

AETHER HOLDINGS INC

Form DEFM14A

September 27, 2006

**SCHEDULE 14A**  
**(Rule 14a-101)**

**INFORMATION REQUIRED IN PROXY STATEMENT**  
**SCHEDULE 14A INFORMATION**

**Proxy Statement Pursuant to Section 14(a) of the Securities**  
**Exchange Act of 1934**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to Rule 14a-11(c) or Rule 14a-12

**Aether Holdings, Inc.**

(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

N/A

(2) Aggregate number of securities to which transaction applies:

N/A

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

Underlying value of the MBS portfolio as of August 29, 2006, is \$81.6 million (determined according to GAAP)

(4) Proposed maximum aggregate value of transaction:

\$81.6 million

(5) Total fee paid:

\$8,732.00

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

Amount previously paid:

Form, schedule or registration statement no.:

Filing party:

Date filed:

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September 26, 2006

Dear Aether Stockholders:

On behalf of the board of directors and management of Aether Holdings, Inc., I cordially invite you to attend the 2006 Annual meeting of Aether stockholders, to be held on October 31, 2006, at the Hilton New York, 1335 Avenue of the Americas, New York, NY 10019, at 9:30 a.m. At this meeting, we will discuss each item of business described in the Notice of Annual Meeting and Proxy Statement. There also will be time for questions.

As you probably know, I became Aether's chief executive officer and joined its board of directors on June 6, 2006, when Aether acquired UCC Capital Corporation and several affiliated companies ( UCC ). (I founded UCC in 1997 and was its chief executive officer and controlling stockholder.) In connection with the acquisition of UCC and my hiring, Aether began a new business strategy focused on acquiring and developing a portfolio of intellectual property ( IP ) and IP-centric businesses. On August 21, 2006, we announced the signing of an agreement to acquire The Athlete's Foot, which will be the first component to this IP business. We are working hard to identify additional growth opportunities and to build the IP business into one that will deliver significant value to our stockholders.

At the annual meeting, we are asking you to approve the sale of Aether's existing mortgage-backed security ( MBS ) portfolio for the purpose of allowing us to reallocate our existing MBS resources to the growth and development of our new IP business. In considering the acquisition of The Athlete's Foot, our board of directors reviewed our continuing involvement in the MBS business. After taking into account a range of relevant considerations, including anticipated capital and management demands of our IP business, the greater growth prospects in the IP business than the MBS business and potential for development of the new IP business, our board concluded that Aether should discontinue the MBS business by liquidating its remaining MBS investments and reallocate those assets entirely to building the new IP business. As discussed in detail in the attached proxy statement, we are seeking stockholder approval of this reallocation of our assets.

In addition to the sale of our remaining MBS assets, we also are asking for your vote at the annual meeting on the following matters:

- to approve a name change to NexCen Brands, Inc. to more closely identify with our new IP strategy;
- to elect the proposed slate of eight directors;
- to ratify the appointment of KPMG as our independent registered public accounting firm;
- to approve a new equity incentive plan; and
- to approve a management bonus plan.

Your board of directors has approved, and recommends that you vote **FOR**, all of these proposals.

We look forward to a very exciting future for your company.

Sincerely,

Robert W. D Loren

*President and Chief Executive Officer*

**YOUR VOTE IS VERY IMPORTANT**

**Whether or not you expect to attend the annual meeting, please complete, sign and date the accompanying proxy card and return it in the enclosed prepaid envelope, or submit your voting instructions by telephone or through the Internet if that option is available to you. Failure to return a properly executed proxy card or to vote at the annual meeting will have the same effect as a vote AGAINST certain proposals, as we discuss in detail in the attached proxy statement. If you attend the annual meeting, you may revoke your proxy and vote in person if you wish, even if you have previously returned your proxy card.**

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**AETHER HOLDINGS, INC.**  
**1330 Avenue of the Americas, 40th Floor**  
**New York, NY 10019**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**  
**TO BE HELD ON OCTOBER 31, 2006**

DATE: October 31, 2006  
TIME: 9:30 a.m. local time  
PLACE: Hilton New York  
1335 Avenue of the Americas  
New York, NY 10019

**YOUR VOTE IS IMPORTANT TO US**

Dear Aether Stockholder:

Notice is hereby given that Aether Holdings, Inc. will hold the annual meeting of its stockholders on October 31, 2006 at the Hilton New York, 1335 Avenue of the Americas, New York, NY 10019, at 9:30 a.m. At the annual meeting, we will ask you to vote on the following matters:

