

SCHEDULE “1”

**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c.S.5, as amended**

-and-

**IN THE MATTER
OF
AIT ADVANCED INFORMATION TECHNOLOGIES CORPORATION
BERNARD JUDE ASHE and
DEBORAH WEINSTEIN**

**SETTLEMENT AGREEMENT
OF
BERNARD JUDE ASHE**

I. INTRODUCTION

1. By Notice of Hearing dated February 12, 2007, the Ontario Securities Commission announced that it proposed to hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, it is in the public interest for the Commission to make an order approving the settlement agreement entered into between Staff of the Commission and the respondent Bernard Jude Ashe (“Ashe”).

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission recommend settlement with Ashe (also referred to hereafter as the “Respondent”) in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A” on the basis of the facts set out in Part IV herein.

3. The terms of this settlement agreement, including the attached Schedule “A” (collectively, the “Settlement Agreement”), will be released to the public only if and when the Settlement Agreement is approved by the Commission.

III. ACKNOWLEDGEMENT

4. Staff and the Respondent agree with the facts as set out in Part IV herein for the purposes of the Settlement Agreement only and further agree that the facts and conclusions contained in the Settlement Agreement are without prejudice to the Respondent in any proceeding brought by the Commission under the Act. Nothing in this Settlement Agreement is intended to be an admission of civil liability by the Respondents to any person or company, and the Respondent expressly denies any such admission of civil liability.

IV. AGREED FACTS

Background

5. [AiT Advanced Information Technologies Corporation \(“AiT” or the “Company”\), which was amalgamated in 2002 with 3M Canada Company](#), was a reporting issuer in Ontario and was located in Ottawa. The Company designed, developed and marketed issuance systems that automated the production of secure identification and travel documents such as passports and inspection and control systems that read documents at traveler inspection points such as international borders.

6. On May 23, 2002, AiT announced that it had entered into an agreement in respect of a merger transaction (the “Merger Transaction”) with 3M Company (“3M”).

7. Ashe joined AiT in March of 1997 as Vice-President Sales. From August 1998 until July 2002, Ashe was the President, Chief Executive Officer and a director of AiT. He was the General Manager of AiT from July 2002 until his departure from the Company in June 2003.

8. Deborah L. Weinstein (“Weinstein”) became a director of AiT in approximately 1996. She was one of eight directors and continued as director to the Company until the closing of the Merger Transaction. Weinstein was, at the time of the Merger Transaction, a partner at LaBarge, Weinstein, AiT’s legal counsel during the relevant period.

Chronology of the Merger Transaction

9. In November 2001, after consideration by the strategic committee of AiT (the “Strategic Committee”, which was comprised of Ashe, Paul Damp, Richard Leshner, and Steve Sandler) and its board of directors (the “AiT Board of Directors” or the “AiT Board”), AiT engaged an investment banking firm for the purpose of completing a private placement of between \$3 million to \$5 million¹. The financing initiative was not successful and was terminated by AiT in January 2002.

10. At a Strategic Committee meeting held on January 25, 2002, AiT management reported on the termination of the financing initiative. The Strategic Committee accepted management’s recommendation that AiT consider finding a strategic buyer or merger partner for AiT. At an AiT Board meeting held on February 19, 2002, the AiT Board authorized management to interview and engage a financial advisor (the “M&A Advisor”) under the direction of the Strategic Committee to find a strategic buyer or merger partner for AiT.

11. AiT and 3M had been aware of one another in the secure travel document market for many years, and the two companies had cooperated in the past with respect to various clients. Representatives of the two companies had met from time to time in the ordinary course of business to discuss product direction, new technologies and the market in general.

12. Between October 2001 and February 2002, representatives of 3M and AiT, including the Department Manager of 3M’s Security Markets Centre (“3M’s Representative”) and Ashe met to discuss the potential for integration of technologies and mutual opportunities in the travel documentation and personal authentication markets.

¹ All references are to Canadian dollars unless otherwise specified.

During this period, the companies executed a confidentiality agreement with respect to their discussions.

13. 3M's Representative and Ashe met for the first time on February 27, 2002 to discuss complementary product and market opportunities, at which time they began to discuss broader strategic possibilities, including the possibility of an acquisition of AiT by 3M.

