

**THE QUEEN'S BENCH
Winnipeg Centre**

BETWEEN:

THE MANITOBA SECURITIES COMMISSION,

Applicant,

– and –

CROCUS INVESTMENT FUND,

Respondent.

**RECEIVER'S REPORT NO. 11
DATED: May 6, 2009**

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

Telephone: (204) 942-0051

**THE QUEEN'S BENCH
Winnipeg Centre**

BETWEEN:

THE MANITOBA SECURITIES COMMISSION,

Applicant,

– and –

CROCUS INVESTMENT FUND,

Respondent.

RECEIVER'S REPORT NO. 11

Background

1. In early 2006, the Receiver made a motion to this Honourable Court seeking the advice and direction of the Court as to whether it might consider making a distribution to the shareholders of Crocus in the face of a proposed class action filed on behalf of Bernard W. Bellan et al in Queen's Bench Suit No. CI 05-01-42765. Upon the hearing of the motion, the notion of a distribution at that time was opposed by a number of parties including the former officers and directors of Crocus, Wellington West Capital Corporation, and Manitoba Federation of Labour. At that time, the Court concluded that an interim distribution was premature. Attached hereto and marked as Schedule "A" is a copy of the Judgment of the Court in regards to the said motion.

2. Following the Court's decision, the Receiver therefore commenced its own investigation into matters affecting Crocus and also participated in extensive negotiations aimed at finding a resolution to the two class action proceedings which had been brought. In June, 2008, an agreement to settle the class action proceedings involving the class action Plaintiffs and the Government of Manitoba and Nesbitt Burns

Inc. ("Nesbitt") were approved. The parties to the class action proceedings involving the former officers and directors, Wellington West Capital Inc., and PricewaterhouseCoopers LLP continued to try to reach a compromise. Although tentative settlements were suggested to the Court in June, 2008 respecting the former officers and directors and PricewaterhouseCoopers LLP, those settlements were not approved over the objection of Wellington West Capital Inc. In January, 2009, the Receiver made application to request the Receivership Court to grant a bar order which the Receiver sought to assist in, amongst other things, arriving at a settlement with former officers and directors. The request of the Receiver for a bar order that included claims against officers and directors was not granted by the Court. Following the appearance of counsel in the Receivership Court in January 2009, the parties embarked upon further negotiations which resulted in a settlement with all remaining parties to the class actions, which settlement was approved by the Honourable Mr. Justice Hanssen on April 22, 2009. Although those class actions have been approved, the settlements as of this date have yet to be confirmed pending the expiration of opt-out provisions and the payment of the settlement funds.

3. Attached hereto and marked as Schedules "B", "C", "D", "E", "F" and "G" are true copies of the Orders approving the various class action settlements. The Settlements with the Government of Manitoba, the Manitoba Securities Commission, and Nesbitt are now completed, whereas the remaining settlements at this time are still in the "Opt out" stages.

4. Given the progress which has been made in the resolution of the class actions, the Receiver wishes to proceed to court to attempt to arrange an interim distribution to the Class A Shareholders of Crocus Investment Fund. Before making an interim distribution, the Receiver wishes to ensure that there are no other claims that might create an impediment to an interim distribution to shareholders and wishes to secure a claims procedure respecting creditors of Crocus, if any, prior to permitting such distribution to take place. The claims procedure is outlined in the proposed form of order which is attached as a schedule to the Notice of Motion filed herein.

5. Concurrent with the publication of the Notice to Creditors, the Receiver intends to advise the solicitors for PricewaterhouseCoopers LLP, Wellington West Capital Inc., and the directors and officers named in the class action that they need not file any claim at this time.

6. The Receiver also wishes to receive direction of this Honourable Court as to the method of service which it needs to make, if any, of its intended motion to obtain authority to make an interim distribution to Class A Shareholders.

7. Attached hereto and marked as Schedule H and I are copies of the restated Articles of Incorporation of Crocus Investment Fund dated October 25, 2001, as amended on January 3, 2003. There had been another class of shares authorized between the restated articles and the amending articles which contemplated the issuance of Series 3 Class I Special Shares (the "solidarity shares") but there are currently no issued shares of the Series 3 Class I shares. Attached hereto as Schedule "J" is a copy of the Crocus Investment Fund Act as it stands today.

8. The current issued capitalization of Crocus Investment Fund is:

- (a) 200,000 shares of Class G Shares held by Government of Manitoba;
- (b) 20 shares of Class L Shares held by Manitoba Federation of Labour;
- (c) 20,000 shares of Series 2 Class I Shares held by Manitoba Government Employees Union;
- (d) 40,651.6297 shares of Series 2 Class I shares held by Workers Compensation Board of Manitoba;
- (e) 8,474.58 shares of Series 2 Class I shares held by Manitoba Blue Cross;

- (f) 14,220,000 of Class A shares (common shares) held by 33,662 shareholders.

9. During its administration, the Receiver has sent confirmatory notices to Class A Shareholders of the shareholdings recorded in the company records. The Receiver believes that the records of the company are reliable in regards to the names of Class A Shareholders and the number of shares held by them.

10. The Receiver proposes to make an interim rateable distribution to Class A and Class I Shareholders, as is contemplated by both the Articles of Incorporation and the Crocus Investment Fund Act. The Receiver also proposes to distribute the sum of \$200 to Manitoba Federation of Labour in full payment of their Class L shares. The Receiver does not believe that any monies are owing to the Government of Manitoba on account of their Class G shares.

11. There are 33,662 Class A Shareholders in Crocus Investment Fund. Service of a distribution motion on each shareholder is therefore impractical.

12. The Receiver recommends that the parties who are entitled to service of a motion regarding an interim distribution are as follows:

- (a) Manitoba Securities Commission;
- (b) Manitoba Federation of Labour;
- (c) The Government of Manitoba;
- (d) Workers Compensation Board;
- (e) United Health Services Corporation, carrying on business as Manitoba Blue Cross;

- (f) Manitoba Government Employees Union;
- (g) Any creditor who has filed a claim in advance of the Claims Bar Date and the claim is unresolved at the date of the interim distribution motion.

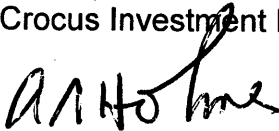
13. The Receiver recommends that Class A Shareholders be given notice of its intention to make a rateable interim distribution as set out above by letter sent by ordinary mail. It is proposed that the shareholders be advised that any objections to such distribution must be filed with the Receiver at least 10 days before the hearing date and that failure to provide such notice may disentitle any such person from objecting at the hearing.

14. This report is made in support of a notice of motion filed concurrently herewith requesting the following orders:

- (a) An order setting forth a creditor claims bar process;
- (b) An order providing directions on the matter of service of the Receiver's intended distribution motion.

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

Tab A

Date: 20060407
Docket: CI 05-01-43350
(Winnipeg Centre)
Indexed as: Manitoba Securities Commission
v. Crocus Investment Fund
Cited as: 2006 MBQB 87

COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:

THE MANITOBA SECURITIES COMMISSION,
Applicant,

- and -

CROCUS INVESTMENT FUND,
Respondent.

) David G. Hill
) for Deloitte & Touche Inc.
) Receiver and Manager of
) Crocus Investment Fund
)
) Kenneth A. Filkow, Q.C.
) and Diane M. Stasiuk
) for Lea Baturin, Albert Beal,
) Diane Beresford, Charles E.
) Curtis, Sylvia Farley, Peter
) Olfert, Robert Ziegler, Wally
) Fox-Decent, Hugh Eliason,
) Ron Waugh, Robert Hilliard
) and John Clarkson
)
) Kenneth A. Filkow, Q.C. also
) appeared as agent for:
) G. Patrick S. Riley,
) Counsel for Sherman Kreiner
) and Jane Hawkins
) and as agent for:
) Robert A. Tapper, Q.C.,
) Counsel for James Umlah
)
) Martin G. Tadman
) for Robert Hilliard
)
) Douglas G. Ward
) for the Manitoba Federation
) of Labour
)

) John Fabello/Andrew Gray
) for BMO Nesbitt Burns Inc.
)
) Jonathan B. Kroft
) and Pearl J. Reimer
) for Wellington West
) Capital Inc.
)
) David Klein, Jay C. Prober
) and J.R. Norman Boudreau
) for Bernard Bellan et al in
) Q.B. Suit No. CI 05-01-42765
)
) Kieran E. Siddal
) for David Friesen
)
) Jack T. McJannet, Q.C.
) for Crocus Investment
) Association
)
) Judgment delivered:
) April 7, 2006

2006 MBQB 87 (CarLI)

McCawley, J. (ORALLY)

[1] Deloitte & Touche Inc., as Receiver and Manager of Crocus Investment Fund, brings a motion seeking the advice and direction of the court with respect to Receiver's Report #6. Specifically, the court is being asked whether the Receiver may consider making a distribution to the shareholders of Crocus in the face of a proposed class action filed on behalf of Bernard W. Bellan et al in Queen's Bench Suit No. CI 05-01-42765 (the "Bellan action").

[2] Since the Receiver's plan for the gradual sale of the assets of Crocus over a reasonable period of time was approved in October 2005, events have

continued to unfold apace. This is evident from the first quarterly report of the Receiver for the period ending December 31, 2005 outlining its activities since its appointment in June of that year.

[3] Additionally, evidence filed in the within motion discloses a continuing interest in Crocus by GrowthWorks Canadian Fund Ltd. (a Vancouver based venture capital fund which earlier had made a proposal to purchase the assets of Crocus) and efforts on the part of certain Crocus shareholders to hold a shareholders' meeting to consider any GrowthWorks proposal. The court was advised that discussions involving the Receiver, GrowthWorks and some of the Crocus investee companies had taken place as recently as the previous evening.

[4] A further development is that, as a result of a court order, new counsel have been retained in the Bellan action. It is their intention to seek an amendment to the statement of claim expanding the proposed class to include all Crocus shareholders, not only those who purchased their shares on or after October 1, 2000. No defences have been filed and the action is yet to be certified.

[5] To set the context against which these events have occurred, it is useful to refer to the Receiver's first quarterly report which, among other things, notes the following:

- as at June 28, 2005 there were 46 individual investee companies within the Crocus portfolio with a gross carrying value of \$64.1M;

- Crocus investments are comprised of both debt and equity with the majority being minority equity positions;
- as at December 31, 2005 there remain 39 investee companies with a gross carrying value of approximately \$61.5M;
- since its appointment, in addition to receiving approximately \$2.4M for investment with a book value of \$2.5M, the Receiver has eliminated exposure on approximately \$1.7M in guarantees;
- the net assets as of December 31, 2005 have a book value of approximately \$85M consisting of the aforementioned \$64.1M plus approximately \$20M in unencumbered short-term investments.

[6] Of particular interest with respect to this motion are the known contingent liabilities as at December 31, 2005 listed in the report. They include:

- the proposed class action filed July 21, 2005 claiming \$150M in damages for oppression and negligence and \$50M for punitive and exemplary damages;
- indemnifications claimed by the former officers and directors of Crocus with respect to proceedings before the Manitoba Securities Commission and an investigation of the Office of the Auditor General of Manitoba, and the defendants in the proposed class action which also include the lead brokers of Crocus;

- guarantees by Crocus of advances to investee companies from other lenders which exposure has been reduced from \$4.0M to \$1.6M as at December 31, 2005;
- severance claims and potential pension plan contributions with respect to two former employees of Crocus who were not paid prior to the receivership;
- a claim by a former employee of Crocus for \$30M filed in the U.S. which the Receiver believes to be frivolous and which will be vigorously defended;
- a potential claim by the Government of Canada - Western Economic Diversification with respect to a \$2M contribution made to Crocus between 1994 and 1996, a portion of which was repayable on an annual basis by Crocus depending on profitability levels;
- an estimated liability for trailer fees of approximately \$1.5M which is based on a share price of \$6.00 but which amount will ultimately be based on the amount of repayment to shareholders;
- two indemnities provided by Crocus of which the trustee became aware after its appointment.

[7] It is important to note the following statement by the Receiver in relation to the list of contingent liabilities:

... The Receiver however cannot provide any assurance that all contingent liabilities of the Fund have been identified. (p. 11)

[8] At p. 15 of the report, addressing the issue of share value, the Receiver also had this to say:

The ultimate realizable value of the shares will be dependent on future events which will determine the realizable value of the portfolio. As well, the amounts that Crocus will have to pay in order to settle known and contingent liabilities, including payment on various indemnities, may have a material effect on the unit value which is ultimately available for distribution to Crocus unit holders. The Receiver continues to believe that these amounts may be significant in light of the current investigations and the Class Action lawsuit against the Fund and other parties that are claiming Crocus' indemnification.... (emphasis added)

[9] The Receiver now says that, in the normal course of its operations, it does not need to retain all the short-term investments in its possession during the wind down period. In its opinion it could distribute \$14.2M as an interim distribution to shareholders and still have sufficient funds to finance the ongoing operations of Crocus including paying its current creditors. The sticking point is the proposed class action which the Receiver identifies as an impediment to any distribution given its current inability to assess the outcome or place a value upon the class action. As the Receiver observed:

... It may be that at some point, the effect of the Class Action will be a judgment in an amount so significant that it renders the company insolvent. However, at the present time, it is the Receiver's opinion that that is not the case, and indeed may never be the case. (p. 3, para. 7)

[10] Accordingly, the Receiver comes to court for advice and direction and asks for authorization to consider an interim distribution of \$14.2M. One of the grounds initially advanced in support of such authorization was that, if the proposed class action were ultimately successful, those shareholders who were not part of the class would be prejudiced. Obviously this justification disappears

if the proposed class action is expanded to include all shareholders. When counsel for the Receiver was asked about this, he suggested that the interim distribution could be treated as an "advance" or "set off" against any future finding of liability and noted this would be consistent with the goal of maximizing the realization available to the shareholders.

[11] Counsel for the Bellan action, in supporting the notion of an interim distribution, described the situation if the class were expanded as a "perfect match" which should alleviate any concern the court might have. Since any defendants claiming indemnification would not be entitled to it until they have been found liable to the shareholders, whatever was paid to the shareholders by way of an interim distribution could be set off against the defendants' liability to them. In any event, it was his opinion that the claims for indemnification were unlikely to succeed. This position was supported by counsel for the Crocus Investment Association.

[12] Not surprisingly, counsel for the former officers and directors of Crocus, its agents and lead broker were opposed to any consideration of an interim distribution at this time. Their position that such consideration was premature was also shared by counsel for the Manitoba Federation of Labour.

[13] As has been observed by many, this is not a "typical" receivership and the issues are varied and complex. Although Crocus is not currently insolvent, the known contingent liabilities far exceed the assets. Whether they, and particularly

the proposed class action, will ultimately result in payments and if so how much is the multi-million dollar question.

[14] The fact that the present circumstances are out of the ordinary can provide an opportunity for creative solutions. On the other hand, it is not an excuse to throw caution to the wind. Whereas one has considerable sympathy for the thousands of shareholders who invested in good faith in Crocus and who are understandably concerned about the return on their investment, such sentiments cannot obscure the court's obligation to apply the law to the facts in accordance with established legal and equitable principles.

[15] In my reasons for decision of October 27, 2005, I noted certain general principles which bear repeating here. One is that creditors have priority over shareholders. Another is that whereas the goal is to maximize the realization available to shareholders, the general rule is that such realization does not occur until after the liabilities of a company are determined and paid. One can conceive of a situation where it might be appropriate to make a distribution after all liabilities have been determined but not yet paid (for example, where sufficient funds have been reserved for that purpose), but that is not the case here.

[16] It should also be remembered that one of the justifications in support of the Receiver's plan to gradually dispose of the assets of Crocus was the corporation's inability to raise and distribute funds in the face of the proposed class action, particularly because the extent of and liabilities of Crocus could not

be ascertained. There is nothing in the evidence before me to suggest they are any better known.

[17] In my view, for the purpose of this motion, it is not necessary to consider the relative priority of shareholders' claims and creditors' claims beyond what has already been said. No one has argued that the shareholders should be considered as anything other than shareholders for the purpose of a potential interim distribution. Neither was it suggested that this was a dividend or indeed anything other than a distribution of part of the Crocus assets. The difference is that, as one counsel aptly observed, this is about a distribution of the Crocus assets rather than a distribution of the remaining assets after liabilities have been determined and paid. It is an important distinction.

[18] Noticeably absent is any legal authority to support any right or entitlement of the shareholders to an interim distribution such as the Receiver wishes to consider.

[19] Counsel for the Receiver argues that consideration of an interim distribution to shareholders at this time would strike the necessary balance between the shareholders of Crocus who are desirous of receiving a distribution and those who have potential claims against the assets of Crocus. But the fact remains that if such a distribution were permitted, the effect would be to prefer the interests of the shareholders over those of the creditors at a time when the liabilities of Crocus are as yet unknown.

[20] Although it is recognized that the presence of a contingent claim does not necessarily preclude a company from making a distribution, there is an obligation to assess the strength of the claim. As noted in the brief of the Receiver:

Ordinarily the directors of a corporation would evaluate a contingent claim, and consider whether they have a reasonable belief that the company has sufficient assets to cover its probable liabilities. That responsibility now rests with the Receiver. (p. 6, para. 21)

[21] At the same time, the Receiver has acknowledged that there is insufficient evidence upon which to properly evaluate the proposed class action. As was stated at pp. 4-5, para. 13 of the Receiver's brief:

... It is difficult if not impossible for the Receiver to assess the likelihood of any recovery to the plaintiffs or the potential value of the claim. Such an assessment would require some consideration as to the facts relied upon by the Plaintiffs and by the Defendants, and could not realistically be made at this stage of the proceedings....

[22] In so stating, the Receiver has effectively answered its own question. Certainly the court is in no better position to conduct such an evaluation at this time. Even ignoring the other contingent liabilities, I am satisfied that it is premature for any consideration to be given to the possibility of an interim distribution to the shareholders of Crocus in the face of the proposed class action. The time, effort and associated costs do not warrant such an undertaking. I do not, however, preclude the possibility from arising in the future.

[23] I am mindful that I have not directly addressed all of the arguments raised by counsel at the hearing of this motion. Although I have considered them, I am satisfied that the uncertainties about what the future portends for

Crocus in the face of the proposed class action overwhelmingly point to the conclusion reached for the reasons stated.

_____ J.

Tab B

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, PRICEWATERHOUSE COOPERS 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

File No. CI 06-01-46955

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

BERNARD W. BELLAN, and ROBERT NELSON,

Plaintiffs,

- and -

THE GOVERNMENT OF MANITOBA,

Defendant,

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

ORDER

(RE: Settlement with Government of Manitoba and Manitoba Securities Commission)

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**DAVID KLEIN
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Fax (604) 874-7180

Counsel for the Plaintiffs

THE QUEEN'S BENCH
Winnipeg Centre

THE HONOURABLE
MR. JUSTICE HANSEN

)
)
)

Tuesday, May 20, 2008

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, PRICEWATERHOUSE COOPERS 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

File No. CI 06-01-46955

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

BERNARD W. BELLAN, and ROBERT NELSON,

Plaintiffs,

- and -

THE GOVERNMENT OF MANITOBA,

Defendant,

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

ORDER

THIS MOTION, made by the Plaintiff, Bernard Bellan, for an order approving a settlement with the Defendants, the Manitoba Securities Commission and the Government of Manitoba (the "Settling Defendants"), was heard this day at Winnipeg.

ON READING the affidavits of Mark Lyons and Bernard Bellan and on hearing the submissions of counsel for the parties,

THIS COURT ORDERS AS FOLLOWS:

1. The Agreement, attached to this Order as Schedule A, is approved as fair and reasonable and in the best interests of the Settlement Class. The Agreement is incorporated into, and forms part of this Order, including the definitions contained therein.
2. The Class Actions are certified as against the Settling Defendants for settlement purposes only.
3. The Settlement Class is defined as the class of persons who own Class A common shares in the Crocus Investment Fund including their legal representatives, heirs, successors and assigns, and who have not opted out of the Agreement but excludes each of the Defendants named or ever named in the Class Actions.
4. The common issue is defined as whether the Settling Defendants owed a duty to the Settlement Class.
5. Bernard Bellan is appointed as the Representative Plaintiff for the Settlement Class. His counsel, Klein Lyons, Booth Dennehy LLP and Prober Law Offices, are appointed as counsel to the Settlement Class.
6. The Settling Parties and all Settlement Class members are ordered to comply with the Agreement.
7. The deadline for exclusion ("opting out") from the Settlement Class is 30 days following the mailing of the Notice of Certification and Settlement Approval ("Opt Out Deadline").

8. Any Settlement Class Member who has not opted out from the Settlement Class in accordance with the procedures set out in this Agreement by the Opt Out Deadline shall be bound by the terms of this Agreement.
9. The Receiver, Deloitte & Touche Inc., is appointed as the Administrator of the settlement.
10. The form of Notice of Certification and Settlement Approval is approved as attached as Schedule B. Within 14 days after the Approval Date, the Administrator shall mail by ordinary mail a copy of the Notice of Certification and Settlement Approval to the last known address it has in its records for each holder of Crocus Investment Fund Class A shares. The Notice of Certification and Settlement Approval will also be posted on the Klein Lyons web site, and on the Receiver's web site. The Administrator will further cause the Notice of Certification and Settlement Approval to be published in one weekday edition of the Winnipeg Free Press.
11. There shall be a bar to any and all claims for contribution, indemnification, subrogation or other claims over against the Settling Defendants by any Non-Settling Defendants, or by any other person, in respect of the subject matter of the Class Actions or any other matter arising out of the operation of the Crocus Investment Fund.
12. The Non-Settling Defendants shall have discovery rights against the Settling Defendants in the Class Actions as if the Non-Settling Defendants had issued third party claims against each Settling Defendant, and the Plaintiff shall have the right to participate as a party to such discoveries.
13. With respect to the collective several liability of the Non-Settling Defendants at paragraphs 11.2.2 and 11.2.3 of the Agreement, the Non-Settling Defendants shall not be made to pay a greater amount to the Settlement Class, as a result of this settlement, than would have occurred in the absence of a settlement.

14. It is declared that, in the event of termination of the Agreement pursuant to Section 13 of the Agreement, this Order is null and void and of no force and effect.

15. The Court shall retain continuing jurisdiction over the Agreement to ensure that all payments are properly made, and over the interpretation and enforcement of the Agreement's terms, conditions and obligations.

W. HANSEN

J.

SCHEDULE "A"

File No. CI 05-01-42765

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

BERNARD W. BELLAN

- and -

Plaintiff

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, PRICEWATERHOUSE COOPERS 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

File No. CI 06-01-46955

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN

BERNARD W. BELLAN and ROBERT NELSON

- and -

Plaintiffs

THE GOVERNMENT OF MANITOBA

Defendant

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

SETTLEMENT AGREEMENT

WHEREAS:

- A. Bernard W. Bellan (the "Plaintiff"), in his own capacity and in his capacity as representative plaintiff for the Settlement Class, and the Government of Manitoba and the Manitoba Securities Commission (the "Settling Defendants"), (collectively, the "Settling Parties"), hereby enter into this Agreement providing for settlement of the claims described below, pursuant to the terms and conditions set forth below, subject to the approval of the Court.
- B. Class Actions have been filed by the Plaintiff against the Settling Defendants pursuant to the *Class Proceedings Act*, C.C.S.M. c. C130 in the Manitoba Court of Queen's Bench.
- C. Robert Nelson has, on the advice of his physician, requested that his name be removed as a plaintiff in action CI 06-01-46955.
- D. The Settling Defendants, notwithstanding their consent to this Agreement, have denied and continue to deny the claims of the Plaintiff and the Settlement Class Members in the Class Actions, have denied and continue to deny any wrongdoing and have raised numerous defences, including defences relating to the certification of the claims in the Class Actions and, except to the extent of their obligations under this Agreement, deny liability of any kind to the Plaintiff or the Settlement Class Members.
- E. The Class Actions have not yet been certified. The Settling Defendants are not opposing certification of the Class Actions as against them for settlement purposes only.
- F. The Settlement Class Members will have the right to exclude themselves ("opt out") from this Agreement pursuant to Section 16 of *The Class Proceedings Act*, C.C.S.M. c.C130, and as provided in this Agreement.
- G. Based upon an analysis of the facts and the law applicable to the claims of the Settlement Class, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving claims of the Settlement Class provided in this Agreement, the Plaintiff and Plaintiff's Counsel have concluded that this Agreement provides substantial

benefits to the Settlement Class and is fair, reasonable, and in the best interests of the Settlement Class.

H. The Settling Defendants have similarly concluded that this Agreement is desirable in order to avoid the time, risk and expense of defending multiple and protracted litigation, and to resolve finally and completely the pending and potential claims of the Settlement Class Members and all pending and potential claims, proceedings, crossclaims and third party actions against them.

NOW THEREFORE, subject to the Court's approval, this Agreement embodies the terms of resolution of the claims asserted or which could have been asserted against the Settling Defendants in the Class Actions.

1. **Definitions**

Unless the specific context of a particular section of this Agreement calls for another interpretation, the following terms, as used in this Agreement, shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural, and *vice versa*. Masculine pronouns and male references shall be deemed to include the female and *vice versa*, where appropriate. The terms "person" or "party" includes individuals, partnerships and corporations.

"Administrator" means the person appointed by the Court as provided in Section 7 of this Agreement.

"Agreement" means this Settlement Agreement.

"Approval Date" means the date on which the Approval Order becomes a final order meaning that the time to appeal has expired and there has been no appeal or, if there have been any appeals from the Approval Order, all rights of appeal have been exhausted and there has been no change to the Approval Order.

"Approval Order" means the Order referred to in section 3.2.1 of this Agreement.

"Class Actions" means the two proceedings filed under the *Class Proceedings Act*, C.C.S.M. c.C130 in the Manitoba Court of the Queens Bench bearing File Nos. CI 05-01-42765 and CI 06-01-46955.

"Class Counsel" means the law firms of Klein Lyons, Booth Dennehy LLP and Prober Law Offices, which firms act on behalf of the Plaintiff and the Settlement Class herein and which shall continue acting on behalf of the Plaintiff and Settlement Class with respect to all acts or consents pursuant to this Agreement.

"Court" means the Manitoba Court of the Queen's Bench which has jurisdiction over the Class Actions, and the Honourable Mr. Justice Hanssen, or his successor.

"Defendants" means any of the defendants ever named or to be named in either of the Class Actions.

"Effective Date" means the date that Settling Defendants pay the Settlement Amount as provided in section 6.1 of this Agreement.

"Non-Settling Defendants" means any of the Defendants, excluding the Settling Defendants, ever named or to be named in either of the Class Actions.

"Notice of Certification and Settlement Approval" means the Notice advising Settlement Class Members of the Court's approval of this Agreement.

"Opt Out Deadline" means the date 30 days after the date of mailing of the Notice of Certification and Settlement Approval pursuant to Section 3.3 of this Agreement.

"Receiver" means Deloitte & Touche, Inc. as Receiver of Crocus Investment Fund.

"Settlement Amount" means the sum of \$2,750,000.00 (two million, seven hundred and fifty thousand dollars) payable by or on behalf of the Settling Defendants under this Agreement.

"Settlement Class" means the class of persons who own Class A common shares in Crocus Investment Fund including their legal representatives, heirs, successors and assigns, and who have not opted out of this Agreement but excludes each of the Defendants named or ever named in the Class Actions.

"Settlement Class Member" means a person who falls within the definition of the Settlement Class.

"Settlement Fund" means the Settlement Amount less the amount approved by the Court for payment of Class Counsel fees and disbursements.

2. **Preliminary Matters**

- 2.1 Promptly after execution of this Agreement, the Plaintiff will serve a true copy of this Agreement on counsel for each of the Non-Settling Defendants.
- 2.2 Where the time on or by which any action to be taken under this Agreement falls on a day that is not a business day, such action may be done on the next day that is a business day.
- 2.3 All references to money in this Agreement are to Canadian currency.

3. **Matters Relating to Certification and Settlement Approval**

- 3.1 Within 14 days of the execution of this Agreement by all Settling Parties, the Plaintiff will bring an application for Court approval of this Agreement. The Settling Defendants will not oppose certification of the Class Actions as against them for settlement purposes only.

3.2 Certification and Settlement Approval Order

3.2.1 Subject to the Court's approval, and as provided in a form of Order to be agreed by the Parties, the order approving this Agreement shall:

- (a) certify the action as a Class Actions as against the Settling Defendants for settlement purposes only;**
- (b) appoint Bernard Bellan as the Representative Plaintiff for the Settlement Class;**
- (c) approve this Agreement and order the Settling Parties and all Settlement Class Members to comply with it;**
- (d) order that the deadline for exclusion ("opting out") from the Settlement Class be 30 days following the mailing of the Notice of Certification and Settlement Approval ("Opt Out Deadline");**
- (e) declare that any Settlement Class Member who has not opted out from the Settlement Class in accordance with the procedures set out in this Agreement by the Opt Out Deadline shall be bound by the terms of this Agreement;**
- (f) declare that this Agreement is fair, reasonable, and in the best interests of the Settlement Class;**
- (g) order mailing of the Notice of Certification and Settlement Approval;**
- (h) appoint the Receiver as the Administrator;**
- (i) bar any and all claims for contribution, indemnification, subrogation or other claims over against the Settling Defendants by any Non-Settling Defendants, or by any other person, in respect of the subject matter of the Class Actions or any other matter arising out of the operation of the Crocus Investment Fund;**

- (j) order that the Non-Settling Defendants shall have discovery rights against the Settling Defendants in the Class Actions as if the Non-Settling Defendants had issued third party notices against each Settling Defendant, and the Plaintiff shall have the right to participate as a party to such discoveries; and
- (k) declare that, in the event of termination of this Agreement pursuant to Section 13 below, the Order is null and void and of no force and effect.

3.2.2 Following Court approval of this Agreement, Class Counsel will apply to the Court for approval of Class Counsel fees and disbursements. On the Effective Date, the amount approved by the Court will be paid to Class Counsel out of the Settlement Amount that was paid to Klein Lyons in trust pursuant to section 6.1 of this Agreement. The approval of this Agreement is not conditional on approval of Class Counsel's fees or disbursements. The Settling Defendants take no position as to the amount that should be paid to Class Counsel for fees and disbursements.

3.3 Notice of Certification and Settlement Approval

- 3.3.1 The content of the Notice of Certification and Settlement Approval shall be as agreed by the Settling Parties and approved by the Court.
- 3.3.2 Within 14 days after the Approval Date, or on such other date as is approved by the Court, the Receiver shall mail by ordinary mail a copy of the Notice of Certification and Settlement Approval to the last known address it has in its records for each holder of Crocus Investment Fund Class A common shares. The Notice of Certification and Settlement Approval will also be posted on the Klein Lyons web site, and the Plaintiff will request that it be posted on the Receiver's web site.

4. Waiver of Limitation Defences

- 4.1 Nothing in this Agreement shall constitute or be deemed to constitute a waiver by the Settling Defendants of defences based upon statutes of limitations or repose, prescription

periods or any other limitation or prescription defence with respect to any action brought or continued by any person who opts out of this Agreement, or is deemed to opt out of this Agreement, or if this Agreement is terminated.

5. **Entitlement to Compensation**

- 5.1 Subject to the payment of administration expenses referred to in section 7.1 of this Agreement, only Settlement Class Members who have not opted out shall be entitled to receive payments out of the Settlement Fund pursuant to this Agreement.

6. **Payments and Related Issues**

- 6.1 Within 14 business days after the expiration of the time period in paragraph 13.2.2, the Government of Manitoba on behalf of the Settling Defendants will pay the Settlement Amount (\$2,750,000.00) to Klein Lyons in trust in full and final settlement of all claims by the Plaintiff and the Settlement Class, whether direct, subrogated, asserted or unasserted or asserted in a representative capacity in the Class Actions, inclusive of all interest, GST and costs.
- 6.2 Klein Lyons will forthwith upon receipt of the Settlement Amount transfer the Settlement Fund to the Administrator to be held in trust by the Administrator for the benefit of the Settlement Class.
- 6.3 Any payments contemplated by this Section 6 are automatically cancelled and rendered null and void if this Agreement is terminated.

7. **Administrator**

- 7.1 The Settling Parties will propose that the Receiver be appointed by the Court as the Administrator for the purpose of administering this Agreement. All expenses of the Receiver related to the administration of this Agreement will be paid out of the Settlement Fund.

8. **Procedures and Deadlines for Exclusion**

- 8.1 Any person who is a holder of Crocus Investment Fund Class A common shares, other than Bernard W. Bellan, will have the right to exclude herself or himself ("opt out") from this Agreement and from the Settlement Class by delivering a letter to the Administrator on or before the Opt Out Deadline signed by the person opting out and setting out that person's name, address, number of shares held and reason for opting out. Persons who elect to opt out shall be excluded from this Agreement and from the Settlement Class. It is the responsibility of the person opting out to ensure that the requisite signed letter is received by the Administrator on or before the Opt Out Deadline. Any member of the Settlement Class who does not deliver to the Administrator a complete and signed opt out letter by the Opt Out Deadline shall be considered a Settlement Class Member and shall be bound by the terms of this Agreement and by the Court Order approving this Agreement.
- 8.2 By entering into this Agreement, Bernard W. Bellan agrees that he will not opt out of this Agreement.