1. A proposal to approve the sale of Aether's existing mortgage-backed security ( MBS ) portfolio for the purpose of discontinuing its MBS business and allocating all cash proceeds from such sale to the growth and development of Aether's intellectual property business (the Strategic Sale );
2. A proposal to amend our certificate of incorporation to change our name to NexCen Brands, Inc.;
3. The election of eight directors to hold office until the 2007 annual meeting of stockholders or until their successors are elected and qualified;
4. A proposal to ratify the appointment of KPMG LLP as Aether's independent registered public accounting firm for the fiscal year ending December 31, 2006;
5. A proposal to approve the adoption of the 2006 Equity Incentive Plan (the 2006 Plan ) to replace both of the Aether 1999 Equity Incentive Plan and the Acquisition Incentive Plan;
6. A proposal to approve the adoption of the 2006 Management Bonus Plan (the Bonus Plan ); and
7. Any such other matters as may properly come before the meeting and any adjournment or postponement thereof.

Your board of directors has approved, and recommends that you vote **FOR**, each of the proposals, which are described in the attached proxy statement.

Only holders of record of common stock as of the close of business on September 6, 2006 will be entitled to notice of and to vote at the annual meeting and any adjournment or postponement thereof. This notice and proxy are first being mailed to stockholders on or about September 27, 2006. You are urged to carefully review the information contained in the enclosed proxy statement prior to deciding how to vote your shares at the annual meeting.

**Your participation in the annual meeting, in person or by proxy, is especially important. You are cordially invited to attend the annual meeting, but whether or not you expect to attend, you are urged to complete, sign, date and return the enclosed proxy card promptly or follow the telephone or Internet proxy submission procedures described on the proxy card and in the accompanying proxy statement so that your shares can be voted.**

If you attend the annual meeting, you may revoke your proxy and vote in person if you wish, even if you have previously returned your proxy card. Simply attending the annual meeting, however, will not revoke your proxy; you must vote at the annual meeting. If you do not attend the annual meeting, you may still revoke your proxy at any time prior to the annual meeting by providing a later-dated proxy or by providing me with written notice of your revocation.

BY ORDER OF THE BOARD OF DIRECTORS

David B. Meister  
*Secretary*

New York, NY  
September 26, 2006

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## QUESTIONS AND ANSWERS REGARDING THE ANNUAL MEETING

**Q: *Why am I receiving this document?***

**A:** You are receiving this proxy statement and the enclosed proxy card from us because you held shares of our common stock at the close of business on September 6, 2006, the record date, and are entitled to vote at the annual meeting. This proxy statement is being mailed to our stockholders beginning September 27, 2006. This proxy statement contains the information you need to know to vote at the annual meeting.

**Q: *What are the proposals I will be voting on at the annual meeting?***

**A:** As a stockholder, you are entitled to and requested to vote on the following matters:

1. to approve the Strategic Sale;
2. to approve an amendment to our certificate of incorporation to change our name to NexCen Brands, Inc.;
3. to elect eight members to the board of directors, each for a one-year term;
4. to ratify the appointment of KPMG LLP as our independent registered public accounting firm for fiscal year 2006;
5. to adopt the 2006 Plan; and
6. to adopt the Bonus Plan.

**Q: *Why has the board decided to pursue the Strategic Sale?***

**A:** Our board of directors decided that it is in the best interests of Aether and its stockholders to liquidate the MBS portfolio, discontinue the MBS business and devote our assets and resources to our IP business because the board believes that the IP business is more likely to help us achieve our business objectives as well as for the other reasons discussed under the heading *Reasons for the Strategic Sale* beginning on page 14.

**Q: *What will Aether stockholders receive if the Strategic Sale is approved and completed?***

**A:** There will be no distributions to stockholders as a result of the completion of the Strategic Sale. Rather, we will use the proceeds to support the growth and development of our IP business.

**Q: *What will Aether do if the Strategic Sale is completed?***

**A:** We will focus on developing and expanding our IP business, which will be our sole operating business. We will wind down our MBS business and exit that business altogether.

**Q: *What are the risks of the Strategic Sale?***

**A:** If stockholders approve the Strategic Sale and the remaining MBS investments are liquidated, we will be exiting our primary existing business (the MBS business), which accounts for the vast majority of our revenues. We then

will be focused on developing our IP business, which is a relatively new business for us and the success of which will depend heavily on our ability to identify and complete desirable acquisitions of intellectual property ( IP ) and IP-centric businesses. Although our chief executive officer and the employees of UCC Capital Corp. and its affiliates, which we acquired in June 2006, have substantial experience working with IP and IP-centric businesses, they have not previously managed a business such as the one we are building. Accordingly, our ability to develop the IP business successfully and achieve our business objectives is subject to many risks and uncertainties, which are discussed under the heading Risk Factors, beginning on page 21.

