

THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT
WITH RESPECT TO ARCTIC GLACIER INCOME FUND, ARCTIC GLACIER INC.,
ARCTIC GLACIER INTERNATIONAL INC. and the ADDITIONAL APPLICANTS LISTED
IN SCHEDULE "A" HERETO

(collectively, the "APPLICANTS")

APPLICATION UNDER THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

THIRTY-FIRST REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.

NOVEMBER 29, 2019

DATE OF HEARING: TUESDAY, DECEMBER 10, 2019 AT 9:00 A.M.
BEFORE THE HONOURABLE MR. JUSTICE KROFT

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1.0 INTRODUCTION

- 1.1 Pursuant to an order of The Court of Queen's Bench (Winnipeg Centre) (the "**Canadian Court**") dated February 22, 2012 (the "**Initial Order**"), Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as Monitor (the "**Monitor**") in respect of an application filed by Arctic Glacier Income Fund ("**AGIF**"), Arctic Glacier Inc. ("**AGI**"), Arctic Glacier International Inc. ("**AGII**") and those entities listed on **Appendix "A"** (collectively the "**Applicants**", together with Glacier Valley Ice Company L.P., the "**Arctic Glacier Parties**"), seeking certain relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The proceedings commenced by the Applicants under the Initial Order are referred to herein as the "**CCAA Proceedings**". The United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") recognized the CCAA Proceedings as a foreign main proceeding and appointed the Monitor as foreign representative of the Applicants by Order dated March 16, 2012.
- 1.2 The Monitor has previously filed thirty reports with the Canadian Court. Capitalized terms used but not otherwise defined in this report (the "**Thirty-First Report**") are as defined in the orders previously granted by, or in the reports previously filed by the Monitor with, the Canadian Court, and the Applicants' consolidated plan of compromise or arrangement dated May 21, 2014, as amended on August 26, 2014 and January 21, 2015, as may be further amended, supplemented or restated from time to time in accordance with the terms therein (the "**Plan**").

- 1.3 The sale transaction for substantially all of the Arctic Glacier Parties' business and assets (the "**Sale Transaction**") closed on July 27, 2012. The Monitor continues to hold significant funds as a result of the Sale Transaction and other receipts.
- 1.4 On September 5, 2012, the Canadian Court issued an order approving a claims process to resolve claims against the Arctic Glacier Parties (the "**Claims Process**") and, among other things, authorizing, directing and empowering the Monitor to take such actions as contemplated by the Claims Process (the "**Claims Procedure Order**"). The Claims Procedure Order provided for a Claims Bar Date of October 31, 2012, in respect of the Proofs of Claim and the DO&T Proofs of Claim. The U.S. Court recognized the Claims Procedure Order by an Order dated September 14, 2012. Eighty-three parties filed Proofs of Claim with the Monitor.
- 1.5 On May 21, 2014, the Canadian Court issued an order (the "**Meeting Order**") with respect to the Plan. On June 6, 2014, the U.S. Court entered an Order recognizing and giving full force and effect in the United States to the Meeting Order.
- 1.6 Following a meeting of the unitholders and a deemed meeting of the Affected Creditors, on September 5, 2014, the Canadian Court issued an order that, among other things, sanctioned and approved the Plan (the "**Sanction Order**"). On September 16, 2014, the U.S. Court entered an order recognizing and giving full force and effect to the Sanction Order in the United States.
- 1.7 On January 22, 2015 (the "**Plan Implementation Date**"), the Plan was successfully implemented after the Monitor certified that the conditions precedent set out in Section

10.3 of the Plan had been satisfied or waived in accordance with the Plan. Accordingly, on the Plan Implementation Date and pursuant to the Plan, the Monitor, on behalf of the Applicants, among other things:

- a) used the Available Funds to fund the reserves and distribution cash pools set out in the Plan;
- b) distributed the Affected Creditors' Distribution Cash Pool to each Affected Creditor in the amount of such creditor's Proven Claim; and
- c) transferred \$54,498,863.58 (the "**Initial Distribution**") from the Unitholders' Distribution Cash Pool to the Transfer Agent for distribution to Registered Unitholders as of December 18, 2014 (the "**Initial Distribution Record Date**").

