

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96995 / February 28, 2023

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4380 / February 28, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21314

In the Matter of

Alan J. Markowitz, CPA,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 4C AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND RULE 102(e) OF THE
COMMISSION’S RULES OF PRACTICE
AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice² against Alan J. Markowitz (“Markowitz” or “Respondent”).

¹ Section 4C provides, in relevant part:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

² Rule 102(e)(1)(ii) provides, in pertinent part:

The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.

II.

After an investigation, the Division of Enforcement and the Office of the Chief Accountant allege that:

A. SUMMARY

1. Alan J. Markowitz, a certified public accountant (“CPA”), engaged in improper professional conduct, within the meaning of Section 4C of the Exchange Act and Rule 102(e) of the Commission’s Rules of Practice, during the audits of the 2016 and 2017 financial statements of FTE Networks, Inc. (“FTE”). FTE later restated these financial statements (the “Restatement”).

2. For both audits, Markowitz served as the lead engagement partner for Marcum LLP (“Marcum”), the audit firm performing these audits, but repeatedly failed to conduct them in accordance with Public Company Accounting Oversight Board (“PCAOB”) auditing standards. Markowitz violated several PCAOB standards, including standards requiring Markowitz to act with due professional care, by improperly relying on FTE management’s false representations during the audits and failing to obtain sufficient audit evidence regarding the existence and valuation of unbilled receivables and revenue, miscellaneous receivables, notes payable and equity transactions. Despite contradictory evidence and significant red flags that signaled FTE’s underlying misconduct, Markowitz improperly relied on management representations and failed to perform procedures to substantiate or reconcile those representations with contradictory evidence.

3. Markowitz also caused Marcum to violate Rule 2-02(b)(1) of Regulation S-X. In connection with the 2016 and 2017 audits, Marcum issued audit reports that stated that the audits were performed in accordance with PCAOB standards. Markowitz approved the issuance of Marcum’s audit reports that contained these unqualified opinions when he knew or should have known that Marcum’s representations were false because Marcum’s audits were not performed in accordance with PCAOB standards.

B. RESPONDENT

4. **Markowitz**, age 66, resides in Wayne, New Jersey, and is a CPA licensed in New York and New Jersey. Markowitz has been a partner at Marcum LLP since 2007. Markowitz was the lead engagement partner on Marcum’s annual audits of FTE from 2014 through 2017. He has no known disciplinary history.

C. OTHER RELEVANT ENTITIES

5. **Marcum** is a limited liability partnership headquartered in New York City with approximately 50 offices in the United States and other countries. It has more than 2,500 employees providing accounting, advisory, and consulting services. Marcum is a public accounting firm registered with the PCAOB.

6. **FTE** is a Nevada corporation currently headquartered in New York, New York and previously headquartered in Naples, Florida. FTE’s common stock was registered with the

Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange under the ticker symbol FTNW from December 14, 2017 until December 17, 2019. Prior to that, FTE's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and traded on OTC Pink as FTNW. From September 12, 2014 until May 16, 2015, the Commission revoked the registration of FTE's shares pursuant to Section 12(j) of the Exchange Act for failure to file periodic reports with the Commission for more than two years. Currently, FTE's common stock is not publicly traded on any exchange nor quoted on OTC Pink. However, its common stock remains registered pursuant to Section 12(g) of the Exchange Act.

D. FACTS

FTE's Improper Accounting for Convertible Notes

7. From approximately January 2017 through January 2019, cash-strapped FTE issued approximately 71 convertible notes ("Notes") to lenders totaling approximately \$22.7 million in order to provide itself with much needed short-term funding. Each individual Note contained varying terms and features that required FTE to perform extensive and complex analyses under generally accepted accounting principles ("GAAP") to determine the proper accounting treatment and required financial statement disclosures related to each Note. These varying terms included such features as (1) the ability of the debt to be converted, at the option of the holder, to shares of FTE common stock at large discounts to market prices and (2) the contemporaneous issuance of attached warrants to purchase shares of FTE common stock. These varying terms will be referred to hereinafter as the "Convertible Features."