14. On March 4, 2002, in a phone call from 3M's Representative to Ashe, 3M confirmed its interest in a potential acquisition of AiT. Ashe provided the Strategic Committee and Weinstein with an update about that call. The two companies entered into a non-disclosure agreement related specifically to such a potential transaction on March 12, 2002. That agreement included customary provisions for disclosure to be made to 3M by AiT of "Evaluation Material" to be used by 3M solely for the purpose of evaluating a possible transaction and prohibiting 3M from using the Evaluation Material for any other purpose or, for a prescribed period, from acquiring, or offering to acquire, more than 5% of the outstanding shares of AiT without the consent of AiT's Board of Directors.

15. On March 19, 2002, the Strategic Committee reported to the AiT Board that it had deferred the appointment of an M&A advisor, recognizing that discussions with 3M might eliminate the need for retaining a costly financial advisor.

16. On March 27 and March 28, 2002, representatives from 3M visited AiT's offices to conduct preliminary due diligence and receive presentations from management.

17. On April 8, 2002, during a meeting of the AiT Board of Directors, the AiT Board struck a "valuation" or "value" committee (the "Valuation Committee") comprised of Ashe, Weinstein and another director to negotiate an offer price and transaction structure with 3M.

18. On April 11 and 12, 2002, the members of the Valuation Committee met with representatives of 3M in St. Paul, Minnesota to discuss valuation expectations. On April 12, 2002, 3M provided the members of the Valuation Committee with an initial price range of between \$35 million to \$45 million for AiT's identification business, excluding its

affinitex product line and including the tax loss carry forward position. The representatives of 3M noted at the time that, as a matter of corporate policy, the approval of board of directors of 3M (the “3M Board”) would be required in respect of any transaction involving consideration of more than USD\$25 million in addition to the other management-level approvals required by 3M for such a transaction. The value expectations discussed in St. Paul exceeded USD\$25 million.

19. On April 23, 2002, on a conference call, 3M representatives advised the Valuation Committee that they would recommend an offer of \$40 million for all of the common shares of AiT, however, after a lengthy discussion, it was agreed that the companies’ respective representatives would carry on further discussions, which took place on April 24, 2002.

20. In the discussions between 3M and AiT on April 23, 2002, 3M had advised AiT that, upon AiT board approval, 3M’s interest in pursuing a transaction would be confirmed in a non-binding letter of intent which would be subject to a number of conditions (including exclusivity until May 15, 2002, assuming that substantive due diligence could commence within two weeks, and approval of the 3M Board).

21. On April 25, 2002, 3M advised Ashe that 3M was willing to offer C\$2.88 per fully-diluted common share of AiT (representing an aggregate purchase price of \$41 million) and Ashe immediately advised the AiT Board of Directors of this change. After discussion, the AiT Board unanimously passed a resolution and agreed to recommend 3M’s \$2.88 per share offer to shareholders and option holders, subject to confirmation of the fairness of this price by its financial adviser, CIBC Investment Banking, and satisfaction of the AiT Board with the other terms of the transaction, including the tax consequences to shareholders. The AiT Board also noted that the parties had agreed to work diligently towards a definitive agreement and announcement. The proposed price represented a premium of approximately 67% over the \$1.70 per common share closing price of the AiT common shares on the Toronto Stock Exchange that day.

22. On or about April 25, 2002, Ashe sent an e-mail to AiT’s principal commercial banker advising of an approval by the Chief Executive Officer of 3M.

23. On April 26, 2002, the two companies signed a non-binding letter of intent relating to a “proposal by 3M company (“3M”) for the purchase of the outstanding capital stock of AiT”. “In consideration of 3M’s continued evaluation of a potential transaction with AiT, and as an inducement for 3M to continue to expend time and incur expenses in connection therewith” AiT offered 3M a period of exclusivity. Additionally, the letter of intent included the following provisions:

“Any agreement for the purchase of the stock of AiT is subject to a favorable due diligence review by 3M that is to be completed prior to 5:00 pm Eastern Time on May 13, 2002. This review will include, but is not limited to, a review of AiT’s business operations, research and development, manufacturing, financial, legal, environmental and regulatory matters. A definitive purchase agreement will also contain representations, warranties and covenants, which are usual and normal in a transaction of this type and size.

