

**THE QUEEN'S BENCH  
Winnipeg Centre**

**BETWEEN:**

**THE MANITOBA SECURITIES COMMISSION,**

Applicant,

– and –

**CROCUS INVESTMENT FUND,**

Respondent.

---

**RECEIVER'S REPORT #6  
DATED: December 16, 2005**

---

**THE QUEEN'S BENCH  
Winnipeg Centre**

**BETWEEN:**

**THE MANITOBA SECURITIES COMMISSION,**

Applicant,

– and –

**CROCUS INVESTMENT FUND,**

Respondent.

**RECEIVER'S REPORT #6**

**BACKGROUND**

1. 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. (the "Receiver") as Receiver and Manager of Crocus Investment Fund ("Crocus").
2. On October 27, 2005, the Court approved a plan by the Receiver regarding the administration of the within receivership on a go forward basis. That plan contemplated the orderly wind down of the operations of Crocus and distribution of the proceeds of sale to creditors and shareholders of the Company.
3. As was set forth in Receiver's Report # 5, the Receiver is currently in possession of an amount of unencumbered short-term investments approximating \$20.0 million. Attached as Exhibit "A" to this Report is the Consolidated Statement of Net Assets for Crocus Investment Fund as at June 28, 2005.

4. The Receiver has concluded that, in the normal course of its operations, it does not need to retain all of the short-term investments in its possession during the wind down period. The Receiver is of the view that it could distribute approximately \$14.2 million as an interim distribution and still have sufficient funds in its possession to finance the on-going operation of the Company during the wind down period. Subject to Court approval, the Receiver is considering an interim distribution to shareholders.

5. There are, however, certain impediments to the Receiver's proposal which must be clarified prior to making such a distribution. One of these impediments is the existence of litigation which is currently in its preliminary stages, namely, Queen's Bench Suit # CI 05-01-42765 issued by B. Bellan against Crocus Investment Fund and a number of other parties. (hereinafter "the Class Action") To date, the Class Action has not been certified nor has leave been granted to permit the Class Action to continue its claim against Crocus Investment Fund. Attached hereto and marked as Exhibit "B" is a true copy of the Statement of Claim in the Class Action.

6. The Receiver is advised by its counsel that a company generally may make a distribution to shareholders in a number of ways, namely:

- (a) By declaring a dividend;
- (b) By redeeming shares;
- (c) By purchasing shares for cancellation; or
- (d) By making a payment whilst concurrently reducing the stated capital account but having the number of shares the same (sometimes referred to as a "Return of Capital").

In every case listed above, the transaction should not be allowed if it results in the following:

- (a) the corporation is, or would after the distribution be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the corporation's assets would, after the distribution be less than the aggregate of:
  - (i) its liabilities; and
  - (ii) the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or in a liquidation, rateably with or prior to the holders of the shares to be purchased or redeemed.

7. The difficulty which presents itself to the Receiver in regards to a potential distribution is that it is currently unable to assess the outcome of or place a value upon the Class Action. 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.

8. Notwithstanding a distribution of \$14.2 million, the Receiver would still retain sufficient cash resources to pay all ongoing costs associated with the receivership including any legal costs, if any, for which Crocus may be ultimately found responsible to pay including those costs associated with the Class Action litigation as well as the matter currently underway before the Manitoba Securities Commission.

9. The current shareholdings of Crocus Investment Fund are broken down as follows:

	<u>Class</u>	<u>Number of Issued Shares</u>
(a)	Class A Shares	14,219,999;
(b)	Class B Shares	200,000;

(c)	Class I Shares	69,126;
(d)	Class G Shares	2,000,000

The share conditions are set out in the Articles attached as Exhibit "C".

10. There are a number of shareholders of Crocus Investment Fund who are not currently associated with the Bellan proposed class action. The Bellan proposed class action involves shareholders who acquired their shares on or after October 1, 2000. According to the records of the Crocus, there are a total of 33,662 Class A shareholders who hold 14,219,999 Class A Shares. The Receiver estimates that there are 7,570,293 Class A Shares issued after October 1, 2000. Should the Bellan Class Action be successful in the amount set out in the Statement of Claim, namely, \$200,000,000.00, and the contemplated claims by officers, directors and promoters against Crocus are also successful, then the holders of Class A shares acquired prior to October 1, 2000 (namely the 46.5% of outstanding Class A Shares) as well as the G & I shareholders would lose their entire investment.

11. The Receiver has reviewed the prices at which shareholders acquired Class A Shares after October 1, 2000. Over the period commencing that date to the present, the highest purchase price was \$14.93 and the lowest purchase price was \$10.45. If one divides the number of shares acquired during that period (namely 7,577,065) into the total consideration received by the company for those shares (\$98,613,986), the average cost per share during the period was \$13.01.

12. Given the Receiver's view that Crocus is not currently insolvent, if no interim distribution were made, the shareholders not part of the Class Action could well be prejudiced. The Receiver is concerned that it not be exposed to any subsequent complaint by those shareholders that it did not take steps to make an interim distribution when the Company was solvent. Indeed, the interests of the Class Action Class A shareholders conflict with the interest of all other shareholders on this issue.

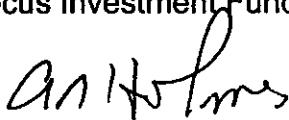
13. It is the Receiver's view that any distribution to the Class Action shareholders could be treated, at least in part, as an advance against the Class Action claim should that claim be successful.

14. Even if a distribution is possible, there is a further series of issues that will need to be resolved prior to distribution of any funds including possible regulatory issues. Should the Court decide that the Class Action is not an impediment to an interim distribution, then the Receiver intends to make a further application to Court with a plan as to how it would propose to distribute the funds. However, there does not need to be the additional time taken to bring those issues forward at this time if the Court does not authorize an interim distribution because of the existence of the Class Action.

15. The Receiver believes that proper parties to this motion would be the parties to the Class Action and the G & I shareholders, and has instructed its counsel to attempt to serve counsel who are involved on behalf of the various parties.

**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

# Appendix 1 – Crocus Financial Statements

## Crocus Investment Fund Consolidated Statements of Net Assets As at June 28, 2005 (unaudited)

### ASSETS

Investments in Manitoba Businesses  
Less: Allowance for investment guarantees  
Net Investments in Manitoba Businesses  
Investments in marketable securities  
Investments in marketable securities - sequestered

Cash  
Accounts receivable  
Prepaid expenses  
Capital assets  
Deferred costs

### LIABILITIES

Accounts payable and accrued liabilities

### NET ASSETS

### SHAREHOLDERS' EQUITY

Share capital  
Deferred selling costs adjustment  
Deficit

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

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

	<b>June 28, 2005</b>
\$	64,143,487
	<u>(3,253,988)</u>
	60,889,499
	19,796,738
	<u>3,500,000</u>
	<u>84,186,237</u>
	66,274
	1,971,046
	199,525
	802,783
	17,970
	<u>87,243,835</u>
	<u>1,631,813</u>
\$	<u>85,612,022</u>
	188,014,669
	(9,134,637)
	<u>(93,268,009)</u>
\$	<u>85,612,022</u>
\$	<u>5.99</u>
\$	<u>6.42</u>





