

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

BETWEEN:

BERNARD W. BELLAN

Plaintiff

- and -

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

Defendants

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

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**ORDER**

**(RE: Settlement with PricewaterhouseCoopers LLP)**

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Counsel for the Plaintiffs

**THE QUEEN'S BENCH  
Winnipeg Centre**

THE HONOURABLE ) WEDNESDAY, APRIL 22, 2009  
 )  
MR. JUSTICE HANSEN )

B E T W E E N:

BERNARD W. BELLAN

Plaintiff

- and -

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INC., THE MANITOBA SECURITIES COMMISSION and THE CROCUS  
INVESTMENT FUND

Defendants

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

**ORDER**

THIS MOTION, made by the Plaintiff, Bernard Bellan, for an order approving a settlement with the Defendants, PricewaterhouseCoopers LLP ("PwC"), was heard this day at Winnipeg.

THIS MOTION is a continuance of the motion brought by the Plaintiff on June 23, 2008, in which the Plaintiff sought approval of a proposed settlement agreement, dated June 8, 2008 (the "Settlement Agreement"). This Honourable Court was prepared to approve that Settlement Agreement subject to certain amendments being made. The Plaintiff now renews his request for approval of settlement in light of an amending agreement, dated April 21, 2009 (the "Amending Agreement").

ON READING the affidavits of Mark Lyons and Bernard Bellan and on hearing the submissions of counsel for the parties.

THIS COURT ORDERS AS FOLLOWS:

1. The Settlement Agreement and the Amending Agreement, attached to this Order as Schedule A, are approved as fair and reasonable and in the best interests of the Settlement Class. The Settlement Agreement and the Amending Agreement (collectively "the Agreement") are incorporated into, and form part of this Order, including the definitions contained therein. In the event of a conflict between the terms of the Settlement Agreement and the terms of the Amending Agreement, the terms of the Amending Agreement shall govern.
2. The Class Action is certified as against PwC for settlement purposes only.
3. The Settlement Class is defined as the class of persons who own Class A common shares in the Crocus Investment Fund including their legal representatives, heirs, successors and assigns, and who have not opted out of the Agreement but excludes each of the Defendants named or ever named in the Class Action or the Related Action.
4. The common issue is defined as whether PwC owed a duty to the Settlement Class.
5. Bernard Bellan is appointed as the Representative Plaintiff for the Settlement Class. His counsel Klein Lyons, Booth Dennehy LLP and Prober Law Offices, are appointed as counsel to the Settlement Class.
6. PwC and all Settlement Class Members are ordered to comply with the Agreement.
7. The deadline for exclusion ("opting out") from the Settlement Class is 30 days following the mailing of the Notice of Certification and Settlement Approval ("Opt Out Deadline").

8. Any Settlement Class Member who has not opted out from the Settlement Class in accordance with the procedures set out in this Agreement by the Opt Out Deadline shall be bound by the terms of this Agreement.

9. The Receiver, Deloitte & Touche, Inc., is appointed as the Administrator of the settlement.

10. The form of Notice of Certification and Settlement Approval is approved in substantially the form as attached as Schedule B. Within 14 days after the Approval Date, the Administrator shall mail by ordinary mail a copy of the Notice of Certification and Settlement Approval to the last known address it has in its records for each holder of Crocus Investment Fund Class A shares. The Notice of Certification and Settlement Approval will also be posted on the Klein Lyons web site, and on the Receiver's web site. The Administrator will further cause the Notice of Certification and Settlement Approval to be published in one weekday edition of the Winnipeg Free Press.

11. All claims for contribution, indemnity, subrogation or any other claims by any Non-Settling Defendant or any other person against PwC in respect of or relating to the subject matter of the Class Action and the Related Action, or any other claim on behalf of the Settlement Class, whether direct, subrogated, derivative, asserted or unasserted or asserted in a representative capacity, inclusive of interest, GST and costs, will be and the same are hereby barred by order of the Court.

12. In any proceeding taken by the Plaintiff or other Settlement Class Member in respect of a claim assigned to them, the Plaintiff or the Settlement Class member shall not claim and shall not be entitled to recover any amount for which PwC may be liable to any party to the assigned claim, including the assignor, by way of indemnity, contribution, subrogation, or other claim or claim over.

13. It is declared for additional certainty that the Plaintiff and other Settlement Class Members shall not commence, plead or assert in any way against PwC any claim obtained by assignment from a Non-Settling Defendant who has entered in a Settlement Agreement approved by the Court settling the Class Action or the Related Action.

14. Any Non-Settling Defendant or other person who intends to commence an action or third party claim against PwC relating to the subject matter of the Class Action or the Related Action or any other matter arising out of the business operations and affairs of the Crocus Investment fund shall not proceed without obtaining leave of the Honourable Mr. Justice Hanssen or such other Justice of the Manitoba Court of Queen's Bench responsible for the management of the Class Action.

15. The Non-Settling Defendants, excluding Non-Settling Defendants who have entered into Settlement Agreements with the Plaintiff which have been approved by the Court, shall have discovery rights against PwC in the Class Action with respect only to claims specifically asserted against PwC in the Statement of Claim issued on July 12, 2005, as amended.

16. With respect to the collective several liability of the Non-Settling Defendants at paragraphs 11.2.2 and 11.2.3 of the Agreement, the Non-Settling Defendants shall not be made to pay a greater amount to the Settlement Class, as a result of this settlement, than would have occurred in the absence of a settlement.

17. It is declared that, in the event of termination of the Agreement pursuant to Section 13 of the Agreement, this Order is null and void and of no force and effect.

18. The Court shall retain continuing jurisdiction over the Agreement to ensure that all payments are properly made, and over the interpretation and enforcement of the Agreement's terms, conditions and obligations.