9. **Distribution of Settlement Fund**

- 9.1 The Settlement Fund will be held in trust by the Administrator for the benefit of the Settlement Class. All Settlement Class Members who have not opted out will be eligible for payment from the Settlement Fund. The Settlement Fund will be distributed to the Settlement Class Members by the Administrator at the same time that the Receiver makes its first distribution of funds from the Crocus Investment Fund to the holders of Crocus Investment Fund Class A common shares. The Settlement Fund will be distributed pro rata to the Settlement Class Members based on the monies paid for each Settlement Class Member's Class A common shares of the Crocus Investment Fund which remained unredeemed as of the date of the Receivership.

10. **Exclusive Remedy/Dismissal of Action**

10.1 **Exclusive Remedy**

10.1.1 This Agreement shall be the exclusive remedy for any and all Settlement Class Members with respect to claims asserted or which could have been asserted against the Settling Defendants in the Class Actions. The Settling Defendants shall not be subject to liability or any other expense of any kind to any Settlement Class Member with respect to the Class Actions, except as provided in this Agreement. Settlement Class Members who have not opted out of this Agreement on or before the Opt Out Deadline shall be forever barred from continuing, initiating, asserting or prosecuting any and all claims asserted or which could have been asserted against the Settling Defendants in the Class Actions.

10.2 **Dismissal of Action**

10.2.1 Forthwith after the Effective Date, the Settling Parties will file a consent to a judgment dismissing the Class Actions as against the Settling Defendants with prejudice and any or all crossclaims and third party claims as against the Settling Defendants, on a "without costs" basis, along with any other documents that may be necessary to give effect to the dismissal of the Class Actions. Notwithstanding the dismissal of the Class Actions as against the Settling Defendants, the Court will retain ongoing jurisdiction to deal with matters arising out of the administration of the settlement provided for in this Agreement.

11. **Releases/Bar Order/Third Party Claims**

11.1 **Release of Class Action Claims Against Settling Defendants**

11.1.1 The claims of the Plaintiff and every Settlement Class Member who has not opted out of this Agreement on or before the Opt Out Deadline, whether their claims are direct, subrogated, asserted or unasserted or asserted in a representative capacity in the Class Actions, inclusive of all interest, GST and costs, shall be conclusively compromised, settled, released and discharged as against the Settling Defendants, and Settlement Class

Members shall be deemed to have forever released and discharged the Settling Defendants from any past, present and future claims, actions, demands and liabilities of any nature whatsoever relating to all claims asserted or which could have been asserted in the Class Actions.

11.2 Bar Order

- 11.2.1 All claims for contribution, indemnity, subrogation or other claims over, by any Non-Settling Defendant or any other person against the Settling Defendants in respect of the subject matter of the Class Actions or any other matter arising out of the operation of the Crocus Investment Fund, whether direct, subrogated, asserted or unasserted or asserted in a representative capacity, inclusive of interest, GST and costs, will be barred by order of the Court.
- 11.2.2 Forthwith after the Effective Date, the Plaintiff will amend the Statement of Claim in Manitoba Queen's Bench Action No. CI 05-01-42765 so as to restrict the claims against the Non-Settling Defendants to the collective several liability of the Non-Settling Defendants. In other words, the Plaintiff agrees to exclude the proportionate share of liability of the Settling Defendants from any judgment which may be granted against, the Non-Settling Defendants.
- 11.2.3 If any action is instituted by a Settlement Class Member seeking damages against persons who are not currently parties to the Class Actions ("non-parties") in respect of claims asserted or which could have been asserted in the Class Actions, such action will be limited to the non-parties' collective several liability. In other words, the Settlement Class Member's claim shall exclude the proportionate share of liability of the Settling Defendants from the claims against the non-parties, and from any judgment which may be granted against the non-parties.

11.3 Reservation of Rights/Third Party Claims

11.3.1 Except as otherwise provided herein, nothing in this Agreement shall prejudice or in any way interfere with the rights of the Settlement Class Members to pursue all of their other rights and remedies against persons and/or entities other than the Settling Defendants.

12. Submissions to the Court by the Administrator

12.1 The Administrator may apply to the Court for directions, as required, upon notice served on Class Counsel and Settling Defendants' Counsel no later than fourteen (14) days prior to the date of any hearing.

13. Termination of this Agreement

13.1 Defendants' Right of Termination

13.1.1 If persons holding a total of more than .5 percent (one half of one percent) of the Crocus Investment Fund Class A common shares elect to opt out of this Agreement on or before the Opt Out Deadline, the Settling Defendants shall have the unilateral right to terminate this Agreement as set forth in Section 13.2.

13.2 Procedures and Time for Termination

13.2.1 Within thirty (30) days following the Opt Out Deadline the Administrator shall notify counsel for the Settling Defendants and Class Counsel of the total number of persons who have opted out of this Agreement, including all particulars of their Crocus Investment Fund shareholdings and copies of their opt out letters.

13.2.2 The Settling Defendants or any of them may exercise their right to terminate this Agreement pursuant to Section 13.1 above by providing written notice to Class Counsel and to the Court within thirty (30) days from the date on which the Administrator

provides counsel for the Settling Defendants with the information and documentation pursuant to Section 13.2.1 above.

13.3 Notice of Settlement Class Members

13.3.1 If the Settling Defendants exercise their right of termination pursuant to Section 13 of this Agreement, Notice of Termination shall be given to all Settlement Class Members. The content and method of dissemination of the Notice of Termination shall be determined by the Court. If any of the Settling Defendants exercises the right to terminate this Agreement, any costs associated with disseminating the Notice of Certification and Settlement and the Notice of Termination shall be paid in equal shares by the Settling Defendants who chose to terminate this Agreement.

13.4 Automatic Termination of the Agreement

13.4.1 This Agreement shall, without notice, be automatically terminated if the Court declines to approve this Agreement in any respect or, ... the event of an appeal, if the Court's approval order is not affirmed in all respects.

13.5 Effect of Termination

13.5.1 If this Agreement is terminated pursuant to Section 13 herein, the certification of the Class Actions for settlement purposes pursuant to this Agreement shall be null and void and this Agreement shall have no further force or effect and shall not be used or referred to in any litigation involving any of the Settling Parties and/or the Non-Settling Defendants.

14. **Miscellaneous Provisions**

14.1 **Ongoing Authority**

14.1.1 The Court shall retain continuing jurisdiction over this Agreement to ensure that all payments under this Agreement are properly made, and over the interpretation and enforcement of this Agreement's terms, conditions and obligations.

14.2 **Entire Agreement**

14.2.1 This Agreement constitutes the entire agreement by and among the Settling Parties with regard to the subject of this Agreement and supersedes any previous agreements and understandings between the Settling Parties with respect to the subject matter of this Agreement. This Agreement may not be amended except in writing signed by all Settling Parties, and such amendments are subject to the Court's approval.

14.3 **Other Originals**

14.3.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument.

14.4 **Dates**

14.4.1 Dates and deadlines referred to in this Agreement may be altered only with the consent of the Settling Parties and with the approval of the Court.

14.5 **Use of Agreement**

14.5.1 Neither the existence nor the terms of this Agreement may be used as evidence of any admission by the Settling Defendants regarding fault, liability, causation, damages, and/or any other issue. This Agreement may, however, be relied upon by any Settling Party for purposes of enforcing any right possessed by such Settling Party or for purposes

of any motion or application made to the Court for interpretation or enforcement of its terms.

14.6 Notification

14.6.1 Any notification, request, instruction or other document to be given by any party to this Agreement to any other party to this Agreement shall be in writing and delivered personally, sent by facsimile, or sent by registered mail, postage prepaid, if to the Plaintiff, to the attention of Class Counsel and, if to the Settling Defendants, to the attention of their counsel:

For the Plaintiff Bernard W. Bellan and the Settlement Class:

David A. Klein, Douglas Lennox, Jay Prober and J. R. Norman Boudreau

For the Defendant The Government of Manitoba:

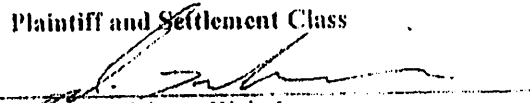
E. W. (Bill) Olson, Q.C. and Robert W. Olson

For Defendant The Manitoba Securities Commission:

William S. Gange and Jacqueline G. Collins

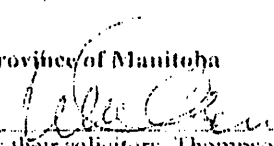
Dated this 13th day of April, 2008.

Plaintiff and Settlement Class


by their solicitors, Klein Lyons
Per: David A. Klein

Date: this 31st day of March, 2008.

Province of Manitoba


by their solicitors, Thompson Dornman
Sweatman
Per: F. W. (Bill) Olson, Q.C.

Date: this _____ day of _____, 2008.

Manitoba Securities Commission

by their solicitors, Gange Goodman French
Per: William S. Gange

SCHEDULE "B"

Crocus Investment Fund Class Actions Notice of Certification and Settlement Approval

To all persons who own Class A common shares in the Crocus Investment Fund (the "Fund"), this notice will be important to you.

Settlements have been approved by the Court in lawsuits brought on behalf shareholders in the Fund. This notice is published by Order of The Honourable Mr. Justice Hanssen of the Manitoba Court of Queen's Bench and explains:

1. the lawsuits;
2. the terms of settlement;
3. your right to choose to opt out of the class actions;
4. legal fees; and
5. where to get more information.

1. The Lawsuits

Bernard Bellan commenced class action lawsuits relating to the Fund on behalf of shareholders in the Manitoba Court of Queen's Bench as action nos. CI 05-01-42765 and CI 06-01-46955. The Manitoba Securities Commission and the Government of Manitoba have agreed to settle these lawsuits (the "Settling Defendants"). Proposed settlements with the former officers and directors of the Fund, Pricewaterhouse Coopers LLP, Nesbitt Burns Inc., Crocus Capital Inc., and the Crocus Investment Fund are also pending finalization and court approval. There has been no settlement with one remaining defendant, Wellington West Capital Inc., and this claim is continuing.

On May 20 2008, Mr. Justice Hanssen certified these lawsuits as class actions for the purposes of settlement as against the Settling Defendants, and approved the settlement agreements reached with the Settling Defendants. The court defined the class as persons who own Class A common shares in the Fund including their legal representatives, heirs, successors and assigns, and who have not opted out but excludes each of the Defendants named or ever named in the lawsuits. The court appointed Mr. Bellan as representative plaintiff for the class. The court appointed the firms of Klein Lyons, Booth Dennehy LLP and Prober Law Offices, (collectively, "Class Counsel") as counsel to the class.

2. The Terms of Settlement

The Settling Defendants have agreed to pay up to a total of \$2.75 million to compensate class members and have agreed to release any claims against the Fund. Subject to court approval, the pending settlements could add up to an additional \$9.25 million to this amount. These other defendants have also agreed to drop most claims for indemnity against the Fund with respect to claims asserted in the lawsuits, thereby significantly reducing one of the major obstacles to the distribution of money to shareholders held in the Fund's receivership. In exchange, the claims against the Settling Defendants will be dismissed. No admission of liability has been made.

Compensation will be distributed pro rata to the Settlement Class Members based on the monies paid for each Settlement Class Member's Class A common shares of the Crocus Investment Fund which remained unredeemed as of the date of the Receivership. Compensation will be distributed by Deloitte & Touche Inc., the Receiver to the Fund, which the court has appointed as the Administrator for the settlements. It is anticipated that compensation will be distributed to class members at the same time that the Administrator makes a distribution of monies from the Receivership to shareholders. If this settlement is concluded, a distribution is anticipated in late fall 2008, at the earliest. To be eligible to receive compensation, it is not necessary for you to take any steps, other than make sure that the Administrator has your correct mailing address. The Administrator is mailing a copy of this notice to all shareholders in the Fund. If you received a copy of this notice in the mail from the Administrator, ^{and it is addressed to you at your current address KRH} this confirms that it has your mailing address.

The class members' recoveries will be subject to payment of Class Counsel's fee, in an amount to be determined by the Court. Copies of the Settlement Agreements are available online at www.kleinlyons.com. Hard copies can be obtained by calling Class Counsel at 1-800-216-1383.

3. Your Right to Choose Whether or Not to be Part of the Class Actions

(a) How to be Included in the Class

If you are a class member, you will automatically be included in the class actions and eligible to receive compensation unless you opt out.

(b) How to be Excluded from the Lawsuits

To opt out of the class actions, you must deliver a letter to the Administrator on or before the **[Opt Out Deadline]** signed by the person opting out and setting out that person's name, address, number of shares held and reason for opting out.

All class members who do not opt out of these class actions will be bound by the settlements.

The address for writing to the Administrator to opt out is: Crocus Class Action Settlement Administrator, Deloitte & Touche Inc., 360 Main Street, Suite 2300, Winnipeg MB, R3C 3Z3.

4. Legal Fees

Mr. Bellan retained Class Counsel to represent him and the Class in the lawsuits. Class Counsel are paid legal fees only if the lawsuit is successful, and then only in an amount approved by the Court.

5. More Information

For further information about the class actions you may contact: Klein Lyons, Barristers & Solicitors, P.O. Box 85, Suite 1220, 65 Queen St. W., Toronto, ON M5H 2M5, 1-800-216-1383. Attn: Doug Lennox dlennox@kleinlyons.com, www.kleinlyons.com.

Tab C

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, PRICEWATERHOUSE COOPERS 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

ORDER

(RE: Settlement with Nesbitt Burns Inc.)

BOOTH DENNEHY LLP

Barristers & Solicitors

387 Broadway

Winnipeg MB R3C 0V5

NORMAN BOUDREAU

Tel (204) 957-1717

Fax (204) 943-6199

PROBER LAW OFFICES

387 Broadway

Winnipeg MB R3C 0V5

JAY PROBER

Tel (204) 957-1205

Fax (204) 943-6199

KLEIN LYONS

Barristers & Solicitors

1100 -1333 West Broadway

Vancouver, BC V6H 4C1

DAVID KLEIN

Tel (604) 874-7171

Fax (604) 874-7180

Counsel for the Plaintiffs

THE QUEEN'S BENCH
Winnipeg Centre

THE HONOURABLE)
MR. JUSTICE HANSSEN) Friday, May 30, 2008

BETWEEN:

BERNARD W. BELLAN,

Plaintiff

- and -

CHARLES E. CURTIS, PETER OLFERT, WALDRON (WALLY) FOX-DECENT, LEA
BA'TURIN, 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, PRICEWATERHOUSE COOPERS 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

ORDER

THIS MOTION, made by the Plaintiff, Bernard Bellan, for an order approving a settlement with the Defendant, BMO Nesbitt Burns Inc. was heard this day at Winnipeg.

ON READING the affidavits of Mark Lyons and Bernard Bellan, and on hearing the submissions of counsel for the parties,

THIS COURT ORDERS AS FOLLOWS:

1. Defined terms in this Order have the meanings ascribed to them in the settlement agreement between Bernard Bellan and Nesbitt (the "Agreement"), attached to this Order as Schedule "A", unless otherwise and specifically indicated.
2. The Agreement, attached to this Order as Schedule "A", is approved as fair and reasonable and in the best interests of the Settlement Class. The Agreement is

incorporated into, and forms part of this Order, including the definitions contained therein.

3. The Class Action is certified as against Nesbitt for settlement purposes only.
4. The Settlement Class is defined as the class of persons who own Class A common shares in the Crocus Investment Fund including their legal representatives, heirs, successors and assigns, and who have not opted out of this Agreement but excludes each of the Defendants named or to be named in the Class Actions.
5. The common issue is defined as whether Nesbitt owed a duty to the Settlement Class.
6. Bernard Bellan is appointed as the Representative Plaintiff for the Settlement Class. His counsel, Klein Lyons, Booth Dennehy LLP and Prober Law Offices, are appointed as counsel to the Settlement Class.
7. The Settling Party and all Settlement Class members are ordered to comply with the Agreement.
8. The deadline for exclusion (“opting out”) from the Settlement Class is 30 days following the mailing of the Notice of Certification and Settlement Approval (“Opt Out Deadline”).
9. Any Settlement Class Member who has not opted out from the Settlement Class in accordance with the procedures set out in this Agreement by the Opt Out Deadline shall be bound by the terms of this Agreement.
10. The Receiver, Deloitte & Touche Inc., is appointed as the Administrator of the settlement.
11. The form, timing and nature of the Notice of Certification and Settlement Approval is deferred until further order of the Court.
12. In accordance with the terms of the Agreement, there shall be a bar to any and all claims for contribution, indemnification, subrogation, or any other claims over against

Nesbitt by any Non-Settling Defendants, or by any other person, in respect of the subject matter of the Class Action.

13. Notwithstanding any other order of this Court made or to be made in this Class Action or the Related Class Action, Nesbitt retains all its rights to indemnity from Cocus in respect of any Opt Out Claims or in the event the Agreement is terminated for any reason.

14. The Non-Settling Defendants shall have discovery rights against Nesbitt in the Class Action with respect only to the claims specifically asserted against Nesbitt in the statement of claim issued July 12, 2005, as it has been and may be amended, as if the Non-Settling Defendants had issued third party claims against Nesbitt, and the Plaintiff shall have the right to participate as a party to such discoveries.

15. With respect to the collective several liability of the Non-Settling Defendants at paragraph 10.2.2 of the Agreement, the Non-Settling Defendants shall not be made to pay a greater amount to the Settlement Class, as a result of this settlement, than would have occurred in the absence of a settlement.

16. It is declared that that, in the event of termination of the Agreement pursuant to Section 12 of the Agreement, this Order is null and void and of no force and effect.

17. The Court shall retain continuing jurisdiction over the Agreement to ensure that all payments are properly made, and over the interpretation and enforcement of this Agreement's terms, conditions and obligations.

SCHEDULE "A"

DRAFT #1

File No. CI 05-01-42765

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, PRICEWATERHOUSE COOPERS 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

SETTLEMENT AGREEMENT

WHEREAS:

- A. Bernard W. Bellan (the "Plaintiff"), in his own capacity and in his capacity as representative plaintiff for the Settlement Class, and BMO Nesbitt Burns Inc. ("Nesbitt"), hereby enter into this Agreement providing for settlement of the claims described below, pursuant to the terms and conditions set forth below, subject to the approval of the Court
- B. A Class Action has been filed by the Plaintiff against Nesbitt pursuant to the *Class Proceedings Act*, C.C.S.M. c. C130 in the Manitoba Court of Queen's Bench
- D. Nesbitt, notwithstanding its consent to this Agreement, has denied and continues to deny the claims of the Plaintiff and the Settlement Class Members in the Class Action, has denied and continues to deny any wrongdoing and has raised numerous defences, including defences relating to the certification of the claims in the Class Action and, except to the extent of its



obligations under this Agreement, denies liability of any kind to the Plaintiff or the Settlement Class Members.

E. The Class Action has not yet been certified. Nesbitt will not oppose certification of the Class Action as against it for settlement purposes only.

F. The Settlement Class Members will have the right to exclude themselves ("opt out") from this Agreement pursuant to Section 16 of *The Class Proceedings Act*, C.C.S.M. c.C130, and as provided in this Agreement.

G. Based upon an analysis of the facts and the law applicable to the claims of the Settlement Class, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving claims of the Settlement Class provided in this Agreement, the Plaintiff and Plaintiff's Counsel have concluded that this Agreement provides substantial benefits to the Settlement Class and is fair, reasonable, and in the best interests of the Settlement Class.

H. Nesbitt has similarly concluded that this Agreement is desirable in order to avoid the time, risk and expense of defending multiple and protracted litigation, and to resolve finally and completely the pending and potential claims of the Settlement Class Members and all pending and potential claims, proceedings, crossclaims and third party actions against them.

NOW THEREFORE, subject to the Court's approval, this Agreement embodies the terms of resolution of the claims asserted or which could have been asserted against the Settling Party in the Class Action.

1 **Definitions**

Unless the specific context of a particular section of this Agreement calls for another interpretation, the following terms, as used in this Agreement, shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural, and *vice versa*.



Masculine pronouns and male references shall be deemed to include the female and *vice versa*, where appropriate. The terms "person" or "party" includes individuals, partnerships and corporations.

"Administrator" means the person appointed by the Court as provided in Section 6 of this Agreement.

"Agreement" means this Settlement Agreement

"Approval Date" means the date on which the Approval Order becomes a final order meaning that the time to appeal has expired and there has been no appeal or, if there have been any appeals from the Approval Order, all rights of appeal have been exhausted and there has been no change to the Approval Order.


"Approval Order" means the Order referred to in section 3.2.1 of this Agreement

"Class Action" means the proceeding filed under the *Class Proceedings Act*, C C S M. c. C130 in the Manitoba Court of the Queens Bench bearing File No. CI 05-01-42765

"Class Counsel" means the law firms of Klein Lyons, Booth Dennehy LLP and Prober Law Offices, which firms act on behalf of the Plaintiff and the Settlement Class herein and which shall continue acting on behalf of the Plaintiff and Settlement Class with respect to all acts or consents pursuant to this Agreement.

"Court" means the Manitoba Court of the Queen's Bench which has jurisdiction over the Class Action, and the Honourable Mr. Justice Hanssen, or his successor

"Defendants" means any of the defendants ever named or to be named in the Class Action (including affiliates and each Defendant and its affiliates' present and former directors, officers, agents, partners, servants and employees and each individual's successors, heirs, executors, estate trustees, administrators and assigns). For greater certainty, "Defendants" includes Deloitte & Touche Inc in its capacity as receiver of the Crocus Investment Fund



"Effective Date" means the date that Nesbitt pays the Settlement Amount as provided in section 5.2 of this Agreement.

"Non-Settling Defendants" means any of the Defendants, excluding Nesbitt, ever named or to be named in the Class Action.

"Notice of Certification and Settlement Approval" means the Notice advising Settlement Class Members of the Court's approval of this Agreement.

"Opt Out Deadline" means the date 30 days after the date of mailing of the Notice of Certification and Settlement Approval pursuant to Section 3.3 of this Agreement.

"Receiver" means Deloitte & Touche, Inc. as Receiver of Crocus Investment Fund.

"Related Action" means the action commenced under *Class Proceedings Act, C.C.S.M.* c C130 by Bernard W. Bellan and Robert Nelson against the Government of Manitoba in the Manitoba Court of the Queen's Bench bearing File No. CI 06-01-46955.

"Settlement Amount" means the sum of \$100,000.00 (one hundred thousand dollars) payable by Nesbitt under this Agreement.

"Settlement Class" means the class of persons who own Class A common shares in Crocus Investment Fund including their legal representatives, heirs, successors and assigns, and who have not opted out of this Agreement but excludes each of the Defendants named or ever named or to be named in the Class Action.

"Settlement Class Member" means a person who falls within the definition of the Settlement Class.

"Settlement Fund" means the Settlement Amount less the amount approved by the Court for payment of Class Counsel fees and disbursements.



“Settling Party” means Nesbitt and its affiliates, and each of Nesbitt’s and its affiliates’ present and former directors, officers, agents, partners, servants and employees, and each individual’s successors, heirs, executors, estate trustees, administrators and assigns

2 **Preliminary Matters**

- 2.1 Promptly after execution of this Agreement by the Plaintiff and Nesbitt, the Plaintiff will serve a true copy of this Agreement on counsel for each of the Non-Settling Defendants
- 2.2 Where the time on or by which any action to be taken under this Agreement falls on a day that is not a business day, such action may be done on the next day that is a business day
- 2.3 All references to money in this Agreement are to Canadian currency

3 **Matters Relating to Certification and Settlement Approval**

- 3.1 Within 14 days of the execution of this Agreement by the Plaintiff and Nesbitt, the Plaintiff will bring an application for Court approval of this Agreement. Nesbitt will not oppose certification of the Class Action as against it for settlement purposes only.

3.2 **Certification and Settlement Approval Order**

- 3.2.1 Subject to the Court’s approval, and as provided in a form of Order to be agreed by the Plaintiff and Nesbitt, acting reasonably, the order approving this Agreement shall:
- (a) certify the Class Action as a class proceeding as against Nesbitt for settlement purposes only;
 - (b) appoint Bernard Bellan as the Representative Plaintiff for the Settlement Class;
 - (c) approve this Agreement and order the Plaintiff, all Settlement Class Members, the Settling Party and all Defendants to comply with it;



- (d) order that the deadline for exclusion ("opting out") from the Settlement Class be 30 days following the mailing of the Notice of Certification and Settlement Approval ("Opt Out Deadline");
- (c) declare that any Settlement Class Member who has not opted out of the Settlement Class in accordance with the procedures set out in this Agreement by the Opt Out Deadline shall be bound by the terms of this Agreement;
- (f) declare that this Agreement is fair, reasonable, and in the best interests of the Settlement Class;
- (g) order mailing of the Notice of Certification and Settlement Approval;
- (h) appoint the Receiver as the Administrator;
- (i) bar any and all claims for contribution, indemnification, subrogation or any other claims against Nesbitt by any Non-Settling Defendants, or by any other person, in respect of the subject matter of the Class Action;
- (j) order that the Non-Settling Defendants shall have discovery rights against Nesbitt in the Class Action with respect only to the claims specifically asserted against Nesbitt in the statement of claim issued July 12, 2005, as it has been and may be amended, as if the Non-Settling Defendants had issued third party notices against Nesbitt, and the Plaintiff shall have the right to participate as a party to such discoveries; and
- (k) declare that, in the event of termination of this Agreement pursuant to Section 12 below, the Order is null and void and of no force and effect.

3.2.2 Following Court approval of this Agreement, Class Counsel will apply to the Court for approval of Class Counsel fees and disbursements. The amount approved by the Court will be paid to Class Counsel out of the Settlement Amount on the Effective Date. The



approval of this Agreement is not conditional on approval of Class Counsel's fees or disbursements. Nesbitt takes no position as to the amount that should be paid to Class Counsel for fees and disbursements.

3.3 **Notice of Certification and Settlement Approval**

3.3.1 The content of the Notice of Certification and Settlement Approval shall be as agreed by the Plaintiff and Nesbitt, acting reasonably, and approved by the Court.

3.3.2 Within 14 days after the Approval Date, or on such other date as is approved by the Court, the Receiver shall mail by ordinary mail a copy of the Notice of Certification and Settlement Approval to the last known address it has in its records for each holder of Crocus Investment Fund Class A common shares. The Notice of Certification and Settlement Approval will also be posted on the Klein Lyons web site, and the Plaintiff will request that it be posted on the Receiver's web site.

4 **Waiver of Limitation Defences**

4.1 Nothing in this Agreement shall constitute or be deemed to constitute a waiver by the Settling Party of defences based upon statutes of limitations or repose, prescription periods or any other limitation or prescription defence in law or in equity or under any applicable statute with respect to any action brought or continued by any person who opts out of this Agreement, is deemed to opt out of this Agreement, or if this Agreement is terminated.

5 **Payments and Related Issues**

5.1 Subject to the payment of administration expenses referred to in this Agreement and all other conditions set out in this Agreement, only Settlement Class Members who have not opted out shall be entitled to receive payments out of the Settlement Fund pursuant to this Agreement.



- 5.2 Within 14 days after the expiration of the time period in paragraph 12.2.2, Nesbitt will pay the Settlement Amount (\$100,000.00) to Klein Lyons in trust in full and final settlement of all claims by the Plaintiff and the Settlement Class, whether direct, subrogated, asserted or unasserted or asserted in a representative capacity in the Class Action, inclusive of all interest, GST and costs
- 5.3 Klein Lyons will forthwith upon receipt of the Settlement Amount transfer the Settlement Fund to the Administrator to be held in trust by the Administrator for the benefit of the Settlement Class.
- 5.4 Any payments contemplated by this Section 5 are automatically cancelled and rendered null and void if this Agreement is terminated. In the event this Agreement is terminated, the Settlement Fund held by Klein Lyons or the Administrator shall be forthwith returned to Nesbitt.

6 **Administrator**

- 6.1 The Plaintiff and Nesbitt will propose that the Receiver be appointed by the Court as the Administrator for the purpose of administering this Agreement. All expenses of the Receiver related to the administration of this Agreement will be paid out of the Settlement Fund.

7 **Procedures and Deadlines for Exclusion**

- 7.1 Any person who is an owner of Crocus Investment Fund Class A common shares, other than Bernard W. Bellan, will have the right to exclude herself or himself ("opt out") from this Agreement and from the Settlement Class by delivering a letter to the Administrator on or before the Opt Out Deadline signed by the person opting out and setting out that person's name, address, number of shares held and reason for opting out. Persons who elect to opt out shall be excluded from this Agreement and from the Settlement Class. It is the responsibility of the person opting out to ensure that the requisite signed letter is received by the Administrator on or before the Opt Out Deadline. Any member of the



Settlement Class who does not deliver to the Administrator a complete and signed opt out letter by the Opt Out Deadline shall be considered a Settlement Class Member and shall be bound by the terms of this Agreement and by the Court Order approving this Agreement.

7.2 By entering into this Agreement, Bernard W Bellan agrees that he will not opt out of this Agreement.

8 **Distribution of Settlement Fund**

8.1 The Settlement Fund will be held in trust by the Administrator for the benefit of the Settlement Class. All Settlement Class Members who have not opted out will be eligible for payment from the Settlement Fund. The Settlement Fund will be distributed to the Settlement Class Members by the Administrator at the same time that the Receiver makes its first distribution of funds from the Crocus Investment Fund to the holders of Crocus Investment Fund Class A common shares. The distribution will be pro rata to the Settlement Class Members based on the monies paid for each Settlement Class Member's Class A common shares of the Crocus Investment Fund which remained unredeemed as of the date of the Receivership.

9 **Exclusive Remedy/Dismissal of Action**

9.1 **Exclusive Remedy**

9.1.1 This Agreement shall be the exclusive remedy for any and all Settlement Class Members with respect to claims asserted or which could have been asserted against the Settling Party in the Class Action. The Settling Party shall not be subject to liability or any other expense of any kind to any Settlement Class Member with respect to the Class Action, except as provided in this Agreement. Settlement Class Members who have not opted out of this Agreement on or before the Opt Out Deadline shall be forever barred from continuing, initiating, asserting or prosecuting any and all claims asserted or which could have been asserted against the Settling Party in the Class Action.



9.2 Dismissal of Action

9.2.1 Forthwith after the Effective Date, the Plaintiff and Nesbitt will file a consent to a dismissal of the Class Action as against Nesbitt with prejudice and any or all crossclaims and third party claims as against Nesbitt, on a "without costs" basis, along with any other documents that may be necessary to give effect to the dismissal of the Class Action. Notwithstanding the dismissal of the Class Action as against Nesbitt, the Court will retain ongoing jurisdiction to deal with matters arising out of the administration of the settlement provided for in this Agreement

10 Releases/Bar Order/Third Party Claims

10.1 Release of Class Action Claims Against the Settling Party

10.1.1 The claims of the Plaintiff and every Settlement Class Member who has not opted out of this Agreement on or before the Opt Out Deadline, whether their claims are direct, subrogated, derivative, asserted or unasserted or asserted in a representative capacity in the Class Action, inclusive of all interest, GST and costs, shall be conclusively compromised, settled, released and discharged as against the Settling Party, and Settlement Class Members shall be deemed to have forever released and discharged the Settling Party from any past, present and future claims, actions, demands and liabilities of any nature whatsoever relating to all claims asserted or which could have been asserted in the Class Action



10.2 Bar Order

10.2.1 All claims for contribution, indemnity, subrogation or any other claims by any Non-Settling Defendant or any other person against the Settling Party in respect of the subject matter of the Class Action and the Related Action, whether direct, subrogated, derivative, asserted or unasserted or asserted in a representative capacity, inclusive of interest, GST and costs, will be barred by order of the Court.

10.2.2 Forthwith after the Effective Date, the Plaintiff will amend the Statement of Claim in the Class Action so as to restrict the claims against the Non-Settling Defendants to the collective several liability of the Non-Settling Defendants.

10.2.3 Forthwith after the Effective Date, the Plaintiff will amend the Statement of Claim in the Related Action so as to restrict the claims against the Defendant in that action to the several liability of that Defendant.

10.2.4 If any action is instituted by a Settlement Class Member seeking damages against persons who are not currently parties to the Class Action ("Non-parties") in respect of claims asserted or which could have been asserted in the Class Action or the Related Action, such action will be limited to the non-parties' collective several liability.

10.3 Reservation of Rights/Third Party Claims

10.3.1 Subject to section 10.1, 10.2 and 10.4 of this Agreement, nothing shall prejudice or in any way interfere with the rights of the Settlement Class Members to pursue all of their other rights and remedies against persons and/or entities other than the Settling Party.

10.4 Mutual Release with Crocus Investment Fund

10.4.1 Nesbitt releases all claims it has or in the future may have for indemnity from Crocus Investment Fund or from any of its subsidiaries or affiliates with respect to all claims



asserted or which could have been asserted against the Settling Party in the Class Action, save and except in respect of any Opt Out claims.

10.4.2 This Agreement is conditional on the Receiver executing a release, in a form satisfactory to Nesbitt, releasing all claims Crocus Investment Fund, its subsidiaries and affiliates, have or in the future may have with respect to all claims asserted or which could have been asserted in the Class Action against the Settling Party.

11. **Submissions to the Court by the Administrator**

11.1 The Administrator may apply to the Court for directions, as required, upon notice served on Class Counsel and Nesbitt's counsel no later than fourteen (14) days prior to the date of any hearing.