# Appendix 1 – Crocus Financial Statements (cont'd)

## Consolidated Statements of Deficit For the period ended June 28, 2005 (unaudited)

**DEFICIT-Beginning of period, September 30, 2004**  
 Loss for the period  
 Series Three Class "I" Special Shares dividend  
 Excess of stated value of Class "A" Common Shares redeemed and Series Two  
 Class "I" Special Shares redeemed over the redemption value  
**DEFICIT-END OF PERIOD**

	<b>June 28, 2005</b>
\$	(34,805,460)
	(58,227,617)
	(333,333)
	<u>98,401</u>
\$	<u>(93,268,009)</u>

## Consolidated Statements of Changes in Net Assets For the period ended June 28, 2005 (unaudited)

### NET ASSETS - September 30, 2004, as previously reported

Operating activities  
 Loss for the period

#### Capital transactions

Proceeds from issuance of Class "A" Common Shares  
 Redemption of Class "A" Common Shares  
 Redemption of Class "I" Special Shares  
 Series Three Class "I" Special Shares dividend  
 Sales charges relating to the issuance of Class "A" Common Shares

### NET ASSETS - END OF PERIOD

	<b>June 28, 2005</b>
\$	154,302,105
	<u>(58,227,617)</u>
	<u>96,074,488</u>
	300,348
	(419,282)
	(10,000,000)
	(333,333)
	<u>(10,199)</u>
\$	<u>85,612,022</u>

# Appendix 1 – Crocus Financial Statements (cont'd)

## Consolidated Statements of Investment Portfolio As at June 28, 2005 (unaudited)

### Investment Portfolio by Sector

#### Science, Medical and Technology

	Debt Cost \$	Equity Cost \$
Biovar Life Support Inc.	-	500,000
CentreStone Ventures Limited Partnership	350,000	-
COH Holdings (US) Inc. (formerly OpTx Corporation)	-	302,400
Diamedica Inc.	-	4,839,356
eZedia Inc.	-	3,705,334
	-	425,000
	-	4,938,938
	6,442,093	-
	100,000	-
	523,433	-
Genesys Venture Inc.	-	125,000
iMRIS Inc	100,000	-
	-	4,294,469
	-	2
	1,078,000	-
Manitoba Science & Technology Fund Medicure Inc.	-	2,702,000
Novra Technologies Inc.	-	1,150,000
	-	1,249,999
	777,197	-
Online Enterprises Inc.	-	5,500,003
ST Partnership	-	802,565
Viventia Biotech Inc.	-	515,000
<b>Total Science, Medical and Technology -</b>	<b>9,370,723</b>	<b>31,050,066</b>

# Appendix 1 – Crocus Financial Statements (cont'd)

## Consolidated Statements of Investment Portfolio As at June 28, 2005 (unaudited)

### Investment Portfolio by Sector

#### Manufacturing & Transportation

	Debt Cost \$	Equity Cost \$
Carte International Inc.	-	1,200,000
Cando Contracting Ltd.	4,000,000	-
Enterprise Swine Systems Ltd	-	2,077,032
Enterprise Swine Systems II Ltd	600,000	-
ESS Holding Company	267,086	-
Maple Leaf Distillers Inc	-	600,000
Mondeitta (Dimensions 100 Inc)	557,512	-
Sequoia Energy Fund	-	2,000,000
Turtle Mountain Pork Limited Partnership	-	800,001
Turtle Mountain Pork II Limited Partnership	-	550,000
Venture Seeds Ltd	-	500,000
Westward Industries Limited	-	400,000
Other	52,980	-
<b>Total Manufacturing &amp; Transportation</b>	<b>94,000</b>	<b>990,000</b>
Each individually less than \$100,000	-	-
<b>Sector Percentage: 16%</b>	<b>5,571,578</b>	<b>9,117,079</b>

# Appendix 1 – Crocus Financial Statements (cont'd)

	Debt Cost \$	Equity Cost \$
<b>Investment Portfolio by Sector</b>		
<b>Entertainment and Hospitality</b>		
Blye Brothers Entertainment Inc.	854,164	251
Canad Corporation of Canada Inc.	-	5,000,000
Crocus Hockey Holdings Inc.	46,939	-
D.L.J.S. Enterprises Ltd.	-	5,067,524
Green Gates Country House and Restaurant	25,000	-
	145,000	-
Mezzo Limited Partnership	70,000	330,000
Minds Eye Pictures	210,000	-
Muddy Waters Smokehouse	-	158,282
Pasta La Vista	679,361	3,000,000
True North Holding Company	1,931,459	-
Winnipeg Goldeyes Baseball Club Inc.	145,161	-
	136,835	75,671
Winnipeg Spaghetti Corp.	172,965	-
W.O.W. Hospitality Concepts Inc.	-	400,000
Other	434,149	576,851
<b>Total Entertainment and Hospitality -</b>	<b>7,147,253</b>	<b>50,000</b>
		<b>14,658,579</b>
		Each individually less than \$100,000
		Sector Percentage: 24%

# Appendix 1 – Crocus Financial Statements (cont'd)

## Consolidated Statements of Investment Portfolio As at June 28, 2005 (unaudited)

### Investment Portfolio by Sector

#### Financial Services

Manitoba Property Fund  
National Leasing Group Inc.  
Wellington West Capital Inc.

Limited partnership units  
Class "A" common shares  
Promissory note  
Common shares  
Debtenture  
**Sector Percentage: 10%**

#### Total Financial Services -

#### Service

Mid Canada Production Services Inc.  
POS Systems Ltd.  
SR&J Customer Care Call Centre Inc.

Common shares  
Debtenture and warrants  
Convertible debtenture and warrants  
Debtenture  
Promissory notes  
**Sector Percentage: 5%**

#### Total Service -

#### TOTAL

**Sector Percentage: 100%**

### INVESTMENTS IN MANITOBA BUSINESSES AT COST

### NET DECLINE IN VALUE OF

### INVESTMENTS IN MANITOBA BUSINESSES

### NET INVESTMENTS IN MANITOBA BUSINESSES

	Debt Cost \$	Equity Cost \$
	-	928,462
	-	6,017,647
	138,750	-
	-	1,870,700
	500,000	-
	<b>638,750</b>	<b>8,816,809</b>
	-	290,000
	750,257	-
	750,000	-
	1,000,000	-
	1,453,402	-
	<b>3,953,659</b>	<b>290,000</b>
	26,681,963	63,932,533
		90,614,496
		(29,724,997)
		<b>60,889,499</b>

# Appendix 1 – Crocus Financial Statements (cont'd)

**Consolidated Statements of Investment Portfolio  
As at June 28, 2005 (unaudited)**

**BONDS AND DEBENTURES**

Province of Manitoba  
Manitoba Hydro  
City of Winnipeg

<u>Par Value</u>	<u>Amortized Cost</u>
\$200,000	\$200,000
811,000	811,000
600,000	599,089
<u>1,611,000</u>	<u>1,610,089</u>

**SHORT TERM INVESTMENTS**

Government of Canada Treasury Bills  
Bank of Montreal Guaranteed Investment Certificates  
RBC Guaranteed Investment Certificates  
Money Market Investments  
Assiniboine Credit Union

2,375,000	2,334,596
1,064,125	1,064,125
14,103,316	14,103,316
13,348	13,348
4,048,580	4,048,580
<u>21,604,369</u>	<u>21,563,965</u>
23,215,369	23,174,054

