

STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE
25 CAPITOL STREET
CONCORD, NH 03301

CONSENT ORDER
IN THE MATTER OF:

THOMAS GUTIERREZ
INV2014-00040

I. For purposes of settling the above-referenced matter and in lieu of further administrative proceedings, Thomas Gutierrez (hereinafter referred to as "Respondent") has submitted an offer of settlement, which the Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as "the Bureau") has determined to accept. Accordingly, and without admitting or denying the allegations herein, Respondent does hereby consent to the entry of this Consent Order as set forth below:

II. **STATEMENT OF FACTS**

1. GT Advanced Technologies, Inc. (hereinafter referred to as "GTAT") is a technology based company primarily engaged in the manufacturing of crystal and sapphire materials used in the electronics industry. Prior to filing for bankruptcy protection in October 2014, GTAT was primarily engaged in the manufacture of equipment that produced silicon and sapphire for use in the photovoltaic and electronics industry and was located in Merrimack, New Hampshire. GTAT is now located in Hudson, New Hampshire. During 2013 through 2014, (hereinafter the "relevant time period"), one of GTAT's primary products produced was the ASF (Advanced Sapphire Furnace), and GTAT was a leader globally in that industry. The ASF was used to produce sapphire by growing boules from sapphire seed materials at very high temperature. The boules would be cooled and then cut into bricks to be shipped for manufacturing into component parts for products such as cameras and screens. Leading up to the relevant time period, demand for the ASF began to decline and Respondent was looking for opportunities to grow business and to enter new markets. In 2013, GTAT lead by the Respondent in his capacity as Chief Executive Officer began marketing the idea of producing sapphire for cell phone screens. Sapphire is the second hardest substance on earth and sapphire could advance cell phone technology greatly by introducing an unbreakable cell phone screen. GTAT introduced their idea to Apple, Inc. (hereinafter "Apple"), one of the largest producers of cell phones globally.

Beginning in 2013, Respondent began negotiations with Apple to produce sapphire in large quantities for installation in a potential iPhone launch in the fall of 2014. On October 31st, 2013, GTAT and Apple reached terms contained in a series of contracts to produce 56 million millimeters of sapphire in 2014.

2. The Apple agreements were a series of contracts with GTAT that establish the terms of the deal with Apple. GTAT was to supply approximately 2000 ASF furnaces to be installed in a plant in Mesa, Arizona. Apple was to build and own the plant and lease it to GTAT. Pursuant to the lease agreement Apple was required to meet various contracted specifications with regard to power supply and cooling water. The Apple agreements targeted GTAT to produce 56 million millimeters of sapphire from 262 kg boules that met quality specifications established by Apple. Apple was not required to buy any of the sapphire. Apple loaned 578 million dollars to GTAT for the ASF which was to be paid back to Apple starting in the beginning of 2015. The 578 million dollars was to be paid to GTAT in four prepayments beginning in November 2013 and ending in April 2014. If GTAT failed to meet certain agreed upon milestones in the sapphire production, GTAT could be determined by Apple to be in default and Apple could call for the immediate repayment of the prepayments made up to that point. The essential terms of the Apple agreements were disclosed to the public in GTAT's Securities and Exchange Commission filings as well as risks relating to the transaction. These risks included the fact that, up to this point in time, GTAT's primary business was not the production of sapphire materials and GTAT did not have the proven ability to produce large high quality sapphire boules. Their success came in smaller boules.
3. From the outset GTAT had significant difficulty producing sapphire in the quantity and quality necessary to fulfill the contracts. Due to the size of the boule, the sapphire came out of the ASF with various defects unacceptable to Apple. The plant in Mesa experienced power failures and water cooling failures that resulted in the interruption of the growth process spoiling the boules. Although GTAT received the first prepayment in November 2013 shortly after the contracts were signed, the second and third prepayments were delayed, and the fourth prepayment of 139 million dollars due in April 2014 was withheld by Apple, but Apple agreed to renegotiate milestone terms for the payment of the 139 million dollars. In July 2014, Apple told Respondent that a planned fall launch of their iPhone with sapphire would be cancelled. Also, GTAT was under financial pressure because the fourth prepayment had not been made, there were high cost overruns occurring in Mesa getting the plant fully operational, and due to exclusivity provisions of the contracts, Apple denied attempts by Respondent to sell ASF to competitors of Apple.
4. By the spring and early summer of 2014, the relationship between GTAT and Apple over the sapphire manufacturing contracts further deteriorated. Respondent could not get Apple to agree to pay the fourth prepayment. Although Apple indicated that they would renegotiate milestone terms for the fourth prepayment,

Apple did not agree to Respondent's proposals. Respondent was unsuccessful in getting Apple to relax exclusivity provisions for the sale of ASF. Apple refused to pay for cost overruns in Mesa and refused Respondent's proposals for reduced sapphire production targets. Apple also refused to agree to pricing increases for delivery of sapphire in 2015. GTAT took the position with its internal auditors that Apple was in breach of the contracts due to the power and water cooling failures in Mesa, and therefore, GTAT's position was that it was not required to book repayment of the money they received as short term debt.