12. **Termination of this Agreement**

12.1 **Nesbitt's Right of Termination**

12.1.1 If persons owning a total of more than 71,100 (0.5 percent) of the Crocus Investment Fund Class A common shares elect to opt out of this Agreement on or before the Opt Out Deadline, Nesbitt shall have the unilateral right to terminate this Agreement as set forth in Section 12.2.

12.2 **Procedures and Time for Termination**

12.2.1 Within thirty (30) days following the Opt Out Deadline the Administrator shall notify counsel for Nesbitt and Class Counsel of the total number of persons who have opted out of this Agreement, including all particulars of their Crocus Investment Fund shareholdings and copies of their opt out letters.

12.2.2 Nesbitt may exercise its right to terminate this Agreement pursuant to Section 12.1 above by providing written notice to Class Counsel and to the Court within thirty (30) days



from the date on which the Administrator provides counsel for Nesbitt with the information and documentation pursuant to Section 12.2.1 above.

12.3 Notice of Settlement Class Members

12.3.1 If Nesbitt exercises its right of termination pursuant to Section 12 of this Agreement, Notice of Termination shall be given to all Settlement Class Members. The content and method of dissemination of the Notice of Termination shall be determined by the Court. If Nesbitt exercises the right to terminate this Agreement, any costs associated with disseminating the Notice of Certification and Settlement and the Notice of Termination shall be paid by Nesbitt.

12.4 Automatic Termination of the Agreement

12.4.1 This Agreement shall, without notice, be automatically terminated without admission by and without prejudice to Nesbitt if the Court declines to approve this Agreement in any respect or, in the event of an appeal, if the Court's approval order is not affirmed in all respects.

12.5 Effect of Termination

12.5.1 If this Agreement is terminated pursuant to Section 12 herein, the certification of the Class Action for settlement purposes pursuant to this Agreement shall be null and void and this Agreement shall have no further force or effect and shall not be used or referred to in any litigation.

13 Miscellaneous Provisions

13.1 Ongoing Authority



13.1.1 The Court shall retain continuing jurisdiction over (i) this Agreement to ensure that all payments under this Agreement are properly made, and (ii) the interpretation and enforcement of this Agreement's terms, conditions and obligations

13.2 Entire Agreement

13.2.1 This Agreement constitutes the entire agreement by and among the Plaintiff and Nesbitt with regard to the subject of this Agreement and supersedes any previous agreements and understandings between the Plaintiff and the Settling Party with respect to the subject matter of this Agreement. This Agreement may not be amended except in writing signed by the Plaintiff and Nesbitt, and, following the making of the Approval Order, such amendments are subject to the Court's approval

13.3 Other Originals

13.3.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument

13.4 Dates

13.4.1 Dates and deadlines referred to in this Agreement may be altered only with the consent of the Plaintiff and Nesbitt and, following the making of the Approval Order, with the approval of the Court.

13.5 Use of Agreement

13.5.1 Neither the existence nor the terms of this Agreement may be used as evidence of any admission by the Settling Party regarding fault, liability, causation, damages, and/or any other issue. This Agreement may, however, be relied upon by the Plaintiff or Nesbitt for purposes of enforcing any right possessed by such person or for purposes of any motion or application made to the Court for interpretation or enforcement of its terms



13.6 Notification

13.6.1 Any notification, request, instruction or other document to be given by any party to this Agreement to any other party to this Agreement shall be in writing and delivered personally, sent by facsimile, or sent by registered mail, postage prepaid, if to the Plaintiff, to the attention of Class Counsel and, if to Nesbitt, to the attention of its counsel:

For the Plaintiff Bernard W. Bellan and the Settlement Class:

David A Klein, Douglas Leunox, Jay Prober and J. R. Norman Boudreau

For the Defendant Nesbitt Burns Inc.:

Sharon Haward-Laird

Dated this _____ day of _____, 2008.

Plaintiff and Settlement Class

by their solicitors, Klein Lyons
Per: David A. Klein

Dated this 16th day of May, 2008.

BMO Nesbitt Burns Inc.



Per: Sharon Haward-Laird

13.6 Notification

13.6.1 Any notification, request, instruction or other document to be given by any party to this Agreement to any other party to this Agreement shall be in writing and delivered personally, sent by facsimile, or sent by registered mail, postage prepaid, if to the Plaintiff, to the attention of Class Counsel and, if to Nesbitt, to the attention of its counsel:

For the Plaintiff Bernard W. Bellan and the Settlement Class:

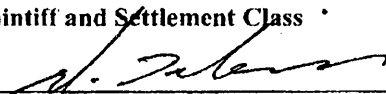
David A. Klein, Douglas Lennox, Jay Prober and J. R. Norman Boudreau

For the Defendant Nesbitt Burns Inc.:

Sharon Haward-Laird

Dated this 16th day of May, 2008.

Plaintiff and Settlement Class


by their solicitors, Klein Lyons
Per: David A. Klein

Dated this _____ day of _____, 2008.

BMO Nesbitt Burns Inc.

Per: Sharon Haward-Laird

Tab D

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, PRICEWATERHOUSE COOPERS 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

File No. CI 06-01-46955

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

BERNARD W. BELLAN, and ROBERT NELSON,

Plaintiffs,

- and -

THE GOVERNMENT OF MANITOBA,

Defendant,

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

ORDER

(RE: Updating Notice)

BOOTH DENNEHY LLP

Barristers & Solicitors

387 Broadway

Winnipeg MB R3C 0V5

NORMAN BOUDREAU

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Fax (204) 943-6199

PROBER LAW OFFICES

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DAVID KLEIN

& DOUGLAS LENNOX

Tel (604) 874-7171

Fax (604) 874-7180

Counsel for the Plaintiffs

THE QUEEN'S BENCH
Winnipeg Centre

THE HONOURABLE)
)
MR. JUSTICE HANSEN) Wednesday, July 2, 2008

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, PRICEWATERHOUSE COOPERS 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

File No. CI 06-01-46955

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

BERNARD W. BELLAN, and ROBERT NELSON, Plaintiffs,

- and -

THE GOVERNMENT OF MANITOBA, Defendant,

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

ORDER

THIS MOTION, made by the Plaintiff, Bernard Bellan, on consent, for an order updating the form of notice approved in the settlement with the Defendants, Manitoba Securities Commission and the Government of Manitoba, and co-ordinating this notice

with notice in the settlement with the Defendant, BMO Nesbitt Burns Inc., was heard this day,

ON HEARING the submissions of counsel for the Plaintiff,

THIS COURT ORDERS AS FOLLOWS:

1. Further to the order approving the settlement with the Manitoba Securities Commission and the Government of Manitoba, granted May 20, 2008, and signed May 30, 2008, the form of Notice of Certification and Settlement Approval in that settlement is hereby replaced and substituted with the form substantially as attached at Schedule A.
2. Further to the order approving the settlement with BMO Nesbitt Burns Inc., granted May 30, 2008, and signed June 18, 2008, the form of Notice of Certification and Settlement with the respect to that settlement is approved in substantially the form attached at Schedule A.
3. To permit and co-ordinate a single notice with respect to these two settlements, on or before July 14, 2008 the Administrator shall mail by ordinary mail a copy of the Notice of Certification and Settlement Approval approved in this order to the last known address it has in its records for each holder of Crocus Investment Fund Class A shares. The Notice of Certification and Settlement Approval will also be posted on the Klein Lyons web site, and on the Receiver's web site. The Administrator will further cause the Notice of Certification and Settlement Approval to be published in one weekday edition of the Winnipeg Free Press.

July 2, 2008

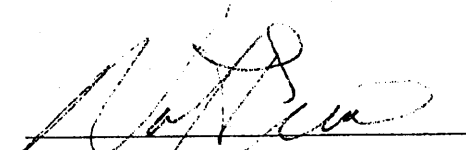
K. R. HANSEN

J.

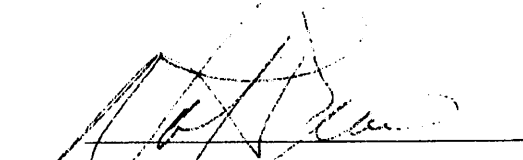
Approved and consented as to form and content by:

Counsel for the
Government of Manitoba

Counsel for the
Manitoba Securities Commission



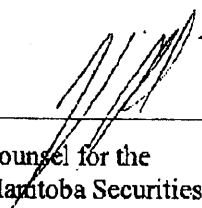
Counsel for the
Plaintiff



Counsel for
BMO Nesbitt Burns Inc.

Approved and consented as to form and content by:

Counsel for the
Government of Manitoba



Counsel for the
Manitoba Securities Commission

Counsel for the
Plaintiff

Counsel for
Nesbitt Burns Inc.

Approved and consented as to form and content by:



Counsel for the
Government of Manitoba

Counsel for the
Manitoba Securities Commission

Counsel for the
Plaintiff

Counsel for
Nesbitt Burns Inc.

**Crocus Investment Fund Class Actions
Notice of Certification and Settlement Approval**

To all persons who own Class A common shares in the Crocus Investment Fund (the "Fund"), this notice will be important to you.

Settlements have been approved by the Court in lawsuits brought on behalf of shareholders in the Fund. This notice is published by Order of The Honourable Mr. Justice Hanssen of the Manitoba Court of Queen's Bench and explains:

1. the lawsuits;
2. the terms of settlement;
3. your right to choose to opt out of the class actions;
4. legal fees; and
5. where to get more information.

1. The Lawsuits

Bernard Bellan commenced class action lawsuits relating to the Fund on behalf of shareholders in the Manitoba Court of Queen's Bench as action nos. CI 05-01-42765 and CI 06-01-46955. The Manitoba Securities Commission, the Government of Manitoba, and BMO Nesbitt Burns Inc. have agreed to settle these lawsuits (the "Settling Defendants"). In addition, on June 23, 2008, proposed settlements with the former officers and directors of the Fund, Pricewaterhouse Coopers LLP, Crocus Capital Inc., and the Crocus Investment Fund were given provisional approval, subject to certain amendments, before they can be finalized. As of the date hereof, it is uncertain whether the required amendments will be satisfactory to the former officers and directors or PricewaterhouseCoopers LLP. There has been no settlement at all with one remaining defendant, Wellington West Capital Inc., and this claim is continuing.

On May 20, 2008 and May 30, 2008, Mr. Justice Hanssen certified these lawsuits as class actions for the purposes of settlement as against the Settling Defendants, and approved the settlement agreements reached with the Settling Defendants. The court defined the class as persons who own Class A common shares in the Fund including their legal representatives, heirs, successors and assigns, and who have not opted out but excludes each of the Defendants named or ever named in the lawsuits. The court appointed Mr. Bellan as representative plaintiff for the class. The court appointed the firms of Klein Lyons, Booth Dennehy LLP and Prober Law Offices, (collectively, "Class Counsel") as counsel to the class.

2. The Terms of Settlement

The Settling Defendants have agreed to pay up to a total of \$2.85 million to compensate class members (\$2.75 million paid by the Government of Manitoba on behalf of the Government of Manitoba and the Manitoba Securities Commission, and \$100,000 plus a release of a claim for costs which substantially exceeded this amount in the case of BMO Nesbitt Burns Inc.). In exchange, the claims against the Settling Defendants will be dismissed. No admission of liability has been made.

If the settlements with the former directors and officers and Pricewaterhouse Coopers receive final approval from the Court, this could add up to an additional \$9.15 million to the amount of \$2.75 million being paid by the Government of Manitoba on behalf of the Government of Manitoba and the Manitoba Securities Commission and the amount paid by BMO Nesbitt Burns Inc. Should the former directors and officers and the Pricewaterhouse Coopers settlements be finalized, those other defendants have also proposed to drop most claims for indemnity against the Fund with respect to claims asserted in the lawsuits, thereby significantly reducing one of the major obstacles to the distribution of money to shareholders held in the Fund's receivership.

The ongoing status of the potential settlements with the former directors and officers and Pricewaterhouse Coopers can be obtained by reviewing the Klein Lyons web page at www.kleinlyons.com.

Compensation will be distributed pro rata to the Settlement Class Members based on the monies paid for each Settlement Class Member's Class A common shares of the Crocus Investment Fund which remained unredeemed as of the date of the Receivership. Compensation will be distributed by Deloitte & Touche Inc., the Receiver to the Fund, which the court has appointed as the Administrator for the settlements. It is anticipated that compensation will be distributed to class members at the same time that the Administrator makes a distribution of monies from the Receivership to shareholders. If this settlement is concluded, a distribution is anticipated in late fall 2008, at the earliest. To be eligible to receive compensation, it is not necessary for you to take any steps, other than make sure that the Administrator has your correct mailing address. The Administrator is mailing a copy of this notice to all shareholders in the Fund. If you received a copy of this notice in the mail from the Administrator, and it is addressed to you at your current address, this confirms that it has your mailing address.

The class members' recoveries will be subject to payment of Class Counsel's fee, in an amount to be determined by the Court. Copies of the Settlement Agreements are available online at www.kleinlyons.com. Hard copies can be obtained by calling Class Counsel at 1-800-216-1383.

3. Your Right to Choose Whether or Not to be Part of the Class Actions

(a) How to be Included in the Class

If you are a class member, you will automatically be included in the class actions and eligible to receive compensation unless you opt out.

(b) How to be Excluded from the Lawsuits

To opt out of the class actions, you must deliver a letter to the Administrator on or before the **[Opt Out Deadline]** signed by the person opting out and setting out that person's name, address, number of shares held and reason for opting out. Note that the within Notice only involves the settlements which have been conclusively approved to date, namely the settlements with the Government of Manitoba, the Manitoba Securities Commission, and BMO Nesbitt Burns Inc. You will be given notice in the future of any settlements reached with the former directors and

officers and PricewaterhouseCoopers if and when they have been finalized, at which time you will have the opportunity to consider whether to accept or opt out of those settlements.

All class members who do not opt out of the settlements with The Government of Manitoba, the Manitoba Securities Commission, and BMO Nesbitt Burns Inc. as described above will be bound by the settlements.

The address for writing to the Administrator to opt out is: Crocus Class Action Settlement Administrator, Deloitte & Touche Inc., 360 Main Street, Suite 2300, Winnipeg MB, R3C 3Z3.

4. Legal Fees

Mr. Bellan retained Class Counsel to represent him and the Class in the lawsuits. Class Counsel are paid legal fees only if the lawsuit is successful, and then only in an amount approved by the Court.

5. More Information

For further information about the class actions you may contact: Klein Lyons, Barristers & Solicitors, P.O. Box 85, Suite 1220, 65 Queen St. W., Toronto, ON M5H 2M5, 1-800-216-1383, Attn: Doug Lennox dlennox@kleinlyons.com, www.kleinlyons.com.

Tab E

**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

ORDER

(RE: Settlement with PricewaterhouseCoopers LLP)

BOOTH DENNEHY LLP
Barristers and Solicitors
387 Broadway
Winnipeg MB R3C 0V5
NORMAN BOUDREAU

Tel: (204) 957-1717
Fax: (204) 943-6199

PROBER LAW OFFICES
Barristers and Solicitors
387 Broadway
R3C 0V5
JAY PROBER

Tel: (204) 957-1205
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KLEIN LYONS
Barristers and Solicitors
1100 - 1333 West Broadway
Vancouver, B.C. V6H 4C1
**DAVID KLEIN &
DOUGLAS LENNOX**

Tel: (604) 874-7171
Fax: (604) 874-7180

Counsel for the Plaintiffs

**THE QUEEN'S BENCH
Winnipeg Centre**

THE HONOURABLE) WEDNESDAY, APRIL 22, 2009
)
MR. JUSTICE HANSSEN)

B E T W E E N:

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

ORDER

THIS MOTION, made by the Plaintiff, Bernard Bellan, for an order approving a settlement with the Defendants, PricewaterhouseCoopers LLP ("PwC"), was heard this day at Winnipeg.

THIS MOTION is a continuance of the motion brought by the Plaintiff on June 23, 2008, in which the Plaintiff sought approval of a proposed settlement agreement, dated June 8, 2008 (the "Settlement Agreement"). This Honourable Court was prepared to approve that Settlement Agreement subject to certain amendments being made. The Plaintiff now renews his request for approval of settlement in light of an amending agreement, dated April 21, 2009 (the "Amending Agreement").

ON READING the affidavits of Mark Lyons and Bernard Bellan and on hearing the submissions of counsel for the parties.

THIS COURT ORDERS AS FOLLOWS:

1. The Settlement Agreement and the Amending Agreement, attached to this Order as Schedule A, are approved as fair and reasonable and in the best interests of the Settlement Class. The Settlement Agreement and the Amending Agreement (collectively “the Agreement”) are incorporated into, and form part of this Order, including the definitions contained therein. In the event of a conflict between the terms of the Settlement Agreement and the terms of the Amending Agreement, the terms of the Amending Agreement shall govern.
2. The Class Action is certified as against PwC for settlement purposes only.
3. The Settlement Class is defined as the class of persons who own Class A common shares in the Crocus Investment Fund including their legal representatives, heirs, successors and assigns, and who have not opted out of the Agreement but excludes each of the Defendants named or ever named in the Class Action or the Related Action.
4. The common issue is defined as whether PwC owed a duty to the Settlement Class.
5. Bernard Bellan is appointed as the Representative Plaintiff for the Settlement Class. His counsel Klein Lyons, Booth Dennehy LLP and Prober Law Offices, are appointed as counsel to the Settlement Class.
6. PwC and all Settlement Class Members are ordered to comply with the Agreement.
7. The deadline for exclusion (“opting out”) from the Settlement Class is 30 days following the mailing of the Notice of Certification and Settlement Approval (“Opt Out Deadline”).

8. Any Settlement Class Member who has not opted out from the Settlement Class in accordance with the procedures set out in this Agreement by the Opt Out Deadline shall be bound by the terms of this Agreement.

9. The Receiver, Deloitte & Touche, Inc., is appointed as the Administrator of the settlement.

10. The form of Notice of Certification and Settlement Approval is approved in substantially the form as attached as Schedule B. Within 14 days after the Approval Date, the Administrator shall mail by ordinary mail a copy of the Notice of Certification and Settlement Approval to the last known address it has in its records for each holder of Crocus Investment Fund Class A shares. The Notice of Certification and Settlement Approval will also be posted on the Klein Lyons web site, and on the Receiver's web site. The Administrator will further cause the Notice of Certification and Settlement Approval to be published in one weekday edition of the Winnipeg Free Press.

11. All claims for contribution, indemnity, subrogation or any other claims by any Non-Settling Defendant or any other person against PwC in respect of or relating to the subject matter of the Class Action and the Related Action, or any other claim on behalf of the Settlement Class, whether direct, subrogated, derivative, asserted or unasserted or asserted in a representative capacity, inclusive of interest, GST and costs, will be and the same are hereby barred by order of the Court.

12. In any proceeding taken by the Plaintiff or other Settlement Class Member in respect of a claim assigned to them, the Plaintiff or the Settlement Class member shall not claim and shall not be entitled to recover any amount for which PwC may be liable to any party to the assigned claim, including the assignor, by way of indemnity, contribution, subrogation, or other claim or claim over.

13. It is declared for additional certainty that the Plaintiff and other Settlement Class Members shall not commence, plead or assert in any way against PwC any claim obtained by assignment from a Non-Settling Defendant who has entered in a Settlement Agreement approved by the Court settling the Class Action or the Related Action.

14. Any Non-Settling Defendant or other person who intends to commence an action or third party claim against PwC relating to the subject matter of the Class Action or the Related Action or any other matter arising out of the business operations and affairs of the Crocus Investment fund shall not proceed without obtaining leave of the Honourable Mr. Justice Hanssen or such other Justice of the Manitoba Court of Queen's Bench responsible for the management of the Class Action.

15. The Non-Settling Defendants, excluding Non-Settling Defendants who have entered into Settlement Agreements with the Plaintiff which have been approved by the Court, shall have discovery rights against PwC in the Class Action with respect only to claims specifically asserted against PwC in the Statement of Claim issued on July 12, 2005, as amended.

16. With respect to the collective several liability of the Non-Settling Defendants at paragraphs 11.2.2 and 11.2.3 of the Agreement, the Non-Settling Defendants shall not be made to pay a greater amount to the Settlement Class, as a result of this settlement, than would have occurred in the absence of a settlement.

17. It is declared that, in the event of termination of the Agreement pursuant to Section 13 of the Agreement, this Order is null and void and of no force and effect.

18. The Court shall retain continuing jurisdiction over the Agreement to ensure that all payments are properly made, and over the interpretation and enforcement of the Agreement's terms, conditions and obligations.

APR 22 2009

K. R. HANSEN

J.

Schedule A to Order

**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, PRICEWATERHOUSE COOPERS 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

SETTLEMENT AGREEMENT

WHEREAS:

A. Bernard W. Bellan (the "Plaintiff"), in his own capacity and in his capacity as representative plaintiff for the Settlement Class, and PricewaterhouseCoopers LLP ("PwC"), (collectively, the "Settling Parties"), hereby enter into this Agreement providing for settlement of the claims described below, pursuant to the terms and conditions set forth below, subject to the approval of the Court.

B. A Class Action, being File No: CI 05-01-42765, has been filed by the Plaintiff against PwC pursuant to the Class Proceedings Act, C.C.S.M. c. C130 in the Manitoba Court of Queen's Bench ("the Class Action"). A related Class Action, being File No: CI 06-01-46955, has been

filed by the Plaintiff against the Government of Manitoba in the Manitoba Court of Queen's Bench ("the Related Action").

C. Robert Nelson has, on the advice of his physician, requested that his name be removed as a plaintiff in the Related Action.

D. By order of the Manitoba Court of Queen's Bench dated June 28, 2005, Deloitte & Touche Inc. was appointed receiver and manager of The Crocus Investment Fund and is a party to this Agreement.

E. The Settling Parties and the Receiver engaged in a mediation process with a nationally recognized mediator.

F. The Plaintiff has entered into a settlement agreement with the Government of Manitoba, the Defendant in the Related Action.

G. It is intended that this Agreement shall fully and finally settle all claims which have been or could have been made against PwC in, arising out of, or related to the Class Action and the Related Action.

H. PwC, notwithstanding its consent to this Agreement, has denied and continues to deny the claims of the Plaintiff and the Settlement Class Members in the Class Action, has denied and continues to deny any wrongdoing and has raised numerous defences, including defences relating to the certification of the claims in the Class Action and, except to the extent of its obligations under this Agreement, PwC denies liability of any kind to the Plaintiff, the Settlement Class Members, or to any Defendant. PwC enters into this Agreement without in any

way acknowledging any fault or liability and this Agreement may not be construed as an admission by PwC of any fault or liability.

I. The Class Action and the Related Action have not yet been certified. PwC is not opposing certification of the Class Action as against it for settlement purposes only.

J. The Settlement Class Members will have the right to exclude themselves ("opt out") from this Agreement pursuant to Section 16 of The Class Proceedings Act, C.C.S.M. C. C130, and as provided in this Agreement.

K. Based upon an analysis of the facts and the law applicable to the claims of the Settlement Class, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving claims of the Settlement Class provided for in this Agreement, the Plaintiff and Plaintiff's Counsel have concluded that this Agreement provides substantial benefits to the Settlement Class and is fair, reasonable, and in the best interests of the Settlement Class.

L. PwC, while continuing to deny any liability whatsoever, has similarly concluded that this Agreement is desirable in order to avoid the time, risk and expense of defending multiple and protracted litigation, and to resolve finally and completely the pending and potential claims of the Settlement Class Members and all pending and potential claims, proceedings, crossclaims and third party actions against them.

NOW THEREFORE, subject to the Court's approval, upon the terms and conditions hereinafter set forth, this Agreement embodies the terms of resolution of the claims asserted or which could

have been asserted against PwC in, arising out of, or related to the Class Action and the Related Action.

1. **Definitions**

Unless the specific context of a particular section of this Agreement calls for another interpretation, the following terms, as used in this Agreement, shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural, and *vice versa*. Masculine pronouns and male references shall be deemed to include the female and *vice versa*, where appropriate. The terms "person" or "party" includes individuals, partnerships and corporations.

"Administrator" means the person appointed by the Court as provided in Section 7 of this Agreement.

"Agreement" means this Settlement Agreement.

"Approval Date" means the date on which the Approval Order becomes a final order meaning that the time to appeal has expired and there has been no appeal or, if there have been any appeals from the Approval Order, all rights of appeal have been exhausted and there has been no change to the Approval Order.

"Approval Order" means the Order referred to in section 3.2.1 of this Agreement.

"Class Counsel" means the law firms of Klein Lyons, Booth Denchey LLP and Prober Law Offices, which firms act on behalf of the Plaintiff and the Settlement Class herein and

which shall continue acting on behalf of the Plaintiff and Settlement Class with respect to all acts or consents pursuant to this Agreement.

"Court" means the Manitoba Court of the Queen's Bench which has jurisdiction over the Class Action and the Related Action, and the Honourable Mr. Justice Hanssen, or his successor.

"Defendants" means any of the defendants ever named or to be named in either of the Class Action or the Related Action (including affiliates and each Defendant and its affiliates' present and former directors, officers, agents, partners, servants and employees and each individual's successors, heirs, executors, estate trustees, administrators and assigns). For greater certainty, "Defendants" includes Deloitte & Touche Inc. in its capacity as receiver of the Crocus Investment Fund.

"Effective Date" means the date that PwC pays the Settlement Amount as provided in section 6.1 of this Agreement.

"Escrow Account" means the funded account established pursuant to Section 6.3 of this Agreement.

"Non-Settling Defendants" means any of the Defendants, excluding PwC, ever named or to be named in the Class Action or the Related Action. For the purpose of this Agreement, The Government of Manitoba and any other party who has entered into a settlement agreement with the Plaintiff shall be deemed to be a Non-Settling Defendant.

"Notice of Certification and Settlement Approval" means the Notice advising Settlement Class Members of the Court's approval of this Agreement.

"Opt Out Deadline" means the date 30 days after the date of mailing of the Notice of Certification and Settlement Approval pursuant to Section 3.3 of this Agreement.

"Receiver" means Deloitte & Touche, Inc. as Receiver of The Crocus Investment Fund.

"Settlement Amount" means the sum of \$6,000,000.00 (Six Million Dollars) payable by or on behalf of PwC under this Agreement.

"Settlement Class" means the class of persons who own Class A common shares in The Crocus Investment Fund including their legal representatives, heirs, successors and assigns, and who have not opted out of this Agreement but excludes each of the Defendants named or ever named in the Class Actions.

"Settlement Class Member" means a person who falls within the definition of the Settlement Class.

"Settlement Fund" means the Settlement Amount less the Escrow Account and the amount approved by the Court for payment of Class Counsel fees and disbursements.

2. Preliminary Matters

- 2.1** Promptly after execution of this Agreement, the Plaintiff will serve a true copy of this Agreement on counsel for each of the Non-Settling Defendants.
- 2.2** Where the time on or by which any action to be taken under this Agreement falls on a day that is not a business day, such action may be done on the next day that is a business day.
- 2.3** All references to money in this Agreement are to Canadian currency.

3. Matters Relating to Certification and Settlement Approval

3.1 Within 14 days of the execution of this Agreement by all Settling Parties, the Plaintiff will bring an application for Court approval of this Agreement. PwC will not oppose certification of the Class Action as against it for settlement purposes only.

3.2 Certification and Settlement Approval Order

3.2.1 Subject to the Court's approval, and as provided in a form of Order to be agreed by the Plaintiff and PwC, the order approving this Agreement shall:

- (a)** certify the Class Action as against PwC for settlement purposes only;
- (b)** appoint Bernard Bellan as the Representative Plaintiff for the Settlement Class;
- (c)** approve this Agreement and order PwC and all Settlement Class Members to comply with it;
- (d)** order that the deadline for exclusion ("opting out") from the Settlement Class be 30 days following the mailing of the Notice of Certification and Settlement Approval ("Opt Out Deadline");
- (e)** declare that any Settlement Class Member who has not opted out from the Settlement Class in accordance with the procedures set out in this Agreement by the Opt Out Deadline shall be bound by the terms of this Agreement;
- (f)** declare that this Agreement is fair, reasonable, and in the best interests of the Settlement Class;

- (g) order mailing of the Notice of Certification and Settlement Approval;
- (h) appoint the Receiver as the Administrator with power to be paid its fees and disbursements from the Settlement Amount;
- (i) bar any and all claims, including claims for contribution, indemnification, subrogation or other claims over, against PwC by any Non-Settling Defendant, or by any other person, in respect of the subject matter of the Class Action and the Related Action or any other matter arising out of or related to the operation of The Crocus Investment Fund;
- (j) order that the Non-Settling Defendants, excluding Non-Settling Defendants who have entered into settlement agreements with the Plaintiff which have been approved by the Court, shall have discovery rights against PwC in the Class Action as if the Non-Settling Defendants had issued third party notices against PwC, and the Plaintiff shall have the right to participate as a party to such discoveries; and
- (k) declare that, in the event of termination of this Agreement pursuant to Section 13 below, the Order is null and void and of no force and effect.

3.2.2 Following Court approval of this Agreement, Class Counsel will apply to the Court for approval of Class Counsel fees and disbursements. On the Effective Date, the amount approved by the Court will be paid to Class Counsel out of the Settlement Amount that was paid to Klein Lyons in trust pursuant to section 6.1 of this Agreement. The approval of this Agreement is not conditional on approval of Class Counsel's fees or

disbursements. PwC takes no position as to the amount that should be paid to Class Counsel for fees and disbursements.

3.3 Notice of Certification and Settlement Approval

3.3.1 The content of the Notice of Certification and Settlement Approval shall be as agreed by the Settling Parties and approved by the Court.

3.3.2 Within 14 days after the Approval Date, or on such other date as is approved by the Court, the Receiver shall mail by ordinary mail a copy of the Notice of Certification and Settlement Approval to the last known address it has in its records for each holder of Crocus Investment Fund Class A common shares. The Notice of Certification and Settlement Approval will also be posted on the Klein Lyons web site, and the Plaintiff will request that it be posted on the Receiver's web site.

4. Waiver of Limitation Defences

4.1 Nothing in this Agreement shall constitute or be deemed to constitute a waiver by PwC of defences based upon statutes of limitations or repose, prescription periods or any other limitation or prescription defence with respect to any action brought or continued by any person who opts out of this Agreement, or is deemed to opt out of this Agreement, or if this Agreement is terminated.

5. Entitlement to Compensation

5.1 Subject to the payment of administration expenses referred to in section 7.1 of this Agreement, and all other conditions set out in this Agreement, only Settlement Class

Members who have not opted out shall be entitled to receive payments out of the Settlement Fund pursuant to this Agreement.

6. **Payments and Related Issues**

- 6.1 Within 14 business days after the expiration of the time period in paragraph 13.2.2, PwC will pay the Settlement Amount (\$6,000,000.00) to Klein Lyons in trust in full and final settlement of all claims by the Plaintiff and the Settlement Class, whether direct, subrogated, asserted or unasserted or asserted in an assigned or representative capacity in the Class Action or the Related Action, inclusive of all interest, GST and costs.
- 6.2 Klein Lyons will forthwith upon receipt of the Settlement Amount transfer the sum of \$5,500,000 to the Administrator to be held in trust by the Administrator for the benefit of the Settlement Class.
- 6.3 From the Settlement Fund Klein Lyons shall deduct the sum of \$500,000 (Five Hundred Thousand Dollars) and deposit the same in an interest bearing account ("The Escrow Account"). The Escrow Account shall be opened and held in the name of Klein Lyons and Heenan Blaikie LLP acting jointly and in trust. Disbursements from the Escrow Account shall require the signature of both Klein Lyons and Heenan Blaikie LLP.
- 6.3.1 The Escrow Account shall be used to compensate or reimburse PwC for reasonable fees, disbursements and other expenses or charges incurred subsequent to the Effective Date by PwC's professional staff and/or its legal advisors as a result of PwC's further involvement in the Class Action, the Related Action, or other actions or proceedings arising out of or related to the subject matter of the Class Action or the Related Action.

Payments out of the Escrow Account shall be made to PwC on agreement between PwC and Class Counsel or, failing agreement, by order of the Court upon motion by PwC with no less than 14 days notice to Class Counsel. On the final disposition of the Class Action, the Related Action or any other action or proceeding in respect of which PwC may have a claim to the Escrow Fund, by settlement or judgment, Class Counsel will apply to the Court for an order for distribution of any balance remaining in the Escrow Account.

6.3.2 Without limiting paragraph 6.3.1, it is agreed that PwC shall be reimbursed from the Escrow Account, to a limit of \$100,000, for reasonable legal fees and disbursements incurred by PwC as a result of its involvement as a party in proceedings commenced by the Receiver against any Crocus investee.

6.4 Any payments contemplated by this Section 6 are automatically cancelled and rendered null and void if this Agreement is terminated. In the event this Agreement is terminated, the Settlement Fund and the Escrow Fund shall be forthwith returned to PwC.

7. **Administrator**

7.1 The Settling Parties will propose that the Receiver be appointed by the Court as the Administrator for the purpose of administering this Agreement. All expenses of the Receiver related to the administration of this Agreement will be paid out of the Settlement Fund.