**NET UNREALIZED APPRECIATION OF INVESTMENTS  
IN MARKETABLE SECURITIES**

122,684

**INVESTMENTS IN MARKETABLE SECURITIES**

\$23,296,738

# Appendix 1 – Crocus Financial Statements (cont'd)

## Notes to the Consolidated Financial Statements For the period ended June 28, 2005 (unaudited)

### "GAAP" 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:

	June 28, 2005
Net assets - end of year	\$ 85,612,022
Less: Attributed to Class "L" Special	<u>(200)</u>
Balance attributed to the Class "A" Common and Series Two Class "I" Special Shares	<u>85,611,822</u>
Number of issued Class "A" Common Shares	14,220,000
Number of issued Series Two Class "I" Special Shares	<u>69,126</u>
"GAAP" net asset value per Class "A" Common Shares and Series Two Class "I" Special Shares	<u>14,289,126</u> <u>\$5.99</u>

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

**BETWEEN:**

**BERNARD W. BELLAN**

Plaintiff,

- and -

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

Defendants

---

**STATEMENT OF CLAIM**

---

**WALSH & COMPANY**  
426 Portage Avenue  
Winnipeg, Manitoba  
R3C 0C9

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

Paul V. Walsh, Q.C./J. David L. Soper

File No.

**STEVENSONS PROFESSIONAL  
CORPORATION**

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

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

Harvin D. Pitch (counsel)/Colin P.  
Stevenson

File No. 01050118



**THE QUEEN'S BENCH**  
Winnipeg Centre

**BETWEEN:**

**BERNARD W. BELLAN**

Plaintiff,

- and -

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

Defendants

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

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

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

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

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

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

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

July , 2005

Issued by

\_\_\_\_\_  
Registrar

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

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

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

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

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

**AND TO: RON WAUGH**  
Winnipeg, Manitoba

- AND TO: DIANE BERESFORD  
P.O. Box 373  
Notre Dame de Lourdes, Manitoba  
R0G 1M0
- AND TO: SYLVIA FARLEY  
Winnipeg, Manitoba
- AND TO: ROBERT HILLIARD  
155 Borebank Street  
Winnipeg, Manitoba  
R3N 1E1
- AND TO: ROBERT ZIEGLER  
Winnipeg, Manitoba
- AND TO: JOHN CLARKSON  
42 Harradence Close  
Winnipeg, Manitoba  
R3Y 1K5
- AND TO: DAVID G. FRIESEN  
Highway 30  
P.O. Box 720  
Altona, Manitoba  
R0G 0B0
- AND TO: HUGH ELIASSON  
86 Tamarack Bay  
Winnipeg, Manitoba  
R2R 0G2
- AND TO: SHERMAN KREINER  
180 West Gate  
Winnipeg, Manitoba  
R3C 2E1
- AND TO: JAMES UMLAH  
609 South Drive  
Winnipeg, Manitoba  
R3C 0C1

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

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

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

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

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

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

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

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

## CLAIM

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

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

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

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

- statements were fairly presented and that the share price valuation was reasonable and accurate, and is liable for damages under s. 36;
- (h) a declaration that The Manitoba Securities Commission (MSC) owed a duty of care to the plaintiff and to the other class members to ensure the Crocus Fund prospectuses contained full, true and plain disclosure of all material facts relating to the value of the Crocus Fund and its class A shares and to undertake a reasonable and prudent investigation of complaints concerning the valuation of the Crocus Fund and the MSC has breached its duty of care and has thereby acted in a grossly careless and reckless manner, amounting to bad faith;
  - (i) an order compensating the plaintiff and plaintiff class as aggrieved persons pursuant to s. 234 of *The Corporations Act* (Manitoba) for oppression;
  - (j) a declaration that the business or affairs of the Crocus Fund have been carried on or conducted in a manner that is oppressive, unfairly prejudicial or which unfairly disregards the interests of the plaintiff and the plaintiff class;
  - (k) a declaration that the powers of the directors of the Crocus Fund have been exercised in a manner that is oppressive or unfairly prejudicial or which unfairly disregards the interests of the plaintiff and the plaintiff class;



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

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

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

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

#### DEFINED TERMS

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

#### OVERVIEW

5. The Crocus Fund is a labour sponsored venture capital corporation created by *The Crocus Investment Fund Act*, C.C.S.M. c. C308 (the *Crocus Act*).

The Crocus Fund has been a reporting issuer in Manitoba since 1992.

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

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

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

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

## PARTIES AND BACKGROUND

### Plaintiff

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

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

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

### Valuation Process

11. On every Valuation Date (every Friday), the Crocus Fund calculates a pricing NAV (net asset value) per common share (the A share price) as at 3:00 p.m. on the Valuation Date. The A share price is the price at which one A share can be purchased or redeemed on the Valuation Date. All subscriptions for A shares and requests for redemption for A shares which have been received since the last Valuation Date are processed on the Valuation Date using the A share price. All purchases and redemptions are processed in this manner.

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

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

- (e) the board, in 1999, delegated the setting of the A share price to any two directors of the board who were authorized to sign a share price valuation certificate on behalf of the board as a whole.
  
- 13. The board established a process for determining the value of the investee companies to establish a net realizable value for the portfolio.
  
- 14. The staff valuation committee prepared the valuation for each investee company in the portfolio. Valuations were to be prepared at least annually where there was no public market for the securities of the investee company.
  
- 15. A valuation was not to be accepted unless all the members of the staff valuation committee agreed on a value.
  
- 16. Once valuations were completed they were to go to the valuation subcommittee of the board which comprised two or three board members and an external valuator who was to do a limited review of the valuations and advise the valuation subcommittee.
  
- 17. The valuation subcommittee was scheduled to meet monthly. If valuations were not available to be considered the meeting was to be cancelled.

18. On October 1, 2000 there were approximately 30,000 shareholders with approximately 11,000,000 outstanding shares. At the end of the class period (December 10, 2004) there were approximately 35,000 shareholders with approximately 13,500,000 outstanding shares. The publicly announced value of the Crocus Fund on October 1, 2000 was \$14.93. On October 1, 2004 the publicly announced value of the Crocus Fund was approximately \$190,000,000 and the price per share was \$10.61.

#### **2002 Solidarité Transaction**

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

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

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

21. In 2002, the Crocus Fund prepared an internal cashflow projection analysis covering the period July 2002 to September 2004. That analysis showed that without significant additional capital the Crocus Fund could fall short of its minimum reserve requirements by October 2002 and would stay below its minimum requirements until December 2002—a 90 day period.
22. In order to prevent a shortfall in its minimum reserve requirements, the Crocus Fund negotiated a short term institutional "investment" of \$10,000,000 from the Fonds de Solidarité FTQ (Solidarité) a Québec-based labour sponsored investment fund.
23. Prior to receiving the funds from Solidarité, the Crocus Fund had fallen below its minimum reserve requirement. Without the Solidarité funds, the Crocus Fund would have been in breach of its minimum reserve requirements and would have been unable to raise additional capital.
24. In the summer of 2002, the Crocus Fund arranged with Solidarité for Solidarité to make a \$10,000,000 "investment" in institutional shares (class I) of the Crocus Fund, a special class of preferred shares created by the Crocus Fund especially for the transaction. On November 15, 2002, a final agreement was signed for the issuance of 790,513.83 series 3 class I special shares for consideration of \$10,000,000. The shares carried a 10% guaranteed annual dividend rate.