In addition, in completing the Strategic Sale, we will be selling our MBS investments in the open market on prevailing market terms. Market prices for MBS change continually and, although we will make every effort to maximize our proceeds from the sale of our MBS, market conditions may require us to sell our MBS at prices below their value as of August 29, 2006. In such event, we would recognize a loss on the sale of our MBS, which would reduce our earnings and the cash proceeds we have available to invest in our IP business. At August 29, 2006, the fair market value of our MBS was approximately \$81.6 million, or 99.0% of their face value. We will not sell our MBS for an amount, when added to the aggregate principal repayments we receive after August 29, 2006 and prior to the sale, that is less than 90% of the current face value of our MBS, or \$74.2 million.

**Q: *What will occur if the Strategic Sale is not approved?***

**A:** If the Strategic Sale is not approved, our board of directors will reconsider the future strategic direction for our company. We are seeking stockholder approval now because a reallocation to our IP business of assets devoted to our MBS investments may be considered to be a sale of all or substantially all of our assets within the meaning of Section 271 of the Delaware General Corporation Law. However, Aether does have the ability to develop the IP business using available cash not dedicated to the MBS business, as well as cash proceeds from the sale of a portion of our MBS investments, to the extent we may do so without requiring stockholder approval. Alternatively, the board may consider other strategic options, such as pursuing other new business opportunities.

**Q: *Am I entitled to appraisal or dissenter's rights?***

**A:** No. Stockholders are not entitled to appraisal or dissenter's rights with respect to the Strategic Sale under Delaware law or our Certificate of Incorporation.

**Q: *If my shares are held in street name by my broker, will my broker vote my shares for me even if I don't give my broker voting instructions?***

**A:** Your broker will vote your shares if you provide instructions on how to vote. In addition, brokerage firms have the authority to vote their clients' unvoted shares on certain routine matters. The proposals related to the election of directors and the ratification of the appointment of KPMG as our independent registered public accounting firm are considered routine. If you do not provide voting instructions, your broker may choose to vote for you or leave your shares unvoted on such routine matters. The other proposals to be voted in at our annual meeting are not routine matters, and your broker does not have discretionary authority to vote on those proposals. Therefore, if your shares are held in street name by your broker and you do not provide your broker with instructions on how to vote your street name shares, your broker will not be permitted to vote on the Strategic Sale, the name change or the adoption of either the 2006 Plan or the Bonus Plan. You therefore should be sure to provide your broker with instructions on how to vote your shares. Please check the voting form used by your broker to see if it offers telephone or Internet submission of proxies.

**Q: *May I change my vote after I have mailed my signed proxy card?***

**A:** Yes, you may change your vote at any time before your shares are voted at the annual meeting. You may change your vote in one of the three following ways:

1. You may notify the Secretary of Aether in writing before the annual meeting that you wish to revoke your proxy. In this case, please contact Aether Holdings, Inc., 1330 Avenue of the Americas, 40th Floor, New York, NY 10019, Attention: David B. Meister, Secretary.
2. You may submit a proxy dated later than your original proxy.
3. You may attend the annual meeting and vote. Merely attending the annual meeting will not by itself revoke a proxy; you must obtain a ballot and vote your shares to revoke the previously submitted proxy.

**Q: *Who may I contact with questions about the proposal?***

**A:** If you have more questions about the proposals or would like additional copies of this proxy statement, you should contact David B. Meister, Aether's Chief Financial Officer and Secretary, at (212) 277-1100.

In addition, Aether is a public company and is required to file reports and other information with the SEC. You may read and copy this information at the SEC's public reference facilities. You may call the SEC at 1-800-SEC-0330 for information about these facilities. This information is also available at the SEC's Internet site at [www.sec.gov](http://www.sec.gov). You can also request copies of these documents from us or visit our website at [www.aetherholdings.com](http://www.aetherholdings.com).

**Q: *Who may attend the annual meeting?***

**A:** Subject to space availability, all stockholders as of the record date, or their duly appointed proxies, may attend the annual meeting. Since seating is limited, admission to the meeting will be on a first-come, first-served

basis. If you attend, please note that you may be asked to present valid picture identification, such as a driver's license or passport.

You will need proof of ownership of Aether common stock to enter the meeting.

If your shares are registered or held in the name of your broker or other nominee, your shares are held in street name. Please note that if you hold your shares in street name, you will need to bring proof of your ownership of common stock as of the record date, such as a copy of a bank or brokerage statement, and check in at the registration desk at the meeting.

