Form Industries Ltd.
W.O.W. Hospitality Concepts Inc.
P.O.S. Systems Limited
Misty River Marine (1999) Inc.
Biovar Life Support Inc.
Diamedica Inc.
Kane Biotech Inc.
SR&J Customer Care Call Centers Inc.
Mid Canada Production Services Inc.
Enterprise Swine Systems Ltd.
Enterprise Swine Systems II Ltd.
Venture Seeds Ltd.
4658702 Manitoba Ltd.

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

Authorized Representative



ENDORSEMENT

Effective date of
this endorsement: May 1, 2004

Company: Chubb Insurance Company of Canada

Endorsement No. 16

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

DELETE AN ENDORSEMENT

It is agreed that Endorsement Number(s) 3 is deleted in its entirety.

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

A handwritten signature in black ink, appearing to read 'J. M. Mirza', is written over a horizontal line.

Authorized Representative





ENDORSEMENT

Effective date of
this endorsement: May 1, 2004

Company: Chubb Insurance Company of Canada

Endorsement No. 15

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

EXCLUDE CLAIMS OF SPECIFIC ENTITY ENDORSEMENT

It is agreed that:

1. The Company shall not be liable for Loss on account of any Claim made against any Insured brought or maintained by or on behalf of Manitoba Science and Technology Fund, Limited Partnership and Scitech Capital Management Inc. or any **Subsidiary** or **Affiliate** thereof, or any directors, officers, employees or trustees of any of the foregoing.
2. For the purposes of this endorsement, the term "**Affiliate**" means any organization whose operation is managed or controlled, either directly or indirectly, by Scitech Management Inc..

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

Authorized Representative





ENDORSEMENT

Effective date of
this endorsement: May 1, 2004

Company: Chubb Insurance Company of Canada

Endorsement No. 14

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

AMENDED DECLARATIONS - PARENT ORGANIZATION ENDORSEMENT

It is agreed that ITEM 1. of the Declarations, Parent Organization, is deleted in its entirety and replaced with the following:

ITEM 1. **Parent Organization** (Name and Address):

CROCUS INVESTMENT FUND
5th Floor, 211 Bannatyne Avenue
Winnipeg, Manitoba
R3B 3P2

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

Authorized Representative





ENDORSEMENT

Effective date of
this endorsement: May 1, 2004

Company: Chubb Insurance Company of Canada

Endorsement No. 13

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

AMENDED DECLARATIONS - ORGANIZATION ENDORSEMENT

It is agreed that ITEM 2. of the Declarations, Organization, is deleted in its entirety and replaced with the following:

ITEM 2. **Organization:**

Crocus Investment Fund
Crocus Capital Inc.

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

Authorized Representative





ENDORSEMENT

Effective date of
this endorsement: July 15, 2004

Company: Chubb Insurance Company of Canada

Endorsement No. 12

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

SCHEDULED PORTFOLIO COMPANY ENDORSEMENT

It is agreed that Section 31., Definitions, is amended by adding the following Portfolio Company to the definition of Outside Entity:

Portfolio Company

eZedia Inc.
Maple Leaf Distillers Inc.
OpTx Corporation

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

Authorized Representative





VENTURE CAPITAL ASSET PROTECTION POLICY

Item 1. CROCUS INVESTMENT FUND
5TH FLOOR, 211 BANNATYNE AVENUE
WINNIPEG, MB
R3B1B7

DECLARATIONS
Venture Capital Asset Protection Policy
Policy Number: 7043-0036
Chubb Insurance Company of Canada,
herein called the Company.

THIS IS A CLAIMS MADE POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY
COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD.
THIS POLICY DOES NOT PROVIDE FOR ANY DUTY TO DEFEND BY THE COMPANY TO DEFEND
THOSE INSURED UNDER THE POLICY. PLEASE READ CAREFULLY.

Item 2. Organization: Crocus Investment Fund

Item 3. Limits of Liability:

- (A) Each Loss \$ 5,000,000.00
(B) Each Policy Period \$ 5,000,000.00

Note: The Limits of Liability and any Deductible Amount are reduced or
exhausted by Defense Costs.

Item 4. Deductible Amount for each Loss:

- Insuring Clause 1
All Insured Persons who are natural persons (A) Nil
All Insured Persons who are not natural persons (B) \$100,000.00
Insuring Clause 2
Management Indemnification (C) \$100,000.00
Insuring Clause 3
Errors & Omissions (D) \$100,000.00

Item 5. Extended Reporting Period:

- (A) Additional Premium: 225 % of the Annual Premium
(B) Additional Period: 365 Days

Item 6. Pending or Prior Date: May 11, 2000

Item 7. Insured Limited Partnerships: Crocus Investment Fund

Item 8. Policy Period: From: May 1, 2004 12:01 A.M. on
To: May 1, 2005 12:01 A.M. on
Local time at the address shown in Item 1.





VENTURE CAPITAL ASSET PROTECTION POLICY

Item 9. Endorsement(s) Effective at Inception:

- 1 CE 17-02-2440 (1/01 ed.)
- 2 CE 17-02-2441 (1/01 ed.)
- 3 CE 17-02-4963 (10/02 ed.)
- 4 CE 17-02-5025 (11/02 ed.)
- 5 CE 17-02-5144 (4/03 ed.)
- 6 CE 17-02-5348 (5/03 ed.)
- 7 CE 17-02-5350 (5/03 ed.)
- 8 CE 17-02-5363 (1/03 ed.)
- 9 CE 17-02-5430 (10/03 ed.)
- 10 CE 17-02-5685 (11/03 ed.)
- 11 CE 17-02-5720Q (11/03 ed.)

In witness whereof, the Company issuing this Policy has caused this policy to be signed by its authorized officer, but this policy shall not be valid unless signed by a duly Authorized Representative of the Company.