25. The agreement was highly restrictive and one-sided in favour of Solidarité. The plaintiff pleads that the transaction, rather than being an "investment" was in effect an onerous loan and was improperly and inaccurately characterised in the relevant financial statements of the Crocus Fund as an investment. The agreement further provided that Solidarité could require the Crocus Fund to purchase all or any part of said shares after May 15, 2004 and that the Crocus Fund was required to purchase any remaining outstanding shares at November 15, 2004. The agreement provided as well for a 10% penalty (in addition to the annual dividend) on any shares outstanding after November 15, 2004 and 10% interest on unpaid dividends. Under the agreement, Solidarité had a guaranteed right to the dividend payment and it was not discretionary. Had the Crocus Fund not paid dividends (which were paid even when the Crocus Fund was in a loss and deficit position) Solidarité could have taken action to collect the principal investment amount, outstanding dividends and any interest penalties from the Crocus Fund. These characteristics are fundamental characteristics of a liability rather than an investment. The unconditional requirement to repay demonstrates that the transaction was a loan.

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

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

### **Regulatory Intervention**

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

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

- (a) a lack of oversight by the Crocus Fund's board of directors;
- (b) flaws in the Crocus Fund's investment procedures;
- (c) abuse of the Crocus Fund's travel and expense policy;

- (d) the value of the Crocus Fund's assets appeared to have been overstated;
- (e) the implementation of the valuation process was flawed.

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

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

### **The Defendants and Other Related Individuals**

#### **The Insiders**

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

32. The defendant, Peter Olfert (Olfert), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from 1995 until 2004. He also executed a certificate attached to the 1999, 2001, 2002 and 2004 prospectuses

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

33. The defendant, Waldron (Wally) Fox-Decent (Fox-Decent), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from 1999 until 2004. He also executed a certificate attached to the 2002 and 2003 prospectuses attesting to the disclosure of all material facts relating to the distribution of the class A shares.
34. The defendant, Lea Baturin (Baturin), currently resides in the Province of Manitoba. She was a director of the Crocus Fund from 1999 until 2004.
35. The defendant, Albert R. Beal (Beal), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from 1999 until 2004.
36. The defendant, Ron Waugh (Waugh), currently resides in the Province of Manitoba. He was a director of the Crocus Fund in 2004.
37. The defendant, Diane Beresford (Beresford), currently resides in the Province of Manitoba. She was a director of the Crocus Fund from 1998 until 2004.
38. The defendant, Sylvia Farley (Farley), currently resides in the Province of Manitoba. She was a director of the Crocus Fund

39. The defendant, Robert Hilliard (Hilliard), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from 1992 until 2004. He also executed a certificate attached to the 1999, 2001, 2002 and 2004 prospectuses attesting to the disclosure of all material facts relating to the distribution of the class A shares.
40. The defendant, Robert Ziegler (Ziegler), currently resides in the Province of Manitoba. He was a director of the Crocus Fund until 2004.
41. The defendant, John Clarkson (Clarkson), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from 2002 until 2004. He also executed a certificate attached to the 2002 and 2003 prospectuses attesting to the disclosure of all material facts relating to the distribution of the class A shares.
42. The defendant, David G. Friesen (Friesen), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from 1998 until 2004.
43. The defendant, Hugh Eliasson (Eliasson), currently resides in the Province of Manitoba. He was a director of the Crocus Fund until 2002.
44. The defendant, Sherman Kreiner (Kreiner), currently resides in the Province of Manitoba. He was president and CEO of the Crocus Fund from 1993 until December 2, 2004. He also executed a certificate attached to the 1999, 2001,

2002, 2003 and 2004 prospectuses attesting to the disclosure of all material facts relating to the distribution of the class A shares.

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

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

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

### **Liability**

48. The plaintiff alleges that each of Charles E. Curtis, Peter Olfert, Waldron (Wally) Fox-Decent, Lea Baturin, Albert R. Beal, Ron Waugh, Diane Beresford, Sylvia Farley, Robert Hilliard, Robert Ziegler, Sherman Kreiner, James Umlah, Jane Hawkins, John Clarkson, David G. Friesen, Hugh Eliasson and Janice Lederman breached s. 141 of *The Securities Act*, s. 234 of the *Corporations Act* and s. 52 of the *Competition Act* (Canada).

### **Oppression**

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

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

**The Competition Act (Canada)**

51. The Insiders and the Financial Advisor breached s. 52(1) of the *Competition Act (Canada)* by issuing to the public the prospectus containing the Representation.
52. The prospectus was made for the purpose of promoting the supply or sale of the Crocus Fund shares and directly or indirectly the business activities or interest of the Crocus Fund, the Insiders and the Financial Advisor.
53. The prospectus contained the Representation which the Insiders, Wellington West and Nesbitt Burns (the latter only for the period 1999-2001) made to the public. The Representation was false or misleading in a material respect, namely, the A share price was not fairly valued and was overstated and the Crocus Fund was not fairly valued and was overstated.
54. The plaintiff and other class members relied upon the Representation and purchased or held shares of the Crocus Fund and suffered loss or damage as a result.



### The Auditor

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

56. PWC issued unqualified audit opinions in respect of the financial statements of the Crocus Fund for each year in the class period. PWC consented to the inclusion of these financial statements, together with its unqualified audit opinion thereon, in each prospectus.

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

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

### **The Financial Advisor**

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

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

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

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

### **The Manitoba Securities Commission (MSC)**

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

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

### **The Value of the Crocus Fund was Overstated**

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

continuation of trading in the Crocus Fund shares created a real monetary loss for innocent shareholders.

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

67. The plaintiff does not allege that the defendants were intentionally actively dishonest. Rather, the plaintiff alleges that the defendants' conduct, when coupled with their immediate pecuniary interests, were such as to make them liable in damages for breach of s. 141 of the *Securities Act*, negligence (PWC only), oppression and under the *Competition Act* (Canada).

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

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

**Non-Disclosure**

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

- (a) the board routinely and consistently overstated the class A share price valuations and priced the Crocus Fund at inflated values;
- (b) the board routinely and consistently failed to determine the fair value of the class A common shares of the Crocus Fund as at each Valuation Date;
- (c) the Crocus Fund accepted subscriptions and paid out redemptions for A shares using an A share price which had not been approved by the board as at each Valuation Date;
- (d) the board failed to establish appropriate procedures to ensure compliance with its statutory obligations and the other obligations disclosed in the prospectus, i.e., that the fair value of the class A common shares of the Crocus Fund shall be determined by the board as at each Valuation Date;
- (e) the board failed to ensure valuations were completed in a timely manner;

- (f) the board failed to seek a suspension of trading for the A shares as soon as they knew or ought to have known of changes which might have had a material effect on the value of any investment asset of the Crocus Fund;
- (g) the board knew or ought to have known as early as October 1, 2000 that there was an overvaluation of the share price and failed to cause a revaluation of the investment asset or assets affected by such changes as at the earliest possible Valuation Date, being October 1, 2000;
- (h) the Insiders executed or are bound by share valuation certificates thereby signifying the board approved the A share price after the appropriate Valuation Date and after the price had been set by the Crocus Fund staff and used for the purposes of sales and redemptions of A shares which were completed prior to the board members approving the share price;
- (i) valuations were issued which did not reflect a fair valuation of the Crocus Fund's portfolio and specifically did not reflect net realizable value.

