

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 96347 / November 17, 2022**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 4366 / November 17, 2022**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21241**

**In the Matter of**

**Jason Jianxun Tang, 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, MAKING  
FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A  
CEASE-AND-DESIST ORDER, AND  
NOTICE OF HEARING**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Jason Jianxun Tang, CPA (“Tang” or “Respondent”) pursuant to Sections 4C<sup>1</sup> and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.<sup>2</sup>

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<sup>1</sup> Section 4C provides, in relevant part, that:

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 issued thereunder.

<sup>2</sup> Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may . . . 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.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this 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, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order, and Notice of Hearing (“Order”), as set forth below.

## III.

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>3</sup> that:

### Summary

1. This matter involves violations of the federal securities laws and improper professional conduct by Respondent in conducting multi-year audits of two public issuers, iFresh, Inc. (“iFresh”) and Issuer A (together, the “Reporting Companies”). iFresh retained Friedman LLP (“Friedman”) to audit its financial statements for the fiscal years ended March 31, 2017 through 2020. Issuer A retained Friedman to audit its financial statements for the years ended December 31, 2016 through 2020. Tang was the audit engagement partner for the aforementioned audits.

2. Respondent failed to comply with the standards of the Public Company Accounting Oversight Board (“PCAOB”) in conducting audits of the Reporting Companies because he did not: (1) design and perform procedures adequately designed to be responsive to assessed risks; (2) perform adequate procedures to identify related party transactions; (3) obtain sufficient appropriate audit evidence; (4) sufficiently respond to fraud risks; (5) adequately document procedures performed and significant findings; (6) maintain control over the confirmation requests and responses in connection with the iFresh audit for fiscal year 2017; and (7) exercise due professional care and professional skepticism.

3. Respondent conducted the iFresh and Issuer A audits without including procedures that were adequately designed to identify related party transactions, and stated the audits had been conducted in accordance with PCAOB standards, when they had not. As a result, Respondent caused Friedman’s violations of Section 10A(a)(2) of the Exchange Act and Rule 2-02(b)(1) of Regulation S-X, and engaged in improper professional conduct within the meaning of Section 4C of the Exchange Act and under Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.

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<sup>3</sup> 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.

## Respondent

4. **Jason Jianxun Tang**, age 51, resides in Durham, North Carolina. He was a partner at Friedman until September 2022 when it merged with Marcum LLP (“Marcum”). He has been a Certified Public Accountant (“CPA”) licensed in New Jersey since 2003.

## Relevant Entities and Individuals

5. **Friedman LLP (“Friedman”)**, a limited liability partnership headquartered in New York, New York, is a public accounting firm registered with the PCAOB. Friedman merged with Marcum, a PCAOB-registered public accounting firm, on September 6, 2022.

6. **iFresh, Inc. (“iFresh”)** is a Delaware corporation headquartered in Long Island City, New York. In February 2017, iFresh and its wholly owned subsidiary, E-Compass Acquisition Corp. (“E-Compass”), a SPAC, merged with NYM Holding, Inc. (“NYM”) through a reverse merger, and became a public company. iFresh is an Asian/Chinese grocer that operates wholesale businesses and retail supermarkets across New York, Massachusetts, and Florida. iFresh’s common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is quoted on an unsolicited basis under the ticker symbol “IFMK” on OTC Link whose parent company is OTC Markets Group Inc. iFresh’s fiscal year ends on March 31, and it files periodic reports, including Form 10-K, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

7. **Issuer A** is a Delaware corporation whose common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act.

8. **Long Deng (“Deng”)**, age 54, is a resident of Roslyn, New York. Deng was the Chairman of the Board of iFresh from February 2017 until April 2022, when the Delaware Chancery Court affirmed a shareholder vote to remove him from iFresh’s board of directors. Deng was also iFresh’s Chief Executive Officer (“CEO”) and Chief Operating Officer (“COO”) from February 2017 through April 2022. Deng founded NYM in 1995 and was NYM’s CEO, COO and sole Director during the relevant time period.

