

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Arctic Glacier International, Inc.,

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 12-10605 (KG)

Eldar Brodski Zardinovsky a/k/a Eldar Brodski a/k/a Eldar Brodski (Zardinovsky), EB Books, Inc., EB Design, Inc., EB Online, Inc., EB Imports, Inc., Lazdar Inc., Eldar Brodski Inc., Y Capital Advisors Inc., Valley West Realty Inc., Ruben Brodski, Ruben Brodski Inc., Ester Brodski, and Yehonathan Brodski,

Plaintiffs,

v.

Arctic Glacier Income Fund, James E. Clark, Gary A. Filmon, David R. Swaine, and Hugh A. Adams,

Defendants.

Adv. Proc. No. 15-_____

COMPLAINT

Eldar Brodski Zardinovsky a/k/a Eldar Brodski a/k/a Eldar Brodski (Zardinovsky), EB Books, Inc., EB Design, Inc., EB Online, Inc., EB Imports, Inc., Lazdar Inc., Eldar Brodski Inc., Y Capital Advisors Inc., Valley West Realty Inc., Ruben Brodski, Ruben Brodski Inc., Ester Brodski, and Yehonathan Brodski (collectively, the “Plaintiffs”), by and through their undersigned attorneys, hereby alleges for their Complaint (the “Complaint”) against Arctic Glacier Income Fund, James E. Clark, Gary A. Filmon, David R. Swaine, and Hugh A. Adams

(collectively, the “Defendants”), upon information and belief as to all matters, as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this adversary proceeding to recover the damages that they have suffered as a result of Defendants’ complete and utter disregard for applicable securities rules and regulations. Such securities rules and regulations establish, *inter alia*, that a company whose securities are “traded by the use of any means or instrumentality of interstate commerce,” like Defendant Artic Glacier Income Fund (“AGIF”), may pay dividends only with the approval of the U.S. Financial Industry Regulatory Authority (“FINRA”), which was granted such authority by the U.S. Securities and Exchange Commission (“SEC”), and then only to holders of the securities that FINRA recognizes as having a right to receive the dividend in accordance with FINRA’s rules. Defendants ignored the applicable securities rules and regulations and AGIF, instead of paying Plaintiffs the almost \$2 million in dividends they were entitled to receive, paid the dividends to the parties who sold the units of AGIF to Plaintiffs.

2. Moreover, Defendants violated securities rules and regulations by failing to disclose material information relating to AGIF’s decision to pay dividends that caused the price of AGIF units to be wrongfully inflated by approximately 75%. As a result, Plaintiffs massively overpaid for the AGIF units that they acquired, which plummeted in value when AGIF finally revealed the information that it had wrongfully withheld from the market, resulting in steep losses to Plaintiffs.

3. In short, not only did Defendants cause AGIF to fail to pay to Plaintiffs the dividends to which Plaintiffs were unquestionably entitled, AGIF compounded the problem by denying investors, like Plaintiffs, the information that they were obligated to provide and that Plaintiffs would have been able to use to protect themselves.

THE PARTIES

4. Plaintiff Eldar Brodski Zardinovsky a/k/a Eldar Brodski a/k/a Eldar Brodski (Zardinovsky) is an individual residing in Nevada and a holder of units of AGIF.

5. Plaintiff EB Books, Inc. is incorporated in Wyoming with its principal place of business in Las Vegas, Nevada. Plaintiff EB Books, Inc. is a holder of units of AGIF.

6. Plaintiff EB Design, Inc. is incorporated in Wyoming with its principal place of business in Las Vegas, Nevada. Plaintiff EB Design, Inc. is a holder of units of AGIF.

7. Plaintiff EB Online, Inc. is incorporated in Wyoming with its principal place of business in Las Vegas, Nevada. Plaintiff EB Online, Inc. is a holder of units of AGIF.

8. Plaintiff EB Imports, Inc. is incorporated in Wyoming with its principal place of business in Las Vegas, Nevada. Plaintiff EB Imports, Inc. is a holder of units of AGIF.

9. Plaintiff Lazdar Inc. is incorporated in Wyoming with its principal place of business in Las Vegas, Nevada. Plaintiff Lazdar Inc. is a holder of units of AGIF.

10. Plaintiff Eldar Brodski Inc. is incorporated in Wyoming with its principal place of business in Las Vegas, Nevada. Plaintiff Eldar Brodski Inc. is a holder of units of AGIF.

11. Plaintiff Y Capital Advisors Inc. is incorporated in Wyoming with its principal place of business in Las Vegas, Nevada. Plaintiff Y Capital Advisors Inc. is a holder of units of AGIF.

12. Plaintiff Valley West Realty Inc. is incorporated in Delaware with its principal place of business in West Hills, California and a holder of units of AGIF.