APR 22 2009

K. R. HANSSEN

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J

**Schedule A to Order**

**THE QUEEN'S BENCH  
Winnipeg Centre**

**BETWEEN:**

**BERNARD W. BELLAN**

**Plaintiff**

- and -

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

**Defendants**

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

**SETTLEMENT AGREEMENT**

**WHEREAS:**

- A. Bernard W. Bellan (the "Plaintiff"), in his own capacity and in his capacity as representative plaintiff for the Settlement Class, and PricewaterhouseCoopers LLP ("PwC"), (collectively, the "Settling Parties"), hereby enter into this Agreement providing for settlement of the claims described below, pursuant to the terms and conditions set forth below, subject to the approval of the Court.
- B. A Class Action, being File No: CI 05-01-42765, has been filed by the Plaintiff against PwC pursuant to the Class Proceedings Act, C.C.S.M. c. C130 in the Manitoba Court of Queen's Bench ("the Class Action"). A related Class Action, being File No: CI 06-01-46955, has been

filed by the Plaintiff against the Government of Manitoba in the Manitoba Court of Queen's Bench ("the Related Action").

C. Robert Nelson has, on the advice of his physician, requested that his name be removed as a plaintiff in the Related Action.

D. By order of the Manitoba Court of Queen's Bench dated June 28, 2005, Deloitte & Touche Inc. was appointed receiver and manager of The Crocus Investment Fund and is a party to this Agreement.

E. The Settling Parties and the Receiver engaged in a mediation process with a nationally recognized mediator.

F. The Plaintiff has entered into a settlement agreement with the Government of Manitoba, the Defendant in the Related Action.

G. It is intended that this Agreement shall fully and finally settle all claims which have been or could have been made against PwC in, arising out of, or related to the Class Action and the Related Action.

H. PwC, notwithstanding its consent to this Agreement, has denied and continues to deny the claims of the Plaintiff and the Settlement Class Members in the Class Action, has denied and continues to deny any wrongdoing and has raised numerous defences, including defences relating to the certification of the claims in the Class Action and, except to the extent of its obligations under this Agreement, PwC denies liability of any kind to the Plaintiff, the Settlement Class Members, or to any Defendant. PwC enters into this Agreement without in any

way acknowledging any fault or liability and this Agreement may not be construed as an admission by PwC of any fault or liability.

I. The Class Action and the Related Action have not yet been certified. PwC is not opposing certification of the Class Action as against it for settlement purposes only.

J. The Settlement Class Members will have the right to exclude themselves ("opt out") from this Agreement pursuant to Section 16 of The Class Proceedings Act, C.C.S.M. C. C130, and as provided in this Agreement.

K. Based upon an analysis of the facts and the law applicable to the claims of the Settlement Class, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving claims of the Settlement Class provided for in this Agreement, the Plaintiff and Plaintiff's Counsel have concluded that this Agreement provides substantial benefits to the Settlement Class and is fair, reasonable, and in the best interests of the Settlement Class.

L. PwC, while continuing to deny any liability whatsoever, has similarly concluded that this Agreement is desirable in order to avoid the time, risk and expense of defending multiple and protracted litigation, and to resolve finally and completely the pending and potential claims of the Settlement Class Members and all pending and potential claims, proceedings, crossclaims and third party actions against them.

**NOW THEREFORE**, subject to the Court's approval, upon the terms and conditions hereinafter set forth, this Agreement embodies the terms of resolution of the claims asserted or which could

have been asserted against PwC in, arising out of, or related to the Class Action and the Related Action.

1. **Definitions**

Unless the specific context of a particular section of this Agreement calls for another interpretation, the following terms, as used in this Agreement, shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural, and *vice versa*. Masculine pronouns and male references shall be deemed to include the female and *vice versa*, where appropriate. The terms "person" or "party" includes individuals, partnerships and corporations.

"Administrator" means the person appointed by the Court as provided in Section 7 of this Agreement.

"Agreement" means this Settlement Agreement.

"Approval Date" means the date on which the Approval Order becomes a final order meaning that the time to appeal has expired and there has been no appeal or, if there have been any appeals from the Approval Order, all rights of appeal have been exhausted and there has been no change to the Approval Order.

"Approval Order" means the Order referred to in section 3.2.1 of this Agreement.

"Class Counsel" means the law firms of Klein Lyons, Booth Dennehy LLP and Prober Law Offices, which firms act on behalf of the Plaintiff and the Settlement Class herein and

which shall continue acting on behalf of the Plaintiff and Settlement Class with respect to all acts or consents pursuant to this Agreement.

**"Court"** means the Manitoba Court of the Queen's Bench which has jurisdiction over the Class Action and the Related Action, and the Honourable Mr. Justice Hanssen, or his successor.

**"Defendants"** means any of the defendants ever named or to be named in either of the Class Action or the Related Action (including affiliates and each Defendant and its affiliates' present and former directors, officers, agents, partners, servants and employees and each individual's successors, heirs, executors, estate trustees, administrators and assigns). For greater certainty, "Defendants" includes Deloitte & Touche Inc. in its capacity as receiver of the Crocus Investment Fund.

**"Effective Date"** means the date that PwC pays the Settlement Amount as provided in section 6.1 of this Agreement.

**"Escrow Account"** means the funded account established pursuant to Section 6.3 of this Agreement.

**"Non-Settling Defendants"** means any of the Defendants, excluding PwC, ever named or to be named in the Class Action or the Related Action. For the purpose of this Agreement, The Government of Manitoba and any other party who has entered into a settlement agreement with the Plaintiff shall be deemed to be a Non-Settling Defendant.

**"Notice of Certification and Settlement Approval"** means the Notice advising Settlement Class Members of the Court's approval of this Agreement.

**"Opt Out Deadline"** means the date 30 days after the date of mailing of the Notice of Certification and Settlement Approval pursuant to Section 3.3 of this Agreement.

**"Receiver"** means Deloitte & Touche, Inc. as Receiver of The Crocus Investment Fund.

**"Settlement Amount"** means the sum of \$6,000,000.00 (Six Million Dollars) payable by or on behalf of PwC under this Agreement.