8. FTE improperly accounted for the Notes as conventional promissory notes and its financial statements did not contain certain required financial disclosures. Indeed, as part of FTE's Restatement for the years ended December 31, 2016 and 2017 and the quarterly periods ended March 31, June 30, and September 30 in 2017 and 2018, FTE's analyses confirmed that the Convertible Features of the Notes required separate accounting treatment as derivatives under GAAP. By failing properly to account for the Notes, FTE materially understated its reported net loss before taxes and current liabilities by 65% and 34%, respectively for the year ended December 31, 2017 and materially understated its reported current liabilities between 9% and 39% during the quarterly periods ended March 31, June 30, and September 30 in 2017 and 2018.

FTE's Improper Revenue Recognition Practices

9. From early 2016 through late 2018, FTE improperly recognized approximately \$12.5 million of revenue and related accounts receivable from purportedly completed construction projects that had not yet been billed and from contracts for projects that purportedly had been completed and billed but not yet paid. FTE management orchestrated FTE's improper accounting practices for these projects, most of which they attributed to FTE's largest customer ("Customer A"). These practices involved FTE (1) recording wholly fictitious revenue and (2) recording revenue for which no evidence of an arrangement or contract with a customer existed.

10. According to the Restatement, these transactions materially overstated FTE's revenue by 108% for the year ended December 31, 2016, and overstated accounts receivable by

477% and 20% as of December 31, 2016 and December 31, 2017, respectively, and between 18% and 120% as of the quarterly periods ended March 31, June 30, and September 30, 2017 and 2018. Adjustments for these transactions were recorded in the Restatement.

Markowitz Violated PCAOB Auditing Standards When Conducting the Audits of FTE's Annual Financial Statements

11. Markowitz was the engagement partner for the 2016 and 2017 annual audits (“Audits”). As the engagement partner, Markowitz was responsible for the supervision and performance of the engagements in order “to obtain reasonable assurance about whether the financial statements [were] free of material misstatement whether caused by error or fraud.”³ For the Audits, Markowitz supervised engagement teams consisting of approximately five to six team members who managed and conducted the fieldwork.

12. In accordance with PCAOB Auditing Standard (“AS”) 2110, *Identifying and Assessing Risks of Material Misstatement*, Marcum developed Audit plans for FTE that identified several areas as having high risk of material misstatement due to fraud or related to a significant audit area (“Audit Risks”). The 2016 audit plan identified several Audit Risks, including: accounts receivable—assessed as both a significant risk and fraud risk for improper revenue recognition; notes payable and long-term debt—assessed as a significant audit area with a high risk of material misstatement for the completeness assertion because FTE might not record all outstanding notes; and equity—assessed as a significant risk due to complexity and potential accounting errors. The 2017 audit plan identified similar risks of material misstatement although notes payable and long-term debt was assessed as having a significant risk of material misstatement overall. As the engagement partner, Markowitz had an obligation to design and perform audit procedures commensurate with assessed risks.

13. During the Audits, Markowitz improperly relied on management representations and did not obtain sufficient appropriate audit evidence related to the Audit Risks. Specifically, Markowitz performed no additional, substantive procedures (and, in certain instances, performed no substantive procedures) to appropriately respond to the assessed Audit Risks despite: (1) Marcum’s risk assessments noting that extended audit procedures were to be performed in certain areas; (2) having reviewed documents contradicting management representations; and (3) identifying that FTE had internal control weaknesses as reflected by, among other things, Marcum’s difficulties in obtaining audit documentation from FTE management.

14. Markowitz’s conduct demonstrated the following audit failures in violation of PCAOB standards: (1) failure to exercise due professional care; (2) failure to address assessed risks; (3) failure to obtain sufficient appropriate audit evidence; and (4) failure to evaluate audit results. As a result of these violations, Markowitz caused Marcum’s issuance of audit reports that inaccurately stated that the Audits were conducted in accordance with the standards of the PCAOB.

