

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10636 / May 3, 2019

SECURITIES EXCHANGE ACT OF 1934
Release No. 85767 / May 3, 2019

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4045 / May 3, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19156

In the Matter of

**GT ADVANCED
TECHNOLOGIES INC.,**

Respondent.

**ORDER INSTITUTING CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A
OF THE SECURITIES ACT OF
1933 AND SECTION 21C OF
THE SECURITIES EXCHANGE
ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against GT Advanced Technologies Inc. (“GT” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of

the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order, and Respondent’s Offer, the Commission finds¹ that:

Summary

1. This matter involves accounting misconduct and material misrepresentations by GT Advanced Technologies Inc. (“GT”) in connection the company’s second quarter Forms 10-Q for 2014 concerning a supply contract and debt agreement that GT entered into with Apple, Inc. (“Apple”) in October 2013. The supply agreement required GT to manufacture large scale “sapphire glass” for use by Apple as cover screens for its next generation iPhone in a facility leased from Apple. The debt agreement required Apple to advance to GT \$578 million in four installments with each installment payment being contingent on GT meeting certain quality and quantity milestones. Further, GT was to repay the debt to Apple by delivering sapphire glass. The relationship with Apple was extremely high profile for the company, material to GT’s revenue and reported liabilities and how its stock was valued, and closely followed by analysts.

2. By April 25, 2014, GT’s CEO, Thomas Gutierrez (“Gutierrez”), and other officials were aware that GT failed to meet the required quantity, quality, and delivery standards, including a “fourth milestone” in the debt agreement. GT knew that Apple had withheld its fourth installment payment of \$139 million due to that failure. In connection with quarterly filing for the first quarter 2014, GT failed to disclose its performance failures under the contracts, resulting in Apple not making the fourth milestone payment. The company’s failure to meet the fourth milestone gave Apple the right to call back \$306 million in GT’s debt from the prior installments and, by the second quarter 2014, would have required GT to recognize the debt as current and not long-term debt. The “current” debt reclassification would have had an immediate, material impact on GT’s liquidity and status as a going concern. Had GT properly classified the Apple debt as current, its current liabilities would have increased from \$393.5 million to \$700.2 million. The accelerated repayment obligation of \$306.7 million would have affected GT’s liquidity and status as a going concern because GT’s second quarter working capital was only \$155.6 million. For the second quarter, the misclassification of the Apple debt caused GT to overstate working capital by \$306.7 million, or by 200%, and to understate current liabilities by \$306.7 million or 43%.

3. In order to avoid recognizing the debt as current, GT, without reasonable basis, formed a position that Apple was in breach of a lease agreement covering a facility used to produce sapphire and, as a result of Apple’s purported breach, GT was released from its performance and milestone obligations to Apple under the debt agreement. In the view of GT, under these

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

circumstances, Apple could no longer call back the debt, allowing the company to continue to classify the debt as long-term.

4. During an August 5, 2014 earnings call in connection with GT's quarterly financial reporting for its second quarter, Gutierrez represented on the call that GT expected to hit performance targets and receive the fourth installment payment from Apple by October 2014. The statement was misleading and created a false impression regarding the relationship between the parties and GT's performance under the contract. Gutierrez failed to disclose to investors or Apple that GT had taken the internal position that Apple breached the lease and considered itself excused from performing under the debt agreement. This position severely jeopardized, if not eliminated, any reasonable expectation by GT that Apple would pay the fourth installment payment. In addition, prior to the earnings call, neither Gutierrez nor the company disclosed that GT had missed the fourth milestone in April, and continued in a state of failed performance in the months that had elapsed. Apple also had not agreed to pay GT the fourth installment payment.

5. In connection with GT's disclosure of sources of cash, liquidity, backlog, and EPS projections, GT included unsupported sales projections for sales of sapphire glass furnaces. The projections assumed future sales despite several indications to GT that these sales were unrealistic, including that Apple refused to authorize the sales and that GT's prospective customers were unable to commit to purchase orders.