8. **Procedures and Deadlines for Exclusion**

8.1 Any person who is a holder of Crocus Investment Fund Class A common shares, other than Bernard W. Bellan, will have the right to exclude herself or himself ("opt out") from this Agreement and from the Settlement Class by delivering a letter to the Administrator on or before the Opt Out Deadline signed by the person opting out and setting out that person's name, address, number of shares held and reason for opting out. Persons who elect to opt out shall be excluded from this Agreement and from the Settlement Class. It is the responsibility of the person opting out to ensure that the requisite signed letter is received by the Administrator on or before the Opt Out Deadline. Any member of the Settlement Class who does not deliver to the Administrator a complete and signed opt out letter by the Opt Out Deadline shall be considered a Settlement Class Member and shall be bound by the terms of this Agreement and by the Court Order approving this Agreement.

8.2 By entering into this Agreement, Bernard W. Bellan agrees that he will not opt out of this Agreement.

9. Distribution of Settlement Fund

9.1 The Settlement Fund will be held in trust by the Administrator for the benefit of the Settlement Class. All Settlement Class Members who have not opted out will be eligible for payment from the Settlement Fund. The Settlement Fund, net of the Administrator's fees and disbursements, will be distributed to the Settlement Class Members by the Administrator at the same time that the Receiver makes its first distribution of funds from The Crocus Investment Fund to the holders of Crocus Investment Fund Class A common shares. The Settlement Fund will be distributed pro rata to the Settlement Class Members

based on the monies paid for each Settlement Class Member's Class A common shares of The Crocus Investment Fund which remained unredeemed as of the date of the Receivership.

9.2 PwC shall have no responsibility for the maintenance of the Settlement Fund after the Effective Date and PwC shall have no responsibility for the allocation and distribution of the Settlement Fund to the Settlement Class.

10. **Exclusive Remedy/Dismissal of Action**

10.1 **Exclusive Remedy**

10.1.1 This Agreement shall be the sole and exclusive remedy for any and all Settlement Class Members with respect to claims asserted or which could have been asserted against PwC in the Class Action or the Related Action. PwC shall not be subject to liability or any other expense of any kind to any Settlement Class Member with respect to the Class Action and the Related Action, except as provided in this Agreement. Settlement Class Members, who have not opted out of this Agreement on or before the Opt Out Deadline and their personal representatives, successors and assigns, shall be forever barred from continuing, initiating, asserting or prosecuting any and all claims asserted or which could have been asserted against PwC in the Class Action or the Related Action.

10.2 **Dismissal of Action**

10.2.1 Forthwith after the Effective Date, the Settling Parties will file a consent to a judgment dismissing the Class Action, including any and all crossclaims and third party claims, as against PwC, with prejudice on a "without costs" basis, along with any other documents

that may be necessary to give effect to the dismissal of the Class Action. Notwithstanding the dismissal of the Class Action as against PwC, the Court will retain ongoing jurisdiction to deal with matters arising out of the administration of the settlement provided for in this Agreement.

11. Releases/Bar Order/Third Party Claims

11.1 Release of Claims Against PwC

11.1.1 The claims of the Plaintiff and every Settlement Class Member, who has not opted out of this Agreement on or before the Opt Out Deadline, whether their claims are direct, subrogated, asserted or unasserted or asserted in an assigned or representative capacity in the Class Action or the Related Action, inclusive of all interest, GST and costs, shall be conclusively compromised, settled, released and discharged as against PwC, and the Plaintiff and every Settlement Class Member, their personal representatives, successors and assigns, shall be deemed to have forever released and discharged PwC from any past, present and future claims, actions, demands and liabilities of any nature whatsoever relating to claims asserted or which could have been asserted in the Class Action or the Related Action.

11.2 Bar Order

11.2.1 All claims, including claims for contribution, indemnity, subrogation or other claims over, by any Non-Settling Defendant or any other person against PwC in respect of or relating to the subject matter or the settlement of the Class Action or the Related Action or any other matter arising out of the operation of The Crocus Investment Fund, whether

direct, subrogated, asserted or unasserted or asserted in an assigned or representative capacity, inclusive of interest, GST and costs, will be forever barred by order of the Court.

11.2.2 Forthwith after the Effective Date, the Plaintiff will amend the Statement of Claim in Manitoba Queen's Bench Action No. CI 05-01-42765 so as to restrict permanently the claims made against the Non-Settling Defendants to the collective several liability of the Non-Settling Defendants. In other words, the Plaintiff agrees to exclude permanently the proportionate share of liability of PwC from any judgment which may be granted against the Non-Settling Defendants or any of them.

11.2.3 If any action is instituted or continued by a Settlement Class Member, including the Plaintiff, seeking damages against persons who are not currently parties to the Class Action or the Related Action ("non-parties") in respect of claims asserted or which could have been asserted in the Class Action or the Related Action, such action will be limited to the non-parties' collective several liability. In other words, the Settlement Class Member's claim shall exclude the proportionate share of liability of PwC from the claims against the non-parties, and from any judgment which may be granted against the non-parties.

11.3 Reservation of Rights/Third Party Claims

11.3.1 Except as otherwise provided herein, nothing in this Agreement shall prejudice or in any way interfere with the rights of the Settlement Class Members to pursue all of their other rights and remedies against persons and/or entities other than PwC.

12. **Submissions to the Court by the Administrator**

12.1 The Administrator may apply to the Court for directions, as required, upon notice served on Class Counsel and PwC's Counsel no later than fourteen (14) days prior to the date of any hearing.

13. **Termination of this Agreement**

13.1 **PwC's Right of Termination**

13.1.1 If persons holding a total of more than .5 percent (one half of one percent) of the Crocus Investment Fund Class A common shares elect to opt out of this Agreement on or before the Opt Out Deadline, PwC shall have the unilateral right to terminate this Agreement as set forth in Section 13.2.

13.2 **Procedures and Time for Termination**

13.2.1 Within thirty (30) days following the Opt Out Deadline the Administrator shall notify counsel for PwC and Class Counsel of the total number of persons who have opted out of this Agreement, including all particulars of their Crocus Investment Fund shareholdings and copies of their opt out letters.

13.2.2 PwC may exercise its right to terminate this Agreement pursuant to Section 13.1.1 above by providing written notice to Class Counsel and to the Court within thirty (30) days from the date on which the Administrator provides counsel for PwC with the information and documentation pursuant to Section 13.2.1 above.

13.3 Notice to Settlement Class Members

13.3.1 If PwC exercises its right of termination pursuant to Section 13 of this Agreement, Notice of Termination shall be given to all Settlement Class Members. The content and method of dissemination of the Notice of Termination shall be determined by the Court. If PwC exercises the right to terminate this Agreement, any costs associated with disseminating the Notice of Certification and Settlement and the Notice of Termination shall be paid by PwC.

13.4 Automatic Termination of the Agreement

13.4.1 This Agreement shall, without notice, be automatically terminated if the Court declines to approve this Agreement in any respect or, in the event of an appeal, if the Court's approval order is not affirmed in all respects.

13.5 Effect of Termination

13.5.1 If this Agreement is terminated pursuant to Section 13 herein, the certification of the Class Action for settlement purposes pursuant to this Agreement shall be null and void and this Agreement shall have no further force or effect and shall not be used or referred to in any litigation involving any of the Settling Parties and/or the Non-Settling Defendants.

14. Receiver's Release of Claims

14.1 In consideration of the settlement provided for in this Agreement, the Receiver releases and forever discharges PwC for or in respect of any claim or matter asserted or which

could have been asserted in the Class Action or in the Related Action and for or in respect of any claim or matter arising out of the operation, audit, or receivership of The Crocus Investment Fund.

15. **Miscellaneous Provisions**

15.1 **Ongoing Authority**

15.1.1 The Court shall retain continuing jurisdiction over this Agreement to ensure that all payments under this Agreement are properly made, and over the interpretation and enforcement of this Agreement's terms, conditions and obligations.

15.2 **Entire Agreement**

15.2.1 This Agreement constitutes the entire agreement by and among the Settling Parties with regard to the subject of this Agreement and supercedes any previous agreements and understandings between the Settling Parties with respect to the subject matter of this Agreement. This Agreement may not be amended except in writing signed by the Settling Parties, and such amendments are subject to the Court's approval.

15.3 **Other Originals**

15.3.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument.

15.4 **Dates**

15.4.1 Dates and deadlines referred to in this Agreement may be altered only with the consent of the Settling Parties and with the approval of the Court.

15.5 Use of Agreement

15.5.1 Neither the existence nor the terms of this Agreement may be used as evidence of any admission by PwC regarding fault, liability, causation, damages, and/or any other issue. This Agreement may, however, be relied upon by the Plaintiff or PwC for purposes of enforcing any right possessed by such person or for purposes of any motion or application made to the Court for interpretation or enforcement of its terms.

15.6 Notification

15.6.1 Any notification, request, instruction or other document to be given by any party to this Agreement to any other party to this Agreement shall be in writing and delivered personally, sent by facsimile, or sent by registered mail, postage prepaid, if to the Plaintiff, to the attention of Class Counsel and, if to PwC, to the attention of its counsel:

For the Plaintiff Bernard W. Bellan and the Settlement Class:

David A. Klein, Douglas Lennox, Jay Prober and J. R. Norman Boudreau

For the Defendant PwC:

William E. Pepall and David Marr


For the Receiver:

A. R. Holmes

Dated this 5th

day of June, 2008.

Plaintiff and Settlement Class

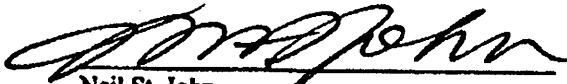

by their solicitors, Klein Lyons
Per: Douglas Lennox

Dated this

6th

day of June, 2008.


PricewaterhouseCoopers LLP


Neil St. John
Corporate Secretary and General Counsel

Dated this

8th

day of June, 2008.

Deloitte & Touche Inc *as Receiver of Focus Investment Fund.*

Senior V.P. *ML*

**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, PRICEWATERHOUSE COOPERS 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

**AGREEMENT TO AMEND THE SETTLEMENT AGREEMENT
DATED JUNE 8, 2008 ("THE AMENDING AGREEMENT")**

WHEREAS:

- A. Bernard W. Bellan ("the Plaintiff"), in his own capacity and in his capacity as representative plaintiff for the Settlement Class, PricewaterhouseCoopers LLP ("PwC") and Deloitte & Touche Inc., as Receiver of Crocus Investment Fund ("the Receiver") (collectively "the Parties") entered into a Settlement Agreement dated June 8, 2008 ("the Settlement Agreement").
- B. The Settlement Agreement was subject to automatic termination if the Court declined to approve the Settlement Agreement in any respect.
- C. On June 23, 2008, the Court declined to approve certain terms in the Settlement Agreement.

- D. The Parties wish to affirm the Settlement Agreement and amend the same, as necessary, in order to obtain the approval of the Court.

NOW THEREFORE, subject to the approval of the Court, this Amending Agreement sets out the revised and additional terms of the Settlement Agreement as follows:

1. The Parties hereby confirm and ratify the terms of the Settlement Agreement except as modified by the terms of this Amending Agreement. In the event of conflict between the terms of the Settlement Agreement and the terms of the Amending Agreement, the terms of the Amending Agreement shall govern.
2. Page 2 of the Settlement Agreement shall be amended to add a new recital, F.1, which shall state:

F.1 The Plaintiff has also entered into a Settlement Agreement dated May 29, 2008 with Settling Director and Officer Defendants. Pursuant to paragraph 11.3.2 of that Settlement Agreement, the Settling Director and Officer Defendants assigned to the Plaintiff, "any and all claims they may have, in law or in equity, for contribution or indemnity from any of the Non-Settling Defendants or against any other person or party in respect of the claims asserted in the Class Action." ("the Assigned Claims")

3. Page 2, paragraph G of the Settlement Agreement shall be amended to state:

G. It is intended that this Agreement shall fully and finally settle all claims which have been or could have been made against PwC in, arising out of, or related to the Class Action and the Related Action, and all other claims that the Plaintiff or

Settlement Class Members may otherwise have against
PwC relating to the Crocus Investment Fund.

4. Page 3 of the Settlement Agreement shall be amended to add a new recital, J.1 which shall state:

J.1 PwC may have claims, in law or in equity, for contribution or indemnity against the Non-Settling Defendants and other third parties in respect of the claims asserted by the Plaintiff and the Settlement Class Members in the Class Action.

5. Page 3 of the Settlement Agreement shall be further amended to state as follows:

NOW THEREFORE, subject to the Court's approval, upon the terms and conditions hereinafter set forth, this Agreement embodies the terms of resolution of the claims asserted or which could have been asserted against PwC in, arising out of, or related to the Class Action and the Related Action and all other claims that the Plaintiff or Settlement Class Members may otherwise have against PwC relating to the Crocus Investment Fund.

6. Page 4, paragraph 1 of the Settlement Agreement shall be amended to state:

"Agreement" means this Settlement Agreement as amended by the Amending Agreement.

7. Page 5, paragraph 1 of the Settlement Agreement shall be amended to state:

"Defendants" means any of the Defendants ever named or to be named in the Class Action, the Related Action or the Assigned Claims (including affiliates and each Defendant and its affiliates'

present and former directors, officers, agents, partners, servants and employees and each individual's successors, heirs, executors, estate trustees, administrators and assigns). For greater certainty, "Defendants" includes Deloitte & Touche Inc. in its capacity as receiver of the Crocus Investment Fund.

8. Page 5, paragraph 1 of the Settlement Agreement shall be amended to state:

"Non-Settling Defendants" means any of the Defendants, excluding PwC, ever named or to be named in the Class Action, the Related Action or the Assigned Claims. For the purpose of this Agreement, The Government of Manitoba and any other party who has entered into a settlement agreement with the Plaintiff shall be deemed to be a Non-Settling Defendant.

9. Page 8, paragraph 3.2.1(j) of the Settlement Agreement shall be amended to state:

3.2.1(j) order that the Non-Settling Defendants excluding Non-Settling Defendants who have entered into settlement agreements with the Plaintiff which have been approved by the Court, shall have discovery rights against PwC in the Class Action with respect only to the claims specifically asserted against PwC in the Statement of Claim issued on July 12, 2005, as amended, as if the Non-Settling Defendants had issued third party notices against PwC, and the Plaintiff shall have the right to participate as a party to such discoveries; and

10. Page 10, paragraph 6.3.1 of the Settlement Agreement shall be amended to state:

6.3.1 The Escrow Account shall be used to compensate or reimburse PwC for reasonable fees, disbursements and

other expenses or charges incurred subsequent to the Effective Date by PwC's professional staff and/or its legal advisors as a result of PwC's further involvement in the Class Action, the Related Action, the Assigned Claims, or other actions or proceedings arising out of, related to, or concerning the subject matter of the Class Action or the Related Action. Payments out of the Escrow Account shall be made to PwC on agreement between PwC and Class Counsel or, failing agreement, by order of the Court upon motion by PwC with no less than 14 days notice to Class counsel. On the final disposition of the Class Action, the Related Action, the Assigned Claims or any other action or proceeding in respect of which PwC may have a claim to the Escrow Fund, by settlement or judgment, Class Counsel will apply to the Court for an order for distribution of any balance remaining in the Escrow Fund.

11. Page 13, paragraph 10.1.1 of the Settlement Agreement shall be amended to state:

10.1.1 This Agreement shall be the sole and exclusive remedy for the Plaintiff and any and all Settlement Class Members with respect to claims relating to the Crocus Investment Fund, including those claims asserted or which could have been asserted against PwC in the Class Action or the Related Action. PwC shall not be subject to liability or any other expense of any kind to the Plaintiff or any Settlement Class Member with respect to the Crocus Investment Fund, the Class Action and the

Related Action, except as provided in this Agreement. Settlement Class Members who have not opted out of this Agreement on or before the Opt Out Deadline and their personal representatives, successors and assigns, shall be forever barred from continuing, initiating, asserting or prosecuting any and all claims relating to the Crocus Investment Fund, including those claims asserted or which could have been asserted against PwC in the Class Action or the Related Action.

12. Page 14, paragraph 11.1.1 of the Settlement Agreement shall be amended to state:

11.1.1 The claims of the Plaintiff and every Settlement Class Member, who has not opted out of this Agreement on or before the Opt Out Deadline relating to the Crocus Investment Fund, whether their claims are direct, subrogated, asserted or unasserted or asserted in an assigned or representative capacity in the Class Action or the Related Action, inclusive of all interest, GST and costs, shall be conclusively, compromised, settled, released and discharged as against PwC, and the Plaintiff and every Settlement Class Member, their personal representatives, successors, and assigns, shall be deemed to have forever released and discharged PwC from any past, present and future claims, actions, demands and liabilities of any nature whatsoever relating to the Crocus Investment Fund, including all claims asserted or which could have been asserted in the Class Action or the Related Action.

13. Page 14, paragraph 11.2.1 of the Settlement Agreement shall be deleted and replaced by the following:

11.2.1 All claims for contribution, indemnity, subrogation or any other claims by any Non-Settling Defendant or any other person against PwC in respect of or relating to the subject matter of the Class Action and the Related Action, or any other claim on behalf of the Settlement Class, whether direct, subrogated, derivative, asserted or unasserted or asserted in a representative capacity, inclusive of interest, GST and costs, will be barred by order of the Court.

14. Page 15, paragraph 11.2.2 of the Settlement Agreement shall be amended to state:

11.2.2 Forthwith after the Effective Date, the Plaintiff will amend the Statement of Claim in Manitoba Queen's Bench Action No. CI 05-01-42765 so as to restrict permanently the claims made against the Non-Settling Defendants to the collective several liability of the Non-Settling Defendants. In other words, the Plaintiff agrees to exclude permanently the proportionate share of liability of PwC from his claims against and any judgment which may be granted against the Non-Settling Defendants or any of them.

15. Page 15, paragraph 11.2.3 of the Settlement Agreement shall be amended to state:

11.2.3 If any action is instituted or continued by a Settlement Class Member, including the Plaintiff, seeking damages against persons who are not currently parties to the

Class Action or the Related Action ("non-parties) in respect of claims asserted or which could have been asserted in the Class Action or the Related Action, such action will be limited to the non-parties' collective several liability and the Settlement Class Member, including the Plaintiff, shall not claim or be entitled to recover any amount for which PwC may be liable to any party thereto by way of indemnity, contribution, claim over or otherwise. In other words, the Settlement Class Member's claim shall exclude the proportionate share of liability of PwC from the claims against the non-parties, and from any judgment which may be granted against the non-parties.

16. A paragraph 11.2.3 (a) shall be added to the Settlement Agreement to state:

11.2.3(a) In any proceeding taken by the Plaintiff or other Settlement Class member in respect of a claim assigned to them, the Plaintiff or the Settlement Class member shall not claim and shall not be entitled to recover any amount for which PwC may be liable to any party to the assigned claim, including the assignor, by way of indemnity, contribution, subrogation, or other claim or claim over.

17. Paragraph 15.7.1 shall be added to the Settlement Agreement to state:

15.7 Leave Requirement

15.7.1 Any Non-Settling Defendant or other person who intends to commence an action or third party claim against PwC

relating to the subject matter of the Class Action or the Related Action or any other matter arising out of the business, operations and affairs of the Crocus Investment Fund shall not proceed without obtaining leave of the Honourable Mr. Justice Hanssen or such other Justice of the Manitoba Court of Queen's Bench responsible for the management of the Class Action.

18. Paragraph 15.8.1 of the Settlement Agreement shall be added to the Settlement Agreement to state:

15.8 Further Assurances

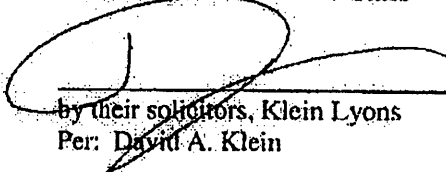
15.8.1 The Parties shall execute such further consents and agreements as may be necessary to give full and appropriate effect to the terms of the Settlement Agreement, as amended.

19. Page 7, paragraph 3.2.1 of the Settlement Agreement shall be amended to:
- (i) incorporate by reference or attachment to the Order the terms of the Settlement Agreement, as amended;
 - (ii) amend paragraph (i) to conform with paragraph 11.2.1 of the Settlement Agreement, as amended;
 - (iii) add a sub-paragraph (l) to refer specifically to paragraph 11.2.3(a) of the Settlement Agreement, as amended; and
 - (iv) add a sub-paragraph (m) to refer specifically to paragraph 15.7.1 of the Settlement Agreement, as amended.

20. This Amending Agreement may be executed in one or more counterparts by the parties or their respective counsel.

Dated this 21st day of April 2009.

Plaintiff and Settlement Class


by their solicitors, Klein Lyons
Per: David A. Klein

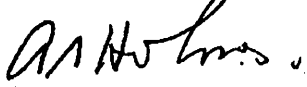
Dated this _____ day of _____ 2009.

PricewaterhouseCoopers LLP

Tony Cancelliere
National Managing Partner Operations

Dated this 21st day of April 2009.

**Deloitte & Touche Inc. as Receiver of
Crocus Investment Fund**



A. R. Holmes
Senior V.P.

20. This Amending Agreement may be executed in one or more counterparts by the parties or their respective counsel.

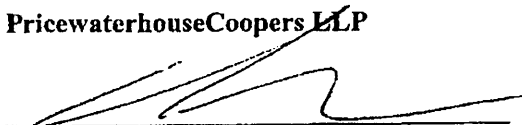
Dated this _____ day of _____ 2009.

Plaintiff and Settlement Class

by their solicitors, Klein Lyons
Per: David A. Klein

Dated this *21st* day of *April* 2009.

PricewaterhouseCoopers LLP



Tony Cancelliere
National Managing Partner Operations

Dated this _____ day of _____, 2009.

**Deloitte & Touche Inc. as Receiver of
Crocus Investment Fund**

A. R. Holmes
Senior V.P.

Schedule B to Order

Crocus Investment Fund Class Actions Notice of Certification and Settlement Approval

To all persons who own Class A common shares in the Crocus Investment Fund (the "Fund"), this notice will be important to you.

Settlements have been approved by the Court in lawsuits brought on behalf of shareholders in the Fund. This notice is published by Order of The Honourable Mr. Justice Hanssen of the Manitoba Court of Queen's Bench and explains:

1. the lawsuits and purpose of this notice;
2. the terms of settlement;
3. your right to choose to opt out of the class actions;
4. legal fees; and
5. where to get more information.

1. The Lawsuits and Purpose of this Notice

Bernard Bellan commenced class action lawsuits relating to the Fund on behalf of shareholders in the Manitoba Court of Queen's Bench as action nos. CI 05-01-42765 and CI 06-01-46955. By notice issued by Mr. Justice Hanssen of the Manitoba Court of Queen's Bench and published July 11, 2008 (the "First Notice"), it was announced that certain defendants, namely the Manitoba Securities Commission, the Government of Manitoba, and BMO Nesbitt Burns Inc had agreed to settle with shareholders, and that the court had approved these settlements. These first settlements became final on August 18, 2008.

This First Notice further advised that a provisional settlement had also been reached, subject to certain amendments, with certain other defendants, namely the former officers and directors of the Fund, Pricewaterhouse Coopers LLP, Crocus Capital Inc., and the Crocus Investment Fund, and that litigation was continuing against Wellington West Capital Inc., with whom no settlement had been reached. All of these remaining defendants have now agreed to settle the claims of shareholders (the "Settling Defendants").

On April 22, 2009, Mr. Justice Hanssen certified the lawsuit against the Settling Defendants as a class action for the purposes of settlement, and approved the settlement agreements, including amendments, reached with the Settling Defendants. The court defined the class as persons who own Class A common shares in the Fund including their legal representatives, heirs, successors and assigns, and who have not opted out but excludes each of the Defendants named or ever named in the lawsuits. The court appointed Mr. Bellan as representative plaintiff for the class. The court appointed the firms of Klein Lyons, Booth Dennehy LLP and Prober Law Offices, (collectively, "Class Counsel") as counsel to the class.

2. The Terms of Settlement

The Settling Defendants have agreed to pay up to a total of \$9.65 million to compensate class members (\$6 million paid by Pricewaterhouse Coopers LLP, \$3.15 million paid by the former

officers and directors of the Fund and \$500,000 paid by Wellington West Capital Inc., now Wellington West Holdings Inc.) The Settling Defendants have also agreed to drop most claims for indemnity against the Fund with respect to claims asserted in the lawsuits, thereby significantly reducing one of the major obstacles to the distribution of money to shareholders held in the Fund's receivership. In exchange, the claims against the Settling Defendants will be dismissed. No admission of liability has been made.

Compensation will be distributed pro rata to the Settlement Class Members based on the monies paid for each Settlement Class Member's Class A common shares of the Crocus Investment Fund which remained unredeemed as of the date of the Receivership. Compensation will be distributed by Deloitte & Touche Inc., the Receiver to the Fund, which the court has appointed as the Administrator for the settlements. It is anticipated that compensation will be distributed to class members at the same time that the Administrator makes a distribution of monies from the Receivership to shareholders. To be eligible to receive compensation, it is not necessary for you to take any steps, other than make sure that the Administrator has your correct mailing address. The Administrator is mailing a copy of this notice to all shareholders in the Fund. If you received a copy of this notice in the mail from the Administrator, and it is addressed to you at your current address, this confirms that it has your mailing address.

The class members' recoveries will be subject to payment of Class Counsel's fee, in an amount to be determined by the Court. Copies of the Settlement Agreements, and amendments, are available online at www.kleinlyons.com. Hard copies can be obtained by calling Class Counsel at 1-800-216-1383.

3. Your Right to Choose Whether or Not to be Part of the Class Actions

(a) How to be Included in the Class

If you are a class member, you will automatically be included in the class actions and eligible to receive compensation unless you opt out.

(b) How to be Excluded from the Lawsuits

To opt out of the class actions, you must deliver a letter to the Administrator on or before the **[Opt Out Deadline]** signed by the person opting out and setting out that person's name, address, number of shares held, the reason for opting out, and specifying which Settling Defendants you are opting out against. Failure to specify which Settling Defendants you are opting out against will be treated as opting out as against all Settling Defendants.

All class members who do not opt out of the settlements with the Settling Defendants, as described above will be bound by the settlements.

The address for writing to the Administrator to opt out is: Crocus Class Action Settlement Administrator, Deloitte & Touche Inc., 360 Main Street, Suite 2300, Winnipeg MB, R3C 3Z3.

4. Legal Fees

Mr. Bellan retained Class Counsel to represent him and the Class in the lawsuits. Class Counsel are paid legal fees only if the lawsuit is successful, and then only in an amount approved by the Court.

5. More Information

For further information about the class actions you may contact: Klein Lyons, Barristers & Solicitors, P.O. Box 85, Suite 1220, 65 Queen St. W., Toronto, ON M5H 2M5, 1-800-216-1383, Attn: Doug Lennox dlennox@kleinlyons.com, www.kleinlyons.com.

Tab F

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, PRICEWATERHOUSE COOPERS 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

ORDER

(RE: Settlement with Officers and Directors)

BOOTH DENNEHY LLP

Barristers & Solicitors
387 Broadway
Winnipeg MB R3C 0V5

NORMAN BOUDREAU

Tel (204) 957-1717
Fax (204) 943-6199

PROBER LAW OFFICES

387 Broadway
Winnipeg MB R3C 0V5

JAY PROBER

Tel (204) 957-1205
Fax (204) 943-6199

KLEIN LYONS

Barristers & Solicitors
1100 - 1333 West Broadway
Vancouver, BC V6H 4C1

**DAVID KLEIN
& DOUGLAS LENNOX**

Tel (604) 874-7171
Fax (604) 874-7180

Counsel for the Plaintiffs

THE QUEEN'S BENCH
Winnipeg Centre

THE HONOURABLE)
) Wednesday, April 22, 2009
MR. JUSTICE HANSEN)

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, PRICEWATERHOUSE COOPERS 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

ORDER

THIS MOTION, made by the Plaintiff, Bernard Bellan, for an order approving a settlement with the Defendants, Charles E. Curtis, Peter Olfert, Waldron (Wally) Fox-Decent, Lcc 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, Crocus Investment Fund and Crocus Capital Inc. (the "Settling Defendants"), was heard this day at Winnipeg.

THIS MOTION is a continuance of the motion brought by the Plaintiff on June 23, 2008, in which the Plaintiff sought approval of a proposed settlement agreement, dated May 29, 2008 (the "Settlement Agreement"). This Honourable Court was prepared to approve that Settlement Agreement subject to certain amendments being made. The

Plaintiff now renews his request for approval of settlement in light of an amending agreement, dated April 21, 2009 (the "Amending Agreement").

ON READING the affidavits of Mark Lyons and Bernard Bellan and on hearing the submissions of counsel for the parties,

THIS COURT ORDERS AS FOLLOWS:

1. The Settlement Agreement and the Amending Agreement, attached to this Order as Schedule A, are approved as fair and reasonable and in the best interests of the Settlement Class. The Settlement Agreement and the Amending Agreement (collectively "the Agreement") are incorporated into, and form part of this Order, including the definitions contained therein. In the event of a conflict between the terms of the Settlement Agreement and the terms of the Amending Agreement, the terms of the Amending Agreement shall govern.
2. The Class Actions are certified as against the Settling Defendants for settlement purposes only.
3. The Settlement Class is defined as the class of persons who own Class A common shares in the Crocus Investment Fund including their legal representatives, heirs, successors and assigns, and who have not opted out of the Agreement but excludes each of the Defendants named or ever named in the Class Actions.
4. The common issue is defined as whether the Settling Defendants owed a duty to the Settlement Class.
5. Bernard Bellan is appointed as the Representative Plaintiff for the Settlement Class. His counsel, Klein Lyons, Booth Dennehy LLP and Prober Law Offices, are appointed as counsel to the Settlement Class.

Plaintiff now renews his request for approval of settlement in light of an amending agreement, dated April , 2009 (the "Amending Agreement").

ON READING the affidavits of Mark Lyons and Bernard Bellan and on hearing the submissions of counsel for the parties,

THIS COURT ORDERS AS FOLLOWS:

1. The Settlement Agreement and the Amending Agreement, attached to this Order as Schedule A, are approved as fair and reasonable and in the best interests of the Settlement Class. The Settlement Agreement and the Amending Agreement (collectively "the Agreement") are incorporated into, and form part of this Order, including the definitions contained therein. In the event of a conflict between the terms of the Settlement Agreement and the terms of the Amending Agreement, the terms of the Amending Agreement shall govern.
2. The Class Actions are certified as against the Settling Defendants for settlement purposes only.
3. The Settlement Class is defined as the class of persons who own Class A common shares in the Crocus Investment Fund including their legal representatives, heirs, successors and assigns, and who have not opted out of the Agreement but excludes each of the Defendants named or ever named in the Class Actions.
4. The common issue is defined as whether the Settling Defendants owed a duty to the Settlement Class.
5. Bernard Bellan is appointed as the Representative Plaintiff for the Settlement Class. His counsel, Klein Lyons, Booth Dennehy LLP and Prober Law Offices, are appointed as counsel to the Settlement Class.

6. The Settling Parties and all Settlement Class members are ordered to comply with the Agreement.
7. The deadline for exclusion ("opting out") from the Settlement Class is 30 days following the mailing of the Notice of Certification and Settlement Approval ("Opt Out Deadline").
8. Any Settlement Class Member who has not opted out from the Settlement Class in accordance with the procedures set out in the Agreement by the Opt Out Deadline shall be bound by the terms of this Agreement.
9. The Receiver, Deloitte & Touche, Inc., is appointed as the Administrator of the settlement.
10. The form of Notice of Certification and Settlement Approval is approved as attached as Schedule B. Within 14 days after the Approval Date, the Administrator shall mail by ordinary mail a copy of the Notice of Certification and Settlement Approval to the last known address it has in its records for each holder of Crocus Investment Fund Class A shares. The Notice of Certification and Settlement Approval will also be posted on the Klein Lyons web site, and on the Receiver's web site. The Administrator will further cause the Notice of Certification and Settlement Approval to be published in one weekday edition of the Winnipeg Free Press.
11. There shall be a bar to any and all claims for contribution, indemnity, subrogation or any other claims by any Non-Settling Defendant or any other person against the Settling Defendants in respect of or relating to the subject matter of the Class Actions, or any other claim on behalf of the Settlement Class, whether direct, subrogated, derivative, asserted or unasserted in a representative capacity, inclusive of interest, GST and costs.
12. It is declared that any and all claims the Settling Director and Officer Defendants may have, in law or in equity, whether such claims could be made by or on behalf of the

Settling Director and Officer Defendants, for contribution or indemnity from any of the Non-Settling Defendants or against any other party in respect of the claims asserted in the Class Actions are assigned to the Plaintiff on behalf of the Settlement Class.

13. Except as provided in paragraph 11.3.2 of the Agreement, if any action is instituted by a Settlement Class Member seeking damages against persons who are not released by the Agreement ("non-parties") in respect of claims that are or could have been asserted in the Class Actions, such action will be limited to the non-parties' collective several liability. In other words, the Settlement Class Member's claim shall exclude the proportionate share of liability of the Settling Director and Officer Defendants and of every person who has served as a director or officer of Crocus Investment Fund at any time from their claims against, and from any judgment which may be granted against the non-parties.

14. The Plaintiff, on his own behalf and as a representative of the Settlement Class, is precluded and restricted from pursuing an action for an Assigned Claim or Claims against either a Non-Settling Defendant or a non-party to the extent of the liability by way of claim for contribution, indemnity, subrogation or otherwise attributable to such action to any Settling Director and Officer Defendants. For greater certainty, in any such action, the Plaintiff and Settlement Class will not seek to recover from any Non-Settling Defendant or any non-party any amounts that are attributable to any claim over or back to any Settling Director and Officer Defendants.