³ See PCAOB Auditing Standard (“AS”) 1001, *Responsibilities and Functions of the Independent Auditor* and AS 1201 *Supervision of the Audit Engagement*.

15. As a result of these violations, Markowitz engaged in improper professional conduct within the meaning of Section 4C of the Exchange Act and Rule 102(e) of the Commission's Rules of Practice.

The 2016 Audit Failures

16. Markowitz violated multiple PCAOB standards when conducting the audit of FTE's 2016 financial statements. These audit failures related to unbilled revenue ("Unbilled Revenue") and unbilled receivables ("Unbilled Receivables") – which related to FTE's purportedly complete but unbilled construction projects – totaling \$5.8 million as of December 31, 2016. This represented 47% of FTE's reported revenue and 83% of FTE's reported accounts receivable, respectively. Marcum's planning materials assessed accounts receivable and sales as a significant audit area susceptible to a significant risk of material misstatement due to fraud and concluded that extended audit procedures should be performed.

17. Markowitz primarily relied on substantive audit procedures to test Unbilled Receivables along with oral confirmations from the customer. For example, with respect to testing the support for Unbilled Receivables, Marcum sampled 31 transactions representing \$1.7 million (29%) of Unbilled Receivables. From this sample, the engagement team concluded that there was insufficient audit evidence to support approximately \$1.2 million (70%) of the sampled transactions. These testing exceptions included instances in which transactions were recorded in the wrong year and certain transactions where the engagement team concluded there was a "lack of support/documentation." Despite these testing exceptions, no additional test work was performed. Moreover, when Markowitz proposed an adjustment to the financial statements to remove at least \$708,000 of Unbilled Receivables that the audit team had concluded were improperly recorded, FTE refused to make the adjustment.

18. In testing Unbilled Receivables, the engagement team also selected a sample of \$2.7 million of construction projects on which FTE had already begun work. However, substantive testing consisted of documenting oral confirmation of \$1.7 million of the projects with a representative for Customer A, and two emails forwarded to Marcum by FTE ("FTE Emails") that purported to show customer approval for work on the project to begin. There was no written confirmation from Customer A or other written documentation to support the purported \$1.7 million. In fact, in an email Markowitz sent to FTE six days before the audit opinion was issued, Markowitz requested that FTE provide the engagement team with five types of evidentiary support for the FTE Emails. There is no written documentation that FTE ever provided the requested support for the \$1.7 million of Unbilled Receivables. Furthermore, Marcum did not perform any substantive testing on the remaining \$1 million in the sample.

19. Markowitz's failure to perform additional procedures in the face of numerous testing exceptions along with his reliance on oral confirmations and insufficient documentation demonstrated his lack of due professional care and skepticism when evaluating the audit results. Based on the test work performed, Markowitz did not have sufficient audit evidence as required by AS 1105, *Audit Evidence* to conclude that FTE's 2016 financial statements were free of material misstatements. Markowitz caused Marcum's issuance of an audit report that inaccurately stated that the audit was performed in accordance with PCAOB standards. FTE filed Marcum's inaccurate audit report along with FTE's 2016 Form 10-K on May 11, 2017.

20. The Unbilled Revenue and Unbilled Receivables materially overstated FTE's revenue and accounts receivable by 108% and 477%, respectively, for the year ended December 31, 2016. Adjustments for these transactions were recorded in the Restatement.

The 2017 Audit Failures

21. Like the 2016 audit, Markowitz violated multiple PCAOB standards when conducting the audit of FTE's 2017 financial statements. These audit failures spanned three audit areas – accounts receivable (specifically, Unbilled Receivables and miscellaneous receivables (“Miscellaneous Receivables”)), notes payable, and equity and stemmed from Markowitz's overreliance on management representations in the face of contradictory evidence. Moreover, Markowitz ignored numerous red flags regarding audit documentation. As such, the 2017 audit was not performed in accordance with PCAOB standards.

