

SETTLEMENT AGREEMENT

Made as of the 25th day of April, 2012

Between

**Alexander Dobbie
Michael Benson**

– and –

**Arctic Glacier Income Fund
Arctic Glacier Inc.
Richard L. Johnson
Keith W. McMahon
Douglas A. Bailey
James E. Clark
Robert J. Nagy
Gary A. Filmon
David R. Swaine
Frank G. Larson
Gary D. Cooley**

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SETTLEMENT AGREEMENT

Subject to the approval of the Court as provided herein, the Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in the Agreement and upon the Approval Order approving the Settlement and directing the implementation of the terms and conditions of the Settlement as set forth in the Agreement becoming final, the Action will be settled and compromised on the terms and conditions contained herein.

SECTION 1 – RECITALS

1.1 WHEREAS:

A. Alexander Dobbie and Michael Benson commenced the Action against the Defendants alleging, among other things, that the Defendants represented that they were good corporate citizen operating in a “very competitive market”, and that such representations were misleading and/or false.

B. The Defendants have denied and continue to deny the Plaintiffs’ claims in the Action, have denied any wrongdoing or liability to the Plaintiffs of any kind, and have raised numerous affirmative defences and would raise numerous other defences had the Action not been settled.

C. Based upon an analysis of the facts and law applicable to the Plaintiffs’ claims, and taking into account the extensive burdens, risks and expense of continued litigation, including any potential appeals, the financial position of the Defendants, the availability of responsive insurance policies to satisfy the claims of the Class and the fair, cost-effective and assured method of resolving the claims of the Class, the Plaintiffs, with the benefit of advice from Class Counsel, concluded that the Agreement is fair and reasonable, and in the best interest of the Class.

D. The Defendants similarly have concluded that the Agreement is desirable in order to avoid the time, risk and expense, including the executive time and expense, of continuing with the litigation, including any potential appeals, and to resolve finally and completely the pending claims of the Class.

E. The Plaintiffs and Defendants have engaged in hard-fought litigation and negotiation.

F. The Parties engaged in a mediation before the Honourable George Adams on February 3, 2012 for the purpose of resolving this litigation.

G. The Parties intend to and hereby do finally resolve the Action and all claims that were or could have been asserted in it, subject to the approval of the Court, without any admission of liability or wrongdoing whatsoever.

H. Arctic Glacier and the Income Fund sought and obtained protection from their creditors under the *Companies' Creditors Arrangements Act*, R.S.C., 1985 c. C-36 from the Court of Queen's Bench of Manitoba (the "CCAA Court") and have obtained the approval of the CCAA Court to execute this Agreement

NOW, THEREFORE, FOR VALUE RECEIVED, the Parties stipulate and agree, subject to the approval of the Court, that any and all claims made or that could have been made in the Action shall be finally settled and resolved on the terms and conditions set forth in the Agreement.

SECTION 2 – DEFINITIONS

2.1 Definitions

In this Settlement Agreement, including the recitals hereto:

- (1) **Action** means *Dobbie and Benson v. Arctic Glacier Income Fund, et al.* brought in the Ontario Superior Court of Justice, Court File No. 59725 (London).
- (2) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to approval, implementation and administration of the Settlement including the costs of publishing and delivering notices, the fees, disbursements and taxes paid to the Administrator, and any other expenses approved by the Court which shall all be paid from the Settlement Amount. For greater certainty, Administration Expenses include the Non-Refundable Expenses for the purposes of the Agreement but do not include Class Counsel Fees.
- (3) **Administrator** means the third-party firm selected at arm's length by Class Counsel and appointed by the Court to administer the Agreement, and any employees of such firm.
- (4) **Agreement** means this agreement, including the recitals.
- (5) **Approval Hearing** means the hearing of the Second Motion by the Court.
- (6) **Approval Motion** a motion brought by the Plaintiffs in the Court for the Approval Order.

- (7) **Approval Order** means the order made by the Court in connection with the motion for approval of the Settlement and Plan of Allocation and publication of the Second Notice, such order to be substantially in the form attached as Schedule “A” or fixed by the Court.
- (8) **Arctic Glacier** means Arctic Glacier Inc.
- (9) **Authorized Claimant** means any Class Member who has submitted a completed Claim Form which, pursuant to the terms of the Agreement, has been approved for compensation by the Administrator in accordance with the Plan of Allocation.
- (10) **CCAA Court** means the Court of Queen’s Bench of Manitoba conducting the CCAA Proceedings.
- (11) **CCAA Proceedings** means the restructuring proceedings of Arctic Glacier Income Fund and Arctic Glacier, among others, commenced by order of the Court of the Queen’s Bench of Manitoba on February 22, 2012 pursuant to the *Companies’ Creditors Arrangements Act*, R.S.C. 1985, c. C-36 as amended, as recognized as foreign main proceedings in the Chapter 15 Proceedings.
- (12) **Chapter 15 Proceedings** means the restructuring proceedings of Arctic Glacier Income Fund and Arctic Glacier, among others, commenced by order of the United States Bankruptcy Court of the District of Delaware pursuant to Chapter 15 of the *United States Bankruptcy Code*.
- (13) **Claim Form** means the form to be approved by the Court which, when completed and submitted in a timely manner to the Administrator, constitutes a Class Member’s claim for compensation pursuant to the Settlement.
- (14) **Claims Bar Deadline** means the date by which each Class Member must file a Claim Form and all required supporting documentation with the Administrator, which date shall be ninety (90) days after the date on which the Second Notice is published.
- (15) **Class or Class Members** means all persons and entities, wherever they may reside or be domiciled, other than Excluded Persons and Opt-Out Parties, who acquired Units of the Income Fund during the Class Period.
- (16) **Class Counsel** means Siskinds LLP.
- (17) **Class Counsel Fees** means the fees, disbursements, costs, HST and other applicable taxes or charges of Class Counsel.
- (18) **Class Period** means the period from March 13, 2002 to September 16, 2008, inclusive.

- (19) ***Collateral Agreement*** means the agreement executed on April 11, 2012, which sets the Opt-Out Threshold, the terms of which shall be kept confidential unless the Court requires disclosure thereof.
- (20) ***Contributing Parties*** means the Insurers.
- (21) ***Court*** means the Ontario Superior Court of Justice.
- (22) ***CPA*** means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended.
- (23) ***Defendants*** means Arctic Glacier Income Fund, Arctic Glacier Inc., Richard L. Johnson, Keith W. McMahon, Douglas A. Bailey, and, in their personal capacities and as trustees of Arctic Glacier Income Fund, James E. Clark, Robert J. Nagy, Gary A. Filmon, David R. Swaine, Frank G. Larson and Gary D. Cooley the defendants in the Action.
- (24) ***Effective Date*** means the date on which all of the following occur or have occurred:
- (a) the Contributing Parties have paid the Settlement Amount into the Escrow account;
 - (b) the CCAA Court approves the Agreement; and
 - (c) the Defendants' right to terminate the Settlement has expired and the Approval Order becomes a Final Order.
- (25) ***Eligible Units*** means the Units acquired by a Class Member or Opt-Out party during the Class Period.
- (26) ***Escrow Account*** means the interest bearing trust account with one of the Canadian Schedule 1 banks in Ontario initially under the control of Siskinds LLP and then transferred to the control of the Administrator within ten (10) days of the Effective Date.
- (27) ***Escrow Settlement Amount*** means the Settlement Amount plus any interest accruing thereon, whether on account of late payment into the Escrow Account as provided in section 5.2, or as a result of investment thereof after payment of all Non-Refundable Expenses.
- (28) ***Excluded Persons*** means the Defendants and Larson and Cooley, members of the immediate families of the Individual Defendants and Larson and Cooley, any officers, directors or employees of the Income Fund or Arctic or any subsidiary of the Income Fund or Arctic, any entity in respect of which any such person has a legal or *de facto* controlling interest, and any legal representatives, heirs, successors or assigns of any such person or entity.
- (29) ***Final Order*** means any order contemplated by this Agreement from which no appeal lies or in respect of which any right of appeal has expired without the initiation of proceedings in

respect of that appeal such as the delivery of a notice of motion for leave to appeal or notice of appeal.

(30) **First Motion** means a motion brought before the Court for an order:

- (i) setting the date for the hearing of the Second Motion in the Court;
- (ii) approving the form of and authorizing the manner of publication and dissemination of the First Notice; and

substantially in the form attached as Schedule “B” or fixed by the Court.

(31) **First Notice** means notice to the Class of the Second Motion substantially in the form attached as Schedule “C” or fixed by the Court.

(32) **Income Fund** means Arctic Glacier Income Fund.

(33) **Individual Defendants** means Richard L. Johnson, Keith W. McMahon, Douglas A. Bailey, James E. Clark, Robert J. Nagy, Gary A. Filmon, David R. Swaine, Frank G. Larson and Gary D. Cooley.

(34) **Insurers** means Chubb Insurance Company of Canada and Travelers Guarantee Company of Canada.

(35) **Monitor** Means Alvarex & Marsal Canada Inc. in its capacity as court-appointed monitor in the CCAA Proceedings and authorized foreign representative in the C Proceedings

(36) **Newspapers** means the following newspaper publications in Canada: National Post, Globe & Mail and La Presse.

(37) **Non-Refundable Expenses** means certain Administration Expenses stipulated in section 4.1(1) of the Agreement to be paid from the Settlement Amount.

(38) **Opt-Out Deadline** means the date sixty (60) days after the date on which the Second Notice is published in the Newspapers.

(39) **Opt-Out Form** means the document in a form to be approved by the Court which, if completed and submitted by a Class Member to the Administrator before the expiry of the Opt-Out Deadline, excludes that Class Member from the Class and participation in the Settlement.

(40) **Opt-Out Party** means any person who would otherwise be a Class Member who submits a completed Opt-Out Form by the Opt-Out Deadline.

(41) **Opt-Out Threshold** means the total number of Eligible Units required to be held by all Opt-Out Parties in order to trigger the right to terminate this Agreement in accordance with paragraph 10.2 hereof, as particularized in the Collateral Agreement.

(42) **Parties** means the Plaintiffs and the Defendants in the Action.