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

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

73. By virtue of their position of authority and responsibility within the Crocus Fund, each of the Insiders as well as Wellington West and Nesbitt Burns had access to material information respecting the business and affairs of the Crocus Fund. Each of the Insiders and Wellington West and Nesbitt Burns reviewed, approved, ratified and/or authorized, whether explicitly or implicitly, the statements in the prospectuses.

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

75. In certifying that each prospectus contained no material misrepresentations or omissions, Wellington West and Nesbitt Burns, as well as the directors and the officers who certified the prospectus participated in or facilitated the

wrongdoing described herein as they knew or ought to have known that it did contain such misrepresentations and/or omissions.

#### **S. 141 of the *Securities Act***

76. Wellington West, Nesbitt Burns, the directors, and the other Insiders who signed the certificates attached to the prospectus, are liable to the plaintiff and the plaintiff class by virtue of s. 141 of the *Securities Act*. These defendants are liable to pay compensation for all loss or damage sustained as a result of the purchase by the plaintiff and the plaintiff class of shares in the Crocus Fund.

#### **PWC's Negligence**

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

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



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

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

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

82. PWC was negligent in the following respects:

- (a) PWC "signed off" that the Crocus Fund investments in Manitoba companies were appropriately valued, year after year, when such was not the case;

- (b) PWC signed unqualified audit reports that failed to explain that Crocus' financial statements were materially misleading to shareholders and, in particular, to buyers and sellers of the Crocus Fund's shares;
- (c) PWC permitted the inclusion of these misleading annual audited financial statements in prospectuses for the Crocus Fund and thereby facilitated the solicitation that the public should purchase and the shareholders not sell the Crocus Fund's shares;
- (d) PWC audit opinions and the financial statements were not prepared in accordance with GAAP as described below;
- (e) PWC audit opinions and the financial statements were not prepared on a consistent basis;
- (f) PWC audit opinions and the financial statements were not audited in accordance with GAAS as described below;
- (g) PWC audit opinions and the financial statements contained material misstatements of the Crocus Fund's financial position and results, including:
  - (i) an overstatement of the value of the company's investments in Manitoba corporations;
  - (ii) an overstatement of assets;
  - (iii) an understatement of losses;
  - (iv) an overstatement of equity of the owners;
- (h) in fiscal year 2003 PWC failed to disclose or, in the alternative, failed to identify that a \$10,000,000 transaction in 2002 between Fonds de

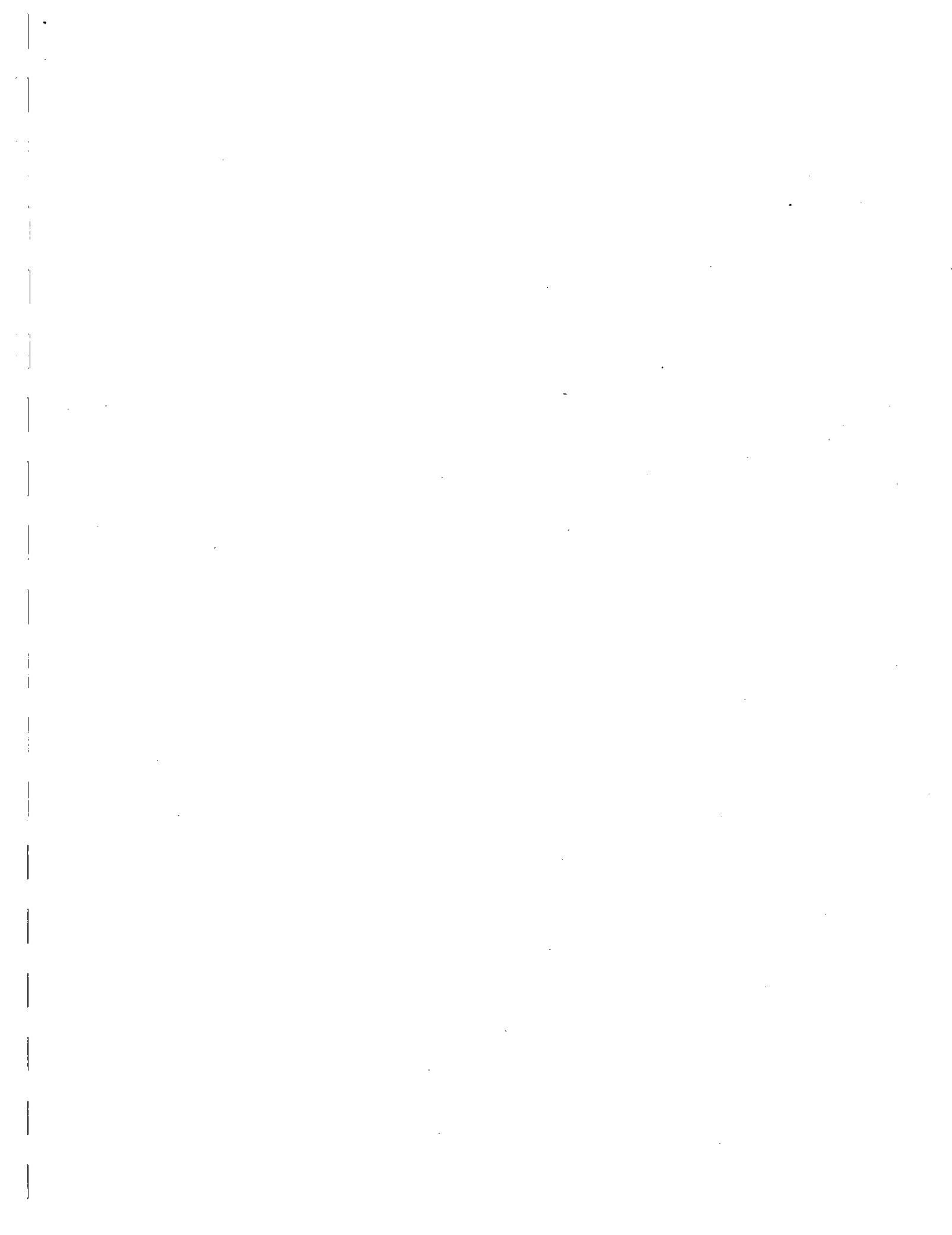
Solidarité FTQ and the Crocus Fund had been materially misstated to give the impression of a share or equity investment when it was in reality a short term loan that should have been viewed as a "bailout" as discussed in more detail above;

- (i) the following additional allegations of negligence against PWC apply with respect to the Solidarité transaction:
  - (i) the Crocus Fund's September 30, 2003 audited consolidated financial statements reflected the proceeds received from Solidarité as shareholders' equity on the balance sheet. This classification of the investment as equity did not comply with s. 3860 of the CICA handbook (financial instruments) and was in fact a financial liability;
  - (ii) the loss for the year ended September 2003 was understated by \$875,000 or 16%. Thus, a better financial picture of the Crocus Fund than actually existed was set out in that financial statement;
  - (iii) the notes to the 2003 and 2004 financial statements did not fully disclose all of the significant covenants of the agreement between Solidarité and the Crocus Fund. As a result, readers were not provided with sufficient information to be able to assess the nature of the transaction between Solidarité and the Crocus Fund. Thus, the transaction was misrepresented in the prospectus as an equity investment while the fundamental

- (g) operating expenses, including selling expenses, were capitalized.