6. Within eight weeks of the second quarter filing and earnings calls, GT filed for bankruptcy under Chapter 11 of the Bankruptcy Code, resulting in significant investor harm.

Respondent

7. **GT Advanced Technologies Inc.**, during the relevant period, was a New Hampshire-based diversified technology company that provided crystal growth equipment and services for the global, solar, LED and electronics industries. GT's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and its shares were listed on the NASDAQ until they were removed from listing on December 11, 2014. As of June 28, 2014, there were approximately 138 million shares of common stock outstanding with a total market capitalization of approximately \$434 million. On October 6, 2014, GT filed for reorganization under Chapter 11 of the Bankruptcy Code. GT continued its operations during the bankruptcy proceedings and exited the bankruptcy pursuant to a court-approved plan on March 17, 2016, in which all equity interests were extinguished. GT Advanced Technologies Inc. is privately-held with new officers and directors, and is owned by former senior debt holders and new investors. Currently, the company provides polysilicon and crystal growth technologies, and produces crystal materials.

Facts

8. On October 31, 2013, GT entered into multiple agreements with Apple and parties related to Apple, including a Statement of Work ("supply agreement"), Prepayment Agreement ("debt agreement"), and Lease Agreement ("lease agreement"). Gutierrez, with other GT executives, negotiated the contracts.

9. The agreements required GT to operate 2,090 “Advanced Sapphire Furnaces” (“ASF furnaces”) with capability to produce 262kg sapphire “boules,” or a synthetic cylindrical mass of sapphire grown in a furnace, to supply a minimum of 56 million millimeters of sapphire in 2014. The contracts with Apple required production of an unprecedented amount of sapphire in boules that were over twice the size of boules GT had previously produced. Given the magnitude of the production obligations and high profile counter-party, the Apple contract was a game-changing event for GT.

10. To accommodate the scale of sapphire manufacturing, Apple leased a facility in Arizona, known as the “Mesa facility” to GT pursuant to a lease agreement.

11. The parties also signed a supply contract, which specified the amounts of sapphire GT was to produce, and the price Apple would pay for it. The supply agreement also contained an exclusivity provision that limited GT’s future ASF furnace sales to customers already in its backlog or customers that did not produce sapphire glass for consumer devices, which could be deemed Apple’s competitors.

12. The debt agreement required GT to achieve certain technical quality and quantity metrics in order to receive each of four prepayments from Apple. Each milestone required GT to produce 262kg boules that contained increasing percentages of material suitable for use by Apple. In exchange, Apple agreed to pay GT \$578 million in four installments, or “prepayments,” based upon GT reaching each of the four milestones. The debt agreement also required GT to: repay prepayments through the delivery of sapphire beginning in 2015; use Apple’s prepayments to purchase 2,036 ASF furnaces to be used at an Arizona facility; and retrofit 54 ASF furnaces to be used in a facility that GT already maintained in Massachusetts.

13. Significantly, the debt agreement provided Apple the right to cancel future milestone prepayments and accelerate GT’s repayment obligations on already-received amounts if GT failed to meet any technical quality and quantity milestone.

Apple’s Installment Payments to GT

14. On November 15, 2013, Apple made the first milestone payment to GT which was due fifteen days after contract signing and did not have any associated milestone requirements.

15. By December 2013, just weeks after execution of the debt agreement, GT could not meet the second milestone requirement, causing Apple to withhold its second prepayment that was due on December 30, 2013 until January 23, 2014.

16. As of that time, Apple had not completed, by the contractual deadline, the first phase of construction of the Mesa Arizona manufacturing facility, which impacted GT’s ability to achieve the second milestone requirements by the original deadline. The parties, however, agreed to amend the debt agreement to loosen some restrictions and provide GT a better chance of meeting its future milestone requirements, including by providing GT more time to meet the third milestone and leniency with regard to producing usable sapphire. GT never disclosed the amendment to the debt agreement, dated January 23, 2014, in a Form 8-K or in any periodic filing.

