

**IN THE MATTER OF THE SECURITIES ACT,  
R.S.O. 1990, C. s. 5, AS AMENDED**

**-and-**

**IN THE MATTER OF ATI TECHNOLOGIES INC.**

**SETTLEMENT AGREEMENT**

**I. INTRODUCTION**

1. By Notice of Hearing dated January 16, 2003 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider whether, pursuant to s. 127 and s. 127.1(1) and (2) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Act*"), it is in the public interest to make an Order that:
  - (a) ATI Technologies Inc. ("ATI") be reprimanded;
  - (b) That exemptions contained in Ontario securities law, particularly Rule 45-503, part 3, section 3.1, that exempts trades by a listed issuer of its own securities to executives not apply to ATI for such period as is specified in the Order;
  - (c) That ATI submit to a review of its practices and procedures; and
  - (d) ATI be ordered to pay a portion of the costs incurred by or on behalf of the Commission relating to the investigation and hearing into this matter.

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## II. JOINT SETTLEMENT RECOMMENDATION

2. Staff recommend settlement of the proceeding initiated in respect of the respondent, ATI, by the Notice of Hearing in accordance with the terms and conditions set out below. ATI agrees to the settlement on the basis of the facts agreed to as provided in Part III and consents to the making of an Order in the form attached as Schedule "A" on the basis of the facts set out below.

## III. FACTS

### Acknowledgement

3. Solely for the purposes of this agreement, for the settlement of this matter and as a basis for the undertakings contained herein, Staff and ATI agree with the facts and conclusions set out in Part III of the Settlement Agreement.
4. Staff and ATI agree this agreement is without prejudice to either of ATI or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the Commission under the *Act* or any civil or other proceedings which may be brought by any other person or agency. It is also agreed that this Agreement and the facts in it are without prejudice to and cannot be raised or relied on in this proceeding as between Staff and any other Respondent not a party to this Agreement.

### Background

5. ATI Technologies Inc. designs, manufactures and markets video, graphics and multi-media hardware and software products for the desktop and mobile personal computer markets. It was incorporated in 1985. Its shares were listed and posted for trading on the Toronto Stock Exchange on November 29, 1993.
6. Jo-Anne Chang was the Director of Investor Relations at ATI.

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### **Allegations**

7. The specific allegations advanced by Staff are:
- (a) That ATI failed to disclose material information forthwith contrary to s. 408 of the TSX Company Manual and thereby acted contrary to the public interest. The material information was that ATI would report lower than expected revenue and earnings for Q3-2000.
  - (b) That ATI made a statement to Staff of the Commission during the course of its investigation of ATI that, in a material respect and at the time and in light of the circumstances in which the statement was made, was misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statement not misleading. In particular, ATI made the statement that the earliest material meetings, communications, events and developments leading up to the disclosure on May 24, 2000 occurred on May 16, 2000.

### **ATI's Failure to Disclose Forthwith**

- (i) **ATI's public profile**
8. On January 13, 2000, ATI issued a news release and announced "first quarter sets revenue record."
  9. Later that day, ATI management held a conference call with analysts and stated it expected 25% year over year revenue growth and gross margins in the "low 30s" for fiscal 2000.
  10. On April 6, 2000, ATI management held a conference call with analysts and repeated its guidance that it expected 20-25% year over year revenue growth and gross margins in the "low 30s" for the balance of the year.

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(ii) **An Unexpected Announcement**

11. Prior to the opening of trading on May 24, 2000, ATI released an early warning news release that it expected a loss of .06¢ to .07¢ per share for Q3-2000. ATI filed a material change report with the Commission on May 25, 2000. The Company cited component shortages and aggressive pricing from competitors as the reasons for the adverse results.
12. Following the announcement on May 24, 2000, ATI's share price fell by 42% from \$25.45 to \$14.75. On May 25, 2000, the price fell further to close at \$12.10 for a two day loss of 53% from \$25.45 to \$12.10.

(iii) **ATI's Q3 2000**

13. ATI's Operating Plan for fiscal 2000 had highlighted various opportunities and concerns for fiscal 2000, including risks that might, but would not necessarily, materialize or affect anticipated results regarding market share, competition, higher costs, lack of a competitive product and declining gross margins. Senior management was advised of rising inventory levels.
14. ATI provides sales targets to its various divisions. Those targets have an incentive component in them and are set higher than outside guidance including the guidance referred to in paragraph 10. Senior management was aware during Q3 that ATI was having difficulty achieving sales targets.
15. ATI's Q2 ended on February 29, 2000. Sales for the final week of Q2 were \$155 million and total sales for the quarter were \$380 million. Over 40% of Q2 sales occurred in the final week of the quarter.