13. Plaintiff Ruben Brodski is an individual residing in California and a holder of units of AGIF.

14. Plaintiff Ruben Brodski Inc. is incorporated in California and has its principal place of business in Porter Ranch, California. Plaintiff Ruben Brodski Inc. is a holder of units of AGIF.

15. Plaintiff Ester Brodski is an individual residing in California and a holder of units of AGIF.

16. Plaintiff Yehonathan Brodski is an individual residing in California and a holder of units of AGIF

17. The Plaintiffs may be referred to hereinafter, collectively, as the “Brodski Parties.”

18. Defendant AGIF is an income trust based in Canada and currently is in the process of liquidating.

19. Upon information and belief, Defendant James E. Clark (“Clark”) has, at all relevant times, been a Trustee of AGIF.

20. Upon information and belief, Defendant Gary A. Filmon (“Filmon”) has, at all relevant times, been a Trustee of AGIF.

21. Upon information and belief, Defendant David R. Swaine (“Swaine”) has, at all relevant times, been a Trustee of AGIF.

22. Upon information and belief, Defendant Hugh A. Adams (“Adams”) has, at all relevant times, been the Secretary of AGIF.

23. Clark, Filmon, Swaine and Adams may be referred to hereinafter, collectively, as the “Individual Defendants.” Each of the Individual Defendants served in his respective capacity during all relevant periods.

JURISDICTION

24. The Court has jurisdiction over this adversary proceeding pursuant to Paragraphs 3(c) and (d) of its Order Recognizing and Enforcing the Unitholder Claims Procedure Order of the Canadian Court, entered on July 8, 2015, Docket No. 427. Pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(P), this Court may exercise subject matter jurisdiction in this case. Pursuant to L.R. 7008-1 of the Delaware Bankruptcy Court, Plaintiffs consent to the entry of a final order or judgments by the Court.

25. Venue is proper in this Court and in this District pursuant to 28 U.S.C. § 1410.

FACTUAL BACKGROUND

A. The Bankruptcy Proceedings

26. In February 2012, AGIF, together with affiliates, commenced proceedings in Canada under the Companies' Creditors Arrangement Act ("CCAA") (hereafter, the "CCAA Proceeding"). Thereafter, AGIF and its affiliates filed a Chapter 15 Bankruptcy Proceeding in the United States District Court, District of Delaware.

27. During these proceedings, AGIF sold substantially all of its assets and then used the sales proceeds to pay its creditors in full and distribute most of the remainder of its substantial assets to unitholders.

28. In connection with the CCAA Proceeding, AGIF filed a Plan of Compromise and Arrangement dated May 21, 2014 (as amended on August 26, 2014 and January 21, 2015) (the "Plan"). The Plan included a provision permitting AGIF to make distributions to its unitholders. The Plan established the general procedure for the payment of dividends, but omitted virtually all details that only could be set by regulators, including the date on which an

investor had to hold AGIF units in order to have the right to receive the dividend and the date and amount of the dividend.

29. The Monitor in the CCAA Proceeding issued periodic reports (each, a “Monitor’s Report”) to, *inter alia*, keep the public apprised of developments with respect to AGIF.

30. The November 18, 2014 Monitor’s Report disclosed an “Estimated Unitholders’ Distributed Cash on the Plan Implementation Date” of approximately USD \$53.5 million, or approximately USD \$0.153 per share, and predicted a Plan Implementation Date near January 8, 2015. Such Monitor’s Report did not disclose, however, that AGIF had not sought and obtained, and would not seek or obtain, the requisite regulatory approval to pay the dividend.

B. AGIF Disregards Applicable Securities Regulations And Causes Chaos In The Marketplace

31. On December 15, 2014, AGIF issued a press release entitled “Arctic Glacier Income Fund Announces Unitholder Distribution Record Date” (the “Press Release”) stating, in pertinent part, as follows:

. . . unitholders of the Fund as of December 18, 2014 will be entitled to receive the initial distribution from the Fund pursuant to the Plan of Compromise or Arrangement of, *inter alia*, the Fund dated May 21, 2014, as amended on August 26, 2014, and approved by the unitholders on August 11, 2014.

Despite its units trading in the U.S. market, AGIF did not communicate its intention to make a dividend payment to FINRA, the applicable securities regulator in the United States. Moreover, AGIF did not have a company website where the Press Release could be posted.

32. Although the Press Release announced that unitholders as of December 18, 2014, the “Unitholder Distribution Record Date” (per the Press Release title), would be paid a dividend, due to the three day period during which purchases of securities are processed and

settled, or finalized (such that the purchaser becomes the registered owner or owner on record), only purchasers on or before December 15, 2014 who continued to own such units through the close of trading on December 15, 2014 would have been registered unitholders or owners of record as of December 18, 2014.

