

Crocus Investment Fund

September 30, 2011 Quarterly report

Table of contents

1.0	Background	1
2.0	Activities of the Receiver	2
3.0	Operations	3
4.0	Financial position	4
5.0	Portfolio	5
5.1	Background	5
5.2	Status	5
6.0	Commitments and contingencies	7
7.0	Share value	8
8.0	Class Action	9
9.0	Interim distribution	10
9.1	First interim distribution	10
9.2	Proposed second interim distribution	10
10.0	Shareholder communication	12
11.0	General	13
	Appendix 1 – Crocus financial information as at September 30, 2011	
	Appendix 2 – Statement of receipts and disbursements to September 30, 2011	

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, 2011 Quarterly Report.

2.0 Activities of the Receiver

The following summarizes the major activities of the Receiver since June 30, 2011:

- Preparation of the June 30, 2011 and September 30, 2011 Quarterly Reports.
- Administering the interim distribution of funds as outlined in the Court Order of September 4, 2009.
- Corresponding with numerous shareholders, brokers, dealers and intermediaries regarding the distribution.
- Monitoring 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 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.
- 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”).
- Discussions and correspondence with Crocus’ landlord and sub-tenants regarding ongoing tenancy and sub-tenancy issues.
- Preparation of various tax returns.
- Preparation and attendance in Court regarding the proposed second interim distribution.
- Planning and system testing in anticipation of a second interim distribution.

3.0 Operations

The ongoing activities of 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 for the third fiscal quarter ended September 30, 2011 and is attached as Appendix 1.

The following summarizes the financial position of the Fund:

- Investments in cash and equivalents (Guaranteed Investment Certificates and Government Bonds) of approximately \$16.3 million.
- Accounts receivable of approximately \$3.8 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 \$9.8 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.

During the quarter the Receiver completed an exit with Online Enterprises Inc. Cumulatively to September 30, 2011, 36 of the 46 investments within the Crocus portfolio have been realized upon or are considered closed. There are 10 investments remaining.

In summary, since its appointment the Receiver has realized proceeds of approximately \$57.7 million for investments with a June 28, 2005 book value of approximately \$54.5 million representing a recovery of approximately 106%. Crocus' carrying value for these investments when it ceased trading in December 2004 was approximately \$90.0 million, which would represent a recovery of approximately 64%. 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:

1. Four (4) investments (D.L.J.S. Enterprises Ltd, Muddy Waters Smokehouse, W.O.W. Hospitality Concepts Inc., Novra Technologies Inc.) held by the Fund represent primarily debt obligations due to Crocus. The Receiver and the investee(s) have entered into long term agreements for the investee(s) to repay the indebtedness. The agreements contemplate various maturities between 2012 and 2018.
2. On November 29, 2006, the Receiver issued a statement of claim against the Winnipeg Goldeyes Baseball Club Inc. 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 has concluded that the matter was not clear enough to deal with the matter summarily and that a trial was required. The Receiver has had numerous discussions around settlement of the outstanding interest as well as the principal debt and shares owned by Crocus but to date no agreement has been reached.

3. Crocus is an investor in Manitoba Science & Technology Fund (“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 from 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.
4. 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 contingency which is known to the Receiver 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, 2011 was \$2.10. 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 (“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 “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 and Stafford F. Swain & Associates. Fillmore Riley LLP had acted as counsel to the Fund and Stafford F. Swain & Associates 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.

The Receiver has been advised that a settlement has been reached between the Class Action plaintiff and Stafford F. Swain & Associates.

9.0 Interim distribution

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, 2010 the Receiver had paid out approximately \$52.4 million or 96% of the authorized interim distribution, however there remains approximately \$2.3 million in unclaimed distributions. In addition there remains approximately \$0.3 million in unclaimed Class Action settlements. The Receiver continues to carry out other procedures to locate and contact shareholders with unclaimed distributions.

9.2 Proposed second interim distribution

In June 2011 the Receiver filed Receiver's Report #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 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 6 year period which would have elapsed since December 10, 2004, the date when Crocus shares had ceased to trade. The significance of the 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 have 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 6 year limitation may not apply. In addition they argued in favour of a \$3.0 million holdback.

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 has been scheduled for October 17, 2011.

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, 2011 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 2012.

Respectfully submitted this 15th day of October, 2011.

