

Crocus Investment Fund

Receiver's Report No. 16

October 6, 2014

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1.0 Background

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

In September 2009, the Receiver recommended, inter alia, a rateable distribution amongst the Class A and Class I shareholders as is contemplated by *The Crocus Investment Fund Act* and the Articles of Incorporation in respect of a winding up. On September 4, 2009, the Court approved a rateable interim distribution (“First Distribution”) to Class A and Class I shareholders of approximately \$54.7 million which equated to \$3.83 per Class A and Class I share. In addition, the Court approved the redemption of the Class L shares.

In June 2011, the Receiver filed Receiver’s Report No.13 with the Court recommending a second interim distribution (“Second Distribution”, collectively with the First Distribution referred to as “First and Second Distributions”) to Class A and Class I shareholders of approximately \$7.9 million. A hearing date was set for June 30, 2011 but the motion was contested by certain former directors of the Fund. Collectively, the former directors did not oppose a Second Distribution to shareholders, but requested that funds continue to be held back for the benefit of the directors. The holdback at issue related to a release and undertaking signed in April 2008 (“Release Agreement”) between the Receiver and the officers and directors as a result of certain Class Action (as defined in Section 4.0) settlements. The holdback totalled \$3.0 million and was available for claim by the officers and directors in the Class Action, however the Receiver maintained the right to contest any claim advanced. Certain of the directors subsequently advised that they had reached settlements regarding proceedings initiated by the MSC, however at the time, two of the directors indicated they had not.

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In the meantime, the Receiver reported that it had made further progress on realizing on the portfolio and recommended that the proposed Second Distribution be increased to \$9.0 million. After hearing arguments over the quantum, if any, of a holdback for the benefit of the former directors, the Court issued an Order authorizing a Second Distribution of \$9.0 million to the Class A and Class I shareholders on December 12, 2011. The Court also ordered a \$1.0 million holdback in favor of the two directors, Mr. Robert Ziegler (“Ziegler”) and Mr. Ron Waugh (“Waugh”) who had not settled with the MSC.

Since the First and Second Distributions, the Receiver has continued to realize on the portfolio of investments and generated additional proceeds. Furthermore, the undertakings and obligations of the Receiver have been reduced such that it is holding sufficient cash for known claims, obligations and ongoing commitments. Accordingly, the Receiver is now in a position where it recommends a third interim distribution (“Third Distribution”) of approximately \$8,573,476 which equates to approximately \$0.60 per Class A and I share.

This report provides an update on the background and support for these recommendations.

2.0 Assets

In the June 30, 2014 Quarterly Report, the Receiver reported that there were three (3) primary assets of the Fund that remained: cash and equivalents totalling approximately \$14.4 million, accounts receivable of approximately \$0.3 million and the remaining Crocus portfolio comprised of 6 investments with an aggregate book value of approximately \$6.1 million.

2.1 Cash and equivalents

2.11 Guaranteed Investment Certificates and Government Bonds

As at June 30, 2014, the Receiver held Guaranteed Investment Certificates and Government Bonds totalling approximately \$10.4 million that were not subject to Court Orders or trust arrangements as described below. A Statement of Receipts and Disbursements as at June 30, 2014 has been attached as Appendix 1.

2.12 Cash in trust - \$1.0 million holdback

As previously discussed, the Court also ordered a \$1.0 million holdback in favor of the Fund directors. Specifically Paragraph 23(c) of the Second Distribution Order provided that:

“\$1.0 million dollars be set aside as a holdback, for any claim for indemnification as contemplated by the Release Agreement dated May 8, 2009, to expire one year and one day after the disposition of the MSC proceedings and appeals therefrom”

Madam Justice McCawley subsequently clarified that this paragraph was solely for the benefit of Ziegler and Waugh, who were the only directors who had not settled with the MSC at the time of the issuance of the Second Distribution Order. On June 19, 2012, the MSC issued an Order which, inter alia, approved a settlement agreement between Waugh and the MSC. On December 18, 2012, the Receiver was provided a notice from the MSC discontinuing its actions against Ziegler. Given that over one year has lapsed, the Receiver is of the view that there is no further requirement for a holdback. Furthermore, the Receiver confirms that all legal expenses of the indemnified officers

and directors have been paid and the Class Actions are complete (Refer to Section 4.0).

2.13 Cash in trust – unclaimed funds

In addition to the above, the Receiver continues to hold approximately \$1.9 million of unclaimed funds from the First Distribution, which includes approximately \$0.2 million in unclaimed Class Action settlements. Furthermore, the Receiver continues to hold approximately \$0.9 million of unclaimed funds from the Second Distribution.

2.14 Cash in trust – undistributed Class Action funds

The Receiver currently holds approximately \$681,952 of funds representing full or partial payments from certain of the Class Action defendants. As at June 30, 2014, the Receiver was only in possession of the amount from Stafford F. Swain & Associates.

| | Amount |
|--------------------------------|-----------|
| PriceWaterhouseCoopers LLP | \$518,523 |
| Fillmore & Riley LLP | 16,102 |
| Stafford F. Swain & Associates | 147,328 |
| Total | \$681,953 |

The Receiver will be distributing these amounts to Class A shareholders should a Third Distribution be approved.

2.2 Accounts receivable

As at June 30, 2014, there were accounts receivable totalling approximately \$0.3 million. The majority of the balance consists of amounts due from the sale of one (1) portfolio investment. In addition, the balance includes accrued interest on marketable securities and portfolio investments.

2.3 Investments

At the commencement of the receivership, there were 46 investments in the Crocus portfolio with a gross carrying value of \$64.1 million. As at June 30, 2014 the Receiver had realized upon 40 of the investments with a gross carrying value of \$58.0 million. There are six (6) investments remaining with a gross carrying value of \$6.1 million. The status of the remaining investments is as follows:

1. Novra Technologies Inc. is an investment held by the Fund representing both equity and debt obligations due to Crocus. The Receiver and the investee have entered into a long term agreement for repayment of the indebtedness.
2. Crocus is an investor in Manitoba Science & Technology Fund (“MS&T”) which is a limited partnership holding several science and technology investments. Crocus is the sole owner of the General Partner and the limited partners gave the General Partner a mandate to wind down the partnership. Crocus and MS&T’s holdings include Diamedica Inc., Genesys Ventures Inc. and ST Partnership. There are numerous interrelationships amongst these entities. In some cases, the ability to negotiate exits from MS&T’s science and technology investments is limited given that certain of the companies are publicly traded with limited market liquidity. As a result, the timing of a complete disposition is unknown.
3. On June 19, 2014, the Receiver caused Crocus to commence proceedings against Leon Norman Ledohowski (“Leo”), LRC Holding Corporation Inc., and Canad Corporation Ltd. (“Canad”) as Respondents in a Court of Queen’s Bench filing. In its Notice of Application, Crocus sought various forms of relief including declarations that Leo had exercised his powers as a director of Canad, and that Canad had conducted its business and affairs in a manner that was oppressive of, or unfairly prejudicial to, or which unfairly disregarded, the interests of Crocus as a shareholder of Canad. The Notice of Application also sought an Order that Canad be liquidated and dissolved and that the proceeds from such liquidation be distributed to the shareholders of Canad. The Notice of Application was supported by an Affidavit sworn by the undersigned, in his capacity as Senior Vice-President of the Receiver. The Notice of Application was scheduled for hearing by the presiding Motions Court Judge on Wednesday, September 3, 2014. By agreement, the Notice was adjourned to the contested list and the Respondents advised that they would file affidavit evidence before the end of September 2014, which they have not yet done.

3.0 Creditors

3.1 Known creditors

Since its appointment, the Receiver has funded and/or settled all of Crocus' obligations/commitments of which it is aware, other than those denoted as outstanding in this report. The only substantive contractual commitment of the Fund is for the lease of real property at 211 Bannatyne which terminates on September 30, 2016. The gross amount payable for the base rent for the remaining term of the lease is approximately \$0.8 million. In addition there is a claim by the agent for the landlord for past building operating costs of approximately \$0.1 million which is being disputed by the Receiver. In order to reduce the overall rental obligation, the Receiver sublet the majority of the space over various terms, some of which extend to August 31, 2016. The balance of the premises is being used to house the shareholder services and accounting operations for Crocus.

The Receiver is aware of one (1) outstanding indemnity provision provided by Crocus relating to an investee company.

3.2 Unknown creditors/claims process

Prior to the First Distribution and pursuant to the Order of the Court dated July 22, 2009, the Receiver was authorized to ascertain if there were any parties who may have any claim against the Fund in priority to the shareholders. Specifically, the Receiver was directed to:

1. Send a claim form and instruction letter to the last known address of any potential claimants of whom the Receiver had notice or knowledge;
2. Post the form of Notice approved in the July 22, 2009 Order on the Receiver's website;
3. Post the form of Notice approved in the July 22, 2009 Order as an advertisement in the Winnipeg Free Press; and

4. Provide a claim form to any person who advised the Receiver of his or her intention to file a claim.

The Receiver carried out these directions and no additional claims ranking in priority to the shareholders were identified. Furthermore, the Receiver is not aware of any additional claims against Crocus that would rank in priority to the shareholders. Accordingly, the Receiver is of the view that no additional claims procedures are necessary in considering whether or not to allow a Third Distribution.

The Receiver also notes that, subject to the right of a claimant to seek leave to commence an action on the basis of recently discovered material facts of a decisive nature, *The Limitations of Actions Act* limits the time within which such actions might generally be brought against Crocus to six (6) years from when the cause of action arose. Given that trading in the Crocus shares ceased in December 2004, and the Receiving Order was made on June 28, 2005, the likelihood of claims being put forward that are not already known is remote.

3.3 Receiver undertakings

The only outstanding indemnity of the Receiver relates to the Class Action settlement with PriceWaterhouseCoopers LLP and is limited to \$0.1 million.

3.4 Receivership expenses

The Receiver continues to incur costs to administer the receivership. These consist primarily of rent, the costs of maintaining a shareholder services department, and professional fees.

4.0 Class action

Approximately two weeks following the appointment of the Receiver, a Class Action statement of claim (the “Class Action”) was issued against Crocus, Crocus Capital Inc. and 21 other defendants. The claim sought \$150 million in damages from the defendants for negligence and oppression, as well as punitive and exemplary damages. A second class action was subsequently filed against the Government of Manitoba (collectively referred to as the “Class Actions”). Certain of the defendants, namely certain former directors and officers of Crocus, Wellington West Inc., and BMO Nesbitt Burns Inc., claimed written or statutory indemnities from Crocus for any amounts which they might have been obliged to pay to the Class Actions plaintiffs.

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

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

A settlement was reached and approved between the Class Actions plaintiff and Stafford on November 15, 2011 in the gross sum of \$250,000. After deduction for fees and disbursements of the Class Actions plaintiff, the Receiver received the net settlement funds in the approximate amount of \$147,000.

Fillmore defended and sought to have the claim against them struck. Fillmore’s motion was heard by the Court of Appeal and the claim by the Class Actions plaintiff was upheld. The Class Actions plaintiff had filed a motion to compel Fillmore to produce an affidavit of documents and to determine whether certain documents in Fillmore’s

possession, including its solicitors' file, were privileged. Subsequently, the Class Actions plaintiff advised that a settlement with Fillmore had been reached in the approximate amount of \$35,000. After deduction for fees and disbursements of the Class Actions plaintiff, the Receiver received the net settlement funds in the approximate amount of \$16,000.

One of the previous settlement agreements was with PriceWaterhouseCoopers LLP ("PwC"), the Fund's former auditors. As part of the settlement agreement, the Class Actions plaintiff was required to hold \$0.5 million (the "Holdback Amount") in trust to compensate or reimburse PwC for reasonable fees, disbursements or other expenses or charges that PwC may incur subsequent to the settlement agreement as a result of the assigned claim or any related proceeding, or its involvement in a proceeding commenced by the Receiver against any Crocus investee. Pursuant to the settlement agreement, the Class Actions plaintiff was to apply to Court following the conclusion of the Class Actions for an order releasing the Holdback Amount for payment to the Receiver. Counsel for the Class Actions plaintiff asked the Receiver to apply to Court for release of the Holdback Amount in its place. The Receiver had the application heard on September 19, 2014 and the release of the Holdback Amount was approved and approximately \$518,000 was paid to the Receiver. With this approval the Class Actions have been finalized.

