

**IN THE MATTER OF THE SECURITIES ACT  
R.S.N.S. 1989, CHAPTER 418, AS AMENDED ("ACT")**

**-AND-**

**CLARKE INC., and GEOSAM INVESTMENTS LIMITED (collectively the  
"RESPONDENTS")**

**SETTLEMENT AGREEMENT**

**PART I – INTRODUCTION**

1. The parties to this Settlement Agreement ("Agreement") are the Respondents and Staff of the Nova Scotia Securities Commission.
2. The parties agree that the Nova Scotia Securities Commission ("Commission") has jurisdiction over this matter.
3. The parties agree to recommend to the Commission approval of this Agreement in accordance with the terms and process set out herein.

**PART II – PROCEDURE FOR APPROVAL OF THE AGREEMENT**

4. Staff of the Commission ("Staff") agrees to request that a Notice of Hearing be issued setting down a hearing ("Settlement Hearing") wherein the Commission will consider whether it is in the public interest to approve this Agreement and to issue an Order in the form attached as Schedule "A".
5. The parties agree that the Agreement constitutes the entirety of the evidence to be submitted to the Commission at the Settlement Hearing.
6. Staff agrees to recommend that the allegations acknowledged and admitted by the Respondents be resolved and disposed of in accordance with this Agreement.
7. The parties acknowledge that this Agreement will become a public document upon its approval by the Commission at the Settlement Hearing.

**PART III – STATEMENT OF AGREED FACTS**

8. The parties to this Agreement acknowledge and agree that the facts and conclusions set out herein are for the purposes of this Agreement only and further agree that this agreement of facts is without prejudice to the Respondents in any other proceeding of any kind including, but without limiting the generality of

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the foregoing, any civil or other proceeding which may be brought by any other person or agency.

9. Clarke Inc. ("Clarke") is an extra-provincial corporation with its head office located in Halifax, Nova Scotia and is a reporting issuer in all provinces and territories in Canada.
10. In 2005, Geosam Investments Limited ("Geosam") was a Nova Scotia limited company.
11. Advanced Fiber Technologies (AFT) Income Fund ("AFT") was, at all material times, a reporting issuer in all provinces and territories of Canada.
12. At all material times in 2005, the Chief Investment Officer of Clarke ("CIO") was a Trustee of AFT.
13. In August, 2005, Geosam placed a standing order to purchase units of AFT. Pursuant to that standing order, Geosam purchased 4000 units of AFT on August 31, 2005, 16,100 units of AFT on October 19, 2005 and 103,400 units of AFT on October 20, 2005.
14. On June 9, 2005, the Clarke Board was approached requesting approval for an investment by Clarke in AFT of up to \$4 million and the Board determined that no such formal resolution was required as the Board had approved investments for amounts not exceeding \$5 million.
15. On September 30, 2005, AFT issued a press release stating that it had formed a special committee to review, assess and consider all steps to be taken by AFT to create unit holder value. The CIO of Clarke was a member of the special committee.
16. On October 5, 2005, members of the special committee and management of AFT attended a dinner with representatives of Aikawa Iron Works Inc. ("Aikawa") and Aikawa's investment bankers, Daiwa Securities America Inc. At that time, Aikawa was a long standing customer of AFT.
17. Following the October 5, 2005 meeting, the CIO informed Clarke and Geosam that Aikawa had expressed an interest in acquiring AFT.
18. On October 19 and 20, 2005 Geosam purchased 16,100 and 103,400 units of AFT respectively, as noted above in paragraph 13 of this Part.
19. On November 8, 2005, Clarke purchased 786,400 units of AFT after being contacted by a broker and asked if Clarke was interested in purchasing a block of AFT units.

20. Immediately after Clarke purchased the AFT units, it issued an early warning report and press release.
21. On November 9, 2005, the special committee received a non-binding letter of intent from Aikawa to purchase the outstanding units of AFT at a price of \$2.50 per unit.
22. On February 14, 2006, AFT announced publicly that Aikawa was offering to purchase the outstanding and issued units of AFT at a price of \$3.00 per unit.
23. On February 16, 2006, the Aikawa offer was accepted by AFT's Board of Trustees.

