

# Crocus Investment Fund

September 30, 2009 Quarterly report

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# 1.0 Background

On June 28, 2005, pursuant to an application made by the Manitoba Securities Commission ("MSC") under Section 27 of *The Securities Act*, the Court of Queen's Bench (the "Court") made an Order appointing Deloitte & Touche Inc. ("Deloitte" or the "Receiver") as Receiver and Manager of the Crocus Investment Fund ("Crocus" or the "Fund"). The Receiving Order appointed Deloitte as Receiver over all of Crocus' current and future assets, undertakings and properties and granted the Receiver powers to carry out its duties as outlined in the Order.

The purpose of this Report is to report on the activities of the Receiver as well as to provide an update on the financial position of the Fund. The Report will cover the Receiver's operations and activities since the June 30, 2009 Quarterly Report.

## 2.0 Activities of the Receiver

The following summarizes the major activities of the Receiver since June 30, 2009:

- Preparation of the June 30, 2009 and September 30, 2009 Quarterly Reports.
- Preparation of Receiver's Report No. 11A requesting an order authorizing a claims process.
- Administering the claims process as outlined in the Order of July 22, 2009.
- Preparation of notices and advertisements to shareholders advising of the Receiver's intention to make an application to Court for a rateable distribution to Class A and Class I shareholders.
- Preparation of Receiver's Report No. 12 in support of a motion requesting a rateable distribution.
- Attendance in Court regarding the Receiver's Report No. 11A and No.12 and the related motions.
- Monitoring the status of the action commenced by Bernard W. Bellan under *The Class Proceedings Act* (the "Class Action") as well as the status of the Manitoba Securities Commission ("MSC") hearings brought against the former members of the Board of Directors of Crocus and various other parties.
- Meeting and corresponding with various parties interested in acquiring certain of the investee companies.
- Supervising and directing Crocus staff retained by the Receiver.
- Meeting and corresponding with individual Crocus shareholders.
- Regular monitoring of the investee companies and discussions with various stakeholders of the investees with respect to possible courses of action regarding Crocus' investment in the investees.
- Ongoing discussions and negotiations with certain of the investee companies about possible exit strategies for Crocus.

- Meetings and discussions regarding debt agreements with certain of the investee companies.
- Fulfilling the duties of Crocus as General Partner of the Manitoba Science & Technology Fund (“MS&T”).
- Review of Crocus shareholder records and investigation into tax, technology, banking, trust and legal issues in anticipation of a distribution to shareholders.
- Corresponding with pension authorities and the plan actuary about wind-up of the Crocus pension fund.
- Discussions and correspondence with Crocus’ landlord and sub-tenants regarding ongoing tenancy and sub-tenancy issues.

## 3.0 Operations

The ongoing activities of Crocus consist of investment monitoring, financial reporting, shareholder services and tax reporting. The Receiver presently employs one (1) staff member and has sub-contracted certain information technology and back office services.

The Receiver continues to occupy approximately one half of the 5<sup>th</sup> floor of the Crocus premises at 211 Bannatyne Avenue. The balance of the space which Crocus leased has been sublet.

## 4.0 Financial position

Financial statements for Crocus have been prepared for the fourth fiscal quarter and year ended September 30, 2009 and are attached as Appendix 1. The statements are internal and unaudited and have been prepared in a manner consistent with the financial information that was formerly provided to Crocus shareholders, with the exception that the portfolio valuation is carried at the June 28, 2005 value, unless the investment has been realized upon. The June 28, 2005 value was derived from the external valuations which were completed after Crocus ceased trading in December 2004.