5.0 Share capital

The following is a recap of the capitalization of the Fund as was reported to the Court prior to the First and Second Distributions.

5.1 Classes of shares

The capitalization of the Fund as at the date of receivership was as follows:

- (a) 200,000 Class G Shares issued for \$2.0 million held by the Province of Manitoba;
- (b) 20 Class L Shares issued for \$200 held by Manitoba Federation of Labour;
- (c) 69,126 Series Two Class I Shares issued for \$800,145 held by three (3) different shareholders; and
- (d) 14,220,000 Class A Shares (common shares) issued for \$185,214,324 held by 33,569 individual shareholders.

The Class A Shares were available for purchase by the general public within Manitoba. Attached as Appendix 2 and Appendix 3 are copies of the Restated Articles of Incorporation of Crocus Investment Fund dated October 25, 2001, and Articles of Amendment dated January 3, 2003, respectively. Attached as Appendix 4 is a copy of the Crocus Investment Fund Act as it stood on the date of receivership. Attached as Appendix 5 is a copy of the Crocus Investment Fund Act as it stands today.

5.2 Cessation of trading

On December 10, 2004, Crocus announced that it had initiated an organizational review and comprehensive assessment of the value of its portfolio. Furthermore, Crocus received regulatory approval to halt sales and suspend redemptions of its shares during the review. Accordingly, no shareholder of Crocus has been able to redeem their shares since that time.

5.3 Class G shareholder

The Restated Articles of Incorporation dated October 25, 2001 state the following with respect to the Class G Shares held by the Province of Manitoba:

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.

Prior to Court approval of the First Distribution, the Receiver corresponded with the Province of Manitoba who advised that they had no claim to make to any share of the proposed distribution on account of their Class G Shares.

5.4 Class L shareholder

The Restated Articles of Incorporation dated October 25, 2001 state the following with respect to the Class L Shares held by the Manitoba Federation of Labour:

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 & 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.

Pursuant to the First Distribution Order, the Receiver offered to refund the \$200 paid by the Manitoba Federation of Labour. The Manitoba Federation of Labour accepted the funds. Accordingly, it is the view of the Receiver that no amount is due for any subsequent distribution.

5.5 Class I shareholders

The Restated Articles of Incorporation dated October 25, 2001 reference two series of Class I Shares. A third series of Class I Shares was subsequently authorized. As at the date of receivership the only Class I Shares issued were the Series Two Class I Shares. The Series Two Class I Shares are held by the Manitoba Government Employees Union, Workers Compensation Board of Manitoba, and United Health Services Corporation, carrying on business as Manitoba Blue Cross.

The Restated Articles of Incorporation state as follows regarding the Series Two Class I Shares:

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 voluntarily or involuntarily, or any other distribution of the assets of the Fund among its shareholders for the purpose of winding up its affairs.

5.6 Class A shareholders

The Restated Articles of Incorporation dated October 25, 2001 state the following with respect to the Class A Shares:

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.

5.7 Summary

Given that the Class L Shares were repaid in full during the First Distribution, and the Class G shareholder has expressly opted not to participate in any distribution, the requested Third Distribution will be for the benefit of the Class I and Class A shareholders.

6.0 Proposed distribution

6.1 Rateable distribution

Prior to the First Distribution, the Receiver notified all Class A shareholders of its intention to make application to the Court during September 2009 for authority to make an interim distribution to the Class A and Class I shareholders of Crocus. The notification was through a published notice in the Winnipeg Free Press, Brandon Sun and the Globe and Mail as well as the Receiver's website. The notice and letter advised that the proposed interim distribution would be on a rateable basis to Class A and Class I shareholders as follows:

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

Five shareholders responded to the notice regarding the proposed interim distribution and the responses were submitted to the Court. None of the responses appeared to constitute opposition to the First Distribution. The Distribution Order for the First and Second Distributions ordered payment on a rateable basis. The Receiver recommends the same treatment for the Third Distribution.

Should the Court approve a Third Distribution, Class A shareholders who continue to maintain registered plans will have the option of transferring their portion of the distribution to another tax deferred account or deregistering the funds which would cause the funds to be taxable.

6.2 Quantum of funds

The Receiver proposes a distribution of approximately \$8,573,476 ((14,220,000 + 69,126) x .60) or 60 cents per Class A and I share which would leave approximately \$2.8 million within the receivership estate. In determining the quantum of funds available for the Third Distribution, the Receiver concluded that sufficient funds need to be held back for certain obligations and commitments and that there are various unresolved matters involving Crocus and the Receiver which are summarized as follows:

1. Crocus' lease obligation for its premises at 211 Bannatyne continues until September 2016 and there is currently outstanding litigation relating to operating costs.
2. The Receiver has entered into litigation with one (1) of the investments. The timing, outcome and costs relating to this matter are unknown. Furthermore, it is unknown whether further litigation will arise with any of the remaining investments.
3. One of the remaining investments is primarily a debt obligation where the Receiver and the Investee(s) have entered into a long term agreement for the Investee to repay the debt.
4. Certain of the remaining investments do not have defined exits available to Crocus and the Receiver. Accordingly, the timing, outcome and costs relating to realizing on these investments are unknown.
5. There are ongoing monitoring requirements for all of the remaining investments.
6. The Receiver will be required to continue to maintain shareholder services and accounting functions until the completion of the receivership.

Accordingly, the Receiver is uncertain as to the timing of a final distribution, if any, and finalization of the receivership given the various outstanding matters detailed above.

6.3 Tax credit claw back

When a shareholder purchased Class A Shares, the shareholder was, except for certain specific exemptions, restricted from redeeming or transferring the shares for a period of eight (8) years. As at the date of this report, the hold period has expired for all

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of the Class A shareholders. The Receiver previously corresponded with the Province of Manitoba which indicated that it would not claw back any of the tax credit which would have otherwise been payable as a result of the early redemption. There is no Federal tax claw back as the quantum of Federal tax is a function of the amount of Provincial tax clawed back.

7.0 Recommendation

After the First and Second Distributions, the Receiver continued to realize on the balance of the portfolio of investments. Furthermore, the obligations and undertakings of the Fund and the Receiver have been reduced. The Receiver has not become aware of any additional claims since undertaking a claims process in the summer of 2009. After making provision for the remaining claims of Crocus and the Receiver, there remain surplus funds. As the Receiver is not able to precisely predict when the final investments will be realized, given the pending litigation and status of investments as outlined above, it is the Receiver's opinion that a Third Distribution is appropriate and is consistent with the liquidating provisions of the Fund.

The Receiver recommends that the sum of \$8,573,476 be divided among Class A and Class I shareholders on a rateable basis as is contemplated by *The Crocus Investment Fund Act* and the Articles of Incorporation in respect of a winding up. This amount equates to \$0.60 per Class A and Class I Share. Consistent with the First and Second Distributions, there has been no formal winding up proceeding taken, however the Receiver recommends such a distribution since it is consistent with the intent of the governing legislation and constating documents when Crocus ceased to carry on business.


Should the Court approve a Third Distribution, it is anticipated that it would take place over the fall of 2014.

8.0 General

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

Respectfully submitted this 6th day of October, 2014.

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



Per: S. P. Peleck

Senior Vice-President

Appendix 1 –
Statement of Receipts and
Disbursements (June 30, 2014)

**Deloitte Restructuring Inc., Receiver and Manager of
CROCUS INVESTMENT FUND
Statement of Receipts and Disbursements
For the Period June 28, 2005 to June 30, 2014**

| | <u>June 28, 2005 to March 31, 2012</u> | <u>April 1, 2012 to June 30, 2014</u> | <u>Total</u> |
|--|--|---|-----------------------|
| Receipts | | | |
| Cash and Short Term Investments on Hand | \$ 23,363,012 | \$ - | \$ 23,363,012 |
| Contract Back Office Services | 518,463 | - | 518,463 |
| Dividends-Portfolio | 657,483 | - | 657,483 |
| Income Tax Refund | 283,503 | 192,040 | 475,543 |
| Insurance Claim and Premium Refund | 20,662 | - | 20,662 |
| Interest-Portfolio | 1,640,835 | 192,894 | 1,833,729 |
| Interest-Short Term Investments | 7,376,492 | 264,745 | 7,641,237 |
| Investment Principal Repayments | 2,890,163 | 135,394 | 3,025,557 |
| Management Fees | 1,118,517 | 88,263 | 1,206,780 |
| Proceeds on Disposal of Investments | 52,442,430 | 4,440,702 | 56,883,132 |
| Rent/Sub-Lease | 1,804,884 | 613,973 | 2,418,857 |
| Sundry | 297,476 | - | 297,476 |
| Pre-Receivership Accounts Receivable | 1,247,463 | - | 1,247,463 |
| Class Action Settlements | 6,812,978 | 147,328 | 6,960,306 |
| Total Receipts | <u>\$ 100,474,361</u> | <u>\$ 6,075,339</u> | <u>\$ 106,549,700</u> |
| Disbursements | | | |
| Advances to Investees | \$ 265,132 | \$ - | \$ 265,132 |
| Capital Tax | 200,257 | - | 200,257 |
| Computer, Telephone and Office Expense | 719,488 | 55,864 | 775,352 |
| Consulting Fees | 359,150 | - | 359,150 |
| Employee Pension | 442,922 | - | 442,922 |
| Insurance - Indemnification | 141,608 | 16,388 | 157,996 |
| Investee Guarantee and Indemnification | 1,344,677 | - | 1,344,677 |
| Investment Expenses | 218,497 | 295 | 218,792 |
| Legal Fees | 2,038,338 | 172,219 | 2,210,557 |
| Disbursements | 55,735 | 5,881 | 61,616 |
| Taxes | 261,922 | 21,440 | 283,362 |
| Legal Fees - Indemnification | 651,982 | 76,423 | 728,405 |
| Disbursements | 11,216 | 1,769 | 12,985 |
| Taxes | 50,057 | 9,254 | 59,311 |
| Payroll & Benefits | 1,735,550 | - | 1,735,550 |
| Receiver and Manager Fees | 7,130,967 | 890,675 | 8,021,642 |
| Taxes | 407,821 | 44,534 | 452,355 |
| Rent | 2,899,455 | 981,230 | 3,880,685 |
| Settlements | 579,116 | - | 579,116 |
| Shareholder Services | 1,317,222 | 466,670 | 1,783,892 |
| Pre-Receivership Payables and Accruals | 914,385 | - | 914,385 |
| Total Disbursements | <u>21,745,497</u> | <u>2,742,642</u> | <u>24,488,139</u> |
| Excess of Receipts over Disbursements prior to: | <u>78,728,864</u> | <u>3,332,697</u> | <u>82,061,561</u> |
| 1st Interim Distribution - Class "A" Shares | 52,305,250 | 453,393 | 52,758,643 |
| 1st Interim Distribution - Class "I" & "L" Shares | 264,955 | - | 264,955 |
| Class Action Settlements | 6,537,507 | 56,431 | 6,593,938 |
| 2nd Interim Distribution - Class "A" Shares | 7,545,272 | 482,951 | 8,028,223 |
| 2nd Interim Distribution - Class "I" Shares | 43,539 | - | 43,539 |
| Excess of Receipts over Disbursements | <u>\$ 12,032,341</u> | <u>\$ 2,339,922</u> | <u>\$ 14,372,263</u> |
| Represented by: | | | |
| Short Term Investments and Bonds | | | \$ 10,373,693 |
| Cash in Trust - Holdback | | | 1,000,000 |
| Cash in Trust - 1st Interim Distribution | | | 1,704,057 |
| Cash in Trust - 2nd Interim Distribution | | | 928,146 |
| Cash in Trust - Class Action Settlements | | | 219,039 |
| Cash in Trust - Class Action Settlements | | | 147,328 |
| | | | <u>\$ 14,372,263</u> |

Appendix 2 –
Articles of Incorporation of Crocus
Investment Fund (October 25, 2001)



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

[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. 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 | Signature / Signature | Description of Office: / Description du poste |
| October 24, 2001 | <i>Jim L. Kuen</i> | President and Chief Executive Officer |