(a) Unbilled Receivables and Miscellaneous Receivables

22. As of December 31, 2017, FTE's financial statements showed that Unbilled Receivables increased from \$5.8 million as of December 31, 2016 to \$10 million (representing 16% of FTE's reported accounts receivable). In accordance with AS 2110, the engagement team identified accounts receivable as a significant audit area susceptible to a significant risk of material misstatement due to fraud and noted that extended audit procedures should be performed. Markowitz reviewed and approved the relevant work papers and relied on substantive audit procedures.

23. Specifically, the engagement team selected for testing a sample of 21 Unbilled Receivables transactions representing \$4.3 million (43%) of the Unbilled Receivables balance. As set forth in AS 1105, *Audit Evidence*, when using information produced by the audit client as evidence, the auditor should evaluate whether the information is “sufficient and appropriate” for the audit procedure being performed. The testing performed on the 21 Unbilled Receivables solely relied on internal FTE documents as opposed to third-party documentation such as independent confirmation from the customer.

24. Also in 2017, FTE recorded Miscellaneous Receivables of approximately \$2.5 million. Markowitz concluded that the limited documentation provided by FTE did not provide sufficient support, and requested support for \$2.4 million of the Miscellaneous Receivables. FTE did not provide support for the \$2.4 million, so the engagement team proposed an adjustment to the financial statements to reverse the \$2.4 million. FTE did not make the adjusting entry, and Markowitz did not insist that FTE make the entry. The Miscellaneous Receivables remained on FTE's financial statements that were included in its 2017 Form 10-K and filed along with Marcum's inaccurate audit report.

25. The Unbilled Receivables and Miscellaneous Receivables materially overstated FTE's accounts receivable by 20% for the year ended December 31, 2017. Adjustments for these transactions were recorded in the Restatement.

(b) Notes Payable

26. During the 2017 quarterly reviews and audit, Markowitz was confronted with significant red flags and inconsistencies that contradicted management representations concerning the Notes. As of December 31, 2017, the Notes represented \$4.8 million (31%) of FTE's reported notes payable balance. The engagement team's planning materials assessed notes payable as a significant audit area susceptible to significant risk of material misstatement and concluded that extended audit procedures should be performed. Yet of 30 Notes FTE entered into in 2017, the engagement team obtained executed agreements for only three.

27. Markowitz ignored significant red flags regarding the Notes. During the first quarter review, Markowitz reviewed FTE's instructions to its transfer agent to reserve a certain number of shares of FTE common stock in the event the noteholder of a \$385,000 Note exercised its right to convert the Note into common stock. Markowitz knew the Notes, namely, the Convertible Features, required additional scrutiny and potentially had to be accounted for differently in FTE's financial statements. Markowitz requested a copy of the Note, but FTE never provided one. Instead of following up with FTE, Markowitz accepted FTE management's representation that the Note was not convertible.

28. During the third quarter, the engagement team obtained a board resolution that authorized the issuance of two *convertible* promissory notes. Despite ongoing difficulties in obtaining Notes and prior evidence from the first quarter that FTE had entered into Notes with Convertible Features, Markowitz never reviewed the resolution and the engagement team never raised it with him. During the third quarter, Marcum continued to ask FTE for all Notes. None were received.

29. During the annual audit, Marcum's audit manager showed Markowitz FTE board meeting minutes authorizing the issuance of *convertible* debt and warrants to two lenders. Markowitz consulted with FTE's senior management, who told him that the debt had not been issued as authorized. Markowitz accepted their representation and did not conduct any further inquiry.

30. Markowitz and the engagement team sent numerous emails throughout 2017 to FTE management requesting all debt agreements (that included Notes). In one email, Markowitz told FTE that the request had been pending for over two months, and further told FTE management that FTE's continued failure to provide the requested agreements or confirmation of the terms could result in a scope limitation (i.e., that Marcum could not opine on the financial statements as a whole). Although Markowitz and the engagement team only received three notes (out of 30), Markowitz did not conclude there was a scope limitation. In fact, 27 of the 30 Notes FTE issued were Convertible Notes that required different, more complex accounting treatment.