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16. From the outset of Q3, the weekly sales summaries reflected that sales began slowly as compared to sales targets.
17. March 20, 2000, the Vice-President for Sales in Europe warned senior management that Q3 sales targets for Europe might not be met.
18. On April 11 and 12, 2000, ATI's Controller informed senior management that he had analysed the sales targets for ATI's European Division and concluded that the sales target was too high and requested it be reviewed.
19. On April 19, 2000, senior management had the weekly sales summary for Q3, week 7. The report indicated that ATI sales to date were \$33 million behind the sales target. As the weeks wore on, ATI did not make up its cumulative sales target.
20. On April 21, 2000 the General Manager of ATI Technologies (Europe) Ltd. informed senior management that forecasted revenue for Q3 in Europe would be \$35 million short of the requested sales target.
21. On April 26, 2000, the COO emailed the CEO and indicated he wanted to talk to him about Q3. He told the CEO that he understood that ATI had put a lot of product in the channel at the end of Q2 which had both positive and negative effects. He wanted to understand the CEO's perspective on Q3 and what he would traditionally do at this point in the quarter. He noted that the sales to Original Equipment Manufacturers seemed low to date.
22. On April 26, 2000, ATI's Controller told the COO that sales did not look good for the quarter.
23. Between April 26, 2000 and April 28, 2000, ATI's CFO conducted an analysis of the anticipated financial results for Q3 based on input from the company's sales

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managers. On April 28, 2000, he concluded that ATI was still on track to meet

the bottom end of the range of analyst's expectations formed on the basis of the guidance of April 6, 2000 with sales of US \$355 million.

24. On May 4, 2000, a customer cancelled a major order.
25. On May 6, 2000, in respect of Q3, the COO emailed the CFO that stated that he had "talked with Jo-Anne [Chang] on the question of when we go out, she is pushing for late May to June 1."
26. On May 9, 2000, the CFO responded to the COO by email and stated that his financial team, in his absence while he was on holidays, were working on crystallizing Q3 results and "I think the week I get back (may 15<sup>th</sup>...we size up situation...and go out that week or perhaps more realistically...the week after...May 22<sup>nd</sup>)."
27. On May 11, 2000, Chang invited the COO and others to a meeting to discuss estimates for Q3, Q4 and fiscal year 2001, and strategy and timing. The meeting did not occur until May 16, 2000.
28. On May 16, 2000, senior management of ATI met to conduct a detailed review of the financial results for Q3 2000, which they continued throughout the week. Upon conclusion of that review, senior management at ATI concluded that that the results for Q3 were almost certain to fall short of market expectations and determined that it would be appropriate to issue a news release and revised forecast, which lowered revenue expectations for Q3 to US \$300 million.
29. The financial reporting systems that ATI had in place in fiscal 2000 were not sufficient to identify and assess with a degree of certainty on a timely basis the cumulative effect of various factors that combined to produce these results. The

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financial reporting systems at ATI in 2000 had not developed at the same pace as ATI's business. The systems at that time were not well integrated and it could take a number of weeks to compile and analyze financial data necessary to critically evaluate the performance of the business relative to the guidance and to revise guidance.

**B. ATI's Statement to Staff**

30. On August 1, 2000, Staff wrote to ATI requesting a chronology of events which resulted in the announcement of May 24, 2000. In a letter dated August 30, 2000 ATI provided a chronology of all material meetings, communications, events and developments leading up to the disclosure on May 24, 2000. In the chronology, the first of all material meetings, communications, events and developments leading up to the disclosure on May 24, was identified as having occurred on May 16.

**Conduct contrary to the public interest**

31. ATI acknowledges that in the chronology that was sent to Staff, May 16, 2000 ought not to have been identified as the first material meeting, communication, event or development leading up to the disclosure on May 24, and that the identification of that date was conduct contrary to the public interest as there were material communications, events or developments that occurred prior to May 16 that were not identified in the chronology to Staff. The individual primarily responsible for the preparation of the chronology was Chang.
32. Staff advise ATI that as a result of their investigation Staff found evidence that persons connected with ATI, some of whom are Respondents in this proceeding may have traded in shares of ATI near the time or after the time that there were material communications, events, or developments leading up to the disclosure on May 24, 2000 of ATI's financial results, but as a result of the chronology provided to Staff, Staff's investigation was made more difficult.