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

- (a) were not planned, executed, reviewed, and finalized in accordance with the auditing firm's standards and with Canadian standards;
- (b) were deficient because internal control weaknesses were not compensated for by gathering sufficient, appropriate, external corroborative evidence;
- (c) failed to design and execute audit procedures that responded to the nature and risks of the client's business, especially the holding of private company investments, and the manner in which the Crocus Fund shares were being traded and how prices were directly linked to accounting numbers;
- (d) were deficient because audit staff were not adequately trained and supervised;
- (e) were deficient because excessive reliance was placed on management instead of on sufficient and appropriate audit evidence;
- (f) did not display a level of scepticism that was necessary given the nature of the company's investments and the uncertainty that surrounded specific companies;
- (g) did not reflect the utilization of knowledgeable experts to assist in identifying appropriate values and risks inherent in assets;



- (h) did not recognize and respond to the existence of scope limitations given the absence of asset values that were appropriate in determining net asset values, which in turn determined the buying and selling prices of the Crocus Fund's shares;
- (i) failed to result in audit reports that disclaimed responsibility for the financial position and results of operations of the Crocus Fund;
- (j) inadequately responded to the Crocus Fund's control weaknesses, which enabled management to override principles and valuations and interpretations of what constituted net realizable value;
- (k) failed to result in warning the Crocus Fund's investors of the magnitude of management optimism that was inherent in the chosen asset values of the Crocus Fund and the corresponding overstated share price; and
- (l) failed to respond to indicators of non-compliance with applicable legislation regarding use of cash.

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

86. The plaintiff and other class members suffered damage and loss because of PWC's negligence. Had PWC met the requisite standard of conduct

expected of it in the circumstances the Crocus Fund would either not have continued trading as a public company or, alternatively, its shares would only have been publicly traded at proper values.

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

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

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

**The *Competition Act***

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

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

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

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



### Liability of MSC

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

95. The plaintiff states, and the fact is, that MSC knew or ought to have known, commencing in or about October 2000, of the valuation irregularities as detailed in this statement of claim. In approving the prospectus and failing to undertake any or any adequate investigation until 2003 as detailed below, of the valuation or irregularities and in approving the prospectuses for the years 1999 and thereafter, MSC acted with such carelessness and/or recklessness so as to constitute bad faith and gross negligence.

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

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

- (a) arrive at any conclusions on the quality of the continuous disclosure documents reviewed;
- (b) utilize a program or checklist in carrying out its investigation;

- (c) identify the true nature of the 2002 Solidarité transaction;
- (d) require the Crocus Fund to cease trading.

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

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

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

a condition of the exemption orders that the work site coordinators would be supervised by Crocus Capital Inc.

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

### **DAMAGES**

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

**COSTS (INCLUDING THE COST OF INVESTIGATION)**

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

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

**PUNITIVE AND EXEMPLARY DAMAGES**

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

**RELEVANT STATUTES**

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

July , 2005

**WALSH & COMPANY**  
426 Portage Avenue  
Winnipeg, Manitoba  
R3C 0C9

Paul V. Walsh, Q.C.  
J. David L. Soper  
947-2282  
943-0211 (fax)

**AND**

**STEVENSONS PROFESSIONAL  
CORPORATION**  
144 Front Street West  
Suite 400  
Toronto, Ontario  
M5J 1L7

Harvin D. Pitch (counsel)  
416-865-5310  
416-365-7702 (fax)

Colin P. Stevenson  
416-599-7900  
416-599-7910 (fax)

Solicitors for the plaintiff

**SCHEDULE 1**

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

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



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

*Ann L. Kuen*

Description of Office: / Description du poste  
President and Chief Executive Officer

**SCHEDULE "A"**  
**TO THE RESTATED ARTICLES OF INCORPORATION**  
**OF CROCUS INVESTMENT FUND**

**5. Directors**

<b>Name in Full</b>	<b>Address in Full</b>
<b>ROBERT HILLIARD</b>	155 Borebank Street Winnipeg, Manitoba R3N 1E1
<b>PETER OLFERT</b>	432 Dunrobin Avenue Winnipeg, Manitoba R3K 0T8
<b>CHARLES E. CURTIS</b>	596 South Drive Winnipeg, Manitoba R3T 0B1
<b>DAVID G. FRIESEN</b>	Highway 30, P.O. Box 720 Altona, Manitoba R0G 0B0
<b>DIANE BERESFORD</b>	565 Whytewold Road Winnipeg, Manitoba R3J 2W8
<b>WALDRON FOX-DECENT</b>	4553 Roblin Boulevard Winnipeg, Manitoba R3R 0G2
<b>LEA BATURIN</b>	26 Bramton Street Winnipeg, Manitoba R2M 4P8
<b>ALBERT R. BEAL</b>	R.R. 2, Box 15 Lorette, Manitoba R0A 0Y0
<b>JOHN CLARKSON</b>	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:

- (l) 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.

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**

**27 JUIN / JUN 2002**

*[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 27(4)  
conformément à l'article

c) and the articles are amended as follows: / et les statuts de la corporation sont modifiés de la façon suivante:

To:

1. Create a new series of Class I Special Shares namely, Series Three Class I Special Shares of an unlimited number for an unlimited consideration.
2. Add the rights, privileges, restrictions and conditions attaching to the Series Three Class I Special Shares set forth in Schedule 1 attached hereto.

Date / Date	Signature / Signature	Description of Office: / Description du poste
June 26, 2002	<i>[Signature]</i>	President & CEO

**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 Series Three Class I Special 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 Three Shares with respect to priority in the payment of dividends, the Series Three 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 Three Shares at the time issued and outstanding, without preference or distinction.

2. **Voting Rights.** Holders of Series Three 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 below, each such holder shall be entitled to one vote at any meeting of shareholders of the Fund at which holders of Series Three Shares are entitled to vote, without regard to the number of Series Three Shares owned by the holder.

3. **Election of Directors.** Holders of Series Three 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.** Series Three Shares shall not be transferred by the holder or holders thereof.

5. **Retraction Rights.**

- (a) Commencing on the fifth anniversary of the date the holder's Series Three Shares were issued or, if the holder's Series Three 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 Three Shares shall be entitled to require the Fund to redeem all or any portion of the Series Three Shares owned by the holder by tendering to the Fund at its registered office the certificate or certificates representing the Series Three 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 Three Share(s) by paying or causing to be paid to or to the order of the holder the Redemption Amount for the Series Three

Share(s) to be redeemed, together with an amount equal to all dividends declared thereon and unpaid.

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 Three Shares with respect to priority in the distribution of property and assets, the holders of Series Three 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 Three Provisions.** The Series Three Provisions may be repealed, altered, modified, amended or varied only with the prior approval of the holders of the Series Three 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.