(c) Equity Transactions

31. During the 2017 quarterly reviews and audit, Markowitz encountered difficulties with obtaining from FTE documentation related to equity transactions. The engagement team's

planning materials assessed equity as a significant risk due to complexity and possible errors in accounting and concluded that extended audit procedures should be performed.

32. During 2017, FTE issued approximately 491,000 shares of FTE common stock, valued at approximately \$5.2 million, to “consultants” and “vendors” in lieu of payment. Although Markowitz and the engagement team requested that FTE provide the agreements or supporting documents related to the share issuances for each quarter, by the third quarter the requests remained outstanding. FTE never fully provided the outstanding documents. Additionally, although many of the “consultants” and “vendors” were Note holders, Markowitz failed to perform additional procedures in the face of these red flags and insufficient evidence. Nevertheless, Markowitz caused Marcum to release the 2017 audit opinion.

33. As part of the Restatement, FTE determined that certain of these share issuances were related to or executed contemporaneously with the issuance of the Notes, and thus required complex accounting analysis and material adjustments in FTE’s Restatement. By failing properly to account for the Convertible Features of the Notes and equity transactions, FTE understated its 2017 net loss before tax and current liabilities by approximately \$60 million (65% and 34%, respectively).

PCAOB Auditing Standards Markowitz Violated During the Audits

Failure to Exercise Due Professional Care

34. **PCAOB AS 1015, Due Professional Care in the Performance of Work** requires due professional care “to be exercised in the planning and performance of the audit and the preparation of the report.” It states that the “exercise of due professional care allows the auditor to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud, or whether any material weaknesses exist as of the date of management’s assessment.” It further provides that “[a]lthough not absolute assurance, reasonable assurance is a high level of assurance.” The standards require the auditor to:

- a. exercise professional skepticism, “an attitude that includes a questioning mind and a critical assessment of audit evidence” and the auditor must use “the knowledge, skill, and ability called for by the profession of public accounting to diligently perform, in good faith and with integrity, the gathering and objective evaluation of evidence;”
- b. “consider the competency and sufficiency of the [audit] evidence;”
- c. neither assume that management is dishonest nor assume “unquestioned honesty” and “the auditor should not be satisfied with less than persuasive evidence because of a belief that management is honest;” and
- d. adhere to the standard during the planning and throughout the audit process.

35. **PCAOB AS 2401, Consideration of Fraud in a Financial Statement Audit** requires that the auditor exercise professional skepticism when considering the fraud risks and “conduct the engagement with a mindset that recognizes the possibility that a material

misstatement due to fraud could be present, regardless of any past experience with the entity and regardless of the auditor's belief about management's honesty and integrity. Furthermore, professional skepticism requires an ongoing questioning of whether the information and evidence obtained suggests that a material misstatement due to fraud has occurred. In exercising professional skepticism in gathering and evaluating evidence, the auditor should not be satisfied with less-than-persuasive evidence because of a belief that management is honest." It also states that "[i]f there is an identified fraud risk that involves improper revenue recognition, the auditor also may want to consider [c]onfirming with customers certain relevant contract terms and the absence of side agreements, because the appropriate accounting often is influenced by such terms or agreements."

36. During the Audits of FTE, Markowitz knew or should have known that there was insufficient evidence or support for the Unbilled Receivables, Miscellaneous Receivables, notes payable, and equity. For example, in 2016 and 2017, Markowitz proposed that FTE make adjusting entries to the Unbilled Receivables and Miscellaneous Receivables. FTE did not make such entries, and Markowitz did not further insist upon the entries. In 2016, Markowitz was aware that there were testing exceptions within sampled items for Unbilled Receivables, but he failed to perform additional procedures or extrapolate the testing results to the entirety of the Unbilled Receivables.

37. Additionally, Markowitz was confronted with evidence that contradicted management representations regarding the existence of the Notes and equity transactions. For example, despite repeated and unanswered requests for the Notes, Markowitz failed to raise his level of professional skepticism and insist on obtaining copies of the Notes. Similarly, he repeatedly requested copies of third-party agreements, which FTE did not provide, in support of the issuance of FTE common stock to "consultants" and "vendors." Instead, he improperly relied on management's representations that the Notes did not contain Convertible Features and the share issuances were unrelated to the Notes.