## Facts

### 2017–2020 iFRESH AUDITS

#### Background

9. Friedman was first engaged to perform an audit for NYM for the fiscal years ending March 31, 2015 and 2016 in March 2016 (collectively the “2016 audit”). Friedman also performed audits for iFresh for the fiscal years ending March 31, 2017, 2018, 2019, and 2020, and issued unqualified audit reports in all of these fiscal years. The audit reports each stated that

Friedman had conducted its audits in accordance with PCAOB standards. After the review for the quarter ended June 30, 2020, iFresh dismissed Friedman as its auditor.<sup>4</sup>

10. iFresh and Deng engaged in a substantial number, and a variety of types of, related party transactions. iFresh filed year-end financial statements for the fiscal years ending March 31, 2017, 2018, 2019 and 2020 that were materially misstated because they failed to properly disclose certain material related party transactions.

11. The NYM and iFresh engagements were assigned to the China Practice Group, whose clients all have Chinese speaking management, are Chinese or Chinese-American owned, or have operations in China. Since 2010, Tang had been a partner and co-head of the China Practice Group at Friedman, until it merged with Marcum in September 2022. Tang was the engagement partner on the iFresh audit and review engagements from March 2016 through September 2020. He and members of the engagement teams were fluent in Mandarin and communicated with Deng in Mandarin.

### **Respondent Failed to Conduct the 2017 through 2020 iFresh Audits in Accordance with PCAOB Standards**

12. Respondent performed inadequate audit procedures with regard to iFresh's related party transactions. Friedman did not obtain a sufficient understanding of iFresh's relationships and transactions with its related parties as required by PCAOB Auditing Standard 2410, *Related Parties* ("AS 2410"). In connection with each of the 2017 through 2020 audits, Friedman obtained related party lists from iFresh that contained the names of at least 30, and as many as 42 entities, all of which were owned or controlled by Deng. Respondent reviewed the related party lists in connection with the audits. However, he did not sufficiently understand how the related party list was created, or whether the list was complete.

13. iFresh disclosed in its Form 10-Ks for the 2017 through 2020 fiscal years that its disclosure controls and procedures were not effective and that it lacked employees with adequate knowledge of the SEC's rules and requirements. In the Form 10-K for fiscal year 2018, iFresh reported that its internal control over financial reporting was not effective, and in the Forms 10-K for fiscal years 2019 and 2020, it reported material weaknesses related to lacking accounting personnel with sufficient knowledge of GAAP and SEC reporting experience. Despite these disclosures, Respondent did not sufficiently understand iFresh's process for identifying a related party or accounting for and disclosing relationships and transactions with related parties.<sup>5</sup>

### ***Respondent Failed to Design and Perform Procedures Responsive to Assessed Risks for the 2017 through 2020 Audits.***

14. PCAOB Auditing Standard 2301, *The Auditor's Responses to the Risks of Material Misstatement* ("AS 2301") requires that "the auditor should design and perform audit

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<sup>4</sup> iFresh filed a Form 8-K on October 6, 2020 announcing a change in auditor and that there were no disagreements with Friedman.

<sup>5</sup> See Accounting Standards Codification ("ASC") Topic 850, *Related Party Disclosures*

procedures in a manner that addresses the assessed risks of material misstatement for each relevant assertion of each significant account and disclosure” (.08). AS 2301 states that “[f]or significant risks, the auditor should perform substantive procedures, including tests of details, that are specifically responsive to the assessed risks” (.11). PCAOB Auditing Standard No. 2110, *Identifying and Assessing Risks of Material Misstatement*, states that a fraud risk is a significant risk (.71).

15. Respondent failed to perform sufficient substantive audit procedures specifically designed to be responsive to fraud risks. Related party transactions were identified as a fraud risk for the 2017 through 2020 audits. In addition, accounts receivable and revenue were identified as significant audit areas and fraud risks for all audits. Due professional care in these audit areas required Friedman to exercise professional skepticism. PCAOB Auditing Standard No. 2401, *Consideration of Fraud in a Financial Statement Audit* (.13).