- (43) **Plaintiffs** means Alexander Dobbie and Michael Benson.
- (44) **Plan of Allocation** means the distribution plan stipulating the proposed implementation and administration of the Settlement which substantially in the form attached as Schedule “D” or fixed by the Court.
- (45) **Plan of Notice** means the plan for disseminating the First Notice and the Second Notice to the Class which shall substantially in the form attached as Schedule “E” or fixed by the Court.
- (46) **Released Claims** (or **Released Claim** in the singular) means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, and liabilities of any nature whatsoever, including interest, costs, expenses, Administration Expenses, penalties, Class Counsel Fees and lawyers’ fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees, relating in any way to the purchase, sale, pricing, marketing or distributing of Eligible Units during the Class Period, or to any representations made by the Releasees during the Class Period to anyone concerning the Income Fund, its operations or the Eligible Units, or relating to any conduct alleged (or which could have been alleged) in the Action, including, without limitation, any such claims which have been asserted, would have been asserted or could have been asserted as a result of the purchase of Eligible Units in the Class Period.
- (47) **Releasees** means the Defendants, their insurers (including, but not limited to, the Insurers), their respective past and present affiliates and subsidiaries, and all of their respective past and present directors, officers, trustees, partners, employees, trustees, servants, consultants, underwriters, advisors, lawyers, representatives, successors, assigns and their heirs, executors, administrators, successors and assigns.
- (48) **Releasors** means, jointly and severally, the Plaintiffs, the Class Members (excluding Opt-Out Parties), including any person having a legal and/or beneficial interest in the Eligible Units purchased or acquired by these Class Members, and their respective past and present directors, officers, employees, agents, trustees, servants, consultants, underwriters, advisors, representatives, heirs, executors, attorneys, administrators, guardians, estate trustees, successors and assigns, as the case may be.
- (49) **Second Long Form Notice** means notice to the Class of the Approval Order, substantially in the form attached as Schedule “F” or fixed by the Court.

- (50) **Second Short Form Notice** means notice to the Class of the Approval Order, substantially in the form attached as Schedule “G” or fixed by the Court.
- (51) **Settlement** means the settlement provided for in the Agreement.
- (52) **Settlement Amount** means CAD\$13,750,000 inclusive of the Administration Expenses, Class Counsel Fees, and any other costs or expenses related to the Action or the Settlement.
- (53) **Units** means common Units of the Income Fund.
- (54) **TSX** means the Toronto Stock Exchange.

SECTION 3 – APPROVAL AND NOTICE PROCESS

3.1 Approval of the CCAA Court

- (1) This Agreement is conditional upon the CCAA Court granting leave to the Parties to continue the Action for the purpose of completing the Settlement and finally binds the parties and Class Members only upon the granting of such leave.
- (2) Promptly upon the execution of the Agreement, Arctic Glacier and/or the Income Fund shall seek the CCAA Court’s leave to continue the action for the purpose of completing the Settlement.

3.2 First Motion and Notice

- (1) The Plaintiffs will, as soon as is reasonably possible following the execution of the Agreement, bring the First Motion. Subject to the content of the First Notice and the order sought by the First Motion being satisfactory to the Defendants, and for the purpose of this Settlement Agreement only, the Defendants will consent to the order being sought.
- (2) Class Counsel shall cause the First Notice to be published in accordance with the directions of the Court and the costs of so doing shall be paid as a Non-Refundable Expense as provided in section 4.1(1)(b).

3.3 Approval Motion and Notice

- (1) The Plaintiffs will thereafter bring the Approval Motion before the Court in accordance with its directions. The Defendants will consent to the Approval Order.
- (2) Upon the granting of the Approval Order, Class Counsel or the Administrator, as the case may be, shall cause the Second Short Form Notice and the Second Long Form Notice to be published and disseminated in accordance with the Plan of Notice as approved by the Court and the costs of so doing shall be paid as a Non-Refundable Expense as provided in section 4.1(1)(c).

(3) The Defendants shall provide a reasonably detailed statement of the reservations taken by the Insurers in response to the Plaintiffs' claims for use on the Second Motion.

3.4 Notice of Termination

(1) If the Agreement is terminated after the Second Notice has been published and disseminated, a notice of the termination will be given to the Class. Class Counsel or the Administrator, as the case may be, will cause the notice of termination, in a form approved by the Court, to be published and disseminated as the Court directs and the costs of so doing shall be paid as a Non-Refundable Expense as provided in section 4.1(1)(d).

3.5 Report to the Court

(1) After publication and dissemination of each of the notices required by this section, Class Counsel or the Administrator, as the case may be, shall file with the Court an affidavit confirming publication and dissemination.

3.6 No Stay of Approval Proceedings

(1) Once leave has been granted by the CCAA Court in accordance with s. 3.1 of this Agreement, the Defendants agree that they shall not seek to stay the proceedings contemplated by this Agreement for the purpose of approving the Settlement in the Restructuring Proceedings or in any other proceedings commenced for the purpose of restructuring their debts or compromising the claims of their creditors in any court under insolvency legislation (including but not limited to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 as amended), or, in the alternative, shall and hereby do consent to the lifting of any such stay for the purpose of allowing any such proceedings to proceed.

SECTION 4 – NON-REFUNDABLE EXPENSES

4.1 Payments

(1) Expenses reasonably incurred for the following purposes, as approved by the Court, shall be the Non-Refundable Expenses, and shall be payable from the Settlement Amount, as and when incurred:

- (a) the costs incurred in connection with establishing and operating the Escrow Account;
- (b) the costs incurred in publishing the First Notice including the associated professional fees;

- (c) the cost incurred in publishing and distributing the Second Short Form Notice and the Second Long Form Notice including the associated professional fees and mailing expenses as may be applicable;
 - (d) if necessary, the costs incurred in publishing notice to the Class that the Agreement has been terminated, including the associated professional fees; and
 - (e) if the Court appoints the Administrator and thereafter the Settlement Agreement is terminated, the costs reasonably incurred by the Administrator for performing the services required to prepare to implement the Settlement, including any mailing expenses, to a maximum of \$35,000, whether or not a claim has been filed or reviewed, as approved by the Court.
- (2) Siskinds LLP shall account to the Court and the Parties (and, to the extent required, the Monitor and/or the courts in the Restructuring Proceedings) for all payments it makes from the Escrow Account. In the event that the Agreement is terminated, this accounting shall be delivered no later than ten (10) days after such termination.

4.2 Disputes Concerning Non-Refundable Expenses

Any dispute concerning the entitlement to or quantum of Non-Refundable Expenses shall be dealt with by a motion to the Court on notice to the Parties.

SECTION 5 – THE SETTLEMENT BENEFITS

5.1 Payment of Escrow Settlement Amount

- (1) The Insurers paid the Settlement Amount into the Escrow Account on March 12, 2012.

5.2 Escrow Account

Siskinds LLP, and then the Administrator after the Settlement becomes final, shall hold the Escrow Settlement Amount in the Escrow Account and shall not pay out any amount from the Escrow Account, except in accordance with the terms of the Agreement, or pursuant to an order of the Court made on notice to the Parties.

5.3 Taxes on Interest

- (1) Except as provided in section 5.3(2), all taxes payable on any interest which accrues in relation to the Settlement Amount, shall be the responsibility of the Class and shall be paid by Siskinds LLP or the Administrator, as appropriate, from the Escrow Settlement Amount, or by the Class as the Administrator considers appropriate.

(2) If the Administrator or Siskinds LLP returns any portion of the Settlement Amount plus accrued interest to the Contributing Parties pursuant to the provisions of the Agreement, the taxes payable on the interest portion of the returned amount shall be the responsibility of the Contributing Parties to be allocated by agreement among themselves.

SECTION 6 – NO REVERSION

Unless the Agreement is terminated as provided herein, the Contributing Parties shall not, under any circumstances, be entitled to the repayment of any portion of the Settlement Amount and then only to the extent of and in accordance with the terms provided herein.

SECTION 7 - DISTRIBUTION OF THE SETTLEMENT AMOUNT

On or after the Effective Date, the Administrator shall distribute the remainder of the Settlement Amount in accordance with the following priorities:

- (a) to pay Class Counsel Fees;
- (b) to pay all of the costs and expenses reasonably and actually incurred in connection with the provision of notices, locating Class Members for the sole purpose of providing notice to them, soliciting Class Members to submit a Claim Form, including the notice expenses reasonably and actually incurred by the Administrator and brokerage firms in connection with the provision of notice of this Settlement to Class Members (provided, however, that the Administrator shall not pay in excess of five thousand Canadian dollars (CAD\$5,000.00) in the aggregate to all brokerage firms and, if the aggregate amount claimed by such brokerage firms exceeds five thousand Canadian dollars (CAD\$5,000.00), then the Administrator shall distribute the sum of five thousand Canadian dollars (CAD\$5,000.00) to such brokerage firms on a *pro rata* basis). The Defendants are specifically excluded from eligibility for any payment of notice expenses under this subsection;
- (c) to pay all of the Administration Expenses. For greater certainty, the Defendants are specifically excluded from eligibility for any payment of costs and expenses under this subsection;
- (d) to pay any taxes required by law to be paid to any governmental authority; and

- (e) to pay a *pro rata* share of the balance of the Escrow Settlement Amount to each Authorized Claimant in proportion to his, her or its claim as recognized in accordance with the Plan of Allocation.

SECTION 8 – EFFECT OF SETTLEMENT

8.1 No Admission of Liability

Neither the Agreement nor anything contained herein, shall be interpreted as a concession or admission of wrongdoing or liability by the Releasees, or as a concession or admission by the Releasees of the truthfulness of any claim or allegation asserted in the Action. Neither the Agreement nor anything contained herein shall be used or construed as an admission by the Releasees of any fault, omission, liability or wrongdoing in connection with any statement, release or written document or financial report, and in fact the Defendants continue to vigorously dispute and contest the allegations made in the Action.

8.2 Agreement Not Evidence

(1) Neither the Agreement, nor anything contained herein, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out the Agreement shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, quasi-criminal, administrative or disciplinary action or proceeding.

(2) Notwithstanding section 8.2(1), the Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the Court contemplated by this Agreement, in a proceeding to approve or enforce the Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

8.3 Best Efforts

(1) The Parties shall use their best efforts to implement the terms of the Agreement. The Parties agree to hold in abeyance all steps in the Action, including all discovery, other than proceedings provided for in the Agreement, the First Motion, the Second Motion and such other proceedings required to implement the terms of the Agreement, until the date the Settlement becomes final or the termination of the Agreement, whichever occurs last.

