

**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

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**THIRTY-THIRD REPORT OF THE MONITOR**  
**ALVAREZ & MARSAL CANADA INC.**  
**DECEMBER 10, 2020**

DATE OF HEARING: WEDNESDAY, DECEMBER 16, 2020 AT 9:00 A.M.  
BEFORE THE HONOURABLE MR. JUSTICE KROFT

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## 1.0 INTRODUCTION

- 1.1 As described below, only a very small percentage of the realized assets remain with the estate. During the course of these CCAA proceedings approximately: (i) \$USD284 million was paid to secured creditors at the time the sale transaction closed; (ii) approximately USD\$34 million has been distributed to unsecured creditors to pay their proven claims in full; and (iii) approximately USD\$54.5 million and CAD\$20 million has been distributed to Unitholders. The Monitor continues to hold approximately CAD\$3.3 million. A requirement for distributing the remaining amount to Unitholders is obtaining tax clearance certificates from the Canada Revenue Agency (“**CRA**”) and Revenue Quebec. As described below, it is anticipated that the taxation authorities will be in a position to complete that process in 2021.

### *Summary of Chronology to Plan Implementation*

- 1.2 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.

- 1.3 The Monitor has previously filed thirty-two reports (the “**Prior Reports**”) with the Canadian Court. Capitalized terms used but not otherwise defined in this Thirty-Third 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**”).
- 1.4 The sale transaction for substantially all of the Arctic Glacier Parties’ business and assets closed on July 27, 2012.
- 1.5 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.

- 1.6 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.
- 1.7 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.
- 1.8 Shortly before seeking the Sanction Order, the Debtors discovered U.S. sales tax issues, including the possibility that the debtors may have incurred sales tax liabilities in certain U.S. states that remained outstanding, which delayed the implementation of the Amended Plan while those issues were addressed.

### ***Plan Implementation***

- 1.9 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.

1.10 As described in certain of the Prior Reports, since the time of the Initial Distribution, a number of issues have arisen that have delayed completion of the steps required to fully implement the Plan, including but not limited to:

- a) pursuant to the June 2, 2015 order of the Canadian Court, conducting the Unitholder Claims Process to identify and determine certain potential claims relating to the Initial Distribution;
- b) addressing claims advanced by a Unitholder regarding the Initial Distribution that led to litigation in the U.S. Bankruptcy Court, an appeal to the District Court for the District of Delaware, and a subsequent appeal to the U.S. Court of Appeals of the Third Circuit, which was not finally determined until November 2018;
- c) the extended time required to obtain consent from the State of New York for the dissolution of Arctic Glacier Newburgh Inc., which was necessary to complete the dissolution of AGII, the final remaining Arctic Glacier Party resident in the United States, in June 2019, which was required to file the Final Returns (defined below); and
- d) most recently, the extended time required to resolve a sales tax ("**QST**") matter with Revenue Quebec, also a requirement for filing the Final Returns.

### ***Unitholder Distributions***

- 1.11 In addition to the Initial Distribution, Unitholder Interim Distributions of CAD\$15 million and CAD\$5 million were made to Unitholders in December 2019 and September 2020, such that aggregate Unitholder Interim Distributions to-date total approximately USD\$54.5 million and CAD\$20 million, which distributions are over and above the amounts paid to secured and unsecured creditors whose claims were paid in full. As described below, the Monitor continues to hold a remaining amount of approximately CAD\$3.3 million which will be distributable to Unitholders upon the filing of the Final Returns and receiving the Clearance Certificates from the CRA and Revenue Quebec.

### ***Purpose of Report***

- 1.12 The purpose of this Thirty-Third Report is to:
- a) provide the Canadian 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 Arctic Glacier Parties' receipts and disbursements for the period from June 1 to November 30, 2020; and
    - iii. the Monitor's activities since the date of the Thirty-Second Report to Court (being June 16, 2020) (the "**Thirty-Second Report**"); and



b) provide information in support of the Monitor's motion returnable December 16, 2020 for an order, among other things:

- i. extending the Stay Period to November 15, 2021; and
- ii. approving this Thirty-Third Report.

1.13 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**"). The Chapter 15 Proceedings were concluded in October 2019 following the dissolution of all 29 Arctic Glacier Parties resident in the United States.