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

5. Directors

| Name in Full | Address in Full |
|--------------------|--|
| ROBERT HILLIARD | 155 Borebank Street Winnipeg, Manitoba R3N 1E1 |
| PETER OLFERT | 432 Dunrobin Avenue Winnipeg, Manitoba R3K 0T8 |
| CHARLES E. CURTIS | 596 South Drive Winnipeg, Manitoba R3T 0B1 |
| DAVID G. FRIESEN | Highway 30, P.O. Box 720 Altona, Manitoba R0G 0B0 |
| DIANE BERESFORD | 565 Whytewold Road Winnipeg, Manitoba R3J 2W8 |
| WALDRON FOX-DECENT | 4553 Roblin Boulevard Winnipeg, Manitoba R3R 0G2 |
| LEA BATURIN | 26 Bramton Street Winnipeg, Manitoba R2M 4P8 |
| ALBERT R. BEAL | R.R. 2, Box 15 Lorette, Manitoba R0A 0Y0 |
| JOHN CLARKSON | 42 Harradence Close Winnipeg, Manitoba R3Y1K5 |

SCHEDULE "B"
TO THE RESTATED ARTICLES OF INCORPORATION
OF CROCUS INVESTMENT FUND

The Corporation is currently authorized to issue Class A Common Shares, Class G Special Shares, Class L Special Shares and Class I Special Shares (Series One and Series Two), which have attached thereto the following rights, privileges, restrictions and conditions:

1. **Definitions.** Where used herein, the following words and phrases, unless there is something in the context otherwise inconsistent therewith, shall have the following meanings, respectively:

"**Act**" means *The Corporations Act* (Manitoba), as amended from time to time;

"**Board**" means the board of directors of the Fund;

"**Class G Shares**" means Class G Special Shares in the capital of the Fund;

"**Class I Shares**" means the Class I Special Shares in the capital of the Fund;

"**Class L Shares**" means Class L Special Shares in the capital of the Fund;

"**Common-Law Partner**" has the same meaning as in the *Income Tax Act* (Canada);

"**Common Shares**" means Class A Common Shares in the capital of the Fund;

"**Fund**" means Crocus Investment Fund, established by Subsection 3(1) of the *Fund Act*;

"**Fund Act**" means *The Crocus Investment Fund Act* (Manitoba), as amended from time to time;

"Qualifying Trust", in relation to an individual, means a trust governed by a registered retirement savings plan or a registered retirement income fund where the annuitant under the plan or fund is the individual or his or her spouse or Common-Law Partner;

"Valuation Date" means the last business day of each week, or such other date or dates determined by by-law of the Board.

PART I

COMMON SHARES

The Common Shares shall have attached thereto the following rights, privileges, restrictions and conditions:

1. **Limitations on the issue of Common Shares.** A Common Share shall be issued only to an individual or a trust governed by a registered retirement savings plan, as that term is defined in the *Income Tax Act* (Canada).
2. **Dividends.** The holder of a Common Share shall be entitled to receive non-cumulative dividends in an amount determined by and at the discretion of the Board from time to time.
3. **Voting Rights.** The holder of a Common Share shall be entitled to receive notice of and to attend all meetings of the shareholders of the Fund and each such holder shall be entitled to one vote at any meeting of shareholders of the Fund at which holders of Common Shares are entitled to vote, without regard to the number of Common Shares owned by the holder.

4. **Election of Directors.** Holders of Common Shares, as a group, are entitled to elect two persons as directors of the Fund.

5. **Restrictions on Transfer.** A Common Share may not be transferred except as follows:

- (a) by an individual to
 - (i) his or her brother , sister, parent, child, spouse or Common-Law Partner, or former spouse or Common-Law Partner;
 - (ii) the trustee of a Qualifying Trust for the individual;
- (b) by the trustee of a Qualifying Trust for an individual to
 - (i) the individual or his or her brother, sister, parent, child, spouse or Common-Law Partner, or former spouse or Common-Law Partner;
or
 - (ii) the trustee of another Qualifying Trust for the individual;
- (c) as a consequence of the death of an individual, to the individual's estate or to his or her heirs;
- (d) to the Fund on a repurchase of the share;
- (e) when the transfer is necessitated by an involuntary loss or interruption of employment of the holder or of an individual whose Qualifying Trust is the holder of the share, and the loss or interruption of employment is not compensated through employment insurance or workers' compensation benefits; or

- (f) when the transfer is at least
 - (i) seven years after the share's original acquisition date, if that date is before June 1997; or
 - (ii) eight years after the share's original acquisition date, if that date is after May 1997.

6. Retraction.

- (a) Except as otherwise provided in this Section 6, a holder of a Common Share is only entitled to require the Fund to repurchase the share on or after the eighth anniversary of its original acquisition date if that acquisition date is after May 1997, or on or after the seventh anniversary of its original acquisition date if that acquisition date is before June 1997;
- (b) A holder of a Common Share shall be entitled to require the Fund to repurchase the share if the Board is satisfied that:
 - (i) the holder acquired the share as a consequence of the death of the individual to whom or to whose Qualifying Trust the share was issued;
 - (ii) the holder, or an individual from whom the holder acquired the share or whose Qualifying Trust is the holder of the share, has experienced an involuntary loss or interruption of employment that was not compensated through employment insurance benefits or workers compensation benefits; or

- (iii) the holder requested the repurchase within 60 days after the share was issued to the holder;
- (c) Where the holder of a Common Share requests that the Fund repurchase the share pursuant to paragraph 6(b)(iii) of this Part, the holder shall be deemed to have rescinded his/her subscription for the share so repurchased and the share shall be deemed for all purposes never to have been issued;
- (d) Subject to the provisions of the Act where, pursuant to paragraph 6(b)(iii) of this Part, a holder of a Common Share is entitled to require the Fund to repurchase that share and has given to the Fund a request that such share be repurchased, the Fund shall repurchase the holder's Common Share on the Valuation Date on which the request for repurchase is tendered on the Fund where it is received before 3:00 p.m. (Winnipeg time) on such date, or, if such request for repurchase is not received on a Valuation Date or is received after 3:00 p.m. (Winnipeg time) on a Valuation Date, on the next Valuation Date immediately following the date upon which the request for repurchase is tendered on the Fund. If on any Valuation Date the Fund is not able to repurchase all of the shares for which it has received requests for repurchase, then the Fund shall repurchase rateably amongst the requests it has received, as many of the Common Shares as it is lawfully entitled to repurchase, and the balance of shares for which it has received such a request shall be considered to have been tendered for repurchase at the immediately following Valuation Date;
- (e) On any Valuation Date, the repurchase price of a Common Share shall be:

- (i) if the repurchase is pursuant to a request made within sixty (60) days after the date upon a share is issued, the amount of the consideration for which the Common Share was issued; and
 - (ii) in any other case, the fair value of a Common Share on the Valuation Date as determined by the Board.
- (f) Where, at any time, the holder of a Common Share gives notice to the Fund requiring the Fund to purchase such share pursuant to paragraph 6(b)(iii) of this Part, paragraph 6(b)(iii) will not apply to permit the holder to require the Fund to repurchase any Common Shares acquired by the holder after the date on which the notice is given.
- (g) The by-laws of the Fund may establish conditions precedent to the right of a holder of Common Shares to redeem a Common Share upon the occurrence of the event described in paragraph 6(b)(ii) of this Part.

7. **Liquidation, Dissolution or Winding-Up.** Subject to the prior rights of the holders of any shares or series of shares ranking senior to the Common Shares with respect to priority in the distribution of property and assets, on the liquidation, dissolution or winding-up of the Fund, the holders of the Common Shares shall be exclusively entitled to receive rateably, share for share, any remaining property or assets of the Fund.

PART II

CLASS G SHARE PROVISIONS

The Class G Shares shall have attached thereto the following rights, privileges, restrictions and conditions:

1. **Definitions.** Where used in this Part the following words and phrases, unless there is something in the context otherwise inconsistent therewith, shall have the following meanings, respectively:

- (a) **"Accumulated Losses"** means, at any particular time, the net loss of the Fund incurred in a month, if any, calculated in accordance with GAAP, subject to the Adjustment, aggregated for all months in which a net loss has occurred ended prior to the particular time;
- (b) **"Adjustment"** means such adjustments in respect of the revenues and expenses of the Fund in a month as may be considered appropriate by management of the Fund in consultation with the auditors of the Fund for the purposes of normalizing revenues and expenses of the Fund over the financial year;
- (c) **"Class G Liquidation Entitlement"** means, in respect of a Class G Share, the sum of \$1.00 per Class G Share multiplied by the number of Class G Shares issued and outstanding, minus the Accumulated Losses, divided by the number of Class G Shares issued and outstanding;
- (d) **"GAAP"** means generally accepted accounting principles applicable to the Fund applied on a consistent basis from year to year.

2. **Limitation on the Issue of Class G Shares.** The Class G Shares shall be issued only to the Minister of Finance in trust for Her Majesty in right of Manitoba.

3. **Dividends.** The holder of Class G Shares shall not be entitled to receive dividends.

4. **Voting Rights.** The holder of Class G Shares shall be entitled to receive notice of and to attend all meetings of the shareholders of the Fund and shall be entitled to one vote at any meeting of shareholders of the Fund at which the holder of Class G Shares is entitled to vote, without regard to the number of shares owned by the holder.
5. **Election of Directors.** The holder of the issued and outstanding Class G Shares of the Fund shall be entitled to elect one person as a director of the Fund.
6. **Restrictions on Transfer.** Class G Shares may not be transferred by the holder thereof without the prior approval of the Lieutenant Governor in Counsel.
7. **Retraction and Conversion.** Class G Shares are not redeemable at the option of either the holder of the Class G Shares or the Fund.
8. **Liquidation, Dissolution or Winding-Up.** Subject to the rights of the holders of the Class I Shares, on the liquidation, dissolution or winding-up of the Fund, the holder of Class G Shares and the holder of Class L Shares shall receive rateably, share for share, without preference or distinction the Class G Liquidation Entitlement and the Class L Liquidation Entitlement (as hereinafter defined), respectively, before any further property or assets of the Fund are distributed.

PART III

CLASS L SHARES

The Class L Shares shall have attached thereto the following rights, privileges, restrictions and conditions:

1. **Limitations on the issue of Class L Shares.** Class L Shares shall be issued only to the Manitoba Federation of Labour.

2. **Dividends.** The holder of Class L Shares shall not be entitled to receive dividends.
3. **Voting Rights.** The holder of Class L Shares shall be entitled to receive notice of and to attend all meetings of the shareholders of the Fund and each such holder shall be entitled to one vote at any meeting of shareholders of the Fund at which holders of Class L Shares are entitled to vote, without regard to the number of Class L Shares owned by the holder.
4. **Election of Directors.** The holder of the issued and outstanding Class L Shares of the Fund is entitled to elect four (4) directors to the Board. The holder of the Class L Shares of the Fund may elect one (1) additional director for each director elected by the holders of the Class I Shares or appointed by the Board, and each such additional director shall hold office until the conclusion of the next meeting at which a director is elected by the holders of the Class I Shares, or appointed by the Board.
5. **Restriction on Transfer.** Class L Shares may not be transferred by the Manitoba Federation of Labour without the prior approval of the Lieutenant Governor in Council.
6. **Retraction.** The Fund shall not purchase, redeem or otherwise acquire any of its issued Class L Shares.
7. **Liquidation, Dissolution or Winding-Up.** Subject to the rights of the holders of the Class I Shares, on the liquidation, dissolution or winding-up of the Fund, the holder of Class G Shares and the holder of Class L Shares shall receive rateably, share for share, without preference or distinction the Class G Liquidation Entitlement and the Class L Liquidation Entitlement, respectively, before any further property or assets of

the Fund are distributed. The "Class L Liquidation Entitlement", in relation to a Class L share, means the amount paid by the holder for the issue of the share.

