

THE QUEEN'S BENCH
Winnipeg Centre

B E T W E E N:

BERNARD W. BELLAN

Plaintiff,

- and -

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

Defendants

STATEMENT OF CLAIM

WALSH & COMPANY

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

File No.

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and THE CROCUS INVESTMENT FUND

Defendants

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

STATEMENT OF CLAIM

TO THE DEFENDANTS

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

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

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

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

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

July , 2005

Issued by

Registrar

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

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

AND TO: WALDRON (WALLY) FOX-DECENT
4553 Roblin Boulevard
Winnipeg, Manitoba
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AND TO: LEA BATURIN
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AND TO: ALBERT R. BEAL
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AND TO: RON WAUGH
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AND TO: DIANE BERESFORD
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AND TO: SYLVIA FARLEY
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- AND TO: WELLINGTON WEST CAPITAL INC.
200 Waterfront Drive
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R3B 3P1
- AND TO: CROCUS CAPITAL INC.
211 Bannatyne Avenue
5th Floor
Winnipeg, Manitoba
R3B 3P2

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

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

CLAIM

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

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

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

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

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

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

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

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

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

DEFINED TERMS

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

OVERVIEW

5. The Crocus Fund is a labour sponsored venture capital corporation created by *The Crocus Investment Fund Act*, C.C.S.M. c. C308 (the *Crocus Act*). The Crocus Fund has been a reporting issuer in Manitoba since 1992.

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

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

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

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

PARTIES AND BACKGROUND

Plaintiff

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

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

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

Valuation Process

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

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

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

- (e) the board, in 1999, delegated the setting of the A share price to any two directors of the board who were authorized to sign a share price valuation certificate on behalf of the board as a whole.

- 13. The board established a process for determining the value of the investee companies to establish a net realizable value for the portfolio.

- 14. The staff valuation committee prepared the valuation for each investee company in the portfolio. Valuations were to be prepared at least annually where there was no public market for the securities of the investee company.

- 15. A valuation was not to be accepted unless all the members of the staff valuation committee agreed on a value.

- 16. Once valuations were completed they were to go to the valuation subcommittee of the board which comprised two or three board members and an external valuator who was to do a limited review of the valuations and advise the valuation subcommittee.

- 17. The valuation subcommittee was scheduled to meet monthly. If valuations were not available to be considered the meeting was to be cancelled.

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

2002 Solidarité Transaction

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

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

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

21. In 2002, the Crocus Fund prepared an internal cashflow projection analysis covering the period July 2002 to September 2004. That analysis showed that without significant additional capital the Crocus Fund could fall short of its minimum reserve requirements by October 2002 and would stay below its minimum requirements until December 2002—a 90 day period.

22. In order to prevent a shortfall in its minimum reserve requirements, the Crocus Fund negotiated a short term institutional “investment” of \$10,000,000 from the Fonds de Solidarité FTQ (Solidarité) a Québec-based labour sponsored investment fund.

23. Prior to receiving the funds from Solidarité, the Crocus Fund had fallen below its minimum reserve requirement. Without the Solidarité funds, the Crocus Fund would have been in breach of its minimum reserve requirements and would have been unable to raise additional capital.

24. In the summer of 2002, the Crocus Fund arranged with Solidarité for Solidarité to make a \$10,000,000 “investment” in institutional shares (class I) of the Crocus Fund, a special class of preferred shares created by the Crocus Fund especially for the transaction. On November 15, 2002, a final agreement was signed for the issuance of 790,513.83 series 3 class I special shares for consideration of \$10,000,000. The shares carried a 10% guaranteed annual dividend rate.

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

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

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

Regulatory Intervention

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

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

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

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

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

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

The Defendants and Other Related Individuals

The Insiders

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

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

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

33. The defendant, Waldron (Wally) Fox-Decent (Fox-Decent), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from 1999 until 2004. He also executed a certificate attached to the 2002 and 2003 prospectuses attesting to the disclosure of all material facts relating to the distribution of the class A shares.

34. The defendant, Lea Baturin (Baturin), currently resides in the Province of Manitoba. She was a director of the Crocus Fund from 1999 until 2004.