## **2.0 TERMS OF REFERENCE**

2.1 In preparing this Thirty-Third 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-Third 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**

3.1 As discussed in the Thirty-First Report to Court dated November 29, 2019 (the “**Thirty-First Report**”), only two legal entities remain, both of which are in Canada: 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.

3.2 As described in the Twenty-Ninth Report to Court dated June 11, 2019, the Trustees and Directors have asked the Monitor to obtain clearance certificates from CRA and Revenue Quebec in respect of both AGI and AGIF (the “**Clearance Certificates**”). To obtain the Clearance Certificates, among other things, all outstanding CRA and Revenue Quebec tax and filing obligations must be addressed.

3.3 As described in the Thirty-Second Report, there was an amount owing by AGI to Revenue Quebec for QST that the Monitor was working with KPMG, the Companies’ tax advisors, to resolve with Revenue Quebec. After numerous attempts to obtain required information from Revenue Quebec, Revenue Quebec responded to KPMG in November 2020, and confirmed the outstanding amount that needed to be paid by AGI. All amounts owed by AGI to Revenue Quebec have now been paid.

- 3.4 At that time, Revenue Quebec also advised KPMG that, notwithstanding that the Company had not conducted business in Quebec for several years, in order to obtain a Clearance Certificate from Revenue Quebec, AGI was required to file nil Quebec provincial tax returns for the 2015 to 2019 tax years. Those returns have also been filed.
- 3.5 As reported in the Thirty-Second Report, the request for the Clearance Certificates must be filed together with the Companies' final tax returns. Accordingly, the QST matter needed to be resolved prior to filing the final tax returns and the request for Clearance Certificates.
- 3.6 In the Thirty-Second Report, the Monitor advised that it had provided information to KPMG in respect of both AGI and AGIF for the period January 1 to April 30, 2020 (commonly referred to as the “**stub period**”) in order to prepare and file the Companies' final tax returns, together with the request for Clearance Certificates once the Revenue Quebec QST matter had been resolved. However, given the time required to resolve that matter with Revenue Quebec, it is now less than one month before the 2020 tax year end.
- 3.7 The Monitor has been advised by KPMG that, to the extent the final tax returns for AGI and AGIF are filed during the 2020 tax year, the final unitholder distribution (the “**Final Distribution**”) would be reportable in the income tax returns of Unitholders for the 2020 tax year (with the associated T3 tax forms being prepared and distributed by AGIF in February of 2021), notwithstanding that the funds would actually be distributed in 2021, following receipt of the Clearance Certificates. Further, to the extent that CRA makes any assessments during the Clearance Certificate process, it would necessitate the

preparation and filing of revised T3 tax forms to Unitholders, which could require Unitholders to amend their 2020 tax returns.

- 3.8 In order to avoid the potential additional time and cost associated with any such adjustments and to ensure that Unitholders receive the Final Distribution in the same year in which it is reportable for tax purposes, the full year 2020 tax returns, nil stub period tax returns (collectively, the “**Final Returns**”), and the request for Clearance Certificates for both AGI and AGIF are intended to be filed in January 2021.
- 3.9 Within two business days of filing the Final Returns, the Monitor will notify the Service List and post notice on the Website to confirm that the Final Returns have been filed.
- 3.10 Within two business days following receipt of the Clearance Certificates, the Monitor will notify the Service List and post notice on the Website to confirm that the Clearance Certificates have been received. The Monitor will then complete the remaining Post-Plan Implementation Date Transactions and Schedule B Steps and make the Final Distribution.
- 3.11 The only remaining Schedule B Steps are Steps 19 to 23. Steps 19 to 22 require no time to complete: these steps include setting off intercompany debts between AGI and AGIF, repaying any AGI-AGIF Payables, the return of capital by AGI to AGIF, and deeming the satisfaction of proven claims against AGIF (which have already been paid as described above). Step 23 is the Final Distribution to Unitholders.