38. As a result, Markowitz failed to exercise due professional care, which was required by PCAOB standards, during the Audits of FTE's financial statements.

Failure to Properly Address Assessed Risks

39. **PCAOB AS 2110, Identifying and Assessing Risks of Material Misstatement** states that "[w]hen the auditor obtains audit evidence during the course of the audit that contradicts the audit evidence on which the auditor originally based his or her risk assessment, the auditor should revise the risk assessment and modify planned audit procedures or perform additional procedures in response to the revised risk assessments."

40. **PCAOB AS 1101 Audit Risk** provides that "[r]easonable assurance is obtained by reducing audit risk to an appropriately low level through applying due professional care, including obtaining sufficient appropriate audit evidence.

41. During the Audits, Markowitz learned of red flags and contradictory evidence indicating that Unbilled Revenue and Receivables, Notes and equity transactions may not have

been properly accounted for. Markowitz did not modify Marcum’s audit plans to respond to these red flags and contradictory evidence by, for example, expanding testing or obtaining third-party audit evidence to corroborate management representations. Accordingly, Markowitz failed to reduce audit risk to an appropriately low level.

Failure to Obtain Sufficient Appropriate Audit Evidence

42. **PCAOB AS 1105, *Audit Evidence*** provides that the auditor “must plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for his or her opinion.” It states that “[t]o be appropriate, audit evidence must be both relevant and reliable in providing support for the conclusions on which the auditor’s opinion is based.” Relevance depends on “whether [the audit procedures] is designed to (1) test the assertion or control directly and (2) test for understatement or overstatement” and the “timing of the audit procedure used to test the assertion or control.” Additionally, the “reliability of evidence depends on the nature and source of the evidence and the circumstances under which it is obtained ... Evidence obtained from a knowledgeable source that is independent of the company is more reliable than evidence obtained only from internal company sources.”

43. Furthermore, when using information produced by the company as audit evidence, the standard requires the auditor to “[t]est the accuracy and completeness of the information, or test the controls over the accuracy and completeness of that information” and [e]valuate whether the information is sufficiently precise and detailed for purposes of the audit.” Furthermore, “the auditor should perform the audit procedures necessary to resolve the matter” when “audit evidence obtained from one source is inconsistent with that obtained from another, or if the auditor has doubts about the reliability of information to be used as audit evidence.”

44. **PCAOB AS 2301, *The Auditor’s Responses to the Risks of Material Misstatement*** states that “assessed risks of material misstatement, particularly fraud risks, should involve the application of professional skepticism in gathering and evaluating audit evidence[,]” which includes “(a) modifying the planned audit procedures to obtain more reliable evidence regarding relevant assertions and (b) obtaining sufficient appropriate evidence to corroborate management’s explanations or representations concerning important matters, such as through third-party confirmation, use of a specialist engaged or employed by the auditor, or examination of documentation from independent sources.” The standard also requires the auditor to:

- a. design the audit procedures performed to “[o]btain more persuasive audit evidence the higher the auditor’s assessment of risk [and] [t]ake into account the types of potential misstatements that could result from the identified risks and the likelihood and magnitude of potential misstatement;”
- b. “perform substantive procedures for each relevant assertion of each significant account and disclosure, regardless of the assessed level of control risk;” and
- c. obtain more evidence from substantive procedures as “the assessed risk of material misstatement increases.” “Inquiry alone does not provide sufficient appropriate evidence to support a conclusion about a relevant assertion.”

45. **PCAOB AS 2310, *The Confirmation Process*** explains that the purpose of confirmation is to “obtain evidence from third parties about financial statement assertions made by management.” It provides that “[o]ral confirmations should be documented in the workpapers [and] [i]f the information in the oral confirmations is significant, the auditor should request the parties involved to submit written confirmation of the specific information directly to the auditor.” Additionally, the auditor should apply “alternative procedures” to nonresponses to “positive confirmation requests” in order “to obtain the evidence necessary to reduce audit risk to an acceptably low level.”