35. The defendant, Albert R. Beal (Beal), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from 1999 until 2004.

36. The defendant, Ron Waugh (Waugh), currently resides in the Province of Manitoba. He was a director of the Crocus Fund in 2004.

37. The defendant, Diane Beresford (Beresford), currently resides in the Province of Manitoba. She was a director of the Crocus Fund from 1998 until 2004.

38. The defendant, Sylvia Farley (Farley), currently resides in the Province of Manitoba. She was a director of the Crocus Fund

39. The defendant, Robert Hilliard (Hilliard), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from 1992 until 2004. He also executed a certificate attached to the 1999, 2001, 2002 and 2004 prospectuses attesting to the disclosure of all material facts relating to the distribution of the class A shares.

40. The defendant, Robert Ziegler (Ziegler), currently resides in the Province of Manitoba. He was a director of the Crocus Fund until 2004.

41. The defendant, John Clarkson (Clarkson), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from 2002 until 2004. He also executed a certificate attached to the 2002 and 2003 prospectuses attesting to the disclosure of all material facts relating to the distribution of the class A shares.

42. The defendant, David G. Friesen (Friesen), currently resides in the Province of Manitoba. He was a director of the Crocus Fund from 1998 until 2004.

43. The defendant, Hugh Eliasson (Eliasson), currently resides in the Province of Manitoba. He was a director of the Crocus Fund until 2002.

44. The defendant, Sherman Kreiner (Kreiner), currently resides in the Province of Manitoba. He was president and CEO of the Crocus Fund from 1993 until December 2, 2004. He also executed a certificate attached to the 1999, 2001,

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

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

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

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

Liability

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

Oppression

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

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

The *Competition Act* (Canada)

51. The Insiders and the Financial Advisor breached s. 52(1) of the *Competition Act* (Canada) by issuing to the public the prospectus containing the Representation.

52. The prospectus was made for the purpose of promoting the supply or sale of the Crocus Fund shares and directly or indirectly the business activities or interest of the Crocus Fund, the Insiders and the Financial Advisor.

53. The prospectus contained the Representation which the Insiders, Wellington West and Nesbitt Burns (the latter only for the period 1999-2001) made to the public. The Representation was false or misleading in a material respect, namely, the A share price was not fairly valued and was overstated and the Crocus Fund was not fairly valued and was overstated.

54. The plaintiff and other class members relied upon the Representation and purchased or held shares of the Crocus Fund and suffered loss or damage as a result.

The Auditor

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

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

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

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

The Financial Advisor

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

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

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

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

The Manitoba Securities Commission (MSC)

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

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

The Value of the Crocus Fund was Overstated

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

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

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

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

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

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

Non-Disclosure

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

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

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

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

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

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

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

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

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

S. 141 of the *Securities Act*

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

PWC's Negligence

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

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

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

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

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

82. PWC was negligent in the following respects:

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

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

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

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

characteristics were those of a liability. Because of these factors, a reader of the prospectus would not have been able to adequately assess the risk of investing in the shares of the Crocus Fund. PWC was aware, or ought to have been aware, of all of these shortcomings and failed to take any action to correct same

- (j) PWC's equity valuation methodology did not comply with the requirements in s. 15 of the *Crocus Act* in that the net realizable value per share was not properly determined.

83. PWC failed for fiscal years 2000 to 2003 to ensure that GAAP were followed by the Crocus Fund, in the following respects:

- (a) investments were valued at other than net realizable value;
- (b) the exigible value of specific loans was uncertain and doubtful and no proper allowance was made;
- (c) under the circumstances of how the trading prices of the Crocus Fund shares were computed, accounting materiality should have approximated zero, and all detected differences and errors should have been recorded;
- (d) losses were recorded in improper periods;
- (e) inadequate disclosure was given to how specific groups of investments were valued;
- (f) owners' equity valuations were materially overstated; and

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

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

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

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

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

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

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

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

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

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

The *Competition Act*

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

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

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

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

Liability of MSC

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

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

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

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

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

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

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

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

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

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

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

DAMAGES

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

COSTS (INCLUDING THE COST OF INVESTIGATION)

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

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

PUNITIVE AND EXEMPLARY DAMAGES

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

RELEVANT STATUTES

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

July , 2005

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SCHEDULE 1

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

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