17. The successful growth of a sapphire boule required a constant supply of electrical power and a carefully regulated flow of cooling water at precise moments in the boule growth process. A failure in the supply of electrical power or cooling water could destroy some or all of the sapphire boules then in the growth process. In the first two quarters of 2014, interruptions in the supply of power and water, referred to as “facilities events,” unexpectedly occurred on some occasions, which destroyed sapphire boules that were then in the growth process.

18. On April 3, 2014, Apple paid the third installment. As to the fourth installment of \$139 million, GT had a deadline of April 25, 2014 to meet the milestone requirements.

19. As the April 25th deadline approached and then passed, GT failed to meet the fourth milestone requirements. In connection with its first quarter Form 10-Q filing, GT failed to disclose its failure to meet the performance requirements by the April 25th deadline and that Apple had not made the fourth payment as a result.

20. Apple, in fact, never made the \$139 million payment or provided GT with a waiver of the obligation to meet the fourth milestone. Further, although the parties discussed the possibility of an amendment to the fourth milestone requirement, the terms for an amended agreement were never agreed upon and the parties never executed a second amendment to the debt agreement.

GT’s Failure to Meet Obligations Under the Contract

21. From nearly the start of the contract, GT was unable to meet required delivery and quality standards under the contract. Among other problems, GT had difficulty scaling the sapphire “recipe” to produce 262 kg boules, and experienced quality problems, including cracks, structural, and cosmetic defects that caused the material to fail to comport with Apple’s specifications. Gutierrez received regular reports concerning the sapphire project and received board materials detailing GT’s failure to scale the sapphire “recipe” to produce larger boules while maintaining quality standards suitable for use by Apple. As reflected in a document presented to GT’s board on January 16, 2014, for example, Apple was “alarmed” that 75% of GT’s boules were cracked.

22. GT also experienced cooling water and power interruptions at the facility. On February 23, 2014 and March 8, 2014, process cooling water interruptions took place, damaging boules that were then in production. Power interruptions occurred on April 22, 2014, and July 22, 2014, which similarly damaged boules that were in production. Gutierrez knew about the power and water interruptions.

23. In May 2014, an Apple supply executive warned Gutierrez by text that the low quantity of sapphire produced was a “major problem.” By June, the Apple supply executive emailed Gutierrez that he had “extremely limited confidence” that GT could produce even 33 million millimeters of sapphire in 2014 “based on GT’s inability to date to track factory performance” and that GT’s “de-commitments have to stop.”

24. Given the production difficulties, throughout 2014, GT continually revised its sapphire production projections downward. By June 3, 2014, as reflected in an internal supply review shared with Gutierrez, GT could not meet its contractual obligation to produce 56 million millimeters of sapphire in 2014. In July, Apple had expressly advised Gutierrez that, due to the production failures, Apple would not use sapphire glass for its iPhone 6 launch.

25. By July, as reflected in emails, GT's Chief Technology Officer informed Gutierrez that it would take at least six months from the summer of 2014 (January 2015 at the earliest) to fix the known problems and produce over 200kg boules of acceptable quality to meet the fourth milestone requirements set forth in the January amendment to the debt agreement. As a result, in the summer of 2014, GT experienced cash flow problems from its inability to achieve the milestones under the agreement.

26. At the end of July, Gutierrez requested that Apple to make the fourth installment payment notwithstanding the performance problems, but Apple rejected the request.

27. Failing to meet the fourth milestone provided Apple with the ability to accelerate the debt repayment requiring GT to pay back to Apple the installment payments.

GT's Internal Position that Apple was in Breach

28. On August 7, 2014, GT filed its second quarter 2014 form 10-Q. In the filing, GT did not disclose that it had failed to meet supply and delivery obligations to Apple.