46. Furthermore, it states that “[c]onfirmation of accounts receivable is a generally accepted auditing procedure [and] it is generally presumed that evidence obtained from third parties will provide the auditor with higher-quality audit evidence than is typically available from within the entity.” As such, “there is a presumption that the auditor will request the confirmation of accounts receivable during an audit unless “[a]ccounts receivable are immaterial to the financial statements[,] [t]he use of confirmations would be ineffective, [or] [t]he auditor’s combined assessed level of inherent and control risk is low, and the assessed level, in conjunction with the evidence expected to be provided by analytical procedures or other substantive tests of details, is sufficient to reduce audit risk to an acceptably low level for the applicable financial statement assertions.”

47. The standard explains that “[i]n many situations, both confirmation of accounts receivable and other substantive tests of details are necessary to reduce audit risk to an acceptably low level for the applicable financial statement assertions.” “An auditor who has not requested confirmations in the examination of accounts receivable should document how he or she overcame this presumption.”

48. **PCAOB AS 2805, *Management Representations*** states that representations from management “are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit.” “If a representation made by management is contradicted by other audit evidence, the auditor should investigate the circumstances and consider the reliability of the representation made. Based on the circumstances, the auditor should consider whether his or her reliance on management’s representations relating to other aspects of the financial statements is appropriate and justified.”

49. During the Audits, Markowitz learned of significant red flags and inconsistencies that necessitated him to exercise a heightened level of professional skepticism and expand the level and extent of audit procedures performed. Examples include:

- In 2017, the testing performed on Unbilled Receivables solely relied on internal FTE documents as opposed to third-party documentation such as independent confirmation from the customer.
- In 2016, Markowitz identified testing exceptions within sampled items of Unbilled Receivables and several instances where Unbilled Receivables were unsupported. Further, in 2017, Markowitz identified that Miscellaneous Receivables were unsupported. Despite this, in each instance, Markowitz did not perform additional procedures in the face of insufficient audit evidence.

- In 2017, Markowitz’s repeated requests to FTE for documentation to support the Notes and certain equity transactions went unanswered. Despite contradictory evidence, he relied on management representations that the Notes did not contain Convertible Features and that the equity transactions were unrelated. Moreover, he did not obtain any evidence to corroborate these representations.

50. As a result, Markowitz failed to obtain sufficient appropriate audit evidence, as required by PCAOB standards, during the Audits of FTE’s financial statements.

Failure to Evaluate Audit Results

51. **PCAOB AS 2810, Evaluating Audit Results** provides that “the auditor should take into account all relevant audit evidence, regardless of whether it appears to corroborate or to contradict the assertions in the financial statements[,] when forming an opinion on whether the financial statements are presented fairly, in all material respects, in conformity with the applicable financial reporting framework. Additionally, “the auditor should evaluate whether the accumulated results of auditing procedures and other observations affect the assessment of the fraud risks made throughout the audit and whether the audit procedures need to be modified to respond to those risks.” The auditor should consider the following factors when determining whether “sufficient appropriate audit evidence” has been obtained:

- a. “[t]he significance of uncorrected misstatements and the likelihood of their having a material effect, individually or in combination, on the financial statements;”
- b. “[t]he results of audit procedures performed in the audit of financial statements, including whether the evidence obtained supports or contradicts management’s assertions and whether such audit procedures identified specific instances of fraud;”
- c. “[t]he auditor’s risk assessments;” and
- d. “[t]he appropriateness (*i.e.*, the relevance and reliability) of the audit evidence obtained.”

52. If the following matters are identified during the audit, the auditor should take into account “[c]onflicting or missing evidence, including: [m]issing documents” and “[p]roblematic or unusual relationships between the auditor and management,” including “[u]nusual delays by management in providing requested information.”