33. Thus, this Press Release only announced a purported record date. It did not announce the “ex-date,” the date on which a security begins to trade “excluding,” or without the right to receive, a dividend. As explained further below, there is a fundamental and significant difference between the ex-date and the record date.

34. Critically, AGIF lacked the authority to set the ex-date that would determine which unitholders would receive dividends. As explained further below, only FINRA has the authority to determine the date on which a holder of AGIF units trading in the United States, under the symbol “AGUNF” in the U.S. Over the Counter (“OTC”) market, has to own such units in order to receive a dividend. Limiting authority to FINRA makes the regulator’s websites and publications the only official source of reliable information relating to dividend payments for U.S. OTC securities, thus preventing investor confusion from companies posting information about dividends and without the required approvals.

35. As part of its operation of the OTC market, FINRA processes requests to announce and publish certain corporate actions from issuers whose securities are quoted on the OTC. FINRA publishes these announcements on the “Daily List” on its website.

36. These corporate actions, referred to as “Company-Related Actions,” include all cash dividends or cash distributions for all securities traded in the OTC market.

37. If FINRA elects to process an issuer's request to announce a cash dividend, FINRA will announce the action on the "Daily List," which the SEC has recently underscored is the only official announcement of this dividend to the OTC market.

38. Despite the Press Release, the price of AGIF units did not materially change until the date of the dividend payment, confirming that buyers of AGIF units continued to believe that they would receive any dividend that AGIF previously announced it would pay. Indeed, buyers had every right to hold that belief, inasmuch as no securities regulator had determined and announced the ex-date for AGIF units, as was required under all applicable securities regulations.

39. On January 21, 2015, AGIF announced, via another press release, that dividends would be paid within five days of January 22, 2015, which AGIF referred to as the Plan Implementation Date, and that AGIF would transfer the dividend payments to a transfer agent on January 22. FINRA did not receive, review or approve this announcement. Moreover, AGIF provided no indication to regulators, investors, or Plaintiffs that the dividend payment would not comply with applicable securities rules and regulations.

40. Beginning on January 22, 2015, via its distribution to its transfer agent, AGIF paid a dividend of \$0.15557 USD per unit. According to AGIF, AGIF made these payments to the unitholders of AGIF as of December 18, 2014 who had purchased units by December 15, 2014. The dividend was more than 75% of the total value of the unit price – \$0.20 – on the date of payment.

41. The relevant securities regulators did not approve or authorize the December 16, 2014 ex-date that AGIF unilaterally and unlawfully imposed as a consequence of its decision to pay unitholders who had purchased units by December 15, 2014

42. AGIF usurped the authority of FINRA by virtue of its unapproved dividend payment and unlawful establishment of a December 16, 2014 ex-date.

43. AGIF's disregard of securities regulations created chaos in the market.

44. FINRA, which had not approved the dividend as required by its rules, halted trading of the units in the United States from January 23, 2015 to January 28, 2015.

45. In the days immediately after FINRA allowed trading of AGIF units to resume on January 28, 2015, the average unit price dove 75% to USD \$0.05 from its closing price of approximately USD \$0.21 on January 22, 2015, the Plan Implementation Date. The massive drop in the price of AGIF units more than one month after the issuance of the Press Release confirmed that buyers of AGIF units after the Press Release's issuance plainly were unaware that AGIF had purported, by itself, to set an ex-date and that AGIF would not distribute to them a dividend approximating their pro-rata share of the Estimated Unitholder Cash Pool Distribution on the Plan Implementation date referenced in the November 18, 2014 Monitor's Report.

46. On December 15, 2014, the last date on which an investor could acquire AGIF units and still receive the dividend payment according to AGIF's self-declared and undisclosed ex-date, the market price per unit was \$0.20. However, the price of the units remained **materially unchanged on December 16, 2015, and remained that way for the subsequent five weeks**. The AGIF unit price on December 15, 2014 closed at \$0.20 and the price on December 16, 2014 closed at \$0.205. Nearly 26 million units then traded near \$0.20 per unit through and including January 22, 2015.

47. Thus, an investor who purchased units of AGIF on December 15, 2014 for \$0.20 received a dividend of approximately \$0.155 from AGIF, while an investor who purchased an AGIF unit on December 16, 2015 for \$0.20 received nothing from AGIF.

48. The absurdity of these results – investors paying exactly the same unit price one day apart but receiving dramatically different returns – confirms that investors were completely in the dark regarding AGIF's intention to disregard the authority of securities regulators to set the ex-date and announce its own ex-date in violation of relevant rules and regulations.

49. If AGIF investors, like Plaintiffs, who purchased units after December 16, 2014, understood that AGIF did not intend to pay the aforesaid dividend to them, they would not have paid the same price for AGIF units as investors who purchased units the prior day with the right to receive the dividend.