29. The debt agreement clearly stated that “[i]f [GT] has not met the technology specifications ...to this Agreement by the deadlines [set forth in this Agreement] Apple shall be entitled to cancel any subsequent Milestone Payment and to receive repayment within five (5) Business Days of all or a portion of all previous Milestone Payments.”

30. Under GAAP, GT treated Apple's installment payments as debt, including classifying 87.5% as long-term debt and 12.5% as short term. At the end of the first quarter 2014, GT classified \$16.8 million as current debt and \$246.2 million as non-current debt and at the end of the second quarter 2014, GT classified \$43.9 million as current debt and \$306.7 million as non-current debt.

31. By failing to comply with the fourth milestone prepayment metrics before the end of the second quarter, GT violated the debt agreement. Under FASB Accounting Standards Board Accounting Standards Codification 470 (“ASC 470”), given GT's violation of the debt agreement, GT was required to record the debt as a current liability, unless Apple waived the repayment for more than a year, or Apple granted a grace period during which GT determined that it was probable that it would cure the violation.

32. As early as January 2014, GT was on notice that its ASC 470 obligation turned on whether Apple had the mere “ability” to call the debt, regardless of whether Apple, in fact, exercised that right. As reflected in a January 18, 2014 email, GT's CFO at the time expressly stated “[t]he accounting treatment on debt classification is not dictated by their declaration of default, its (sic) if we determine they have the ability to issue such a default notice.” (Emphasis in

the original). GT never sought a waiver from Apple, let alone obtained an actual waiver, and Apple never modified its right to be repaid.

33. During the second quarter, but prior to the filing of the Form 10-Q, GT's external auditor was concerned that GT's failure to achieve the fourth milestone constituted a violation of the debt covenant and gave Apple the ability to call back GT's debt from the prepayments. As a result, GT's auditor looked at whether GT's continued classification of the debt as long term comported with GAAP. Had GT classified the prior Apple payments as current debt, this would have had an immediate, material impact on its liquidity and status as a going concern because Apple would have the right to call back \$306 million in debt from the prior payments that GT owed. In determining whether GT had to classify the debt as current or continue to record it as long-term, GT's external auditor discussed GT approaching Apple for a waiver, and discussed the following language: "Apple waives all its rights under the Prepayment Agreement to require repayment of Milestone Payments previously paid to GT based on GT not meeting the Milestones as described in the January 17, 2014 Amendment to the Prepayment Agreement." Similarly, GT's then CFO encouraged Gutierrez to directly approach Apple and seek a waiver. However, in a June 18th email to Gutierrez, GT's then Chief Operating Officer advised him that "this is an issue of how we deal with [the external auditor] and [the CFO] learning how to keep him in a box."

34. As a result of GT's failure to obtain a waiver, GT's General Counsel, drafted an opinion shared with GT's auditor that reflected that GT's failure to meet the fourth milestone prepayment metrics did not cause acceleration of the prepayment debt. Instead, GT formulated an "approach" that avoided the classification of the debt as current by taking the position that Apple was in breach of the contract.

35. On July 7, 2014, Gutierrez requested by email that Apple confirm that the parties were "postponing establishing revised criteria for the 4th milestone until Q4." Apple responded the following day, stating: "Correct: we are postponing our discussions with respect to the 4th prepayment milestone." GT sent this exchange to its external auditor. Gutierrez, however, did not send to Apple the language respecting waiver that GT's CFO had proposed.

36. Without being able to provide evidence of a waiver from Apple, GT formed a position that Apple was in breach of a lease agreement because, in GT's view, Apple had not met certain power and water specifications in the lease, and, as a result, GT was released from its obligations to meet the performance milestones under the debt agreement and could not be deemed to have violated the debt covenant. On the basis of this new position, GT continued to record the debt as long-term.

37. As GT knew or should have known, the letter was not supported by facts known to the company at the time and, thus, its debt was improperly recorded as long-term debt. Specifically, the project reports reflected that the parties had resolved the electrical and water design issues by May 2014, but GT did not disclose this fact to its auditor. Moreover, GT took the position that Apple was in breach without providing Apple with notice of the breach, which was a requirement under the lease.