...

3M’s obligation to close the transaction shall be conditioned upon the AiT shareholders, listed in Schedule 1, entering into Voting and Stock Option Agreements in favor of the approval and adoption of the transaction, subject to customary limitations and conditions. This indication of value and letter is understood as non-binding and subject to the approval of the appropriate management committees and the board of directors of 3M, as well as any applicable government agencies and the termination or waiver of any AiT Shareholders’ Rights Plans.....Accordingly, you should not make any business decisions in reliance upon this letter or the successful consummation of the proposed transaction. If, for any reason, 3M and AiT are unable to consummate the transaction or to pursue further negotiations, neither 3M nor AiT shall have any liability or obligations to each other and each party shall pay its own costs and expenses.”

24. In an effort to ensure compliance with securities legislation regarding insider trading and “tipping”, a letter dated April 25, 2002 was circulated to certain directors and employees of AiT who were known to be aware of the proposed Merger Transaction. The letter indicated that the Board had approved “the entry into an agreement in principal” [sic] with 3M and warned them that it was unlawful to trade in securities of the company until the information was publicly disclosed.

25. On May 7, 8 and 9, 2002, due diligence resumed and integration planning commenced in Ottawa.
26. On May 8, 2002, counsel to AiT participated on the first call with counsel to 3M regarding a mechanism through which the Merger Transaction could be implemented.
27. On May 9, 2002, staff of Regulation Services Inc. (“RS”) telephoned AiT and made inquiries regarding unusual trading in the shares of AiT. On the same date, AiT issued a press release captioned “AiT Comments on Recent Stock Activity” that indicated, in response to recent share activity, that the Company was “exploring strategic alternatives that would ultimately enhance value for our shareholders.” The press release did not contain reference to a transaction with 3M.
28. On May 14, 2002, the 3M Board (at its regularly scheduled board meeting), authorized the Merger Transaction, subject to the further approval of the Chairman of the Board and Chief Executive Officer of 3M of the due diligence report and integration plan for AiT. On the same date, a draft merger agreement relating to the potential Merger Transaction was provided by counsel to 3M to AiT and its counsel. It was noted that the draft was being sent concurrently to 3M who had not yet reviewed it.
29. On May 20, 2002, the 3M Legal Issues Review Committee indicated that it had no objection to the Merger Transaction, and on May 21, 2002 the 3M Operations Committee indicated its support for proceeding with the acquisition. On May 21, 2002, the Chairman and CEO of 3M was provided with a report titled “Project Bravo Assessments and Approvals by Function” that reflected these final committee approvals. The Chairman and CEO subsequently granted final approval of the Merger Transaction.
30. On May 22, 2002, the Board of AiT approved the definitive merger agreement and related documents and received the fairness opinion referred to in paragraph 21, above, from its financial adviser, which concluded that the consideration offered to the shareholders of AiT in connection with the Merger Transaction was fair, from a financial point of view, to the shareholders.

31. On May 22, 2002, the offer by 3M of \$2.88 per AiT common share represented a premium of approximately 25% over the \$2.30 per common share closing price of the AiT common shares on the Toronto Stock Exchange that day.

32. On May 23, 2002, AiT and 3M signed the definitive merger agreement in respect of the Merger Transaction. On the same date, AiT issued a press release and filed a material change report announcing that it had entered into an agreement in respect of the Merger Transaction.

33. Ashe consulted with and relied upon AiT's legal counsel regarding the issue of disclosure. Ashe was never advised by legal counsel to make any disclosure other than the disclosures made in the press releases dated May 9, 2002 and May 23, 2002.

34. On July 15, 2002, the Merger Transaction was approved by the shareholders of AiT at a special meeting called for that purpose.

35. On July 19, 2002, AiT announced that it had concluded the Merger Transaction and, in effect, AiT became an indirect, wholly-owned subsidiary of 3M.