1.8 On June 2, 2015, the Canadian Court issued an order approving a claims process to identify and determine certain potential claims relating to the Initial Distribution (the "**Unitholder Claims Process**") and, among other things, authorizing, directing and empowering the Monitor to take such actions as contemplated by the Unitholder Claims Process (the "**Unitholder Claims Procedure Order**"). The Unitholder Claims Process provided for a Unitholder Claims Bar Date of July 28, 2015, in respect of claims against AGIF arising from any action or omission on or after the setting of the Initial Distribution Record Date in connection with the Initial Distribution ("**Initial Distribution Claims**"), or claims against AGIF's Officers or Trustees in connection with an action or omission occurring on or after the setting of the Initial Distribution Record Date in connection with or related to the Initial Distribution ("**O&T Claims**").

- 1.9 On June 19, 2019, the Canadian Court issued an order (the “**Stay Extension Order**”) extending the Stay Period to December 18, 2019.
- 1.10 The purpose of this Thirty-First Report is to:
- a) provide the Canadian Court, the U.S. Court, Affected Creditors, Unitholders and other interested parties with an update regarding:
 - i. post-Plan implementation steps to be completed by the Arctic Glacier Parties and the Monitor;
 - ii. the status of the Unitholder Interim Distribution (as defined below);
 - iii. the Arctic Glacier Parties’ receipts and disbursements for the period from September 28 to November 23, 2019; and
 - iv. the Monitor’s activities since the date of the Thirtieth Report (October 3, 2019);
 - b) provide information in support of the Monitor’s motion returnable December 10, 2019 for an order, among other things:
 - i. extending the Stay Period to June 17, 2020; and
 - ii. approving this Thirty-First Report and the Thirtieth Report.
- 1.11 Further information regarding these CCAA Proceedings and the concurrent Chapter 15 Proceedings, and all previous reports of the Monitor, can be found on the Monitor’s website at <http://www.alvarezandmarsal.com/arctic-glacier-income-fund-arctic-glacier-inc-and-subsidiaries> (the “**Website**”).

2.0 TERMS OF REFERENCE

- 2.1 In preparing this Thirty-First Report, the Monitor has relied upon unaudited financial information, books and records and financial information of the Arctic Glacier Parties (collectively, the “**Information**”).
- 2.2 The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion and does not provide any other form of assurance contemplated under CASs in respect of the Information.
- 2.3 The Information contained in this Thirty-First Report is not intended to be relied upon by any investor in any transaction with the Arctic Glacier Parties or in relation to any transfer or assignment of the Trust Units of AGIF.
- 2.4 Capitalized terms not described elsewhere have the meaning ascribed to them in the Plan.

3.0 POST-PLAN IMPLEMENTATION DATE TRANSACTIONS

US Subsidiaries and Termination of the Chapter 15 Proceedings

- 3.1 As discussed in the Thirtieth Report, pursuant to the Plan, each of the Arctic Glacier Parties, or the Monitor on their behalf, as the case may be, were to take certain steps after the Plan Implementation Date (the “**Post-Plan Implementation Date Transactions**”),

including the completion of a series of specific steps, assumptions, distributions, transfers, payments, contributions, reductions of capital, settlements and releases of various of the Arctic Glacier Parties listed in Schedule “B” to the Plan (the “**Schedule B Steps**”).

3.2 As of the date of the Twenty-Ninth Report, all Arctic Glacier Parties resident in the US had been dissolved and the Monitor had filed a motion to seek an Order Closing Chapter 15 Cases and Relief from Certain Noticing Requirements. No objections to the order were made and on October 3, 2019, the US Court granted the requested order.

3.3 The US Court retains jurisdiction with respect to its prior orders in the Chapter 15 Proceedings, and all orders granted in the Chapter 15 Proceedings survived the entry of the order closing the Chapter 15 Proceedings.

Canadian Subsidiaries and Post-Implementation Date Transactions and Events

3.4 As discussed in the Thirtieth Report, two Canadian entities remain: AGI and AGIF. To complete the Post-Plan Implementation Date Transactions and Schedule B Steps, any remaining issues of taxation must be resolved before a Final Distribution can be completed.

3.5 As described in paragraph 3.5 of the Twenty-Ninth Report, with respect to AGI, the Monitor received a Proposal Letter and Waiver dated May 27, 2019 from CRA in respect of the tax audit of AGI for the 2015 tax year wherein CRA proposed to disallow approximately CAD\$1.23 million of professional fees expensed in 2015 on the basis that such expenses were not incurred to earn income. The letter provided the Monitor until

June 17, 2019 to submit additional information or explanation for consideration, following which such proposed disallowance will be formally reassessed.