Authorized Representative

08/25/2004

Date



**Insuring Clause 1****Management Liability Coverage**

In consideration of payment of the premium and subject to the Declarations, limitations, conditions, provisions and other terms of this Policy, the Company agrees as follows:

1. The Company shall pay on behalf of each **Insured Person** all **Loss** for which the **Insured Person** is not indemnified by the **Organization** and which the **Insured Person** becomes legally obligated to pay on account of any **Claim** first made against such **Insured Person**, individually or otherwise, during the **Policy Period** or, if exercised, during the **Extended Reporting Period**, for a **Wrongful Act** committed, attempted, or allegedly committed or attempted, by such **Insured Person** before or during the **Policy Period**.

Insuring Clause 2**Management Indemnification Coverage**

2. The company shall pay on behalf of the **Organization** all **Loss** for which the **Organization** grants indemnification to each **Insured Person**, as permitted or required by law, which the **Insured Person** has become legally obligated to pay on account of any **Claim** first made against such **Insured Person**, individually or otherwise, during the **Policy Period** or, if exercised, during the **Extended Reporting Period** for a **Wrongful Act** committed, attempted, or allegedly committed or attempted, by such **Insured Person** before or during the **Policy Period**.

Insuring Clause 3**Errors & Omissions Coverage**

3. The Company shall pay on behalf of any **Insured** all **Loss** arising out of **Private Equity Venture Investing** for which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against the **Insured** during the **Policy Period** or, if exercised, during the **Extended Reporting Period**, for a **Wrongful Act** committed, attempted, or allegedly committed or attempted, by any **Insured** before or during the **Policy Period**.

Extended Reporting Period

4. If this Policy terminates, other than for nonpayment of premium, the **Parent Organization**, on behalf of the **Insured**, shall have the right, upon payment of the additional premium set forth in Item 5(A) of the Declarations for this Policy, to an extension of the coverage granted by this Policy for the period set forth in item 5(B) of the Declarations for this Policy (**Extended Reporting Period**) following the effective date of termination or nonrenewal with respect to any **Claim** or **Claims** made during the **Extended Reporting Period**, but only for any **Wrongful Act** committed, attempted, or allegedly committed or attempted, prior to the effective date of termination or nonrenewal. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is received by the Company within thirty (30) days following the effective date of termination or nonrenewal. Any **Claim** made during the **Extended Reporting Period** shall be deemed to have been made during the immediately preceding **Policy Period**.

If the **Extended Reporting Period** is purchased, the entire premium noted in Item 5(A) of the Declarations shall be deemed fully earned at the inception of the **Extended Reporting Period**.

**Extended Reporting Period
(continued)**

The offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew.

Exclusions**Exclusions Applicable to Insuring
Clauses 1, 2 and 3**

5. The Company shall not be liable for Loss on account of any Claim made against any Insured:
- a. based upon, arising from, or in consequence of any circumstance if written notice of such circumstance has been given under any policy of which this Policy is a renewal or replacement and if such prior policy affords coverage (or would afford such coverage except for the exhaustion of its limits of liability) for such Loss in whole or in part, as a result of such notice;
 - b. based upon, arising from, or in consequence of any demand, suit or other proceeding pending, or order, decree or judgment entered against any Insured on or prior to the Pending or Prior Date set forth in Item 6 of the Declarations for this Policy, or the same or any substantially similar fact, circumstance or situation underlying or alleged therein;
 - c. brought or maintained by or on behalf of any Insured in any capacity except:
 - i. a Claim that is a derivative action brought or maintained on behalf of an Organization by one or more persons who are not an Insured Person and who bring and maintain the Claim without the solicitation, assistance or participation of any Insured Person, or
 - ii. a Claim brought or maintained by an Insured Person for the actual or alleged wrongful employment termination of the Insured Person, or
 - iii. a Claim brought or maintained by an Insured Person for contribution or indemnity, if the Claim directly results from another Claim covered under this Policy;
 - d. for an actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 and amendments thereto or similar provisions of any federal, province or local statutory law or common law upon fiduciaries of any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to employees of an Organization;
 - e. for bodily injury, mental anguish or emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof;
 - f. for defamation, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, assault or battery;



**Exclusions****Exclusions Applicable to Insuring
Clauses 1, 2 and 3
(continued)**

- g. based upon, arising from, or in consequence of:
- i. the actual, alleged or threatened discharge, release, escape or disposal of **Pollutants** into or on real or personal property, water or the atmosphere, or
 - ii. any direction or request that the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so;
- including but not limited to any **Claim** for financial loss to the **Organization**, its security holders or its creditors based upon, arising from, or in consequence of the matters described in i. or ii. of this Exclusion;
- h. based upon, arising from, or in consequence of any dishonest or deliberately criminal or deliberately fraudulent act or omission or any willful violation of any statute or regulation by such **Insured** if a judgment or other final adjudication adverse to such **Insured** establishes dishonest or deliberately criminal or deliberately fraudulent act or omission or willful violation;
- i. based upon, arising from, or in consequence of any **Claim** against a limited partner, acting in the capacity as a general partner of an **Insured Limited Partnership**, provided, however, that this Exclusion shall not apply to an **Insured Person** otherwise covered under this Policy;
- j. based upon, arising from, or in consequence of the liability of a party, other than the **Insured**, assumed by the **Insured** pursuant to a contract, except liability which would have attached in absence of such contract;
- k. based upon, arising from or in consequence of any intentional breach of contract;
- l. for an accounting of profits made from the purchase or sale by such **Insured** of securities of the **Organization** within the meaning of Section 16 (b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any federal, state or local statutory law or common law; or
- m. based upon, arising from or in consequence of any **Insured** having gained any profit, remuneration or advantage to which such **Insured** was not legally entitled, provided, however, this exclusion shall not apply unless it is established in fact that such **Claim** was brought about or contributed to by having gained any profit, remuneration or advantage to which such **Insured** was not legally entitled;



**Exclusions****Exclusions Applicable to Insuring Clauses 1, 2 and 3 (continued)**

n. brought by or on behalf of any **Portfolio Company** for principal, interest, or other monies either paid, accrued, or due as a result of any loan, lease, extension of credit or equity contribution.