**Q: *How may I obtain Aether's corporate governance materials?***

**A:** The Aether home page is [www.aetherholdings.com](http://www.aetherholdings.com), and the following information may be found there:

Aether's Code of Ethics; and

Aether Board Committee Charters – Audit Committee, Compensation Committee, Corporate Governance Committee, and Nominating Committee.

**AETHER HOLDINGS, INC.**  
**1330 Avenue of the Americas, 40th Floor**  
**New York, NY 10019**

**INFORMATION ABOUT THE ANNUAL MEETING AND VOTING**

**TIME AND PLACE**

The annual meeting will be held on October 31, 2006 at the Hilton New York, 1335 Avenue of the Americas, New York, NY 10019, at 9:30 a.m., local time.

**PROPOSALS TO BE CONSIDERED**

At the annual meeting, we will ask our stockholders to consider and vote upon the following matters:

1. Approving the Strategic Sale;
2. Approving an amendment to our certificate of incorporation to change our name to NexCen Brands, Inc.;
3. Electing eight members of the board of directors, each for a one-year term;
4. Ratifying appointment of KPMG LLP as our independent registered public accounting firm for fiscal year 2006;
5. Adopting the 2006 Plan; and
6. Adopting the Bonus Plan.

Our board of directors is not aware of any other matters to be presented at the annual meeting. If any other matters should properly come before the annual meeting, the persons named as proxies in the enclosed proxy card will vote the proxies in accordance with their best judgment.

**THIS PROXY SOLICITATION**

We are sending you this proxy statement because our board is seeking a proxy to vote your shares at the annual meeting. This proxy statement is intended to assist you in deciding how to vote your shares. At the close of business on September 6, 2006, there were 47,434,296 shares of common stock outstanding, which constitute all of the outstanding voting shares of Aether. Only holders of record shares of common stock on the close of business on September 6, 2006 will be entitled to vote at the annual meeting. On September 27, 2006, we began mailing this proxy statement to all persons who will be entitled to vote at the annual meeting.

We are paying the cost of requesting these proxies. Our directors, officers and employees may request proxies in person or by telephone, mail, facsimile or otherwise, but they will not receive additional compensation for their services. In addition, we have retained Innisfree M&A Incorporated to assist us in soliciting proxies for the annual meeting. We have agreed to reimburse Innisfree M&A Incorporated for its reasonable expenses, to indemnify it against certain losses, costs and expenses and to pay its fees, which all together we estimate will not exceed \$150,000. We will reimburse brokers and other nominees for their reasonable out-of-pocket expenses for forwarding proxy materials to beneficial owners of our common stock shares.

In this proxy statement, Aether, the company, we and our refer to Aether Holdings, Inc. and its subsidiaries and predecessors.

**VOTING YOUR SHARES**

If you are a stockholder of record, you may vote your shares at the annual meeting either in person or by proxy. To vote in person, you must attend the annual meeting and obtain and submit a ballot. We recommend that you submit a proxy even if you plan to attend the annual meeting. Ballots for voting in person will be available at the annual meeting. To vote by proxy, you must complete and return the enclosed proxy card in time to be received by us before the annual meeting. By completing and returning the proxy card, you will be directing the persons designated

on the proxy card to vote your shares at the annual meeting in accordance with the instructions you give on the proxy card. If you attend the annual meeting, you may vote by ballot, which cancels any proxy previously submitted.

You also may submit your proxy by telephone by calling the toll-free telephone number on the enclosed proxy card or through the Internet by going to the Internet address on the enclosed proxy card. Please have your proxy card available when you call or go online. Telephone and Internet access is available 24 hours a day seven days per week and will be accessible until 11:59 p.m., Eastern Time, on October 30, 2006. You will be prompted to enter the number printed on your proxy card and to follow the instructions to submit your proxy. Our telephone and Internet proxy procedures are designed to authenticate stockholders by using individual control numbers.

If you are a beneficial owner, please refer to your proxy card or the information provided by your bank, broker, custodian or recordholder for information on telephone or Internet voting. **If you submit your proxy by telephone or through the Internet, please do not mail your proxy card. If you are located outside the United States or Canada, see your proxy card or other materials for additional instructions.**

If you sign and date your proxy but do not make specific choices, your proxy will follow the respective board of director recommendations and vote your shares as follows:

*FOR* the proposal to approve the Strategic Sale;

*FOR* the proposal to approval the amendment to our certificate of incorporation to change our name to NexCen Brands, Inc.;

*FOR* the election as Aether directors of the nominees named in the proxy statement;

*FOR* the proposal to ratify the appointment of KPMG LLP as our independent registered public accounting firm for fiscal year 2006;

*FOR* the proposal to adopt the 2006 Plan; and

*FOR* the proposal to adopt the Bonus Plan.

