

Crocus Investment Fund

September 30, 2012 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, 2012 Quarterly Report.

2.0 Activities of the Receiver

The following summarizes the major activities of the Receiver since June 30, 2012:

- Preparation of the June 30, 2012 and September 30, 2012 Quarterly Reports.
- Preparation and attendance in Court for an interim passing of accounts.
- Attendance in Court regarding a motion by former directors regarding their costs for attending the Receiver's motion for a second distribution.
- Administering the interim distribution of funds as outlined in the Court Orders of September 4, 2009 and December 12, 2011.
- Corresponding with numerous shareholders, brokers, dealers and intermediaries regarding the distribution.
- Monitoring the status of the MSC hearings brought against the former members of the Board of Directors of Crocus and various other parties.
- Supervising and directing agents retained by the Receiver.
- Meeting and corresponding with individual Crocus shareholders.
- Regular monitoring of the remaining 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.
- Fulfilling the duties of Crocus as General Partner of the Manitoba Science & Technology Fund ("MS&T").
- Discussions and correspondence with Crocus' landlord and sub-tenants regarding ongoing tenancy and sub-tenancy issues including issues matters related to building operating costs.
- Preparation of various tax returns.

3.0 Operations

The ongoing activities related to Crocus consist of investment monitoring, financial reporting, shareholder services and tax reporting. The Receiver no longer employs any former Crocus employees but has sub-contracted certain information technology and back office services.

The Receiver continues to occupy a portion of the Crocus premises at 211 Bannatyne Avenue. The balance of the space which Crocus leased has been sublet.

4.0 Financial position

Financial information for Crocus has been prepared by the Receiver for the second fiscal quarter ended September 30, 2012 and is attached as Appendix 1.

The following summarizes the financial position of the Fund:

- Investments in cash and cash equivalents (Guaranteed Investment Certificates and Government Bonds) of approximately \$8.4 million. This excludes funds held in trust for shareholders relating to prior distributions', Court ordered holdbacks or other settlements.
- Accounts receivable of approximately \$2.4 million. The majority of the balance consists of the balance due from the sale of two (2) portfolio investments. In addition, the balance includes accrued interest on marketable securities and portfolio investments.
- Net carrying value of the remaining Crocus portfolio of investees of approximately \$8.3 million. The portfolio valuation is primarily carried at the June 28, 2005 value which was derived from the external valuations completed after Crocus ceased trading in December 2004.

5.0 Portfolio

5.1 Background

As at June 28, 2005 there were 46 individual investee companies in the Crocus portfolio with a gross carrying value of \$64.1 million.

Cumulatively to September 30, 2012, 39 of the 46 investments within the Crocus portfolio have been realized upon or are considered closed. There are 7 investments remaining. During the quarter, the Receiver realized on a portion of one investment.

In summary, since its appointment the Receiver has realized proceeds of approximately \$59.4 million for investments with a June 28, 2005 book value of approximately \$56.0 million representing a recovery of approximately 106%. Crocus' carrying value for these investments when it ceased trading in December 2004 was approximately \$91.6 million, which would represent a recovery of approximately 65%. In addition, since its appointment the Receiver has also eliminated exposure on approximately \$2.3 million in guarantees that had been reserved.

5.2 Status

The status of the remaining investments is as follows:

- Novra Technologies Inc. ("Novra") is an investment held by the Fund representing both equity and debt obligations due to Crocus. The Receiver and the investee have entered into a long term agreement for the repayment of the indebtedness.
- On November 29, 2006, the Receiver issued a statement of claim against the Winnipeg Goldeyes Baseball Club Inc. ("Goldeyes") for unpaid interest which at the time totalled approximately \$306,000. A summary judgment motion was heard on May 14, 2008 and on December 24, 2008 the Court issued a judgment dismissing the summary judgment motion. In essence, the Court concluded that the matter was not clear enough to deal with the matter summarily and that a trial was required. The Receiver subsequently had numerous discussions around settlement of the outstanding interest, as well as the principal debt and shares owned by Crocus, but no agreement was

reached. On September 16, 2011, the Receiver issued a demand for the repayment of principal owed by the Goldeyes pursuant to two (2) debentures in the amounts of \$375,000 and \$59,149. No repayment or response was received from the Goldeyes. Subsequently, the Receiver filed an amended statement of claim in Court seeking to add the outstanding principal of \$434,149 to its claim as well as increase the claim for outstanding interest which currently totalled approximately \$683,000 at December 31, 2011. Counsel for the Goldeyes contested the manner and use of the Court of Queen's Bench rule under which the claim was amended. Counsel for the Receiver filed a motion in Court to determine the issue but subsequently agreed with Goldeyes' counsel to amend both the statement of claim and the statement of defence. Both the statement of claim and statement of defence have been amended and filed.