C. The Brodski Parties Acquire FINRA Regulated AGIF Units

50. The Brodski Parties collectively acquired 12,641,050 units of AGIF between and including December 16, 2014 and January 22, 2015, of which they continue to own 12,637,370. The Brodski Parties purchased all their units of AGIF through U.S. brokers.

51. The Brodski Parties purchased their units of AGIF at prices ranging from USD \$0.18 to approximately \$0.22.

52. In light of the November 18, 2014 Monitor's Report, the AGIF unit price reflected investors', including the Brodski Parties', justifiable beliefs that the units continued to trade with the right to receive the dividend between and including December 16, 2014 and January 22, 2015 and that AGIF would adhere to the applicable securities rules and regulations. The Brodski Parties thus purchased their AGIF units with the expectation that they would receive the substantial dividends ultimately paid on or about January 22, 2015.

53. Although AGIF is based in Canada, its units trade on the U.S.-based OTC market, where the Brodski Parties acquired all their AGIF units.

54. The OTC market is regulated by FINRA pursuant to authority granted to FINRA by the SEC.

55. The AGIF units the Brodski Parties purchased traded on the OTC market, and were therefore regulated by FINRA.

D. AGIF Violates The Relevant SEC And FINRA Regulations Relating To The Issuance Of Dividends

56. SEC Rule 10b-17 establishes a mandatory set of disclosures that an issuer of securities that are traded on the OTC must make if it wishes to pay a dividend.

57. The purpose of SEC Rule 10b-17 is to protect investors from fraud. SEC Rule 10b-17(a) states in pertinent part:

It shall constitute a “manipulative or deceptive device or contrivance” as used in section 10(b) of the [Securities Exchange Act of 1934] for any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to **fail to give notice** in accordance with paragraph (b) of this section of the following actions relating to such class of securities . . . **(1) A dividend or other distribution in cash . . .**

(Emphasis added.)

58. Paragraph (b) of SEC Rule 10b-17 establishes a deadline by which any issuer desiring to pay dividends must notify FINRA. It states that, subject to certain exceptions not applicable here, “Notice shall be deemed to have been given in accordance with this section **only if:** (1) Given to [FINRA], no later than 10 days prior to the record date involved . . .” SEC Rule 10b-17(b) (emphasis added).

59. SEC Rule 10b-17 does not exempt foreign issuers from its disclosure obligations. Rather, it expressly applies to any issuer that has “a class of securities publicly traded by the use

of any means or instrumentality of interstate commerce or of the mails,” without regard to the location of the issuer.

60. AGIF, as an issuer of securities on publicly traded OTC markets, is subject to both SEC and FINRA regulations.

61. The SEC, through SEC Release No. 34-62434 (July 1, 2010) (the “SEC Release”), specifically granted to FINRA the power to regulate the payment of dividends by companies traded on the OTC, including, without limitation, **the power to refuse an OTC company’s request to pay dividends because of the failure to provide the information specified in SEC Rule 10b-17 to FINRA.**

62. Pursuant to the SEC Release, Rule 10b-17 is applicable to all issuers of securities that trade through the OTC market. The SEC Release states in pertinent part:

FINRA reviews and processes requests to announce or publish certain actions taken by issuers of OTC Securities. FINRA performs other more limited functions relating to the processing of certain actions by non-exchange listed companies whose securities are traded in the OTC market. **In this regard, FINRA reviews and processes documents relating to announcements for company-related actions pursuant to Rule 10b-17 under the Act (“Rule 10b-17 Actions”). These documents include announcements of dividends** or other distributions in cash or in kind . . .

(Emphasis added.)

63. The SEC Release explained that FINRA Rule 6490 (“Rule 6490”), which rule the SEC approved on September 27, 2010, established procedures within FINRA for the review and determination of the sufficiency of requests to issue, *inter alia*, dividends, as well as for the submission of the necessary documentation for an issuer to comply with SEC Rule 10b-17 in connection with the issuance of dividends.

64. The SEC Release further explained that that Rule 6490 was designed to protect “the OTC marketplace and investors in OTC Securities” by permitting FINRA to deny a

Company-Related Action request when there are “certain indicators of potential fraud” or the potential for investor harm exists.

65. Through Rule 6490, FINRA confirmed its responsibilities over issuers with respect to receiving and processing notifications by OTC-traded securities required by SEC Rule 10b-17. Rule 6490 states in pertinent part:

(a) General

(1) In furtherance of FINRA’s obligations to foster cooperation and coordination of the clearing, settling and processing of transactions in equity and debt securities of **any issuer with a class of publicly traded, non-exchange listed, securities in the OTC market and, in general, to protect investors and the public interest**, FINRA’s Operations Department (“Department”) reviews and processes documents related to announcements for SEA Rule 10b-17 Actions and Other Company-Related Actions to facilitate the orderly trading and settlement of OTC securities.