Exclusions Applicable Only To Insuring Clauses 1 and 2

6. The Company shall not be liable under Insuring Clause 1 and 2 for **Loss** on account of any **Claim** made against any **Insured** based upon, arising from, or in consequence of **Private Equity Venture Investing**.

Severability of Exclusions

7. With respect to Exclusions in Sections 5 and 6:

a. No fact pertaining to or knowledge possessed by any **Insured Person** who is a natural person shall be imputed to any other **Insured Person** who is a natural person to determine if coverage is available.

b. Only facts pertaining to or knowledge possessed by any natural person who is a past, present or future **Chief Financial Officer, President, Chairman, Managing Partner, or General Partner** of any **Organization** shall be imputed to any **Organization** to determine if coverage is available for such **Organization**.

Limit of Liability and Deductible

8. For the purposes of this Policy, all **Loss** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of any **Insured** shall be deemed one **Loss**, and such **Loss** shall be deemed to have originated in the earliest **Policy Period** in which a **Claim** is made against any **Insured** alleging any such **Wrongful Act** or **Interrelated Wrongful Act**.

The Company's maximum liability for each **Loss**, whether covered under one or more Insuring Clauses, shall be the **Limit of Liability** for each **Loss** set forth in Item 3(A) of the **Declarations** for this Policy. The Company's maximum aggregate liability for all **Loss** on account of all **Claims** first made during the same **Policy Period**, whether covered under one or more Insuring Clauses, shall be the **Limit of Liability** for each **Policy Period** set forth in Item 3(B) of the **Declarations** for this Policy.

The Company's liability under Insuring Clause 1, Insuring Clause 2, or Insuring Clause 3 for **Loss** incurred by **Insured Persons** or **Organizations** shall apply only to that part of each **Loss** which is in excess of the applicable **Deductible Amount** set forth in Item 4 of the **Declarations** for this Policy.

If a single **Loss** is subject to more than one **Deductible Amount**, the maximum **Deductible Amount** applicable to such **Loss** shall be the largest of such **Deductible Amounts**.

The **Limit of Liability** available during the **Extended Reporting Period**, if exercised, shall be the remaining portion, if any, of the **Aggregate Limit of Liability** provided by the immediately preceding **Policy Period**.



**Non-Accumulation of Limits**

9. If any Loss arising from any Claim made against any Insured, in the Insured's capacity as a director or officer of a Portfolio Company, is insured under any other valid policy(ies) issued by a member company of the Chubb Group of Insurance Companies, then payment under such policy(ies) on account of a Claim also covered under this Policy shall reduce by the amount of the payment the Company's Limit of Liability under this Policy with respect to such Claim.

Presumptive Indemnification

10. If the Organization:
- fails or refuses, other than for reason of Financial Impairment, to indemnify the Insured Person for Loss; and
 - is authorized to indemnify the Insured Person for such Loss, to the fullest extent permitted or required by law;

then, notwithstanding any other conditions, provisions or terms of this Policy to the contrary, any payment by the Company of such Loss shall be subject to:

- the Deductible Amount set forth in Item 4(C) of the Declarations for this Policy, and
- all of the Exclusions set forth in Sections 5 and 6 of this Policy.

Defense and Settlement

11. Subject to this Section, it shall be the duty of the Insured and not the duty of the Company to defend Claims made against the Insured. The Insured agrees not to settle any Claim, incur any Defense Costs or otherwise assume any contractual obligation or admit any liability with respect to any Claim without the Company's written consent, which shall not be unreasonably withheld. The Company shall not be liable for any settlement, Defense Costs, assumed obligation or admission to which it has not consented.

The Company shall have the right and shall be given the opportunity to effectively associate with the Insured in the investigation, defense and settlement, including but not limited to the negotiation of a settlement, of any Claim that appears reasonably likely to be covered in whole or in part by this Policy.

The Insured agrees to provide the Company with all information, assistance and cooperation which the Company reasonably requests and agree that in the event of a Claim the Insureds will do nothing that may prejudice the Company's position or its potential or actual rights of recovery.

Defense Costs are part of and not in addition to the Limits of Liability set forth in Item 3 of the Declarations for this Policy; and the payment by the Company of Defense Costs reduces such Limits of Liability.



**Allocation**

12. If both Loss covered by this Policy and loss not covered by this Policy are incurred, either because a Claim against the Insured includes both covered and uncovered matters (including allegations against an Insured both in an Insured Capacity and uninsured capacity), or because a Claim is made against both an Insured and others, including the Organization, the Insured and the Company shall allocate such amount between covered Loss and uncovered loss based upon the relative legal exposures of such parties to such matters.

If the Insured and the Company agree on an allocation of Defense Costs, the Company shall advance on a current basis Defense Costs allocated to covered Loss. If the Insured and the Company cannot agree on an allocation:

- a. no presumption as to allocation shall exist in any arbitration, suit or other proceeding;
- b. the Company shall advance on a current basis Defense Costs which the Company believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined; and
- c. the Company, if requested by the Insured, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the Insured, one arbitrator selected by the Company, and a third independent arbitrator selected by the first two arbitrators.

Any negotiated, arbitrated or judicially determined allocation of Defense Costs on account of a Claim shall be applied retroactively to all Defense Costs on account of such Claim, notwithstanding any prior advancement to the contrary. Any allocation or advancement of Defense Costs on account of a Claim shall not apply to or create any presumption with respect to the allocation of other Loss on account of such Claim.

Reporting and Notice

13. The Insured shall, as a condition precedent to exercising its rights under this Policy, give to the Company written notice as soon as practicable of any Claim made against any Insured for a Wrongful Act.

If, during the Policy Period, an Insured becomes aware of circumstances which could give rise to a Claim and gives written notice of such circumstance(s) to the Company, then any Claims subsequently arising from such circumstances shall be considered to have been made during the Policy Period in which the circumstances were first reported to the Company.