- Crocus is an investor in MS&T which is a limited partnership holding several science and technology investments. Crocus is the sole owner of the General Partner and the limited partners gave the General Partner a mandate to wind down the partnership. Crocus and MS&T's holdings include Diamedica Inc., Genesys Ventures Inc. and ST Partnership. There are numerous interrelationships amongst these entities. In some cases, the ability to negotiate exits any divestitures of MS&T's science and technology investments is limited given that certain of the companies are publicly traded with limited market liquidity. As a result, the timing of a complete disposition is unknown.
- No exit agreement has been agreed upon with Canad Corporation Ltd.

6.0 Commitments and contingencies

The primary remaining obligation is for the lease of real property at 211 Bannatyne which terminates on September 30, 2016.

There remains one known contingency for an indemnity provided by Crocus to an investee company.

7.0 Share value

The net asset value per Class A and Class I shares (“Share Value”) as at September 30, 2012 was \$1.42 as detailed in Appendix 1. 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 negotiations and 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.

8.0 Class Action

Approximately two weeks following the appointment of the Receiver, a Class Action statement of claim (the “Class Action”) was issued against Crocus, Crocus Capital Inc. and 21 other defendants. The claim 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 (collectively referred to as the “Class Actions”). Certain of the defendants, namely certain former directors and officers of Crocus, Wellington West Inc., and BMO Nesbitt Burns Inc., claimed written or statutory indemnities from Crocus for any amounts which they might have been obliged to pay to the class action plaintiffs.

The parties in the Class Actions subsequently entered into various settlement agreements, the last of which was approved by Mr. Justice K. Hanssen on April 22, 2009.

As part of the settlements, the directors and officers assigned any claim for contribution and indemnity that they may have to the Class Action plaintiff. Pursuant to this assignment, on June 25, 2010, the Class Action plaintiff filed a statement of claim against Fillmore Riley LLP (“Fillmore”) and Stafford F. Swain & Associates (“Stafford”). Fillmore had acted as counsel to the Fund and Stafford had provided valuation services. The claim was a representative action on behalf of the shareholder class and claimed damages of up to \$5.0 million plus interest.

A settlement was reached and approved between the Class Action plaintiff and Stafford F. Swain & Associates on November 15, 2011. Fillmore & Riley LLP opposed and sought to have the claim against them struck. Fillmore & Riley LLP’s motion was heard by the Court of Appeal but the claim by the Class Action Plaintiff was upheld.

9.0 Interim distributions

9.1 First interim distribution

On September 4, 2009 the Court issued an Order authorizing a rateable interim distribution of approximately \$54.7 million to the Class A and Class I shareholders.

The Receiver began the distribution in October 2009. Concurrent with the distribution the Receiver also began distributing the net proceeds of the Class Action settlements. Class A and Class I shareholders received \$3.83 per share from the approved distribution plus their portion of the Class Action settlement. Depending on the type of account held, it may be necessary for the shareholder to complete applicable transfer or deregistration forms prior to receiving their distribution.

As at June 30, 2012 the Receiver had paid out approximately \$52.8 million or 97% of the first interim distribution, however there remains approximately \$2.1 million in unclaimed distributions which includes approximately \$0.2 million in unclaimed Class Action settlements.

9.2 Second interim distribution

In June 2011 the Receiver filed Receiver's Report No. 13 with the Court recommending a second interim distribution to Class A and Class I shareholders of approximately \$7.9 million. A hearing date was set for June 30, 2011 but the motion was contested by the following former directors of the Fund:

1. Peter Olfert, Lea Baturin, Sylvia Farley, Waldron Fox-Decent, Albert Beal, Charles Curtis, Diane Beresford and Robert Hilliard represented by D'arcy Deacon LLP.
2. Ron Waugh represented by Pitblado LLP.
3. Robert Ziegler represented by Aikins MacAulay & Thorvaldson LLP.

Collectively the former directors did not oppose a second distribution to shareholders but requested that funds continue to be held back for the benefit of the directors. The holdback at issue related to a release and undertaking signed in April 2008 between

the Receiver and the officers and directors as a result of the Class Action settlements. The holdback totalled \$3.0 million and was available for claim by the officers and directors in the Class Action, however the Receiver maintained the right to contest any claim advanced. Given the directors' opposition, the Court ordered that a contested hearing was required and set a hearing date for July 7, 2011.

At the July 7, 2011 hearing, the Receiver's position was, inter alia, that the April 2008 agreement specified that the \$3.0 million holdback was available after December 31, 2010 unless counsel for the former directors had notified the Receiver of any claims for indemnity. Counsel for the Receiver noted that no indemnity claims were received by December 31, 2010 or subsequently. Furthermore, it was noted that all the parties at the time of execution of the release and undertaking had understood that the December 31, 2010 date was intentionally greater than the six (6) year period which would have elapsed since December 10, 2004, the date when Crocus shares had ceased to trade. The significance of the six (6) year period is that it would generally eliminate the ability of any party to commence a new action against Crocus or the former directors pursuant to the provisions of *The Limitations of Actions Act*. Counsel for the Receiver indicated that because no new claims for indemnity had been advanced by the former directors prior to December 31, 2010 or to date, the \$3.0 million should be available for distribution.