- 3.6 The Monitor disagreed with this proposal and worked with KPMG, the Companies' tax advisor to prepare and deliver a response to CRA before the deadline.
- 3.7 CRA thereafter advised KPMG that it had no further concern regarding the deductibility of the professional fees in question and indicated that the Monitor should expect to receive a letter to that effect. The Monitor then received a letter dated June 27, 2019, wherein CRA requested information in respect of the adjusted cost base of shares of AGII held by AGI and on July 10, 2019, KPMG, at the request of the Monitor, responded to CRA's request.
- 3.8 The Monitor received a letter dated November 19, 2019 from CRA advising that it has completed its audit and there will be no reassessment in respect of the corporate income tax return for the year ended December 31, 2015.
- 3.9 As described in paragraph 3.7 of the Twenty-Ninth Report, the Trustees and Directors have asked the Monitor to obtain clearance certificates from CRA. In association with this request, the Monitor will also need to obtain a separate clearance certificate from Revenue Quebec. In the ordinary course, AGI had been registered in Quebec for tax purposes. That registration lapsed, and in order to obtain the clearance certificate from Revenue Quebec, the Monitor was required to take steps to have the registration reinstated.
- 3.10 Since the date of the Thirtieth Report, AGI's Quebec registration has been reinstated.

3.11 With the completion of CRA's audit and the reinstatement of AGI's Quebec registration, following the Unitholder Interim Distribution, the Monitor will be in a position to coordinate the preparation of and file final tax returns for AGI and AGIF, to seek clearance certificates from CRA and Revenue Quebec and, once received, complete the Post-Plan Implementation Date Transactions and the Schedule B Steps required and make a Final Distribution.

4.0 UNITHOLDER INTERIM DISTRIBUTION

4.1 As described in the Thirtieth Report, the Monitor evaluated the estimated time required to complete the Post-Plan Implementation Date Transactions and Schedule B Steps, as well as the amount of funds available for distribution at that time and concluded that it was appropriate to make an interim distribution to unitholders (the "**Unitholder Interim Distribution**").

4.2 Since the date of the Thirtieth Report, the Monitor has taken the following steps to implement the Unitholder Interim Distribution:

- a) after consultation with its tax advisors, determined that the Unitholder Interim Distribution would be in the amount of CAD\$15 million, which is CAD\$0.04281834 per outstanding unit;
- b) established the record date as November 15, 2019 which, in accordance with the Plan, was 21 days prior to the date of the Unitholder Interim Distribution (the "**Unitholder Interim Distribution Date**");

- c) consulted with the Canadian Securities Exchange (“CSE”) and the Transfer Agent regarding their respective requirements for completion of the Unitholder Interim Distribution;
- d) confirmed with the CSE that the Trust Units would trade “ex dividend” commencing November 14, 2019;
- e) determined that the Unitholder Interim Distribution Date would be December 6, 2019;
- f) provided notice of the Unitholder Interim Distribution and related dates to the Transfer Agent, CSE and the Financial Industry Regulatory Authority (although the Applicants and the Monitor do not concede that AGIF is subject to the requirements of Rule 10b-17 under the Exchange Act, or any other provision of the U.S. federal securities laws); and
- g) caused notices of the Unitholder Interim Distribution Record Date, which included the amount of the Unitholder Interim Distribution, to be published on November 5, 2019 in the *Globe and Mail* (National Edition), the *Wall Street Journal* (National Edition) and the *Winnipeg Free Press*, which was in addition to the press release regarding same that was issued by AGIF on November 5, 2019.

4.3 Pursuant to the Plan, on the Unitholder Interim Distribution Date, the Monitor will transfer the amount of the Unitholder Interim Distribution to the Transfer Agent, which shall distribute the Unitholder Interim Distribution on behalf and for the account of AGIF by way of cheque sent by prepaid ordinary mail or by way of wire transfer to each

Registered Unitholder as of the Unitholder Interim Distribution Record Date that the Transfer Agent is aware of and has contact information in respect of, based on each Registered Unitholder's Pro Rata Share, (a) for such Registered Unitholder, in respect of Trust Units held by such Registered Unitholder solely for and on behalf of itself, as applicable; or (b) for distribution by such Registered Unitholder to (i) Beneficial Unitholders, as applicable, or (ii) Nominees, or the agents of such Nominees for subsequent distribution to the applicable Beneficial Unitholders.