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**  
**27 SEP / SEP 2002**

  
DIRECTOR, CORPORATIONS BRANCH /  
DIRECTEUR, DIRECTION DES CORPORATIONS

1-Name of Corporation / Dénomination sociale <b>CROCUS INVESTMENT FUND</b>	2-Corporation Number / N° de la corporation <b>2859018</b>
---	--

3- a) The amendment to the articles has been authorized by: / La modification apportée aux statuts a été autorisée par résolution:

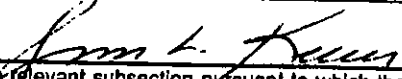
- |              |                                     |                 |
|--------------|-------------------------------------|-----------------|
| directors    | <input checked="" type="checkbox"/> | administrateurs |
| shareholders | <input type="checkbox"/>            | actionnaires    |
| members      | <input type="checkbox"/>            | members         |

b) pursuant to Section 27(4)  
conformément à l'article

c) and the articles are amended as follows: / et les statuts de la corporation sont modifiés de la façon suivante:

To:

1. Amend the rights, privileges, restrictions and conditions attaching to the Series Three Class I Special Shares which were created by Articles of Amendment dated June 27, 2002 by replacing them with the rights, privileges, restrictions and conditions set forth in Schedule I attached hereto.

Date / Date	Signature /Signature	Description of Office: / Description du poste
September 27 , 2002		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 rights, privileges, restrictions and conditions of the Series Three Class I Special Shares set out in the Schedule I attached to the Articles of Amendment of Crocus Investment Fund (the "Fund") dated June 27, 2002 are hereby deleted and replaced with the following:

"The Series Three Class I Special Shares (the "**Series Three 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. **Definitions.** Where used herein, the following and phrases, unless there is something in the context otherwise inconsistent therewith, shall have the following meanings, respectively:

"**Corporation Agreement**" means that certain Corporation Agreement to be entered into between the Fund and Fonds De Solidarité Des Travailleurs Du Québec (F.T.Q.) to be dated as of September 27, 2002;

"**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 of Directors of the Fund in accordance with the rules set out in the Fund Act and in the valuation policies of the Fund;

"**Series Three Redemption Amount**" means the price payable by the Fund to the holder of a Series Three Share for the redemption of a Series Three Share as set out in the Corporation Agreement;

"**Series Three Redemption Date**" means the date upon which the Fund shall redeem Series Three Shares pursuant to a Series Three Redemption Request and shall be not more than thirty (30) days after the day on which the Series Three Redemption Request is received by the Fund

"**Series Three Redemption Request**" means a request in writing given by the holder of Series Three Shares to the Fund specifying such holder's desire for redemption, the number of Series Three Shares which such holder desires to have redeemed and the Series Three Redemption Date;

"**Series Three Redemption Valuation Date**" means the date on which a Series Three Redemption Request is received by the Fund in respect of the purchase of a Series Three Share where it is received before 3:00 p.m. (Winnipeg time) on such date, or, if such Series Three 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, as at the next Valuation Date following the date on which the Series Three Redemption Request is received by the Fund.

**"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. **Voting Rights.** Holders of Series Three 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 below, each such holder shall be entitled to one vote at any meeting of shareholders of the Fund at which holders of Series Three Shares are entitled to vote, without regard to the number of Series Three Shares owned by the holder.

3. **Election of Directors.** Holders of Series Three 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.** Series Three Shares shall not be transferred by the holder or holders thereof.

5. **Retraction Rights.** Commencing on the date that is eighteen (18) months from the date the holder's Series Three Shares were issued or such earlier date as set out in the Corporation Agreement, a holder of Series Three Shares shall be entitled, from time to time, to require the Fund to redeem all or any portion of the Series Three Shares owned by the holder as provided by the Corporation Agreement, by tendering to the Fund at its registered office the certificate or certificates representing the Series Three Share(s) which the holder desires to have the Fund redeem, together with a Series Three Redemption Request. On the Series Three Redemption Date, unless such redemption will be contrary to Section 34 of *The Corporations Act (Manitoba)*, the Fund shall redeem such Series Three Share(s) by paying or causing to be paid to or to the order of the holder the Series Three Redemption Amount for the Series Three Share(s) to be redeemed.

6. **Redemption.** The Corporation shall have the right, at its option at any time after the date that is twelve (12) months from the date the holder's Series Three Shares were issued, and from time to time, on notice, to redeem all of the Series Three Shares held by such holder, or that portion of the Series Three Shares as provided by the Corporation Agreement, by paying or causing to be paid to or to the order of the holder the Series Three Redemption Amount for the Series Three Share(s) to be redeemed.

7. **Liquidation, Dissolution or Winding-Up.** The holders of Series Three Shares shall be entitled, in priority to the holders of all other classes of shares or series of shares to share equally 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.

8. **Amendments to Series Three Provisions.** The Series Three provisions may be repealed, altered, modified, amended or varied only with the prior approval of the holders of the Series Three 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."

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**

**12 NOV NOV 2002**

*[Signature]*  
DIRECTOR, CORPORATIONS BRANCH /  
DIRECTEUR, DIRECTION DES CORPORATIONS

1-Name of Corporation / Dénomination sociale <b>CROCUS INVESTMENT FUND</b>	2-Corporation Number / N° de la corporation <b>2859018</b>
---	--

3- a) The amendment to the articles has been authorized by: / La modification apportée aux statuts a été autorisée par résolution:

- directors  administrateurs
- shareholders  actionnaires
- members  membres

b) pursuant to Section 27(4)  
conformément à l'article

c) and the articles are amended as follows: / et les statuts de la corporation sont modifiés de la façon suivante:

To:  
1. Amend the rights, privileges, restrictions and conditions attaching to the Series Three Class I Special Shares which were created by Articles of Amendment dated June 27, 2002 and amended by Articles of Amendment on September 27, 2002, by replacing them with the rights, privileges, restrictions and conditions set forth in Schedule I attached hereto.

Date / Date <b>November 8, 2002</b>	Signature / Signature <i>[Signature]</i>	Description of Office: / Description du poste <b>President and Chief Executive Officer</b>
--	---	---

**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 rights, privileges, restrictions and conditions of the Series Three Class I Special Shares set out in the Schedule I attached to the Articles of Amendment of Crocus Investment Fund (the "Fund") dated September 27, 2002 are hereby deleted and replaced with the following:

"The Series Three Class I Special Shares (the "Series Three 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. **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:

"**Corporation Agreement**" means that certain Corporation Agreement to be entered into between the Fund and Fonds De Solidarité Des Travailleurs Du Québec (F.T.Q.) to be dated as of November 15, 2002;

"**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 of Directors of the Fund in accordance with the rules set out in the Fund Act and in the valuation policies of the Fund;

"**Series Three Purchase Price**" means the price per Series Three Share, being an amount equal to the Net Asset Value Per Common Share on the Valuation Date immediately following November 15, 2002;

"**Series Three Redemption Amount**" means the price payable by the Fund to the holder of a Series Three Share for the redemption of a Series Three Share in an amount equal to the greater of:

(a) the Net Asset Value Per Common Share on the Series Three Redemption Valuation Date less an amount equal to all dividends paid upon such Series Three Share prior to the Series Three Redemption Date, and

(b) the amount equal to the Series Three Purchase Price;

"**Series Three Redemption Date**" means the date upon which a Series Three Redemption Request is received by the Fund;

"**Series Three Redemption Request**" means a request in writing given by the holder of Series Three Shares to the Fund specifying such holder's desire for

redemption of the number of Series Three Shares which such holder desires to have redeemed on the Series Three Redemption Date;

**"Series Three Redemption Valuation Date"** means the date on which a Series Three Redemption Request is received by the Fund in respect of the purchase of a Series Three Share where it is received before 3:00 p.m. (Winnipeg time) on such date, or, if such Series Three 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, as at the next Valuation Date following the date on which the Series Three Redemption Request is received by the Fund.