Opposing counsel interpreted other provisions of the agreement and submitted that the \$3.0 million was still required to be held back. Other comments from opposing counsel included:

1. Counsel for certain of the former directors advised, inter alia, that the MSC proceedings had been protracted. They indicated that no new claims against the directors had arisen and that in their view a \$1.0 million holdback in favour of the directors would be sufficient.
2. Other counsel indicated, inter alia, that there cannot necessarily be certainty that there are no further claims and that there are situations where the six (6) year limitation may not apply. In addition they argued in favour of a \$3.0 million holdback.

Madam Justice McCawley adjourned the matter sine die and directed all parties to enter into discussions with a view to making a risk assessment regarding the necessity and quantum of holdbacks. No agreement was reached and a hearing was scheduled for October 17, 2011.

Prior to the hearing on October 17, 2011, the Receiver filed Receiver's Report No. 13 increasing the amount of the recommended distribution to \$9.0 million. At the October 17, 2011 hearing further submissions were heard. The Court was also advised that a settlement had been put forward for approval by the MSC as between the MSC and the eight (8) former directors represented by D'arcy Deacon LLP. The hearing was adjourned sine die as it was anticipated that a decision would be received within two (2) weeks. The MSC subsequently advised that the settlement put forward had been approved and it did not contain any assessments of costs, administrative penalties or orders of compensation for financial loss against any of the settling directors. Given this information, the Court wrote all parties to clarify their position in light of the settlement. The Receiver maintained its position that the former directors were no longer entitled to a \$3.0 million holdback, but if the Court decided otherwise then amount should be significantly reduced.

In a judgment issued on December 12, 2011, the Court approved a second interim distribution of \$9.0 million and also ordered the Receiver to set aside \$1.0 million as a holdback for the potential indemnification claims of Mr. Waugh and Mr. Ziegler. The Receiver has been advised that Mr. Waugh has subsequently settled with the MSC.

Mailings for the distribution took place in January 2012. As at September 30, 2012 the Receiver had paid out approximately \$8.0 million or 88% of the second interim distribution, however there remains approximately \$1.0 million in unclaimed distributions.

Counsel for the former directors subsequently brought motions for indemnification and/or reimbursement of their legal expenses incurred in relation to the motion brought by the Receiver for Court approval for a second interim distribution. The Receiver opposed the position of the former directors. A Court hearing was heard on October 9, 2012. In a judgement delivered on October 19, 2012 Madam Justice McCawley found that the former Directors were entitled to an order of indemnification for legal expenses and costs incurred by them in responding to the Receiver's motion for a second distribution as well as their costs for advancing the motion.

10.0 Shareholder communication

The Receiver has continued to post Court Orders, Receiver's Reports, Quarterly Reports, Media Statements and shareholder letters on its website at www.deloitte.com/ca/crocusfund.

11.0 General

A Statement of Receipts and Disbursements from June 28, 2005 to September 30, 2012 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 2013.

Respectfully submitted this 23rd day of October, 2012.

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 fluid and cursive, with a prominent initial "S" and a long, sweeping underline.

Per: S. P. Peleck
Senior Vice-President

Appendix 1 – Crocus financial information as at September 30, 2012

Crocus Investment Fund
Consolidated Statement of Net Assets
As at September 30, 2012 (unaudited)

	September 30, 2012
ASSETS	
Cash and cash equivalents	\$ 8,357,881
Cash in Trust - Holdback	1,000,000
Cash in Trust - 1st Interim Distribution	1,899,541
Cash in Trust - Class Action Settlements	243,465
Cash in Trust - 2nd Interim Distribution	1,046,552
Cash in Trust - Class Action Settlements	147,890
Investments in Manitoba businesses	8,327,040
	<u>21,022,369</u>
Accounts receivable	2,388,839
Capital assets	210,433
	<u>23,621,641</u>
LIABILITIES	
Accounts payable and accrued liabilities	13,465
Due to Crocus Investment Fund	-
Due to Shareholders - 1st Interim Distribution	1,899,541
Due to Shareholders - Class Action Settlements	243,465
Due to Shareholders - 2nd Interim Distribution	1,046,552
Due to Shareholders - Class Action Settlements	147,890
NET ASSETS	<u><u>\$ 20,270,728</u></u>
SHAREHOLDERS' EQUITY	
Share capital	\$ 188,014,669
Deferred selling costs adjustment	(9,134,637)
1st Interim Distribution - Class "A" shares	(54,462,836)
2nd Interim Distribution - Class "A" shares	(8,956,466)
1st Interim Distribution - Class "I" & "L" shares	(264,956)
2nd Interim Distribution - Class "I" shares	(43,539)
Deficit	(94,881,507)
	<u><u>\$ 20,270,728</u></u>
NET ASSET VALUE PER SHARE	
Net assets	\$ 20,270,728
Balance attributed to the Class "A" Common and Series Two Class "I" Special Shares	<u>\$ 20,270,728</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
NET ASSET VALUE PER CLASS "A" COMMON SHARE and SERIES TWO CLASS "I" SPECIAL SHARE	<u><u>\$ 1.42</u></u>