SECTION 9 – OPTING OUT

9.1 Awareness of any Potential Opt-Outs

(1) The Defendants represent and warrant that:

- (a) they are unaware of any Class Member who has expressed an intention to opt out of the Class; and
 - (b) they will not encourage or solicit any Class Member to opt out of the Class.
- (2) Class Counsel represent and warrant that:
- (a) they are unaware of any Class Member who has expressed an intention to opt out of the Class; and
 - (b) they will not encourage or solicit any Class Member to opt out of the Class.

9.2 Opt-Out Procedure

- (1) Each Class Member who wishes to opt out must submit a properly completed Opt-Out Form along with all required supporting documents to the Administrator on or before the Opt-Out Deadline.
- (2) In order to remedy any deficiency in the completion of the Opt-Out Form, the Administrator may require and request that additional information be submitted by a Class Member who submits an Opt-Out Form, and that such Class Members shall have until ten (10) days after the Opt-Out Deadline to remedy the deficiency.
- (3) If a Class Member fails to submit a properly completed Opt-Out Form and/or all required supporting documents to the Administrator or fails to remedy any deficiency within ten (10) days after the Opt-Out Deadline, the Class Member shall not have opted out of the Action, subject to any order of the Court to the contrary, and will in all other respects be subject to, and bound by, the provisions of the Agreement and the releases contained herein.
- (4) The Opt-Out Deadline will not be extended unless the Court orders otherwise.
- (5) Opt-Out Parties will be excluded from any and all rights and obligations arising from the Settlement. Class Members who do not opt out shall be bound by the Settlement and the terms of the Agreement regardless of whether the Class Member files a Claim Form or receives compensation from the Settlement.

9.3 Notification of Number of Opt-Outs

Within thirty (30) days after the Opt-Out Deadline, the Administrator shall report to the Court and the Parties the number of Eligible Units held by each Opt-Out Party, a summary of the information delivered by each Opt-Out Party and the total number of Eligible Units held by the Opt-Out Parties.

SECTION 10 – TERMINATION OF THE AGREEMENT

10.1 General

- (1) The Agreement shall, without notice, be automatically terminated if:
 - (a) the Approval Order is not granted by the Court; or
 - (b) the Approval Order is reversed on appeal and the reversal becomes a Final Order;
or
 - (c) the Defendants elect to terminate the Agreement if the Opt-Out Threshold is exceeded.
- (2) The failure of the Court to approve in full the request by Class Counsel for Class Counsel fees shall not be grounds to terminate this Agreement.
- (3) In the event the Agreement is terminated in accordance with its terms:
 - (a) the Plaintiffs and the Defendants will be restored to their respective positions prior to the execution of the Agreement;
 - (b) the Escrow Settlement Amount will be returned to the contributing Parties in accordance with section 10.3(2)(d) hereof;
 - (c) the Agreement will have no further force and effect and no effect on the rights of the Plaintiffs or the Defendants except as specifically provided for herein;
 - (d) all statutes of limitation applicable to the claims asserted in the Action shall be deemed to have been tolled during the period beginning with the execution of this Agreement and ending with the day on which the orders contemplated by section 10.3(2)(c) are entered;
 - (e) any amounts paid for Non-Refundable Expenses pursuant to section 4.1(1) are non-recoverable from the Plaintiffs, the Class Members, the Administrator or Class Counsel;
 - (f) the Agreement will not be introduced into evidence or otherwise referred to in any litigation against the Defendants.
- (4) Notwithstanding the provisions of section 10.1(3)(c), if the Agreement is terminated, the provisions of this section and sections 2, 4, 5.2, 5.3, 8.1, 8.2, 9.3, 10.1(3), 10.1(4), 10.3, and 16.4 and the recitals applicable thereto shall survive termination and shall continue in full force and effect.

10.2 Effect of Exceeding the Opt-Out Threshold, Conditions Precedent and Right to Terminate

- (1) Notwithstanding any other provision in the Agreement, the Defendants in their sole discretion, may elect to terminate the Agreement if the total number of Eligible Units held by Opt-Out Parties exceeds the Opt-Out Threshold provided that their election is made within fifteen (15) days of the Administrator notifying them of the number of Opt-Outs pursuant to section 9.3 after which date their right to terminate the Agreement will have expired.
- (2) The right of termination provided in paragraph 10.2(1), shall be effected only in the event that all of the Defendants elect to terminate in accordance with the terms of that provision.
- (3) If the Opt-Out Threshold is not exceeded, the Defendants' right to terminate the Agreement pursuant to the provisions of this section is inoperative and of no force and effect.
- (4) The Opt-Out Threshold shall be stated in the Collateral Agreement signed prior to, or contemporaneously with, the execution of the Agreement. The Collateral Agreement will state the Opt-Out Threshold shall be kept confidential by the Parties and their counsel, and may be shown to the Court but shall not be otherwise disclosed, unless disclosure is ordered by the Court.

10.3 Allocation of Monies in the Escrow Account Following Termination

- (1) The Administrator and Siskinds LLP shall account to the Court and the Parties for the amounts maintained in the Escrow Account. If the Agreement is terminated, this accounting shall be delivered no later than ten (10) days after such termination.
- (2) If the Agreement is terminated, the Defendants shall, within thirty (30) days after termination, apply to the appropriate Court, on notice to the Plaintiffs, the Monitor and the Administrator, for an order:
 - (a) declaring the Agreement null and void and of no force or effect except for the provisions of those sections listed in section 10.1(4);
 - (b) determining whether a notice of termination shall be sent out to the Class Members and, if so, the form and method of disseminating such a notice;
 - (c) requesting an order setting aside, *nunc pro tunc*, all prior orders or judgments entered by the Court in accordance with the terms of this Agreement; and
 - (d) authorizing the payment of all funds in the Escrow Account, including accrued interest, to the Insurers and apportioned *pro rata*, based on their respective contributions, directly or indirectly, to the Escrow Account, as the case may be, minus any amounts paid out of the Escrow Account in accordance with the Agreement.

(3) Subject to section 10.4, the Parties shall consent to the orders sought in any motion made by the Defendants pursuant to section 10.3.

10.4 Disputes Relating to Termination

If there is any dispute about the termination of the Agreement, the Court shall determine any dispute by motion on notice to the Parties.

SECTION 11 – DETERMINATION THAT THE SETTLEMENT IS FINAL

- (1) The Settlement shall be considered final on the Effective Date.
- (2) Within ten (10) days after the Effective Date, Siskinds LLP shall transfer the Escrow Account to the Administrator.

SECTION 12 – RELEASES AND JURISDICTION OF THE COURT

12.1 Release of Releasees

As of the Effective Date and after the Settlement Amount has been deposited into the Escrow Account, the Releasers forever and absolutely release the Releasees from the Released Claims.

12.2 Mutual Release Between Releasees

As of the Effective Date and after the Settlement Amount has been deposited into the Escrow Account, each of the Releasees, except the Insurers and their insureds, forever and absolutely remise, release, waive and forever discharge the other Releasees, their successors and assigns of and from all claims, demands, actions, costs, and debts whatsoever in law or in equity arising from or relating to the Released Claims, save and except for any entitlements to indemnification. For greater clarity, nothing herein shall be taken as, or shall constitute, a release by any insured of rights he or she or it may have under any applicable policies of insurance.

12.3 No Further Claims

As of the Effective Date, the Releasers and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim

contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.

12.4 Dismissal of the Action

Except as otherwise provided in the Agreement and the Approval Order, the Action shall be dismissed without costs and with prejudice.

12.5 No Claims in Interim

As of the date of the Agreement, Class Counsel does not represent plaintiffs in any other proceeding related to any matter at issue in the Action.

SECTION 13 – ADMINISTRATION

13.1 Appointment of the Administrator

- (1) The Court will appoint the Administrator to serve until such time as the Escrow Settlement Fund is distributed in accordance with the Plan of Allocation, to implement the Agreement and the Plan of Allocation, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Agreement and in the Plan of Allocation.
- (2) If the Agreement is terminated, the Administrator's fees, disbursements and taxes will be fixed as set out in section 4.1.
- (3) If the approval of the Settlement becomes final as contemplated by section 11 the Court will fix the Administrator's compensation and payment schedule.

13.2 Information and Assistance from the Defendants

- (1) Within thirty (30) days of the approval of the Settlement, the Income Fund will, in writing, authorize and direct delivery of a computerized list of the names and addresses of persons who purchased Eligible Units during the Class Period in its possession to Class Counsel and the Administrator. The Income Fund will direct its transfer agent to deliver a computerized list of the names and addresses of persons who purchased Eligible Units during the Class Period. The Income Fund will also assist Class Counsel or the Administrator as may be required in obtaining information about Class Members who hold or held beneficial interests in the Eligible Units.
- (2) The Income Fund will identify an individual employee or agent of the Income Fund to whom Class Counsel and/or the Administrator may address any requests for information for the purpose of implementing this Agreement. The Income Fund agrees to make reasonable efforts to answer any reasonable inquiry from Class Counsel and/or the Administrator in order to facilitate the administration and implementation of the Agreement and the Plan.

(3) Class Counsel and/or the Administrator may use the information obtained in accordance with sections 13.2(1) and (2) for the purpose of delivering the Second Notice and for the purposes of administering and implementing the Agreement and the Plan of Allocation.

(4) Any information obtained or created in the administration of this Agreement is confidential and, except as required by law, shall be used and disclosed only for the purpose of distributing notices and the administration of the Agreement and Plan.

13.3 Claims Process

(1) In order to seek payment from the Settlement Amount, a Class Member must submit a completed Claim Form to the Administrator, in accordance with the provisions of the Plan of Allocation, on or before the Claims Bar Deadline. Class Members shall be bound by the terms of the Settlement regardless of whether they submit a completed Claim Form or receive payment from the Settlement Amount.