The Insured shall, as a condition precedent to exercising its rights under this Policy, give to the Company such information and cooperation as it may reasonably require, including but not limited to a description of the Claim or circumstances, the nature of the alleged or potential damage, the names of actual or potential claimants, and the manner in which the Insured first became aware of the Claim or circumstances.





Notice

14. Notice to the Company under this Policy shall be given in writing addressed to:

Notice of Claim or potential Claim: All Other Notices:

Canadian Zone Claims Dept.
Chubb Insurance Company of
Canada
One Financial Place
1 Adelaide Street East
Toronto, Ontario M5C 2V9

Department of Financial Institutions
Chubb Insurance Company of
Canada
One Financial Place
1 Adelaide Street East
Toronto, Ontario M5C 2V9

Such notice shall be effective on the date of receipt by the Company at such address.

**Estates and Legal
Representatives**

15. Subject otherwise to the limitations, conditions, provisions and other terms of this Policy, coverage shall extend to **Claims for the Wrongful Acts** of an **Insured Person** made against the estates, heirs, legal representatives or assigns or such **Insured Person** who are deceased or against the legal representatives or assigns of an **Insured Person** who are incompetent, insolvent or bankrupt.

**Spousal Liability
Extension**

16. If a **Claim** against an **Insured Person** includes a claim against the lawful spouse of such **Insured Person** solely by reason of such spouse's status as a spouse or such spouse's ownership interest in property which the claimant seeks as recovery for an alleged **Wrongful Act** of such **Insured Person**, all loss which such spouse becomes legally obligated to pay on account of such **Claim** shall be treated for purposes of this policy as **Loss** which such **Insured Person** becomes legally obligated to pay on account of the **Claim** made against such **Insured Person**. All limitations, conditions, provisions and other terms of coverage (including the deductible) applicable to such **Insured Person's Loss** shall also be applicable to such spousal **Loss**. However, coverage shall not apply to the extent any **Claim** alleging any **Wrongful Act** by the **Insured Person's** spouse.

Other Insurance

17. If any **Loss** arising from any **Claim** made against any **Insured** is insured under any other valid policy(ies), prior or current, then this Policy shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the amount of payment from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this Policy.

Changes in Exposure

**Acquisition or Creation Of
Another Organization**

18. If the **Organization** after the inception date of this Policy:

- a. acquires securities or voting rights in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**, or
- b. acquires any organization by merger into or consolidation with an **Organization**,





**Acquisition or Creation Of
Another Organization (continued)**

such organization and its Insured Persons shall be Insureds under this Policy but only with respect to Wrongful Acts committed, attempted, or allegedly committed or attempted, after such acquisition, or creation unless the Company agrees, after presentation of a complete application and all appropriate information, to provide coverage by endorsement for Wrongful Acts committed or attempted, or allegedly committed or attempted, by such Insured Persons prior to such acquisition or creation.

If the fair value of all cash, securities, assumed indebtedness and other consideration paid by the Organization(s) for any such acquisition or creation exceeds 10% of the total assets of the Parent Organization as reflected in the Parent Organization's most recent audited consolidated financial statements, the Parent Organization shall give written notice of such acquisition or creation to the Company as soon as practicable together with such information as the Company may require and shall pay any reasonable additional premium required by the Company.

**Acquisition Of Organization
By Another Organization**

19. If:

- a. the Parent Organization merges into or consolidates with another organization or,
- b. another organization or person or group of organizations and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than 50% of the outstanding securities representing the present right to vote for election of directors or select General Partners of the Parent Organization, or
- c. the Parent Organization completely ceases to actively engage in its primary business ("cessation"), or
- d. upon the Financial Impairment of the Parent Organization,

coverage under this Policy shall continue until termination of this Policy but only with respect to Claims for Wrongful Acts committed, attempted, or allegedly committed or attempted, by an Insured prior to such merger, consolidation, acquisition or Financial Impairment. The Parent Organization shall give written notice of such merger, consolidation, acquisition or Financial Impairment to the Company as soon as practicable together with such information as the Company may require. The full annual Premium for the Policy Period shall be deemed fully earned immediately upon the occurrence of any event outlined in items a. through d. above.

Cessation of Subsidiaries

20. In the event an organization ceases to be a Subsidiary before or after the Inception Date of this Policy, coverage with respect to such Subsidiary and its Insured Persons shall continue until termination of this Policy but only with respect to Claims for Wrongful Acts committed, attempted or allegedly committed or attempted prior to the date such organization ceased to be a Subsidiary.



**Creation of Another Insured Limited Partnership**

21. If during the Policy Period an Organization creates another Insured Limited Partnership, which is engaged in substantially similar activities as any Insured Limited Partnership scheduled in Item 7 of the Declarations, then such organization and its Insured Persons shall be Insureds under this Policy, but only with respect to Wrongful Acts committed, attempted, or allegedly committed or attempted after such creation unless the Company agrees, after presentation of a complete application and all appropriate information, to provide additional coverage by endorsement. The Parent Organization shall give written notice of such creation to the Company as soon as practicable, but not to exceed ninety (90) days, together with such information as the Company may require and shall pay any reasonable additional premium required by the Company.

Representations and Severability

22. In granting coverage to any Insured, the Company has relied upon the declarations and statements in the written application for coverage and supplementary information provided therewith. All such declarations and statements are the basis of such coverage and shall be considered as incorporated in and constituting part of this Policy.

Such written application(s) for coverage shall be construed as a separate application for coverage by each Insured Person. With respect to the declarations and statements contained in such written application(s) for coverage, no statement in the application or knowledge possessed by any Insured Person who is a natural person shall be imputed to any other Insured Person who is a natural person for the purpose of determining if coverage is available.