15. Without in any way limiting or altering the meaning of the 2nd sentence of paragraph 1 of this Order, the provisions of 11.3.2 and 11.3.4 of the Agreement are specifically referred to and made part of this order.

16. It is declared that the Policy is exhausted to the extent of payment by Chubb of the Settlement Amount and any Defence Costs (as defined in the Policy) paid by Chubb on behalf of the Settling Director and Officer Defendants.

17. The Non-Settling Defendants shall have discovery rights against the Settling Director and Officer Defendants and Crocus Capital Inc. in the Class Actions as if the Non-Settling Defendants had issued third party claims against each Settling Director and Officer Defendant and Crocus Capital Inc., and the Plaintiff shall have the right to participate as a party to such discoveries.

18. It is approved that 25% of the Settlement Amount be directed to Class Counsel, to be held in trust, as provided by paragraphs 3.2.2 and 11.2.4 of the Agreement.

19. With respect to the collective several liability of the Non-Settling Defendants at paragraphs 11.2.2 and 11.2.3 of the Agreement, the Non-Settling Defendants shall not be made to pay a greater amount to the Settlement Class, as a result of this settlement, than would have occurred in the absence of a settlement.

20. It is declared that, in the event of termination of the Agreement pursuant to Section 13 of the Agreement, this Order is null and void and of no force and effect.

21. The Court shall retain continuing jurisdiction over the Agreement to ensure that all payments are properly made, and over the interpretation and enforcement of the Agreement's terms, conditions and obligations.

22. Any Non-Settling Defendant or other person or party who intends to commence an action or third party claim against the Settling Defendants relating to the subject matter of the Class Actions or any other matter arising out of the business, operation and affairs of the Crocus Investment Fund, including any actions, claims and demands based upon, arising out of, or in any way relating to any alleged acts and/or omissions of the Settling Director and Officer Defendants in their capacity as former directors and/or officers of the Crocus Investment Fund, shall not proceed without obtaining leave of the Honourable Mr. Justice Hanssen or such other Justice of the Manitoba Court of Queen's Bench responsible for the management of the Class Actions.

APR 22 2009

K. R. HANSSEN

J.

Schedule A to Order

Schedule "A"

COURT OF QUEEN'S BENCH OF MANITOBA

File No. CI 05-01-42765

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, PRICEWATERHOUSE COOPERS 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

SETTLEMENT AGREEMENT

WHEREAS:

A. Bernard W. Bellan (the "Plaintiff"), in his own capacity and in his capacity as representative plaintiff for the Settlement Class, and Charles E. Curtis, Peter Olfert, Waldron (Wally) Fox-Decent, Lee 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, Crocus Investment Fund and Crocus Capital Inc. (the "Settling Defendants"), (collectively, the "Settling Parties"), hereby enter into this Agreement providing for settlement of the claims described below, pursuant to the terms and conditions set forth below, subject to the approval of the Court.

- B.** An action has been filed by the Plaintiff against the Settling Defendants pursuant to the *Class Proceedings Act*, C.C.S.M. c. D130 in the Manitoba Court of Queen's Bench;
- C.** Plaintiff's counsel have conducted settlement negotiations with counsel for the Settling Defendants;
- D.** The Settling Parties engaged in mediation to attempt to resolve this dispute;
- E.** The Settling Defendants, notwithstanding their consent to this Agreement, have denied and continue to deny the claims of the Plaintiff and the Settlement Class Members they seek to represent in the Class Actions, have denied and continue to deny any wrongdoing and have raised numerous defences, including defences relating to the certification of the claims in the Class Actions and, except to the extent of their obligations under this Agreement, deny liability of any kind and anywhere to the Plaintiff or the Settlement Class Members he seeks to represent;
- F.** The Class Actions have not been certified to date and the Settling Defendants are not opposing the Plaintiff's motion for certification for settlement purposes only;
- G.** The Settlement Class Members have the right to exclude themselves ("opt out") from this Agreement under Section 16 of *The Class Proceedings Act*, C.C.S.M. c.C130, and as provided in this Agreement;
- H.** Based upon an analysis of the facts and the law applicable to the claims of the Settlement Class, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving claims of the Settlement Class provided in this Agreement, the Plaintiff and Plaintiff's Counsel have concluded that this Agreement provides substantial benefits to the Settlement Class and is fair, reasonable, and in the best interests of the Settlement Class;
- I.** The Settling Defendants have similarly concluded that this Agreement is desirable in order to avoid the time, risk and expense of defending multiple and protracted litigation, and to

resolve finally and completely the pending and potential claims of the Settlement Class Members and all pending and potential claims, proceedings, crossclaims and third party actions against them;

J. The Settling Director and Officer Defendants may have claims for indemnity against Crocus Investment Fund with respect to costs, charges and expenses, including any amount paid to settle any action or satisfy a judgment, reasonably incurred by them by reason of being or having been a director or officer of Crocus Investment Fund;

K. Crocus Investment Fund may have claims for indemnity or otherwise against the Settling Director and Officer Defendants with respect to their conduct while acting as directors or officers of Crocus Investment Fund;

L. Crocus Investment Fund has commenced an action in the Manitoba Court of Queen's Bench against Chubb Insurance Company of Canada seeking coverage under Chubb Venture Capital Asset Protection Policy No. 7043-00-36 (the "Policy") for, inter alia, the payment of defence costs incurred by former directors and officers of Crocus Investment Fund;

M. The Settling Director and Officer Defendants may have claims, in law or in equity, for contribution or indemnity against the Non-Settling Defendants and other third parties in respect of the claims asserted by the Plaintiff and the Settlement Class Members in the Class Actions;

N. Crocus Investment Fund was placed into receivership on June 28, 2005 with Deloitte and Touche Inc. appointed as the Receiver;

NOW THEREFORE, subject to the Court's approval, this Agreement embodies the terms of resolution of the claims contemplated, asserted and/or unasserted against the Settling Defendants in the Class Actions.

1. **Definitions**

Unless the specific context of a particular section of this Agreement calls for another interpretation, the following terms, as used in this Agreement, shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural, and *vice versa*. Masculine pronouns and male references shall be deemed to include the female and *vice versa*, where appropriate. The terms "person" or "party" includes individuals, partnerships and corporations.

"Administrator" means the person appointed by the Court as provided in Section 7 of this Agreement.

"Agreement" means this Settlement Agreement.

"Approval Date" means the date on which the Approval Order becomes a final order meaning that the time to appeal has expired and there has been no appeal or, if there have been any appeals from the Approval Order, all rights of appeal have been exhausted and there has been no change to the Approval Order.

"Approval Order" means the Order referred to in section 3.2.1 of this Agreement.

"Class Actions" means the proceedings filed under the *Class Proceedings Act*, C.C.S.M. c.C130 in the Manitoba Court of the Queens Bench bearing File Nos. CI 05-01-42765 and CI 06-01-46955.

"Class Counsel" means the law firms of Klein Lyons, Booth Dennehy LLP and Prober Law Offices, which firms act on behalf of the Plaintiff and the Settlement Class herein and which shall continue acting on behalf of the Plaintiff and Settlement Class with respect to all acts or consents pursuant to this Agreement.

"Court" means the Manitoba Court of the Queen's Bench which has jurisdiction over the Class Actions, and the Honourable Mr. Justice Hanssen, or his successor.

"Defendants" means any of the defendants ever named in either of the Class Actions.

"Effective Date" means the date that Settling Director and Officer Defendants pay the Settlement Amount as provided in section 6.1 of this Agreement.

"Non-Settling Defendants" means any of the Defendants, excluding the Settling Defendants, ever named in either of the Class Actions.

"Notice of Certification and Settlement Approval" means the Notice advising Settlement Class Members of the Court's approval of this Agreement.

"Opt Out Deadline" means the date 30 days after the date of mailing of the Notice of Certification and Settlement Approval pursuant to Section 3 of this Agreement.

"Receiver" means Deloitte & Touche, Inc. as Receiver of Crocus Investment Fund.

"Settlement Amount" means the sum of \$3,150,000.00 payable by the Settling Director and Officer Defendants under this Agreement.

"Settlement Class" means the class of persons who own Class A common shares in Crocus Investment Fund including their legal representatives, heirs, successors and assigns and who have not opted out of this Agreement but excludes each of the Defendants named or ever named in the Class Actions.

"Settlement Class Member" means a person who falls within the definition of the Settlement Class.

"Settlement Fund" means the Settlement Amount less the amount approved by the Court for payment to Class Counsel pursuant to Section 3 of this Agreement.

"Settling Director Defendants" means Charles E. Curtis, Peter Olfert, Waldron (Wally) Fox-Decent, Lee Baturin, Albert R. Beal, Ron Waugh, Diane Boresford, Sylvia Farley, Robert Hilliard, Robert Ziegler, John Clarkson, David G. Friesen, and Hugh Eliasson, and their

respective representatives, agents, successors, assigns, all of whom are released by the Plaintiff and Settlement Class Members pursuant to this Agreement.

"Settling Officer Defendants" means Sherman Kreiner, James Umlah, Jane Hawkins and Janice Lederman and their respective representatives, agents, successors, assigns, all of whom are released by the Plaintiff and Settlement Class Members pursuant to this Agreement.

"Settling Director and Officer Defendants" means collectively the Settling Director Defendants and the Settling Officer Defendants.

2. **Preliminary Matters**

- 2.1 The Settling Parties hereby affirm the accuracy of the recitals set out above.
- 2.2 Promptly after execution of this Agreement, the Plaintiff shall serve a true copy of this Agreement on the Non-Settling Defendants.
- 2.3 Where the time on or by which any action to be taken under this Agreement falls on a day that is not a business day, such action may be done on the next day that is a business day.
- 2.4 All references to money in this Agreement are to Canadian currency.

3. **Matters Relating to Certification and Settlement Approval**

- 3.1 Within 14 days of the execution of this Agreement by all Parties, the Plaintiff will bring an application for Court approval of this Agreement on behalf of the Settlement Class Members and the Settling Defendants shall not oppose class certification for the purpose of Court approval of this Agreement only, subject to the terms and conditions below.
- 3.2 Certification and Settlement Approval Order
 - 3.2.1 Subject to the Court's approval, and as provided in a form of Order to be agreed by the Parties, the order approving this Agreement shall:

- (a) certify the action as a Class Action as against the Settling Defendants for the purposes of settlement only;
- (b) appoint Bernard Bellan as the Representative Plaintiff for the Settlement Class;
- (c) approve this Agreement and order the Settling Parties and all Settlement Class Members to comply with it;
- (d) order that the deadline for exclusion ("opting out") from the Settlement Class be 30 days following the mailing of the Notice of Certification and Settlement Approval ("Opt Out Deadline");
- (e) declare that any Settlement Class Member who has not opted out from the Settlement Class in accordance with the procedures set out in this Agreement by the Opt Out Deadline shall be bound by the terms of this Agreement;
- (f) declare that this Agreement is fair, reasonable, and in the best interests of the Settlement Class;
- (g) order mailing of the Notice of Certification and Settlement Approval;
- (h) appoint the Receiver as the Administrator;
- (i) bar any and all claims for contribution, indemnification, subrogation or otherwise against the Settling Defendants by any Non-Settling Defendants or by any other person or party, against the Settling Defendants and every other person who has served as a director or officer of Crocus Investment Fund at any time, in respect of the subject matter of the Class Actions or any other matter arising out of the business, operations and affairs of the Crocus Investment Fund;
- (j) declare that any and all claims the Settling Defendants may have, in law or in equity, for contribution or indemnity from any of the Non-Settling Defendants or

against any other party in respect of the claims asserted in the Class Actions are assigned to the Plaintiff on behalf of the Settlement Class;

- (k) subject to the Court's ongoing jurisdiction over this Agreement, dismiss the Plaintiff's action as against the Settling Defendants (being Manitoba Court of Queen's Bench action bearing file number CI 05-01-42765) pursuant to Section 11.1 of this Agreement;
- (l) declare that the Policy is exhausted to the extent of payment by Chubb of the Settlement Amount and any Defense Costs (as defined in the Policy) paid by Chubb on behalf of the Settling Director and Officer Defendants;
- (m) order that the Non-Settling Defendants shall have discovery rights against the Settling Director and Officer Defendants in the Class Actions as if the Non-Settling Defendants had issued third party notices against each Settling Director and Officer Defendant, and the Plaintiff shall have the right to participate as a party to such discoveries; and
- (n) declare that, in the event of termination of this Agreement pursuant to Section 13 below, the said Order is null and void and of no force and effect.

3.2.2 Concurrently with the application for Court approval of this Agreement, Class Counsel will apply to the Court for approval of a payment of 25% of the Settlement Amount to Class Counsel. This amount, or such other amount as is approved by the Court, will be held by Class Counsel in trust and will be used to fund past and future disbursements incurred by Class Counsel in the prosecution of the Class Actions. Any amount remaining at the conclusion of the Class Actions will be applied toward any Class Counsel fees that are approved by the Court. The approval of this Agreement is not conditional on approval of Class Counsel's requested payment. The Settling Defendants take no position as to the amount that should be paid to Class Counsel.

3.2.3 Following Court approval of this Agreement, Class Counsel will apply to the Court for approval of Class Counsel fees and disbursements. On the Effective Date, the amount approved by the Court will be paid to Class Counsel out of the Settlement Amount that was paid to Klein Lyons in trust pursuant to section 6.1 of this Agreement. The approval of this Agreement is not conditional on approval of Class Counsel's fees or disbursements. The Settling Defendants take no position as to the amount that should be paid to Class Counsel for fees and disbursements.

3.3 Notice of Certification and Settlement Approval

3.3.1 The content of the Notice of Certification and Settlement Approval shall be as agreed by the Settling Parties and approved by the Court.

3.3.2 Within 14 days after the Approval Date, the Receiver shall mail by ordinary mail a copy of the Notice of Certification and Settlement Approval to the last known address it has in its records for each holder of Crocus Investment Fund Class A common shares. The Notice of Certification and Settlement Approval will also be posted on the Receiver's web site and on the Klein Lyons web site.

4. Waiver of Limitation Defences

4.1 Nothing in this Agreement shall constitute or be deemed to constitute a waiver by the Settling Defendants of defences based upon statutes of limitations or repose, prescription periods or any other limitation or prescription defence with respect to any person who opts out of this Agreement, is deemed to opt out of this Agreement, or, if this Agreement is terminated, brings or continues an action against the Settling Defendants.

5. Entitlement to Compensation

5.1 Only Settlement Class Members who have not opted out shall be entitled to receive payments out of the Settlement Fund pursuant to this Agreement.

6. Payments and Related Issues

- 6.1 Within 14 business days after the expiration of the time period in paragraph 13.2.2 , the Settling Director and Officer Defendants shall pay the Settlement Amount (\$3,150,000.00) to Klein Lyons in trust in full and final settlement of all claims by the Plaintiff, whether direct, subrogated, asserted or unasserted or asserted in a representative capacity in the Class Actions, inclusive of all interest, GST and costs.
- 6.2 Klein Lyons will forthwith upon receipt of the Settlement Amount transfer the Settlement Fund to the Administrator to be held in trust by the Administrator for the benefit of the Settlement Class.
- 6.3 Any payments contemplated by this Section 6 are automatically cancelled and rendered null and void if this Agreement is terminated.

7. Administrator

- 7.1 The Settling Parties will propose that the Receiver be appointed by the Court as the Administrator for the purpose of administering this Agreement. All expenses of the Receiver related to the administration of this Agreement will be borne by Crocus Investment Fund.

8. Procedures and Deadlines for Exclusion

- 8.1 Any person who is a holder of Crocus Investment Fund Class A common shares, other than Bernard W. Bellan, will have the right to exclude herself or himself ("opt out") from this Agreement and from the Settlement Class by delivering a letter to the Administrator on or before the Opt Out Deadline signed by the person opting out and setting out that person's name, address, number of shares held and reason for opting out. Persons who elect to opt out shall be excluded from this Agreement and from the Settlement Class. It is the responsibility of the person opting out to ensure that the requisite signed letter is received by the Administrator on or before the Opt Out Deadline. Any member of the

Settlement Class who does not deliver to the Administrator a complete and signed opt out letter by the Opt Out Deadline shall be considered a Settlement Class Member and shall be bound by the terms of this Agreement and by the Court Order approving this Agreement.

8.2 By entering into this Agreement, Bernard W. Bellan agrees that he will not opt out of this Agreement.

9. **Distribution of Settlement Fund**

9.1 The Settlement Fund will be held in trust by the Administrator for the benefit of the Settlement Class. All Settlement Class Members who have not opted out will be eligible for payment from the Settlement Fund. The Settlement Fund will be distributed to the Settlement Class Members by the Administrator at the same time that the Receiver makes its first distribution of funds from the Crocus Investment Fund to the holders of Crocus Investment Fund Class A common shares. The Settlement Fund will be distributed pro rata to the Settlement Class Members based on the monies paid for each Settlement Class Member's Class A common shares of the Crocus Investment Fund which remained unredeemed as of the date of the Receivership.

10. **Exclusive Remedy/Dismissal of Action**

10.1 **Exclusive Remedy**

10.1.1 This Agreement shall be the exclusive remedy for any and all Settlement Class Members with respect to the Class Actions *vis-à-vis* the Settling Defendants. The Settling Defendants shall not be subject to liability or any other expense of any kind to any Settlement Class Member with respect to the Class Actions, except as provided in this Agreement. Settlement Class Members who have not opted out of this Agreement on or before the Opt Out Deadline shall be forever barred from continuing, initiating, asserting or prosecuting any and all claims related to Crocus Investment Fund against the Settling

Defendants and every person who has served as a director or officer of Crocus Investment Fund at any time.

10.2 Dismissal of Action

10.2.1 Forthwith after the Effective Date, the Settling Parties will file a consent to a dismissal of the Plaintiff's action against the Settling Defendants (being Manitoba Court of Queen's Bench action bearing file number CI 05-01-42765) with prejudice and any or all crossclaims and third party claims as against the Settling Defendants, on a "without costs" basis, along with any other documents that may be necessary.

11. Releases/Bar Order/Third Party Claims

11.1 Release of Class Action Claims Against Settling Defendants

11.1.1 The claims of the Plaintiff and every Settlement Class Member who has not opted out of this Agreement on or before the Opt Out Deadline, whether their claims are direct, subrogated, asserted or unasserted or asserted in a representative capacity in the Class Actions, inclusive of all interest, GST and costs, shall be conclusively compromised, settled, released and discharged as against the Settling Defendants, and Settlement Class Members shall be deemed to have forever released and discharged the Settling Defendants and every other person who has served as a director or officer of Crocus Investment Fund at any time, and their insurer, Chubb Insurance Company of Canada and any of its subsidiaries, parents, affiliates, directors, officers, shareholders, representatives and agents from any past, present and future claims, actions, demands and liabilities of any nature whatsoever relating to all claims asserted or which could have been asserted in, or relating to the Class Actions or the conduct of any person who has served as a director or officer of Crocus Investment Fund at any time or based upon or seeking any amount or form of coverage under the Policy.

11.2 Bar Order

- 11.2.1 All claims for contribution, indemnity, subrogation or other claims over, by any Non-Settling Defendant or any other person or party, against the Settling Defendants and every other person who has served as a director or officer of Crocus Investment Fund at any time in respect of the subject matter of the Class Actions or any other matter arising out of the business, operation and affairs of the Crocus Investment Fund, whether direct, subrogated, asserted or unasserted or asserted in a representative capacity, inclusive of interest, GST and costs, will be barred by order of the Court.
- 11.2.2 Forthwith after the Effective Date, the Plaintiff will amend the Statements of Claim in the Class Actions so as to restrict the claims of the Settlement Class against the Non-Settling Defendants to the collective several liability of the Non-Settling Defendants. In other words, the Plaintiff agree to exclude the proportionate share of liability of the Settling Defendants and of every person who has served as a director or officer of Crocus Investment Fund at any time from their claims against, and from any judgment which may be granted against, the Non-Settling Defendants.
- 11.2.3 Except as provided in Section 11.3 of this Agreement, if any action is instituted by a Settlement Class Member seeking damages against persons who are not currently parties to the Class Actions ("non-parties") in respect of claims that are or could have been asserted in the Class Actions, such action will be limited to the non-parties' collective several liability. In other words, the Settlement Class Member's claim shall exclude the proportionate share of liability of the Settling Defendants and of every person who has served as a director or officer of Crocus Investment Fund at any time from their claims against, and from any judgment which may be granted against the non-parties.
- 11.2.4 The Settlement Class shall, as a disbursement in the Class Actions, indemnify the Settling Director and Officer Defendants for their reasonable costs associated with retaining counsel in connection with providing discovery and evidence in the Class Actions or in any action commenced pursuant to paragraph 11.3.2.
- 11.2.5 Notwithstanding its release from the Class Actions, Crocus Investment Fund agrees to participate in the Class Actions in such manner as is ordered by the Court.

11.3 Reservation of Rights/Third Party Claims

11.3.1 Except as otherwise provided herein, nothing in this Agreement shall prejudice or in any way interfere with the rights of the Settlement Class Members to pursue all of their other rights and remedies against persons and/or entities other than the Settling Defendants.

11.3.2 The Settling Director and Officer Defendants shall assign to the Plaintiff on behalf of the Settlement Class any and all claims they may have, in law or in equity, for contribution or indemnity from any of the Non-Settling Defendants or against any other person or party in respect of the claims asserted in the Class Actions.

11.3.3 Within 14 days of the Effective Date, the Receiver, on its own behalf and on behalf of Crocus Investment Fund will consent to a with prejudice dismissal of Manitoba Queen's Bench Action No C1 06-01-46191 commenced by Crocus Investment Fund against Chubb Insurance Company of Canada and will provide a release of all claims under or in respect of the Policy against Chubb Insurance Company of Canada.

11.3.4 Within 14 days of the Effective Date:

(1) the Settling Director and Officer Defendants agree to provide full and final releases of any and all claims they may have had or, now or in the future, may have against each other and each others' heirs, successors and assigns for all matters arising out of the business, operation, and affairs of the Crocus Investment Fund, both before and after the receivership of the Crocus Investment Fund, to the date of this Agreement;

(2) the Settling Director Defendants agree to provide full and final releases of any and all claims they may have had or, now or in the future, may have against Crocus Investment Fund, the Receiver and Crocus Capital Inc. for all matters arising out of the business, operation, and affairs of the Crocus Investment Fund, both before and after the receivership of the Crocus Investment Fund, to the date of this Agreement; except that a) nothing in the said releases will take away the rights of the Settling Director Defendants to receive distributions as shareholders from funds collected by the Receiver other than

from the Class Actions and b) nothing in the said releases will foreclose the Settling Director Defendants to claim to be indemnified by Crocus Investment Fund for any judgments, fines or monetary penalties that may be imposed by the Manitoba Securities Commission, except that nothing herein is to be taken as an admission by Crocus Investment Fund or the Receiver of Crocus Investment Fund that they are responsible for payment of such judgments, fines or monetary penalties and c) the said release will not apply to the Settling Director Defendants' entitlement to the \$250,000 indemnity advance provided for in paragraph 11.3.4 (3)(a) below.

(3) Crocus Investment Fund and the Receiver agree to:

- a. pay the sum of \$250,000 to D'Arcy & Deacon LLP to be used by that law firm and such other law firms representing any one or more of the Settling Director Defendants for paying any amounts, including legal expenses, incurred for matters other than the Class Action litigation, save and except that the said \$250,000 will not be used for judgments, fines or monetary penalties which one or more of the Settling Director Defendants successfully recovers under the indemnity claims referred to in paragraph 11.3.4(2)(b) above, including any legal expenses incurred to pursue such recovery. The payment of the \$250,000 will be subject to the proviso that any amount of the said \$250,000 which remains unexpended at a date to be agreed between the Settling Director Defendants and the Receiver shall be returned to the Receiver for distribution amongst the shareholders of Crocus Investment Fund; and
- b. provide an incontrovertible undertaking not to pursue reimbursement of any legal expenses previously paid for and on behalf of the Settling Director Defendants and including the \$250,000 advance as aforesaid; and
- c. provide full and final releases of any and all claims they may have had or, now or in the future, may have against the Settling Director Defendants and their heirs, successors and assigns for all matters arising out of the business, operation and affairs of

the Crocus Investment Fund, both before and after the receivership of the Crocus Investment Fund to the date of this Agreement, including the \$250,000 payment as aforesaid and the reimbursement of any legal expenses previously paid for and on behalf of the Settling Director Defendants. Crocus Capital Inc. will provide a similar release.

(4) The Settling Officer Defendants agree to provide full and final releases of any and all claims they may have had or, now or in the future, may have against Crocus Investment Fund, the Receiver and Crocus Capital Inc. for all matters arising out of the business, operation and affairs of the Crocus Investment Fund, both before and after the receivership of the Crocus Investment Fund to the date of this Agreement, save and except that nothing in the said release will take away the right of the Settling Officer Defendants to claim payment of their indemnity for legal fees incurred for matters other than the Class Action litigation, except that nothing herein is to be taken as an admission by Crocus Investment Fund or the Receiver of Crocus Investment Fund that they are responsible for payment of same and nothing in the said releases will take away the rights of the Settling Officer Defendants to receive distributions as shareholders from funds collected by the Receiver other than from the Class Actions;

(5) Crocus Investment Fund, the Receiver and Crocus Capital Inc. agree to provide full and final releases of any and all claims they may have had or, now or in the future, may have against the Settling Officer Defendants and their heirs, successors and assigns for all matters arising out of the business, operation and affairs of the Crocus Investment Fund, both before and after the receivership of the Crocus Investment Fund to the date of this Agreement, save and except that nothing in the said release will take away the right of the Crocus Investment Fund or the Receiver to claim reimbursement for legal fees paid by Crocus Investment Fund or the Receiver to or for the benefit of the Settling Officer Defendants.

12. Submissions to the Court by the Administrator

12.1 The Administrator may apply to the Court for directions, as required, upon notice served on Class Counsel and Settling Defendants' Counsel no later than fourteen (14) days prior to the date of any hearing.

13. Termination of this Agreement

13.1 Defendants' Right of Termination

13.1.1 If persons holding a total of more than .5 percent (one half of one percent) of the Crocus Investment Fund Class A common shares elect to opt out of this Agreement on or before the Opt Out Deadline, the Settling Defendants shall have the unilateral right to terminate this Agreement as set forth in Section 13.2.

13.2 Procedures and Time for Termination

13.2.1 Within thirty (30) days following the Opt Out Deadline the Administrator shall notify counsel for the Settling Defendants and Class Counsel of the total number of persons who have opted out of this Agreement, including all particulars of their Crocus Investment Fund shareholdings and copies of their opt out letters.

13.2.2 The Settling Defendants or any of them may exercise their right to terminate this Agreement pursuant to Section 13.1 above by providing written notice to Class Counsel and to the Court within thirty (30) days from the date on which the Administrator provides counsel for the Settling Defendants with the information and documentation pursuant to Section 13.2.1 above.

13.3 Notice of Settlement Class Members

13.3.1 If the Settling Defendants exercise their right of termination pursuant to Section 13 of this Agreement, Notice of Termination shall be given to all Settlement Class Members. The

content and method of dissemination of the Notice of Termination shall be determined by the Court. If any of the Settling Defendants exercises the right to terminate this Agreement, any costs associated with disseminating the Notice of Termination shall be paid by the Settling Defendants who chose to terminate this Agreement.

13.4 Automatic Termination of the Agreement

13.4.1 This Agreement shall, without notice, be automatically terminated if the Court declines to approve this Agreement in any respect or, in the event of an appeal, if the Court's approval order is not affirmed in all respects.

13.5 Effect of Termination

13.5.1 If this Agreement is terminated pursuant to Section 13, the certification of the Class Actions for settlement purposes pursuant to this Agreement shall be null and void and this Agreement shall have no further force or effect and shall not be used or referred to in any litigation involving any of the Settling Parties and/or the Non-Settling Defendants.

14. Miscellaneous Provisions

14.1 Ongoing Authority

14.1.1 The Court shall retain exclusive and continuing jurisdiction over the Class Actions; over all parties named or described herein, including, but not limited to, all Settlement Class Members and Settling Defendants; over this Agreement, to ensure that all payments and disbursements are properly made; and over the interpretation and enforcement of this Agreement's terms, conditions and obligations.

14.2 Entire Agreement

14.2.1 This Agreement constitutes the entire agreement by and among the Settling Parties with regard to the subject of this Agreement and shall supersede any previous agreements and

understandings between the Settling Parties with respect to the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by all Settling Parties hereto and subject to the Court's approval.

14.3 Other Originals

14.3.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument.

14.4 Notification

14.4.1 Any notification, request, instruction or other document to be given by any party to this Agreement to any other party to this Agreement shall be in writing and delivered personally, sent by facsimile, or sent by registered mail, postage prepaid, if to the Plaintiff, to the attention of Class Counsel and, if to the Settling Defendants, to the attention of their counsel:

For the Plaintiff Bellan and the Settlement Class:

David A. Klein, Douglas Lennox, Jay Prober and J. R. Norman Boudreau

For the Defendants Curtis, Olfert, Fox-Decent, Baturin, Beal, Waugh, Beresford, Farley, Hilliard, Ziegler, Clarkson and Eliasson:

Kenneth A. Filkow, Q.C. and Diane M. Stasiuk

For Defendants Kreiner and Hawkins:

G. Patrick S. Riley

For Defendant Umlah:

Robert L. Tapper, Q.C. and Jason D. Kendall

For Defendant David Friesen:

J. Kenneth McEwan, Q.C.

For Crocus Investment Fund, Crocus Capital Inc and the Receiver:

Dave Hill, Robert A. Dewar, Q.C. and Karen R. Wittman

For Chubb Insurance Company of Canada:

Mary Margaret Fox

14.5 Dates


14.5.1 Dates referred to in this Agreement may be altered only with the consent of the Settling Parties and with the approval of the Court.

14.6 Use of Agreement

14.6.1 Neither the existence nor the terms of this Agreement may be used as evidence of any admission by the Settling Defendants regarding fault, liability, causation, damages, and/or any other issue. This Agreement may, however, be relied upon by any Settling Party for purposes of enforcing any right possessed by such Settling Party or for purposes of any motion or application made to the Court for interpretation or enforcement of its terms pursuant to Section 14 of this Agreement.

Dated this 28th day of May, 2008.

Plaintiff and Settlement Class

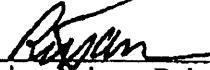

by their solicitors, Kitchin Lyons
Per: Douglas Lennox

Dated this 29 day of May, 2008.

Settling Director and Officer Defendants

by their solicitors, Kenneth A. Filkow, Q.C.

by their solicitors, G. Patrick S. Riley


by their solicitors, Robert L. Tapper, Q.C.

by their solicitors, J. Kenneth McEwan, Q.C.

Dated this _____ day of _____, 2008.

**Crocus Investment Fund, Crocus Capital Inc.
and the Receiver**

by their solicitors, Hill, Dewar, Vincent
Per: Robert Dewar, Q.C.

Dated this _____ day of _____, 2008.

Chubb Insurance Company of Canada

by their solicitors, Nicholl Paskell-Mede
Per: Mary Margaret Fox

Dated this _____ day of _____, 2008.

Settling Director and Officer Defendants

by their solicitors, Kenneth A. Filkow, Q.C.


by their solicitors, G. Patrick S. Riley

by their solicitors, Robert L. Tapper, Q.C.

by their solicitors, J. Kenneth McEwan, Q.C.

Dated this 29th day of May, 2008.

**Crocus Investment Fund, Crocus Capital Inc.
and the Receiver**



by their solicitors, Hill, Dewar, Vincent
Per: Robert Dewar, Q.C.

Dated this _____ day of _____, 2008.

Chubb Insurance Company of Canada

by their solicitors, Nicholl Paskell-Mede
Per: Mary Margaret Fox

Dated this 21st day of MAY, 2008.

Settling Director and Officer Defendants

by their solicitors, Kenneth A. Filkoff, Q.C.


by their solicitors, G. Patrick S. Riley

by their solicitors, Robert L. Tapper, Q.C.

by their solicitors, J. Kenneth McEwan, Q.C.

Dated this _____ day of _____, 2008.

**Crocus Investment Fund, Crocus Capital Inc.
and the Receiver**

by their solicitors, Hill, Dewar, Vincent
Per: Robert Dewar, Q.C.

Dated this _____ day of _____, 2008.

Chubb Insurance Company of Canada

by their solicitors, Nicholl Paskell-Mede
Per: Mary Margaret Fox

Dated this 29th day of May, 2008.

Settling Director and Officer Defendants


by their solicitors, Kenneth A. Filkow, Q.C.

by their solicitors, G. Patrick S. Riley

by their solicitors, Robert L. Tapper, Q.C.

by their solicitors, J. Kenneth McEwan, Q.C.

Dated this _____ day of _____, 2008.

**Crocus Investment Fund, Crocus Capital Inc.
and the Receiver**

by their solicitors, Hill, Dewar, Vincent
Per: Robert Dewar, Q.C.

Dated this _____ day of _____, 2008.

Chubb Insurance Company of Canada

by their solicitors, Nicholl Paskell-Mede
Per: Mary Margaret Fox

Dated this _____ day of _____, 2008.