36. Effective January 1, 2005, AiT amalgamated with an indirect, wholly-owned Canadian subsidiary of 3M.

V. MITIGATING FACTORS

37. Ashe has cooperated fully and from an early stage with Staff's investigation of the matters that are the subject of the Notice of Hearing.

VI. CONDUCT CONTRARY TO THE PUBLIC INTEREST

38. Ashe, by authorizing, permitting or acquiescing in AiT failing to make disclosure of the Merger Transaction in a timely manner, engaged in conduct contrary to the public interest.

VII. TERMS OF SETTLEMENT

39. Ashe agrees to the following terms of settlement:

- a) the making of an order providing:
 - i) that this settlement be approved;
 - ii) that the Commission will make an order pursuant to clause 6 of subsection 127(1) of the Act, that Ashe be reprimanded by the Commission; and
 - iii) that the Commission make an order pursuant to section 127.1 of the Act that Ashe pay costs to the Commission in the amount of \$25,000.
- b) Ashe agrees to make a payment to the Commission of \$15,000, to be made by certified cheque, to be allocated by the Commission for allocation to or for the benefit of third parties in accordance with section 3.4(2) of the Act.
- c) Ashe undertakes to continue to cooperate with Staff in relation to this proceeding, including attending as a witness if necessary.
- d) Ashe will attend the settlement hearing in person.

VIII. STAFF COMMITMENT

40. If this Settlement Agreement is approved by the Commission, Staff will not initiate any proceeding under Ontario securities law in respect of any conduct or alleged conduct of Ashe in relation to the facts set out in Part IV of this Settlement Agreement, subject to the provisions of paragraph 44 below.

IX. PROCEDURE FOR APPROVAL OF SETTLEMENT

41. Approval of this Settlement Agreement shall be sought at a hearing of the Commission on a date agreed to by counsel for Staff and Ashe.

42. Staff and Ashe may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and Ashe also agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted

respecting Ashe in this matter, and Ashe agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.

43. Staff and Ashe agree that if this Settlement Agreement is approved by the Commission, neither Staff nor Ashe will make any public statement inconsistent with this Settlement Agreement.

44. If this Settlement Agreement is approved by the Commission, and at any subsequent time Ashe fails to honour any of the Terms of Settlement set out in Part VII herein, Staff reserve the right to bring proceedings under Ontario securities law against Ashe based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement.

45. 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, each of Staff and Ashe will 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, unaffected by this Settlement Agreement or the settlement negotiations.

46. Whether or not this Settlement Agreement is approved by the Commission, Ashe agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the Commission of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

X. DISCLOSURE OF AGREEMENT

47. The terms of this Settlement Agreement will be treated as confidential by all parties hereto 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 both Ashe and Staff or as may be required by law.

48. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission.

XI. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated this 23rd day of February, 2007.

Witness

"Bernard Jude Ashe"
Bernard Jude Ashe

"Michael Watson"
Staff of the Ontario Securities Commission
Per: Michael Watson
Director, Enforcement Branch

SCHEDULE “A”

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

- and -

**IN THE MATTER OF
BERNARD JUDE ASHE**

**O R D E R
(Sections 127 and 127.1)**

WHEREAS on [insert], the Commission issued a Notice of Hearing (the “Notice of Hearing”) pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) in respect of Bernard Jude Ashe (“Ashe”);

AND WHEREAS Ashe entered into a settlement agreement dated [insert] (the Settlement Agreement”), in which the respondent Ashe agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and upon hearing submissions from the counsel for Ashe and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

1. the Settlement Agreement dated **[insert]**, attached to this Order as Schedule “1”, is hereby approved;
2. pursuant to clause 6 of subsection 127(1) of the Act, Ashe will be reprimanded;
3. pursuant to section 127.1 of the Act, Ashe will pay costs to the Commission in the amount of \$25,000;
4. pursuant to section 3.4(2) of the Act, Ashe agrees to make a payment to the Commission of \$15,000, to be made by certified cheque, to be allocated by the Commission for allocation to or for the benefit of third parties; and
5. Ashe undertakes to continue to cooperate with Staff in relation to this proceeding, including attending as a witness if necessary.

DATED at Toronto this day of February, 2007.