(2) In order to remedy any deficiency in the completion of a Claim Form, the Administrator may require and request that additional information be submitted by a Class Member who submits a Claim Form. Such Class Members shall have until the later of thirty (30) days from the date of the request from the Administrator or the Claims Bar Deadline to rectify the deficiency. Any person who does not respond to such a request for information within the thirty (30) day period shall be forever barred from receiving any payments pursuant to the Settlement, subject to any order of the Court to the contrary, but will in all other respects be subject to, and bound by, the provisions of the Agreement and the releases contained herein.

(3) By agreement between the Administrator and Class Counsel, the Claims Bar Deadline may be extended. Class Counsel and the Administrator shall agree to extend the Claims Bar Deadline if, in their opinions, doing so will not adversely affect the efficient administration of the Settlement and it is in the best interests of the Class to do so.

13.4 Disputes Concerning the Decisions of the Administrator

(4) In the event that a Class Member disputes the Administrator's decision, whether in whole or in part, the Class Member may appeal the decision to the Court in accordance with the provisions in the Plan of Allocation. The decision of the Court will be final with no right of appeal.

(5) No action shall lie against Class Counsel or the Administrator for any decision made in the administration of the Agreement and Plan of Allocation without an order from the Court authorizing such an action.

13.5 Conclusion of the Administration

(1) Following the Claims Bar Deadline, and in accordance with the terms of the Settlement Agreement, the Plan of Allocation, and such further approval or order of the Court as may be necessary, or as circumstances may require, the Administrator shall distribute the Escrow Settlement Amount to Authorized Claimants.

(2) No claims or appeals shall lie against Class Counsel or the Administrator based on distributions made substantially in accordance with the Agreement, the Plan of Allocation, or with any other order or judgment of the Court.

(3) If the Escrow Settlement Account is in a positive balance (whether by reason of tax refunds, un-cashed cheques or otherwise) after one hundred eighty (180) days from the date of distribution of the Escrow Settlement Amount to the Authorized Claimants, the Administrator shall, if feasible, allocate such balance among Authorized Claimants in an equitable and economic fashion. Any balance below CAD\$25,000.00 which still remains thereafter shall be donated to FAIR Canada.

(4) Upon the conclusion of the administration, or at such other time as the Court directs, the Administrator shall report to the Court on the administration and shall account for all monies it has received, administered and disbursed and obtain an order from the Court discharging it as Administrator.

SECTION 14 – THE PLAN OF ALLOCATION

(1) The Defendants shall have no obligation to consent to but shall not oppose the Court's approval of the Plan of Allocation.

(2) Unless directed to do so by the Court, the Defendants will not make any submissions to the Court relating to the Plan of Allocation.

(3) Sections 14(1) and (2) are not an acknowledgement by the Class or Class Counsel that the Defendants have standing to make any submissions to the Court about the Plan of Allocation.

SECTION 15 – THE FEE AGREEMENT AND CLASS COUNSEL FEES

15.1 Motion for Approval of Class Counsel Fees

(1) At the Approval Hearing Class Counsel may seek the approval of Class Counsel Fees to be paid as a first charge on the Settlement Amount. Class Counsel are not precluded from making additional applications to the Court for expenses incurred as a result of implementing the

terms of the Agreement. All amounts awarded on account of Class Counsel Fees shall be paid from the Settlement Amount.

(2) The Defendants acknowledge that they are not parties to the motion concerning the approval of Class Counsel Fees, they will have no involvement in the approval process to determine the amount of Class Counsel Fees and they will not take any position or make any submissions to the Court concerning Class Counsel Fees.

(3) The procedure for, and the allowance or disallowance by the Court of any requests for Class Counsel Fees to be paid out of the Settlement Amount are not part of the Settlement provided for herein, except as expressly provided in section 7(a), and are to be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement provided for herein.

(4) Any order or proceeding relating to Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Agreement or affect or delay the finality of the Approval Order and the Settlement of the Action provided herein.

15.2 Payment of Class Counsel Fees

Forthwith after the Settlement becomes final, as contemplated in section 11 and the time for the Defendants to elect to terminate pursuant to the provisions of section 10 has expired or the Defendants have waived their right to elect, the Administrator shall pay to Siskinds LLP in trust the Class Counsel Fees approved by the Ontario Court from the Escrow Account.

SECTION 16 – MISCELLANEOUS

16.1 Motions for Directions

(1) Any one or more of the Parties, Class Counsel, or the Administrator may apply to the Court for directions in respect of any matter in relation to the Agreement and Plan of Allocation.

(2) All motions contemplated by the Agreement shall be on notice to the Parties.

16.2 Defendants Have No Responsibility or Liability for Administration

Except for the obligation to pay the Settlement Amount and provide the information and assistance contemplated by sections 13.3(1), (2), the Defendants shall have no responsibility for and no liability whatsoever with respect to the administration or implementation of the Agreement and Plan, including, without limitation, the processing and payment of claims by the Administrator.

16.3 Headings, etc.

- (1) In the Agreement:
 - (a) the division of the Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of the Agreement;
 - (b) the terms “the Agreement”, “herein”, “hereto” and similar expressions refer to the Agreement and not to any particular section or other portion of the Agreement;
 - (c) all amounts referred to are in lawful money of Canada; and
 - (d) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.
- (2) In the computation of time in the Agreement, except where a contrary intention appears:
 - (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

16.4 Governing Law

- (6) The Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.
- (7) The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Action, the Parties and Class Members to interpret and enforce the terms, conditions and obligations under the Agreement and the Approval Order.

16.5 Severability

- (1) Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

16.6 Entire Agreement

- (1) The Agreement constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection

herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of the Agreement, unless expressly incorporated herein. The Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment must be approved by the Court.

16.7 Binding Effect

(1) If the Settlement is approved by the Court and the CCAA Court) and becomes final as contemplated in section 11, the Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Class Members, the Defendants, the Releasees, the Releasors, the Contributing Parties, the Insurers and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

(2) Arctic Glacier and the Income Fund represent and warrant that:

- (a) they have all requisite corporate power and authority to execute, deliver and perform the Agreement and to consummate the transaction contemplated hereby on their own behalf;
- (b) the execution, delivery, and performance of the Agreement and the consummation of the Action contemplated herein have been duly authorized by all necessary corporate action their part;
- (c) the Agreement has been duly and validly executed and delivered by them and constitutes their legal, valid, and binding obligations;
- (d) they agree to use their best efforts to cause all conditions precedent to the Effective Date to occur.

16.8 Survival

The representations and warranties contained in the Agreement shall survive its execution and implementation.

16.9 Negotiated Agreement

The Agreement and the underlying settlement have been the subject of negotiations and many discussions among the undersigned. Each of the undersigned has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of the

Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of the Agreement.

16.10 Recitals

(1) The recitals to the Agreement are material and integral parts hereof and are fully incorporated into, and form part of, the Agreement.

16.11 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or its representative has the authority (including any required authorization of the Monitor and/or the courts in the Restructuring Proceedings) to bind the Party with respect to the matters set forth herein has read and understood the Agreement;
- (b) the terms of the Agreement and the effects thereof have been fully explained to him, her or its representative by his, her or its counsel;
- (c) he, she or its representative fully understands each term of the Agreement and its effect.

16.12 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, the Agreement on behalf of the Party for whom he or she is signing.

16.13 Counterparts

The Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing the Agreement.

16.14 Confidentiality and Communications

(1) In any public discussion of, comment on, press release or other communication of any kind (with the media or otherwise) about the Agreement and Plan, the Parties and their respective counsel agree and undertake to describe the Settlement and the terms of this Agreement as fair, reasonable and in the best interests of the Class.

(2) The Parties' obligations under this section shall not prevent them, or any of them, from reporting to their clients, from complying with any order of the Court, or from making any

disclosure or comment required by the Agreement, or from making any necessary disclosure or comment for the purposes of any applicable securities or tax legislation or from making any disclosure or comment to Class Members or the Court or for the purposes of any proceedings as between the Defendants.

(3) Without limiting the generality of the foregoing, the Parties specifically agree that the Parties will not make any public statements, comment or any communication of any kind about any negotiations or information exchanged as part of the settlement process. In addition, to the extent that there is public discussion of, comment on or communication of any kind about this Settlement Agreement, the Parties and their counsel agree and undertake to describe the Settlement Agreement as fair, reasonable and in the best interests of the Class.

16.15 Notice

Any notice, instruction, motion for Court approval or motion for directions or Court orders sought in connection with the Agreement or any other report or document to be given by any party to any other party shall be in writing and delivered personally, by facsimile or e-mail during normal business hours, or sent by registered or certified mail, or courier postage paid:

For Plaintiffs and for Class Counsel:

A. Dimitri Lascaris

Michael G. Robb

Siskinds LLP

680 Waterloo Street

London, ON N6A 3V8

Telephone: 519.660.7872

Facsimile: 519.660.7873

Email: michael.robb@siskinds.com

For Arctic Glacier Income Fund, Arctic Glacier Inc.,
Richard L. Johnson, Keith W. McMahon, Douglas A.
Bailey, and, in their personal capacities and as trustees of
Arctic Glacier Income Fund, James E. Clark, Robert J.
Nagy, Gary A. Filmon, David R. Swaine:

R. Paul Steep
Dana M. Peebles
McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto Dominion Centre
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Facsimile: (416) 868-0673
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For Frank G. Larson:
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Eric R. Hoaken
Bennett Jones LLP
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Telephone: 416.777.5780
Facsimile: 416.863.1716
Email: hoakene@bennettjones.com

For Gary D. Cooley:

Nigel M. Campbell
BLAKE, CASSELS & GRAYDON LLP
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Suite 2800, Commerce Court West
Toronto ON M5L 1A9
Telephone: (416) 863-2429
Facsimile: (416) 863-2653
Email: nigel.campbell@blakes.com

The Parties have executed the Agreement as of the date on the cover page.