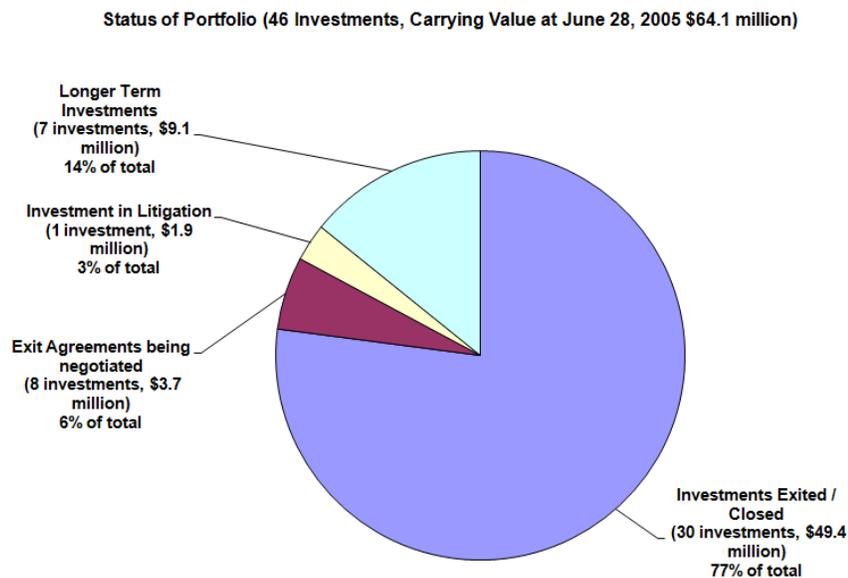
The following are the financial highlights for the fourth quarter and the Fiscal year ended September 30, 2009:

- Net loss for the quarter of approximately \$782,000 and year to date net loss of approximately \$964,000. The quarterly loss is primarily attributable to the write-down of a portfolio investment.
- Investments in cash and equivalents (Government Bonds and Guaranteed Investment Certificates) of approximately \$66.2 million.
- Accounts receivable of approximately \$6.7 million. The majority of the balance consists of accrued interest on marketable securities and portfolio investments. In addition there is a balance due from the sale of one (1) portfolio investment.
- Net carrying value of the remaining Crocus portfolio of investees of approximately \$14.5 million.
- Accounts payable of \$0.3 million.

# 5.0 Portfolio

## 5.1 Status and valuation

As at June 28, 2005 there were 46 individual investee companies in the Crocus portfolio with a gross carrying value of \$64.1 million. The Receiver has categorized the current status of the portfolio as follows:



As noted in previous reports, one of the overriding issues with the Crocus portfolio is that the majority of agreements entered into between Crocus and the investee companies did not provide for any exit mechanism. Accordingly, the Receiver continues to monitor and discuss exit strategies with many of the remaining investees. The position of the majority of the investees is that they prefer to negotiate an arrangement whereby the investee company and/or the existing non-Crocus shareholder(s) of the investee would buy Crocus' interest from the Receiver.

During the quarter the Receiver realized on its interest in Crocus Hockey Holdings Inc. Cumulatively to September 30, 2009, 30 of the 46 investments within the Crocus portfolio have been realized upon or are considered closed. There are 16 investments remaining.

In summary, since its appointment the Receiver has realized proceeds of approximately \$53.9 million for investments with a June 28, 2005 book value of

approximately \$49.6 million representing a recovery of approximately 109%. Crocus' carrying value for these investments when it ceased trading in December 2004 was approximately \$85.0 million, which would represent a recovery of approximately 60%. In addition, since its appointment the Receiver has also eliminated exposure on approximately \$2.3 million in guarantees that had been reserved.

## **5.2 Exit agreements being negotiated**

The Receiver continues discussions with a number of the investee companies regarding the possible exit of Crocus' interest. Currently there are eight (8) investees with a carrying value of approximately \$3.7 million where varying levels of discussions are taking place.

## **5.3 Investment in litigation**

On November 29, 2006, the Receiver issued a statement of claim against the Goldeyes for unpaid interest which at the time totalled approximately \$306,000. A statement of defence was received and was reviewed by the Receiver and counsel. The Receiver filed a motion to have this matter dealt with summarily by the Court. Counsel for the Goldeyes requested an examination of the Receiver on its affidavit and brought a motion seeking an Order to compel the Receiver to produce certain documents. The Receiver produced the documents sought and the Goldeyes' motion was not proceeded with. The parties then engaged in a series of cross-examinations on affidavits. A summary judgment motion was heard on May 14, 2008. On December 24, 2008, the Court issued a judgment dismissing the summary judgment motion. In essence, the Court has concluded that the matter was not clear enough to deal with the matter summarily and that a trial was required.