Crocus Investment Fund
Consolidated Statement of Investment Portfolio
As at September 30, 2012 (unaudited)

INVESTMENTS IN MANITOBA BUSINESSES

Canad Corporation of Canada Inc.
Diamedica Inc.
Genesys Venture Inc.
Manitoba Science & Technology Fund
Novra Technologies Inc.
ST Partnership
Winnipeg Goldeyes Baseball Club Inc.

INVESTMENTS IN MANITOBA BUSINESSES

\$ 8,327,040

Appendix 2 – Statement of receipts and disbursements to September 30, 2012

**Deloitte & Touche Inc., Receiver and Manager of
CROCUS INVESTMENT FUND
Statement of Receipts and Disbursements
For the Period June 28, 2005 to September 30, 2012**

	June 28, 2005 to March 31, 2012	April 1, 2012 to September 30, 2012	Total
Receipts			
Cash and Short Term Investments on Hand	\$ 23,363,012	\$ -	\$ 23,363,012
Contract Back Office Services	518,463	-	518,463
Dividends-Portfolio	657,483	-	657,483
Income Tax Refund	283,503	14,852	298,355
Insurance Claim and Premium Refund	20,662	-	20,662
Interest-Portfolio	1,640,835	99,134	1,739,969
Interest-Short Term Investments	7,376,492	49,854	7,426,346
Investment Principal Repayments	2,890,163	65,250	2,955,413
Management Fees	1,118,517	-	1,118,517
Proceeds on Disposal of Investments	52,442,430	1,572,385	54,014,815
Rent/Sub-Lease	1,804,884	158,691	1,963,575
Sundry	297,476	13,515	310,991
Pre-Receivership Accounts Receivable	1,247,463	-	1,247,463
Class Action Settlements	6,812,978	147,890	6,960,868
Total Receipts	\$ 100,474,361	\$ 2,121,571	\$ 102,595,932
Disbursements			
Advances to Investees	\$ 265,132	\$ -	\$ 265,132
Capital Tax	200,257	-	200,257
Computer, Telephone and Office Expense	719,488	12,443	731,931
Consulting Fees	359,150	-	359,150
Employee Pension	442,922	-	442,922
Insurance - Indemnification	141,608	7,879	149,487
Investee Guarantee and Indemnification	1,344,677	-	1,344,677
Investment Expenses	218,497	-	218,497
Legal Fees	2,038,338	59,589	2,097,927
Disbursements	55,735	1,149	56,884
Taxes	261,922	6,353	268,275
Legal Fees - Indemnification	651,982	-	651,982
Disbursements	11,216	-	11,216
Taxes	50,057	-	50,057
Payroll & Benefits	1,735,550	-	1,735,550
Receiver and Manager Fees	7,130,967	350,620	7,481,587
Taxes	407,821	17,531	425,352
Rent	2,899,455	253,292	3,152,747
Settlements	579,116	-	579,116
Shareholder Services	1,317,222	96,107	1,413,329
Pre-Receivership Payables and Accruals	914,385	-	914,385
Total Disbursements	21,745,497	804,963	22,550,460
Excess of Receipts over Disbursements prior to:	78,728,864	1,316,608	80,045,472
1st Interim Distribution - Class "A" Shares	52,305,250	257,283	52,562,533
1st Interim Distribution - Class "I" & "L" Shares	264,955	-	264,955
Class Action Settlements	6,537,507	32,006	6,569,513
2nd Interim Distribution - Class "A" Shares	7,545,272	364,331	7,909,603
2nd Interim Distribution - Class "I" Shares	43,539	-	43,539
Excess of Receipts over Disbursements	\$ 12,032,341	\$ 662,988	\$ 12,695,329
Represented by:			
Short Term Investments and Bonds			\$ 8,357,881
Cash in Trust - Holdback			1,000,000
Cash in Trust - 1st Interim Distribution			1,899,541
Cash in Trust - 2nd Interim Distribution			1,046,552
Cash in Trust - Class Action Settlements			243,465
Cash in Trust - Class Action Settlements			147,890
			\$ 12,695,329

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