5. GTAT's stock during the relevant time period was publically traded on the NASDAQ. As a publically traded company, GTAT and Respondent were required to periodically file 10-Ks and 10-Qs with the Securities and Exchange Commission. Also, Respondent would have periodic earnings calls with analysts that followed GTAT and the Apple agreements. In 2014, Respondent in public statements, including in an August 5th, 2014 analyst call, stated that GTAT expected to meet certain operational targets, that GTAT expected to hit these targets for sapphire production and receive the 139 million prepayment by the end of October 2014. That statement was accompanied by the following statement about the fourth prepayment, which GTAT made in its Form 10-Q for its second quarter of 2014: "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." GTAT's revenue projections were based in part on receipt of the 139 million, successful manufacturing of 25 million millimeters of sapphire for Apple and the sale of ASF furnaces in 2014. GTAT failed to disclose that GTAT believed internally that Apple was in breach of the agreements. Apple had not agreed to the reduced target of 25 million millimeters of sapphire production. Payment of the 139 million by the end of October of 2014 was unlikely and realistically targets could not be reached and the prepayment made until 2015 due to delays in the manufacturing process and the inability to ramp up sapphire quantities. Projected revenues for 2014 were overstated and not supported given that GTAT had not made the fourth milestone.
6. Shareholders of GTAT were harmed when its stock lost its value when GTAT declared bankruptcy in October 2014. GTAT's shares were extinguished pursuant to a plan of reorganization order from the United States Bankruptcy Court District of New Hampshire, which was confirmed on 3/8/2016. The plan became effective 3/17/2016 and GTAT formally emerged from bankruptcy as a private company. Respondent is no longer with GTAT.

III. STATEMENT OF LAW

- I. Respondent and GTAT are "persons" within the meaning of RSA 421-B:2,XVI.

2. GTAT's shares are a "security" within the meaning of RSA 421-B:2,XX.
3. Pursuant to RSA 421-B:3, it is unlawful for any person in connection with the offer, sale, or purchase of any security, directly or indirectly, to make any untrue statement of a material fact or to omit 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. Respondent negligently violated this provision in connection with his statement that GTAT expected to receive from Apple the fourth prepayment of 139 million dollars by the end of October 2014.
4. Pursuant to RSA 421-B:22, the Secretary of State may require the payment of costs of investigation if the Respondent is found to have violated RSA 421-B.
5. Pursuant to RSA 421-B:23, whenever it appears to the Secretary of State that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule under this chapter, he shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. Respondent is subject to this section.
6. Pursuant to RSA 421-B:26,III, any person who negligently violates any provision of this chapter, may, upon hearing, and in addition to any other penalty provided by law, be subject to an administrative fine not to exceed \$2,500. Each of the acts specified shall constitute a separate violation. Respondent is subject to this provision.

IV. In view of the foregoing, the Respondent agrees to the following undertakings and sanctions:

1. Respondent agrees that he has voluntarily consented to the entry of this Consent Order and represents and avers that no employee or representative of the Bureau has made any promise, representation or threat to induce his execution.
2. Respondent agrees to waive his right to an administrative hearing and any appeal therein under this chapter.
3. Respondent agrees to cease and desist from any alleged violations of RSA 421-B.
4. Pursuant to RSA 421-B:22 and RSA 421-B:26, within 15 days of execution, Respondent agrees to pay costs in the total amount of \$45,000 (forty-five thousand) and an administrative fine of \$45,000 (forty-five thousand), total \$90,000 (ninety thousand) to the State of New Hampshire. Payment shall be made by 1) United States postal money order, check, bank cashier's check, or bank money order; 2) made payable to the State of New Hampshire; and 3) hand-

delivered or mailed to the Bureau of Securities Regulation, Department of State, State House, Room 204, Concord, New Hampshire, 03301.

5. Respondent agrees that this Consent is entered into for purpose of resolving only the matter as described herein. This Consent shall have no collateral estoppel, res judicata, evidentiary, or other legal effect in any other lawsuit, proceeding, or action, not described herein. Likewise, this Consent shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by Respondent of which the Bureau has no knowledge at the time of the date of final entry of this Agreement.
6. The Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this Consent or creating the impression that the Consent is without factual basis. However, nothing in this provision affects the Respondent's testimonial obligations or right to take contrary legal or factual positions in litigation or other legal proceedings in which the State of New Hampshire is not a party.
7. Should the Respondent not fully comply with this Consent in all its terms and conditions, the Bureau may withdraw the Consent and proceed with a formal enforcement action.

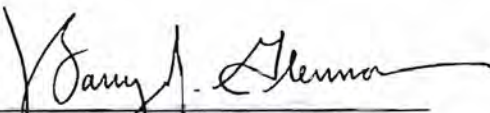
V. Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Consent. THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondent will cease and desist from any violations of the provisions of New Hampshire RSA 421-B.
2. Within 15 days of the execution of this Consent Order Respondent will pay the cost of the investigation in the amount of \$45,000 and an administrative fine of \$45,000, total \$90,000 as described herein.
3. Respondent will fully comply with the above-referenced undertakings.


Thomas Butierrez

dated: 5/1/2020

On behalf of Respondent
(Please print name, title below:)


Bureau of Securities Regulation
Barry Glennon, Director

dated: 5-4-2020