(2) **For purposes of this Rule, the term “SEA Rule 10b-17 Actions” includes dividends** or other distributions in cash or kind, stock splits or reverse stock splits, or rights or other subscription offerings, and such other actions as are provided for in SEA Rule 10b-17. . . .

(Emphasis Added).

66. Rule 6490(3) makes clear that the payment of dividends by companies traded on the OTC market, without FINRA’s approval, is impermissible:

In circumstances where an SEA Rule 10b-17 Action or Other Company-Related Action is deemed deficient, the Department may determine that it is necessary for the protection of investors, the public interest and to maintain fair and orderly markets, that documentation related to such SEA Rule 10b-17 Action or Other Company-Related Action will not be processed.

67. To ensure that investors receive the information specified in SEC Rule 10b-17, FINRA publishes the “Daily List” of announcements regarding dividends. As a result, on the assumption that an issuer is complying with its obligations under SEC Rule 10b-17 and applicable FINRA rules, investors, like the Brodski Parties, and brokers monitor FINRA’s website to obtain reliable information regarding payments of dividends.

68. Investors have the absolute right to conclude, based on Rule 6490, that until FINRA has announced the amount and date of a dividend payment, no determination as to these matters has been made and the security continues to trade with the right to receive any future dividend.

69. Once AGIF decided, in the first instance, to pay dividends, it was required, pursuant to SEC Rule 10b-17 and Rule 6490, to notify FINRA of the decision 10 days prior to the record date, which in this case would have been December 5, 2014, further advise FINRA of, *inter alia*, the date and amount of the dividend payment, and obtain FINRA's approval. Without any apparent excuse, AGIF paid a dividend on or about January 22, 2105 even though FINRA had not been given the requisite notice and information, approved the payment or established an ex-date.

70. FINRA has also adopted Uniform Practice Code 11140 ("UPC 11140") and issued a corresponding notice that specifies (1) that, with respect to OTC companies, only FINRA has the authority to designate the ex-date, and (2) the rules that must be used to set the ex-date. As previously noted, the "ex-date" is the date on which the security begins to trade "excluding", or without the right to receive, the dividend processed and approved pursuant to Rule 6490. UPC 11140(a) and (b)(2) state in pertinent part:

(a) **Designation of Ex-Date**

All transactions in securities, except "cash" transactions, shall be "ex-dividend," "ex-rights" or "ex-warrants": (1) on the day specifically designated by the Committee after definitive information concerning the declaration and payment of a dividend or the issuance of rights or warrants has been received at the office of the Committee; or (2) on the day specified as such by the appropriate national securities exchange which has received definitive information in accordance with the provisions of SEA Rule 10b-17 concerning the declaration and payment of a dividend or the issuance of rights or warrants.

(b) **Normal Ex-Dividend, Ex-Warrants Dates**

(2) In respect to cash dividends or distributions, stock dividends and/or splits, and the distribution of warrants, which are 25% or greater of the value of the subject security, the ex-dividend date shall be the first business day following the payable date.

71. Pursuant to the express language of UPC 11140(a), where an issuer like AGIF does not trade on a national securities exchange, it is FINRA, and not the OTC issuer – *i.e.* AGIF – that determines the ex-date.

72. FINRA Notice to Members 00-54 explains that the ex-date is determined solely by the date of payment of the dividend when the dividend exceeds 25% of the security's price, as follows:

[S]ubparagraph (b)(2) of Rule 11140, provides that for dividends or distributions that are 25 percent or greater of the value of the subject security, the ex-date shall be the first business day following the payable date. For example, if an issuer has announced August 10 as the record date and August 31 as the payable date, then the ex-date will be September 1, the first business day after the payable date. In this example, September 1 is the day on or after which a buyer would purchase the security without the dividend and, therefore, the day on which the price of the stock is adjusted downward. In this example, a seller of the security on August 15, even though the holder of record to receive the dividend would have to relinquish the dividend to the buyer. Indeed, because the value of the security on August 15 has not yet been adjusted downward to reflect the dividend distribution, the seller in this example would be unjustly enriched by keeping the dividend. The seller would have received the value of the dividend twice: first, as fully reflected in the unadjusted price of the stock on August 15; and secondly, as subsequently paid by the company to record date holders.

73. Therefore, pursuant to FINRA UPC 11140(b)(2) and Notice to Members 00-54, when 25% or more of the value of a security is paid as a dividend, **only the holders of the security as of the close of trading on the date of payment**, or the day before the ex-date established by FINRA pursuant to UPC 11140(a), are entitled to receive the dividend.

74. Accordingly, AGIF's dividend, which was more than 25% of the value of its securities, should have been paid to those who held units as of the close of trading on the date of

payment transfer, approximately January 22, 2015. The December 18, 2014 date, which AGIF announced without any authority or the requisite FINRA approval as the purported “record date” for the payment of dividends, was irrelevant for purposes of determining the “ex-date” pursuant to FINRA UPC 11140(b)(2), because the value of the dividend was approximately 75% of the value of the AGIF share price.