PART IV

CLASS I SHARES

The Class I Shares and the different series thereof, shall have attached thereto the following rights, privileges, restrictions and conditions:

1. **Definitions.** Where used in this Part (including Part IV(A) and (B)) the following words and phrases, unless there is something in the context otherwise inconsistent therewith, shall have the following meanings, respectively:

"Net Asset Value Per Common Share" means the fair value of each Common Share of the Fund as at each Valuation Date as determined by the Board in accordance with the rules set out in the Fund Act and in the valuation policies of the Fund, all as described in the Prospectus,

"Prospectus" means the Prospectus of the Fund for the continuous offering for sale to the public of Common Shares of the Fund dated January 12, 2001, as amended from time to time and any renewal prospectus;

"Redemption Amount" means, in relation to Series One Shares the price payable by the Fund to a holder of a Series One Share for the redemption of a Series One Share and is an amount equal to the Net Asset Value Per Common Share on the Redemption Date, multiplied by the number of Series One Shares being redeemed and, in relation to Series Two Shares, means the price payable by the Fund to a holder of a Series Two Share for the redemption of a Series Two Share and is an amount equal to the Net Asset Value Per Common Share

on the Redemption Date, multiplied by the number of Series Two Shares being redeemed;

"Redemption Date" the date upon which the Fund shall redeem a Series One Share or a Series Two Share, as the case may be, pursuant to a Redemption Request and shall be the Valuation Date on which the Redemption Request is tendered to the Fund where it is received before 3:00 p.m. (Winnipeg time) on such date, or, if such Redemption Request is not received on a Valuation Date or is received at or after 3:00 p.m. (Winnipeg time) on a Valuation Date, on the next Valuation Date following the date on which the Redemption Request is received by the Fund.

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

"Series One Provisions" means, in addition to the rights, privileges, restrictions, conditions and limitations attaching to the Class I Shares as a class, the rights, privileges, restrictions and conditions attaching to the Series One Shares as described herein;

"Series One Shares" means the first series of Class I Shares in the capital stock of the Fund designated by the Board as Series One Class I Special Shares;

"Series Two Provisions" means, in addition to the rights, privileges, restrictions, conditions and limitations attaching to the Class I Shares as a class, the rights, privileges, restrictions and conditions attaching to the Series One Shares as described herein;

"Series Two Shares" means the second series of Class I Shares in the capital stock of the Fund designated by the Board as Series Two Class I Special Shares;

"Valuation Date" means the last business day of each week, or such other date or dates as may be determined by the Fund from time to time.

2. **Rights, Privileges, Restrictions and Conditions attaching to Class I Shares.**

Class I Shares shall be issued only to institutional or corporate investors, the Minister of Finance in trust for Her Majesty in right of Manitoba, or the Minister of Finance (Canada) in trust for Her Majesty in right of Canada. The Class I Shares may at any time and from time to time be issued in one or more series. The Board may fix before issue the number of Class I Shares in each series, the designation, rights, privileges, restrictions and conditions attaching to the Class I Shares of each series, including, without limitation, any voting rights, any right to receive dividends, which may be cumulative or non-cumulative and variable or fixed and may include a provision for the means of determining the amount of such dividends or the dates of payment thereof, any terms and conditions of redemption or purchase, any conversion rights, any rights on the liquidation, dissolution or winding-up of the Fund, any sinking fund provisions, any restrictions on transfer and other provisions not inconsistent with the Fund Act.

3. **Dividends and Distributions.** The Class I Shares of each series may, with respect to the payment of dividends and the distribution of assets in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, have such preferences over the Class I Shares of every other series and be entitled to such preference over the Common Shares, Class G Shares and Class L Shares as the Board may fix before the issue thereof.

4. **Voting.** A holder of a Class I Share of a series shall only be entitled to vote in accordance with the voting rights attached to such series of Class I Shares as

established by the Board at the time of their issue. The voting rights established by the Board in respect of a series of Class I Shares shall provide that a holder is limited, except in respect to election of directors, if any, in which that series is entitled to participate, to one vote at any meeting of shareholders of the Fund at which a holder of Class I Shares series is entitled to vote, without regard to the number of shares owned by the holder.

5. **Restriction on Transfer.** A Class I Share may not be transferred if such transfer is in contravention of the restrictions on transfer, if any, specified by the Board as permitted by Section 2 of this Part.

6. **New Series.** Upon the creation of any Series of Class I Shares, Articles of Amendment setting forth the rights, privileges, restrictions and conditions attaching to the Class I Shares of the Series shall be filed under the Act.

PART IV(A)

SERIES ONE PROVISIONS

The Series One Class I Shares shall have attached thereto, in addition to the rights, privileges, restrictions, conditions and limitations attaching to the Class I Shares as a class, the following rights, privileges, restrictions and conditions:

1. **Dividends.** Subject to the prior rights of any shares or series of shares ranking senior to the Series One Shares with respect to priority in the payment of dividends, the Series One Shares shall participate equally, share for share in any dividend declared by the Board on Common Shares (and with all shares or series of shares ranking equally to the Common Shares with respect to the payment of dividends), and all dividends which the Board may declare and pay in any fiscal year of the Fund on Common Shares shall also be declared and paid in equal amounts per share and at the same time or times on all Series One Shares at the time issued and outstanding, without preference

or distinction.

2. **Voting Rights.** A holder of a Series One Shares shall be entitled to receive notice of and to attend all meetings of the shareholders of the Fund and, except with respect to the election of a director as provided in Section 3 of this Part IV(A), each such holder shall be entitled to one vote at any meeting of shareholders of the Fund at which holders of Series One Shares are entitled to vote, without regard to the number of Series One Shares owned by the holder.
3. **Election of Directors.** Holders of Series One Shares shall not be entitled to elect or to vote in respect of the election of any directors of the Fund
4. **Restriction on Transfer.** A Series One Share shall not be transferred by the holder thereof.
5. **Retraction Rights.** A holder of a Series One Share shall be entitled to require the Fund to redeem at any time or from time to time all or any of the Series One Shares owned by the holder by tendering to the Fund, at its registered office, the certificate or certificates representing the Series One Share(s) which the holder desires to have the Fund redeem, together with a Redemption Request, and unless such redemption is contrary to any applicable law, the Fund shall redeem such Series One Share(s) by paying or causing to be paid to or to the order of the holder the Redemption Amount for the Series One Share(s) to be redeemed, together with an amount equal to all dividends declared thereon and unpaid on the Redemption Date.
6. **Liquidation, Dissolution or Winding-Up.** Subject to the prior rights of the holders of any shares or series of shares ranking senior to the Series One Shares with respect to priority in the distribution of property and assets, the holders of Series One Shares shall be entitled to share equally, share for share, without preference or distinction, with the holders of Common Shares (and with the holders of all shares or

series of shares ranking equally to the Common Shares with respect to the distribution of property and assets) in all remaining property and assets of the Fund in the event of the liquidation, dissolution or winding-up of the Fund, whether voluntary or involuntary, or any other distribution of the assets of the Fund among its shareholders for the purposes of winding up its affairs.

7. **Amendments to Series One Provisions.** The Series One Provisions may be repealed, altered, modified, amended or varied only with the prior approval of the holders of the Series One Shares in addition to any other approval required by the Act or any other statutory provision of like or similar effect applicable to the Fund from time to time in force.

PART IV(B)
SERIES TWO PROVISIONS

The Series Two Class I Shares shall have attached thereto, in addition to the rights, privileges, restrictions, conditions and limitations attaching to the Class I Shares as a class, the following rights privileges, restrictions and conditions

1. **Dividends.** Subject to the prior rights of any shares or series of shares ranking senior to the Series Two Shares with respect to priority in the payment of dividends, the Series Two Shares shall participate equally, share for share in any dividend declared by the Board on Common Shares (and with all shares or series of shares ranking equally to the Common Shares with respect to the payment of dividends), and all dividends which the Board may declare and pay in any fiscal year of the Fund on Common Shares shall also be declared and paid in equal amounts per share and at the same time or times on all Series Two Shares at the time issued and outstanding, without preference or distinction.

2. **Voting Rights.** A holder of a Series Two Share shall be entitled to receive notice of and to attend all meetings of the shareholders of the Fund and each such holder shall be entitled to one vote at any meeting of shareholders of the Fund at which holders of Series Two Shares are entitled to vote, without regard to the number of Series Two Shares owned by the holder

3. **Election of Directors.**

- (a) Holders of Series Two Shares shall not be entitled to elect any directors of the Fund until such time as there are at least 50,000 Series Two Shares issued and outstanding, and for so long as at least 50,000 Series Two Shares are issued and outstanding, holders of Series Two Shares, voting exclusively and separately and as a class, shall be entitled to elect one person as director of the Fund and for this purpose each holder of a Series Two Share is entitled to one vote for each Series Two Share owned by the holder. Nothing herein contained shall be deemed to restrict the right of the Fund from time to time to increase or decrease the number of its directors as permitted by the Fund Act;
- (b) For the purposes of exercising the right to elect a director as provided in this section, a quorum for a separate meeting of the holders of the Series Two Shares shall be holders of Series Two Shares being not less than one in number and holding or representing by proxy not less than 51% of the then issued and outstanding Series Two Shares;
- (c) Any meeting of the holders of the Series Two Shares for the purpose of electing a director may be held upon not less than 21 days' notice to the holders of Series Two Shares. In all other respects the formalities to be observed with respect to giving of notice and the conduct of such meetings shall be those from time to time required by the Act or prescribed in the

by-laws of the Fund with respect to the meetings of shareholders generally;

- (d) Any vacancy occurring in the office of the director elected to represent the holders of Series Two Shares in accordance with the foregoing provisions may be filled by the Board electing a representative of a holder of Series Two Shares to fill the vacancy. Whether or not such vacancy is so filled by the Board, the registered holders of at least 51% of the then issued and outstanding Series Two Shares shall have the right to require the Secretary of the Fund to call a meeting of the holders of the Series Two Shares for the purpose of filling the vacancy or replacing the person filling such vacancy who has been appointed by the Board and the foregoing provisions of this section shall apply in respect of the calling of such meeting.

4. **Restriction on Transfer.** The right to transfer Series Two Shares shall be restricted in that no holder of a Series Two Share shall be entitled to transfer a Series Two Share except to an Institutional Investor.

5. **Retraction Rights.**

- (a) Commencing on the fifth anniversary of the date the holder's Series Two Shares were issued or, if the holder's Series Two Shares were issued pursuant to the exercise of a warrant, on the fifth anniversary of the date such warrant was issued, or, if such warrant was issued pursuant to the exercise of a right to acquire a warrant, on the fifth anniversary of the date such right was issued, a holder of Series Two Shares shall be entitled to require the Fund to redeem all or any portion of the Series Two Shares owned by the holder by tendering to the Fund at its registered office the certificate or certificates representing the Series Two Share(s) which the

holder desires to have the Fund redeem, together with a Redemption Request. On the Redemption Date, unless such redemption will be contrary to any applicable law, the Fund shall redeem such Series Two Share(s) by paying or causing to be paid to or to the order of the holder the Redemption Amount for the Series Two Share(s) to be redeemed, together with an amount equal to all dividends declared thereon and unpaid;

- (b) If on or before the fifth anniversary of the date the holder's Series Two Shares were issued or, if the holder's Series Two Shares were issued pursuant to the exercise of a warrant, on or before the fifth anniversary of the date such warrant was issued, or, if such warrant was issued pursuant to the exercise of a right to acquire a warrant, on the fifth anniversary of the date such right was issued, a holder of Series Two Shares presents to the Fund a sworn declaration of a senior officer of the holder declaring that such holder's reserve fund for expenses which may be incurred by the holder during a strike or strikes by its members has been eliminated as a result of such strike or strikes and that the holder requires all or some of its Series Two Shares to be redeemed by the Fund for the purpose of replenishing such reserve fund or for paying additional expenses relating to such strike or strikes, then such holder shall be entitled at that time to require the Fund to redeem all or part of the Series Two Shares owned by such holder in the manner provided in sub-paragraph (a) hereof.

6. **Liquidation, Dissolution or Winding-Up.** Subject to the prior rights of the holders of any shares or series of shares ranking senior to the Series Two Shares with respect to priority in the distribution of property and assets, the holders of Series Two Shares shall be entitled to share equally, share for share, without preference or distinction, with the holders of Common Shares (and with the holders of all shares or series of shares ranking equally to the Common Shares with respect to the distribution

of property and assets) in all remaining property and assets of the Fund in the event of the liquidation, dissolution or winding-up of the Fund, whether voluntary or involuntary, or any other distribution of the assets of the Fund among its shareholders for the purpose of winding up its affairs

7. **Amendments to Series Two Provisions.** The Series Two Provisions may be repealed, altered, modified, amended or varied only with the prior approval of the holders of the Series Two Shares in addition to any other approval required by the Act or any other statutory provision of like or similar effect applicable to the Fund from time to time in force.