## **5.4 Longer term investments**

Seven (7) investments with a carrying value of \$9.1 million are currently considered longer term investments. In the case of several of these investments the Receiver has entered into long term agreements for the repayment of amounts advanced by Crocus. For other investments, in the opinion of the Receiver, exit transactions with these investees in the short term are unlikely. The Receiver continues to monitor these investees and, where deemed appropriate, has taken Board positions.

One (1) investee, MS&T, is a limited partnership holding several science and technology investments. Crocus is an investor in the limited partnership and is the sole owner of the General Partner. A number of the investments held by the limited partnership are common to the investments held by Crocus. At a meeting held on February 29, 2008, the limited partners gave the General Partner a mandate to wind down the partnership. The Receiver has proceeded with this mandate and reports to the limited partners on a quarterly basis.

# 6.0 Contingent liabilities

Previous Quarterly Reports outlined a number of contingent liabilities of the Fund. The following is an update on developments regarding known contingent liabilities. The Receiver cannot provide any assurance that all contingent liabilities of the Fund have been identified.

## 6.1 Class Action proceedings and indemnifications

Prior to the appointment of the Receiver there had been an investigation of Crocus by the Office of the Auditor General (“OAG”) as well as an investigation into the conduct of Crocus and its directors and officers by the MSC. In total, 17 former directors and officers were named in the investigations and proceedings. The By-laws of Crocus, as well as certain provisions contained in certain severance agreements, make provision for indemnification of directors and officers. In addition, Crocus had contractually indemnified its former lead brokers, which are also named as defendants in the Class Action.

Subsequent to the appointment of the Receiver, a Class Action suit had been brought by the Crocus shareholders against Crocus, Crocus Capital Inc. and 21 other defendants. The Class Action suit sought \$150 million in damages from the defendants for negligence and oppression as well as punitive and exemplary damages. A second class action was subsequently filed against the Government of Manitoba.

In January 2006, Madam Justice McCawley ordered that Crocus, through the Receiver, was responsible for paying the ongoing legal costs of the various directors and officers named in the Class Action as well as those parties named in the regulatory proceedings brought by the MSC. The decision was upheld by the Court of Appeal.

Earlier Quarterly Reports provided details of the settlements reached amongst the parties in the Class Actions. The June 30, 2008 Quarterly Report indicated that the Class Action had been fully resolved subject to the payment of settlement funds and that the exposure of Crocus to additional indemnity claims from former officers and directors was limited to \$250,000 and to certain other contingent circumstances. Deloitte in its capacity as Class Action Administrator has now received the net settlement proceeds which total approximately \$6.8 million.

## **6.2 Insurer**

Crocus had maintained insurance coverage on behalf of directors and officers (but not on behalf of the lead brokers) to cover claims. The coverage is limited to \$5.0 million with a \$100,000 deductible which has been paid by the Receiver. The insurer denied coverage for those legal costs related to the MSC and OAG investigations. A statement of claim was therefore filed by the Receiver against the insurer asking the Court to declare that the legal costs associated with the MSC and OAG investigations are covered by the policy of insurance.

The Class Action settlement included terms that once settlement monies are paid, the claim against the insurer will be discontinued.

## **6.3 Guarantees/Other**

The Receiver is not aware of any guarantees of indebtedness to lenders of investee companies which remain outstanding.

In addition to the indemnifications outlined in Section 6.1 above, the Receiver is aware of one (1) additional indemnity provided by Crocus relating to an investee company which remains outstanding.

## 7.0 Claims process

The Receiver was of the view that a claims bar process for creditors was also appropriate prior to distribution. On May 2, 2009 the Receiver proposed a claims bar approach to the Court but that approach was declined. Subsequently the Court issued an Order dated July 22, 2009, which authorized the Receiver to advise that any person, not including shareholders of Crocus, with a claim of any kind relating to, or arising from, the operation of Crocus both before and after the appointment of the Receiver must file a Proof of Claim in the prescribed form with the Receiver by no later than August 24, 2009. The Notice as approved by the Court was published in the Winnipeg Free Press on Friday July 24, 2009. In addition, the advertisement was posted on the Receiver's website. No additional claims, other than those already known to the Receiver were identified as a result of the claims process.