With respect to the declarations and statements contained in such written application(s) for coverage, all declarations and statements contained in such application and knowledge possessed by any past, present or future Chief Financial Officer, President, Chairman or Managing or General Partner of any Insured that is an organization shall be imputed to such organization for the purpose of determining if coverage is available for such Insured.

Investigation and Settlement

23. The Company may make any investigation it deems necessary and may, with the written consent of the Parent Organization, on behalf of the Insured, make any settlement of a Claim it deems expedient.

Subrogation

24. In the event of any payment under this Policy, the Company shall be subrogated to the extent of such payment, to all the Insured Persons' and Organization's rights of recovery, and the Insured shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Company effectively to bring suit in the name of the Insured.

Action Against the Company

25. No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy. No person or organization shall have any rights under this Policy to join the Company as party to any action against an Insured Person and/or Organization to determine Insured Persons' or Organization's liability nor shall the Company be impleaded by the Insured Persons and/or the Organization or their legal representatives.





- Bankruptcy or Insolvency** 26. Bankruptcy or insolvency of an Insured or the estate of an Insured shall not relieve the Company of its obligations nor deprive the Company its rights under this Policy.
- Authorization Clause** 27. By acceptance of this Policy, the Parent Organization agrees to act behalf of all Insureds with respect to giving and receiving of notice of Claim or termination, the payment of premiums, and the receiving of return premiums that may become due under this Policy, the negotiation, agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for in this Policy, and the Insureds agree that the Parent Organization shall act on their behalf.
- Alteration or Assignment** 28. No change in, modification of, or assignment of interest under this Policy shall be effective except when made by a written endorsement to this Policy which is signed by an authorized employee of Chubb Insurance Company of Canada, the Company or an affiliate thereof.
- Termination of Policy** 29. This Policy shall terminate at the earliest of the following times;
- ten (10) days after the receipt by the Parent Organization of a written notice of termination by the Company, in the event of non-payment of premium,
 - upon receipt by the Company of written notice of termination from the Parent Organization,
 - upon expiration of the Policy Period as set forth in Item 8 of the Declarations for this Policy,
 - sixty (60) days after receipt by the Parent Organization of the Company's notice of non-renewal. Such notice shall be in conformance with applicable state laws and regulations,
 - at such other time as may be agreed upon by the Company and the Parent Organization.
- The Company shall refund the unearned premium computed at the customary short rate if the Policy is terminated by the Parent Organization. Under any other circumstances the refund shall be calculated pro-rata.
- Valuation and Foreign Currency** 30. All premiums, limits, retentions, Loss, and other amounts under this Policy are expressed and payable in the Canadian dollars. Except as otherwise provided in the Policy, if judgment is rendered, settlement is denominated or another element of Loss under this Policy is stated in a currency other than the Canadian dollars, payment under this policy shall be made in Canadian dollars at the rate of exchange published in The Globe & Mail on the date the final judgment is entered, the amount of settlement is agreed upon or other element of Loss is due, respectively.



**Definitions****31. When used in this Policy:****Claims means:**

- a. a written Demand for monetary damages, or
- b. a civil proceeding commenced by the filing or service, whichever is earlier, of a complaint or similar pleading, or
- c. a criminal proceeding commenced by the return of an indictment, or
- d. a formal administrative proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;

against any Insured for a Wrongful Act, including any appeal therefrom.

Defense Costs means that part of Loss consisting of reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers, general partners or employees of the Organization) incurred in defending or investigating Claims and the premium for appeal, attachment or similar bonds.

Demand means a written request of an Insured by a third party, which seeks specified monetary damages based on the existence of facts that would create a cause of action in a court of law.

Financial Impairment means the status of the Organization resulting from:

- a. the appointment by any province or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the Organization, or
- b. the Organization becoming a debtor in possession.

General Partner means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

Insured means the Organization and any Insured Persons.

Insured Capacity means the position or capacity described in the definition of "Insured Person" held by any Insured Person but shall not include any position or capacity in any organization other than the Organization, even if the Organization directed or requested the Insured Person to serve in such other position or capacity.

Insured Limited Partnership means those Limited Partnerships as designated in Item 7 of the Declarations.



Definitions
(continued)

Insured Person means:

- a. with respect to an **Organization** that is a corporation, all natural persons who were, now are, or shall be duly elected directors or duly elected or appointed officers of the **Organization**;
- b. with respect to an **Organization** that is a partnership:
 - 1. all duly elected or selected **General Partners** of the **Organization**,
 - 2. all natural persons who were, now are, or shall be duly elected or appointed to any other management position in the **Organization**, and
 - 3. all natural persons or organizations who were, now are, or shall be employees or duly elected, appointed or selected directors, officers or **General Partners** of any of the **Organization**, but only with respect to such **General Partner's** activities as a **General Partner** of such **Organization**.

Interrelated Wrongful Acts means all causally connected **Wrongful Acts**.

Loss means the total amount which any **Insured Person** becomes legally Obligated to pay on account of each **Claim** and for all **Claims** in each **Policy**

Period and the **Extended Reporting Period**, if exercised, made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, settlements, costs and **Defense Costs**. **Loss** does not include:

- a. any amount not indemnified by the **Organization** for which the **Insured Person** is absolved from payment by reason of any covenant, agreement or court order;
- b. any amount incurred by the **Organization** (including its board of directors, any committee of the board of directors, or its general partners) in connection with the investigation or evaluation of any **Claim** or potential **Claim** by or on behalf of the **Organization**;
- c. fines, penalties or taxes imposed by law, including but not limited to punitive or exemplary damages, or the multiple portion of any multiplied damage award; or
- d. matters uninsurable under the law pursuant to which this **Policy** is construed.

Organization means, collectively:

- a. those organizations designated in Item 2 of the **Declarations** for this **Policy**, and
- b. **Insured Limited Partnerships**, and



**Definitions**
(continued)

- c. any incorporated subsidiary of a **General Partner** this is not a natural person, but only while performing services for an **Organization** that is a partnership.

Parent Organization means the entity named in Item 1 of the Declarations, as legally constituted at the inception of this Policy.