For the Plaintiffs and Class Counsel

By: 
Name: Michael G. Robb
Title: Partner

For Arctic Glacier Income Fund, Arctic Glacier Inc.,
Richard L. Johnson, Keith W. McMahon, Douglas A.
Bailey, and, in their personal capacities and as trustees of
Arctic Glacier Income Fund, James E. Clark, Robert
J. Nagy, Gary A. Filmon, David R. Swaine:

By: 
Name: McCarthy Tétrault LLP
Title: Counsel

For Gary D. Cooley

By: M/GH Per Blake, Cassels & Graydon LLP
Name Blake, Cassels & Graydon LLP
Title Counsel

For Frank G. Larson

By: M/GH Per Bennett Jones LLP
Name Bennett Jones LLP
Title Counsel

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, THE _____
JUSTICE TAUSENDFREUND) DAY OF _____, 2012

B E T W E E N:

ALEXANDER DOBBIE and MICHAEL BENSON

Plaintiffs

- and -

ARCTIC GLACIER INCOME FUND, ARCTIC GLACIER INC.,
KEITH W. MCMAHON, DOUGLAS A. BAILEY, and, in their personal capacities
and as trustees of Arctic Glacier Income Fund, JAMES E. CLARK, ROBERT J. NAGY
GARY A. FILMON, DAVID R. SWAINE, FRANK G. LARSON
and GARY D. COOLEY

Defendants

Proceeding under the *Class Proceedings Act, 1992*

O R D E R

THIS MOTION, made by the Plaintiffs for an Order approving the Settlement Agreement, dated April 11, 2012, was heard on June 1, 2012, at the Belleville Courthouse, 235 Pinnacle Street, Belleville, Ontario

ON READING the materials filed, including the Settlement Agreement, dated April 11, 2012, attached hereto as **Schedule "A"** (the "Settlement Agreement") and on hearing the submissions of counsel for the Plaintiffs and counsel for the Defendants:

1. **THIS COURT DECLARES** that except as otherwise stated, this Order incorporates and adopts the definitions set out in the Settlement Agreement.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.

3. **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to s.29 of the *CPA*.
4. **THIS COURT ORDERS** that the Settlement Agreement shall be implemented in accordance with its terms.
5. **THIS COURT DECLARES** that the Settlement Agreement, in its entirety, forms part of this Order and is binding upon the Defendants, the Representative Plaintiffs, and upon all Class Members who do not opt out of the Class in accordance with the Approval Notices (as defined below), including those persons who are minors or mentally incapable, and that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are hereby disposed of.
6. **THIS COURT DECLARES** that the Plan of Allocation, attached hereto as **Schedule “B”**, is hereby approved as fair and reasonable and that the Settlement Amount shall be distributed in accordance with the Plan of Allocation after the payment of Class Counsel Fees and Administration Expenses.
7. **THIS COURT ORDERS** that ● be and hereby is appointed the Administrator as defined in the Settlement Agreement.
8. **THIS COURT ORDERS** that the form and content of the Second Long Form Notice, attached hereto as **Schedule “C”**, is hereby approved.
9. **THIS COURT ORDERS** that the form and content of the Second Short Form Notice, attached hereto as **Schedule “D”** (together with the Second Long-Form Notice, the “Approval Notices”), is hereby approved.
10. **THIS COURT ORDERS** that the Opt-Out Form, substantially in the form attached hereto as **Schedule “E”**, is hereby approved.
11. **THIS COURT ORDERS** that the Claim Form, substantially in the form attached hereto as **Schedule “F”**, is hereby approved.
12. **THIS COURT ORDERS** that the Approval Notices, Claim Form and Opt-Out Form shall be disseminated in accordance with the Plan of Notice.

13. **THIS COURT ORDERS** that a person who would otherwise be a Class Member may opt out in accordance with the directions contained in the Second Long Form Notice attached hereto as **Schedule “C”**.

14. **THIS COURT ORDERS** that on notice to the Court but without further order of the Court, the parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

15. **THIS COURT ORDERS AND DECLARES** that, other than as provided in s. 4.1 (1)(e) of the Settlement Agreement, the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

16. **THIS COURT ORDERS** that if the Settlement Agreement is terminated pursuant to any rights of termination therein, then:

- (a) the Order (except for paragraphs 1, 15 and 16 herein) shall be set aside, be of no further force or effect, and be without prejudice to any party; and
- (b) each party to the Action shall be restored to his, her or its respective position in the Action as it existed immediately prior to the execution of the Settlement Agreement.

17. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, the Releasors shall release and discharge, and shall be conclusively deemed to have fully, finally and forever released and discharged the Releasees from the Released Claims.

18. **THIS COURT ORDERS** that, upon the Effective Date, no Class Member shall institute, continue, maintain or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, proceeding, complaint, claim or demand against any Released Party or any other person who may claim any form of contribution or indemnity from any Released Party in respect of the Released Claims or any matter related thereto, and are permanently barred and enjoined from doing so.

19. **THIS COURT ORDERS** that, upon the Effective Date, the Action shall be dismissed against the Defendants with prejudice and without costs.

THE HONOURABLE JUSTICE W. TAUSENDFREUND

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

ORDER

Siskinds ^{LLP}
Barristers & Solicitors
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London, ON N6A 3V8

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Tel: 416.362.8334
Fax: 416.362.2610

Lawyers for the Plaintiffs

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
JUSTICE TAUSENDFREUND)

DAY OF , 2012

B E T W E E N:

ALEXANDER DOBBIE and MICHAEL BENSON

Plaintiffs

- and -

ARCTIC GLACIER INCOME FUND, ARCTIC GLACIER INC.,
KEITH W. MCMAHON, DOUGLAS A. BAILEY, and, in their personal capacities
and as trustees of Arctic Glacier Income Fund, JAMES E. CLARK, ROBERT J. NAGY
GARY A. FILMON, DAVID R. SWAINE, FRANK G. LARSON and GARY D. COOLEY

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiffs for, *inter alia*, an Order fixing the date of the Approval Motion, approving the form of notice of the settlement approval hearing, and approving the method of dissemination of said notice, was heard this day in London, Ontario.

ON READING the materials filed, including the Settlement Agreement between the parties (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiffs and counsel for the Defendants:

1. **THIS COURT DECLARES** that except as otherwise stated, this Order incorporates and adopts the definition set forth in the Settlement Agreement, which is attached hereto as **Schedule "A"**.

2. **THIS COURT ORDERS** that the hearing of the representative plaintiffs' motion for settlement approval (the "Approval Motion") and of the representative plaintiffs' motion for approval of the fees of Class Counsel shall take place on June 1, 2012.

3. **THIS COURT ORDERS** that the form and content of the First Notice, substantially in the form attached hereto as **Schedule "B"** is hereby approved.

4. **THIS COURT ORDERS** that the First Notice shall be published in accordance with the Plan of Notice attached hereto as **Schedule "C"**.

5. **THIS COURT ORDERS** that Class Counsel shall, at or before the hearing of the Settlement Approval Motion, file with the Court proof of the dissemination and publication of the First Notice in accordance with the Plan of Notice.

6. **THIS COURT ORDERS** that Class Members who wish to file with the Court an objection or comment to the Settlement or to the approval of Class Counsel fees shall deliver a written statement to Class Counsel, at the address indicated in the First Notice, no later than May 18, 2012.

THE HONOURABLE JUSTICE TAUSENDFREUND

DOBBIE & BENSON
Plaintiffs and ARCTIC GLACIER INCOME FUND, et al.
Defendants

Court File No. 59725

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

Proceeding under the *Class Proceeding Act, 1992*

ORDER

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680 Waterloo Street
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Fax: 416.362.2610

Lawyers for the Plaintiffs

**NOTICE OF HEARING OF MOTION FOR APPROVAL OF
SETTLEMENT AND CERTIFICATION NOTICE IN ARCTIC
GLACIER INCOME FUND AND ARCTIC GLACIER INC.
(AG.UN)
SECURITIES CLASS ACTION**

READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS

This notice is directed to all persons and entities, wherever they may reside or be domiciled, other than Excluded Persons (as defined below), who acquired Units of Arctic Glacier Income Fund ("Arctic Glacier") during the period from March 13, 2002 to September 16, 2008 ("Class Members").

In September 2008, the plaintiffs commenced a class proceeding against Arctic Glacier, Arctic Glacier Inc., and certain officers and directors of Arctic Glacier (the "Defendants") in the Ontario Superior Court of Justice (the "Court"). The class action arises out of Arctic Glacier's announcement of an investigation by the United States Department of Justice into anti-competitive conduct in the packaged ice industry. Following that announcement, Arctic Glacier suspended its distributions to its unit-holders, and the trading price of the units declined significantly.

On March 1, 2011, the Court certified the class action. The Defendants sought leave to appeal the certification order and leave to appeal was granted on February 1, 2012. The Defendants sought leave to appeal the certification decision and leave to appeal was granted on February 1, 2012.

On April 12, 2012 the parties to the class action executed a Settlement Agreement (the "Settlement"). The Settlement is subject to the approval of the Court. The Settlement provides for the payment of CAD\$13,750,000 (the "Settlement Amount") in full and final settlement of the claims of Class Members. The Settlement Amount includes all legal fees, disbursements, taxes and administration expenses. In return for the Settlement Amount, the Defendants will receive releases and a dismissal of the class action. The Settlement is a compromise of disputed claims and is not an admission of liability, wrongdoing or fault on the part of any of the Defendants, all of whom have denied, and continue to deny, the allegations against them.

A complete copy of the Settlement is available on the website of Class Counsel at www.classaction.ca.

A Settlement Approval Motion Will Be Held in Belleville, Ontario

The Settlement must be approved by the Court before it can be implemented. Class Members may, but are not required to, attend at the Approval Motion which will be held on June 1, 2012 at 10:00 am, at the Court House, 235 Pinnacle St, Belleville, Ontario.

If the Settlement is approved, another notice to Class Members will be published which will provide instructions on how to make a claim to receive compensation from the Settlement and how to opt out of the class if the Class Member does not wish to share in, or be bound by, the Settlement.

Class Members who approve of or do not oppose the Settlement do not need to appear at the Approval Motion or take any other action at this time.

In addition to seeking the Court's approval of the Settlement, Siskinds LLP will seek the Court's approval of its legal fees not to exceed 25% of the Settlement Amount, plus disbursements and applicable taxes ("Class Counsel Fees") at the Approval Motion. Siskinds will also seek the appointment of an Administrator for the Settlement whose fees, together with any other costs relating to approval, notification, implementation and administration of the Settlement ("Administration Expenses"), will be paid from the Settlement Amount. Class Counsel Fees and Administration Expenses will be deducted from the Settlement Amount before it is distributed to Class Members.

Terms of the Settlement Agreement

The remainder of the Settlement Amount, after deduction of Class Counsel Fees and Administration Expenses (the "Net Settlement Amount") will be distributed to Class Members in accordance with the Plan of Allocation which is also subject to Court approval.