## 8.0 Distribution

In December 2005, the Receiver issued Receiver's Report No. 6 which requested that the Court authorize an initial distribution to shareholders as well as additional distributions as cash became available. The Court heard the matter and in April 2006 ruled that the Receiver should not make any distribution of funds until such time as the liabilities for which Crocus may be responsible are better determined. The indemnifications to the directors and officers and underwriters as a result of the Class Action form the vast majority of the Fund's contingent liabilities.

On July 27, 2009 the Receiver notified all Class A shareholders of its intention to make an application to the Court during September 2009 for authority to make an interim distribution to the Class A and Class I shareholders of Crocus. In addition the Receiver published a notice in the Winnipeg Free Press, Brandon Sun and the Globe and Mail on July 28, 2009. The notice and letter advised that the proposed interim distribution would be on a rateable basis to Class A and Class I shareholders as follows:

$$\frac{\text{Total funds approved for interim distribution}}{\text{Total number of Class A and Class I shares}} \times \text{Number of shares held by a shareholder} = \text{Shareholder's portion of interim distribution}$$

In addition the notice and letter notified all Class A shareholders of the Receiver's intention to request that the Court order that the number of shares of each shareholder be reduced proportionately by 63.1% to reflect the interim payment. In this way, the relative holdings of each shareholder in the remaining shares as amongst other shareholders will remain the same so that proportionate entitlements to future distributions will stay the same.

The advertisement and letter requested that if any Class A shareholder was not in agreement with the method of distribution outlined above, that they advise Deloitte in writing outlining the reasons for their disagreement on or before August 27, 2009. The advertisement and letter also advised that "if the Receiver does not receive a written objection by August 27, 2009, it will assume that you are not opposed to the Receiver's recommended interim distribution". The responses received from shareholders were disclosed to the Court in a supplementary report.

The Receiver subsequently filed Receiver's Report 12 in support of a motion recommending a rateable distribution to Class A and Class I shareholders as outlined above, as well as a refund of capital to the Class L shareholder. On

September 4, 2009 the Court issued an Order authorizing a rateable distribution of \$54,727,591 to the Class A and Class I shareholders. In addition the Court ordered a refund of \$200 to the Class L shareholder. The Court declined the Receiver's request for a proportionate reduction in the number of shares to reflect the interim payment.

The distribution to shareholders will not begin until the appeal periods have expired. If there are no appeals filed, Deloitte will begin the distribution on October 15, 2009. Depending on the type of account an individual shareholder has, it may be necessary for the shareholder to complete applicable transfer or deregistration forms prior to receiving their distribution. Concurrent with the distribution Deloitte will also be distributing the net proceeds of the Class Action settlements. The average Class A shareholder will receive \$3.83 per share from the approved distribution plus their portion of the Class Action settlement.

## 9.0 Share value

The net asset value per Class A and Class I share ("share value") as at September 30, 2009 was \$6.13. As noted in previous Reports, the Receiver emphasizes that the share value is an accounting book value partially based on the June 28, 2005 carrying value of the investment portfolio.

Future events will determine the ultimate realizable value of the portfolio. Such matters may have a material effect on the share value which is ultimately available for distribution to Crocus shareholders. The future events identified to date include:

- Possible further increases/reductions in the value of the portfolio as a result of ongoing investee performance.
- The length of time taken to realize on the portfolio.
- Professional costs incurred by the Receiver and its counsel as a result of current and future litigation.
- Any provision for the costs of the difference between the head lease and subleases for the premises maintained by Crocus.
- Any additional guarantees or indemnities granted by Crocus which have not yet been identified.
- All other costs of monitoring the portfolio and realizing on the assets.

The Receiver will continue to provide updates on the share value in future Quarterly Reports.