Policy Period means the period of time specified in Item 8 of the Declarations, subject to prior termination in accordance with Section 29. If the period is less than or greater than one year, then the Limits of Liability specified in Item 3 of the Declarations shall be the Company's maximum liability under this Policy for the entire period.

Pollutants means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the Canadian Environmental Protection Act, the United States Environmental Protection Agency or a federal, provincial, state, county, municipality or locally counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.

Portfolio Company means any organization in which one or more **Insured Limited Partnerships**, in any combination, own or control, or propose to own or control, outstanding securities or voting rights representing the present right to vote for election of directors or to select managing partners.

Private Equity Venture Investing means the formation, capitalization, operation or management of an **Insured Limited Partnership** by an **Organization**, acting in its capacity as **General Partner** of the **Insured Limited Partnership**.

Subsidiary means any organization, in which more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors or to select **General partners** is owned or controlled, directly or indirectly, in any combination, by one or more **Organizations**, other than an **Insured Limited Partnership**.

Wrongful Act means:

- a. for purposes of Insuring Clauses 1 and 2, any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted, by an **Insured Person**, individually or otherwise, in an **Insured Capacity**.
- b. for purposes of Insuring Clause 3, any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted, by an **Organization** or by an **Insured Person** in an **Insured Capacity**.

For the purposes of the definitions, the singular includes the plural and the plural includes the singular, unless otherwise indicated.





ENDORSEMENT

Effective date of
this endorsement: May 1, 2004

Company: Chubb Insurance Company of Canada

Endorsement No. 1

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

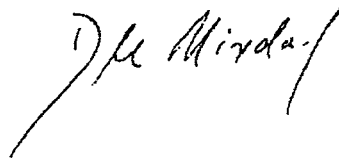
COVERAGE TERRITORY ENDORSEMENT

It is agreed that this Policy is amended by adding the following Section:

Territory

32. This Policy applies to **Claims** made against **Insureds** anywhere in the world.

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.



Authorized Representative





ENDORSEMENT

Effective date of
this endorsement: May 1, 2004

Company: Chubb Insurance Company of Canada

Endorsement No. 2

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

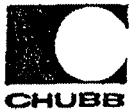
DELETION OF SECTION 6, EXCLUSIONS ENDORSEMENT

It is agreed that Section 6., Exclusions Applicable Only To Insuring Clauses 1 and 2, is deleted in its entirety.

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

Authorized Representative





ENDORSEMENT

Effective date of
this endorsement: May 1, 2004

Company: Chubb Insurance Company of Canada

Endorsement No. 3

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

SCHEDULED PORTFOLIO COMPANY ENDORSEMENT

It is agreed that Section 31., Definitions, is amended by adding the following **Portfolio Company** to the definition of **Outside Entity**:

Portfolio Company

Flo-Form Industries Ltd.
W.O.W. Hospitality Concepts Inc.
P.O.S. Systems Limited
Misty River Marine (1999) Inc.
Biovar Life Support Inc.
Diamedica Inc.
Kane Biotech Inc.
SR&J Customer Call Centres Inc.
Mid Canada Production Services Inc.
Enterprise Swine Systems Ltd.
Enterprise Swine Systems II Ltd.
Venture Seeds Ltd.
4658702 Manitoba Ltd.

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

Authorized Representative





ENDORSEMENT

Effective date of
this endorsement: May 1, 2004

Company: Chubb Insurance Company of Canada

Endorsement No. 4

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

AMENDED DEFINITION OF LOSS ENDORSEMENT

It is agreed that Section 31., Definitions, is amended by deleting the definition of **Loss** in its entirety and replacing it with the following:

Loss means the amount that any **Insured** becomes legally obligated to pay on account of each **Claim** and for all **Claims** in each **Policy Period** and the **Extended Reporting Period**, if exercised, made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, settlements, costs and **Defense Costs**. **Loss** does not include:

- a. any amount not indemnified by the **Organization** for which the **Insured Person** is absolved from payment by reason of any covenant; agreement or court order;
- b. any amount incurred by the **Organization** (including its board of directors, any committee of the board of directors, or its general partners) in connection with the investigation or evaluation of any **Claim** or potential **Claim** by or on behalf of the **Organization**;
- c. fines, penalties or taxes imposed by law, including but not limited to punitive or exemplary damages, or the multiple portion of any multiplied damage award; or
- d. matters uninsurable under the law pursuant to which this Policy is construed

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

Authorized Representative





ENDORSEMENT

Effective date of
this endorsement: May 1, 2004

Company: Chubb Insurance Company of Canada

Endorsement No. 5

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

AMEND DECLARATIONS – OUTSIDE DIRECTORSHIP LIABILITY DEDUCTIBLE ENDORSEMENT

It is agreed that ITEM 4. of the Declarations, Deductible Amount for each Loss, is deleted in its entirety and replaced with the following:

ITEM 4. Deductible Amount for each Loss:

Insuring Clause 1	(A)	\$Nil	All Insured Persons who are natural persons
	(B)	\$100,000	All Insured Persons who are not natural persons
	(C)	\$250,000	All Insured Persons in an Outside Directorship
Insuring Clause 2	(D)	\$100,000	Management Indemnification
	(E)	\$250,000	Management Indemnification for any Outside Directorship
Insuring Clause 3	(F)	\$100,000	Errors & Omissions

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

Authorized Representative





ENDORSEMENT

Effective date of
this endorsement: May 1, 2004

Company: Chubb Insurance Company of Canada

Endorsement No. 6

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

AMENDED DEFINITION OF LOSS FOR INSURING CLAUSES I & II

It is agreed that with respect to Insuring Clause 1 and 2 only, Section 31, *Definitions, Loss*, Item c. is deleted in its entirety and replaced with the following:

- c. fines or penalties imposed by law, including but not limited to punitive or exemplary damages, or the multiple portion of any multiplied damage award; or.