38. Further, the debt agreement conditioned Apple's earlier installment payments on GT's acknowledgement that Apple was not in breach of the lease. The agreement expressly states that at the time of each installment payment, the parties agree that "there are no ongoing disputes under the Facility Lease Agreement which have a material impact on the use of the manufacturing facility to be located in Mesa, AZ that Apple is purchasing and developing (the "*Mesa Facility*") for its intended purpose." Thus, GT knew or should have known that its position that Apple was in breach was inconsistent with the terms upon which GT received three prior installment payments from Apple.

39. Gutierrez was aware of GT's position that Apple was in breach of the lease agreement. Gutierrez was also aware that GT did not disclose this view to GT's investors.

40. GT failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that its debt classification complied with GAAP.

41. Had GT properly classified and recorded the Apple debt as current, its current liabilities would have increased from \$393.5 million to \$700.2 million. The accelerated repayment obligation of \$306.7 million would have affected GT's liquidity and status as a going concern because GT's second quarter working capital was only \$155.6 million. For the second quarter, the misclassification of the Apple debt caused GT to overstate working capital by \$306.7 million, or by 200%, and to understate current liabilities by \$306.7 million or 43%.

GT's False and Misleading Second Quarter Earnings Calls and Filing

42. On August 5, Gutierrez as the CEO, held an analyst call, disclosing that GT expected Apple to pay the fourth installment by October 2014. Specifically, Gutierrez stated on the call that: "[t]he fourth prepayment from Apple is contingent upon the achievement of certain operational targets by GT. GT expects to hit these targets and receive the final \$139 million prepayment by the end of October 2014." On August 13, Gutierrez held another analyst call where he similarly stated that "[w]e have indicated that we expect our final payment in the October time frame. I wouldn't say that if I didn't believe it and my conviction in terms of the long-term importance of the business to GT remains intact."

43. In the days prior to the second quarter filing, Gutierrez sent Apple a draft of various proposed second quarter disclosures, including proposed disclosure for GT's second quarter earnings release, which stated "[t]he 4th and final prepayment from Apple, which is tied to achievement of certain operational targets, under GT's control in Mesa, is now expected to be paid in the September/October timeframe." In response, on August 1, 2014, Apple informed Gutierrez and two other GT officials that the disclosure was "Not ok" and that the disclosure was "ambiguous about whether it is GT's or Apple's expectation to pay it in that time-frame." Apple further requested that GT rephrase the disclosure "to something like 'GT expects to [meet those targets] [receive the prepayment] in the September/October timeframe' ... not 'is now expected to be paid'."

44. During this email exchange or any subsequent communication, GT and Gutierrez did not raise with Apple that GT took the position that Apple breached the lease agreement, which

excused GT from performing under the contracts, including meeting the fourth milestone of the debt agreement.

45. GT's disclosure on the earnings call, through its CEO, was misleading and false given that the public was unaware that GT took the position that Apple was in breach (and thus GT was released from its obligations) and painted a misleading picture of GT's relationship with Apple and GT's performance under the contract. This position severely jeopardized any reasonable expectation by GT that Apple would pay the fourth installment payment. In this regard, under the contract terms, Apple could refuse to pay GT if there were lease disputes. In addition, GT's expectation of receiving the fourth payment was undermined by its repeated failure to meet performance milestones. At a minimum, the breach position called into question whether either party had *any* ongoing obligations under the contract.

46. GT disclosed in the Form 10-Q for the second quarter of 2014 that: "We have not received the fourth prepayment amount under the Prepayment Agreement and there can be no guarantee that we will satisfy the technical and performance metrics necessary to receive such prepayment amount in the near future, or at all." Gutierrez's statements on the earnings call, however, were inconsistent with facts known to GT, including that: GT had already missed the April 25 milestone date and remained in a state of failed performance on production of sapphire glass for over three months by the time of the call; GT's failures could not be rectified until January 2015 at the earliest; and the parties had not determined the terms of a future amendment or executed an amendment.