75. In short, if a company paying 25% or more of the value of a security as a dividend notifies FINRA of its decision, as required by SEC Rule 10b-17, and obtains FINRA’s approval, as required by FINRA Rule 6490, investors will know, by monitoring FINRA’s website, that, pursuant to UPC 11140(b)(2) and Notice to Members 00-54, they will receive the dividend payment if they hold units at the close of trading on the date payment is to be made.

76. Because the amount of the dividend paid by AGIF was approximately 75% of the value of the outstanding securities of AGIF, FINRA UPC 11140(b)(2) and Notice to Members 00-54 required AGIF to pay the dividends to the holders of its units as of the close of trading on the date of payment transfer, approximately January 22, 2015. AGIF disregarded UPC 11140(b)(2) and Notice to Members 00-54.

E. AGIF Admits That It Knew the Market Was Misinformed and Did Nothing

77. On or about March 5, 2015, Plaintiff Eldar Brodski Zardinovsky (“Eldar”) spoke on the telephone with Defendant Adams, the Secretary of AGIF, regarding AGIF’s failure to pay the required dividends to the Brodski Parties. Eldar attempted to reach AGIF on numerous occasions over the preceding six weeks but AGIF was wholly unresponsive to his communications. During this call, Adams admitted that he had observed after the issuance of the Press Release that there was no change in the market price of AGIF units, despite AGIF’s assertion that it had set December 16, 2014 as the ex-date, which Adams admitted should have

caused the share price to have fallen by approximately 75% on December 16, 2014, the first day the units supposedly began to trade without the right to receive the dividend.

78. Adams further informed Eldar that despite this awareness that AGIF units were trading at an unjustified several hundred percent premium, Defendants affirmatively decided not to take any corrective action to ensure that current or potential shareholders had the information contained in the Press Release, of which such current and potential shareholders so obviously were unaware.

79. Having issued a Press Release that AGIF intended impermissibly to establish an ex-date, which would supposedly determine which unitholders would receive a dividend payment, Defendants were under continuing duties to: (a) ensure that the information that they disclosed actually reached investors; and (b) provide complete information concerning the dividend payment, including the amount of the dividend and the date on which AGIF intended to make payment.

80. Defendants made a conscious decision to withhold from the market material information concerning the dividend, and allowed investors to continue to trade in AGIF units without the benefit of the required and expected disclosure. As a result of Defendants' failure to disclose this material information, the Brodski Parties and all other purchasers of AGIF units between December 16, 2014 and January 22, 2015 incurred a 75% loss.

81. Despite observing that the market price of AGIF units did not materially decline to reflect the purported ex-date that AGIF claimed to set through the December 15, 2014 Press Release and recognizing that the investors were unaware that AGIF had purported to set its own December 16, 2014 ex-date, Defendants took absolutely no steps to ensure that investors received additional, accurate information.

82. If AGIF had complied with SEC Rule 10b-17, Rule 6490 and UPC 11140(a) and (b)(2), FINRA would have been able to 1) approve or reject the dividend payment application, 2) establish the ex-date if the proposal were accepted, and 3) provide investors notice of both. Compliance with this process by AGIF would have enabled to the Brodski Parties to avoid their losses.

83. Despite the fact that AGIF was clearly subject to SEC and FINRA rules and regulations, and thus was required to adhere to SEC Rule 10b-17, Rule 6490, UPC 11140(a) and (b)(2) and Notice to Members 00-54 in connection with the disclosure and payment of dividends to unitholders, on information and belief, AGIF failed to notify either the Canadian or Delaware bankruptcy court of the contents of these rules and regulations and its duty to comply with them.

COUNT ONE
Negligence Against All Defendants

84. Plaintiffs incorporate by reference Paragraphs 1-83 by reference as if expressly set forth herein.

85. Defendants owed Plaintiffs, as unitholders of AGIF on and after January 22, 2015, a duty to pay Plaintiffs dividends of AGIF on a pro rata basis according to Plaintiffs' AGIF holdings as of the date of payment.

86. Defendants breached that duty by failing to make payment to Plaintiffs.

87. As a direct and proximate result of defendants' breach, Plaintiffs have sustained damages.

COUNT TWO
Negligence Against All Defendants

88. Plaintiffs incorporate by reference Paragraphs 1-87 by reference as if expressly set forth herein.

89. Defendants had a duty to comply with all relevant statutes, rules, regulations, authorities and agreements concerning the establishment of the ex-date in connection with its January 2015 dividend payment.

90. Defendants breached their duties by unilaterally establishing an ex-date without approval from the applicable regulators or exchanges.