53. Markowitz failed properly to evaluate audit results. During the Audits, FTE repeatedly failed to provide copies of the Notes and support for certain equity transactions, as well as sufficient audit evidence to support the Unbilled Revenue and Unbilled Receivables. Throughout the Audits, Markowitz did not consider conflicting audit evidence when evaluating audit results. For example, despite written representations in board meeting minutes, board resolutions, and transfer agent instructions that FTE issued convertible notes, Markowitz accepted management representations that there were no such Notes, even when FTE did not produce copies of the Notes.

54. As a result, Markowitz failed properly to evaluate audit results, which was required by PCAOB standards, during the Audits of FTE's financial statements.

Marcum's Inaccurate Audit Reports

55. Despite Markowitz's multiple departures from PCAOB auditing standards, as described above, Marcum, through Markowitz, issued audit reports that contained unqualified opinions on FTE's 2016 and 2017 financial statements. Those reports contained Marcum's opinion that FTE's financial statements presented fairly, in all material respects, the company's financial position and results of operations in conformity with GAAP, and Marcum's representation that its audits were conducted in accordance with PCAOB audit standards.

56. As the lead engagement partner on the audits, Markowitz approved the issuance of these audit reports. Markowitz knew that FTE would file Marcum's audit reports with the Commission with FTE's Forms 10-K. Markowitz caused Marcum's audit reports to inaccurately state that the audits were conducted in accordance with PCAOB audit standards.

E. VIOLATIONS

57. As a result of the conduct described above, Markowitz engaged in improper professional conduct within the meaning of Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice. Section 4C(a)(2) and Rule 102(e)(1)(ii) provide, in pertinent part, that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to any person who is found by the Commission to have engaged in improper professional conduct. With respect to persons licensed to practice as accountants, "improper professional conduct" includes "[r]epeated instances of unreasonable conduct, each resulting in violations of applicable professional standards, that indicate a lack of competence to practice before the Commission." *See* Rule 102(e)(1)(iv)(B)(2). As discussed above, Markowitz engaged in repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards.

58. Rule 2-02(b)(1) of Regulation S-X requires an accountant's report to state "the applicable professional standards under which the audit was conducted." 17 C.F.R. § 210.2-02(b)(1). For audits of fiscal years 2016 and 2017, Rule 2-02(b)(1) similarly mandated that an accountant's report "state whether the audit was made in accordance with accepted auditing standards...." An auditor violates Rule 2-02(b)(1) if it issues a report stating it has conducted its audit in accordance with the PCAOB standards when it has not. As a result of the conduct described above, Marcum violated and Markowitz caused Marcum's violations of Rule 2-02(b)(1) of Regulation S-X.

III.

In view of the allegations made by the Division of Enforcement and the Office of the Chief Accountant, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 4C(a) of the Exchange Act and Rule 102(e) of the Commission's Rules of Practice; and

C. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Rule 2-02(b)(1) of Regulation S-X and whether Respondent should be ordered to pay a civil penalty pursuant to Sections 21B(a) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing before the Commission for the purposes of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed by further order of the Commission, pursuant to Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b).

IT IS FURTHER ORDERED that the Division of Enforcement and Respondent shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If any Respondent fails to file the directed Answer, or fails to appear at a hearing or conference after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent by any means permitted by the Commission's Rules of Practice.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to service of paper copies, service to the Division of Enforcement of all opinions, orders, and decisions described in Rule 141, 17 C.F.R. § 201.141, and all papers described in Rule 150(a), 17 C.F.R. §

201.150(a), in these proceedings shall be by email to the attorneys who enter an appearance on behalf of the Division, and not by paper service.

Attention is called to Rule 151(a), (b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(a), (b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed electronically in administrative proceedings using the Commission's Electronic Filings in Administrative Proceedings (eFAP) system access through the Commission's website, www.sec.gov, at <http://www.sec.gov/eFAP>. Respondent also must serve and accept service of documents electronically. All motions, objections, or applications will be decided by the Commission.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission. This proceeding shall be deemed to be one under the 120-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) The completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) The completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) The determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Vanessa A. Countryman
Secretary