**"Settlement Class"** means the class of persons who own Class A common shares in The Crocus Investment Fund including their legal representatives, heirs, successors and assigns, and who have not opted out of this Agreement but excludes each of the Defendants named or ever named in the Class Actions.

**"Settlement Class Member"** means a person who falls within the definition of the Settlement Class.

**"Settlement Fund"** means the Settlement Amount less the Escrow Account and the amount approved by the Court for payment of Class Counsel fees and disbursements.

## **2. Preliminary Matters**

- 2.1 Promptly after execution of this Agreement, the Plaintiff will serve a true copy of this Agreement on counsel for each of the Non-Settling Defendants.
- 2.2 Where the time on or by which any action to be taken under this Agreement falls on a day that is not a business day, such action may be done on the next day that is a business day.
- 2.3 All references to money in this Agreement are to Canadian currency.

3. **Matters Relating to Certification and Settlement Approval**

3.1 Within 14 days of the execution of this Agreement by all Settling Parties, the Plaintiff will bring an application for Court approval of this Agreement. PwC will not oppose certification of the Class Action as against it for settlement purposes only.

3.2 **Certification and Settlement Approval Order**

3.2.1 Subject to the Court's approval, and as provided in a form of Order to be agreed by the Plaintiff and PwC, the order approving this Agreement shall:

- (a) certify the Class Action as against PwC for settlement purposes only;
- (b) appoint Bernard Bellan as the Representative Plaintiff for the Settlement Class;
- (c) approve this Agreement and order PwC and all Settlement Class Members to comply with it;
- (d) order that the deadline for exclusion ("opting out") from the Settlement Class be 30 days following the mailing of the Notice of Certification and Settlement Approval ("Opt Out Deadline");
- (e) declare that any Settlement Class Member who has not opted out from the Settlement Class in accordance with the procedures set out in this Agreement by the Opt Out Deadline shall be bound by the terms of this Agreement;
- (f) declare that this Agreement is fair, reasonable, and in the best interests of the Settlement Class;

- (g) order mailing of the Notice of Certification and Settlement Approval;
- (h) appoint the Receiver as the Administrator with power to be paid its fees and disbursements from the Settlement Amount;
- (i) bar any and all claims, including claims for contribution, indemnification, subrogation or other claims over, against PwC by any Non-Settling Defendant, or by any other person, in respect of the subject matter of the Class Action and the Related Action or any other matter arising out of or related to the operation of The Crocus Investment Fund;
- (j) order that the Non-Settling Defendants, excluding Non-Settling Defendants who have entered into settlement agreements with the Plaintiff which have been approved by the Court, shall have discovery rights against PwC in the Class Action as if the Non-Settling Defendants had issued third party notices against PwC, and the Plaintiff shall have the right to participate as a party to such discoveries; and
- (k) declare that, in the event of termination of this Agreement pursuant to Section 13 below, the Order is null and void and of no force and effect.

3.2.2 Following Court approval of this Agreement, Class Counsel will apply to the Court for approval of Class Counsel fees and disbursements. On the Effective Date, the amount approved by the Court will be paid to Class Counsel out of the Settlement Amount that was paid to Klein Lyons in trust pursuant to section 6.1 of this Agreement. The approval of this Agreement is not conditional on approval of Class Counsel's fees or

disbursements. PwC takes no position as to the amount that should be paid to Class Counsel for fees and disbursements.

**3.3 Notice of Certification and Settlement Approval**

3.3.1 The content of the Notice of Certification and Settlement Approval shall be as agreed by the Settling Parties and approved by the Court.

3.3.2 Within 14 days after the Approval Date, or on such other date as is approved by the Court, the Receiver shall mail by ordinary mail a copy of the Notice of Certification and Settlement Approval to the last known address it has in its records for each holder of Crocus Investment Fund Class A common shares. The Notice of Certification and Settlement Approval will also be posted on the Klein Lyons web site, and the Plaintiff will request that it be posted on the Receiver's web site.

**4. Waiver of Limitation Defences**

4.1 Nothing in this Agreement shall constitute or be deemed to constitute a waiver by PwC of defences based upon statutes of limitations or repose, prescription periods or any other limitation or prescription defence with respect to any action brought or continued by any person who opts out of this Agreement, or is deemed to opt out of this Agreement, or if this Agreement is terminated.

**5. Entitlement to Compensation**

5.1 Subject to the payment of administration expenses referred to in section 7.1 of this Agreement, and all other conditions set out in this Agreement, only Settlement Class

Members who have not opted out shall be entitled to receive payments out of the Settlement Fund pursuant to this Agreement.

6. **Payments and Related Issues**

- 6.1 Within 14 business days after the expiration of the time period in paragraph 13.2.2, PwC will pay the Settlement Amount (\$6,000,000.00) to Klein Lyons in trust in full and final settlement of all claims by the Plaintiff and the Settlement Class, whether direct, subrogated, asserted or unasserted or asserted in an assigned or representative capacity in the Class Action or the Related Action, inclusive of all interest, GST and costs.
- 6.2 Klein Lyons will forthwith upon receipt of the Settlement Amount transfer the sum of \$5,500,000 to the Administrator to be held in trust by the Administrator for the benefit of the Settlement Class.
- 6.3 From the Settlement Fund Klein Lyons shall deduct the sum of \$500,000 (Five Hundred Thousand Dollars) and deposit the same in an interest bearing account ("The Escrow Account"). The Escrow Account shall be opened and held in the name of Klein Lyons and Heenan Blaikie LLP acting jointly and in trust. Disbursements from the Escrow Account shall require the signature of both Klein Lyons and Heenan Blaikie LLP.
- 6.3.1 The Escrow Account shall be used to compensate or reimburse PwC for reasonable fees, disbursements and other expenses or charges incurred subsequent to the Effective Date by PwC's professional staff and/or its legal advisors as a result of PwC's further involvement in the Class Action, the Related Action, or other actions or proceedings arising out of or related to the subject matter of the Class Action or the Related Action.