Settling Director and Officer Defendants

by their solicitors, Kenneth A. Filkow, Q.C.

by their solicitors, G. Patrick S. Riley

by their solicitors, Robert L. Tapper, Q.C.

by their solicitors, J. Kenneth McEwan, Q.C.

Dated this _____ day of _____, 2008.

**Crocus Investment Fund, Crocus Capital Inc.
and the Receiver**

by their solicitors, Hill, Dewar, Vincent
Per: Dave Hill

Dated this 29th day of May, 2008.

Chubb Insurance Company of Canada

Mary Margaret Fox
by their solicitors, Nicholl Paskell-Mede
Per: Mary Margaret Fox

**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

**AGREEMENT TO AMEND THE SETTLEMENT AGREEMENT DATED
MAY 29TH, 2008 ("THE AMENDING AGREEMENT")**

WHEREAS:

- A. Bernard W. Bellan ("the Plaintiff"), in his own capacity and in his capacity as representative plaintiff for the Settlement Class, 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 (the "Directors"), Sherman Kreiner, James Umlah and Jane Hawkins (the "Officers"), Crocus Capital Inc., Crocus Investment Fund by its Receiver, Deloitte & Touche Inc., Deloitte & Touche Inc., as Receiver of Crocus Investment Fund ("the Receiver"), and Chubb Insurance Company of Canada (collectively "the Parties") entered into a Settlement Agreement

dated May 29th, 2008 ("the Settlement Agreement").

- B. The Settlement Agreement was subject to automatic termination if the Court declined to approve the Settlement Agreement in any respect.
- C. On June 23, 2008, the Court declined to approve certain terms in the Settlement Agreement.
- D. The Parties wish to affirm the Settlement Agreement and amend the same, as necessary, in order to obtain the approval of the Court.

NOW THEREFORE, subject to the approval of the Court, this Amending Agreement sets out the revised and additional terms of the Settlement Agreement as follows:

1. The Parties hereby confirm and ratify the terms of the Settlement Agreement except as clarified or modified by the terms of this Amending Agreement. In the event of a conflict between the terms of the Settlement Agreement and the terms of this Amending Agreement, the terms of the Amending Agreement shall govern.
2. Page 2, Section B. of the preamble to the Settlement Agreement shall be amended to add a new sentence after the first sentence which shall read:

A related Class Action, being file No. CI 06-01-46955 has been filed by the Plaintiff against the Government of Manitoba in the Manitoba Court of Queen's Bench (collectively the "Class Actions").

3. Page 4, Section 1 of the Settlement Agreement shall be amended to state:

“Agreement” means this Settlement Agreement as amended
by the Amending Agreement.

4. Page 4, Section 1 of the Settlement Agreement shall be amended to add a new definition which shall read:

“Assigned Claims” means those claims assigned by the
Settling Director and Officer Defendants to the Plaintiff on
behalf of the Settlement Class referred to in paragraph
11.3.2 of this Agreement.

5. Page 5, Section 1 of the Settlement Agreement shall be amended to state:

“Defendants” means any of the defendants ever named or
to be named in the Class Actions or in the Assigned
Claims (including affiliates and each Defendant and its
affiliates' present and former directors, officers, agents,
partners, servants and employees and each individual's
successors, heirs, executors, estate trustees, administrators and
assigns). For greater certainty, “Defendants” includes
Deloitte & Touche Inc. in its capacity as receiver of the
Crocus Investment Fund.

6. Page 5, Section 1 of the Settlement Agreement shall be amended to state:

“Non-Settling Defendants” means any of the Defendants,
excluding the Settling Defendants, ever named or to be

named in the Class Actions or the Assigned Claims. For the purpose of this Agreement, The Government of Manitoba and any other party who has entered into a settlement agreement with the Plaintiff shall be deemed to be a Non-Settling Defendant.

7. Page 13, paragraph 11.2.1 of the Settlement Agreement shall be deleted and replaced by the following:

11.2.1 All claims for contribution, indemnity, subrogation or any other claims by any Non-Settling Defendant or any other person against the Settling Defendants in respect of or relating to the subject matter of the Class Actions, or any other claim on behalf of the Settlement Class, whether direct, subrogated, derivative, asserted or unasserted in a representative capacity, inclusive of interest, GST and costs, will be barred by order of the court.

8. Page 13, paragraph 11.2.3 of the Settlement Agreement shall be amended to state:

11.2.3 Except as provided in paragraph 11.3.2 of this Agreement, if any action is instituted by a Settlement Class Member seeking damages against persons who are not released by this Agreement ("non-parties") in respect of claims that are or could have been asserted in the Class Actions, such action will be limited to the non-parties' collective several liability. In other words, the Settlement Class

Member's claim shall exclude the proportionate share of liability of the Settling Director and Officer Defendants and of every person who has served as a director or officer of Crocus Investment Fund at any time from their claims against, and from any judgment which may be granted against the non-parties.

9. Page 13, paragraph 11.2.4 of the Settlement Agreement shall be amended to state:

11.2.4 The Settlement Class shall, as a disbursement in the Class Actions, indemnify the Settling Director and Officer Defendants for their reasonable costs associated with retaining counsel in connection with providing discovery and evidence in the Class Actions or in any action commenced pursuant to paragraphs 11.2.3 and 11.3.2.

10. Page 14, paragraph 11.3.2 of the Settlement Agreement shall be amended to add the following paragraph to the existing paragraph which shall state:

The Plaintiff, on his own behalf and as a representative of the Settlement Class, is precluded and restricted from pursuing an action for an Assigned Claim or Claims against either a Non-Settling Defendant or a non-party to the extent of the liability by way of claim for contribution, indemnity subrogation or otherwise attributable in such action to any Settling Director and Officer Defendants. For greater certainty, in any such action, the Plaintiff and Settlement Class will not seek to recover from any Non-

Settling Defendant or any non-party any amounts that are attributable to any claim over or back to any Settling Director and Officer Defendants.

11. Page 14, paragraph 11.3.4 of the Settlement Agreement shall be deleted in its entirety and replaced with the following:

11.3.4 For the purposes of this paragraph 11.3.4, Independent Claims are those claims, demands or actions which have not been brought within the context or subject matter of the Class Actions but which may hereafter be brought by a Non-Settling Defendant (as that term is defined in this Agreement) or a non-party against Crocus, the Receiver, a Settling Director Defendant or a Settling Officer Defendant for any matter arising out of or relating to the business, operations and affairs of Crocus including in regard to the Receiver's administration of the receivership of Crocus or in regard to any actions, claims or demands based upon, arising out of or in any manner relating to, any alleged conduct of a Settling Director Defendant or a Settling Officer Defendant in his or her capacity as a former director or officer of Crocus. Provided that claims or allegations made by the Manitoba Securities Commission against any one or more of the Settling Director Defendants in the pending proceedings to be scheduled shall not be deemed an Independent Claim. Independent Claims include any claims over or any cross claims among Crocus, the Receiver, a Settling Director Defendant or Settling Officer Defendant resulting from any such Independent Claim or Claims being

brought against one or more of these potential litigants directly. Further, in the case of a legal cost indemnity claim brought by a Settling Director Defendant or Settling Officer Defendant against Crocus which arises from an Independent Claim, it is understood that the Settling Director and Officer Defendants shall be at liberty to seek a Court order requiring current ongoing funding of legal costs to defend an Independent Claim and nothing prohibits Crocus or the Receiver from opposing the granting of such order.

Within 14 days of the Effective Date:

(1) the Settling Director and Officer Defendants agree to provide a release from any and all direct proceedings, actions, causes of action, claims and demands, for damages, loss or injury, howsoever arising, which they may have had or, now have or, in the future may have against each other and each others' heirs, successors and assigns arising out of the business, operation and affairs of Crocus, both before and after the receivership of Crocus to the date of this Agreement, save and excepting the right of a Settling Director Defendant and Settling Officer Defendant to bring claims over or cross claims against each other in the context of Independent Claims;

(2) the Settling Director and Officer Defendants agree to provide a release from any and all direct proceedings, actions, causes of action, claims and demands, for damages, loss or injury, howsoever arising, which they may have had or, now or in the future, may have against Crocus, the Receiver and Crocus

Capital Inc. arising out of the business, operation and affairs of Crocus, both before and after the receivership of Crocus to the date of this Agreement, save and excepting that the release will not apply to: (i) any indemnity claims of a Settling Director Defendant as to any judgments, fines, monetary penalties or settlement amounts which may result from the Manitoba Securities Commission proceedings, including any legal costs incurred or to be incurred by a Settling Director Defendant in pursuing such indemnity claims, (ii) the right of a Settling Director Defendant and Settling Officer Defendant to bring claims over or cross claims against Crocus and the Receiver in the context of Independent Claims, (iii) any indemnity claims of a Settling Director Defendant or Settling Officer Defendant as to any amounts, judgments, fines or settlements, including legal costs, arising from any Independent Claims, (iv) the right of the Settling Director and Officer Defendants to receive distributions as shareholders from funds realized by the Receiver other than from the Class Actions and (v) the Settling Directors Defendants' entitlement to the \$250,000.00 indemnity legal fund and to retain same to the extent that such funds are required by one or more of them, except in the case of a declared surplus, if any. It is expressly understood that nothing in said release shall be construed as an admission on the part of Crocus or the Receiver that any claims described in subparagraphs (i), (ii) and (iii) immediately preceding are valid claims.

(3) Crocus and the Receiver agree to deliver:

(a) an indemnity legal fund of \$250,000.00 to D'Arcy & Deacon LLP as to legal fees and expenses ("costs") incurred or to be incurred collectively by the Settling Director Defendants in response to allegations by the Manitoba Securities Commission to be heard in proceedings to be scheduled, it being understood that the indemnity legal fund will not have any application toward any settlement amounts or judgments, fines or monetary penalties which one or more of the Settling Director Defendants successfully recovers under separate indemnity claims referred to in paragraph 11.3.4 (2)(iii) above. The payment of the indemnity legal fund will be subject to certain understandings as to the utilization, if any, of the surplus and return to the Receiver of the surplus or any amounts in excess of the utilized surplus;

(b) an incontrovertible undertaking (Undertaking #1) not to pursue any claims for reimbursement of any legal costs previously paid for and on behalf of the Settling Director Defendants including, without limitation, in regards to the investigation by the Office of the Auditor General, the investigation by the Manitoba Securities Commission and addressing motions related to the receivership;

(c) an incontrovertible undertaking (Undertaking #1) not to pursue any claims for reimbursement of the indemnity legal fund of \$250,000.00 referred to in paragraph (a) above except in the case of a declared surplus, if any;

(d) an incontrovertible undertaking (Undertaking #2) to holdback \$3,000,000.00 from the first distribution to shareholders ("3M Holdback"). The 3M Holdback is intended to address potential indemnity claims of the nature set out below which may arise after the Receiver effects the said distribution. The 3M Holdback shall be available for release and distribution on or after January 1, 2011 unless, after the first distribution and on or prior to December 31st, 2010, a Settling Director Defendant or Settling Officer Defendant notifies the Receiver and Crocus of any Independent Claims known to him or her or other proceedings which are pending against one or more of the Settling Director Defendants which may lead to one or more of the following indemnity claims:

- (A) indemnity claims of a Settling Director Defendant as to any judgments, fines, monetary penalties or settlement amounts which may result from the Manitoba Securities Commission proceedings, including any legal costs incurred in pursuing such indemnity entitlement; and
- (B) indemnity claims of a Settling Director Defendant or Settling Officer Defendant as to any amounts, judgments, fines or settlements, including legal costs, arising from Independent Claims.

It being expressly understood that nothing herein shall be construed as an admission on the part of the Receiver and Crocus that any claims referred to in subparagraphs (A) and (B) immediately preceding are valid and

provided further that if the aggregate of such potential indemnity claims is less than \$3M, then the Receiver may seek to negotiate a reduced holdback or, failing agreement between the parties, the Receiver shall be at liberty to apply to the court supervising the Crocus receivership.

(e) an incontrovertible undertaking (Undertaking #2), in the event any Independent Claims arise which may result in direct claims or claims over against a Settling Director Defendant or a Settling Officer Defendant before the date that the Receiver makes application to Court for approval of the Receiver's first distribution to shareholders, to consent to the standing of the Settling Director Defendant or Settling Officer Defendant to appear at the said distribution hearing and speak to the Court requiring any holdback additional to the \$3M Holdback referred to in paragraph (d) above. If any Independent Claims should arise directly against Crocus or the Receiver prior to the said hearing, Crocus will immediately give written notification to counsel for each of the Settling Director Defendants and Settling Officer Defendants of any such Claims.

(4) Crocus, the Receiver and Crocus Capital Inc. agree to provide a release from any and all direct proceedings, actions, causes of action, claims and demands, for damages, loss or injury, howsoever arising, which they may have had or, now have or, in the future may have, against the Settling Director and Officer Defendants and each of their respective heirs, successors and assigns, arising out of the business, operation and affairs of Crocus, both before and after the receivership of Crocus to the date of this Agreement, and including any

actions, claims or demands based upon, arising out of or in any manner relating to any alleged conduct of the Settling Director and Officer Defendants in their capacity as former directors and officers of Crocus, and also including: (i) with respect to any claims for reimbursement of any indemnification payments previously paid by Crocus or the Receiver for and on behalf of one or more of the Settling Director Defendants by reason of him or her having held office as a director of Crocus and (ii) the \$250,000.00 indemnity legal fund as aforesaid, except in the case of a declared surplus, if any. The release does not disentitle Crocus and the Receiver to bring any cross claims or other claims over against any one or more of the Settling Director and Officer Defendants in the context of Independent Claims.

12. Page 6, paragraph 3.2.1 of the Settlement Agreement shall be amended to:

- (i) incorporate by reference or attachment to the Order the terms of the Settlement Agreement, as amended;
- (ii) amend sub-paragraph (i) to conform with paragraph 11.2.1 of the Settlement Agreement, as amended;
- (iii) add a sub-paragraph (o) to refer specifically to paragraph 11.3.2 of the Settlement Agreement, as amended;
- (iv) add a sub-paragraph (p) to refer specifically to paragraph 11.3.4 of the Settlement Agreement, as amended.

13. Paragraph 14.5 shall be added to the Settlement Agreement to state:


Any Non-Settling Defendant or other person or party who intends to commence an action or third party claim against the Settling

Defendants relating to the subject matter of the Class Actions or any other matter arising out of the business, operation and affairs of the Crocus Investment Fund, including any actions, claims and demands based upon, arising out of, or in any way relating to any alleged acts and/or omissions of the Settling Director and Officer Defendants in their capacity as former directors and/or officers of the Crocus Investment Fund, shall not proceed without obtaining leave of the Honourable Mr. Justice Hanssen or such other Justice of the Manitoba Court of Queen's Bench responsible for the management of the Class Actions.

14. This Amending Agreement may be executed in one or more counterparts by the parties or their respective counsel.


Dated this 21st day of April, 2009.

Plaintiff and Settlement Class


by their solicitors, Klein Lyons
Per: Douglas Lennox

Dated this ___ day of _____, 2009.

Settling Director and Officer Defendants


by their solicitors, Kenneth A. Filkow, Q.C.

by their solicitors, G. Patrick S. Riley

Defendants relating to the subject matter of the Class Actions or any other matter arising out of the business, operation and affairs of the Crocus Investment Fund, including any actions, claims and demands based upon, arising out of, or in any way relating to any alleged acts and/or omissions of the Settling Director and Officer Defendants in their capacity as former directors and/or officers of the Crocus Investment Fund, shall not proceed without obtaining leave of the Honourable Mr. Justice Hanssen or such other Justice of the Manitoba Court of Queen's Bench responsible for the management of the Class Actions.

14. This Amending Agreement may be executed in one or more counterparts by the parties or their respective counsel.

Dated this ____ day of _____, 2009.

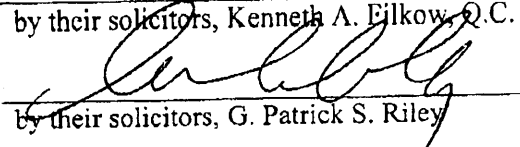
Plaintiff and Settlement Class

by their solicitors, Klein Lyons
Per: Douglas Lennox

Dated this 20th day of APRIL, 2009.

Settling Director and Officer Defendants

by their solicitors, Kenneth A. Ejlkow, Q.C.



by their solicitors, G. Patrick S. Riley

by their solicitors, Robert L. Tapper, Q.C.

by their solicitors, J. Kenneth McEwan, Q.C.

Dated this 22nd day of April, 2009.

**Crocus Investment Fund, Crocus
Capital Inc. and the Receiver**




by their solicitors, Hill, Dewar, Vincent
Per: Robert Dewar, Q.C.

Dated this ___ day of _____, 2009.

Chubb Insurance Company of Canada

by their solicitors, Nicholl Paskell-Mede
Per: Mary Margaret Fox

by their solicitors, Robert L. Tapper, Q.C.



by their solicitors, J. Kenneth McEwan, Q.C.

Dated this ___ day of _____, 2009.

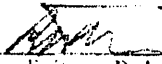
**Crocus Investment Fund, Crocus
Capital Inc. and the Receiver**

by their solicitors, Hill, Dewar, Vincent
Per: Robert Dewar, Q.C.

Dated this ___ day of _____, 2009.

Chubb Insurance Company of Canada

by their solicitors, Nicholl Paskell-Mede
Per: Mary Margaret Fox


by their solicitors, Robert L. Tapper, Q.C.

by their solicitors, J. Kenneth McEwan, Q.C.

Dated this ___ day of _____, 2009.

**Crocus Investment Fund, Crocus
Capital Inc. and the Receiver**

by their solicitors, Hill, Dewar, Vincent
Per: Robert Dewar, Q.C.

Dated this ___ day of _____, 2009.

Chubb Insurance Company of Canada

by their solicitors, Nicholl Paskell-Mede
Per: Mary Margaret Fox

FROM : PackNSend

FAX NO. : 7278673754

Apr. 21 2009 10:51AM P2/2

No. 200 P. 15

APR. 20. 2009 3:38PM

- 14 -

by their solicitors, Robert L. Tappin, Q.C.

by their solicitors, J. Kenneth McIvor, Q.C.

Dated this 22nd day of April, 2009.

Crocus Investment Fund, Crocus
Capital Inc. and the Receiver

Robert Dewar
by their solicitors, Hill, Dewar, & Vincent
Per: Robert Dewar, Q.C.

Dated this 21st day of April, 2009.

Chubb Insurance Company of Canada

Mary Margaret Fox
by their solicitors, Nicholl Pascoe & Medel
Per: Mary Margaret Fox

Schedule B to Order

Crocus Investment Fund Class Actions Notice of Certification and Settlement Approval

To all persons who own Class A common shares in the Crocus Investment Fund (the "Fund"), this notice will be important to you.

Settlements have been approved by the Court in lawsuits brought on behalf of shareholders in the Fund. This notice is published by Order of The Honourable Mr. Justice Hanssen of the Manitoba Court of Queen's Bench and explains:

1. the lawsuits and purpose of this notice;
2. the terms of settlement;
3. your right to choose to opt out of the class actions;
4. legal fees; and
5. where to get more information.

1. The Lawsuits and Purpose of this Notice

Bernard Bellan commenced class action lawsuits relating to the Fund on behalf of shareholders in the Manitoba Court of Queen's Bench as action nos. CI 05-01-42765 and CI 06-01-46955. By notice issued by Mr. Justice Hanssen of the Manitoba Court of Queen's Bench and published July 11, 2008 (the "First Notice"), it was announced that certain defendants, namely the Manitoba Securities Commission, the Government of Manitoba, and BMO Nesbitt Burns Inc had agreed to settle with shareholders, and that the court had approved these settlements. These first settlements became final on August 18, 2008.

This First Notice further advised that a provisional settlement had also been reached, subject to certain amendments, with certain other defendants, namely the former officers and directors of the Fund, Pricewaterhouse Coopers LLP, Crocus Capital Inc., and the Crocus Investment Fund, and that litigation was continuing against Wellington West Capital Inc., with whom no settlement had been reached. All of these remaining defendants have now agreed to settle the claims of shareholders (the "Settling Defendants").

On April 22, 2009, Mr. Justice Hanssen certified the lawsuit against the Settling Defendants as a class action for the purposes of settlement, and approved the settlement agreements, including amendments, reached with the Settling Defendants. The court defined the class as persons who own Class A common shares in the Fund including their legal representatives, heirs, successors and assigns, and who have not opted out but excludes each of the Defendants named or ever named in the lawsuits. The court appointed Mr. Bellan as representative plaintiff for the class. The court appointed the firms of Klein Lyons, Booth Dennehy LLP and Prober Law Offices, (collectively, "Class Counsel") as counsel to the class.

2. The Terms of Settlement

The Settling Defendants have agreed to pay up to a total of \$9.65 million to compensate class members (\$6 million paid by Pricewaterhouse Coopers LLP, \$3.15 million paid by the former

officers and directors of the Fund and \$500,000 paid by Wellington West Capital Inc., now Wellington West Holdings Inc.) The Settling Defendants have also agreed to drop most claims for indemnity against the Fund with respect to claims asserted in the lawsuits, thereby significantly reducing one of the major obstacles to the distribution of money to shareholders held in the Fund's receivership. In exchange, the claims against the Settling Defendants will be dismissed. No admission of liability has been made.

Compensation will be distributed pro rata to the Settlement Class Members based on the monies paid for each Settlement Class Member's Class A common shares of the Crocus Investment Fund which remained unredeemed as of the date of the Receivership. Compensation will be distributed by Deloitte & Touche Inc., the Receiver to the Fund, which the court has appointed as the Administrator for the settlements. It is anticipated that compensation will be distributed to class members at the same time that the Administrator makes a distribution of monies from the Receivership to shareholders. To be eligible to receive compensation, it is not necessary for you to take any steps, other than make sure that the Administrator has your correct mailing address. The Administrator is mailing a copy of this notice to all shareholders in the Fund. If you received a copy of this notice in the mail from the Administrator, and it is addressed to you at your current address, this confirms that it has your mailing address.

The class members' recoveries will be subject to payment of Class Counsel's fee, in an amount to be determined by the Court. Copies of the Settlement Agreements, and amendments, are available online at www.kleinlyons.com. Hard copies can be obtained by calling Class Counsel at 1-800-216-1383.

3. Your Right to Choose Whether or Not to be Part of the Class Actions

(a) How to be Included in the Class

If you are a class member, you will automatically be included in the class actions and eligible to receive compensation unless you opt out.

(b) How to be Excluded from the Lawsuits

To opt out of the class actions, you must deliver a letter to the Administrator on or before the **[Opt Out Deadline]** signed by the person opting out and setting out that person's name, address, number of shares held, the reason for opting out, and specifying which Settling Defendants you are opting out against. Failure to specify which Settling Defendants you are opting out against will be treated as opting out as against all Settling Defendants.

All class members who do not opt out of the settlements with the Settling Defendants, as described above will be bound by the settlements.

The address for writing to the Administrator to opt out is: Crocus Class Action Settlement Administrator, Deloitte & Touche Inc., 360 Main Street, Suite 2300, Winnipeg MB, R3C 3Z3.

4. Legal Fees

Mr. Bellan retained Class Counsel to represent him and the Class in the lawsuits. Class Counsel are paid legal fees only if the lawsuit is successful, and then only in an amount approved by the Court.

5. More Information

For further information about the class actions you may contact: Klein Lyons, Barristers & Solicitors, P.O. Box 85, Suite 1220, 65 Queen St. W., Toronto, ON M5H 2M5, 1-800-216-1383. Attn: Doug Lennox dlennox@kleinlyons.com, www.kleinlyons.com.

Tab G

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, PRICEWATERHOUSE COOPERS 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

ORDER

(RE: Settlement with Wellington West)

BOOTH DENNEHY LLP
Barristers & Solicitors
387 Broadway
Winnipeg MB R3C 0V5
NORMAN BOUDREAU

Tel (204) 957-1717
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**DAVID KLEIN
& DOUGLAS LENNOX**

Tel (604) 874-7171
Fax (604) 874-7180

Counsel for the Plaintiff

THE QUEEN'S BENCH
Winnipeg Centre

THE HONOURABLE)
) Wednesday, April 22, 2009
MR. JUSTICE HANSSEN)

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, PRICEWATERHOUSE COOPERS 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

ORDER

THIS MOTION, made by the Plaintiff, Bernard Bellan, for an order approving a settlement with the Defendant, Wellington West Capital Inc., now Wellington West Holdings Inc., and referred to herein as "Wellington West", was heard this day at Winnipeg.

ON READING the affidavits of Mark Lyons and Bernard Bellan and on hearing the submissions of counsel for the parties.

THIS COURT ORDERS AS FOLLOWS:

1. The Agreement, attached to this Order as Schedule A, is approved as fair and reasonable and in the best interests of the Settlement Class. The Agreement is

incorporated into, and forms part of this Order, including the definitions contained therein. In the event of conflict between this Order and the Agreement, this Order shall prevail.

2. The Class Action is certified as against Wellington West for settlement purposes only.
3. The Settlement Class is defined as the class of persons who own Class A common shares in the Crocus Investment Fund including their legal representatives, heirs, successors and assigns, and who have not opted out of the Agreement but excludes each of the Defendants named or ever named in the Class Actions.
4. The common issue is defined as whether Wellington West owed a duty to the Settlement Class.
5. Bernard Bellan is appointed as the Representative Plaintiff for the Settlement Class. His counsel, Klein Lyons, Booth Dennehy LLP and Prober Law Offices, are appointed as counsel to the Settlement Class.
6. The Settling Party and all Settlement Class members are ordered to comply with the Agreement.
7. The deadline for exclusion ("opting out") from the Settlement Class is 30 days following the mailing of the Notice of Certification and Settlement Approval ("Opt Out Deadline").
8. Any Settlement Class Member who has not opted out from the Settlement Class in accordance with the procedures set out in this Agreement by the Opt Out Deadline shall be bound by the terms of this Agreement.

9. The Receiver, Deloitte & Touche, Inc., is appointed as the Administrator of the settlement.

10. The form of Notice of Certification and Settlement Approval is approved in substantially the form as attached as Schedule B. Within 14 days after the Approval Date, the Administrator shall mail by ordinary mail a copy of the Notice of Certification and Settlement Approval to the last known address it has in its records for each holder of Crocus Investment Fund Class A shares. The Notice of Certification and Settlement Approval will also be posted on the Klein Lyons web site, and on the Receiver's web site. The Administrator will further cause the Notice of Certification and Settlement Approval to be published in one weekday edition of the Winnipeg Free Press.

11. All claims for contribution, indemnity, subrogation or any other claims by any Non-Settling Defendant or any other person against Wellington West in respect of or relating to the subject matter of the Class Action and the Related Action, or any other claim on behalf of the settlement class, whether direct, subrogated, derivative, asserted or unasserted or asserted in a representative capacity, inclusive of interest, GST and costs, will be barred by order of the Court.

12. In any proceeding taken by the Plaintiff or other Settlement Class member in respect of a claim assigned to them, the Settlement Class members shall not claim or be entitled to recover any amount for which Wellington West may be liable to any party thereto by way of indemnity, contribution, claim over or otherwise.

13. Any Non-Settling Defendant or other person who intends to commence an action or third party claim against Wellington West relating to the subject matter of the Class Action or the Related Action or any other matter arising out of the business, operations and affairs of the Crocus Investment Fund shall not proceed without obtaining leave of the Honourable Mr. Justice Hanssen or such other Justice of the Manitoba Court of Queen's Bench responsible for the management of the Class Action.

14. The Non-Settling Defendants shall have discovery rights against Wellington West in the Class Action with respect only to the claims specifically asserted against Wellington West in the statement of claim issued July 12, 2005, as it has been and may be amended, as if the Non-Settling Defendants had issued third party claims against Wellington West, and the Plaintiff shall have the right to participate as a party to such discoveries.

15. With respect to the collective several liability of the Non-Settling Defendants at paragraphs 10.2.3 and 10.2.4 of the Agreement, the Non-Settling Defendants shall not be made to pay a greater amount to the Settlement Class, as a result of this settlement, than would have occurred in the absence of a settlement.

16. It is declared that, in the event of termination of the Agreement pursuant to Section 12 of the Agreement, this Order is null and void and of no force and effect.

17. The Court shall retain continuing jurisdiction over the Agreement to ensure that all payments are properly made, and over the interpretation and enforcement of the Agreement's terms, conditions and obligations.

APR 22 2009

K. R. HANSSEN

J.

Schedule A to Order

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, PRICEWATERHOUSE COOPERS 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

SETTLEMENT AGREEMENT

WHEREAS:

- A.** Bernard W. Bellan (the "Plaintiff"), in his own capacity and in his capacity as representative plaintiff for the Settlement Class, and Wellington West Holdings Inc. (formerly Wellington West Capital Inc. and herein referred to as "Wellington West"), hereby enter into this Agreement providing for settlement of the claims described below, pursuant to the terms and conditions set forth below, subject to the approval of the Court.
- B.** A Class Action has been filed by the Plaintiff against Wellington West pursuant to the *Class Proceedings Act*, C.C.S.M. c. C130 in the Manitoba Court of Queen's Bench. A related Class Action, being File No. CI 06-01-46555, has been filed by the plaintiff against the Government of Manitoba in the Manitoba Court of Queen's Bench (the "Related Action").
- C.** Wellington West, notwithstanding its consent to this Agreement, has denied and continues to deny the claims of the Plaintiff and the Settlement Class Members in the Class

Action, has denied and continues to deny any wrongdoing and has raised numerous defences, including defences relating to the certification of the claims in the Class Action and, except to the extent of its obligations under this Agreement, denies liability of any kind to the Plaintiff or the Settlement Class Members.

D. The Class Action has not yet been certified as against Wellington West. Wellington West will not oppose certification of the Class Action as against it for settlement purposes only.

E. The Settlement Class Members will have the right to exclude themselves ("opt out") from this Agreement pursuant to Section 16 of *The Class Proceedings Act*, C.C.S.M. c.C130, and as provided in this Agreement.

F. Based upon an analysis of the facts and the law applicable to the claims of the Settlement Class, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving claims of the Settlement Class provided in this Agreement, the Plaintiff and Plaintiff's Counsel have concluded that this Agreement provides substantial benefits to the Settlement Class and is fair, reasonable, and in the best interests of the Settlement Class.

G. Wellington West has similarly concluded that this Agreement is desirable in order to avoid the time, risk and expense of defending multiple and protracted litigation, and to resolve finally and completely the pending and potential claims of the Settlement Class Members and all pending and potential claims, proceedings, crossclaims and third party actions against them.

H. It is intended that this Agreement shall fully and finally settle all claims which have been or could have been made against Wellington West in, arising out of, or related to the Class Action and the Related Action and all other claims that the Plaintiff or Settlement Class Members may otherwise have against Wellington West relating to the Crocus Investment Fund.

NOW THEREFORE, subject to the Court's approval, this Agreement embodies the terms of resolution of the claims asserted or which could have been asserted against the Settling Party in

the Class Action and the Related Action and all other claims that the Plaintiff or Settlement Class Members may otherwise have against Wellington West relating to the Crocus Investment Fund..

1. **Definitions**

Unless the specific context of a particular section of this Agreement calls for another interpretation, the following terms, as used in this Agreement, shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural, and *vice versa*. Masculine pronouns and male references shall be deemed to include the female and *vice versa*, where appropriate. The terms "person" or "party" includes individuals, partnerships and corporations.

"Administrator" means the person appointed by the Court as provided in Section 6 of this Agreement.

"Agreement" means this Settlement Agreement.

"Approval Date" means the date on which the Approval Order becomes a final order meaning that the time to appeal has expired and there has been no appeal or, if there have been any appeals from the Approval Order, all rights of appeal have been exhausted and there has been no change to the Approval Order.

"Approval Order" means the Order referred to in section 3.2.1 of this Agreement.

"Class Action" means the proceeding filed under the *Class Proceedings Act*, C.C.S.M. c.C130 in the Manitoba Court of the Queens Bench bearing File No. CI 05-01-42765.

"Class Counsel" means the law firms of Klein Lyons, Booth Dennehy LLP and Prober Law Offices, which firms act on behalf of the Plaintiff and the Settlement Class herein and which shall continue acting on behalf of the Plaintiff and Settlement Class with respect to all acts or consents pursuant to this Agreement.

“**Court**” means the Manitoba Court of the Queen’s Bench which has jurisdiction over the Class Action, and the Honourable Mr. Justice Hanssen, or his successor.

“**Defendants**” means any of the defendants ever named or to be named in the Class Action or the Related Class Action (including affiliates and each Defendant and its affiliates’ present and former directors, officers, agents, partners, servants and employees and each individual’s successors, heirs, executors, estate trustees, administrators and assigns). For greater certainty, “Defendants” includes Deloitte & Touche Inc. in its capacity as receiver of the Crocus Investment Fund.

“**Effective Date**” means the date on which Wellington West’s right to terminate this agreement expires as provided in sections 12.1 and 12.2 of this Agreement.

“**Non-Settling Defendants**” means any of the Defendants, excluding Wellington West, ever named or to be named in the Class Action or the Related Class Action.

“**Notice of Certification and Settlement Approval**” means the Notice advising Settlement Class Members of the Court’s approval of this Agreement.