PART V

ADDITIONAL PROVISIONS

1. **Board May Appoint Independent Director.** In addition to the directors elected by the shareholders of the Fund, the Board may appoint as a director one individual who:

- (a) is not an officer or employee of the Fund;
- (b) is not a director, officer or employee of the holder of the Class L Shares or the Government of Manitoba; and
- (c) is not a director, officer, employee, member or shareholder of any firm or corporation that is engaged to provide services to the Fund.

provided always that a majority of the directors on the Board shall be elected by the holder of the Class L Shares.

Appendix 3 –
Articles of Amendment (January 3,
2003)

The Corporations Act /
Loi sur les corporations
ARTICLES OF AMENDMENT
CLAUSES MODIFICATRICES

MANITOBA



The Corporations Act /
Loi sur les corporations

Corporation No. 2859018
N° de la corporation

CERTIFICATE / CERTIFICAT
ARTICLES EFFECTIVE /
LES STATUTS PRENNENT EFFET LE
3^e JAN JAN 2005

[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 administrateurs
- shareholders actionnaires
- members members

b) pursuant to Section 167(5) of The Corporations Act (Manitoba)
conformément à l'article

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

- To:
- 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 la 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.

Appendix 4 –
The Crocus Investment Fund Act (as
at June 28, 2005)

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The Crocus Investment Fund Act

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Regulations

(Assented to July 26, 1991)

WHEREAS the Government of Manitoba and the Manitoba Federation of Labour recognize the need to support economic development and renewal and consider it to be in the public interest to promote long-term capital formation and a broad understanding of local ownership;

AND WHEREAS it is in the public interest to establish the Crocus Investment Fund ("the Fund") for the purpose of making investments with a view to earning income and promoting and maintaining

- (a) capital retention and economic stability in Manitoba,
- (b) employee ownership in Manitoba businesses, and
- (c) business continuity, job retention and creation and ownership of Manitoba businesses by Manitobans;

AND WHEREAS it is intended that the Fund will, among other things, make investments in Manitoba businesses that operate in accordance with ethical policies with respect to employment practices, workplace safety, environmental suitability and other matters;

AND WHEREAS the Fund is intended to provide investment capital and other financial assistance and other services to Manitoba businesses to enable them to create, maintain and protect jobs;

AND WHEREAS it is intended every Manitoban who is an individual be entitled to invest in the Fund and be eligible for tax credits;

AND WHEREAS it is intended that the Fund will provide an opportunity for long-term investment that can be used to supplement employee savings through conventional retirement plans or pension plans;

AND WHEREAS, through the investment activities of the Fund, investor and employee awareness and knowledge relating to economic and management matters will increase enabling investors and employees to increase their influence on provincial economic development;

NOW THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

PART 1

INTERPRETATION AND APPLICATION

Definitions

1(1) In this Act,

"Board" means the Board of Directors of the Fund; (« conseil »)

"Class "A" Common Share" means a share of the capital stock of the Fund that is issuable only to an individual (other than a trust) or a trust governed by a registered retirement savings plan, and that entitles the holder

(a) to receive notice of and, subject to *The Corporations Act*, to attend and vote at all meetings of the shareholders of the Fund,

(b) to receive dividends at the discretion of the Board, and

(c) to receive, on the dissolution of the Fund, rateably with all the other holders of Class "A" Common Shares, all the assets of the Fund that remain after payment of all amounts payable to the holders of other classes of shares of the Fund; (« action ordinaire de catégorie « A » »)

"Class "G" Special Share" means a share of the capital stock of the Fund that

(a) may be issued only to, and held only by, the Minister of Finance on behalf of Her Majesty in right of Manitoba,

(b) entitles the holder to elect one director to the Board, and

(c) does not entitle the holder to any dividends; (« action spéciale de catégorie « G » »)

"Class "L" Special Share" means a share of the capital stock of the Fund that is issuable only to, and may be held only by, the Manitoba Federation of Labour, and that entitles the holder

(a) to receive notice of and, subject to *The Corporations Act*, to attend and vote at all meetings of the shareholders of the Fund, and

(b) to receive, on the dissolution of the Fund, an amount equal to the amount of the consideration received by the Fund on the issue of the Class "L" Special Shares divided by the number of Class "L" Special Shares issued,

but does not entitle the holder to any dividends; (« action spéciale de catégorie « L » »)

"eligible investment" of the Fund means

(a) a share in the capital stock of a corporation that was a qualified Manitoba business entity when the Fund acquired the share,

(b) a partnership interest in a partnership that was a qualified Manitoba business entity when the Fund acquired the interest,

(c) a debt obligation of an entity that was a qualified Manitoba business entity when the Fund acquired the obligation, if the debt obligation meets the following requirements:

(i) by its terms, or by the terms of any agreement related to it, it does not restrict the entity from incurring other debts,

(ii) by its terms, or by the terms of any agreement related to it, it is subordinated to all other debt obligations of the entity except that, where the entity is a corporation, the debt obligation need not be subordinate to a debt obligation

(A) issued by the entity that is prescribed as a small business security for the purposes of paragraph (a) of the definition "small business property" in subsection 206(1) of the *Income Tax Act* (Canada), or

(B) owing to a shareholder of the entity or to a person related to any of its shareholders,

(iii) it is secured solely by a floating charge on the assets of the entity,

(d) a debt obligation of an entity that was a qualified Manitoba business entity when the debt obligation was issued to the Fund, and that requires that the funds advanced to the entity by the Fund be advanced by the entity to another entity all or substantially all of whose assets are investments of a type referred to in clause (a), (b) or (c),

(e) a guarantee provided by the Fund in respect of a debt obligation that, if the Fund had acquired the debt obligation at the time the guarantee was given, would have been a debt obligation described in clause (c), (d) or (f) at that time,

(f) a debt obligation issued by a qualified Manitoba business entity, if all or substantially all of the entity's assets at the time the debt obligation was acquired by the Fund were investments described in this clause or any of clauses (a) to (d),

(g) an option or right granted by a qualified Manitoba business entity, in conjunction with the acquisition by the Fund of an investment that is described in any of clauses (a) to (f), to acquire a share of the capital stock of a corporation or an interest in a partnership that would have been described in clause (a) or (b) if the share or interest had been acquired at the time of the option or right was granted,

(h) an investment or part of an investment that, under a written agreement between the Fund and the minister, qualifies as an eligible investment,

(i) an investment of a flow-through investment vehicle, as defined in the regulations, to the extent that the investment qualifies under the regulations as an eligible investment of the Fund, and

(j) any other investment that, under the regulations, is an eligible investment,

but does not include an investment declared under section 11.1 to be an ineligible investment or an investment that, when it was acquired by the Fund, was an ineligible investment under the regulations; (« placement admissible »)

"entity" means

- (a) a corporation that is a taxable Canadian corporation,
- (b) a partnership of corporations, each of which is a taxable Canadian corporation, or
- (c) a trust that is resident in Canada; (« entité »)

"Fund" means the Crocus Investment Fund incorporated by subsection 3(1); (« Fonds »)

"investment assets", when used with respect to the Fund, means all of the assets of the Fund other than operating assets used by it directly in carrying on its business; (« actif de placement »)

"investment shortfall" of the Fund in respect of a month means, at a particular time,

- (a) if the month ended in a taxation year of the Fund that ended before the particular time, the Fund's monthly deficiency, as defined in subsection 11.1(1) of *The Income Tax Act*, for the month, and
- (b) if the month ended in the Fund's current taxation year, the amount, if any, that would be its monthly deficiency for the month if the taxation year had ended at the end of last month that ended before the particular time; (« écart de placement »)

"minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act; (« ministre »)

"original acquisition date" in relation to a share means the date of the share's original acquisition as determined under section 11.1 of *The Income Tax Act*; (« date d'acquisition initiale »)

"qualified Manitoba business entity" means an entity

- (a) that carries on business in Manitoba, has assets of a value less than \$50,000,000 and has a majority of its employees in Manitoba, or
- (b) substantially all of whose assets would be eligible investments had they been owned by the Fund directly and that has assets of a value less than \$50,000,000.; (« entité manitobaine admissible »)

"registered retirement income fund", **"registered retirement savings plan"** and **"taxable Canadian corporation"** have the same meaning as in the *Income Tax Act (Canada)*; (« fonds enregistré de revenu de retraite », « régime enregistré d'épargne-retraite » et « société canadienne imposable »)

"valuation date" means a date or dates determined by by-law of the Board. (« jour d'évaluation »)

Interpretation of "related"

1(2) For the purposes of this Act, a person or entity is related to another person or entity if they are related for the purposes of sections 11.1 to 11.5 of *The Income Tax Act*.

Interpretation of "secured"

1(3) For the purposes of subclause (c)(iii) of the definition of "eligible investment", a debt obligation is not secured by reason only that a guarantee is given in respect of that obligation.

Determination of value of assets

1(4) For the purpose of determining the value of the assets of an entity in the definition of "qualified Manitoba business entity", the assets of a corporation, partnership or trust are deemed to include the assets of any other corporation, partnership or trust that is an affiliate of the corporation, partnership or trust.

Interpretation of "affiliate"

1(5) For the purposes of subsection (4), a corporation, partnership or trust is deemed to be an affiliate of another corporation, partnership or trust if one of them is controlled by the other or if each of them is controlled by the same person, corporation, partnership or trust.

Control of corporation

1(6) A person, corporation, partnership or trust is deemed to control a corporation, if

(a) it owns shares in the corporation carrying more than 50% of the votes for the election of directors of the corporation; or

(b) it owns shares of the capital stock of the corporation having a fair market value of more than 50% of the fair market value of all of the issued shares of the capital stock of the corporation.

Control of partnership

1(7) A person, corporation, partnership or trust is deemed to control a partnership if

(a) it owns interests in the capital or income of the partnership carrying more than 50% of the votes associated with all interests in the capital or income of the partnership; or

(b) it owns interests in the capital or income of the partnership having a fair market value of more than 50% of the fair market value of all of the interests in the capital or income of the partnership.

Control of trust

1(8) A person, corporation, partnership or trust is deemed to control a trust if

(a) where the terms of the trust provide that the beneficiaries of the trust are entitled to vote on any matter concerning the business or affairs of the trust, it owns interests in the capital or income of the trust carrying more than 50% of the votes associated with all interests in the capital or income of the trust; or

(b) it owns interests in the capital or income of the trust having a fair market value of more than 50% of the fair market value of all of the interests in the capital or income of the trust.

Beneficial ownership

1(9) For the purpose of determining whether a corporation, partnership or trust is controlled by a person, corporation, partnership or trust, a person, corporation, partnership or trust shall be deemed to own beneficially shares, partnership interests or interests in the capital or income of a trust that are owned beneficially by any corporation, partnership or trust that is an affiliate of the person, corporation, partnership or trust.

Agreement to make additional investments

1(10) When for the purposes of sections 11.1 to 11.5 of *The Income Tax Act* the Fund's cost of a particular investment includes an amount under clause 11.1(1.1)(d) of that Act because the Fund is required to make an additional investment, the additional investment, when it is acquired, shall qualify as an eligible investment of the Fund if it would have been an eligible investment had it been acquired by the Fund when it acquired the particular investment.

Minister may enter into agreement

1(11) Subject to subsection (12), the minister may enter into an agreement with the Fund under which, on any terms or conditions the minister considers appropriate, an investment of the Fund or of a flow-through investment vehicle qualifies as an eligible investment of the Fund.

Limitation

1(12) An investment cannot qualify as an eligible investment of the Fund under an agreement made under subsection (11) unless, at the time that the Fund acquired

(a) the investment; or

(b) by acquiring or holding an interest in a flow-through investment vehicle, an indirect interest in the investment held or acquired by the flow-through investment vehicle;

the entity that issued the investment would have been a qualified Manitoba business entity if clause (a) of the definition "qualified Manitoba business entity" in subsection (1) were read as follows:

"(a) all or substantially all of the fair market value of the property of which is attributable to

(i) property used in a specified active business, as defined in subsection 204.8(1) of the *Income Tax Act* (Canada), carried on by the entity or by an entity related to it,

(ii) investments in other qualified Manitoba business entities, or

(iii) any combination of properties described in subclauses (i) and (ii),

and that has assets with a total value of not more than \$50,000,000., or".

S.M. 1997, c. 40, s. 2; S.M. 1998, c. 28, s. 2; S.M. 2001, c. 24, s. 6.