91. As a direct and proximate result of Defendants' breach, Plaintiffs have sustained damages.

COUNT THREE
Breach of Fiduciary Duty Against the Individual Defendants

92. Plaintiffs incorporate by reference Paragraphs 1-91 by reference as if expressly set forth herein.

93. The Individual Defendants each owed Plaintiffs a fiduciary duty to ensure that dividend payments intended for unitholders were paid to Plaintiffs.

94. Each of the foregoing individuals breached that fiduciary duty.

95. As a direct and proximate result of such breach of fiduciary duty, Plaintiffs have sustained damages.

COUNT FOUR
Negligent Misrepresentation Against AGIF

96. Plaintiffs incorporate by reference Paragraphs 1-95 by reference as if expressly set forth herein.

97. AGIF had a duty to disclose material information related to AGIF's January 2015 dividend payment.

98. AGIF failed to disclose the following material information, to which it alone had access, in connection with the dividend payment:

(a) that AGIF would disregard U.S. securities rules and regulations, including SEC Rule 10b-17;

(b) that AGIF would disregard FINRA rules, including those reflected in FINRA Rule 6490, UPC 11140 and Notice to Members 00-54;

(c) that AGIF would unilaterally establish the ex-date without the review and approval of a regulator or exchange, as appropriate; and

(d) that, following the issuance of the Press Release, the trading price of AGIF's stock had not appropriately adjusted downward to reflect a decision that AGIF had made concerning eligibility to receive payment of dividends.

99. AGIF failed to disclose the foregoing information despite its duty to do so. Such information was material to the Brodski Parties, as its nondisclosure caused the price of AGIF's unit price in the market to be artificially inflated by several hundred percent.

100. AGIF's omission of material information constituted a breach of its duty of disclosure.

101. Plaintiffs relied to their detriment on the artificially inflated market price of AGIF units when they purchased the units from December 16, 2014 to January 22, 2015, and would not have purchased the units at that price had they known of AGIF's material omissions

102. As a direct and proximate result of AGIF's failure to disclose the foregoing information and Plaintiffs' reliance on AGIF's nondisclosures, Plaintiffs have sustained damages.

COUNT FIVE
Violation of §10(b) of the 1934 Act and Rule 10b-5

103. Plaintiffs incorporate by reference Paragraphs 1-102 by reference as if expressly set forth herein.

104. AGIF's December 15, 2014 Press Release was a partial disclosure of material information, giving rise to a duty of full disclosure concerning material facts related to the dividend payment, which AGIF breached.

105. AGIF further failed to comply with SEC Rule 10b-17, FINRA Rule 6490, UPC 11140(a) and UPC 11140(b)(2), thereby depriving the OTC market and the Brodski Parties of material information used in connection with the trading of AGIF's units.

106. AGIF's omissions and incomplete statements concerning the dividend, including those set forth in paragraph 98 hereof, had the effect of sustaining and artificially inflating the market price of AGIF's units between and including December 16, 2014 and January 22, 2015, by a quantity equal to the dividend per unit that buyers during those dates should have received but did not receive.

107. AGIF's omissions constituted breaches of its duties of disclosure and resulted in purchases of AGIF units by Plaintiffs at artificially inflated prices measured by the difference between the market price per unit after the dividend was paid, which is when the omitted information was revealed, and the purchase price of such units, thus causing the damages complained of herein.

108. AGIF's conduct demonstrated a complete and utter disregard of the applicable United States securities rules and regulations, despite AGIF's knowledge that AGIF units traded on the United States OTC market and investors in the United States purchase and sell AGIF units.

109. AGIF's breaches of its duties of disclosure were reckless and misled the Brodski Parties, buyers in the U.S. OTC market, as to the actual value of AGIF's units between and including December 16, 2014 and January 22, 2015.

110. Plaintiffs relied on AGIF's omissions by purchasing units of AGIF at an artificially inflated price.

111. Plaintiffs would not have purchased AGIF units at the inflated prices had they known of AGIF's material omissions.

112. As a direct and proximate result of AGIF's aforesaid wrongful conduct and the Brodski Parties' reliance thereon, Plaintiffs suffered substantial damages in connection with their purchases of AGIF's units.

COUNT SIX
Fraud Against AGIF

113. Plaintiffs incorporate by reference Paragraphs 1-112 by reference as if expressly set forth herein.

114. AGIF's December 15, 2014 Press Release was a partial disclosure of material information, giving rise to a duty of full disclosure concerning material facts related to the dividend payment, which AGIF breached.

115. AGIF further failed to comply with SEC Rule 10b-17, FINRA Rule 6490, UPC 11140(a) and UPC 11140(b)(2), thereby depriving the Brodski Parties of material information used in connection with the trading of AGIF's units.

116. AGIF's omissions and incomplete statements concerning the dividend and its obligations pursuant to the applicable securities regulations, including those set forth in paragraphs 98 hereof, had the effect of sustaining and artificially inflating the market price of AGIF's units from December 16, 2014 to January 23, 2015 by a quantity equal to the dividend per unit that buyers during those dates should have received but did not receive.