16. Respondent failed to exercise professional skepticism when reviewing work papers. First, the work papers that documented the details and testing of accounts receivable and prepaid expenses and other current assets contained names included on iFresh’s related party lists. Respondent signed off as having reviewed the accounts receivable work papers in connection with the 2017 through 2020 audits, and the prepaid expenses and other current assets work papers for the 2017, 2018, and 2020 audits. Respondent did not identify the names on the work papers as related parties, so certain related party transactions were not disclosed in the financial statements.

17. Second, Respondent failed to recognize red flags that indicated undisclosed related parties. For example, schedules provided to Friedman by iFresh in connection with the 2018 through 2020 audits included names of entities that had similar names as iFresh subsidiaries, and transaction descriptions that were inconsistent with iFresh’s business.

18. Respondent also encountered numerous red flags of undisclosed related party transactions with Li Ba HVAC & Construction (“Li Ba”). Li Ba was a related party because it was owned by Deng’s brother.<sup>6</sup> In connection with the 2018 audit, Respondent was aware that Li Ba was owned by Deng’s brother. AS 2410 states the auditor should look to the requirements of the SEC and to GAAP for the definition of a related party (.01). Accounting Standards Codification Topic 850, *Related Party Disclosures* provides that related party transactions include, among other things, transactions between an entity and its principal owners, management, or members of their immediate families. ASC 850-10-05-3. Immediate family is defined as “Family members who might control or influence a principal owner or a member of management, or who might be controlled or influenced by a principal owner or a member of management, because of the family relationship.” ASC 850-10-20.

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<sup>6</sup> Li Ba was also a related party because Deng could exercise control by having signature authority over Li Ba’s bank accounts. Friedman was not aware of Deng’s signature authority.

- a. Other red flags that indicated undisclosed related party transactions with Li Ba include<sup>7</sup>: iFresh's largest receivable was from Li Ba, with long aging and little to no collection for the 2017 through 2020 audits (the aging exceeded iFresh's bad-debt policy, which required accounts receivable to be written off after 90 days);
- b. iFresh engaged in significant unusual transactions with Li Ba. Friedman's 2017 through 2020 audit files documented that iFresh sold commercial refrigeration equipment to Li Ba, which was outside the normal course of business for iFresh;
- c. Documents provided to Friedman and Friedman's workpapers indicated that Li Ba had the same address as iFresh; and
- d. Li Ba paid a legal settlement in the amount of \$652,000 on behalf of iFresh. Respondent signed off as having reviewed the settlement agreement that was saved in the 2018 audit file. The disclosure in the financial statements inaccurately stated a third party paid the settlement on iFresh's behalf. Respondent reviewed the settlement agreement but did not question *why* Li Ba paid the legal settlement or question if this payment was evidence that Deng could exercise control over Li Ba.

19. In addition, iFresh made material undisclosed payments to Li Ba for property and equipment.

20. During the fiscal year 2020 second and third quarter reviews, Respondent failed to identify red flags that indicated transactions with other undisclosed related parties. Friedman obtained agreements that showed Deng made payments totaling \$500,000 to iFresh on behalf of New York Mart White Plains, Inc. ("White Plains") to satisfy accounts receivable owed to iFresh, and another undisclosed related party, Jiutian Music Club ("Jiutian"), made capital contributions of approximately \$558,000 to iFresh on behalf of Deng. White Plains and Jiutian were related parties because Deng could exercise control by having signature authority over bank accounts and they are owned by Deng's brother. Respondent did not sufficiently question why Deng would personally pay a liability on behalf of a purportedly unrelated party and why a purportedly unrelated party would make capital contributions on behalf of Deng.

***Respondent Failed to Perform Procedures to Identify Related Party Transactions for the 2017 through 2020 Audits.***

21. Section 10A(a)(2) of the Exchange Act requires that the audit of the financial statements of an issuer by a registered public accounting firm shall include procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein.

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<sup>7</sup> Appendix A of AS 2410 provides examples of information that could indicate undisclosed related party transactions. The examples include, extended payment terms, borrowing or lending without fixed repayment terms, and contracts or agreements representing unusual transactions (.A2).