47. Apple was concerned that GT's statement on the earnings call was misleading and inconsistent with GT's deficient performance under the contract. For example, in an internal Apple exchange, the senior-most Apple executive overseeing the GT contract stated to his colleagues: "I feel like we got sold a bit of a story by Tom [Gutierrez]. It was all doom and gloom when he talked to us and how he needed our help to stay alive, then he ups his earnings guidance for the year on the call." The Apple supply executive responded "I am concerned about his earnings (the message was too positive)."

48. GT's statement on the earnings call concerning the fourth installment payment was material. Several analysts who covered GT's stock, for example, noted GT's expectation that Apple would make the fourth installment payment as a positive development.

49. In its Form 10-Q for the second quarter 2014, GT also failed to disclose additional material facts that would have been material to investors, especially in light of the misleading statements on the earnings calls. These include: (a) the nature and extent of its sapphire manufacturing difficulties; (b) the lack of progress against its supply commitment; (c) GT's failure to meet the fourth milestone and ability to cure the situation for several months past the April deadline; (d) the debt agreement had been already amended once due to GT's failure to meet the second milestone; (e) GT had not met sapphire and supply and delivery obligations; and (f) power failures represented not just a material risk, but a material event that had actually occurred.

GT's Second Quarter Liquidity, Backlog, and 2014 EPS Estimate

50. In connection with the second quarter Form 10-Q filing, GT's external auditor became concerned about GT's cash flow, and for the first time, requested a liquidity analysis. In addition, GT held debenture notes that included a covenant for default for inability to pay \$100 million in indebtedness. If GT defaulted on the Apple debt, the company faced significant risk of cross-defaults under these debenture notes.

51. In response, GT, provided the external auditor with a liquidity analysis that included inaccurate assumptions concerning its ability to sell: (1) \$275 million in ASF furnaces to non-Apple customers; and (2) 25 million millimeters of sapphire to Apple for \$232 million. These assumptions would result in GT ending the year with a cash balance of between \$267 million and \$424 million.

52. GT relied in large part on Gutierrez's internal projections that GT could achieve its 2014 ASF sales goals by selling in the second half of the year either 450 ASF's to two Apple suppliers or to a Taiwanese company. Based on the unsupported liquidity analysis, GT disclosed in its second quarter Form 10-Q that it had "sufficient" cash to satisfy its commitments and requirements for the next twelve months. Gutierrez's projected furnace sales also provided, in part, the basis for GT's non-GAAP EPS guidance estimate of \$0.12-\$0.18 to be misleading as disclosed in its second quarter earnings release attached to Form 8-K.

53. GT's projections incorporated in GT's liquidity analysis were unsupported, unduly optimistic, and without reasonable basis. GT relied on these projections to assess revenue of approximately \$236 million and to maintain its books and records.

54. As to the potential sales to the two Apple suppliers, Apple had offered on July 30, 2014, to "approach [two of its suppliers] with an offer to purchase 450 furnaces for their facilities" to be "exclusively used for Apple projects." Prior to the August 5, 2014 earnings call, Apple had only given to Gutierrez the names of the sales contacts and informed him they had both been told that "Apple is interested in [the two suppliers] expanding their sapphire growth capacity to reduce parts pricing." At the time of the filing, GT representatives had not yet met with either of the two suppliers. Communications with the suppliers never advanced to the stage of completing non-disclosure agreements, a necessary first step for any negotiations.

55. As to the potential sale of 447 ASF to the Taiwanese customer, GT made the representations despite the fact that these projected sales would violate the exclusivity provisions of the Apple agreements with Apple and GT did not have permission from Apple to close on these sales. As reflected in an August 3, 2014 email from Apple to Gutierrez, Apple specifically declined to give permission to GT to sell furnaces to a potentially new customer in Taiwan, stating "Tom, we are not going to waive the terms for the 983 [the total backlog] furnaces."