Payments out of the Escrow Account shall be made to PwC on agreement between PwC and Class Counsel or, failing agreement, by order of the Court upon motion by PwC with no less than 14 days notice to Class Counsel. On the final disposition of the Class Action, the Related Action or any other action or proceeding in respect of which PwC may have a claim to the Escrow Fund, by settlement or judgment, Class Counsel will apply to the Court for an order for distribution of any balance remaining in the Escrow Account.

6.3.2 Without limiting paragraph 6.3.1, it is agreed that PwC shall be reimbursed from the Escrow Account, to a limit of \$100,000, for reasonable legal fees and disbursements incurred by PwC as a result of its involvement as a party in proceedings commenced by the Receiver against any Crocus investee.

6.4 Any payments contemplated by this Section 6 are automatically cancelled and rendered null and void if this Agreement is terminated. In the event this Agreement is terminated, the Settlement Fund and the Escrow Fund shall be forthwith returned to PwC.

7. **Administrator**

7.1 The Settling Parties will propose that the Receiver be appointed by the Court as the Administrator for the purpose of administering this Agreement. All expenses of the Receiver related to the administration of this Agreement will be paid out of the Settlement Fund.

8. **Procedures and Deadlines for Exclusion**

8.1 Any person who is a holder of Crocus Investment Fund Class A common shares, other than Bernard W. Bellan, will have the right to exclude herself or himself ("opt out") from this Agreement and from the Settlement Class by delivering a letter to the Administrator on or before the Opt Out Deadline signed by the person opting out and setting out that person's name, address, number of shares held and reason for opting out. Persons who elect to opt out shall be excluded from this Agreement and from the Settlement Class. It is the responsibility of the person opting out to ensure that the requisite signed letter is received by the Administrator on or before the Opt Out Deadline. Any member of the Settlement Class who does not deliver to the Administrator a complete and signed opt out letter by the Opt Out Deadline shall be considered a Settlement Class Member and shall be bound by the terms of this Agreement and by the Court Order approving this Agreement.

8.2 By entering into this Agreement, Bernard W. Bellan agrees that he will not opt out of this Agreement.

9. **Distribution of Settlement Fund**

9.1 The Settlement Fund will be held in trust by the Administrator for the benefit of the Settlement Class. All Settlement Class Members who have not opted out will be eligible for payment from the Settlement Fund. The Settlement Fund, net of the Administrator's fees and disbursements, will be distributed to the Settlement Class Members by the Administrator at the same time that the Receiver makes its first distribution of funds from The Crocus Investment Fund to the holders of Crocus Investment Fund Class A common shares. The Settlement Fund will be distributed pro rata to the Settlement Class Members

based on the monies paid for each Settlement Class Member's Class A common shares of The Crocus Investment Fund which remained unredeemed as of the date of the Receivership.

- 9.2 PwC shall have no responsibility for the maintenance of the Settlement Fund after the Effective Date and PwC shall have no responsibility for the allocation and distribution of the Settlement Fund to the Settlement Class.

10. **Exclusive Remedy/Dismissal of Action**

10.1 **Exclusive Remedy**

- 10.1.1 This Agreement shall be the sole and exclusive remedy for any and all Settlement Class Members with respect to claims asserted or which could have been asserted against PwC in the Class Action or the Related Action. PwC shall not be subject to liability or any other expense of any kind to any Settlement Class Member with respect to the Class Action and the Related Action, except as provided in this Agreement. Settlement Class Members, who have not opted out of this Agreement on or before the Opt Out Deadline and their personal representatives, successors and assigns, shall be forever barred from continuing, initiating, asserting or prosecuting any and all claims asserted or which could have been asserted against PwC in the Class Action or the Related Action.

10.2 **Dismissal of Action**

- 10.2.1 Forthwith after the Effective Date, the Settling Parties will file a consent to a judgment dismissing the Class Action, including any and all crossclaims and third party claims, as against PwC, with prejudice on a "without costs" basis, along with any other documents

that may be necessary to give effect to the dismissal of the Class Action. Notwithstanding the dismissal of the Class Action as against PwC, the Court will retain ongoing jurisdiction to deal with matters arising out of the administration of the settlement provided for in this Agreement.

**11. Releases/Bar Order/Third Party Claims**

**11.1 Release of Claims Against PwC**

11.1.1 The claims of the Plaintiff and every Settlement Class Member, who has not opted out of this Agreement on or before the Opt Out Deadline, whether their claims are direct, subrogated, asserted or unasserted or asserted in an assigned or representative capacity in the Class Action or the Related Action, inclusive of all interest, GST and costs, shall be conclusively compromised, settled, released and discharged as against PwC, and the Plaintiff and every Settlement Class Member, their personal representatives, successors and assigns, shall be deemed to have forever released and discharged PwC from any past, present and future claims, actions, demands and liabilities of any nature whatsoever relating to claims asserted or which could have been asserted in the Class Action or the Related Action.

**11.2 Bar Order**

11.2.1 All claims, including claims for contribution, indemnity, subrogation or other claims over, by any Non-Settling Defendant or any other person against PwC in respect of or relating to the subject matter or the settlement of the Class Action or the Related Action or any other matter arising out of the operation of The Crocus Investment Fund, whether

direct, subrogated, asserted or unasserted or asserted in an assigned or representative capacity, inclusive of interest, GST and costs, will be forever barred by order of the Court.

11.2.2 Forthwith after the Effective Date, the Plaintiff will amend the Statement of Claim in Manitoba Queen's Bench Action No. CI 05-01-42765 so as to restrict permanently the claims made against the Non-Settling Defendants to the collective several liability of the Non-Settling Defendants. In other words, the Plaintiff agrees to exclude permanently the proportionate share of liability of PwC from any judgment which may be granted against the Non-Settling Defendants or any of them.