“**Opt Out Deadline**” means the date 30 days after the date of mailing of the Notice of Certification and Settlement Approval pursuant to Section 3.3 of this Agreement.

“**Plaintiff**” means Bernard W. Bellan.

“**Receiver**” means Deloitte & Touche, Inc. as Receiver of Crocus Investment Fund.

“**Related Action**” means the action commenced under *Class Proceedings Act, C.C.S.M.* c.C130 by Bernard W. Bellan and Robert Nelson against the Government of Manitoba in the Manitoba Court of the Queens Bench bearing File No. CI 06-01-46955.

“**Settlement Amount**” means the sum of \$500,000.00 (five hundred thousand dollars) payable in instalments by Wellington West under this Agreement.

“**Settlement Class**” means the class of persons who own Class A common shares in Crocus Investment Fund including their legal representatives, heirs, successors and assigns, and who have not opted out of this Agreement but excludes each of the Defendants named or ever named or to be named in the Class Action.

“**Settlement Class Member**” means a person who falls within the definition of the Settlement Class.

“**Settlement Fund**” means the Settlement Amount less the amount approved by the Court for payment of Class Counsel fees and disbursements.

“**Settling Party**” means Wellington West and its affiliates, and each of Wellington West’s and its affiliates’ present and former directors, officers, agents, partners, servants and employees, and each individual’s successors, heirs, executors, estate trustees, administrators and assigns.

2. **Preliminary Matters**

2.1 Promptly after execution of this Agreement by the Plaintiff and Wellington West, the Plaintiff will serve a true copy of this Agreement on counsel for each of the Non-Settling Defendants.

2.2 Where the time on or by which any action to be taken under this Agreement falls on a day that is not a business day, such action may be done on the next day that is a business day.

2.3 All references to money in this Agreement are to Canadian currency.

3. **Matters Relating to Certification and Settlement Approval**

3.1 Within 14 days of the execution of this Agreement by the Plaintiff and Wellington West, the Plaintiff will bring an application for Court approval of this Agreement. Wellington

West will not oppose certification of the Class Action as against it for settlement purposes only.

3.2 Certification and Settlement Approval Order

3.2.1 Subject to the Court's approval, and as provided in a form of Order to be agreed by the Plaintiff and Wellington West, acting reasonably, the order approving this Agreement shall:

- (a) certify the Class Action as a class proceeding as against Wellington West for settlement purposes only;
- (b) appoint Bernard Bellan as the Representative Plaintiff for the Settlement Class;
- (c) approve this Agreement and order the Plaintiff, all Settlement Class Members, the Settling Party and all Defendants to comply with it;
- (d) order that the deadline for exclusion ("opting out") from the Settlement Class be 30 days following the mailing of the Notice of Certification and Settlement Approval ("Opt Out Deadline");
- (e) declare that any Settlement Class Member who has not opted out of the Settlement Class in accordance with the procedures set out in this Agreement by the Opt Out Deadline shall be bound by the terms of this Agreement;
- (f) declare that this Agreement is fair, reasonable, and in the best interests of the Settlement Class;
- (g) order mailing of the Notice of Certification and Settlement Approval;
- (h) appoint the Receiver as the Administrator;

- (i) bar any and all claims for contribution, indemnity, subrogation or any other claims by any Non-Settling Defendant or any other person against Wellington West in respect of or relating to the subject matter of the Class Action and the Related Action, or any other claim on behalf of the settlement class, whether direct, subrogated, derivative, asserted or unasserted or asserted in a representative capacity, inclusive of interest, GST and costs;
- (j) order that in any proceeding taken by the Plaintiff or other Settlement Class member in respect of a claim assigned to them, the Settlement Class members shall not claim or be entitled to recover any amount for which Wellington West may be liable to any party thereto by way of indemnity, contribution, claim over or otherwise;
- (k) order that any Non-Settling Defendant or other person who intends to commence an action or third party claim against Wellington West relating to the subject matter of the Class Action or the Related Action or any other matter arising out of the business, operations and affairs of the Crocus Investment Fund shall not proceed without obtaining leave of the Honourable Mr. Justice Hanssen or such other Justice of the Manitoba Court of Queen's Bench responsible for the management of the Class Action;
- (l) order that the Non-Settling Defendants shall have discovery rights against Wellington West in the Class Action with respect only to the claims specifically asserted against Wellington West in the statement of claim issued July 12, 2005, as it has been and may be amended, as if the Non-Settling Defendants had issued third party notices against Wellington West, and the Plaintiff shall have the right to participate as a party to such discoveries; and
- (m) declare that, in the event of termination of this Agreement pursuant to Section 12 below, the Order is null and void and of no force and effect.

3.2.2 Following Court approval of this Agreement, Class Counsel will apply to the Court for approval of Class Counsel fees and disbursements. The amount approved by the Court will be paid to Class Counsel out of the Settlement Amount. The approval of this Agreement is not conditional on approval of Class Counsel's fees or disbursements. Wellington West takes no position as to the amount that should be paid to Class Counsel for fees and disbursements.

3.3 Notice of Certification and Settlement Approval

3.3.1 The content of the Notice of Certification and Settlement Approval shall be as agreed by the Plaintiff and Wellington West, acting reasonably, and approved by the Court.

3.3.2 Within 14 days after the Approval Date, or on such other date as is approved by the Court, the Receiver shall mail by ordinary mail a copy of the Notice of Certification and Settlement Approval to the last known address it has in its records for each holder of Crocus Investment Fund Class A common shares. The Notice of Certification and Settlement Approval will also be posted on the Klein Lyons web site, and the Plaintiff will request that it be posted on the Receiver's web site.

4. Waiver of Limitation Defences

4.1 Nothing in this Agreement shall constitute or be deemed to constitute a waiver by the Settling Party of defences based upon statutes of limitations or repose, prescription periods or any other limitation or prescription defence in law or in equity or under any applicable statute with respect to any action brought or continued by any person who opts out of this Agreement, is deemed to opt out of this Agreement, or if this Agreement is terminated.

5. Payments and Related Issues

5.1 Subject to the payment of administration expenses referred to in this Agreement and all other conditions set out in this Agreement, only Settlement Class Members who have not

opted out shall be entitled to receive payments out of the Settlement Fund pursuant to this Agreement.

- 5.2 On January 2, 2009 or within 14 days after the Effective Date, whichever date is later, Wellington West will pay the sum of \$250,000.00 (two hundred and fifty thousand dollars) to Klein Lyons in trust.
- 5.3 On July 2, 2009 or within 14 days after the Effective Date, whichever date is later, Wellington West will pay the sum of \$250,000.00 (two hundred and fifty thousand dollars) to Klein Lyons in trust.
- 5.4 The payments made pursuant to sections 5.2 and 5.3 of this Agreement are in full and final settlement of all claims by the Plaintiff, the Settlement Class and each Settlement Class Member relating to the Crocus Investment Fund, whether direct, subrogated, assigned, asserted or unasserted or asserted in a representative capacity in the Class Action, inclusive of all interest, GST and costs. No Settlement Class Member nor anyone acting on his or her behalf shall commence any claim against the Settling Party in respect of any matter relating to the Crocus Investment Fund, including, for greater certainty, claims assigned to him or her by a Defendant or other person.
- 5.5 Klein Lyons will forthwith upon receipt of the Settlement Amount transfer the Settlement Fund to the Administrator to be held in trust by the Administrator for the benefit of the Settlement Class.
- 5.6 Any payments contemplated by this Section 5 are automatically cancelled and rendered null and void if this Agreement is terminated. In the event this Agreement is terminated, the Settlement Amount held by Klein Lyons or the Administrator shall be forthwith returned to Wellington West.

6. **Administrator**

- 6.1 The Plaintiff and Wellington West will propose that the Receiver be appointed by the Court as the Administrator for the purpose of administering this Agreement. All expenses of the Receiver related to the administration of this Agreement will be paid out of the Settlement Fund.

7. **Procedures and Deadlines for Exclusion**

- 7.1 Any person who is an owner of Crocus Investment Fund Class A common shares, other than Bernard W. Bellan, will have the right to exclude herself or himself ("opt out") from this Agreement and from the Settlement Class by delivering a letter to the Administrator on or before the Opt Out Deadline signed by the person opting out and setting out that person's name, address, number of shares held and reason for opting out. Persons who elect to opt out shall be excluded from this Agreement and from the Settlement Class. It is the responsibility of the person opting out to ensure that the requisite signed letter is received by the Administrator on or before the Opt Out Deadline. Any member of the Settlement Class who does not deliver to the Administrator a complete and signed opt out letter by the Opt Out Deadline shall be considered a Settlement Class Member and shall be bound by the terms of this Agreement and by the Court Order approving this Agreement.
- 7.2 By entering into this Agreement, Bernard W. Bellan agrees that he will not opt out of this Agreement.

8. **Distribution of Settlement Fund**

- 8.1 The Settlement Fund will be held in trust by the Administrator for the benefit of the Settlement Class. All Settlement Class Members who have not opted out will be eligible for payment from the Settlement Fund. The Settlement Fund will be distributed to the Settlement Class Members by the Administrator at the same time that the Receiver makes its first distribution of funds from the Crocus Investment Fund to the holders of Crocus Investment Fund Class A common shares. The distribution will be pro rata to the

Settlement Class Members based on the monies paid for Class A common shares of the Crocus Investment Fund owned by each Settlement Class Member.

- 8.2 Wellington West shall have no responsibility for the maintenance of the Settlement Fund once the payments contemplated by articles 5.2 and 5.3 have been made and Wellington West shall have no responsibility for the allocation and distribution of the Settlement Fund to the Settlement Class.

9. **Exclusive Remedy/Dismissal of Action**

9.1 **Exclusive Remedy**

- 9.1.1 This Agreement shall be the exclusive remedy for any and all Settlement Class Members with respect to claims relating to the Crocus Investment Fund, including those claims asserted or which could have been asserted against the Settling Party in the Class Action or the Related Action. The Settling Party shall not be subject to liability or any other expense of any kind to any Settlement Class Member with respect to the Crocus Investment Fund, the Class Action or the Related Action, except as provided in this Agreement. Settlement Class Members who have not opted out of this Agreement on or before the Opt Out Deadline shall be forever barred from continuing, initiating, asserting or prosecuting any and all claims relating to the Crocus Investment Fund, including those claims asserted or which could have been asserted against the Settling Party in the Class Action or the Related Action.

9.2 **Dismissal of Action**

- 9.2.1 Forthwith after the payments referred to in Articles 5.2 and 5.3 have been made, the Plaintiff and Wellington West will file a consent to a dismissal of the Class Action as against Wellington West with prejudice and any or all crossclaims and third party claims as against Wellington West, on a "without costs" basis, along with any other documents that may be necessary to give effect to the dismissal of the Class Action. Notwithstanding the dismissal of the Class Action as against Wellington West, the Court

will retain ongoing jurisdiction to deal with matters arising out of the administration of the settlement provided for in this Agreement.

10. **Releases/Bar Order/Third Party Claims**

10.1 **Release of Class Action Claims Against the Settling Party**

10.1.1 The claims of the Plaintiff and every Settlement Class Member who has not opted out of this Agreement on or before the Opt Out Deadline, relating to the Crocus Investment Fund whether their claims are direct, subrogated, derivative, asserted or unasserted or asserted in a representative capacity in the Class Action or the Related Action, inclusive of all interest, GST and costs, shall be conclusively compromised, settled, released and discharged as against the Settling Party, and Settlement Class Members shall be deemed to have forever released and discharged the Settling Party from any past, present and future claims, actions, demands and liabilities of any nature whatsoever relating to the Crocus Investment Fund, including all claims asserted or which could have been asserted in the Class Action or the Related Action.

10.2 Bar Order

- 10.2.1 Any and all claims for contribution, indemnity, subrogation or any other claims by any Non-Settling Defendant or any other person against Wellington West in respect of or relating to the subject matter of the Class Action and the Related Action, or any other claim on behalf of the settlement class, whether direct, subrogated, derivative, asserted or unasserted or asserted in a representative capacity, inclusive of interest, GST and costs, shall be barred by order of the Court.
- 10.2.2 The Court shall order that, in any proceeding taken by the Plaintiff or other Settlement Class member in respect of a claim assigned to them, the Settlement Class members shall not claim or be entitled to recover any amount for which Wellington West may be liable to any party thereto by way of indemnity, contribution, claim over or otherwise.
- 10.2.3 The Court shall order that any Non-Settling Defendant or other person who intends to commence an action or third party claim against Wellington West relating to the subject matter of the Class Action or the Related Action or any other matter arising out of the business, operations and affairs of the Crocus Investment Fund shall not proceed without obtaining leave of the Honourable Mr. Justice Hanssen or such other Justice of the Manitoba Court of Queen's Bench responsible for the management of the Class Action.
- 10.2.4 Forthwith after the Effective Date, the Plaintiff will amend the Statement of Claim in the Class Action so as to restrict permanently the claims against the Non-Settling Defendants to the collective several liability of the Non-Settling Defendants.
- 10.2.5 Forthwith after the Effective Date, the Plaintiff will amend the Statement of Claim in the Related Action so as to restrict permanently the claims against the Defendant in that action to the several liability of that Defendant.
- 10.2.6 If any action is instituted by a Settlement Class Member seeking damages against persons who are not currently parties to the Class Action ("Non-parties") in respect of claims asserted or which could have been asserted in the Class Action or the Related

Action, such action will be limited to the Non-parties' collective several liability and the Settlement Class Member shall not claim or be entitled to recover any amount for which Wellington West may be liable to any party thereto by way of indemnity, contribution, claim over or otherwise.

10.3 Reservation of Rights/Third Party Claims

10.3.1 Except as expressly provided herein, nothing in this Agreement shall prejudice or in any way interfere with the rights of the Settlement Class Members to pursue all of their other rights and remedies against persons and/or entities other than the Settling Party.

10.4 Mutual Release with Crocus Investment Fund

10.4.1 Wellington West releases all claims it has or in the future may have for indemnity from Crocus Investment Fund or from any of its subsidiaries or affiliates with respect to all claims asserted or which could have been asserted against the Settling Party in the Class Action, save and except in respect of any Opt Out claims.

10.4.2 This Agreement is conditional on the Receiver executing a release, in a form satisfactory to both Wellington West and the Receiver, releasing claims Crocus Investment Fund, its subsidiaries and affiliates, have or in the future may have against the Settling Party.

11. Submissions to the Court by the Administrator

11.1 The Administrator may apply to the Court for directions, as required, upon notice served on Class Counsel and Wellington West's counsel no later than fourteen (14) days prior to the date of any hearing.

12. Termination of this Agreement

12.1 Wellington West's Right of Termination

12.1.1 If persons owning a total of more than 71,100 (0.5 percent) of the Crocus Investment Fund Class A common shares elect to opt out of this Agreement on or before the Opt Out Deadline. Wellington West shall have the unilateral right to terminate this Agreement as set forth in Section 12.2.

12.2 Procedures and Time for Termination

12.2.1 Within thirty (30) days following the Opt Out Deadline the Administrator shall notify counsel for Wellington West and Class Counsel of the total number of persons who have opted out of this Agreement, including all particulars of their Crocus Investment Fund shareholdings and copies of their opt out letters.

12.2.2 Wellington West may exercise its right to terminate this Agreement pursuant to Section 12.1 above by providing written notice to Class Counsel and to the Court within thirty (30) days from the date on which the Administrator provides counsel for Wellington West with the information and documentation pursuant to Section 12.2.1 above.

12.3 Notice of Settlement Class Members

12.3.1 If Wellington West exercises its right of termination pursuant to Section 12 of this Agreement, Notice of Termination shall be given to all Settlement Class Members. The content and method of dissemination of the Notice of Termination shall be determined by the Court. If Wellington West exercises the right to terminate this Agreement, the reasonable costs associated with disseminating the Notice of Certification and Settlement and the Notice of Termination shall be paid by Wellington West.

12.4 Automatic Termination of the Agreement

12.4.1 This Agreement shall, without notice, be automatically terminated without admission by and without prejudice to Wellington West if the Court declines to approve this Agreement in any respect or, in the event of an appeal, if the Court's approval order is not affirmed in all respects.

12.5 Effect of Termination

12.5.1 If this Agreement is terminated pursuant to Section 12 herein, the certification of the Class Action for settlement purposes pursuant to this Agreement shall be null and void and this Agreement shall have no further force or effect and shall not be used or referred to in any litigation.

13. Miscellaneous Provisions

13.1 Ongoing Authority

13.1.1 The Court shall retain continuing jurisdiction over (i) this Agreement to ensure that all payments under this Agreement are properly made, and (ii) the interpretation and enforcement of this Agreement's terms, conditions and obligations.

13.2 Entire Agreement

13.2.1 This Agreement constitutes the entire agreement by and among the Plaintiff and Wellington West with regard to the subject of this Agreement and supersedes any previous agreements and understandings between the Plaintiff and the Settling Party with respect to the subject matter of this Agreement. This Agreement may not be amended except in writing signed by the Plaintiff and Wellington West, and, following the making of the Approval Order, such amendments are subject to the Court's approval.

13.3 Other Originals

13.3.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument.

13.4 Dates

13.4.1 Dates and deadlines referred to in this Agreement may be altered only with the consent of the Plaintiff and Wellington West and, following the making of the Approval Order, with the approval of the Court.

13.5 Use of Agreement

13.5.1 Neither the existence nor the terms of this Agreement may be used as evidence of any admission by the Settling Party regarding fault, liability, causation, damages, and/or any other issue. This Agreement may, however, be relied upon by the Plaintiff or Wellington West for purposes of enforcing any right possessed by such person or for purposes of any motion or application made to the Court for interpretation or enforcement of its terms.

13.6 Notification

13.6.1 Any notification, request, instruction or other document to be given by any party to this Agreement to any other party to this Agreement shall be in writing and delivered personally, sent by facsimile, or sent by registered mail, postage prepaid, if to the Plaintiff, to the attention of Class Counsel and, if to Wellington West, to the attention of its counsel:

For the Plaintiff Bernard W. Bellan and the Settlement Class:

David A. Klein, Douglas Lennox, Jay Prober and J. R. Norman Boudreau

For the Defendant Wellington West Holdings Inc.:

Aikins, MacAulay & Thorvaldson LLP

Attention: David M. Wright / Nicole M. Watson

Dated this _____ day of _____, 2009.

13.6 Notification

13.6.1 Any notification, request, instruction or other document to be given by any party to this Agreement to any other party to this Agreement shall be in writing and delivered personally, sent by facsimile, or sent by registered mail, postage prepaid, if to the Plaintiff, to the attention of Class Counsel and, if to Wellington West, to the attention of its counsel:

For the Plaintiff Bernard W. Bellan and the Settlement Class:

David A. Klein, Douglas Lennox, Jay Prober and J. R. Norman Boudreau

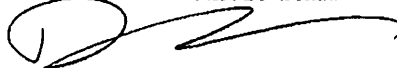
For the Defendant Wellington West Holdings Inc.:

Aikins, MacAulay & Thorvaldson LLP

Attention: David M. Wright / Nicole M. Watson

Dated this 21st day of April, 2009.

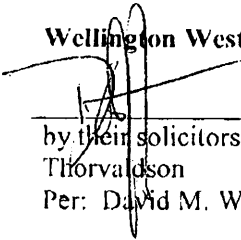
Plaintiff and Settlement Class



by their solicitors, Klein Lyons
Per: David A. Klein

Dated this 17th day of APRIL, 2009.

Wellington West Holdings Inc.



by their solicitors, Aikins, MacAulay &
Thorvaldson
Per: David M. Wright

Schedule B to Order

**Crocus Investment Fund Class Actions
Notice of Certification and Settlement Approval**

To all persons who own Class A common shares in the Crocus Investment Fund (the "Fund"), this notice will be important to you.

Settlements have been approved by the Court in lawsuits brought on behalf of shareholders in the Fund. This notice is published by Order of The Honourable Mr. Justice Hanssen of the Manitoba Court of Queen's Bench and explains:

1. the lawsuits and purpose of this notice;
2. the terms of settlement;
3. your right to choose to opt out of the class actions;
4. legal fees; and
5. where to get more information.

1. The Lawsuits and Purpose of this Notice

Bernard Bellan commenced class action lawsuits relating to the Fund on behalf of shareholders in the Manitoba Court of Queen's Bench as action nos. CI 05-01-42765 and CI 06-01-46955. By notice issued by Mr. Justice Hanssen of the Manitoba Court of Queen's Bench and published July 11, 2008 (the "First Notice"), it was announced that certain defendants, namely the Manitoba Securities Commission, the Government of Manitoba, and BMO Nesbitt Burns Inc had agreed to settle with shareholders, and that the court had approved these settlements. These first settlements became final on August 18, 2008.

This First Notice further advised that a provisional settlement had also been reached, subject to certain amendments, with certain other defendants, namely the former officers and directors of the Fund, Pricewaterhouse Coopers LLP, Crocus Capital Inc., and the Crocus Investment Fund, and that litigation was continuing against Wellington West Capital Inc., with whom no settlement had been reached. All of these remaining defendants have now agreed to settle the claims of shareholders (the "Settling Defendants").

On April 22, 2009, Mr. Justice Hanssen certified the lawsuit against the Settling Defendants as a class action for the purposes of settlement, and approved the settlement agreements, including amendments, reached with the Settling Defendants. The court defined the class as persons who own Class A common shares in the Fund including their legal representatives, heirs, successors and assigns, and who have not opted out but excludes each of the Defendants named or ever named in the lawsuits. The court appointed Mr. Bellan as representative plaintiff for the class. The court appointed the firms of Klein Lyons, Booth Dennehy LLP and Prober Law Offices, (collectively, "Class Counsel") as counsel to the class.

2. The Terms of Settlement

The Settling Defendants have agreed to pay up to a total of \$9.65 million to compensate class members (\$6 million paid by Pricewaterhouse Coopers LLP, \$3.15 million paid by the former

officers and directors of the Fund and \$500,000 paid by Wellington West Capital Inc., now Wellington West Holdings Inc.) The Settling Defendants have also agreed to drop most claims for indemnity against the Fund with respect to claims asserted in the lawsuits, thereby significantly reducing one of the major obstacles to the distribution of money to shareholders held in the Fund's receivership. In exchange, the claims against the Settling Defendants will be dismissed. No admission of liability has been made.

Compensation will be distributed pro rata to the Settlement Class Members based on the monies paid for each Settlement Class Member's Class A common shares of the Crocus Investment Fund which remained unredeemed as of the date of the Receivership. Compensation will be distributed by Deloitte & Touche Inc., the Receiver to the Fund, which the court has appointed as the Administrator for the settlements. It is anticipated that compensation will be distributed to class members at the same time that the Administrator makes a distribution of monies from the Receivership to shareholders. To be eligible to receive compensation, it is not necessary for you to take any steps, other than make sure that the Administrator has your correct mailing address. The Administrator is mailing a copy of this notice to all shareholders in the Fund. If you received a copy of this notice in the mail from the Administrator, and it is addressed to you at your current address, this confirms that it has your mailing address.

The class members' recoveries will be subject to payment of Class Counsel's fee, in an amount to be determined by the Court. Copies of the Settlement Agreements, and amendments, are available online at www.kleinlvons.com. Hard copies can be obtained by calling Class Counsel at 1-800-216-1383.

3. Your Right to Choose Whether or Not to be Part of the Class Actions

(a) How to be Included in the Class

If you are a class member, you will automatically be included in the class actions and eligible to receive compensation unless you opt out.

(b) How to be Excluded from the Lawsuits

To opt out of the class actions, you must deliver a letter to the Administrator on or before the **[Opt Out Deadline]** signed by the person opting out and setting out that person's name, address, number of shares held, the reason for opting out, and specifying which Settling Defendants you are opting out against. Failure to specify which Settling Defendants you are opting out against will be treated as opting out as against all Settling Defendants.

All class members who do not opt out of the settlements with the Settling Defendants, as described above will be bound by the settlements.

The address for writing to the Administrator to opt out is: Crocus Class Action Settlement Administrator, Deloitte & Touche Inc., 360 Main Street, Suite 2300, Winnipeg MB, R3C 3Z3.

4. Legal Fees

Mr. Bellan retained Class Counsel to represent him and the Class in the lawsuits. Class Counsel are paid legal fees only if the lawsuit is successful, and then only in an amount approved by the Court.

5. More Information

For further information about the class actions you may contact: Klein Lyons, Barristers & Solicitors, P.O. Box 85, Suite 1220, 65 Queen St. W., Toronto, ON M5H 2M5, 1-800-216-1383. Attn: Doug Lennox dlennox@kleinlyons.com, www.kleinlyons.com.

Tab H



The Corporations Act
Loi sur les corporations

RESTATED ARTICLES OF INCORPORATION (share capital)
STATUTS CONSTATIFS MIS À JOUR (corporation avec capital actions)

Corporation No.
N° de la corporation



The Corporations Act /
Loi sur les corporations

CERTIFICATE / CERTIFICAT
ARTICLES EFFECTIVE /
LES STATUTS PRENNENT EFFET LE

25 OCT / OCT 2001


DIRECTOR, CORPORATIONS BRANCH /
DIRECTEUR, DIRECTION DES CORPORATIONS

1. Name of Corporation / Dénomination sociale

CROCUS INVESTMENT FUND

2. Corporation Number
N° de la corporation

2859018

3. The address in full of the registered office (include postal code)
Adresse complète du bureau enregistré (inclure le code postal)

**303 - 275 Broadway
Winnipeg, Manitoba R3C 4M6**

4. Number (or minimum and maximum number) of directors
Nombre (ou nombre minimal et maximal) d'administrateurs

Minimum Three (3) - Maximum Eleven (11)

5. Directors/ Administrateurs

Name in full / Nom complet

Address in full / Adresse complète

As set forth in the attached Schedule A hereto.

6. The classes and any maximum number of shares that the corporation is authorized to issue
Catégories et tout nombre maximal d'actions que la corporation est autorisée à émettre

The Corporation is authorized to issue five classes of shares and any additional classes of shares from time to time by filing articles of amendment under The Corporations Act. The Corporation is currently authorized to issue Class A Common Shares and Class L Special Shares in unlimited numbers for unlimited consideration; Class G Special Shares in unlimited numbers for maximum consideration of \$2,000,000; Series One Class I Special Shares to a maximum of 200,000 for unlimited consideration; and Series Two Class I Special Shares to a maximum of 1,000,000 for unlimited consideration.

7. The rights, privileges, restrictions and conditions attaching to the shares, if any
 Droits, privilèges, restrictions et conditions dont les actions sont assorties, s'il y a lieu

As set forth in the attached Schedule B hereto.

8. Restrictions, if any, on share transfers/ Restrictions au transfer des actions, s'il y a lieu

As set forth in the attached Schedule B hereto.

9. Restrictions, if any, on business the corporation may carry on/
 Limites imposées quant à l'entreprise que la corporation peut exercer, s'il y a lieu

The business of the Fund is restricted to (a) the operation of an investment fund that will make investments in qualified Manitoba business entities with a view to earning income and promoting and maintaining (i) capital retention and economic stability in Manitoba, (ii) employee ownership of qualified Manitoba businesses, and (iii) business continuity, job retention and creation, and the ownership of Manitoba businesses by Manitobans; and (b) providing investment capital and other financial assistance and other services to Manitoba businesses to enable them to create, maintain and protect jobs.

10. Other provisions, if any/Autres dispositions, s'il y a lieu

As set forth in the attached Schedule B hereto.

The foregoing restated articles of incorporation correctly set out, without substantive change, the corresponding provisions of the articles of incorporation as amended and supersede the original articles of incorporation.

Les statuts constitutifs mis à jour, dont les dispositions correspondent essentiellement à celles des statuts constitutifs modifiés, remplacent les statuts constitutifs originaux.

Date / Date October 24, 2001	Signature / Signature <i>Ann L. Kuan</i>	Description of Office: / Description du poste President and Chief Executive Officer
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SCHEDULE "A"
TO THE RESTATED ARTICLES OF INCORPORATION
OF CROCUS INVESTMENT FUND

5. Directors

Name in Full	Address in Full
ROBERT HILLIARD	155 Borebank Street Winnipeg, Manitoba R3N 1E1
PETER OLFERT	432 Dunrobin Avenue Winnipeg, Manitoba R3K 0T8
CHARLES E. CURTIS	596 South Drive Winnipeg, Manitoba R3T 0B1
DAVID G. FRIESEN	Highway 30, P.O. Box 720 Altona, Manitoba R0G 0B0
DIANE BERESFORD	565 Whytewold Road Winnipeg, Manitoba R3J 2W8
WALDRON FOX-DECENT	4553 Roblin Boulevard Winnipeg, Manitoba R3R 0G2
LEA BATURIN	26 Bramton Street Winnipeg, Manitoba R2M 4P8
ALBERT R. BEAL	R.R. 2, Box 15 Lorette, Manitoba R0A 0Y0
JOHN CLARKSON	42 Harradence Close Winnipeg, Manitoba R3Y1K5

SCHEDULE "B"
TO THE RESTATED ARTICLES OF INCORPORATION
OF CROCUS INVESTMENT FUND

The Corporation is currently authorized to issue Class A Common Shares, Class G Special Shares, Class L Special Shares and Class I Special Shares (Series One and Series Two), which have attached thereto the following rights, privileges, restrictions and conditions:

1. **Definitions.** Where used herein, the following words and phrases, unless there is something in the context otherwise inconsistent therewith, shall have the following meanings, respectively:

"**Act**" means *The Corporations Act (Manitoba)*, as amended from time to time;

"**Board**" means the board of directors of the Fund;

"**Class G Shares**" means Class G Special Shares in the capital of the Fund;

"**Class I Shares**" means the Class I Special Shares in the capital of the Fund;

"**Class L Shares**" means Class L Special Shares in the capital of the Fund;

"**Common-Law Partner**" has the same meaning as in the *Income Tax Act (Canada)*;

"**Common Shares**" means Class A Common Shares in the capital of the Fund;

"**Fund**" means Crocus Investment Fund, established by Subsection 3(1) of the *Fund Act*;

"**Fund Act**" means *The Crocus Investment Fund Act (Manitoba)*, as amended from time to time;

"Qualifying Trust", in relation to an individual, means a trust governed by a registered retirement savings plan or a registered retirement income fund where the annuitant under the plan or fund is the individual or his or her spouse or Common-Law Partner;

"Valuation Date" means the last business day of each week, or such other date or dates determined by by-law of the Board.

PART I

COMMON SHARES

The Common Shares shall have attached thereto the following rights, privileges, restrictions and conditions:

1. **Limitations on the issue of Common Shares.** A Common Share shall be issued only to an individual or a trust governed by a registered retirement savings plan, as that term is defined in the *Income Tax Act* (Canada).
2. **Dividends.** The holder of a Common Share shall be entitled to receive non-cumulative dividends in an amount determined by and at the discretion of the Board from time to time.
3. **Voting Rights.** The holder of a Common Share shall be entitled to receive notice of and to attend all meetings of the shareholders of the Fund and each such holder shall be entitled to one vote at any meeting of shareholders of the Fund at which holders of Common Shares are entitled to vote, without regard to the number of Common Shares owned by the holder.

4. **Election of Directors.** Holders of Common Shares, as a group, are entitled to elect two persons as directors of the Fund.

5. **Restrictions on Transfer.** A Common Share may not be transferred except as follows:

- (a) by an individual to
 - (i) his or her brother , sister, parent, child, spouse or Common-Law Partner, or former spouse or Common-Law Partner;
 - (ii) the trustee of a Qualifying Trust for the individual;
- (b) by the trustee of a Qualifying Trust for an individual to
 - (i) the individual or his or her brother, sister, parent, child, spouse or Common-Law Partner, or former spouse or Common-Law Partner;
or
 - (ii) the trustee of another Qualifying Trust for the individual;
- (c) as a consequence of the death of an individual, to the individual's estate or to his or her heirs;
- (d) to the Fund on a repurchase of the share;
- (e) when the transfer is necessitated by an involuntary loss or interruption of employment of the holder or of an individual whose Qualifying Trust is the holder of the share, and the loss or interruption of employment is not compensated through employment insurance or workers' compensation benefits; or

- (f) when the transfer is at least
 - (i) seven years after the share's original acquisition date, if that date is before June 1997; or
 - (ii) eight years after the share's original acquisition date, if that date is after May 1997.