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

Authorized Representative





ENDORSEMENT

Effective date of
this endorsement: May 1, 2004

Company: Chubb Insurance Company of Canada

Endorsement No. 7

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

CORPORATE ENDORSEMENT

It is agreed that:

1. the definition of **Private Equity Venture Investing** of Section 31, Definitions, is deleted in its entirety and replaced with the following:

Private Equity Venture Investing means the formation, capitalization, operation or management of an **Insured Limited Partnership** by an **Organization**.

2. the definition of **Insured Person** of Section 31, Definitions, is deleted in its entirety and replaced with the following:

Insured Person means with respect to an **Organization** that is a corporation, all natural persons who were, now are, or shall be duly elected directors or duly elected or appointed officers of the **Organization**.

3. the definition of **Subsidiary** of Section 31, Definitions, is deleted in its entirety and replaced with the following:

Subsidiary means any organization, in which more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors is owned or controlled, directly or indirectly, in any combination, by one or more **Organization**. **Subsidiary** shall not include any **Portfolio Company**.

4. Section 21, Creation of Another Insured Limited Partnership, is deleted in its entirety.

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

Authorized Representative





ENDORSEMENT

Effective date of
this endorsement: May 1, 2004

Company: Chubb Insurance Company of Canada

Endorsement No. 8

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

AMENDMENT TO REPRESENTATIONS AND SEVERABILITY

It is agreed that Section 22. *Representations and Severability* is deleted in its entirety and replaced with the following:

22. In granting coverage under this policy to any Insured, the Company has relied upon the declarations and statements in the written application, including any supplementary information provided therewith, submitted to the Company and more particularly identified as the Chubb Insurance Company of Canada Mutual Fund Professional Liability Application, executed and dated April 17, 2002.

All such declarations and statements identified above, are the basis of coverage under this policy and shall be considered as incorporated in, and constituting part of this Policy.

Such written application(s) for coverage identified above, shall be construed as a separate application for coverage by each **Insured Person**. With respect to the declarations and statements contained in such written application(s) for coverage identified above, no statement in the application or knowledge possessed by any **Insured Person** who is a natural person shall be imputed to any other **Insured Person** who is a natural person, for the purpose of determining if coverage is available.

With respect to the declarations and statements contained in such written application(s) for coverage identified above, all declarations and statements contained in such application and knowledge possessed by any past, present or future Chief Financial Officer, President, Chairman or Managing or **General Partner** of any **Insured** that is an **Organization**, shall be imputed to such **Organization** for the purpose of determining if coverage is available for such **Insured**.

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

Authorized Representative





ENDORSEMENT

Effective date of
this endorsement: May 1, 2004

Company: Chubb Insurance Company of Canada

Endorsement No. 9

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

SHARED AGGREGATE LIMITS ENDORSEMENT

It is expressly acknowledged by all **Insureds** that in addition to this Policy, the Company or an affiliate of the Company, has issued to the **Insured** all Policies and Bonds listed below (all of the foregoing, collectively referred to as the "Policies") and that the premium for the Policies has been negotiated with the understanding that all Policies combine and share a single aggregate limit of liability irrespective of the total **Loss** incurred by the **Insureds** or the number of **Claims**. Therefore, in consideration of the premium charged:

1. The Company's **Collective Maximum Aggregate Limit of Liability** shall, under no circumstances, and notwithstanding any other provision of any of the Policies, exceed \$5,000,000(Cdn), for all **Loss** incurred on account of all **Claim(s)** made, or otherwise, under or in respect of any or all of the Policies:

Org/Parent Org

Crocus Investment Fund
Scitech Management Inc.

Policy Number:

7043 00 36
7043 00 37

2. Any payment of **Loss** by the Company under any of the Policies shall reduce the **Collective Maximum Aggregate Limit of Liability** and upon payment of the **Collective Maximum Aggregate Limit of Liability**, any and all obligations of the Company under the Policies shall be completely fulfilled and extinguished and the Company shall have no further obligations of any kind or nature under any of the Policies.
3. Nothing in this endorsement shall be construed as increasing the Aggregate Limit of Liability beyond the amount stated in each of the Policies.
4. Nothing in this endorsement shall be construed as relieving the **Insureds** of any obligation to pay any **Deductible Amount** or **Self-Insured Retention**, as the case may be, under any of the Policies.
5. For the purposes of this endorsement:
Collective Maximum Aggregate Limit of Liability means the maximum amount under the Policies which the Company shall be liable for under any and all circumstances, regardless of which **Policy Period** any **Loss** is incurred or in which **Policy Period** any **Claim** is made during, the number of **Claims** or regardless of whether those **Claims** are based on **Interrelated Wrongful Acts**, the number of policies, or the number of claimants.



Name and Address of Insured:

Crocus Investment Fund
5th Floor, 211 Bannatyne Avenue
Winnipeg, Manitoba
R3B 3P2

Signature of Insured's Representative

Position/Title

Date

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

Authorized Representative





ENDORSEMENT

Effective date of
this endorsement: May 1, 2004

Company: Chubb Insurance Company of Canada

Endorsement No. 10

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

GOVERNMENT OF MANITOBA EXCLUSION

It is agreed that Section 5 Exclusions Applicable to Insuring Clauses 1, 2, and 3 is amended by adding the following:

- (o) based upon, arising from or in consequence of the actual or purported imposition of liability upon any **Insured** pursuant to any act of the Legislative Assembly of the Province of Manitoba, any section of any act enacted by the Legislative Assembly of the Province of Manitoba, or any regulations promulgated under any act of the Legislative Assembly of the Province of Manitoba, not already in force as of the effective date of this endorsement. Provided, however, that this exclusion shall not apply if the **Insured** would otherwise be liable in the absence of any such act, section or regulation; or
- (p) based upon, arising from or in consequence of a **Claim** brought by or maintained by or on behalf of Her Majesty the Queen in right of the Province of Manitoba or her servants, agents and employees. Provided, however, that this exclusion shall not apply to **Loss** on account of any **Claim** against any **Insured Person**,
 - (i) otherwise covered under either insuring clause 1 or 2 of the Policy; and
 - (ii) which represents any amount owed but cannot for any reason be paid by the **Organization** and in respect of which, any **Insured Person** may be legally obligated to pay pursuant to the operation of any statute, regulation or order.