# 10.0 Shareholder communication

The Receiver has continued to post Court Orders, Receiver's Reports, Quarterly Reports, Media Statements and shareholder letters as well as information related to the Class Action settlements on its website at [www.deloitte.com/ca/crocusfund](http://www.deloitte.com/ca/crocusfund).

# 11.0 General

A Statement of Receipts and Disbursements from June 28, 2005 to September 30, 2009 is attached as Appendix 2.

The Receiver will continue to keep the Court apprised of ongoing developments with the next Quarterly Report to be filed in mid-January 2010.

Respectfully submitted this 15th day of October, 2009.

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

A handwritten signature in black ink, appearing to read "Steven Peleck". The signature is written in a cursive style with a prominent horizontal stroke at the beginning.

Per: S. P. Peleck  
Senior Vice-President

# Appendix 1 – Crocus financial statements as at September 30, 2009

**Crocus Investment Fund**

**Consolidated Statement of Net Assets**

**As at September 30, 2009 (unaudited)**

**ASSETS**

Cash and equivalents	66,176,499
Investments in Manitoba businesses	<u>\$ 14,525,147</u>
	80,701,646
Accounts receivable	6,742,402
Capital assets	<u>379,100</u>
	87,823,148

**September 30, 2009**

**LIABILITIES**

Accounts payable and accrued liabilities	<u>289,419</u>
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**NET ASSETS**

\$ 87,533,729

**SHAREHOLDERS' EQUITY**

Share capital	\$ 188,014,668
Deferred selling costs adjustment	(9,134,637)
Deficit	<u>(91,346,302)</u>
	<u><u>\$ 87,533,729</u></u>

**NET ASSET VALUE PER CLASS "A" COMMON SHARE and  
SERIES TWO CLASS "I" SPECIAL SHARE**

\$ 6.13

**Crocus Investment Fund****Consolidated Statement of Operations**

For the period ended September 30, 2009 (unaudited)

**REVENUE**Interest and Dividend Revenue  
Management Fees & Other Recoveries**EXPENSES**Amortization of Capital Assets  
Occupancy  
Administrative, Office and Investment  
Legal  
Receiver and Manager  
Salaries and Benefits**OPERATING INCOME BEFORE NON-RECURRING ITEMS**

Amount realized in excess of June 28, 2005 carrying value

**LOSS FOR THE PERIOD**

	<b>Quarter Ended</b>		<b>Year to Date</b>
	<b>September 30, 2009</b>	<b>September 30, 2009</b>	<b>September 30, 2009</b>
	\$ 155,285	\$	1,059,686
	<u>89,840</u>		<u>500,223</u>
	<u>245,125</u>		<u>1,559,909</u>
	26,499		105,994
	92,113		368,453
	159,869		325,511
	89,723		258,590
	336,156		1,118,357
	<u>36,122</u>		<u>149,573</u>
	<u>740,482</u>		<u>2,326,478</u>
	<u>(495,357)</u>		<u>(766,569)</u>
	<u>(286,313)</u>		<u>(197,713)</u>
	<u>\$ (781,670)</u>	\$	<u>(964,282)</u>

**Crocus Investment Fund**

**Consolidated Statement of Deficit**

**For the period ended September 30, 2009 (unaudited)**

**DEFICIT-Beginning of period, September 30, 2008**

Loss for the period

**DEFICIT-END OF PERIOD**

**September 30, 2009**

\$ (90,382,020)

(964,282)

\$ (91,346,302)

**Consolidated Statement of Changes in Net Assets**

**For the period ended September 30, 2009 (unaudited)**

**NET ASSETS - September 30, 2008**

Loss for the period

**NET ASSETS - END OF PERIOD**

**September 30, 2009**

\$ 88,498,011

(964,282)

\$ 87,533,729

**Crocus Investment Fund**

**Consolidated Statement of Investment Portfolio**

**As at September 30, 2009 (unaudited)**

**NET INVESTMENTS IN MANITOBA BUSINESSES**

Biovar Life Support Inc.

Canad Corporation of Canada Inc.

Cando Contracting Ltd.

Diamedica Inc.