11.2.3 If any action is instituted or continued by a Settlement Class Member, including the Plaintiff, seeking damages against persons who are not currently parties to the Class Action or the Related Action ("non-parties") in respect of claims asserted or which could have been asserted in the Class Action or the Related Action, such action will be limited to the non-parties' collective several liability. In other words, the Settlement Class Member's claim shall exclude the proportionate share of liability of PwC from the claims against the non-parties, and from any judgment which may be granted against the non-parties.

11.3 Reservation of Rights/Third Party Claims

11.3.1 Except as otherwise provided herein, nothing in this Agreement shall prejudice or in any way interfere with the rights of the Settlement Class Members to pursue all of their other rights and remedies against persons and/or entities other than PwC.

12. **Submissions to the Court by the Administrator**

12.1 The Administrator may apply to the Court for directions, as required, upon notice served on Class Counsel and PwC's Counsel no later than fourteen (14) days prior to the date of any hearing.

13. **Termination of this Agreement**

13.1 **PwC's Right of Termination**

13.1.1 If persons holding a total of more than .5 percent (one half of one percent) of the Crocus Investment Fund Class A common shares elect to opt out of this Agreement on or before the Opt Out Deadline, PwC shall have the unilateral right to terminate this Agreement as set forth in Section 13.2.

13.2 **Procedures and Time for Termination**

13.2.1 Within thirty (30) days following the Opt Out Deadline the Administrator shall notify counsel for PwC and Class Counsel of the total number of persons who have opted out of this Agreement, including all particulars of their Crocus Investment Fund shareholdings and copies of their opt out letters.

13.2.2 PwC may exercise its right to terminate this Agreement pursuant to Section 13.1.1 above by providing written notice to Class Counsel and to the Court within thirty (30) days from the date on which the Administrator provides counsel for PwC with the information and documentation pursuant to Section 13.2.1 above.

**13.3 Notice to Settlement Class Members**

13.3.1 If PwC exercises its right of termination pursuant to Section 13 of this Agreement, Notice of Termination shall be given to all Settlement Class Members. The content and method of dissemination of the Notice of Termination shall be determined by the Court. If PwC exercises the right to terminate this Agreement, any costs associated with disseminating the Notice of Certification and Settlement and the Notice of Termination shall be paid by PwC.

**13.4 Automatic Termination of the Agreement**

13.4.1 This Agreement shall, without notice, be automatically terminated if the Court declines to approve this Agreement in any respect or, in the event of an appeal, if the Court's approval order is not affirmed in all respects.

**13.5 Effect of Termination**

13.5.1 If this Agreement is terminated pursuant to Section 13 herein, the certification of the Class Action for settlement purposes pursuant to this Agreement shall be null and void and this Agreement shall have no further force or effect and shall not be used or referred to in any litigation involving any of the Settling Parties and/or the Non-Settling Defendants.

**14. Receiver's Release of Claims**

14.1 In consideration of the settlement provided for in this Agreement, the Receiver releases and forever discharges PwC for or in respect of any claim or matter asserted or which

could have been asserted in the Class Action or in the Related Action and for or in respect of any claim or matter arising out of the operation, audit, or receivership of The Crocus Investment Fund.

15. **Miscellaneous Provisions**

15.1 **Ongoing Authority**

15.1.1 The Court shall retain continuing jurisdiction over this Agreement to ensure that all payments under this Agreement are properly made, and over the interpretation and enforcement of this Agreement's terms, conditions and obligations.

15.2 **Entire Agreement**

15.2.1 This Agreement constitutes the entire agreement by and among the Settling Parties with regard to the subject of this Agreement and supercedes any previous agreements and understandings between the Settling Parties with respect to the subject matter of this Agreement. This Agreement may not be amended except in writing signed by the Settling Parties, and such amendments are subject to the Court's approval.

15.3 **Other Originals**

15.3.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument.

15.4 **Dates**

15.4.1 Dates and deadlines referred to in this Agreement may be altered only with the consent of the Settling Parties and with the approval of the Court.

15.5 Use of Agreement

- 15.5.1 Neither the existence nor the terms of this Agreement may be used as evidence of any admission by PwC regarding fault, liability, causation, damages, and/or any other issue. This Agreement may, however, be relied upon by the Plaintiff or PwC for purposes of enforcing any right possessed by such person or for purposes of any motion or application made to the Court for interpretation or enforcement of its terms.

15.6 Notification

- 15.6.1 Any notification, request, instruction or other document to be given by any party to this Agreement to any other party to this Agreement shall be in writing and delivered personally, sent by facsimile, or sent by registered mail, postage prepaid, if to the Plaintiff, to the attention of Class Counsel and, if to PwC, to the attention of its counsel:

**For the Plaintiff Bernard W. Bellan and the Settlement Class:**

David A. Klein, Douglas Lennox, Jay Prober and J. R. Norman Boudreau

**For the Defendant PwC:**

William E. Pepall and David Marr


**For the Receiver:**

A. R. Holmes

Dated this 5<sup>th</sup>

day of June, 2008.


**Plaintiff and Settlement Class**

  
by their solicitors, Klein Lyons  
Per: Douglas Lennox

Dated this 16<sup>th</sup>


day of June, 2008.

**PricewaterhouseCoopers LLP**

  
Neil St. John  
Corporate Secretary and General Counsel

Dated this 8<sup>th</sup>

day of June, 2008.

Deloitte & Touche Inc as Receiver of  
Focus Investment Fund, <sup>LLP</sup>  
  
Senior V.P.