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

Authorized Representative





ENDORSEMENT

Effective date of
this endorsement: May 1, 2004

Company: Chubb Insurance Company of Canada

Endorsement No. 11

To be attached to and
form a part of Policy No. 7043-0036

Issued to: CROCUS INVESTMENT FUND

OUTSIDE DIRECTORSHIP LIABILITY ENDORSEMENT – SCHEDULED PORTFOLIO COMPANIES

It is agreed that with respect to this endorsement only:

1. Section 31., Definitions, is amended as follows:
 - a. The definition of **Insured Capacity** is deleted in its entirety and replaced with following:
Insured Capacity means the position or capacity of an **Insured Person** that causes him or her to meet the definition of **Insured Person** set forth in this Policy.
 - b. The definition of **Insured Person** is amended by adding the following:
 4. Employees and all natural persons identified in a. and b. above who were, are, or shall be duly elected or appointed directors of the **Organization** while acting in any **Outside Directorship**.
 - c. The following definitions are added to Section 31., Definitions:
Outside Directorship means the position of director, officer, trustee, governor, board observer, or equivalent executive position with an **Outside Entity** if service by an **Insured Person** in such position was at the specific request of the **Organization** or was part of the duties regularly assigned to the **Insured Person** by the **Organization**.
Outside Entity means:
 - a. a **Portfolio Company** scheduled by endorsement to this Policy.
2. Section 5., Exclusions Applicable to Insuring Clauses 1, 2, and 3, is amended by adding the following:
The Company shall not be liable for **Loss** on account of any **Claim** made against any **Insured Person**:
 - a. for a **Wrongful Act** committed, attempted, or allegedly committed or attempted, by such **Insured Person** while serving in the **Outside Directorship** if such **Wrongful Act** is committed, attempted, or allegedly committed or attempted, after the date:
 - i. such **Insured Person** ceases to be a **General Partner** of the **Organization**; or





- ii. service by such **Insured Person** in the **Outside Directorship** ceases to be at the specific request of the **Organization** or a part of the duties regularly assigned to the **Insured Person** by the **Organization**;
- b. for a **Wrongful Act** committed, attempted, or allegedly committed or attempted, by such **Insured Person** while serving in the **Outside Directorship** where such **Claim** is:
 - i. by the **Outside Entity**; or
 - ii. by any affiliate of the **Outside Entity**; or
 - iii. on behalf of the **Outside Entity** and a director, officer, trustee, governor, board observer or equivalent executive of the **Outside Entity** instigates such **Claim**; or
 - iv. by any director, officer, trustee, governor, board observer or equivalent executive of the **Outside Entity**;

provided, however, this exclusion shall not apply to any **Claim** that is brought and maintained against an **Insured Person** by or on behalf of a **Portfolio Company**.

- c. based upon, arising from, or in consequence of:
 - i. any litigation, arbitration, **Claim**, demand, cause of action, equitable, legal or quasi-legal proceeding, decree or judgment (collectively referred to as litigation) against the **Outside Entity** occurring prior to, or pending as of the date the **Insured Person** first serves in the **Outside Directorship**, of which the **Outside Entity** or the director, officer, trustee, governor or board observer of the **Outside Entity** have received notice or otherwise had knowledge as of such date; or
 - ii. any subsequent litigation arising from, or based on the same or substantially the same matters alleged in the prior or pending litigation in i. above; or
 - iii. any **Wrongful Act** of the **Outside Entity**, or the directors, officers, trustees, or governors of the **Outside Entity**, which gave rise to such prior or pending litigation including in i. above; or
- d. based upon, arising from or in consequence of any **Wrongful Act** which occurred prior to the date coverage was granted for the **Insured Person**, or any **Wrongful Act** occurring subsequent to the date coverage was granted for the **Insured Person** which, together with a **Wrongful Act** occurring prior to such date, constitute **Interrelated Wrongful Acts**.

3. Coverage provided to any **Insured Person** in an **Outside Directorship** shall:

- a. not extend to the **Outside Entity** or to any director, officer, trustee, governor, board observer or any other equivalent executive or employee of the **Outside Entity**, other than the **Insured Person** serving in the **Outside Directorship**; and
- b. be specifically excess of any indemnity (other than the indemnity provided by the **Organization**) and insurance available to such **Insured Person** by reason of serving in the **Outside Directorship**, including any indemnity or insurance available from or provided by the **Outside Entity**.

4. Section 8., Limit of Liability and Deductible, is amended by adding the following:

The Company's maximum liability to pay **Loss** under this Policy, including this endorsement, shall not exceed the amount set forth in ITEM 3. of the Declarations. This endorsement does not





increase the Company's maximum liability beyond the Limits of Liability set forth in ITEM 3. of the Declarations.

Payment by the Company or any of its subsidiaries or affiliated companies under another policy on account of a Claim also covered pursuant to this endorsement shall reduce by the amount of the payment the Company's Limits of Liability under this Policy with respect to such Claim.

5. The first paragraph of Section 12., Allocation, is deleted in its entirety and replaced with the following:

If both Loss covered by this Policy and Loss not covered by this Policy are incurred, either because a Claim against an Insured Person includes both covered and uncovered matters (including allegations against an Insured Person both in an Outside Directorship and uninsured capacity), or because a Claim is made against both an Insured Person and others, including the Organization and Outside Entity, the Insured Person and the Company shall allocate such amount between covered Loss and uncovered loss based upon the relative legal exposures of such parties to such matters.

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

A handwritten signature in cursive script, appearing to read 'J. M. Mirzaei'.

Authorized Representative