56. GT knew or should have known that the market for ASF furnaces was limited. GT received industry analysis reflecting that demand for ASF furnaces was based on Apple using GT's sapphire glass in its iPhone screens. By the time of the liquidity analysis, GT was aware that

Apple would not announce an iPhone with a sapphire screen in September 2014 and, thus, market participants would have little interest in new ASF furnace purchases.

57. In July, at Gutierrez's direction, GT increased the forecasted ASF furnace sales from its original internal estimate of \$130 million to \$275 million, despite red flags indicating that the forecasts were unrealistic. In this regard, ASF furnace customers presented limited sales opportunities and discussions with potential Apple suppliers had not begun. In fact, Gutierrez acknowledged in a July 30, 2014 email to Apple that five of GT's six ASF furnace "backlog" customers (that were in its pipeline at the time the Apple contract was executed) lacked the capacity to purchase furnaces in 2014. The remaining client's interest represented only about \$65 million in potential sales.

58. GT's cash analysis included the assumption that GT would receive the fourth installment, despite Apple never providing such assurances and contrary to the legal opinion drafted by its General Counsel. As a result of these unsupported assumptions, in its second quarter 2014 Form 10-Q, GT inaccurately stated that "existing cash, customer deposits and prepayment installment proceeds will be sufficient to satisfy working capital requirements, commitments for capital expenditures and other cash requirements for at least the next twelve months," and "[GT] will have sufficient cash resources to fund operations for at least the next twelve months."

59. Based on these unsupported assumptions, GT also overstated sapphire equipment (ASF furnaces) backlog in its second quarter 2014 Form 10-Q and earnings release, attached to Form 8-K. Most of the agreements in backlog were over 18 months old. Although GT had sales agreements with the backlog customers, it did not have an expectation of delivering furnaces to them in the second half of 2014. Although GT's second quarter 2014 Form 10-Q stated that "our order backlog as of any particular date should not be relied upon as indicative of our revenues for any future period," analysts typically regard it as an indication of the company's sales prospects. GT's backlog disclosure was material given that several analysts covering GT's stock specifically referenced the backlog disclosure as a positive factor.

60. On October 6, 2014, two months after filing its second quarter 2014 Form 10-Q, GT filed voluntary petitions for reorganization under Chapter 11 and filed a Form 8-K in which the company stated that as of September 29, 2014 it had approximately \$85 million of cash compared to \$333 million of cash at June 28, 2014.

The Offer and Sale of Securities

61. During the relevant time, GT offered and sold securities pursuant to a Form S-8 the Company filed on April 20, 2012. During fiscal year 2014, GT received payment from stock option exercises as a result of exercises and sales of stock by GT employees. GT's Form S-8 filed in 2012 incorporated by reference GT's subsequent periodic filings under the Exchange Act, including the quarterly and current filings during fiscal year 2014.

Violations

62. As a result of the conduct above, GT violated Sections 17(a)(2) of the Securities Act, which makes it unlawful, in the offer or sale of securities, to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and 17(a)(3) of the Securities Act, which, in the offer or sale of securities, proscribes any transaction, practice or course of business which operates or would operate as a fraud or deceit upon a purchaser of securities.

63. As a result of the conduct described above, GT violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11, and 13a-13 thereunder, which requires issuers to file with the Commission accurate current reports, which include such further information as may be necessary to make the required statements not misleading.

64. As a result of the conduct described above, GT violated Section 13(b)(2)(A) of the Exchange Act, which requires issuers to “make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer” and Section 13(b)(2)(B) of the Exchange Act, which requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded to permit the preparation of financial statements in conformity with generally accepted accounting principles.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent’s Offer.

Accordingly, it is hereby ORDERED that:

Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act and Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-11, and 13a-13 thereunder.

By the Commission.

Vanessa A. Countryman
Acting Secretary