Application of Corporations Act

2(1) Except as provided in this Act, *The Corporations Act* applies to the Fund with such modifications as the circumstances require.

Inapplicable provisions

2(2) Sections 5 to 9, subsections 10(1) to (3) and (6), sections 12 and 13, subsections 27(3), 45(9), 101(1), 126(2) and (3), 167(7), 181(2) and 182(1), and sections 191 and 194 of *The Corporations Act* do not apply to the Fund.

Partially applicable provisions

2(3) Subsections 32(2), 33(3) and 34(2), section 38, clauses 113(2)(a) and (f), and subsections 184(26) and 234(6) of *The Corporations Act* do not apply with respect to Class "G" Special Shares.

Conflict of Acts

2(4) If this Act conflicts with *The Corporations Act*, this Act prevails.

S.M. 1997, c. 40, s. 3; S.M. 2001, c. 24, s. 7.

PART 2**INCORPORATION AND ORGANIZATION****Establishment**

3(1) There is hereby established a corporation, to be known as the Crocus Investment Fund, consisting of the first directors and those persons who, from time to time, are shareholders of the corporation.

Objects of the Fund

3(2) The 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.

3(3) and (4) Repealed, S.M. 2001, c. 24, s. 8.

S.M. 2001, c. 24, s. 8.

Articles of the Fund

4(1) The articles of the Fund that are filed under *The Corporations Act* must

(a) set out the authorized capital of the Fund, which shall consist of

(i) Class "A" Common Shares,

(ii) Class "G" Special Shares that may be issued for a maximum consideration of \$2,000,000.,

(iii) Class "L" Special Shares,

(iv) any additional classes of shares that were issued before this subclause came into force, and

(v) any additional classes of shares created by filing articles of amendment under *The Corporations Act*;

(b) set out the rights, privileges, restrictions and conditions attaching to each class of shares which, in the case of the Class "A" Common Shares, must be consistent with sections 4.1 and 4.2; and

(c) provide that the business and affairs of the Fund shall be managed by a board of directors a majority of whom are elected by the holder of the Class "L" Special Shares.

Amendment requires minister's approval

4(1.1) The articles of the Fund shall not be amended without the minister's approval except to create a new class or classes of shares or to amend the rights, privileges, restrictions or conditions attaching to a class of shares other than the Class "A" Common Shares.

4(2) Repealed, S.M. 2001, c. 24, s. 9.

Rights of Class "G" Special Shares

4(3) Where an agreement entered into between the Fund and the Government of Manitoba requires amendments to the rights attaching to the Class "G" Special Shares, the directors shall, by filing articles of amendment under *The Corporations Act*, make those amendments.

4(4) Repealed, S.M. 2001, c. 24, s. 9.

Reduction of stated capital

4(5) The Fund shall not reduce the stated capital in respect of its Class "A" Common Shares otherwise than on a redemption, acquisition or cancellation of shares of that class by the Fund or under prescribed circumstances.

S.M. 1993, c. 13, s. 2; S.M. 1997, c. 40, s. 4; S.M. 2001, c. 24, s. 9.

Definitions

4.1(1) In this section and section 4.2,

"**common-law partner**" has the same meaning as in the *Income Tax Act* (Canada); (« conjoint de fait »)

"**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. (« fiducie admissible »)

Repurchase of share acquired after May 1997

4.1(2) A holder of a Class "A" Common Share is not entitled to require the Fund to repurchase the share before the eighth anniversary of its original acquisition date if that date is after May 1997.

Repurchase of share acquired before June 1997

4.1(3) Except as otherwise provided in the articles of the Fund, a holder of a Class "A" Common Share is not entitled to require the Fund to repurchase the share before the seventh anniversary of its original acquisition date if that date is before June 1997.

Exceptions to 8-year hold period

4.1(4) Subsection (2) does not apply to a request for the repurchase of a Class "A" Common Share if the Board is satisfied that

(a) 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;

(b) 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

(c) the holder requested the repurchase within 60 days after the share was issued to the holder.

S.M. 2001, c. 24, s. 10.

Restrictions on transfers

4.2 A Class "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, or

(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.

S.M. 2001, c. 24, s. 10.

5 Repealed.

S.M. 1993, c. 13, s. 3; S.M. 1997, c. 40, s. 5; S.M. 1998, c. 28, s. 3; S.M. 2001, c. 24, s. 11.

6 Repealed.

S.M. 2001, c. 24, s. 11.

7 Repealed.

S.M. 1997, c. 40, s. 6; S.M. 2001, c. 24, s. 11.

8 Repealed.

S.M. 2001, c. 24, s. 11.

Quorum

9 At least one director who is not elected by the holder of Class "L" Special Shares shall be present at any meeting of directors of the Fund.

S.M. 2001, c. 24, s. 12.

Investment advisory committee

9.1(1) The Fund shall establish an investment advisory committee to advise the Board regarding the financial merits of proposed acquisitions of eligible investments.

Composition of committee

9.1(2) The investment advisory committee shall consist of a minimum of five persons,

(a) one of whom shall be appointed by the Board from among its members to chair the committee;

(b) a majority of whom shall be selected and appointed by the Fund from a list of nominees approved by the Board for their experience or expertise in a particular business sector or in the management of investments; and

(c) a majority of whom shall not be employees, directors or officers of the Fund.

Conflict of interest

9.1(3) A member of the investment advisory committee who has a material interest in a proposed investment by the Fund that is under consideration by the committee

(a) shall disclose the nature and extent of his or her interest in writing to the committee

(i) at or before the meeting of the committee at which the proposed investment is first considered,

(ii) if the member did not then have an interest in the proposed investment, at the first meeting after he or she becomes interested in it, or

(iii) if the member had an interest in the proposed investment before becoming a member, at the first meeting after he or she becomes a member at which the proposed investment is considered; and

(b) thereafter shall not participate in the committee's deliberations or advice to the Board regarding the proposed investment.

Committee to advise Board

9.1(4) The Fund shall provide the particulars of each proposed acquisition of an eligible investment to the investment advisory committee, and the committee shall advise the Board regarding the financial merits of the proposed acquisition.

Board to consider committee's advice

9.1(5) Before approving the acquisition of an eligible investment, the Board shall consider the investment advisory committee's advice regarding the investment.

S.M. 1997, c. 40, s. 7.

10 Repealed.

S.M. 2001, c. 24, s. 13.

PART 3**OPERATION AND ADMINISTRATION****Investment policies and criteria**

11(1) Subject to subsection (2), the Fund shall by by-law establish from time to time investment policies and criteria with respect to

- (a) the promotion of employee ownership and employee participation in corporate governance and management;
- (b) the creation, retention or protection of employment in Manitoba;
- (c) employment practices, workplace safety, environmental suitability and other matters; and
- (d) the composition of the investment portfolio of the Fund in terms of industry sectors, income, growth and risk.

Restrictions

11(2) The Fund shall

- (a) repealed, S.M. 2001, c. 24, s. 14;
- (b) not acquire an eligible investment that would result in the total fair market value of its investments in a qualified Manitoba business entity being more than 10% of the fair market value of the Fund's investment assets;
- (c) not prohibit investment in non-unionized or unionized qualified Manitoba business entities and other businesses;
- (d) not be used as an instrument for organizing employees into unions; and
- (e) use its best efforts to ensure that a majority of its investment assets directly or indirectly promote employee ownership or employee participation in corporate governance and management.

11(3) Repealed, S.M. 2001, c. 24, s. 14.

S.M. 1992, c. 58, s. 7; S.M. 2001, c. 24, s. 14.

Notice of intent to declare investment ineligible

11.1(1) Where,

(a) at any time after the acquisition of an eligible investment by the Fund, the investment would, if it were acquired at that time, not be an eligible investment of the Fund because of one or more transactions or events in a series of transactions or events that included the Fund's acquisition of the investment; and

(b) in the minister's opinion, the Fund's acquisition of the investment as an eligible investment is contrary to the object and spirit of this Act or sections 11.1 to 11.5 of *The Income Tax Act*;

the minister may, by written notice to the Fund within two years after the day on which the series of transactions or events came to the attention of the minister, propose that the investment be declared to be an ineligible investment.

Objection

11.1(2) The Fund may, within 30 days after receiving a notice under subsection (1), object to the proposed declaration by filing a written notice of objection with the minister setting out the relevant facts and its reasons for the objection.

Action of minister

11.1(3) Where the minister has made a proposal under subsection (1) in respect of an investment, the minister may, after considering any objection made under subsection (2),

(a) abandon the proposal; or

(b) declare the investment to be an ineligible investment;

and shall give the Fund written notice of the decision.

Effect of declaration

11.1(4) For the purpose of sections 11.1 to 11.5 of *The Income Tax Act*, an investment that is declared under this section to be an ineligible investment is deemed never to have been an eligible investment.

Minister's declaration final

11.1(5) A declaration under subsection (3) by the minister is final and is not subject to appeal.

S.M. 1997, c. 40, s. 8; S.M. 2001, c. 24, s. 15.

Reserves

12(1) The Fund shall maintain a reserve fund equal to the total of

(a) all amounts each of which is an amount included in the cost of an eligible investment of the Fund for the purposes of sections 11.1 to 11.5 of *The Income Tax Act* because of clause 11.1(1.1) (d) of that Act; and

(b) the greater of

(i) 15% of the fair market value of its investment assets, and

(ii) 50% of the total of its outstanding guarantees.

Investment of reserve fund

12(2) The Fund shall invest the assets of its reserve fund in

(a) money on deposit with a bank to which the *Bank Act* (Canada) applies, a credit union or caisse populaire to which *The Credit Unions and Caisses Populaires Act* applies or a trust company that is incorporated under the laws of Canada or of a province of Canada and carries on the business of a trust company in Manitoba;

(b) guaranteed investment certificates issued by a bank, credit union, caisse populaire or trust company referred to in clause (a);

(c) debt obligations of

(i) the Province of Manitoba,

(ii) municipal governments within Manitoba; or

(iii) Manitoba crown corporations,

(iv) repealed, S.M. 2001, c. 24, s. 16;

(d) prescribed investments; or

(e) any combination of investments referred to in clause (a), (b), (c) or (d).

Interpretation of "guarantee" or "security"

12(3) For the purpose of subsection (1), the amount of the guarantees and securities given by the Fund does not include the amount of any guarantee or security in respect of which the liability of the Fund is limited to the portion of its investment assets comprising its investment in the person for whose benefit the guarantee or security is given.

S.M. 1997, c. 40, s. 9; S.M. 2001, c. 24, s. 16.

13 Repealed.

S.M. 1997, c. 40, s. 10; S.M. 2001, c. 24, s. 17.

Payroll deduction for share purchase

14(1) Subject to subsection (2), an employer who has been requested to do so in writing by

(a) 20% of the Manitoba employees, if the employer has less than 250 Manitoba employees; or

(b) 50 Manitoba employees, if the employer has 250 or more Manitoba employees;

shall, for the purpose of facilitating an employee's purchase of Class "A" Common Shares of the Fund, deduct from the salary or wages of any employee who requests that a deduction be made the amount for the number of pay periods specified in writing by that employee.

Notice to terminate deduction

14(2) If an employee gives notice to an employer in writing that the deduction of amounts from his or her salary or wages referred to in subsection (1) is to cease, the employer shall commencing with the

pay period following the giving of the notice cease to make the deduction.

Remittance of deductions

14(3) The employer shall, not later than the 15th day of the month following the month in which the deduction was made, remit the amounts to the Fund together with a statement specifying the amount deducted in respect of each employee, the employee's name, address, date of birth and social insurance number.

Deemed subscription

14(4) The amount remitted to the Fund by an employer on behalf of an employee is deemed to be a subscription by the employee for as many Class "A" Common Shares, including fractional shares, as may be purchased with that amount.

Amounts deemed to be salary

14(5) Until an amount deducted by the employer with respect to an employee under subsection (1) is remitted to the Fund, the amount is, for the purposes of the rights of the employee, deemed to be salary or wages owed by the employer to the employee and, if the employer fails to remit to the Fund any amount so deducted, the employee shall be entitled to enforce the payment to the employee and for that purpose is entitled to all of the rights of employees in respect of the payment of wages or salaries under any Act of the Legislature.

Valuation

15(1) The fair value of the Class "A" Common Shares of the Fund shall be determined by the Board as at each valuation date.