117. AGIF's omissions constituted breaches of its duties of disclosure and resulted in purchases of AGIF units by Plaintiffs at artificially inflated prices measured by the difference between the market price after the payment date, which is when the omitted information was revealed, and the purchase price of such units, thus causing the damages complained of herein.

118. AGIF's conduct demonstrated a complete and utter disregard of the applicable United States securities rules and regulations, despite AGIF's knowledge that AGIF units traded on the United States OTC market and investors in the United States purchase and sell AGIF units.

119. AGIF's breaches of its duties of disclosure were reckless and misled the Brodski Parties, buyers in the U.S. OTC market, as to the actual value of AGIF's units between December 16, 2014 and January 22, 2015, inclusive.

120. Plaintiffs relied on AGIF's omissions by purchasing units of AGIF between December 16, 2014 and January 22, 2015, inclusive, at an artificially inflated price.

121. AGIF intended for investors, including Plaintiffs, to purchase AGIF units after December 15, 2014 at artificially inflated prices, despite the fact that AGIF did not intend to, and ultimately did not, make dividend payments to Plaintiffs in accordance with U.S. securities rule regulations and the justified expectations of investors, including Plaintiffs.

122. Plaintiffs would not have purchased AGIF units at inflated prices if they had known of AGIF's material omissions.

123. As a direct and proximate result of AGIF's aforesaid wrongful conduct and the Brodski Parties' reliance thereon, Plaintiffs suffered substantial damages in connection with their purchases of AGIF's units.

PRAYERS FOR RELIEF

WHEREFORE, the Brodski Parties respectfully request that this Court enter judgment in its favor and award them as follows:

- A. Compensatory damages on all counts in an amount to be determined at trial;
- B. Reasonable attorneys' fees and costs;
- C. Prejudgment interest;
- D. Punitive damages;
- E. Treble damages;
- F. Allowance of Plaintiffs' claims and a distribution pursuant to the Plan; and
- G. Such other relief as this Court deems just and proper.

Dated: October 30, 2015

CROSS & SIMON, LLC

/s/ Christopher P. Simon

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Attorneys for the Brodski Parties

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Arctic Glacier International, Inc.,

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 12-10605 (KG)

Eldar Brodski Zardinovsky a/k/a Eldar Brodski
a/k/a Eldar Brodski (Zardinovsky), EB Books, Inc.,
EB Design, Inc., EB Online, Inc., EB Imports, Inc.,
Lazdar Inc., Eldar Brodski Inc., Y Capital
Advisors Inc., Valley West Realty Inc., Ruben
Brodski, Ruben Brodski Inc., Ester Brodski, and
Yehonathan Brodski,

Plaintiffs,

v.

Arctic Glacier Income Fund, James E. Clark, Gary
A. Filmon, David R. Swaine, and Hugh A. Adams,

Defendants.

Adv. Proc. No. 15-

NOTICE OF DISPUTE RESOLUTION ALTERNATIVES

As party to litigation you have a right to adjudication of your matter by a judge of this Court. Settlement of your case, however, can often produce a resolution more quickly than appearing before a judge. Additionally, settlement can also reduce the expense, inconvenience, and uncertainty of litigation.

There are dispute resolution structures, other than litigation, that can lead to resolving your case. Alternative Dispute Resolution (ADR) is offered through a program established by this Court. The use of these services are often productive and effective in settling disputes. **The purpose of this Notice is to furnish general information about ADR.**

The ADR structures used most often are mediation, early-neutral evaluation, mediation/arbitration and arbitration. In each, the process is presided over by an impartial third party, called the "neutral".

In mediation and early neutral evaluation, an experienced neutral has no power to impose a settlement on you. It fosters an environment where offers can be discussed and exchanged. In the process, together, you and your attorney will be involved in weighing settlement proposals and crafting a settlement. The Court in its Local Rules requires all ADR processes, except threat of a potential criminal

action, to be confidential. You will not be prejudiced in the event a settlement is not achieved because the presiding judge will not be advised of the content of any of your settlement discussions.

Mediation/arbitration is a process where you submit to mediation and, if it is unsuccessful, agree that the mediator will act as an arbitrator. At that point, the process is the same as arbitration. You, through your counsel, will present evidence to a neutral, who issues a decision. If the matter in controversy arises in the main bankruptcy case or arises from a subsidiary issue in an adversary proceeding, the arbitration, though voluntary, may be binding. If a party requests *de novo* review of an arbitration award, the judge will rehear the case.

Your attorney can provide you with additional information about ADR and advise you as to whether and when ADR might be helpful in your case.

Dated: October 30, 2015

/s/ David D. Bird
Clerk of the Court