The amount of each Class Member's actual compensation from the Net Settlement Amount will depend upon: (i) the number and the price of Arctic Glacier Income Fund units purchased by the Class Member during the Class Period; (ii) if and when the Class Member sold the Arctic Glacier Income Fund units purchased during the Class Period and the price at which such units were sold; (iii) whether the Class Member continues to hold some or all of their Arctic Glacier Income Fund units purchased during the Class Period; and (iv) the total number and value of claims for compensation filed with the Administrator and their value. It is therefore not possible to predict what any individual Class Member's share of the Net Settlement Amount will be.

Copies of the Settlement and the proposed Plan of Allocation may be found at www.classaction.ca or by contacting Siskinds at the contact information provided below.

Participation in the Settlement May Affect Other Actions Commenced by Class Members

If the Court approves the Settlement, all Class Members will be bound by its terms, unless they exclude themselves from the Class ("opt out"). This means that if they do not opt out, they may participate in the Settlement by filing a proper claim but will not be able to bring or maintain any other claim or legal proceeding against the Defendants or any other person released by the Settlement in relation to the matters alleged in the class action. If the Settlement is approved, a notice explaining the process by which a Class Member can opt out, and the consequences thereof, will be published.

Class Members May Object to the Settlement

Class Members who wish to comment on or object to the Settlement should do so in writing. All objections should be received by Siskinds LLP (at the address listed below) no later than May 18, 2012. Siskinds will file all such submissions with the Court. You may attend at the Approval Motion whether or not you deliver an objection. The Court may permit you to participate in the Approval Motion whether or not you deliver an objection.

A written objection should include: (i) the Class Member's name, address, telephone number, fax number (where applicable) and email address; (ii) a brief statement outlining the nature of, and

reason for, the objection; and (iii); a statement as to whether the objector intends to appear at the Approval Motion in person or through a lawyer, and, if through a lawyer, the name, address, telephone number, fax number and email address of the lawyer.

Questions related to this Notice should NOT be addressed to the Ontario Superior Court of Justice. For further information, please contact:

Siskinds LLP
Nicole Young
680 Waterloo Street
London, ON N6A 3V8
Tel: 1-877-672-2121 x 2380
Email: nicole.young@siskinds.com

or visit Siskinds LLP's website at www.classaction.ca.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ALEXANDER DOBBIE and MICHAEL BENSON

Plaintiffs

- and -

ARCTIC GLACIER INCOME FUND, ARCTIC GLACIER INC., RICHARD L. JOHNSON, KEITH W. MCMAHON, DOUGLAS A. BAILEY, FRANK LARSON, GARY COOLEY and, in their personal capacities and as Trustees of Arctic Glacier Income Fund, JAMES E. CLARK, ROBERT J. NAGY, GARY A. FILMON and DAVID R. SWAINE

Proceeding under the *Class Proceedings Act*, 1992

PLAN OF ALLOCATION

(Supplement to the Settlement Agreement, dated April 11, 2012)

DEFINED TERMS

1. For the purposes of this Plan of Allocation, the definitions set out in the Settlement Agreement apply to and are incorporated into this Plan of Allocation and, in addition, the following definitions apply:
 - (a) “**Acquisition Expense**” means the total monies paid by the Claimant (including brokerage commissions) to acquire Eligible Units;
 - (b) “**Claimant**” means a Class Member who submits a properly completed Claim Form and all required supporting documentation to the Administrator, on or before the Claims Bar Deadline;
 - (c) “**Disposition Proceeds**” means the total proceeds paid to the Claimant (without deducting any commissions paid in respect of the dispositions) in consideration of the sale of all of his/her/its Eligible Units; provided, however, that with respect to any Eligible Units that the Claimant continues to hold, they shall be deemed to have been disposed of for an amount equal to the number of Eligible Units still held, multiplied by \$1.84 [being the 10 trading day volume weighted average trading price of Arctic Glacier Units on the TSX from September 17, 2008 to September 30, 2008 inclusive];
 - (d) “**FIFO**” means the principle of first-in, first-out, wherein Units are deemed to be sold in the same order that they were purchased (i.e. the first Units purchased are

deemed to be the first sold); and which requires, in the case of a Claimant who held Units of Arctic Glacier at the commencement of the Class Period, that those Units be deemed to have been sold completely before Eligible Units are sold or deemed sold;

- (e) “**Net Loss**” means that the Claimant’s Disposition Proceeds are less than the Claimant’s Acquisition Expense;
- (f) “**Net Settlement Amount**” means the Escrow Settlement Amount remaining after payment of Administration Expenses and Class Counsel Fees; and
- (g) “**Nominal Entitlement**” means a Claimant’s nominal damages as calculated pursuant to the formula set forth herein, and which forms the basis upon which each Claimant’s *pro rata* share of the Net Settlement Amount is determined.

CALCULATION OF NET LOSS AND NOMINAL ENTITLEMENT

2. A Claimant must have sustained a Net Loss in order to be eligible to receive a payment from the Net Settlement Amount. A Claimant who has not suffered a net loss as calculated hereunder shall not be entitled to receive any portion of the Net Settlement Amount.
3. The Administrator shall first determine whether a Claimant sustained a Net Loss. If the Claimant has sustained a Net Loss, they become an Authorized Claimant, and the Administrator will go on to calculate his/her/its Nominal Entitlement.
4. No Nominal Entitlement shall be allocated in respect Eligible Units acquired by a Class Member in its capacity as an underwriter to an offering of Units made during the Class Period.
5. The Administrator will apply FIFO to distinguish the sale of Arctic Glacier Units held at the beginning of the Class Period from the sale of Eligible Units, and will continue to apply FIFO to determine the purchase transactions which correspond to the sale of Eligible Units. The Administrator will use this data in the calculation of an Authorized Claimant’s Nominal Entitlement according to the formulas listed below.

6. The date of a purchase, sale or deemed disposition shall be the trade date, as opposed to the settlement date, of the transaction.
7. For the purposes of any calculation under the Plan of Allocation, the Administrator will account for any unit splits or consolidations that occur during and after the Class Period, such that the Claimants' holdings for the purposes of the calculations are completed in units equivalent to those traded during the Class Period.
8. A Claimant's Nominal Entitlement will be calculated as follows:
 - I. No Nominal Entitlement shall be attributed to any Eligible Units *disposed of* prior to the first alleged corrective disclosure, that is, *prior to March 6, 2008*.**
 - II. For Eligible Units *disposed of* between the first alleged corrective disclosure and the end of the 10 trading day period following the final alleged corrective disclosure on September 17, 2008, that is, *on or between March 6, 2008 and September 30, 2008*, the Nominal Entitlement shall be:**
 - A. an amount equal to the number of Eligible Units thus disposed of, multiplied by the difference between the volume weighted average price paid for those Eligible Units (including any commissions paid in respect thereof) and the average price per share received upon the disposition of those Eligible Units (without deducting any commissions paid in respect of the disposition).
 - III. For Eligible Units *disposed of* after the 10 trading day period following the second alleged corrective disclosure, that is, *on or after September 30, 2008*, the Nominal Entitlement shall be the lesser of:**
 - A. an amount equal to the number of Eligible Units thus disposed of, multiplied by the difference between the volume weighted average price paid for those Eligible Units (including any commissions paid in respect thereof) and the price per share received upon the disposition of those Eligible Units (without deducting any commissions paid in respect of the disposition); and
 - B. an amount equal to the number of Eligible Units thus disposed of, multiplied by the difference between the volume weighted average price paid for those Eligible Units (including any commissions paid in respect thereof) and \$1.84 [being the 10 trading day volume weighted average trading price of Arctic Glacier Units on the TSX from September 17, 2008 to September 30, 2008 inclusive].

IV. For Eligible Units still held at the time the Claim Form is completed, the Nominal Entitlement shall be:

- A. an amount equal to the number of Eligible Units still held, multiplied by the difference between the volume weighted average price paid for those Eligible Units (including any commissions paid in respect thereof) and \$1.84 [being the 10 trading day volume weighted average trading price of Arctic Glacier Units on the TSX from September 18, 2008 to September 30, 2008 inclusive].

FINAL DISTRIBUTION

9. Each Claimant's actual compensation shall be the portion of the Net Settlement Amount equivalent to the ratio of his/her/its Nominal Entitlement to the total Nominal Entitlements of all Authorized Claimants multiplied by the Net Settlement Amount, as calculated by the Administrator.
10. Compensation shall be paid to Claimants in Canadian currency.
11. The Administrator will not distribute entitlements of less than \$1.00. Such amounts will instead be redistributed pro rata to the other Authorized Claimants.
12. The Administrator shall be authorized to distribute the Net Settlement Amount in accordance with this Plan of Allocation upon having received and reviewed the Claim Forms submitted by the Claims Bar Deadline without further order of the Court.
13. If, one hundred eighty (180) days from the date on which the Administrator distributes the Net Settlement Amount to Claimants, the Escrow Account remains in a positive balance (whether due to tax refunds, uncashed cheques or otherwise), the Administrator shall, if feasible, reallocate such balance among the Claimants in an equitable and economic fashion. In the event any such remaining balance is less than CAN\$25,000.00, such balance will be donated to FAIR Canada. Under no circumstances will any repayment be made to the Contributing Parties.

PLAN OF NOTICE

Capitalized terms used in this Plan of Notice have the meanings ascribed to them in the Settlement Agreement.

PART 1 – NOTICE OF SETTLEMENT APPROVAL MOTION

The First Notice will be disseminated as follows:

Internet Publication

The First Notice will be posted, in both English and French on www.classaction.ca.

Newspaper and Newswire Publication

Publication of the First Notice, which notice will be at least ¼ page in size, will occur at least twenty-eight (28) days prior to the Approval Motion. Such publication will be made in English in the business/legal section of National edition of *The Globe and Mail*, and *The National Post*, Report on Business, and in French in the business section of *La Presse*.

Class Counsel

Class Counsel shall make a toll free number and email address available to the public that will enable Class Members to contact Class Counsel and obtain more information about the proposed settlement, and/or to request that a copy of the Settlement Agreement be sent to them directly. Additionally, the First Notice will be made available orally by recorded message at Class Counsel's toll-free line. In addition, the public may view or obtain copies of the Settlement Agreement from Class Counsel's website: www.classaction.ca.