22. The guidance in AS 2410 requires the auditor to perform procedures to test the accuracy and completeness of related parties and related party transactions identified by the company, including taking into account information gathered during the audit, which could include significant unusual transactions (.14). As detailed above, the 2017 through 2020 Li Ba transactions were material, and Respondent overlooked numerous red flags indicating that there were undisclosed related party transactions.

23. AS 2410.15 states, “If the auditor identifies information that indicates that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist, the auditor should perform the procedures necessary to determine whether previously undisclosed relationships or transactions with related parties, in fact, exist. These procedures should extend beyond inquiry of management.” As detailed above, Respondent did not perform sufficient procedures designed to identify related party transactions and failed to perform procedures when confronted with information that indicated undisclosed related party transactions.

***Respondent Failed to Obtain Sufficient Appropriate Audit Evidence for the 2017 through 2020 Audits.***

24. PCAOB Auditing Standard 1105, *Audit Evidence* (“AS 1105”), requires the auditor to “plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for his or her opinion” (.04). Friedman issued audit reports in connection with the 2017 through 2020 audits that contained unqualified opinions, and Respondent approved the issuances of those audit reports. However, Respondent failed to obtain sufficient appropriate audit evidence to provide a reasonable basis for the opinions.

25. For fiscal years 2017 through 2020, iFresh disclosed in the notes to the financial statements that it had advanced funds to related entities that it intended to acquire (“Target Entities”). The disclosed amounts due from the Target Entities included balances that were assigned to the Target Entities from other entities that were owned or controlled by Deng (“Assignors”). Respondent did not obtain agreements that authorized the transfer from the Assignors to the Target Entities of all of the liabilities that were reflected in the balances due from the Target Entities in fiscal years 2017 through 2020.

26. In fiscal year 2020, iFresh disclosed in the notes to the financial statements a debt conversion agreement in which iFresh converted \$3.5 million in debt owed to Deng to 1,000 preferred shares of iFresh. Respondent failed to obtain sufficient appropriate audit evidence to support portions of the debt conversion agreement in connection with the 2020 audit. Respondent also failed to obtain sufficient evidence regarding the transactions underlying iFresh’s debts that were assigned by Deng before the debt conversion.

***Respondent Failed to Respond to Fraud Risks for the 2017 through 2020 Audits.***

27. PCAOB Auditing Standard 2401, *Consideration of Fraud in a Financial Statement Audit* (“AS 2401”) states that the auditor should design and perform procedures to obtain an understanding of the business purpose of significant unusual transactions (.66A) and

“must evaluate whether significant unusual transactions that the auditor has identified have been properly accounted for and disclosed in the financial statements” (.67A). Significant unusual transactions are defined as “outside the normal course of business for the company or that appear to be unusual due to their timing, size, or nature” (.66).

28. Respondent failed to design and to perform procedures to obtain a sufficient understanding of the following significant unusual transactions involving undisclosed related parties: 1) the sale of commercial refrigeration equipment to Li Ba and the resulting large receivable with long aging and little to no collection for the 2017 through 2020 audits; 2) a legal settlement paid by Li Ba on behalf of iFresh for the 2018 audit; 3) iFresh and Li Ba extending loans to each other for the 2019 and 2020 audits; 4) Deng’s payments to iFresh on behalf of White Plains for the 2020 audit; and 5) Jiutian’s capital contributions to iFresh on behalf of Deng for the 2020 audit.

29. Respondent failed to adequately evaluate the business purpose of the above transactions and whether there were indications of undisclosed related party transactions that would cause fraudulent financial reporting. Even when Respondent obtained supporting documentation, as discussed above, he failed to recognize red flags of undisclosed related party transactions.

***Respondent Failed to Document Procedures Performed and Significant Findings for the 2017 through 2020 Audits.***

30. AS 1215, *Audit Documentation* (“AS 1215”), states that “audit documentation must include information the auditor has identified relating to significant findings or issues that is inconsistent with or contradicts the auditor’s final conclusions” (.08). Audit documentation is “the written record of the basis for the auditor’s conclusions that provides the support for the auditor’s representations, whether those representations are contained in the auditor’s report or otherwise. Audit documentation also facilitates the planning, performance, and supervision of the engagement, and is the basis for the review of the quality of the work because it provides the reviewer with written documentation of the evidence supporting the auditor’s significant conclusions” (.02).