Asset valuation

15(2) For the purpose of determining the fair value of the Class "A" Common Shares of the Fund as at any valuation date, the value of the investments assets of the Fund on that valuation date shall be determined by the Board in accordance with the following rules:

(a) investment assets held by the Fund for which there is a published market value shall be valued at their published market value as at the valuation date;

(b) if, despite the existence of a published market value for particular investment assets of the Fund,

(i) in the opinion of the Board such investment assets could not readily be disposed of through such market at the valuation date, the Board may adjust the value of those assets to reflect the amount which would likely be realized from their sale, or

(ii) it was the intention of the Board at the time such assets were acquired to hold them as a fixed income security until maturity, the Board may value those assets at cost, adjusted to reflect the amortized portion of the discount or premium, as the case may be;

(c) for each valuation date preceding the first anniversary of the date on which it was acquired by the Fund, an investment asset held by the Fund for which there is no published market value shall be valued at its cost unless the Fund is required by subsection (6) to revalue the assets prior to the expiration of that one year period;

(d) for each valuation date following the first anniversary of the date on which it was acquired by

the Fund, each investment asset held by the Fund for which there is no published market value shall be valued at its net realizable value as at that date;

(e) assets of the Fund other than investment assets shall be valued at cost less any depreciation applicable to them as determined by the Board in consultation with the auditors of the Fund.

Definition of "net realizable value"

15(3) In this section, "**net realizable value**", means the amount which would be received by the Fund from the sale of the investment asset on an orderly basis over a reasonable period of time in an arm's-length sale between the Fund and an informed, knowledgeable and willing purchaser, acting without restraint.

Report of valuation

15(4) For the purpose of determining the net realizable value of an investment asset, the Board shall cause a person qualified to make an evaluation of the investment asset to prepare a report annually, as at each anniversary date of the acquisition of the investment asset, giving his or her opinion as to the fair value of the investment asset.

Duty of Board in determining value

15(5) In determining the net realizable value of an investment asset the Board shall have regard to the report under subsection (4), to any other bona fide arm's-length transactions respecting the investment asset which in the opinion of the Board provide a valid indication of the net realizable value of the investment asset and to such other factors as the by-laws of the Fund may provide.

Revaluation

15(6) If on any valuation date the Board determines that there has been a change which may have a material effect on the value of any investment asset of the Fund, the Board shall cause a revaluation of the investment asset or investment assets affected by the change as at that valuation date.

Duty of the Board in determining value

15(7) Subject to subsection (8), for the purpose of assisting it in determining the value of the Class "A" Common Shares at a valuation date, the Board shall cause a person qualified to make an evaluation of the Fund to prepare a report stating his or her opinion as to the manner in which the value of the Class "A" Common Shares should be calculated by the accountants to the Fund at such valuation date on the assumption that the values of the investment assets of the Fund at that valuation date are the values determined in accordance with the rules set out in this section.

Exception

15(8) If on any valuation date the Board determines that since the preceding valuation date there has been no change in the assets or liabilities of the Fund which could have a material effect upon the manner of calculating the value of the Class "A" Common Shares of the Fund, the Board may dispense with the report as to the manner in which the value of the Class "A" Common Shares should be calculated, and, when it does so, the calculation determining the value of the Class "A" Common Shares shall be done by the accountants to the Fund in accordance with the last report prepared by the person qualified to make an evaluation of the Fund.

S.M. 1994, c. 27, s. 2; S.M. 1997, c. 40, s. 11; S.M. 2001, c. 24, s. 18.

PART 4

REPORTING AND COMPLIANCE

Annual statements and returns

15.1(1) The Fund must file with the minister for each fiscal year, on or before the day on or before which it is required to file its return of income under Part I of the *Income Tax Act* (Canada),

(a) a copy of its audited financial statements, together with the auditor's report on those statements; and

(b) a copy of the return of information it is required to file for the year under section 11.4 of *The Income Tax Act*, along with a written statement from the Fund's auditor attesting to the accuracy of the information it contains.

Request for additional information

15.1(2) The minister may at any time, by written notice to Fund, require the Fund to file with the minister a return of information on any subject connected with the business, affairs, assets or liabilities of the Fund that, in the minister's opinion, is relevant to the administration or enforcement of this Act or of sections 11.1 to 11.5 of *The Income Tax Act*, including information that would assist the minister in determining whether or not to make a declaration under section 11.1.

Return of additional information

15.1(3) When the Fund receives a notice under subsection (2), it must provide the required return of information required by the notice within the time specified in the notice.

Extension of time

15.1(4) The minister may extend the time for filing any statement, report or return of information under this section.

S.M. 2001, c. 24, s. 19.

Records to be maintained

15.2(1) The Fund must maintain records in the form and containing the information that the minister considers necessary to determine whether the Fund is in compliance with this Act, the regulations, the articles of the Fund and sections 11.1 to 11.5 of *The Income Tax Act*.

Location and time for retention of records

15.2(2) The Fund must

(a) keep its records at its head office in Manitoba or at any other location in Manitoba approved by the minister; and

(b) retain them for the period of time its records are required to be retained for the purposes of the administration and enforcement of *The Income Tax Act*.

S.M. 2001, c. 24, s. 19.

"Authorized person" defined

15.3(1) In this section, "authorized person" means a person authorized by the minister for the purposes of this section.

Demand for production of records

15.3(2) If the minister considers it necessary for the administration or enforcement of this Act or sections 11.1 to 11.5 of *The Income Tax Act*, he or she may, by a demand served personally or by registered letter, require the Fund to produce for inspection, audit or examination by an authorized

person any of the records referred to in section 15.2.

Audits and inspections

15.3(3) An authorized person may, at any reasonable time and for any purpose related to the administration or enforcement of this Act or sections 11.1 to 11.5 of *The Income Tax Act*, inspect, audit or examine

- (a) records produced pursuant to a demand made under subsection (2); and
- (b) records referred to in section 15.2, including documents that relate, or in the opinion of the authorized person may relate, to those records;

and the authorized person may make or cause to be made one or more copies of those records or documents.

Authorized entry

15.3(4) An authorized person may, in order to carry out an inspection, audit or examination permitted by this section,

- (a) enter into any premises or place where the Fund carries on business or where records relating to its business are kept; and
- (b) require a person having responsibility for management of the Fund's business or custody of its records, or any other person in the premises or place, to give the authorized person all reasonable assistance and to answer all proper questions relating to the administration and enforcement of this Act and sections 11.1 to 11.5 of *The Income Tax Act* and, for that purpose, require the person to attend at the premises or place with the authorized person.

S.M. 2001, c. 24, s. 19.

Offences

15.4(1) A person who

- (a) makes a false or misleading statement in any document filed with the minister under or for the purposes of this Act or the regulations; or
- (b) interferes with an inspection, audit or investigation by an authorized person under section 15.3;

is guilty of an offence and is liable on summary conviction

(c) in the case of an individual, to a fine of not less than \$1,000. and not more than \$20,000. or imprisonment for a term of not more than two years, or both; and

(d) in the case of a corporation, to a fine of not less than \$5,000. and not more than \$100,000.

Offence by Fund

15.4(2) If the minister notifies the Fund of its failure to comply with a requirement under this Act or sections 11.1 to 11.5 of *The Income Tax Act* to file or provide, or to produce for inspection, a record, report, return, statement or other information, and the Fund does not comply with that requirement within 30 days after receiving the notice, the Fund is guilty of an offence and is liable on summary

conviction to a fine of not less than \$5,000. and not more than \$100,000.

Liability of director, officer or agent

15.4(3) If a corporation commits an offence under this Act, a director, officer or agent of the corporation who authorized, permitted or acquiesced in the commission of the offence is also guilty of an offence and is liable on summary conviction to a fine of not more than \$20,000., whether or not the corporation has been prosecuted or convicted.

Defence re false or misleading statement

15.4(4) A person is not guilty of an offence under clause (1)(a) or under subsection (3) in respect of a statement that is false or misleading if the person

(a) did not know, and in the exercise of reasonable diligence could not have known, that the statement was false or misleading; and

(b) upon becoming aware that the statement was false or misleading, took steps to notify the minister that the statement was false or misleading.

Defence re interference with audit or inspection

15.4(5) A person is not guilty of an offence under clause (1)(b) in respect of a refusal to provide, disclose or permit access to information or records if the person demonstrates to the satisfaction of the court that

(a) he or she communicated to the minister or a person authorized to act for the minister that the information or records were protected by a solicitor-client privilege; and

(b) he or she believed on reasonable grounds that the information or records were protected by a solicitor-client privilege that had not been waived by the person entitled to waive it.

Limitation on prosecution

15.4(6) No prosecution for an offence under this Act may be instituted more than two years after the day on which evidence sufficient to justify a prosecution for the offence came to the knowledge of the ~~minister~~, and a certificate of the minister as to the day on which the evidence came to his or her knowledge is, in the absence of evidence to the contrary, proof of that date.

S.M. 2001, c. 24, s. 19.

Monthly reporting re investment shortfalls

15.5(1) If at any time the Fund has had an investment shortfall of more than \$1,000,000. for any 18 months in a 36-month period, it must provide to the minister, by the end of each month and in a form approved by the minister, a report setting out

(a) all information required to determine whether the Fund had an investment shortfall for the immediately preceding month; and

(b) the value, as at the end of the immediately preceding month, of the Fund's investment assets and of its reserves under section 12.

Duration of monthly reporting

15.5(2) The monthly reporting requirement under subsection (1) applies to the first month after the last of the 18 months referred to in that subsection and to every month after that until the monthly

reports demonstrate that the Fund has had no investment shortfall for a period of 12 consecutive months and is meeting the liquid reserve requirement in section 12.

S.M. 2001, c. 24, s. 19.

Minister may declare shares ineligible for tax credit

15.6(1) In the following circumstances, the minister may, by written order, declare the Class "A" Common Shares that are issued after a date specified in the order to be ineligible for the labour-sponsored funds tax credit under section 11.1 of *The Income Tax Act*:

- (a) the minister has notified the Fund of its failure to comply with a requirement under this Act or sections 11.1 to 11.5 of *The Income Tax Act* to file or provide, or to produce for inspection, a record, report, return, statement or other information, and the Fund does not comply with that requirement within 30 days after receiving the notice;
- (b) the minister has notified the Fund of its failure to value its shares in accordance with section 15, and the Fund does not make the valuation as required within 30 days after receiving the notice;
- (c) the Fund has had an investment shortfall of at least \$1,000,000. for any two months within a period during which it is required to provide monthly reports to the minister under section 15.5;
- (d) the Fund fails for a period of more than 60 days to maintain the reserve required by section 12;
- (e) the Fund fails to pay a tax or penalty payable under section 11.1, 11.2 or 11.3 of *The Income Tax Act* within 60 days after it is assessed; or
- (f) the articles of the Fund are amended contrary to subsection 4(1.1).

Notice of order

15.6(2) The minister must give the Fund written notice of an order made under subsection (1) at least seven days before the date specified in the order.

Cancellation or suspension of order

15.6(3) If, after an order is issued under subsection (1), the Fund is no longer in default under that subsection, the minister

- (a) must cancel the order if no order has been made under that subsection within the immediately preceding 96 months; and
- (b) in any other case, may cancel the order, or may suspend it subject to any conditions the minister considers appropriate.

When no longer in default

15.6(4) For the purpose of subsection (3), the Fund is no longer in default under subsection (1) when all of the following conditions are met:

- (a) if it was given notice under clause (1)(a) or (b) of a failure to comply with a requirement, it has complied with that requirement;

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(b) if applicable, the Fund has filed with the minister the latest monthly report required to be filed under section 15.5 and, according to that report, did not have an investment shortfall for the month for which that report was filed;

(c) the Fund is meeting the requirements of section 12 respecting reserves;

(d) the Fund has paid all taxes and penalties payable under sections 11.1, 11.2 and 11.3 of *The Income Tax Act*;

(e) if the articles of the Fund were amended contrary to subsection 4(1.1), the minister has approved the amendments or the articles are further amended with the approval of the minister.

S.M. 2001, c. 24, s. 19.

16 to 22 Repealed.

S.M. 1997, c. 40, s. 12.