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33. ATI further admits that it failed to disclose that it was not going to achieve analysts' expectations forthwith contrary to the TSX Company Manual and thereby acted contrary to the public interest.

#### **Subsequent Developments**

34. ATI has instituted new practices and procedures governing trading by insiders, financial reporting, and other corporate governance matters.
35. Chang left the employ of ATI in September 2000.
36. ATI no longer compensates directors with stock options.

#### **IV. TERMS OF SETTLEMENT**

37. The respondent agrees to the following terms of Settlement:
- (a) Pursuant to clause 6 of subsection 127(1) of the *Act*, ATI shall be reprimanded;
  - (b) Pursuant to subsections 127.1(1) and (2) of the *Act*, ATI agrees to pay the sum of \$100,000 in respect of the cost of the investigation and hearing concerning the conduct of failing to disclose forthwith and agrees to pay \$300,000 in respect of the additional cost of the investigation concerning the conduct of the making of the statement to Staff referred to in paragraph 30, above;
  - (c) That ATI will provide to Staff a letter of comfort from a party acceptable to Staff to confirm that ATI has instituted the new practices and procedures related to trading and corporate governance matters consistent with the practices and procedures of other TSX listed companies; and

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- (d) ATI agrees to make a settlement payment of \$500,000 to the Ontario Securities Commission for allocation to or for the benefit of ~~such~~ third parties ~~as may be approved by the Minister~~ under section 3.4(2) of the *Act*. ATS

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#### V. STAFF COMMITMENT

38. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the *Act* against ATI or its officers, directors or employees not currently Respondents respecting all of the facts set out in Part III of this Settlement Agreement.
39. This Settlement Agreement constitutes full answer to the allegations alleged in the Notice of Hearing.

#### VI. PROCEDURE FOR APPROVAL OF SETTLEMENT

40. Approval of this Settlement Agreement shall be sought at a hearing of the Commission (the "Settlement Hearing") scheduled for March 29, 2005.
41. Counsel for Staff and counsel for ATI may refer to any part or all of this Settlement Agreement at the Settlement Hearing. Staff and ATI agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.
42. If this Settlement Agreement is approved by the Commission, ATI agrees to waive its rights under the *Act* to a full hearing, judicial review or appeal of the matter.
43. Whether or not the Settlement Agreement is approved by the Commission, ATI agree that they will not, in any proceeding, refer to or rely on this Settlement

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Agreement, the settlement discussions/negotiations, or the process of approval of this Settlement Agreement as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

44. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or an Order in the form attached as Schedule "A" is not made by the Commission:
- (a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and ATI leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and ATI; and
  - (b) except as set out in paragraph 27 above, Staff and ATI shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by this Settlement Agreement or the settlement discussions/negotiations.

## VII. DISCLOSURE OF AGREEMENT

45. Except as required above, this Settlement Agreement and its terms will be treated as confidential by Staff and ATI until approved by the Commission, and forever if, for any reason whatsoever, this Settlement Agreement is not approved by the Commission, except with the written consent of Staff and ATI, or as may be required by law.
46. Any obligations of confidentiality attaching to this Settlement Agreement shall terminate upon approval of this settlement by the Commission.
47. Staff and ATI agree that if this Settlement Agreement is approved by the Commission, they will not make any public statement inconsistent with this

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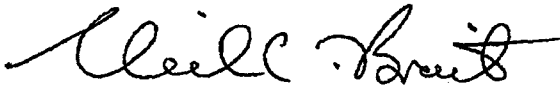
Settlement Agreement. Nothing in this paragraph affects the testimonial obligations of employees of ATI if called to be witnesses in this or any other proceeding or the right of ATI to make full answer and defence in any civil proceeding.

**VIII. EXECUTION OF SETTLEMENT AGREEMENT**

48. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

49. A facsimile copy of any signature shall be as effective as an original signature.

DATED AT TORONTO this 28<sup>th</sup> day of March, 2005.



ATI Technologies Inc.

per : RICHARD A. BRAIT  
GENERAL COUNSEL



Michael Watson  
Director, Enforcement