**THE QUEEN'S BENCH  
Winnipeg Centre**

BETWEEN:

BERNARD W. BELLAN

Plaintiff

- and -

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

Defendants

Proceedings under *The Class Proceedings Act*, C.C.S.M. c. CI30

**AGREEMENT TO AMEND THE SETTLEMENT AGREEMENT  
DATED JUNE 8, 2008 ("THE AMENDING AGREEMENT")**

**WHEREAS:**

- A. Bernard W. Bellan ("the Plaintiff"), in his own capacity and in his capacity as representative plaintiff for the Settlement Class, PricewaterhouseCoopers LLP ("PwC") and Deloitte & Touche Inc., as Receiver of Crocus Investment Fund ("the Receiver") (collectively "the Parties") entered into a Settlement Agreement dated June 8, 2008 ("the Settlement Agreement").
- B. The Settlement Agreement was subject to automatic termination if the Court declined to approve the Settlement Agreement in any respect.
- C. On June 23, 2008, the Court declined to approve certain terms in the Settlement Agreement.

- D. The Parties wish to affirm the Settlement Agreement and amend the same, as necessary, in order to obtain the approval of the Court.

**NOW THEREFORE**, subject to the approval of the Court, this Amending Agreement sets out the revised and additional terms of the Settlement Agreement as follows:

1. The Parties hereby confirm and ratify the terms of the Settlement Agreement except as modified by the terms of this Amending Agreement. In the event of conflict between the terms of the Settlement Agreement and the terms of the Amending Agreement, the terms of the Amending Agreement shall govern.
2. Page 2 of the Settlement Agreement shall be amended to add a new recital, F.1, which shall state:

F.1 The Plaintiff has also entered into a Settlement Agreement dated May 29, 2008 with Settling Director and Officer Defendants. Pursuant to paragraph 11.3.2 of that Settlement Agreement, the Settling Director and Officer Defendants assigned to the Plaintiff, "any and all claims they may have, in law or in equity, for contribution or indemnity from any of the Non-Settling Defendants or against any other person or party in respect of the claims asserted in the Class Action." ("the Assigned Claims")

3. Page 2, paragraph G of the Settlement Agreement shall be amended to state:

G. It is intended that this Agreement shall fully and finally settle all claims which have been or could have been made against PWC in, arising out of, or related to the Class Action and the Related Action, and all other claims that the Plaintiff or

Settlement Class Members may otherwise have against PwC relating to the Crocus Investment Fund.

4. Page 3 of the Settlement Agreement shall be amended to add a new recital, J.1 which shall state:

J.1 PwC may have claims, in law or in equity, for contribution or indemnity against the Non-Settling Defendants and other third parties in respect of the claims asserted by the Plaintiff and the Settlement Class Members in the Class Action.

5. Page 3 of the Settlement Agreement shall be further amended to state as follows:

NOW THEREFORE, subject to the Court's approval, upon the terms and conditions hereinafter set forth, this Agreement embodies the terms of resolution of the claims asserted or which could have been asserted against PwC in, arising out of, or related to the Class Action and the Related Action and all other claims that the Plaintiff or Settlement Class Members may otherwise have against PwC relating to the Crocus Investment Fund.

6. Page 4, paragraph 1 of the Settlement Agreement shall be amended to state:

"Agreement" means this Settlement Agreement as amended by the Amending Agreement.

7. Page 5, paragraph 1 of the Settlement Agreement shall be amended to state:

"Defendants" means any of the Defendants ever named or to be named in the Class Action, the Related Action or the Assigned Claims (including affiliates and each Defendant and its affiliates)

present and former directors, officers, agents, partners, servants and employees and each individual's successors, heirs, executors, estate trustees, administrators and assigns). For greater certainty, "Defendants" includes Deloitte & Touche Inc. in its capacity as receiver of the Crocus Investment Fund.

8. Page 5, paragraph 1 of the Settlement Agreement shall be amended to state:

"Non-Settling Defendants" means any of the Defendants, excluding PwC, ever named or to be named in the Class Action, the Related Action or the Assigned Claims. For the purpose of this Agreement, The Government of Manitoba and any other party who has entered into a settlement agreement with the Plaintiff shall be deemed to be a Non-Settling Defendant.

9. Page 8, paragraph 3.2.1(j) of the Settlement Agreement shall be amended to state:

3.2.1(j) order that the Non-Settling Defendants excluding Non-Settling Defendants who have entered into settlement agreements with the Plaintiff which have been approved by the Court, shall have discovery rights against PwC in the Class Action with respect only to the claims specifically asserted against PwC in the Statement of Claim issued on July 12, 2005, as amended, as if the Non-Settling Defendants had issued third party notices against PwC, and the Plaintiff shall have the right to participate as a party to such discoveries; and

10. Page 10, paragraph 6.3.1 of the Settlement Agreement shall be amended to state:

6.3.1 The Escrow Account shall be used to compensate or reimburse PwC for reasonable fees, disbursements and

other expenses or charges incurred subsequent to the Effective Date by PwC's professional staff and/or its legal advisors as a result of PwC's further involvement in the Class Action, the Related Action, the Assigned Claims, or other actions or proceedings arising out of, related to, or concerning the subject matter of the Class Action or the Related Action. Payments out of the Escrow Account shall be made to PwC on agreement between PwC and Class Counsel or, failing agreement, by order of the Court upon motion by PwC with no less than 14 days notice to Class counsel. On the final disposition of the Class Action, the Related Action, the Assigned Claims or any other action or proceeding in respect of which PwC may have a claim to the Escrow Fund, by settlement or judgment, Class Counsel will apply to the Court for an order for distribution of any balance remaining in the Escrow Fund.

11. Page 13, paragraph 10.1.1 of the Settlement Agreement shall be amended to state:

10.1.1 This Agreement shall be the sole and exclusive remedy for the Plaintiff and any and all Settlement Class Members with respect to claims relating to the Crocus Investment Fund, including those claims asserted or which could have been asserted against PwC in the Class Action or the Related Action. PwC shall not be subject to liability or any other expense of any kind to the Plaintiff or any Settlement Class Member with respect to the Crocus Investment Fund, the Class Action and the

Related Action, except as provided in this Agreement. Settlement Class Members who have not opted out of this Agreement on or before the Opt Out Deadline and their personal representatives, successors and assigns, shall be forever barred from continuing, initiating, asserting or prosecuting any and all claims relating to the Crocus Investment Fund, including those claims asserted or which could have been asserted against PwC in the Class Action or the Related Action.