#### **PART IV – STATEMENT OF ALLEGATIONS ACKNOWLEDGED AND ADMITTED BY THE RESPONDENTS**

24. The Respondents admit the facts set out in Part III herein.
25. The Respondents failed to exercise due diligence to determine whether the information received from the CIO was material and the Respondents acknowledge and admit that they acted contrary to the public interest.
26. The Respondents acknowledge and accept responsibility for their conduct which is the subject matter of this Agreement.

#### **PART V – MITIGATING FACTORS**

27. The Respondents cooperated with Staff's investigation of this matter.
28. Geosam, in August 2005, placed a standing order to purchase AFT units which resulted in acquisitions of units of AFT commencing in August 2005.
29. Prior to the November 2005 acquisition of AFT units by Clarke, the Clarke Board on June 9, 2005 had been requested to approve an investment by Clarke in AFT of up to \$4 million. The Clarke Board determined that no formal resolution was required as the Board had previously approved investment by Clarke for amounts not exceeding \$5 million.
30. On November 2, 2005, the Clarke Board approved a Code of Conduct and Ethics, including a trading policy. The November 2005 Code of Conduct and Ethics included direction with respect to trading and trading blackout periods.

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31. Subsequently, on November 5, 2007, the Clarke Board approved a Clarke Trading Policy and Personal Trading Policy. That Clarke Trading Policy addresses a number of securities law requirements including issues related to: materiality; trading blackout periods; control block disposition; take-over bids and insider bids; and proxy solicitation. The Clarke Personal Trading Policy was a supplement to the Clarke Code of Conduct and Ethics that similarly addressed trading issues and compliance, including issues of materiality and trading blackout periods.
32. The Clarke Board approved on November 14, 2008, a new Investment Policy, establishing an Investment Committee comprised of the Chief Operating Officer, the Vice President of Investments and the Director of Research. The new Clarke Investment Policy provides that no trade transaction shall be completed by Clarke unless it has been authorized and approved by a majority of the three-member Investment Committee, including approval on each occasion by the Chief Operating Officer.
33. Clarke has agreed no later than December 2009 to have certain of its directors and officers, as agreed with Commission Staff, complete a course/program in corporate governance/securities law acceptable to Commission Staff.

#### **PART VI – TERMS OF SETTLEMENT**

34. The terms of settlement are set forth in the Order contained in Schedule "A" to this Agreement which is expressly incorporated herein.
35. The Respondents consent to the Order contained in Schedule "A".

#### **PART VII – COMMITMENTS**

36. If this Agreement is approved and the Order as set out in Schedule "A" is granted, the parties agree to waive any right to a full hearing and judicial review and appeal of this matter.
37. If this Agreement is approved by the Commission, the parties will not in any way make any public statement that is inconsistent with the terms of this Agreement.
38. If this Agreement is approved by the Commission, the Respondents agree to abide by all terms of this Agreement as set out in the Order attached as Schedule "A".
39. If this Agreement is approved by the Commission, Staff will not initiate or support any other proceeding under the *Act* against any of Clarke Inc., Geosam

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Investments Ltd, or any other current or former officers, directors, employees, representatives or agents of Clarke Inc. or Geosam Investments Ltd. in relation to any of the facts set out herein.

40. If, for any reason whatsoever, this Agreement is not approved, or the Order set forth in Schedule "A" is not granted by the Commission:
- a. Staff and the Respondents will be entitled to proceed to a hearing of the allegations which are the subject matter of this Agreement unaffected by the Agreement or the settlement negotiations;
  - b. The terms of the Agreement will not be raised in any other proceeding of disclosed to any person except with written consent of the Staff and the Respondents or as may otherwise be required by law; and
  - c. The Respondents agree that they will not raise in any proceeding the Agreement or the negotiations or process of approval thereof as a basis of any attack or challenge of the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other challenge that may otherwise be available.
41. If, in the view of Staff and prior to the approval of this Agreement by the Commission, there are new facts or issues of substantial concern regarding the facts set out in Part III of this Agreement, Staff will be at liberty to withdraw from this Agreement. Notice of such intention will be provided to the Respondents in writing. In the event of such notice being given, the provisions of paragraph 40 in this Part will apply as if this Agreement had not been approved in accordance with the procedures set out herein.