Stockholders who hold shares registered in the name of a broker or other nominee may generally only vote pursuant to the voting instructions given to them by their broker or other nominee. In addition, if you hold shares registered in the name of a broker or other nominee, generally the nominee may only vote your shares as you direct, except that if you fail to provide directions, the nominee may nevertheless vote on matters for which it has discretionary voting authority. Brokers will have discretionary voting authority to vote on routine matters incident to the conduct of the annual meeting, including the election of directors and ratification of the outside auditor. Brokers will not have discretionary voting authority to vote on the proposals to approve the Strategic Sale, change Aether's name, or adopt the 2006 Plan or the Bonus Plan. If a nominee cannot vote on a matter because it does not have discretionary voting authority, this is a "broker non-vote" on that matter. In order to vote their shares by attending the annual meeting, as opposed to directing their broker or nominee to vote their shares, stockholders who hold shares registered in the name of a broker or other nominee generally must bring to the annual meeting a legal proxy from the broker or nominee authorizing them to vote the shares.

## QUORUM

A quorum for the transaction of business at the annual meeting will be established by the presence, in person or by proxy, of a majority of the shares of our common stock issued and outstanding on the record date. Abstentions and



broker non-votes each will be included in determining the number of shares present and voting at the meeting for the purpose of determining the presence of a quorum.

**VOTE REQUIRED**

Each share of our common stock issued and outstanding on the record date will be entitled to one vote.

The affirmative vote of a majority of the issued and outstanding shares of our common stock shall be required to approve Proposals 1 and 2, provided a quorum is present.

For the election of directors in Proposal 3, the eight candidates who receive the highest number of votes cast For at the annual meeting shall be elected, provided a quorum is present.

The affirmative vote of a majority of the shares of our common stock present in person or represented by proxy at the annual meeting, and entitled to vote on the subject matter, shall be required to approve Proposals 4, 5 and 6, provided a quorum is present.

Under the General Corporation Law of the State of Delaware, an abstaining vote and a broker non-vote are counted as present and are, therefore, included for purposes of determining whether a quorum of shares is present at the annual meeting. A broker non-vote occurs when a broker submits a proxy card with respect to shares of common stock held in a fiduciary capacity (typically referred to as being held in street name ), but declines to vote on a particular matter because the broker has not received voting instructions from the beneficial owner. Under the rules that govern brokers who are voting with respect to shares held in street name, brokers have the discretion to vote such shares on routine matters, but not on non-routine matters. Proposals 3 and 4 are routine matters. Proposals 1, 2, 5 and 6 are non-routine matters. For the purpose of determining whether the stockholders have approved matters other than the election of directors, abstentions are treated as shares present or represented and voting, so abstentions have the same effect as negative votes.

For Proposals 1 and 2, because each of these proposals requires the affirmative vote of a majority of the outstanding shares of our common stock, as discussed in this proxy statement, abstentions and broker non-votes will have the same effect as votes against the proposals because their shares will not count toward the vote needed to adopt these proposals.

For Proposals 1 and 2, the failure of a stockholder to return a proxy or to vote in person or to direct its broker or other nominee to vote its shares will have the effect of a vote against these proposals.

For Proposal 3, abstentions and broker non-votes will not affect the outcome of this proposal.

For Proposals 4, 5 and 6, because each of these proposals requires the affirmative vote of a majority of the shares present in person or by proxy at the meeting and entitled to vote on the subject matter, abstentions will have the same effect as votes against the proposals because the shares will count toward the quorum but not toward the vote needed to adopt these proposals. Broker non-votes will have no effect on these Proposals.

Brokers holding shares for beneficial owners cannot vote on Proposals 1, 2, 5 or 6 without the owners' specific instructions. Accordingly, stockholders are encouraged to return the enclosed proxy card marked to indicate their grant of a proxy or to follow the instructions for voting provided by their broker or other nominee.

## **OTHER BUSINESS; ADJOURNMENTS**

We are not currently aware of any other business to be acted upon at the annual meeting. If, however, other matters are properly brought before the annual meeting, or any adjournment of the annual meeting, your proxies include discretionary authority on the part of the individuals appointed to vote your shares or act on those matters according to their best judgment, including to adjourn the meeting, unless you have expressly elected to withhold discretionary authority on your proxy card.