4.4 Following the Unitholder Interim Distribution, the Monitor will hold approximately CAD\$9.4 million. In the absence of any further issues arising, the Monitor anticipates that it will be in a position to make a Final Distribution upon receipt of the clearance certificates from CRA and Revenue Quebec. The Monitor is cautiously optimistic that the Final Distribution will occur in the first half of 2020.

4.5 It is the Monitor's intention to file its next report with the Canadian Court once the final tax returns have been filed and the clearance certificates requested.

5.0 EXTENSION OF THE STAY

5.1 As described above and in the Thirtieth Report, prior to making a Final Distribution, the Monitor must obtain CRA and Revenue Quebec clearance certificates for AGI and AGIF, which it intends to request coinciding with the preparation and filing of the fiscal 2019 tax returns, which will be the Companies' final returns.

5.2 Pursuant to the Initial Order and subsequent Orders of the Canadian Court, the Stay Period was granted and extended until December 18, 2019. The Monitor requests an

extension of the Stay Period to June 17, 2020. The Monitor believes that an extension of the Stay Period until June 17, 2020, is appropriate, as it will allow the Monitor, in consultation with the Applicants, to among other things, continue implementing the steps contemplated by the Plan, including arranging for the preparation and filing of the final tax returns for AGI And AGIF and requesting CRA and Revenue Quebec clearance certificates in respect of same.

5.3 Upon receipt of the CRA and Revenue Quebec clearance certificates, the Monitor will promptly facilitate a Final Distribution and seek the termination of these CCAA Proceedings. Accordingly, there is a reasonable possibility that the Monitor will be making the Final Distribution and seeking termination of the CCAA Proceedings in advance of June 17, 2020.

5.4 The Monitor believes that the Arctic Glacier Parties have acted and continue to act in good faith and with due diligence in advancing the administration of these CCAA Proceedings.

6.0 RECEIPTS AND DISBURSEMENTS SINCE THE TWENTY-NINTH REPORT

6.1 During the period from September 28, 2019 to November 23, 2019 (the “**Reporting Period**”), receipts during the Reporting Period were approximately CAD\$59,000 comprised entirely of deposit interest.

6.2 Disbursements consisted primarily of professional fees and expenses totaling approximately CAD\$126,000 (which collectively includes fees and expenses paid to the Monitor, its legal counsel, the CPS, the Applicants’ legal counsel, the Applicants’ tax

consultants, and other professionals involved with these CCAA Proceedings, as well as HST and other expenses of an administrative nature totaling approximately CAD\$17,000).

6.3 As at November 23, 2019, the Monitor is holding approximately CAD \$24.4 million, all of which is being held in interest-bearing accounts in the name of the Monitor, on behalf of the Applicants.

6.4 The Plan provides that certain reserves and cash pools be maintained in respect of the remaining obligations of the estates. As discussed in the Twenty-Seventh Report, all remaining funds held by the Monitor on behalf of the Companies are part of the Administrative Costs Reserve.

7.0 ACTIVITIES OF THE MONITOR

7.1 In addition to the activities of the Monitor described above, the Monitor's activities from the date of the Thirtieth Report, being October 3, 2019, have included the following:

- responding to inquiries from Unitholders and other stakeholders;
- continuing to make non-confidential materials filed with the Canadian Court and with the U.S. Court publicly available on the Website;
- communicating with the Transfer Agent, CSE and FINRA in relation to the Unitholder Interim Distribution Date;
- coordinating the Unitholder Interim Distribution, including the preparation of required disclosure materials, with AGIF;

- preparing this Thirty-First Report;
- maintaining estate bank accounts and overseeing the accounting for the Applicants' receipts and disbursements pursuant to the Transition Order;
- attending to the re-registration of AGI in Quebec; and
- preparing and filing GST/HST returns and various other statutory returns and communicating with CRA, as appropriate in respect of same.

All of which is respectfully submitted to the Court of Queen's Bench this 29th day of November 2019.

**Alvarez & Marsal Canada Inc., in its capacity
as Monitor of Arctic Glacier Income Fund,
Arctic Glacier Inc., Arctic Glacier International Inc. and
the other Applicants listed on Appendix "A".**



Per: Alan J. Hutchens, Senior Vice-President