#### **4.0 EXTENSION OF THE STAY**

- 4.1 As described above, prior to making the Final Distribution, the Monitor must obtain the Clearance Certificates. Once the Final Returns have been filed, KPMG has estimated

that the timeline for CRA and Revenue Quebec to review and respond to the request for Clearance Certificates could be in the range of four to six months. The Final Distribution will be made as soon as possible thereafter in compliance with the applicable securities laws. Accordingly, to permit this process to be completed and to avoid the risk of an unnecessary court appearance due to unforeseeable delays in Revenue Quebec's and the CRA's review of the Final Returns, the Monitor is requesting an extension of the Stay Period until November 15, 2021. This extension of the Stay Period should be sufficient to allow the Monitor, in consultation with the Applicants, to among other things, continue implementing the steps contemplated by the Plan, including arranging for the filing of the Final Returns, obtaining the Clearance Certificates, and making the Final Distribution.

- 4.2 Given the length of the requested Stay Period, in addition to notifying the Service List of the filing of the Final Returns, the Monitor will also notify the Service List when the Clearance Certificates are received.
- 4.3 Following the Final Distribution, the Monitor will apply for delisting of AGIF and seek the termination of these CCAA Proceedings.
- 4.4 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.

## **5.0 RECEIPTS AND DISBURSEMENTS SINCE THE THIRTY-SECOND REPORT**

- 5.1 During the period from June 1 to November 30, 2020 (the "**Reporting Period**"), receipts consisted of only a nominal amount of interest on deposits.

- 5.2 Total disbursements during the Reporting Period were approximately CAD\$5.39 million and US\$34,000 and were comprised primarily of: (a) a Unitholder Interim Distribution in the amount of CAD\$5 million, (b) professional fees and expenses totaling approximately CAD\$202,000 paid to the Monitor, its legal counsel, the Applicants' legal counsel and tax consultants, and the CPS, and (c) amounts paid to the Trustees of AGIF of approximately CAD\$88,000 and US\$30,000.
- 5.3 As at November 30, 2020, the Monitor is holding approximately CAD\$3.3 million and US\$34,000 on behalf of the Applicants.
- 5.4 The Plan provides that certain reserves and cash pools be maintained in respect of the remaining obligations of the estates. All remaining funds held by the Monitor on behalf of the Companies are part of the Administrative Costs Reserve.

## **6.0 ACTIVITIES OF THE MONITOR**

- 6.1 In addition to the activities of the Monitor described above, the Monitor's activities from the date of the Thirty-Second Report have included the following:
- coordinating the Unitholder Interim Distribution of CAD\$5 million, including arranging for the publication of related notices in *The Globe and Mail* (National Edition), the *Wall Street Journal* (National Edition) and the *Winnipeg Free Press*;
  - communicating with KPMG in respect of QST and income tax matters, including matters related to obtaining Clearance Certificates;
  - responding to inquiries from Unitholders and other stakeholders;

- continuing to make non-confidential materials filed with the Canadian Court and, in previous periods, with the U.S. Court publicly available on the Website;
- preparing this Thirty-Third Report;
- maintaining estate bank accounts and overseeing the accounting for the Applicants' receipts and disbursements pursuant to the Transition Order;
- preparing and filing GST/HST returns; and
- attending the June 23, 2020 Stay Extension Motion.

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All of which is respectfully submitted to the Court of Queen's Bench this 10<sup>th</sup> day of December, 2020.

**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

## **APPENDIX A**

### **ADDITIONAL APPLICANTS**

Arctic Glacier California Inc.  
Arctic Glacier Grayling Inc.  
Arctic Glacier Lansing Inc.  
Arctic Glacier Michigan Inc.  
Arctic Glacier Minnesota Inc.  
Arctic Glacier Nebraska Inc.  
Arctic Glacier Newburgh Inc.  
Arctic Glacier New York Inc.  
Arctic Glacier Oregon Inc.  
Arctic Glacier Party Time Inc.  
Arctic Glacier Pennsylvania Inc.  
Arctic Glacier Rochester Inc.  
Arctic Glacier Services Inc.  
Arctic Glacier Texas Inc.  
Arctic Glacier Vernon Inc.  
Arctic Glacier Wisconsin Inc.  
Diamond Ice Cube Company Inc.  
Diamond Newport Corporation  
Glacier Ice Company, Inc.  
Ice Perfection Systems Inc.  
ICESurance Inc.  
Jack Frost Ice Service, Inc.  
Knowlton Enterprises, Inc.  
Mountain Water Ice Company  
R&K Trucking, Inc.  
Winkler Lucas Ice and Fuel Company  
Wonderland Ice, Inc.