D.L.J.S. Enterprise Ltd.

Enterprise Swine Ltd.

Enterprise Swine II Ltd.

ESS Holding Company

Genesys Venture Inc.

Manitoba Science & Technology Fund

Muddy Waters Smokehouse

Novra Technologies Inc.

Online Enterprise Inc.

ST Partnership

Winnipeg Goldeyes Baseball Club Inc.

W.O.W. Hospitality Concepts Inc.

**NET INVESTMENTS IN MANITOBA BUSINESSES**

\$ 14,525,147

**Crocus Investment Fund**

**Consolidated Statement of Investment Portfolio**

**As at September 30, 2009 (unaudited)**

**BONDS AND DEBENTURES**

Province of Manitoba

City of Winnipeg

	<b>Par Value</b>	<b>Amortized Cost</b>
\$	-	\$ -
	300,000	299,663
	<u>300,000</u>	<u>299,663</u>

**SHORT TERM INVESTMENTS**

Assiniboine Credit Union

HSBC

Scotia Bank

	50,000	50,000
	3,320,987	3,320,987
	<u>62,377,494</u>	<u>62,377,494</u>
	<u>65,748,481</u>	<u>65,748,481</u>
	<u>66,048,481</u>	<u>66,048,143</u>

**NET UNREALIZED APPRECIATION OF INVESTMENTS**

128,357

**CASH & EQUIVALENTS**

\$ 66,176,499

**Crocus Investment Fund**

**Notes to the Consolidated Financial Statements**

**For the period ended September 30, 2009 (unaudited)**

**Net Asset Value of Class "A" Common Shares and Series Two Class "I" Special Shares**

The net asset value of the Fund's issued Class "A" Common Shares and Series Two Class "I" Special Shares is calculated as follows:

	<b>September 30, 2009</b>
Net assets - end of year	\$ 87,533,729
Less: Attributed to Class "L" Special Shares	<u>(200)</u>
Balance attributed to the Class "A" Common and Series Two Class "I" Special Shares	<u>\$ 87,533,529</u>
Number of issued Class "A" Common Shares	14,220,000
Number of issued Series Two Class "I" Special Shares	<u>69,126</u>
	14,289,126
<b>NET ASSET VALUE PER CLASS "A" COMMON SHARE and SERIES TWO CLASS "I" SPECIAL SHARE</b>	<u>\$ 6.13</u>

Appendix 2 –  
Statement of receipts and disbursements  
to September 30, 2009

**Deloitte & Touche Inc., Receiver and Manager of  
CROCUS INVESTMENT FUND  
Statement of Receipts and Disbursements  
For the Period June 28, 2005 to September 30, 2009**

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**Receipts**

Cash and Short Term Investments on Hand	\$ 23,363,012
Contract Back Office Services	518,463
Dividends-Portfolio	657,483
Income Tax Refund	131,991
Insurance Claim and Premium Refund	20,662
Interest-Portfolio	1,593,532
Interest-Short Term Investments	6,681,982
Investment Principal Repayments	1,124,848
Management Fees	930,613
Proceeds on Disposal of Investments	46,620,706
Rent/Sub-Lease	1,111,897
Sundry	246,615
Pre-Receivership Accounts Receivable	566,705

**Total Receipts**

83,568,509

**Disbursements**

Advances to Investees	\$ 265,132
Capital Tax	200,257
Computer, Telephone and Office Expense	588,773
Consulting Fees	418,120
Insurance - Indemnification	122,078
Investee Guarantee and Indemnification	1,344,677
Investment Expenses	194,625
Legal Fees	1,804,778
Legal Fees - Indemnification	788,834
Payroll & Benefits	1,710,641
Receiver and Manager Fees	4,707,419
Records Review	1,288,814
Rent	1,746,452
Settlements	620,000
Shareholder Services	677,025
Pre-Receivership Payables and Accruals	914,385

**Total Disbursements**

17,392,010

**Excess of Receipts over Disbursements**

\$ 66,176,499

Represented by:

Short Term Investments and Bonds	<u>\$ 66,176,499</u>
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