PART 2 – NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL

The Second Short Form Notice will be disseminated as follows:

Newspaper and Newswire Publication

Publication of the Second Short Form Notice, which notice will be at least a ¼ page in size, will occur as soon as possible following the date the Approval Order becomes a Final Order, and, in any event, no later than fourteen (14) days following such date. Such publication will be made in the English language in the business/legal section of the national edition of the *National Post*, and the *Globe and Mail*, and in the French language in the business section of *La Presse*.

The English and French language versions of the Second Short Form Notice will also be issued (with necessary formatting modifications) across *Marketwire*, a major business newswire in Canada.

The Second Long Form Notice will be disseminated as follows:

Internet Publication

The Second Long Form Notice will be posted, in both the English and French languages, on (i) www.classaction.ca; and (ii) the website of the Administrator.

Individual Notice

Within thirty (30) days of the date the Approval Order becomes a Final Order, Class Counsel shall direct the Administrator to send the Second Long Form Notice, the Claim Form and the Opt-Out Form to all putative Class Members as follows:

1. The Administrator shall mail the Second Long Form Notice, the Claim Form and the Opt-Out Form to the persons identified as a result of the Defendants delivering a computerized list of the names and addresses of persons who purchased Shares during the Class Period in its possession to Class Counsel and the Administrator; and
2. The Administrator will send the Second Long Form Notice, the Claim Form and the Opt-Out Form to the brokerage firms in the Administrator's proprietary databases requesting that the brokerage firms either send a copy of the Second Long Form Notice, the Claim Form and the Opt-Out Form to all individuals and entities identified by the brokerage firms as being Class Members, or to send the names and addresses of all such individuals and entities to the Administrator who shall mail the Second Long Form Notice, the Claim Form and the Opt-Out Form to the individuals and entities so identified.

Class Counsel shall mail or email the Second Long Form Notice, the Claim Form and the Opt-Out Form to those persons who have contacted Class Counsel regarding this litigation and have provided Class Counsel with their contact information.

Class Counsel shall make a toll-free number and email address available to the public that will enable Class Members to obtain more information about the settlement, the claims process, and to request that a copy of the Second Long Form Notice, the Claim Form and the Opt-Out Form be sent to them directly. Class Counsel or the Administrator, as appropriate, will directly mail the Second Long Form Notice, the Claim Form and/or the Opt-Out Form to any Class Member who contacts Class Counsel or the Administrator's offices and requests same. Additionally, the public may view, or obtain copies of, the Settlement Agreement, the Second Long Form Notice, the Claim Form and the Opt-Out Form on Class Counsel's website: www.classaction.ca.

NOTICE OF SETTLEMENT APPROVAL IN ARCTIC GLACIER INCOME FUND SECURITIES LITIGATION

This notice is to all individuals and entities, wherever they may reside or be domiciled (other than Excluded Persons as defined below), who purchased Units of Arctic Glacier Income Fund (AG.UN) during the period from March 13, 2002 to September 16, 2008 (the "Class Period").

**READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.
YOU MAY NEED TO TAKE PROMPT ACTION**

IMPORTANT DEADLINES

Opt-Out Deadline (for those who wish to exclude ● themselves from the Class Action and NOT file a claim for compensation. See page ● for more details.):

Claims Bar Deadline (to file a claim for compensation ● from the Net Settlement Fund. See page ● for more details.):

Opt-Out Forms and/or Claim Forms will not be accepted after their respective deadlines. As a result, it is necessary that you act without delay.

COURT APPROVAL OF THE CLASS ACTION SETTLEMENT

In September 2008, the plaintiffs commenced a class proceeding against Arctic Glacier, Arctic Glacier Inc., and certain officers and directors of Arctic Glacier (the "Defendants") in the Ontario Superior Court of Justice (the "Court"). The class action arises out of Arctic Glacier's announcement of an investigation by the United States Department of Justice into anti-competitive conduct in the packaged ice industry. Following that announcement, Arctic Glacier suspended its distributions to its unit-holders, and the trading price of the units declined significantly. By order issued March 1, 2011, the Court certified the class action. The Defendants sought leave to appeal the certification order and leave to appeal was granted on February 1, 2012.

On February 22, 2012, Arctic Glacier and Arctic Glacier Inc. applied for protection from their creditors pursuant to the *Companies' Creditors Arrangements Act* (the "CCAA") in the Court of Queen's Bench of Manitoba (the "CCAA Court") and pursuant to Chapter 15 of the *United States Bankruptcy Code* in the United States Bankruptcy Court of the District of Delaware. Each of these Courts (the "Restructuring Courts") granted orders staying all legal proceedings against Arctic Glacier and Arctic Glacier Inc. for the purpose of permitting them to restructure their affairs. Those orders currently prohibit the commencement or prosecution against Arctic Glacier and Arctic Glacier Inc. and certain of their current or former officers and directors. It is not currently known when or if such stays of proceedings will be lifted. Those proceedings may result in further orders of the Restructuring Courts compromising or extinguishing the claims of Class Members.

On April 12, 2012 the parties to the class action executed a Settlement Agreement (the “Settlement”). The Settlement was subject to the approval of the Court. The Settlement provides for the payment of CAD\$13,750,000 (the “Settlement Amount”) in full and final settlement of the claims of Class Members. The Settlement Amount includes all legal fees, disbursements, taxes and administration expenses. In return for the Settlement Amount, the Defendants receive releases and a dismissal of the class action. The Settlement is a compromise of disputed claims and is not an admission of liability, wrongdoing or fault on the part of any of the Defendants, all of whom have denied, and continue to deny, the allegations against them.

A complete copy of the Settlement Agreement is available on the website of Class Counsel: www.classaction.ca.

On ●, the Court approved the Settlement and declared that it is fair, reasonable and in the best interests of the Class.

The Court also awarded Class Counsel legal fees, expenses and applicable taxes in the amount of \$● (“Class Counsel Fees”). As is customary in such cases, Class Counsel conducted the class action on a contingent fee basis. Class Counsel was not paid as the matter proceeded and funded the expenses of conducting the litigation. The amount awarded for Class Counsel Fees includes \$● for the reimbursement of amounts spent by Class Counsel in the conduct of the class action. The remainder, net of applicable taxes, will be Class Counsel’s only compensation for conducting the class action. Class Counsel Fees will be deducted from the Settlement Amount before it is distributed to Class Members. Expenses incurred or payable relating to approval, notification, implementation and administration of the Settlement (“Administration Expenses”), will also be paid from the Settlement Amount before it is distributed to Class Members.

ADMINISTRATOR

The Court has appointed ● as the Administrator of the Settlement. The Administrator will, among other things: (i) receive and process the Claim Forms and Opt-Out Forms; (ii) make determinations of Class Members’ eligibility for compensation pursuant to the Plan of Allocation; (iii) communicate with Class Members regarding their eligibility for compensation; and (iv) manage and distribute the Settlement Amount. The Administrator can be contacted at:

Telephone: ●

Mailing Address: ●

Website: ●

CLASS MEMBERS’ ENTITLEMENT TO COMPENSATION

Class Members will be eligible for compensation pursuant to the Settlement if they sustained a Net Loss on their Class Period transactions and if they timely submit a complete Claim Form, including any supporting documentation with the Administrator. To be eligible for compensation under the Settlement, Class Members must submit their Claim Form postmarked **no later than ●**, (the “Claims Bar Deadline”).

“Excluded Persons” are not permitted to participate in the Settlement. Excluded Persons are the Defendants, members of the immediate families of the Defendants, any officers, directors or employees of the Income Fund or Arctic or any subsidiary of the Income Fund or Arctic, any entity in respect of which any such person has a legal or *de facto* controlling interest, and any legal representatives, heirs, successors or assigns of any such person or entity.

The remainder of the Settlement Amount, after deduction of Class Counsel Fees and Administration Expenses (the “Net Settlement Amount”) will be distributed to Class Members in accordance with the Plan of Allocation.

The Plan of Allocation uses the following definitions, in addition to those contained in the Settlement:

- (a) “**Acquisition Expense**” means the total monies paid by the Claimant (including brokerage commissions) to acquire Eligible Units;
- (b) “**Claimant**” means a Class Member who submits a properly completed Claim Form and all required supporting documentation to the Administrator, on or before the Claims Bar Deadline;
- (c) “**Disposition Proceeds**” means the total proceeds paid to the Claimant (without deducting any commissions paid in respect of the dispositions) in consideration of the sale of all of his/her/its Eligible Units; provided, however, that with respect to any Eligible Units that the Claimant continues to hold, they shall be deemed to have been disposed of for an amount equal to the number of Eligible Units still held, multiplied by \$1.84 [being the 10 trading day volume weighted average trading price of Arctic Glacier Units on the TSX from September 17, 2008 to September 30, 2008 inclusive];
- (d) “**FIFO**” means the principle of first-in, first-out, wherein Units are deemed to be sold in the same order that they were purchased (i.e. the first Units purchased are deemed to be the first sold); and which requires, in the case of a Claimant who held Units of Arctic Glacier at the commencement of the Class Period, that those Units be deemed to have been sold completely before Eligible Units are sold or deemed sold;
- (e) “**Net Loss**” means that the Claimant’s Disposition Proceeds are less than the Claimant’s Acquisition Expense;
- (f) “**Net Settlement Amount**” means the Escrow Settlement Amount remaining after payment of Administration Expenses and Class Counsel Fees; and
- (g) “**Nominal Entitlement**” means a Claimant’s nominal damages as calculated pursuant to the formula set forth herein, and which forms the basis upon which each Claimant’s *pro rata* share of the Net Settlement Amount is determined.

A Claimant must have sustained a Net Loss in order to be eligible to receive a payment from the Net Settlement Amount. A Claimant who has not suffered a net loss as calculated under the Plan of Allocation will not be entitled to receive any portion of the Net Settlement Amount.

The Administrator shall first determine whether a Claimant sustained a Net Loss. If the Claimant has sustained a Net Loss, the Claimant becomes an Authorized Claimant, and the Administrator will proceed to calculate his/her/its Nominal Entitlement.