PART 5

REGULATIONS

Regulations

23 The Lieutenant Governor in Council may make regulations

(a) for the purpose of subsection 4(5), prescribing the circumstances in which the stated capital of the Fund may be reduced;

(b) for the purpose of clause 12(2)(d), prescribing investments in which the Fund may invest its reserve fund;

(c) for the purpose of the definition "eligible investment" in subsection 1(1),

(i) prescribing classes of investments as ineligible investments and enabling the minister, on application by the Fund, to exempt specific investments from those classes, and

(ii) prescribing investments or classes of investments as eligible investments;

(c.1) defining "flow-through investment vehicle", prescribing the circumstances under which, and the extent to which, an investment of a flow-through investment vehicle qualifies as an eligible investment of the Fund, and establishing the Fund's cost of such an investment for the purposes of sections 11.1 to 11.4 of *The Income Tax Act*;

(d) respecting any other matter that the Lieutenant Governor in Council considers necessary for carrying out the purposes of this Act.

S.M. 1997, c. 40, s. 13; S.M. 2001, c. 24, s. 20.

PART 6

CONSEQUENTIAL AMENDMENTS AND COMING INTO FORCE

24 **NOTE: This section contained consequential amendments to *The Income Tax Act* which are now included in that Act.**

C.C.S.M. reference

25 This Act shall no longer be referred to as chapter E95 of the *Continuing Consolidation of the Statutes of Manitoba* but may be referred to as chapter C308 of the *Continuing Consolidation of the Statutes of Manitoba*.

S.M. 2001, c. 24, s. 21.

Coming into force

26 This Act comes into force on a day fixed by proclamation.

NOTE: S.M. 1991-92, c. 48 was proclaimed in force March 21, 1992.

SCHEDULE

Repealed.

S.M. 1993, c. 13, s. 4 and 5; S.M. 1994, c. 27, s. 3 and 4; S.M. 1997, c. 40, s. 14 to 17; S.M. 2000, c. 51, s. 2; S.M. 2001, c. 24, s. 22.

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Appendix 5 –
The Crocus Investment Fund Act (as
it stands today)

C.C.S.M. c. C308

The Crocus Investment Fund Act

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(Assented to July 26, 1991)

WHEREAS the Government of Manitoba and the Manitoba Federation of Labour recognize the need to support economic development and renewal and consider it to be in the public interest to promote long-term capital formation and a broad understanding of local ownership;

AND WHEREAS it is in the public interest to establish the Crocus Investment Fund ("the Fund") for the purpose of making investments with a view to earning income and promoting and maintaining

(a) capital retention and economic stability in Manitoba,

(b) employee ownership in Manitoba businesses, and

(c) business continuity, job retention and creation and ownership of Manitoba businesses by Manitobans;

AND WHEREAS it is intended that the Fund will, among other things, make investments in Manitoba businesses that operate in accordance with ethical policies with respect to employment practices, workplace safety, environmental suitability and other matters;

AND WHEREAS the Fund is intended to provide investment capital and other financial assistance and other services to Manitoba businesses to enable them to create, maintain and protect jobs;

AND WHEREAS it is intended every Manitoban who is an individual be entitled to invest in the Fund and be eligible for tax credits;

AND WHEREAS it is intended that the Fund will provide an opportunity for long-term investment that can be used to supplement employee savings through conventional retirement plans or pension plans;

AND WHEREAS, through the investment activities of the Fund, investor and employee awareness and knowledge relating to economic and management matters will increase enabling investors and employees to increase their influence on provincial economic development;

NOW THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

PART 1

Definitions

1(1) In this Act,

"Board" means the Board of Directors of the Fund; (« conseil »)

"Class "A" Common Share" means a share of the capital stock of the Fund that is issuable only to an individual (other than a trust) or a trust governed by a registered retirement savings plan, and that entitles the holder

(a) to receive notice of and, subject to *The Corporations Act*, to attend and vote at all meetings of the shareholders of the Fund,

(b) to receive dividends at the discretion of the Board, and

(c) to receive, on the dissolution of the Fund, rateably with all the other holders of Class "A" Common Shares, all the assets of the Fund that remain after payment of all amounts payable to the holders of other classes of shares of the Fund; (« action ordinaire de catégorie « A » »)

"Class "L" Special Share" means a share of the capital stock of the Fund that is issuable only to, and may be held only by, the Manitoba Federation of Labour, and that entitles the holder

(a) to receive notice of and, subject to *The Corporations Act*, to attend and vote at all meetings of the shareholders of the Fund, and

(b) to receive, on the dissolution of the Fund, an amount equal to the amount of the consideration received by the Fund on the issue of the Class "L" Special Shares divided by the number of Class "L" Special Shares issued,

but does not entitle the holder to any dividends; (« action spéciale de catégorie « L » »)

"eligible business entity" and **"eligible investment"** have the same meaning as in *The Labour-Sponsored Venture Capital Corporations Act*; (« entreprise admissible » et « placement admissible »)

"Fund" means the Crocus Investment Fund incorporated by subsection 3(1); (« Fonds »)

"investment assets", when used with respect to the Fund, means all of the assets of the Fund other than operating assets used by it directly in carrying on its business; (« actif de placement »)

"minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act. (« ministre »)

1(2) to (12) Repealed, S.M. 2005, c. 43, s. 3.

S.M. 1997, c. 40, s. 2; S.M. 1998, c. 28, s. 2; S.M. 2001, c. 24, s. 6; S.M. 2005, c. 43, s. 3.

Application of Corporations Act

2(1) Except as provided in this Act, *The Corporations Act* applies to the Fund with such modifications as the circumstances require.

Inapplicable provisions

2(2) Sections 5 to 9, subsections 10(1) to (3) and (6), sections 12 and 13, subsections 27(3), 45(9), 101(1), 126(2) and (3), 167(7) and 182(1), and sections 191 and 194 of *The Corporations Act* do not apply to the Fund.

2(3) Repealed, S.M. 2005, c. 43, s. 4.

S.M. 2005, c. 43, s. 4.

Conflict of Acts

2(4) If this Act conflicts with *The Corporations Act*, this Act prevails.

S.M. 1997, c. 40, s. 3; S.M. 2001, c. 24, s. 7; S.M. 2005, c. 43, s. 4.

PART 2

Establishment

3(1) There is hereby established a corporation, to be known as the Crocus Investment Fund, consisting of the first directors and those persons who, from time to time, are shareholders of the corporation.

Objects of the Fund

3(2) The Fund must carry on all material aspects of its business with a view to earning a return for its shareholders. Its business is restricted to

(a) the operation of an investment fund with a view to promoting and maintaining

(i) capital retention and economic stability in Manitoba,

(ii) employee ownership of Manitoba businesses, and

(iii) business continuity, job retention and creation, and the ownership of Manitoba businesses by Manitobans; and

(b) providing investment capital and other financial assistance and other services to Manitoba businesses to enable them to create, maintain and protect jobs.

3(3) and (4) Repealed, S.M. 2001, c. 24, s. 8.

S.M. 2001, c. 24, s. 8; S.M. 2005, c. 43, s. 5.

Articles of the Fund

4(1) The articles of the Fund that are filed under *The Corporations Act* must

(a) set out the authorized capital of the Fund, which must include Class "A" Common Shares and Class "L" Special Shares the rights, privileges, restrictions and conditions of which satisfy the requirements of *The Labour-Sponsored Venture Capital Corporations Act* for such shares; and

(b) repealed, S.M. 2005, c. 43, s. 6;

(c) provide that 1/2 of the members of the Board are to be appointed by the holder of the Class "L" Special Shares, and at least four members of the Board are to be elected by the holders of the Class "A" Common Shares.

Amendment requires minister's approval

4(1.1) The articles of the Fund shall not be amended without the minister's approval except

(a) to create a new class or classes of shares or to amend the rights, privileges, restrictions or conditions attaching to a class of shares other than the Class "A" Common Shares; or

(b) as required by subsection (1.2).

Transitional — articles to be amended within 60 days

4(1.2) Within 60 days after this subsection comes into force, the Board must cause the articles of the Fund to be amended

(a) to make them consistent with subsection (1); and

(b) to remove any entitlement of the government, as the holder of any shares that, by their terms and conditions, are issuable only to the government, to elect any member of the Board.

Despite *The Corporations Act*, the articles may be amended as required by this subsection by a resolution of the Board and without the approval of the Fund's shareholders. As soon as practicable after the articles are amended, the Fund must take all steps necessary to comply with the amended articles.

4(2) Repealed, S.M. 2001, c. 24, s. 9.

4(3) Repealed, S.M. 2005, c. 43, s. 6.

4(4) Repealed, S.M. 2001, c. 24, s. 9.

4(5) Repealed, S.M. 2005, c. 43, s. 6.

S.M. 1993, c. 13, s. 2; S.M. 1997, c. 40, s. 4; S.M. 2001, c. 24, s. 9; S.M. 2005, c. 43, s. 6.

4.1 and 4.2 Repealed.

S.M. 2001, c. 24, s. 10; S.M. 2005, c. 43, s. 7.

5 to 8 Repealed.

S.M. 1993, c. 13, s. 3; S.M. 1997, c. 40, s. 5 and 6; S.M. 1998, c. 28, s. 3; S.M. 2001, c. 24, s. 11.

Quorum

9 At least one director who is not elected by the holder of Class "L" Special Shares shall be present at any meeting of directors of the Fund.

S.M. 2001, c. 24, s. 12.

9.1 Repealed.

S.M. 1997, c. 40, s. 7; S.M. 2005, c. 43, s. 7.

10 Repealed.

S.M. 2001, c. 24, s. 13.

PART 3

Investment policies and criteria

11(1) Subject to subsection (2), the Fund shall establish from time to time investment policies and criteria with respect to

(a) the promotion of employee ownership and employee participation in corporate governance and management;

(b) the creation, retention or protection of employment in Manitoba;

(c) employment practices, workplace safety, environmental suitability and other matters; and

(d) the composition of the investment portfolio of the Fund in terms of industry sectors, income, growth and risk.

Restrictions

11(2) The Fund shall

(a) repealed, S.M. 2001, c. 24, s. 14;

(b) not acquire an eligible investment that would result in the total cost to the Fund, immediately after the acquisition, of its investments in an eligible business entity and entities affiliated with the entity being more than 10% of the fair market value of the Fund's investment assets;

(c) not prohibit investment in non-unionized or unionized eligible business entities and other businesses;

(d) not be used as an instrument for organizing employees into unions; and

(e) use its best efforts to ensure that a majority of its investment assets directly or indirectly promote employee ownership or employee participation in corporate governance and management.

11(3) Repealed, S.M. 2001, c. 24, s. 14.

S.M. 1992, c. 58, s. 7; S.M. 2001, c. 24, s. 14; S.M. 2005, c. 43, s. 8.

11.1 Repealed.

S.M. 1997, c. 40, s. 8; S.M. 2001, c. 24, s. 15; S.M. 2005, c. 43, s. 9.

12 to 15 Repealed.

S.M. 1994, c. 27, s. 2; S.M. 1997, c. 40, s. 9 and 11; S.M. 1997, c. 40, s. 10; S.M. 2001, c. 24, s. 16 and 18; S.M. 2001, c. 24, s. 17; S.M. 2005, c. 43, s. 9.

PART 4

15.1 to 15.6 Repealed.

S.M. 2001, c. 24, s. 19; S.M. 2005, c. 43, s. 9.

16 to 22 Repealed.

S.M. 1997, c. 40, s. 12.

PART 5

23 Repealed.

S.M. 1997, c. 40, s. 13; S.M. 2001, c. 24, s. 20; S.M. 2005, c. 43, s. 9.

PART 6

24

NOTE: This section contained consequential amendments to *The Income Tax Act* which are now included in that Act.

C.C.S.M. reference

25 This Act shall no longer be referred to as chapter E95 of the *Continuing Consolidation of the Statutes of Manitoba* but may be referred to as chapter C308 of the *Continuing Consolidation of the Statutes of Manitoba*.

S.M. 2001, c. 24, s. 21.

Coming into force

26 This Act comes into force on a day fixed by proclamation.

NOTE: S.M. 1991-92, c. 48 was proclaimed in force March 21, 1992.

SCHEDULE

Repealed.

S.M. 1993, c. 13, s. 4 and 5; S.M. 1994, c. 27, s. 3 and 4; S.M. 1997, c. 40, s. 14 to 17; S.M. 2000, c. 51, s. 2; S.M. 2001, c. 24, s. 22.

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