6. Retraction.

- (a) Except as otherwise provided in this Section 6, a holder of a Common Share is only entitled to require the Fund to repurchase the share on or after the eighth anniversary of its original acquisition date if that acquisition date is after May 1997, or on or after the seventh anniversary of its original acquisition date if that acquisition date is before June 1997;
- (b) A holder of a Common Share shall be entitled to require the Fund to repurchase the share if the Board is satisfied that:
 - (i) the holder acquired the share as a consequence of the death of the individual to whom or to whose Qualifying Trust the share was issued;
 - (ii) the holder, or an individual from whom the holder acquired the share or whose Qualifying Trust is the holder of the share, has experienced an involuntary loss or interruption of employment that was not compensated through employment insurance benefits or workers compensation benefits; or

- (iii) the holder requested the repurchase within 60 days after the share was issued to the holder;

- (c) Where the holder of a Common Share requests that the Fund repurchase the share pursuant to paragraph 6(b)(iii) of this Part, the holder shall be deemed to have rescinded his/her subscription for the share so repurchased and the share shall be deemed for all purposes never to have been issued;

- (d) Subject to the provisions of the Act where, pursuant to paragraph 6(b)(iii) of this Part, a holder of a Common Share is entitled to require the Fund to repurchase that share and has given to the Fund a request that such share be repurchased, the Fund shall repurchase the holder's Common Share on the Valuation Date on which the request for repurchase is tendered on the Fund where it is received before 3:00 p.m. (Winnipeg time) on such date, or, if such request for repurchase is not received on a Valuation Date or is received after 3:00 p.m. (Winnipeg time) on a Valuation Date, on the next Valuation Date immediately following the date upon which the request for repurchase is tendered on the Fund. If on any Valuation Date the Fund is not able to repurchase all of the shares for which it has received requests for repurchase, then the Fund shall repurchase rateably amongst the requests it has received, as many of the Common Shares as it is lawfully entitled to repurchase, and the balance of shares for which it has received such a request shall be considered to have been tendered for repurchase at the immediately following Valuation Date;

- (e) On any Valuation Date, the repurchase price of a Common Share shall be:

- (i) if the repurchase is pursuant to a request made within sixty (60) days after the date upon a share is issued, the amount of the consideration for which the Common Share was issued; and
- (ii) in any other case, the fair value of a Common Share on the Valuation Date as determined by the Board.
- (f) Where, at any time, the holder of a Common Share gives notice to the Fund requiring the Fund to purchase such share pursuant to paragraph 6(b)(iii) of this Part, paragraph 6(b)(iii) will not apply to permit the holder to require the Fund to repurchase any Common Shares acquired by the holder after the date on which the notice is given.
- (g) The by-laws of the Fund may establish conditions precedent to the right of a holder of Common Shares to redeem a Common Share upon the occurrence of the event described in paragraph 6(b)(ii) of this Part.

7. **Liquidation, Dissolution or Winding-Up.** Subject to the prior rights of the holders of any shares or series of shares ranking senior to the Common Shares with respect to priority in the distribution of property and assets, on the liquidation, dissolution or winding-up of the Fund, the holders of the Common Shares shall be exclusively entitled to receive rateably, share for share, any remaining property or assets of the Fund.

PART II

CLASS G SHARE PROVISIONS

The Class G Shares shall have attached thereto the following rights, privileges, restrictions and conditions:

1. **Definitions.** Where used in this Part the following words and phrases, unless there is something in the context otherwise inconsistent therewith, shall have the following meanings, respectively:

- (a) **"Accumulated Losses"** means, at any particular time, the net loss of the Fund incurred in a month, if any, calculated in accordance with GAAP, subject to the Adjustment, aggregated for all months in which a net loss has occurred ended prior to the particular time;
- (b) **"Adjustment"** means such adjustments in respect of the revenues and expenses of the Fund in a month as may be considered appropriate by management of the Fund in consultation with the auditors of the Fund for the purposes of normalizing revenues and expenses of the Fund over the financial year;
- (c) **"Class G Liquidation Entitlement"** means, in respect of a Class G Share, the sum of \$1.00 per Class G Share multiplied by the number of Class G Shares issued and outstanding, minus the Accumulated Losses, divided by the number of Class G Shares issued and outstanding;
- (d) **"GAAP"** means generally accepted accounting principles applicable to the Fund applied on a consistent basis from year to year.

2. **Limitation on the Issue of Class G Shares.** The Class G Shares shall be issued only to the Minister of Finance in trust for Her Majesty in right of Manitoba.

3. **Dividends.** The holder of Class G Shares shall not be entitled to receive dividends.

4. **Voting Rights.** The holder of Class G Shares shall be entitled to receive notice of and to attend all meetings of the shareholders of the Fund and shall be entitled to one vote at any meeting of shareholders of the Fund at which the holder of Class G Shares is entitled to vote, without regard to the number of shares owned by the holder.
5. **Election of Directors.** The holder of the issued and outstanding Class G Shares of the Fund shall be entitled to elect one person as a director of the Fund.
6. **Restrictions on Transfer.** Class G Shares may not be transferred by the holder thereof without the prior approval of the Lieutenant Governor in Counsel.
7. **Retraction and Conversion.** Class G Shares are not redeemable at the option of either the holder of the Class G Shares or the Fund.
8. **Liquidation, Dissolution or Winding-Up.** Subject to the rights of the holders of the Class I Shares, on the liquidation, dissolution or winding-up of the Fund, the holder of Class G Shares and the holder of Class L Shares shall receive rateably, share for share, without preference or distinction the Class G Liquidation Entitlement and the Class L Liquidation Entitlement (as hereinafter defined), respectively, before any further property or assets of the Fund are distributed.

PART III

CLASS L SHARES

The Class L Shares shall have attached thereto the following rights, privileges, restrictions and conditions:

1. **Limitations on the issue of Class L Shares.** Class L Shares shall be issued only to the Manitoba Federation of Labour.

2. **Dividends.** The holder of Class L Shares shall not be entitled to receive dividends.
3. **Voting Rights.** The holder of Class L Shares shall be entitled to receive notice of and to attend all meetings of the shareholders of the Fund and each such holder shall be entitled to one vote at any meeting of shareholders of the Fund at which holders of Class L Shares are entitled to vote, without regard to the number of Class L Shares owned by the holder.
4. **Election of Directors.** The holder of the issued and outstanding Class L Shares of the Fund is entitled to elect four (4) directors to the Board. The holder of the Class L Shares of the Fund may elect one (1) additional director for each director elected by the holders of the Class I Shares or appointed by the Board, and each such additional director shall hold office until the conclusion of the next meeting at which a director is elected by the holders of the Class I Shares, or appointed by the Board.
5. **Restriction on Transfer.** Class L Shares may not be transferred by the Manitoba Federation of Labour without the prior approval of the Lieutenant Governor in Council.
6. **Retraction.** The Fund shall not purchase, redeem or otherwise acquire any of its issued Class L Shares.
7. **Liquidation, Dissolution or Winding-Up.** Subject to the rights of the holders of the Class I Shares, on the liquidation, dissolution or winding-up of the Fund, the holder of Class G Shares and the holder of Class L Shares shall receive rateably, share for share, without preference or distinction the Class G Liquidation Entitlement and the Class L Liquidation Entitlement, respectively, before any further property or assets of

the Fund are distributed. The "Class L Liquidation Entitlement", in relation to a Class L share, means the amount paid by the holder for the issue of the share.

PART IV

CLASS I SHARES

The Class I Shares and the different series thereof, shall have attached thereto the following rights, privileges, restrictions and conditions:

1. **Definitions.** Where used in this Part (including Part IV(A) and (B)) the following words and phrases, unless there is something in the context otherwise inconsistent therewith, shall have the following meanings, respectively:

"Net Asset Value Per Common Share" means the fair value of each Common Share of the Fund as at each Valuation Date as determined by the Board in accordance with the rules set out in the Fund Act and in the valuation policies of the Fund, all as described in the Prospectus,

"Prospectus" means the Prospectus of the Fund for the continuous offering for sale to the public of Common Shares of the Fund dated January 12, 2001, as amended from time to time and any renewal prospectus;

"Redemption Amount" means, in relation to Series One Shares the price payable by the Fund to a holder of a Series One Share for the redemption of a Series One Share and is an amount equal to the Net Asset Value Per Common Share on the Redemption Date, multiplied by the number of Series One Shares being redeemed and, in relation to Series Two Shares, means the price payable by the Fund to a holder of a Series Two Share for the redemption of a Series Two Share and is an amount equal to the Net Asset Value Per Common Share

on the Redemption Date, multiplied by the number of Series Two Shares being redeemed;

"Redemption Date" the date upon which the Fund shall redeem a Series One Share or a Series Two Share, as the case may be, pursuant to a Redemption Request and shall be the Valuation Date on which the Redemption Request is tendered to the Fund where it is received before 3:00 p.m. (Winnipeg time) on such date, or, if such Redemption Request is not received on a Valuation Date or is received at or after 3:00 p.m. (Winnipeg time) on a Valuation Date, on the next Valuation Date following the date on which the Redemption Request is received by the Fund.

"Redemption Request" means a request in writing given to the Fund by a holder of a Series One Share or Series Two Share specifying such holder's desire for redemption, the number of Series One Shares or Series Two Shares which such holder desires to have redeemed and the Redemption Date;

"Series One Provisions" means, in addition to the rights, privileges, restrictions, conditions and limitations attaching to the Class I Shares as a class, the rights, privileges, restrictions and conditions attaching to the Series One Shares as described herein;

"Series One Shares" means the first series of Class I Shares in the capital stock of the Fund designated by the Board as Series One Class I Special Shares;

"Series Two Provisions" means, in addition to the rights, privileges, restrictions, conditions and limitations attaching to the Class I Shares as a class, the rights, privileges, restrictions and conditions attaching to the Series One Shares as described herein;

"Series Two Shares" means the second series of Class I Shares in the capital stock of the Fund designated by the Board as Series Two Class I Special Shares;

"Valuation Date" means the last business day of each week, or such other date or dates as may be determined by the Fund from time to time.

2. **Rights, Privileges, Restrictions and Conditions attaching to Class I Shares.**

Class I Shares shall be issued only to institutional or corporate investors, the Minister of Finance in trust for Her Majesty in right of Manitoba, or the Minister of Finance (Canada) in trust for Her Majesty in right of Canada. The Class I Shares may at any time and from time to time be issued in one or more series. The Board may fix before issue the number of Class I Shares in each series, the designation, rights, privileges, restrictions and conditions attaching to the Class I Shares of each series, including, without limitation, any voting rights, any right to receive dividends, which may be cumulative or non-cumulative and variable or fixed and may include a provision for the means of determining the amount of such dividends or the dates of payment thereof, any terms and conditions of redemption or purchase, any conversion rights, any rights on the liquidation, dissolution or winding-up of the Fund, any sinking fund provisions, any restrictions on transfer and other provisions not inconsistent with the Fund Act.

3. **Dividends and Distributions.** The Class I Shares of each series may, with respect to the payment of dividends and the distribution of assets in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, have such preferences over the Class I Shares of every other series and be entitled to such preference over the Common Shares, Class G Shares and Class L Shares as the Board may fix before the issue thereof.

4. **Voting.** A holder of a Class I Share of a series shall only be entitled to vote in accordance with the voting rights attached to such series of Class I Shares as

established by the Board at the time of their issue. The voting rights established by the Board in respect of a series of Class I Shares shall provide that a holder is limited, except in respect to election of directors, if any, in which that series is entitled to participate, to one vote at any meeting of shareholders of the Fund at which a holder of Class I Shares series is entitled to vote, without regard to the number of shares owned by the holder.

5. **Restriction on Transfer.** A Class I Share may not be transferred if such transfer is in contravention of the restrictions on transfer, if any, specified by the Board as permitted by Section 2 of this Part.

6. **New Series.** Upon the creation of any Series of Class I Shares, Articles of Amendment setting forth the rights, privileges, restrictions and conditions attaching to the Class I Shares of the Series shall be filed under the Act.

PART IV(A)

SERIES ONE PROVISIONS

The Series One Class I Shares shall have attached thereto, in addition to the rights, privileges, restrictions, conditions and limitations attaching to the Class I Shares as a class, the following rights, privileges, restrictions and conditions:

1. **Dividends.** Subject to the prior rights of any shares or series of shares ranking senior to the Series One Shares with respect to priority in the payment of dividends, the Series One Shares shall participate equally, share for share in any dividend declared by the Board on Common Shares (and with all shares or series of shares ranking equally to the Common Shares with respect to the payment of dividends), and all dividends which the Board may declare and pay in any fiscal year of the Fund on Common Shares shall also be declared and paid in equal amounts per share and at the same time or times on all Series One Shares at the time issued and outstanding, without preference

or distinction.

2. **Voting Rights.** A holder of a Series One Shares shall be entitled to receive notice of and to attend all meetings of the shareholders of the Fund and, except with respect to the election of a director as provided in Section 3 of this Part IV(A), each such holder shall be entitled to one vote at any meeting of shareholders of the Fund at which holders of Series One Shares are entitled to vote, without regard to the number of Series One Shares owned by the holder.
3. **Election of Directors.** Holders of Series One Shares shall not be entitled to elect or to vote in respect of the election of any directors of the Fund
4. **Restriction on Transfer.** A Series One Share shall not be transferred by the holder thereof.
5. **Retraction Rights.** A holder of a Series One Share shall be entitled to require the Fund to redeem at any time or from time to time all or any of the Series One Shares owned by the holder by tendering to the Fund, at its registered office, the certificate or certificates representing the Series One Share(s) which the holder desires to have the Fund redeem, together with a Redemption Request, and unless such redemption is contrary to any applicable law, the Fund shall redeem such Series One Share(s) by paying or causing to be paid to or to the order of the holder the Redemption Amount for the Series One Share(s) to be redeemed, together with an amount equal to all dividends declared thereon and unpaid on the Redemption Date.
6. **Liquidation, Dissolution or Winding-Up.** Subject to the prior rights of the holders of any shares or series of shares ranking senior to the Series One Shares with respect to priority in the distribution of property and assets, the holders of Series One Shares shall be entitled to share equally, share for share, without preference or distinction, with the holders of Common Shares (and with the holders of all shares or

series of shares ranking equally to the Common Shares with respect to the distribution of property and assets) in all remaining property and assets of the Fund in the event of the liquidation, dissolution or winding-up of the Fund, whether voluntary or involuntary, or any other distribution of the assets of the Fund among its shareholders for the purposes of winding up its affairs.

7. **Amendments to Series One Provisions.** The Series One Provisions may be repealed, altered, modified, amended or varied only with the prior approval of the holders of the Series One Shares in addition to any other approval required by the Act or any other statutory provision of like or similar effect applicable to the Fund from time to time in force.

PART IV(B)
SERIES TWO PROVISIONS

The Series Two Class I Shares shall have attached thereto, in addition to the rights, privileges, restrictions, conditions and limitations attaching to the Class I Shares as a class, the following rights privileges, restrictions and conditions

1. **Dividends.** Subject to the prior rights of any shares or series of shares ranking senior to the Series Two Shares with respect to priority in the payment of dividends, the Series Two Shares shall participate equally, share for share in any dividend declared by the Board on Common Shares (and with all shares or series of shares ranking equally to the Common Shares with respect to the payment of dividends), and all dividends which the Board may declare and pay in any fiscal year of the Fund on Common Shares shall also be declared and paid in equal amounts per share and at the same time or times on all Series Two Shares at the time issued and outstanding, without preference or distinction.

2. **Voting Rights.** A holder of a Series Two Share shall be entitled to receive notice of and to attend all meetings of the shareholders of the Fund and each such holder shall be entitled to one vote at any meeting of shareholders of the Fund at which holders of Series Two Shares are entitled to vote, without regard to the number of Series Two Shares owned by the holder

3. **Election of Directors.**

- (a) Holders of Series Two Shares shall not be entitled to elect any directors of the Fund until such time as there are at least 50,000 Series Two Shares issued and outstanding, and for so long as at least 50,000 Series Two Shares are issued and outstanding, holders of Series Two Shares, voting exclusively and separately and as a class, shall be entitled to elect one person as director of the Fund and for this purpose each holder of a Series Two Share is entitled to one vote for each Series Two Share owned by the holder. Nothing herein contained shall be deemed to restrict the right of the Fund from time to time to increase or decrease the number of its directors as permitted by the Fund Act;
- (b) For the purposes of exercising the right to elect a director as provided in this section, a quorum for a separate meeting of the holders of the Series Two Shares shall be holders of Series Two Shares being not less than one in number and holding or representing by proxy not less than 51% of the then issued and outstanding Series Two Shares;
- (c) Any meeting of the holders of the Series Two Shares for the purpose of electing a director may be held upon not less than 21 days' notice to the holders of Series Two Shares. In all other respects the formalities to be observed with respect to giving of notice and the conduct of such meetings shall be those from time to time required by the Act or prescribed in the

by-laws of the Fund with respect to the meetings of shareholders generally;

- (d) Any vacancy occurring in the office of the director elected to represent the holders of Series Two Shares in accordance with the foregoing provisions may be filled by the Board electing a representative of a holder of Series Two Shares to fill the vacancy. Whether or not such vacancy is so filled by the Board, the registered holders of at least 51% of the then issued and outstanding Series Two Shares shall have the right to require the Secretary of the Fund to call a meeting of the holders of the Series Two Shares for the purpose of filling the vacancy or replacing the person filling such vacancy who has been appointed by the Board and the foregoing provisions of this section shall apply in respect of the calling of such meeting.

4. **Restriction on Transfer.** The right to transfer Series Two Shares shall be restricted in that no holder of a Series Two Share shall be entitled to transfer a Series Two Share except to an Institutional Investor.

5. **Retraction Rights.**

- (a) Commencing on the fifth anniversary of the date the holder's Series Two Shares were issued or, if the holder's Series Two Shares were issued pursuant to the exercise of a warrant, on the fifth anniversary of the date such warrant was issued, or, if such warrant was issued pursuant to the exercise of a right to acquire a warrant, on the fifth anniversary of the date such right was issued, a holder of Series Two Shares shall be entitled to require the Fund to redeem all or any portion of the Series Two Shares owned by the holder by tendering to the Fund at its registered office the certificate or certificates representing the Series Two Share(s) which the

holder desires to have the Fund redeem, together with a Redemption Request. On the Redemption Date, unless such redemption will be contrary to any applicable law, the Fund shall redeem such Series Two Share(s) by paying or causing to be paid to or to the order of the holder the Redemption Amount for the Series Two Share(s) to be redeemed, together with an amount equal to all dividends declared thereon and unpaid;

- (b) If on or before the fifth anniversary of the date the holder's Series Two Shares were issued or, if the holder's Series Two Shares were issued pursuant to the exercise of a warrant, on or before the fifth anniversary of the date such warrant was issued, or, if such warrant was issued pursuant to the exercise of a right to acquire a warrant, on the fifth anniversary of the date such right was issued, a holder of Series Two Shares presents to the Fund a sworn declaration of a senior officer of the holder declaring that such holder's reserve fund for expenses which may be incurred by the holder during a strike or strikes by its members has been eliminated as a result of such strike or strikes and that the holder requires all or some of its Series Two Shares to be redeemed by the Fund for the purpose of replenishing such reserve fund or for paying additional expenses relating to such strike or strikes, then such holder shall be entitled at that time to require the Fund to redeem all or part of the Series Two Shares owned by such holder in the manner provided in sub-paragraph (a) hereof.

6. **Liquidation, Dissolution or Winding-Up.** Subject to the prior rights of the holders of any shares or series of shares ranking senior to the Series Two Shares with respect to priority in the distribution of property and assets, the holders of Series Two Shares shall be entitled to share equally, share for share, without preference or distinction, with the holders of Common Shares (and with the holders of all shares or series of shares ranking equally to the Common Shares with respect to the distribution

of property and assets) in all remaining property and assets of the Fund in the event of the liquidation, dissolution or winding-up of the Fund, whether voluntary or involuntary, or any other distribution of the assets of the Fund among its shareholders for the purpose of winding up its affairs

7. **Amendments to Series Two Provisions.** The Series Two Provisions may be repealed, altered, modified, amended or varied only with the prior approval of the holders of the Series Two Shares in addition to any other approval required by the Act or any other statutory provision of like or similar effect applicable to the Fund from time to time in force.

PART V

ADDITIONAL PROVISIONS

1. **Board May Appoint Independent Director.** In addition to the directors elected by the shareholders of the Fund, the Board may appoint as a director one individual who:

- (a) is not an officer or employee of the Fund;
- (b) is not a director, officer or employee of the holder of the Class L Shares or the Government of Manitoba; and
- (c) is not a director, officer, employee, member or shareholder of any firm or corporation that is engaged to provide services to the Fund.

provided always that a majority of the directors on the Board shall be elected by the holder of the Class L Shares.

Tab I

The Corporations Act /
Loi sur les corporations
ARTICLES OF AMENDMENT
CLAUSES MODIFICATRICES

MANITOBA



The Corporations Act /
Loi sur les corporations

Corporation No. 2859018
N° de la corporation

CERTIFICATE / CERTIFICAT
ARTICLES EFFECTIVE /
LES STATUTS PRENNENT EFFET LE
3^e JAN JAN 2003

[Signature]
DIRECTOR, CORPORATIONS BRANCH /
DIRECTEUR, DIRECTION DES CORPORATIONS

1-Name of Corporation / Dénomination sociale CROCUS INVESTMENT FUND	2-Corporation Number / N° de la corporation 2859018
---	--

3- a) The amendment to the articles has been authorized by: / La modification apportée aux statuts a été autorisée par résolution:

- | | | |
|--------------|-------------------------------------|-----------------|
| directors | <input checked="" type="checkbox"/> | administrateurs |
| shareholders | <input type="checkbox"/> | actionnaires |
| members | <input type="checkbox"/> | members |

b) pursuant to Section 167(5) of The Corporations Act (Manitoba)
conformément à l'article

c) and the articles are amended as follows: / et les statuts de la cororation sont modifiés de la façon suivante:

To:

1. Correct certain clerical errors which were contained in the Corporation's Restated Articles of Incorporation dated October 25, 2001, in the manner more particularly set out in Schedule 1 hereto.

Date / Date	Signature /Signature	Description of Office: / Description du poste
December 18 . 2002	<i>[Signature]</i>	President and Chief Executive Officer

Instructions: Specify the relevant subsection pursuant to which the amendment is authorized, and the changes which are being made. Specify whether amendment authorized by directors, shareholders or members. The resolution authorizing the amendment is not required to be attached hereto.

Directives: Énoncer chacune des modifications apportées aux statuts, en mentionnant la disposition de la loi qui l'autorise. Indiquer également s'il s'agit d'une modification adoptée par résolution des administrateurs ou par résolution des actionnaires ou membres. Il n'est pas nécessaire de fournir une copie de cette résolution.

SCHEDULE 1

TO THE ATTACHED ARTICLES OF AMENDMENT

The Restated Articles of Incorporation of Crocus Investment Fund (the "Fund") dated October 25, 2001 (the "Restated Articles"), including the rights; privileges, restrictions and conditions attaching to the shares of the Fund, as set out in Schedule B to the said Restated Articles, be corrected as follows:

1. By deleting the text in section 6 of the Restated Articles and replacing the following therefor:

" The Corporation is authorized to issue four classes of shares and any additional classes of shares from time to time by filing articles of amendment under The Corporations Act. The Corporation is currently authorized to issue Class A Common Shares and Class L Special Shares in unlimited numbers for unlimited consideration; Class G Special Shares in unlimited numbers for maximum consideration of \$2,000,000; Class I Special Shares, issuable in any number of series, in an unlimited number and for unlimited consideration, of which Series One Class I Special Shares are authorized only to a maximum of 200,000 for unlimited consideration and Series Two Class I Special Shares to a maximum of 1,000,000 for unlimited consideration"

2. That the words "pursuant to paragraph 6(b)(iii) of this Part" in the first line of subsection 6(d) of Part I of Schedule B to the Restated Articles be deleted, and the words "pursuant to paragraphs 6(a), 6(b)(i) or 6(b)(ii) of this Part" be replaced therefor.

Tab J

C.C.S.M. c. C308

The Crocus Investment Fund Act

Table of Contents

(Assented to July 26, 1991)

WHEREAS the Government of Manitoba and the Manitoba Federation of Labour recognize the need to support economic development and renewal and consider it to be in the public interest to promote long-term capital formation and a broad understanding of local ownership;

AND WHEREAS it is in the public interest to establish the Crocus Investment Fund ("the Fund") for the purpose of making investments with a view to earning income and promoting and maintaining

(a) capital retention and economic stability in Manitoba,

(b) employee ownership in Manitoba businesses, and

(c) business continuity, job retention and creation and ownership of Manitoba businesses by Manitobans;

AND WHEREAS it is intended that the Fund will, among other things, make investments in Manitoba businesses that operate in accordance with ethical policies with respect to employment practices, workplace safety, environmental suitability and other matters;

AND WHEREAS the Fund is intended to provide investment capital and other financial assistance and other services to Manitoba businesses to enable them to create, maintain and protect jobs;

AND WHEREAS it is intended every Manitoban who is an individual be entitled to invest in the Fund and be eligible for tax credits;

AND WHEREAS it is intended that the Fund will provide an opportunity for long-term investment that can be used to supplement employee savings through conventional retirement plans or pension plans;

AND WHEREAS, through the investment activities of the Fund, investor and employee awareness and knowledge relating to economic and management matters will increase enabling investors and employees to increase their influence on provincial economic development;

NOW THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

PART 1

Definitions

1(1) In this Act,

"Board" means the Board of Directors of the Fund; (« conseil »)

"Class "A" Common Share" means a share of the capital stock of the Fund that is issuable only to an individual (other than a trust) or a trust governed by a registered retirement savings plan, and that entitles the holder

(a) to receive notice of and, subject to *The Corporations Act*, to attend and vote at all meetings of the shareholders of the Fund,

(b) to receive dividends at the discretion of the Board, and

(c) to receive, on the dissolution of the Fund, rateably with all the other holders of Class "A" Common Shares, all the assets of the Fund that remain after payment of all amounts payable to the holders of other classes of shares of the Fund; (« action ordinaire de catégorie « A » »)

"Class "L" Special Share" means a share of the capital stock of the Fund that is issuable only to, and may be held only by, the Manitoba Federation of Labour, and that entitles the holder

(a) to receive notice of and, subject to *The Corporations Act*, to attend and vote at all meetings of the shareholders of the Fund, and

(b) to receive, on the dissolution of the Fund, an amount equal to the amount of the consideration received by the Fund on the issue of the Class "L" Special Shares divided by the number of Class "L" Special Shares issued,

but does not entitle the holder to any dividends; (« action spéciale de catégorie « L » »)

"eligible business entity" and **"eligible investment"** have the same meaning as in *The Labour-Sponsored Venture Capital Corporations Act*; (« entreprise admissible » et « placement admissible »)

"Fund" means the Crocus Investment Fund incorporated by subsection 3(1); (« Fonds »)

"investment assets", when used with respect to the Fund, means all of the assets of the Fund other than operating assets used by it directly in carrying on its business; (« actif de placement »)

"minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act. (« ministre »)

1(2) to (12) Repealed, S.M. 2005, c. 43, s. 3.

S.M. 1997, c. 40, s. 2; S.M. 1998, c. 28, s. 2; S.M. 2001, c. 24, s. 6; S.M. 2005, c. 43, s. 3.

Application of Corporations Act

2(1) Except as provided in this Act, *The Corporations Act* applies to the Fund with such modifications as the circumstances require.

Inapplicable provisions

2(2) Sections 5 to 9, subsections 10(1) to (3) and (6), sections 12 and 13, subsections 27(3), 45(9), 101(1), 126(2) and (3), 167(7) and 182(1), and sections 191 and 194 of *The Corporations Act* do not apply to the Fund.

2(3) Repealed, S.M. 2005, c. 43, s. 4.

S.M. 2005, c. 43, s. 4.

Conflict of Acts

2(4) If this Act conflicts with *The Corporations Act*, this Act prevails.

S.M. 1997, c. 40, s. 3; S.M. 2001, c. 24, s. 7; S.M. 2005, c. 43, s. 4.

PART 2

Establishment

3(1) There is hereby established a corporation, to be known as the Crocus Investment Fund, consisting of the first directors and those persons who, from time to time, are shareholders of the corporation.

Objects of the Fund

3(2) The Fund must carry on all material aspects of its business with a view to earning a return for its shareholders. Its business is restricted to

(a) the operation of an investment fund with a view to promoting and maintaining

(i) capital retention and economic stability in Manitoba,

(ii) employee ownership of Manitoba businesses, and

(iii) business continuity, job retention and creation, and the ownership of Manitoba businesses by Manitobans; and

(b) providing investment capital and other financial assistance and other services to Manitoba businesses to enable them to create, maintain and protect jobs.

3(3) and (4) Repealed, S.M. 2001, c. 24, s. 8.

S.M. 2001, c. 24, s. 8; S.M. 2005, c. 43, s. 5.

Articles of the Fund

4(1) The articles of the Fund that are filed under *The Corporations Act* must

(a) set out the authorized capital of the Fund, which must include Class "A" Common Shares and Class "L" Special Shares the rights, privileges, restrictions and conditions of which satisfy the requirements of *The Labour-Sponsored Venture Capital Corporations Act* for such shares; and

(b) repealed, S.M. 2005, c. 43, s. 6;

(c) provide that 1/2 of the members of the Board are to be appointed by the holder of the Class "L" Special Shares, and at least four members of the Board are to be elected by the holders of the Class "A" Common Shares.

Amendment requires minister's approval

4(1.1) The articles of the Fund shall not be amended without the minister's approval except

(a) to create a new class or classes of shares or to amend the rights, privileges, restrictions or conditions attaching to a class of shares other than the Class "A" Common Shares; or

(b) as required by subsection (1.2).

Transitional — articles to be amended within 60 days

4(1.2) Within 60 days after this subsection comes into force, the Board must cause the articles of the Fund to be amended

(a) to make them consistent with subsection (1); and

(b) to remove any entitlement of the government, as the holder of any shares that, by their terms and conditions, are issuable only to the government, to elect any member of the Board.

Despite *The Corporations Act*, the articles may be amended as required by this subsection by a resolution of the Board and without the approval of the Fund's shareholders. As soon as practicable after the articles are amended, the Fund must take all steps necessary to comply with the amended articles.

4(2) Repealed, S.M. 2001, c. 24, s. 9.

4(3) Repealed, S.M. 2005, c. 43, s. 6.

4(4) Repealed, S.M. 2001, c. 24, s. 9.

4(5) Repealed, S.M. 2005, c. 43, s. 6.

S.M. 1993, c. 13, s. 2; S.M. 1997, c. 40, s. 4; S.M. 2001, c. 24, s. 9; S.M. 2005, c. 43, s. 6.

4.1 and 4.2 Repealed.

S.M. 2001, c. 24, s. 10; S.M. 2005, c. 43, s. 7.

5 to 8 Repealed.

S.M. 1993, c. 13, s. 3; S.M. 1997, c. 40, s. 5 and 6; S.M. 1998, c. 28, s. 3; S.M. 2001, c. 24, s. 11.

Quorum

9 At least one director who is not elected by the holder of Class "L" Special Shares shall be present at any meeting of directors of the Fund.

S.M. 2001, c. 24, s. 12.

9.1 Repealed.

S.M. 1997, c. 40, s. 7; S.M. 2005, c. 43, s. 7.

10 Repealed.

S.M. 2001, c. 24, s. 13.

PART 3

Investment policies and criteria

11(1) Subject to subsection (2), the Fund shall establish from time to time investment policies and criteria with respect to

(a) the promotion of employee ownership and employee participation in corporate governance and management;

(b) the creation, retention or protection of employment in Manitoba;

(c) employment practices, workplace safety, environmental suitability and other matters; and

(d) the composition of the investment portfolio of the Fund in terms of industry sectors, income, growth and risk.

Restrictions

11(2) The Fund shall

(a) repealed, S.M. 2001, c. 24, s. 14;

(b) not acquire an eligible investment that would result in the total cost to the Fund, immediately after the acquisition, of its investments in an eligible business entity and entities affiliated with the entity being more than 10% of the fair market value of the Fund's investment assets;

(c) not prohibit investment in non-unionized or unionized eligible business entities and other businesses;

(d) not be used as an instrument for organizing employees into unions; and

(e) use its best efforts to ensure that a majority of its investment assets directly or indirectly promote employee ownership or employee participation in corporate governance and management.

11(3) Repealed, S.M. 2001, c. 24, s. 14.

S.M. 1992, c. 58, s. 7; S.M. 2001, c. 24, s. 14; S.M. 2005, c. 43, s. 8.

11.1 Repealed.

S.M. 1997, c. 40, s. 8; S.M. 2001, c. 24, s. 15; S.M. 2005, c. 43, s. 9.

12 to 15 Repealed.

S.M. 1994, c. 27, s. 2; S.M. 1997, c. 40, s. 9 and 11; S.M. 1997, c. 40, s. 10; S.M. 2001, c. 24, s. 16 and 18;
S.M. 2001, c. 24, s. 17; S.M. 2005, c. 43, s. 9.

PART 4

15.1 to 15.6 Repealed.

S.M. 2001, c. 24, s. 19; S.M. 2005, c. 43, s. 9.

16 to 22 Repealed.

S.M. 1997, c. 40, s. 12.

PART 5

23 Repealed.

S.M. 1997, c. 40, s. 13; S.M. 2001, c. 24, s. 20; S.M. 2005, c. 43, s. 9.

PART 6

24

NOTE: This section contained consequential amendments to *The Income Tax Act* which are now included in that Act.

C.C.S.M. reference

25 This Act shall no longer be referred to as chapter E95 of the *Continuing Consolidation of the Statutes of Manitoba* but may be referred to as chapter C308 of the *Continuing Consolidation of the Statutes of Manitoba*.

S.M. 2001, c. 24, s. 21.

Coming into force

26 This Act comes into force on a day fixed by proclamation.

NOTE: S.M. 1991-92, c. 48 was proclaimed in force March 21, 1992.

SCHEDULE

Repealed.

S.M. 1993, c. 13, s. 4 and 5; S.M. 1994, c. 27, s. 3 and 4; S.M. 1997, c. 40, s. 14 to 17; S.M. 2000, c. 51, s. 2;
S.M. 2001, c. 24, s. 22.