12. Page 14, paragraph 11.1.1 of the Settlement Agreement shall be amended to state:

11.1.1 The claims of the Plaintiff and every Settlement Class Member, who has not opted out of this Agreement on or before the Opt Out Deadline relating to the Crocus Investment Fund, whether their claims are direct, subrogated, asserted or unasserted or asserted in an assigned or representative capacity in the Class Action or the Related Action, inclusive of all interest, GST and costs, shall be conclusively, compromised, settled, released and discharged as against PwC, and the Plaintiff and every Settlement Class Member, their personal representatives, successors, and assigns, shall be deemed to have forever released and discharged PwC from any past, present and future claims, actions, demands and liabilities of any nature whatsoever relating to the Crocus Investment Fund, including all claims asserted or which could have been asserted in the Class Action or the Related Action.

13. Page 14, paragraph 11.2.1 of the Settlement Agreement shall be deleted and replaced by the following:

11.2.1 All claims for contribution, indemnity, subrogation or any other claims by any Non-Settling Defendant or any other person against PwC in respect of or relating to the subject matter of the Class Action and the Related Action, or any other claim on behalf of the Settlement Class, whether direct, subrogated, derivative, asserted or unasserted or asserted in a representative capacity, inclusive of interest, GST and costs, will be barred by order of the Court.

14. Page 15, paragraph 11.2.2 of the Settlement Agreement shall be amended to state:

11.2.2 Forthwith after the Effective Date, the Plaintiff will amend the Statement of Claim in Manitoba Queen's Bench Action No. CI 05-01-42765 so as to restrict permanently the claims made against the Non-Settling Defendants to the collective several liability of the Non-Settling Defendants. In other words, the Plaintiff agrees to exclude permanently the proportionate share of liability of PwC from his claims against and any judgment which may be granted against the Non-Settling Defendants or any of them.

15. Page 15, paragraph 11.2.3 of the Settlement Agreement shall be amended to state:

11.2.3 If any action is instituted or continued by a Settlement Class Member, including the Plaintiff, seeking damages against persons who are not currently parties to the

Class Action or the Related Action ("non-parties) in respect of claims asserted or which could have been asserted in the Class Action or the Related Action, such action will be limited to the non-parties' collective several liability and the Settlement Class Member, including the Plaintiff, shall not claim or be entitled to recover any amount for which PwC may be liable to any party thereto by way of indemnity, contribution, claim over or otherwise. In other words, the Settlement Class Member's claim shall exclude the proportionate share of liability of PwC from the claims against the non-parties, and from any judgment which may be granted against the non-parties.

16. A paragraph 11.2.3 (a) shall be added to the Settlement Agreement to state:

11.2.3(a) In any proceeding taken by the Plaintiff or other Settlement Class member in respect of a claim assigned to them, the Plaintiff or the Settlement Class member shall not claim and shall not be entitled to recover any amount for which PwC may be liable to any party to the assigned claim, including the assignor, by way of indemnity, contribution, subrogation, or other claim or claim over.

17. Paragraph 15.7.1 shall be added to the Settlement Agreement to state:

15.7 Leave Requirement

15.7.1 Any Non-Settling Defendant or other person who intends to commence an action or third party claim against PwC

relating to the subject matter of the Class Action or the Related Action or any other matter arising out of the business, operations and affairs of the Crocus Investment Fund shall not proceed without obtaining leave of the Honourable Mr. Justice Hanssen or such other Justice of the Manitoba Court of Queen's Bench responsible for the management of the Class Action.

18. Paragraph 15.8.1 of the Settlement Agreement shall be added to the Settlement Agreement to state:

15.8 Further Assurances

15.8.1 The Parties shall execute such further consents and agreements as may be necessary to give full and appropriate effect to the terms of the Settlement Agreement, as amended.

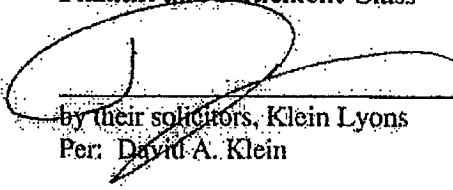
19. Page 7, paragraph 3.2.1 of the Settlement Agreement shall be amended to:

- (i) incorporate by reference or attachment to the Order the terms of the Settlement Agreement, as amended;
- (ii) amend paragraph (i) to conform with paragraph 11.2.1 of the Settlement Agreement, as amended;
- (iii) add a sub-paragraph (l) to refer specifically to paragraph 11.2.3(a) of the Settlement Agreement, as amended; and
- (iv) add a sub-paragraph (m) to refer specifically to paragraph 15.7.1 of the Settlement Agreement, as amended.

20. This Amending Agreement may be executed in one or more counterparts by the parties or their respective counsel.

Dated this 21<sup>st</sup> day of April 2009.

**Plaintiff and Settlement Class**

  
by their solicitors, Klein Lyons  
Per: David A. Klein

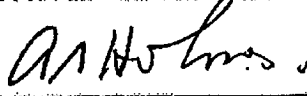
Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

**PricewaterhouseCoopers LLP**

\_\_\_\_\_  
Tony Cancelliere  
National Managing Partner Operations

Dated this 21<sup>st</sup> day of April, 2009.

**Deloitte & Touche Inc. as Receiver of  
Crocus Investment Fund**

  
\_\_\_\_\_  
A. R. Holmes  
Senior V.P.

20. This Amending Agreement may be executed in one or more counterparts by the parties or their respective counsel.

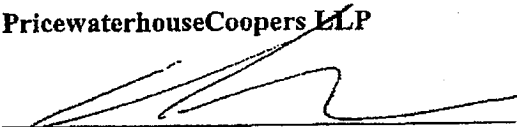
Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

**Plaintiff and Settlement Class**

\_\_\_\_\_  
by their solicitors, Klein Lyons  
Per: David A. Klein

Dated this *21st* day of *April* 2009.