**"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. **Dividends.** The holders of the Series Three Shares shall be entitled to receive the following amounts as dividends:

- (a) in preference and priority to any payment of dividends on all other classes of shares or series of shares of the Fund, fixed preferential cumulative cash dividends, at the rate per annum equal to 10% per share of the Series Three Purchase Price. The fixed preferential cumulative dividend on the Series Three Shares shall be payable half-yearly on the last day of April and October in each year;
- (b)
  - (i) in preference and priority to any payment of dividends on all other classes of shares or series of shares of the Fund, a fixed preferential cumulative cash dividend (the "2004 Dividend") on each Series Three Share issued and outstanding as of 5:00 p.m. (Central Time) on November 15, 2004, in an amount per unredeemed Series Three Share equal to 10% of the Series Three Redemption Amount, payable on November 15, 2004; and
  - (ii) thereafter, in each year, in preference and priority to any payment of dividends on all other classes of shares or series of shares of the Fund, a fixed preferential cumulative cash dividend in an amount equal to the 2004 Dividend on each Series Three Share issued and outstanding as of 5:00 p.m. (Central Time) on November 15<sup>th</sup> of that year, payable on November 15<sup>th</sup> of that year, provided that in the event that any of the Series Three Shares are redeemed at any time prior to November 15<sup>th</sup> in any such year, then the 2004 Dividend for that portion of such year shall be calculated and paid, in respect of each Series Three Share being redeemed, on the date of such redemption; and
- (c) interest in the amount of 10% per annum (compounded monthly

and to be paid annually) on the amount of any unpaid dividends which are payable on the Series Three Shares in accordance with (a) and (b) above. In the event any of the Series Three Shares are redeemed at any time prior to November 15<sup>th</sup> in any year, then a dividend for that portion of such year shall be calculated in accordance with (a) and (b) above and paid on the date of such redemption.

3. **Voting Rights.** Holders of Series Three 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 4 below, each such holder shall be entitled to one vote at any meeting of shareholders of the Fund at which holders of Series Three Shares are entitled to vote, without regard to the number of Series Three Shares owned by the holder.
4. **Election of Directors.** Holders of Series Three Shares shall not be entitled to elect or to vote in respect of the election of any directors of the Fund.
5. **Restriction on Transfer.** Series Three Shares shall not be transferred by the holder or holders thereof.
6. **Retraction Rights.** Commencing on the date that is eighteen (18) months from the date the holder's Series Three Shares were issued or such earlier date as set out in the Corporation Agreement, a holder of Series Three Shares shall be entitled, from time to time, to require the Fund to redeem all or any portion of the Series Three Shares owned by the holder as provided by the Corporation Agreement, by tendering to the Fund at its registered office the certificate or certificates representing the Series Three Share(s) which the holder desires to have the Fund redeem, together with a Series Three Redemption Request. On the Series Three Redemption Date, unless such redemption will be contrary to Section 34 of *The Corporations Act (Manitoba)*, the Fund shall redeem such Series Three Share(s) by paying or causing to be paid to or to the order of the holder the Series Three Redemption Amount for each Series Three Share to be redeemed. The Fund shall, in the event the provisions of section 2.06 of the Corporation Agreement apply, redeem all or a portion of the Series Three Shares, which number of shares shall be determined and which redemption shall occur in accordance with section 2.06 of the Corporation Agreement.
7. **Redemption.** The Fund shall have the right, at its option at any time after the date that is twelve (12) months from the date the holder's Series Three Shares were issued, and from time to time, on notice, to redeem all of the Series Three Shares held by such holder, or that portion of the Series Three Shares as provided by the Fund Agreement, by paying or causing to be paid to or to the order of the holder the Series Three Redemption Amount for each Series Three Share to be redeemed.

8. **Liquidation, Dissolution or Winding-Up.** The holders of Series Three Shares shall be entitled, in priority to the holders of all other classes of shares or series of shares to share equally 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.

9. **Amendments to Series Three Provisions.** The Series Three provisions may be repealed, altered, modified, amended or varied only with the prior approval of the holders of the Series Three 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."



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<sup>e</sup> JAN JAN 2005**

*[Signature]*  
DIRECTOR, CORPORATIONS BRANCH /  
DIRECTEUR, DIRECTION DES CORPORATIONS

1-Name of Corporation / Dénomination sociale <b>CROCUS INVESTMENT FUND</b>	2-Corporation Number / N° de la corporation <b>2859018</b>
---	--

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 corporation 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.

Loi sur les corporations  
**ARTICLES OF AMENDMENT**  
**CLAUSES MODIFICATRICES**

Schedule A

**MANITOBA**

Corporation No. 2859018  
 N° de la corporation

1-Name of Corporation / Dénomination sociale  <b>CROCUS INVESTMENT FUND</b>	2-Corporation Number / N° de la corporation <b>2859018</b>
---	--

3- a) The amendment to the articles has been authorized by: / La modification apportée aux statuts a été autorisée par résolution:

- court order
- directors  administrateurs
- shareholders  actionnaires
- members  members

b) pursuant to Subsection 4(1.2) of *The Labour-Sponsored Investment Funds Act (Various Acts Amended)* conformément à l'article

c) and the articles are amended as follows: / et les statuts de la corporation sont modifiés de la façon suivante:

To:

1. Amend the Corporation's Restated Articles of Incorporation dated October 25, 2001 (as amended by Articles of Amendment dated June 27, 2002, Articles of Amendment dated September 27, 2002, Articles of Amendment dated November 12, 2002 and Articles of Amendment dated January 3, 2003), in the manner set out in Schedule 1 hereto.

Date / Date	Signature /Signature	Description of Office: / Description du poste
July , 2005		Receiver and Manager of Crocus Investment Fund pursuant to Order of Court of Queen's Bench, a true copy of which is attached as Schedule 2 hereto

**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 (as amended by Articles of Amendment dated June 27, 2002, Articles of Amendment dated September 27, 2002, Articles of Amendment dated November 12, 2002 and Articles of Amendment dated January 3, 2003) (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 amended as follows:

1. That Section 4 of Part I of Schedule B to the Restated Articles be deleted, and the following be replaced therefor:

**"Election of Directors.** Holders of Common Shares of the Fund, as a group, are entitled to elect at least four (4) persons as directors of the Fund."

2. That the following be added as Subsection 5(e.1) of Part I of Schedule B to the Restated Articles:

"(e.1) when the transfer is necessitated by the holder, or the individual whose Qualifying Trust is the holder of the share, becoming disabled and permanently unfit for work or terminally ill after the share was issued and before the transfer; or"

3. That the following be added as Paragraph 6(b)(ii.1) of Part I of Schedule B to the Restated Articles:

"(ii.1) the holder, or the individual whose Qualifying Trust is the holder of the share, has become disabled and permanently unfit for work or terminally ill after the share was issued; or"

4. That Section 5 of Part II of Schedule B to the Restated Articles be deleted in its entirety.
5. That Section 4 of Part III of Schedule B to the Restated Articles be deleted, and the following be replaced therefor:

**"Election of Directors.** The holder of the issued and outstanding Class L Shares of the Fund is entitled to elect one-half (½) of the directors of the Fund."

6. That the words "a majority" in the second last line of Section 1 of Part V of Schedule B to the Restated Articles be deleted and the words "~~one-half~~ (1/2)" be replaced therefor.