Adjournments may be made for the purpose of, among other things, soliciting additional proxies. Any adjournment may be made from time to time by approval of the holders of shares representing a majority of the votes present in person or by proxy at the meeting, whether or not a quorum exists, without further notice other than by an

announcement made at the meeting. We do not currently intend to seek an adjournment of the annual meeting.

## **REVOKING YOUR PROXY**

If you decide to change your vote, you may revoke your proxy at any time before it is voted. You may revoke your proxy in one of the following three ways:

1. You may notify the Secretary of Aether in writing that you wish to revoke your proxy. Please contact: Aether Holdings, Inc., 1330 Avenue of the Americas, 40th Floor, New York, NY, Attention: David B. Meister, Secretary. We must receive your notice before the time of the annual meeting.
2. You may submit a proxy dated later than your original proxy.
3. You may attend the annual meeting and vote. Merely attending the annual meeting will not by itself revoke a proxy. You must obtain a ballot and vote your shares to revoke the proxy.

## TRANSACTION SUMMARY

*This summary highlights selected information from this proxy statement with respect to the proposed Strategic Sale and may not contain all of the information that is important to you. To understand the Strategic Sale fully, you should carefully read this entire proxy statement. We have included references to other portions of this proxy statement to direct you to a more complete description of the topics presented in this summary.*

### **The Company (see page 16)**

Aether Holdings, Inc.  
1330 Avenue of the Americas, 40th Floor  
New York, NY 10019

Aether Holdings, Inc. (which we refer to herein as Aether ) operates two business segments its mortgage-backed securities ( MBS ) business and its intellectual property ( IP ) business through its wholly owned subsidiaries. Shares of Aether common stock are traded on the Nasdaq Global Market under the symbol AETH.

### **The Strategic Sale (see page 10)**

We are seeking stockholder approval to sell our remaining MBS investments for the purpose of allowing us to reallocate the assets now dedicated to the MBS business into supporting the growth and development of our IP business. This sale and repositioning of our assets is referred to in this proxy statement as the Strategic Sale.

If we receive the required stockholder approval of the Strategic Sale, we intend to promptly exit the MBS business by selling our MBS investments over a period of no more than 180 days following receipt of such stockholder approval. Subject to market conditions, we plan (and anticipate that we will be able) to sell all of our existing MBS investments within 30 days of receiving stockholder approval of the Strategic Sale.

We do not have any agreements to sell our MBS investments. The market for MBS is highly liquid, and we intend to sell our MBS at the best available prevailing market prices.

### **Consideration to be Received (see page 11)**

We will sell our existing MBS investments for cash. The total amount we receive from the sale of such MBS investments may be more or less than their current market value, depending upon market conditions at the time of the Strategic Sale and the extent of principal repayments we receive for these securities, pursuant to their terms, prior to such sale. If we receive the required stockholder approval for the Strategic Sale, we will not sell the MBS for an amount that, when added to the aggregate principal repayments we receive after August 29, 2006 and prior to the sale, is less than 90% of the current face value of our MBS securities, or \$74.2 million.

### **Use of Proceeds (see page 10)**

The use of proceeds from the sale of our MBS investments may include funding all or a portion of the purchase price of acquisitions of IP and IP-centric businesses, as well as funding any operating losses or capital spending requirements for our IP business. Aether stockholders will not receive a distribution of any proceeds upon completion of the Strategic Sale. Pending investment in the IP business, proceeds from the sale of the MBS portfolio will be held in cash or other short-term investments. We currently do not have any fixed commitments to use the proceeds from

the sale of our MBS business. We have, however, entered into an agreement to acquire The Athlete's Foot®, which is discussed under the heading "About Our Business - Plans to Grow the IP Business; TAF Acquisition," beginning on page 17.

**Required Stockholder Approval (see page 11)**

Approval of the Strategic Sale requires the affirmative vote of a majority of the outstanding shares of our common stock. Abstentions and broker non-votes will have the same effect as votes against this proposal because their shares will not count toward the vote needed to adopt this proposal.

**Recommendation to Aether Stockholders (see page 26)**

The Aether board of directors has approved the Strategic Sale and recommends that Aether stockholders vote *FOR* the Strategic Sale proposal.

**Risk Factors (see page 21)**

There are a number of risks related to the Strategic Sale, including the risks related to our plan to focus on our IP business, including the following:

We may incur additional losses in selling our MBS investments;

Our IP business is new, and we may not be successful in operating or expanding it and may not be able to operate it profitably and realize our business objectives;

Development of our IP business will require us to complete acquisitions, and we may not be successful in making favorable acquisitions;

Our IP business is highly dependent upon the efforts of Robert W. D Loren, our president and chief executive officer;

We will need additional capital to develop our IP business, and that capital may not be available to us on favorable terms or at all; and

The success of our IP business will be heavily dependent upon the success of third parties to whom we license IP that we acquire.