No Nominal Entitlement shall be allocated in respect Eligible Units acquired by a Class Member in its capacity as an underwriter to an offering of Units made during the Class Period.

The Administrator will apply FIFO to distinguish the sale of Arctic Glacier Units held at the beginning of the Class Period from the sale of Eligible Units, and will continue to apply FIFO to determine the purchase transactions which correspond to the sale of Eligible Units. The Administrator will use this data in the calculation of an Authorized Claimant's Nominal Entitlement according to the formulas listed below.

The date of a purchase, sale or deemed disposition shall be the trade date, as opposed to the settlement date, of the transaction.

For the purposes of any calculation under the Plan of Allocation, the Administrator will account for any unit splits or consolidations that occur during and after the Class Period, such that the Claimants' holdings for the purposes of the calculations are completed in units equivalent to those traded during the Class Period.

A Claimant's Nominal Entitlement will be calculated as follows:

- I. No Nominal Entitlement shall be attributed to any Eligible Units *disposed of prior to the first alleged corrective disclosure, that is, prior to March 6, 2008.***
- II. For Eligible Units *disposed of between the first alleged corrective disclosure and the end of the 10 trading day period following the final alleged corrective disclosure on September 17, 2008, that is, on or between March 6, 2008 and September 30, 2008, the Nominal Entitlement shall be:***
 - A. an amount equal to the number of Eligible Units thus disposed of, multiplied by the difference between the volume weighted average price paid for those Eligible Units (including any commissions paid in respect thereof) and the average price per share received upon the disposition of those Eligible Units (without deducting any commissions paid in respect of the disposition).
- III. For Eligible Units *disposed of after the 10 trading day period following the second alleged corrective disclosure, that is, on or after September 30, 2008, the Nominal Entitlement shall be the lesser of:***
 - A. an amount equal to the number of Eligible Units thus disposed of, multiplied by the difference between the volume weighted average price paid for those Eligible Units (including any commissions paid in respect thereof) and the price per share received upon the disposition of those Eligible Units (without deducting any commissions paid in respect of the disposition); and

- B. an amount equal to the number of Eligible Units thus disposed of, multiplied by the difference between the volume weighted average price paid for those Eligible Units (including any commissions paid in respect thereof) and \$1.84 [being the 10 trading day volume weighted average trading price of Arctic Glacier Units on the TSX from September 17, 2008 to September 30, 2008 inclusive].

IV. For Eligible Units still held at the time the Claim Form is completed, the Nominal Entitlement shall be:

- A. an amount equal to the number of Eligible Units still held, multiplied by the difference between the volume weighted average price paid for those Eligible Units (including any commissions paid in respect thereof) and \$1.84 [being the 10 trading day volume weighted average trading price of Arctic Glacier Units on the TSX from September 18, 2008 to September 30, 2008 inclusive].

Each Claimant's actual compensation shall be the portion of the Net Settlement Amount equivalent to the ratio of his/her/its Nominal Entitlement to the total Nominal Entitlements of all Authorized Claimants multiplied by the Net Settlement Amount, as calculated by the Administrator.

The Administrator will not distribute entitlements of less than \$1.00 to Class Members. Such amounts will instead be redistributed pro rata to the other Authorized Claimants.

REQUESTING EXCLUSION FROM THE CLASS

All persons and entities that fall within the definition of the Class will automatically be considered Class Members unless and until they exclude themselves from the Class ("opt out"). This means that Class Members will not be able to bring or maintain any other claim or legal proceeding against the Defendants, or any other person released by the Settlement in relation to the matters alleged in the class action.

If you do not want to be bound by the Settlement you must opt out. Please note, however, that by opting out you will also be barred from making a claim and receiving compensation from the Settlement Amount. If you are considering opting out, you should have specific regard to the impact of the orders which have been or may be made by the Restructuring Courts on your ability to pursue litigation against the Defendants in this action. Those orders may severely limit or eliminate your ability to commence or continue litigation against the Defendants named in this action.

If you wish to opt out, you may do so by completing the "Opt-Out Form" enclosed with this notice. In order to successfully opt out, you must include all of the information and documentation requested by the Opt-Out Form.

If you wish to opt out, you must submit your Opt-Out Form and the required supporting documentation to the Administrator at the above-noted address, **no later than ●**.

IMPORTANT DEADLINES

Opt-Out Deadline: ●

Claims Bar Deadline: ●

Opt-Out Forms and/or Claim Forms will not be accepted after their respective deadlines. As a result, it is necessary that you act without delay.

CLASS COUNSEL

The law firm of Siskinds LLP is counsel to the Plaintiffs in the class proceeding, and can be reached by telephone, toll free, at 1-800-461-6166 ext. 2380. Email inquiries may be sent to nicole.young@siskinds.com.

INTERPRETATION

If there is a conflict between the provisions of this notice and the Settlement, the terms of the Settlement will prevail.

Please do not direct inquiries about this notice to the Court. All inquiries should be directed to the Administrator or Siskinds LLP.

DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED
BY THE ONTARIO SUPERIOR COURT OF JUSTICE

NOTICE OF SETTLEMENT APPROVAL IN THE ARCTIC GLACIER INCOME FUND SECURITIES LITIGATION

This notice is to all individuals and entities, wherever they may reside or be domiciled (other than Excluded Persons as defined below), who purchased Units of Arctic Glacier Income Fund (AG.UN) during the period from March 13, 2002 to September 16, 2008 (the "Class Period").

**READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.
YOU MAY NEED TO TAKE PROMPT ACTION.**

Please note: This is a summary notice, produced for publication purposes, announcing Court approval of the settlement reached in this litigation. A Long Form Notice, containing additional detail is available on the Administrator's website: ● or Class Counsel's website: <http://www.classaction.ca>.

COURT APPROVAL OF THE CLASS ACTION SETTLEMENT

In September 2008, the plaintiffs commenced a class proceeding against Arctic Glacier, Arctic Glacier Inc., and certain officers and directors of Arctic Glacier (the "Defendants") in the Ontario Superior Court of Justice (the "Court"). The class action arises out of Arctic Glacier's announcement of an investigation by the United States Department of Justice into anti-competitive conduct in the packaged ice industry. Following that announcement, Arctic Glacier suspended its distributions to its unit-holders, and the trading price of the units declined significantly. By order issued March 1, 2011, the Court certified the class action. The Defendants sought leave to appeal the certification order and leave to appeal was granted on February 1, 2012.

On February 22, 2012, Arctic Glacier and Arctic Glacier Inc. applied for protection from their creditors pursuant to the *Companies' Creditors Arrangements Act* (the "CCAA") in the Court of Queen's Bench for Manitoba (the "CCAA Court") and pursuant to Chapter 15 of the *United States Bankruptcy Code* in the United States Bankruptcy Court of the District of Delaware. Each of these Courts (the "Restructuring Courts") granted orders staying all legal proceedings against Arctic Glacier and Arctic Glacier Inc. for the purpose of permitting them to restructure their affairs. Those orders currently prohibit the commencement or prosecution against Arctic Glacier and Arctic Glacier Inc. and certain of their current or former officers and directors. It is not currently known when or if such stays of proceedings will be lifted. Those proceedings may result in further orders of the Restructuring Courts compromising or extinguishing the claims of Class Members.

On ●, 2012, the Court approved the Settlement Agreement, dated April 12, 2012 (the "Settlement"). The Settlement is a compromise of disputed claims and is not an admission of liability, wrongdoing or fault on the part of any of the Defendants, all of whom have denied, and continue to deny, the allegations against them.

The Settlement provides for the payment of CAD\$13,750,000 (the "Settlement Amount") in full and final settlement of the claims of Class Members, including legal fees, disbursements, taxes and administration expenses in return for releases and a dismissal of the class action. The Defendants, members of the immediate families of the Individual Defendants, any officers, directors or employees of the Income Fund or Arctic or any subsidiary of the Income Fund or Arctic, any entity in respect of which any such person has a legal or *de facto* controlling interest,

and any legal representatives, heirs, successors or assigns of any such person or entity (the “Excluded Persons”), are not permitted to participate in the Settlement.

ADMINISTRATION OF THE SETTLEMENT AGREEMENT

The Court has appointed ● as the Administrator of this Settlement Agreement. The Administrator will oversee the claims and opt-out processes (described below) and will distribute the Settlement Amount.

Those Class Members who wish to receive compensation from the Settlement Amount must mail or otherwise submit a completed Claim Form and any supporting documents to the Administrator, no later than ●, (the “Claims Bar Deadline”) at the following address: ●

The Class Members who do not opt out (as discussed below) and who file a valid claim will be paid a *pro rata* share of the balance of the Settlement Amount after payment of fees, expenses, and taxes. The Long Form Notice contains the complete details of the process for filing a Claim Form and how the Settlement Amount will be distributed.

All Class Members will be bound by the terms of the Settlement Agreement unless they “opt out.” This means that Class Members who do not opt out will not be able to bring or continue any other claim or legal proceeding against the Defendants, or any other person released by the Settlement Agreement in relation to the matters alleged in the class action. If you do not want to be bound by the Settlement Agreement you must opt out. Please note however, that by opting out you will be barred from making a claim and receiving compensation from the Settlement Amount.

If you wish to opt out you must submit a fully completed Opt-Out Form along with the documents identified therein to the Administrator, no later than ● (the “Opt-Out Deadline”). If you are considering opting out, you should have specific regard to the impact of the orders which have been or may be made by the Restructuring Courts on your ability to pursue litigation against the Defendants in this action. Those orders may severely limit or eliminate your ability to commence or continue litigation against the Defendants named in this action.

For further information regarding the terms of the Settlement Agreement, the Plan of Allocation, filing a claim and/or opting out, or to obtain a Claim Form or request to opt out, visit the Administrator’s website: ● or contact the Administrator by calling ●.

The law firm of Siskinds LLP is counsel to the Plaintiffs in the class proceeding, and can be reached by telephone, toll free, at 1-800-461-6166 ext. 2380, by email at nicole.young@siskinds.com, or on the internet at www.classaction.ca.

Please do not contact the Court with inquiries about the class action or the Settlement. All inquiries should be directed to the Administrator or Siskinds LLP.

[date]

PUBLICATION OF THIS NOTICE HAS BEEN AUTHORIZED
BY THE ONTARIO SUPERIOR COURT OF JUSTICE