

## **2003 BCSECCOM 546**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – open-end investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unitholders under a distribution reinvestment plan where distributions of income are reinvested in additional units of the trust, subject to certain conditions – first trade relief provided for additional units of trust, subject to certain conditions

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C.1996, c. 418, ss. 48 and 76

Multilateral Instrument 45-102 *Resale of Securities*

**IN THE MATTER OF THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,  
ONTARIO, QUÉBEC, NOVA SCOTIA, NEW BRUNSWICK,  
NEWFOUNDLAND AND LABRADOR, AND PRINCE EDWARD ISLAND**

**AND**

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM  
FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF ARCTIC GLACIER INCOME FUND**

### **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Arctic Glacier Income Fund (the “Trust”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”), that the requirements contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Registration and Prospectus Requirements”) shall not apply to the distribution and resale of trust units of the Trust pursuant to a distribution reinvestment plan (the “Plan”);

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), The Manitoba Securities Commission is the principal regulator for this application;

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AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS the Trust has represented to the Decision Makers that:

1. The Trust is an unincorporated open-end mutual fund trust established under the laws of the Province of Alberta by a declaration of trust dated January 22, 2002, as amended and restated as of March 11, 2002.
2. The beneficial interests in the Trust are divided into interests of one class, described and designated as "Trust Units". The Trust is authorized to issue an unlimited number of Trust Units of which 15,659,846 are presently issued and outstanding.
3. The Trust became a reporting issuer or the equivalent in all Jurisdictions on March 13, 2002 on obtaining a receipt for its prospectus dated March 12, 2002. The last prospectus of the Trust was dated June 17, 2003 and filed in all of the Jurisdictions on June 17, 2003. The Trust is current on all filings required to be made under the Legislation.
4. The Trust Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX") under the symbol "AG.UN".
5. The Trust makes cash distributions of a proportionate share of its annual distributable cash flow ("Distributions") on a monthly basis paid on the 15<sup>th</sup> day of each month (the "Distribution Date") to unitholders of record ("Unitholders") on the last business day of the previous month (each a "Record Date").
6. The Trust has adopted the Plan which, subject to obtaining all necessary regulatory approvals, will permit Unitholders to reinvest Distributions by electing to purchase additional Units ("Plan Units") pursuant to the Plan and in accordance with a distribution reinvestment plan services agreement entered into between the Trust and Computershare Trust Company of Canada in its capacity as agent under the Plan (in such capacity, the "Plan Agent").
7. Participation in the Plan is restricted to Unitholders and beneficial owners of Trust Units who are residents of Canada.
8. A registered holder of Trust Units may elect to participate in the Plan by completing an authorization form and sending it to the Plan Agent. Beneficial

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owners of Trust Units may elect to participate in the Plan by notifying the Plan Agent via the applicable participant ("CDS Participant") in the Canadian Depository for Securities Limited ("CDS") depository service.

9. Distributions due to participants in the Plan ("Plan Participants") will be paid to the Plan Agent and applied to purchase Plan Units directly from the Trust.
10. The Price of Plan Units purchased with Distributions will be 95% of the volume weighted average of the trading price for the Trust Units on the TSX for the ten (10) trading days immediately preceding the relevant Distribution Date.
11. The Plan also allows Plan Participants to make optional cash payments ("Optional Cash Payments") to purchase Plan Units, provided that Optional Cash Payments made by any Plan Participant shall be not less than \$1,000 per Distribution Date and not more than \$12,000 per calendar year.
12. The Price of Plan Units purchased with Optional Cash Payments will be 100% of the volume weighted average of the trading price for the Trust Units on the TSX for the ten (10) trading days immediately preceding the relevant Distribution Date.
13. The aggregate number of Plan Units that may be purchased with Optional Cash Payments in a calendar year will be limited to 2% of the outstanding Trust Units at the commencement of that calendar year.
14. Optional Cash Payments, accompanied by the prescribed forms, must be received by the Plan Agent on or before 5:00 p.m. (Toronto time) no later than two (2) business days prior to a Distribution Date, in order to be invested in Plan Units in respect of such Distribution Date. Any Optional Cash Payments received after such time will be held (without interest) by the Plan Agent and be used to purchase Plan units in respect of the following Distribution Date.
15. Plan Participants may terminate their participation in the Plan by written notice to the Plan Agent or their CDS Participant, who will in turn notify CDS. CDS will notify the Plan Agent each month of the number of Trust Units participating in the Plan through CDS.
16. No commissions or brokerage fees will be payable on the purchase of Plan Units and administrative costs will be borne by the Trust.

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17. The Trust reserves the right to suspend or terminate the Plan at any time in its sole discretion, upon not less than 30 days' notice to (i) the Plan Participants who are registered Unitholders, (ii) CDS and (iii) the Plan Agent.
18. Subject to the approval of the TSX, the Trust may amend the Plan at any time and may, in consultation with the Plan Agent, adopt additional rules and regulations to facilitate the administration of the Plan.
19. The distribution of the Plan Units by the Trust pursuant to the Plan cannot be made in reliance on certain registration and prospectus exemptions contained in the Legislation for the reinvestment of dividends, interest or distributions of capital gains, earnings or surplus, as the Plan involves the reinvestment of Distributions of all distributable cash flow of the Trust which may not fall into any of these categories.
20. Additionally, the distribution of Plan Units by the Trust pursuant to the Plan cannot be made in reliance on certain registration and prospectus exemptions contained in the Legislation for the reinvestment plans of mutual funds as the Trust is not a "mutual fund" within the definition in the Legislation because the Unitholders are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the Trust.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that the Registration and Prospectus Requirements contained in the Legislation shall not apply to the trades of Plan Units to the Plan Agent for the account of Plan Participants pursuant to the Plan provided that:

- (a) at the time of the trade the Trust is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;
- (b) no sales charge is payable in respect of the distributions of Plan Units from treasury;

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- (c) the Trust has caused to be sent to the person or company to whom the Plan Units are traded, not more than 12 months before the trade, a statement describing:
  - (i) their right to withdraw from the Plan and to make an election to receive cash instead of Plan Units on the making of a distribution by the Trust; and
  - (ii) instructions on how to exercise the right referred to in (i);
- (d) in the calendar year during which the trade takes place, the aggregate number of Plan Units issued pursuant to the Optional Cash Payments shall not exceed 2% of the aggregate number of Units outstanding at the commencement of that calendar year;
- (e) except in Québec, the first trade in Plan Units acquired pursuant to this Decision will be a distribution or primary distribution to the public under the Legislation unless the conditions of paragraphs 2 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied; and
- (f) in Québec, the first trade (alienation) in Plan Units acquired pursuant to this Decision will be a distribution unless:
  - (i) at the time of the first trade, the Trust is a reporting issuer in Québec and is not in default of any of the requirements of securities legislation in Québec;
  - (ii) no unusual effort is made to prepare the market or to create a demand for the Plan Units;
  - (iii) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
  - (iv) if the seller of the Plan Units is an insider of the Trust, the seller has reasonable grounds to believe that the issuer is not in default of any of requirement of the Legislation of Québec.

DATED August 7, 2003

Chris Besko  
Deputy Director - Legal