**No Appraisal Rights (see page 12)**

As holders of shares of Aether common stock, you will not have any right to an appraisal of the value of your shares in connection with the completion of the Strategic Sale.

**Accounting Treatment of the Strategic Sale (see page 18)**

Our MBS investments are classified as available-for-sale and reported at fair value on our balance sheet. Unrealized gains or losses are reported as a component of stockholder's equity with other than temporary impairment recorded in earnings. The fair value of our MBS at June 30, 2006 was \$87.4 million. An other than temporary impairment of \$552,000 was reported in earnings for the six months ending June 30, 2006 because as of December 31, 2005 we no longer had a firm intention to hold our MBS until maturity or such time as the market value has recovered. No unrealized gain or loss was reported in other comprehensive income for the six month period ending June 30, 2006. Any gain or loss on the disposition of our remaining MBS assets will be recognized at the time of sale in our statement of operations. We do not have any unamortized premium or discount associated with our MBS investments as of June 30, 2006.

## **PROPOSAL 1 STRATEGIC SALE PROPOSAL**

We are asking you to approve the sale of our existing portfolio of mortgage-backed securities ( MBS ) for the purpose of allowing us to reposition the assets now dedicated to the MBS business in order to support the growth and development of our intellectual property ( IP ) business. We commenced our IP business in June 2006 when we acquired UCC Capital Corp. and its affiliates ( UCC ). In this proxy statement, we refer to the repositioning of those assets now dedicated to the MBS business to the IP business as the Strategic Sale.

A central feature of our IP business strategy is to acquire valuable IP and IP-centric businesses. Although we do not currently own or license any IP or operate any IP-centric businesses, our chief executive officer, together with the team we acquired as part of our acquisition of UCC, have been exploring potential acquisitions and have been engaged in discussions regarding various opportunities. As we have previously announced, on August 21, 2006, we entered into a definitive agreement to acquire Athlete s Foot Brands, LLC and related entities (which we refer to collectively as TAF ). TAF franchises retail athletic footwear stores under The Athlete s Foot name in 40 countries around the world, including the United States. We consider TAF to be an IP-centric business because it relies on the commercial exploitation of The Athlete s Foot name and related marks. If we are able to complete this acquisition, it would be the first expansion of our IP business since the acquisition of UCC and would involve us in operating a global retail franchise business. We expect to be pursuing additional potential acquisitions on a regular basis in the future, subject to the availability of adequate capital and managerial resources.

As discussed below under the heading Reasons for the Strategic Sale, beginning on page 14, in August 2006, our board of directors, at the recommendation of our management, concluded that we should transition out of the MBS business and devote our assets entirely to building the IP business. As of June 30, 2006, we had approximately \$117 million of our total assets either invested in MBS or held in other short-term investments pending re-investment in MBS. This amount constituted approximately 82% of our total assets (excluding our tax loss carryforwards), and our MBS investments have accounted for substantially all of our revenues. The decision by our board of directors to reallocate these assets from the MBS business to the IP business even over a period of time could be considered to be a decision to effect a sale of all or substantially all of our assets under Section 271 of the Delaware General Corporation Law (the DGCL ). A sale of all or substantially all of our assets requires the prior approval of the holders of a majority of our outstanding shares. Although we are able to sell a portion of our MBS investments and reallocate the resulting cash to our IP business without triggering the stockholder approval requirements under Section 271 of the DGCL, our board of directors, after consulting with Delaware counsel, concluded that it was advisable to seek stockholder approval at this time so that our company would have the freedom to dedicate all or any portion of its assets to the growth and development of the IP business.

Proposal 1 seeks authorization to sell our existing MBS on prevailing market terms, from time to time, subject to the limits discussed in this proxy statement, for the purpose of converting those investments into cash that will be used to fund the development of our IP business. Although we expect that the development of our IP business will include completion of the TAF acquisition, we note that completion of the Strategic Sale is not conditioned upon completion of the TAF acquisition. Even if we were not to complete the TAF acquisition, we believe that the repositioning of our assets from the MBS business to the IP business is in the best interests of our stockholders, and we intend to focus our attention and resources on the IP business if you approve Proposal 1.