#### **PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT**

42. Staff or the Respondents may refer to any or all parts of this Agreement as required by the General Rules of Practice and Procedure and in the course of the Settlement Hearing. Otherwise, this Settlement Agreement and its terms will be treated as confidential by all parties to it until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission.
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**PART IX – EXECUTION OF SETTLEMENT AGREEMENT**

43. This Agreement may be signed in one or more counterparts that together shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

DATED this 4 day of September 2009.

**SIGNED, SEALED AND DELIVERED**  
In the presence of:

*Beverly Pearson*  
Witness

**Clarke Inc.**

*Robert Normandeau*

Per: **Robert Normandeau**  
Position: **President and**  
**Chief Operating Officer**

DATED this 23 day of September 2009.

**SIGNED, SEALED AND DELIVERED**  
In the presence of:

*Deborah Payne*  
Witness

**Geosam Investments Limited**

*Paul Budovich*

Per: **PAUL BUDOVICH**  
Position: **VICE PRESIDENT**

DATED this 21 day of September 2009.

**SIGNED, SEALED AND DELIVERED**  
In the presence of:

*Shirley Smith*  
Witness

**Staff of the Nova Scotia Securities Commission**

*R. Scott Peacock*

R. Scott Peacock  
Director of Enforcement  
Nova Scotia Securities Commission

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**SCHEDULE "A"**

**IN THE MATTER OF THE SECURITIES ACT  
R.S.N.S. 1989, CHAPTER 418, AS AMENDED ("ACT")**

**-AND-**

**CLARKE INC., and GEOSAM INVESTMENTS LIMITED (collectively the  
"RESPONDENTS")**

**ORDER  
(Sections 135 and 135A)**

**WHEREAS** on \_\_\_\_\_, 2009 the Nova Scotia Securities Commission ("Commission") issued a Notice of Hearing to the Respondents pursuant to Sections 134 and 135A of the Act;

**AND WHEREAS** the Respondents entered into a settlement agreement with Staff of the Commission ("Staff") whereby it agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

**AND WHEREAS** Staff and the Respondents recommended approval of the Settlement Agreement;

**AND WHEREAS** the Commission is of the opinion that the Respondents failed to comply with Nova Scotia securities laws and it is in the public interest to make this Order;

**AND UPON** reviewing the Settlement Agreement and the Notice of Hearing, and upon hearing submissions of counsel for Staff and the Respondents;

**IT IS HEREBY ORDERED** pursuant to Sections 135 and 135A of the Act that:

1. The Settlement Agreement dated \_\_\_\_\_, 2009, a copy of which is attached is approved;
2. Pursuant to section 135 of the Act, the Respondents shall, jointly and severally, pay an administrative penalty in the aggregate amount of Four Hundred Thousand Dollars (\$400,000.00);
3. Pursuant to Section 135A of the Act, the Respondent Geosam Investments Limited shall pay costs in connection with the joint investigation of conduct in the proceedings in the amount of Fifteen Thousand Dollars (\$15,000.00); and

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4. Pursuant to Section 135A of the Act, the Respondent Clarke Inc. shall pay costs in connection with the joint investigation of conduct in the proceedings in the amount of Fifteen Thousand Dollars (\$15,000.00).

*[Handwritten signature]*

**DATED** at Halifax, Nova Scotia, this \_\_\_ day of \_\_\_\_\_, 2009.

**NOVA SCOTIA SECURITIES COMMISSION**

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Chair

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