**PricewaterhouseCoopers LLP**

  
\_\_\_\_\_  
Tony Cancelliere  
National Managing Partner Operations

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**Deloitte & Touche Inc. as Receiver of  
Crocus Investment Fund**

\_\_\_\_\_  
A. R. Holmes  
Senior V.P.

**Schedule B to Order**

## **Crocus Investment Fund Class Actions Notice of Certification and Settlement Approval**

To all persons who own Class A common shares in the Crocus Investment Fund (the "Fund"), this notice will be important to you.

Settlements have been approved by the Court in lawsuits brought on behalf of shareholders in the Fund. This notice is published by Order of The Honourable Mr. Justice Hanssen of the Manitoba Court of Queen's Bench and explains:

1. the lawsuits and purpose of this notice;
2. the terms of settlement;
3. your right to choose to opt out of the class actions;
4. legal fees; and
5. where to get more information.

### **1. The Lawsuits and Purpose of this Notice**

Bernard Bellan commenced class action lawsuits relating to the Fund on behalf of shareholders in the Manitoba Court of Queen's Bench as action nos. CI 05-01-42765 and CI 06-01-46955. By notice issued by Mr. Justice Hanssen of the Manitoba Court of Queen's Bench and published July 11, 2008 (the "First Notice"), it was announced that certain defendants, namely the Manitoba Securities Commission, the Government of Manitoba, and BMO Nesbitt Burns Inc had agreed to settle with shareholders, and that the court had approved these settlements. These first settlements became final on August 18, 2008.

This First Notice further advised that a provisional settlement had also been reached, subject to certain amendments, with certain other defendants, namely the former officers and directors of the Fund, Pricewaterhouse Coopers LLP, Crocus Capital Inc., and the Crocus Investment Fund, and that litigation was continuing against Wellington West Capital Inc., with whom no settlement had been reached. All of these remaining defendants have now agreed to settle the claims of shareholders (the "Settling Defendants").

On April 22, 2009, Mr. Justice Hanssen certified the lawsuit against the Settling Defendants as a class action for the purposes of settlement, and approved the settlement agreements, including amendments, reached with the Settling Defendants. The court defined the class as persons who own Class A common shares in the Fund including their legal representatives, heirs, successors and assigns, and who have not opted out but excludes each of the Defendants named or ever named in the lawsuits. The court appointed Mr. Bellan as representative plaintiff for the class. The court appointed the firms of Klein Lyons, Booth Dennehy LLP and Prober Law Offices, (collectively, "Class Counsel") as counsel to the class.

### **2. The Terms of Settlement**

The Settling Defendants have agreed to pay up to a total of \$9.65 million to compensate class members (\$6 million paid by Pricewaterhouse Coopers LLP, \$3.15 million paid by the former

officers and directors of the Fund and \$500,000 paid by Wellington West Capital Inc., now Wellington West Holdings Inc.) The Settling Defendants have also agreed to drop most claims for indemnity against the Fund with respect to claims asserted in the lawsuits, thereby significantly reducing one of the major obstacles to the distribution of money to shareholders held in the Fund's receivership. In exchange, the claims against the Settling Defendants will be dismissed. No admission of liability has been made.

Compensation will be distributed pro rata to the Settlement Class Members based on the monies paid for each Settlement Class Member's Class A common shares of the Crocus Investment Fund which remained unredeemed as of the date of the Receivership. Compensation will be distributed by Deloitte & Touche Inc., the Receiver to the Fund, which the court has appointed as the Administrator for the settlements. It is anticipated that compensation will be distributed to class members at the same time that the Administrator makes a distribution of monies from the Receivership to shareholders. To be eligible to receive compensation, it is not necessary for you to take any steps, other than make sure that the Administrator has your correct mailing address. The Administrator is mailing a copy of this notice to all shareholders in the Fund. If you received a copy of this notice in the mail from the Administrator, and it is addressed to you at your current address, this confirms that it has your mailing address.

The class members' recoveries will be subject to payment of Class Counsel's fee, in an amount to be determined by the Court. Copies of the Settlement Agreements, and amendments, are available online at [www.kleinlyons.com](http://www.kleinlyons.com). Hard copies can be obtained by calling Class Counsel at 1-800-216-1383.

### **3. Your Right to Choose Whether or Not to be Part of the Class Actions**

#### *(a) How to be Included in the Class*

If you are a class member, you will automatically be included in the class actions and eligible to receive compensation unless you opt out.

#### *(b) How to be Excluded from the Lawsuits*

To opt out of the class actions, you must deliver a letter to the Administrator on or before the **[Opt Out Deadline]** signed by the person opting out and setting out that person's name, address, number of shares held, the reason for opting out, and specifying which Settling Defendants you are opting out against. Failure to specify which Settling Defendants you are opting out against will be treated as opting out as against all Settling Defendants.

All class members who do not opt out of the settlements with the Settling Defendants, as described above will be bound by the settlements.

The address for writing to the Administrator to opt out is: Crocus Class Action Settlement Administrator, Deloitte & Touche Inc., 360 Main Street, Suite 2300, Winnipeg MB, R3C 3Z3.

### **4. Legal Fees**

Mr. Bellan retained Class Counsel to represent him and the Class in the lawsuits. Class Counsel are paid legal fees only if the lawsuit is successful, and then only in an amount approved by the Court.

**5. More Information**

For further information about the class actions you may contact: Klein Lyons, Barristers & Solicitors, P.O. Box 85, Suite 1220, 65 Queen St. W., Toronto, ON M5H 2M5, 1-800-216-1383, Attn: Doug Lennox [dlennox@kleinlyons.com](mailto:dlennox@kleinlyons.com), [www.kleinlyons.com](http://www.kleinlyons.com).