If Proposal 1 is approved, the IP business will become our only operating business. As discussed below, we intend to promptly exit the MBS business following receipt of stockholder approval by selling our MBS investments for an amount, when added to the aggregate principal prepayments we receive after August 29, 2006 and prior to the date of the sale, that is no less than 90% of the current face amount of those investments (or \$74.2 million), over a period of



no more than 180 days following such stockholder approval. Subject to market conditions, we plan (and anticipate that we will be able) to sell all of our existing MBS investments within 30 days of receiving stockholder approval of this Proposal 1.

The market for MBS is highly liquid, and we intend to sell our MBS at the best available prices. The use of proceeds from the sale of our MBS investments may include funding all or a portion of the purchase price of acquisitions of IP and IP-centric businesses, as well as funding any operating losses or capital spending requirements for our IP business. Pending investment in the IP business, proceeds from the sale of the MBS portfolio will be held in cash or other short-term investments.

We are not required to seek stockholder approval to sell MBS as part of our current MBS strategy, which involves the purchase and sale of MBS investments in response to market conditions. The reason for seeking stockholder approval under this Proposal 1 is that our sale of MBS would not be for the purpose of continuing our MBS business in its normal course, but for the purpose of exiting the MBS business and reallocating to the IP business the assets now dedicated to the MBS business into the IP business.

We also are not required to seek stockholder approval of the proposed acquisition of TAF, and this Proposal 1 is not a request for stockholder approval of that proposed acquisition. Even if we do not receive the requisite stockholder approval of this Proposal 1, we may decide to proceed with the acquisition of TAF. We also may elect to complete the TAF acquisition prior to the annual meeting. In addition, we may choose to acquire other IP and IP-centric businesses, subject to any limitations imposed by Section 271 of the DGCL, or any other applicable legal or regulatory requirements to seek stockholder approval of specific acquisitions.

If for any reason the requisite stockholder approval is not obtained, the board of directors will reconsider Aether's strategic direction. The board may decide to proceed with developing the IP business using available cash not dedicated to the MBS business, as well as cash proceeds from the sale of MBS investments that do not constitute a sale of substantially all of our assets. Alternatively, the board may consider other strategic options, including pursuing other new business opportunities. Any such decisions would be made by our board of directors and may be subject to further stockholder vote.

#### **CONSIDERATION TO BE RECEIVED**

We will sell our existing MBS investments for cash. As of August 29, 2006, the market value of our MBS securities was approximately \$81.6 million, which is approximately 99.0% of the \$82.4 million face value of such securities. The total amount we receive from the sale of such MBS investments may be more or less than such current market value, depending upon market conditions at the time of the Strategic Sale and the extent of principal repayments we receive for these securities, pursuant to their terms, prior to such sale. Such principal repayments occur when the borrowers repay principal on the individual mortgages underlying such MBS; the extent and timing of which cannot be predicted prior to the Strategic Sale. (In our most recent Quarterly Report, the reported fair market value of our MBS securities as of June 30, 2006 was approximately \$87.4 million, but since June 30, we have received \$6.2 million of principal repayments.)

If we receive the required stockholder approval for the Strategic Sale, we will not sell our MBS for an amount that, when added to the aggregate principal repayments we receive after August 29, 2006 and prior to the sale, is less than 90% of the current face value of our MBS securities. That is, we will not sell our MBS securities, and reallocate the proceeds, along with the cash now dedicated to our MBS business and any principal repayments we receive after August 29, 2006 and prior to the Strategic Sale, to our IP business, unless the proceeds we receive for the MBS securities we currently hold (plus repayments we receive) is at least equal to \$74.2 million (which is 90% of the \$82.4 million of face value of our MBS as of August 29, 2006).

Market conditions for MBS change continually and, although we will make every effort to maximize our proceeds from the sale of our MBS, market conditions may require us to sell our MBS at prices below their market value as of August 29, 2006. As short-term interest rates have risen, the price of our remaining MBS has declined generally since we purchased such assets in March and April of 2005. Because the MBS market is liquid and prices for MBS fluctuate, we cannot predict whether the aggregate proceeds we will receive from the sale of our MBS will be more or less than their value at August 29, 2006. In light of current market conditions (which has resulted in a slight increase in the fair market value of our MBS since June 30), we expect to receive a greater amount of aggregate proceeds from the Strategic Sale than the minimum amount specified in this Proposal 1, but market conditions may change, and thus we cannot predict the actual proceeds we will receive from the Strategic Sale.

We currently do not have any fixed commitments to use the proceeds from the sale of our MBS business. We have, however, entered into an agreement to acquire TAF. The terms of the TAF acquisition, including the purchase price, are discussed under the heading [About Our Business](#) [Plans to Grow the IP Business; TAF Acquisition](#), beginning on page 17.

The holders of shares of our common stock will not have any right to an appraisal of the va