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

Per: S. P. Peleck
Senior Vice-President

Appendix 1 – Crocus financial information as at September 30, 2011

Crocus Investment Fund
Consolidated Statement of Net Assets
As at September 30, 2011 (unaudited)

	September 30, 2011
ASSETS	
Cash and equivalents	\$ 16,290,524
Cash in Trust - Interim Distribution	2,258,351
Cash in Trust - Class Action Settlements	288,573
Investments in Manitoba businesses	9,756,569
	<u>28,594,017</u>
Accounts receivable	3,816,498
Capital assets	263,520
	<u>32,674,035</u>
LIABILITIES	
Accounts payable and accrued liabilities	86,128
Due to Shareholders - Interim Distribution	2,258,351
Due to Shareholders - Class Action Settlements	288,573
NET ASSETS	<u><u>\$ 30,040,983</u></u>
SHAREHOLDERS' EQUITY	
Share capital	\$ 188,014,669
Deferred selling costs adjustment	(9,134,637)
Interim Distribution - Class "A" shares	(54,462,836)
Interim Distribution - Class "I" & "L" shares	(264,956)
Deficit	(94,111,257)
	<u><u>\$ 30,040,983</u></u>
NET ASSET VALUE PER SHARE	
Net assets	\$ 30,040,983
Balance attributed to the Class "A" Common and Series Two Class "I" Special Shares	<u><u>\$ 30,040,983</u></u>
Number of issued Class "A" Common Shares	14,220,000
Number of issued Series Two Class "I" Special Shares	69,126
	<u>14,289,126</u>
NET ASSET VALUE PER CLASS "A" COMMON SHARE and SERIES TWO CLASS "I" SPECIAL SHARE	<u><u>\$ 2.10</u></u>

Crocus Investment Fund
Consolidated Statement of Investment Portfolio
As at September 30, 2011 (unaudited)

INVESTMENTS IN MANITOBA BUSINESSES

Canad Corporation of Canada Inc.
Diamedica Inc.
D.L.J.S. Enterprises Ltd.
Genesys Venture Inc.
Manitoba Science & Technology Fund
Muddy Waters Smokehouse
Novra Technologies Inc.
ST Partnership
Winnipeg Goldeyes Baseball Club Inc.
W.O.W. Hospitality Concepts Inc.

INVESTMENTS IN MANITOBA BUSINESSES

\$	9,756,569
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Appendix 2 – Statement of receipts and disbursements to September 30, 2011

**Deloitte & Touche Inc., Receiver and Manager of
CROCUS INVESTMENT FUND
Statement of Receipts and Disbursements
For the Period June 28, 2005 to September 30, 2011**

Receipts

Cash and Short Term Investments on Hand	\$ 23,363,012
Contract Back Office Services	518,463
Dividends-Portfolio	657,483
Income Tax Refund	278,832
Insurance Claim and Premium Refund	20,662
Interest-Portfolio	1,636,446
Interest-Short Term Investments	7,272,278
Investment Principal Repayments	2,106,248
Management Fees	1,062,816
Proceeds on Disposal of Investments	51,790,007
Rent/Sub-Lease	1,648,364
Sundry	223,796
Pre-Receivership Accounts Receivable	1,247,368
Class Action Settlements	6,812,978

Total Receipts

98,638,753

Disbursements

Advances to Investees	\$ 265,132
Capital Tax	200,257
Computer, Telephone and Office Expense	681,209
Consulting Fees	306,540
Employee Pension	442,922
Insurance - Indemnification	141,608
Investee Guarantee and Indemnification	1,344,677
Investment Expenses	194,625
Legal Fees	2,057,925
Legal Fees - Indemnification	662,601
Payroll & Benefits	1,735,550
Receiver and Manager Fees	6,208,309
Records Review	1,288,814
Rent	2,568,783
Settlements	620,000
Shareholder Services	1,174,552
Pre-Receivership Payables and Accruals	914,385

Total Disbursements

20,807,889

Excess of Receipts over Disbursements prior to:

77,830,864

Interim Distribution - Class "A" Shares	52,204,056
Interim Distribution - Class "I" & "L" Shares	264,955
Class Action Settlements	6,524,405

Excess of Receipts over Disbursements

\$ 18,837,448

Represented by:

Short Term Investments and Bonds	\$ 16,290,524
Cash in Trust - Interim Distribution	2,258,351
Cash in Trust - Class Action Settlements	288,573

\$ 18,837,448

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