31. In connection with the 2017 through 2020 audits, Respondent failed to document the Assignors’ assignment of a portion of the advances and receivables due from related parties to the Target Entities (“Debt Assignments”). More specifically, Friedman’s audit work papers did not adequately document the existence of the Debt Assignments, nor did Respondent obtain the underlying agreements.

32. In connection with the 2018 through 2020 audits, Respondent failed to document that Li Ba was owned by Deng’s brother.



***Respondent Failed to Maintain Control over the Confirmation Requests and Responses for the 2017 Audit.***

33. PCAOB Auditing Standard AS 2310, *The Confirmation Process* (“AS 2310”) provides guidance about the audit confirmation process. Confirmation is the process of obtaining and evaluating a direct communication from a third party in response to a request for information about a particular item affecting financial statement assertions, including presentation and disclosure; and evaluating the information provided by the third party (AS 2310 at .04 and .11). Additionally, “The auditor should exercise an appropriate level of professional skepticism throughout the confirmation process” (.15). An auditor should maintain control over confirmation requests and responses, which means establishing direct communication between intended recipient and the auditor to minimize the possibility that the results will be biased because of interception and alteration (AS 2310 at .28).

34. In connection with the 2017 audit, Respondent failed to adhere to AS 2310. First, Respondent failed to ensure the engagement team obtained a confirmation response directly from Li Ba. Instead, the engagement team accepted an email forwarded from the iFresh Accounting Manager containing the confirmation response from Li Ba. Second, Respondent failed to evaluate the information provided on the confirmation with professional skepticism. Li Ba’s 2017 confirmation listed the same address as iFresh, an indication that it may be (and in fact was) an undisclosed related party.

***Respondent Failed to Exercise Due Professional Care for the 2017 through 2020 Audits.***

35. PCAOB Auditing Standard 1015, *Due Professional Care in the Performance of Work* (“AS 1015”), states that auditors are required to exercise due professional care throughout the audit. AS 1015 states that the “engagement partner should know, at a minimum, the relevant professional accounting and auditing standards...” (.06). Due professional care requires that the auditor exercise professional skepticism. Under this standard, “[p]rofessional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence” (.07), and auditors should “consider the competency and sufficiency of the evidence” (.08) and “neither assume[] that management is dishonest nor assume[] unquestioned honesty” (.09).

36. As a result of Respondent’s conduct described in paragraphs 12 through 34 above, Respondent failed to exercise due professional care and an attitude of professional skepticism as required by AS 1015.

**2017–2019 ISSUER A AUDITS**

**Background**

37. Friedman was first engaged in September 2017 to perform an audit of Issuer A’s financial statements for the years ending December 31, 2016 and 2017 (collectively the “2017 audit”). Friedman also performed audits of Issuer A’s financial statements for the years ending December 31, 2018, 2019, and 2020, and issued unqualified audit reports for each of those years.

Each audit report stated that Friedman had conducted its audits in accordance with PCAOB standards. Issuer A dismissed Friedman as its auditor in September 2021.<sup>8</sup>

The Issuer A engagements were assigned to Friedman's China Practice Group. Respondent served as the engagement partner for all of the Issuer A's audit and review engagements.

**Respondent Failed to Conduct the 2017 through 2019 Issuer A Audits in Accordance with PCAOB Standards**

***Respondent Failed to Obtain Sufficient Appropriate Audit Evidence Relating to the Staff Loan Program for the 2017 through 2019 Audits (AS 1105).***

38. Prior to going public, Issuer A had a multimillion dollar liability recorded on its books and records, described by Issuer A's management as a liability for a "staff loan" program. In 2017, in preparation for going public, Issuer A removed this liability from its books in a series of accounting entries which included assigning this liability to an executive of Issuer A, via the executive's loan account on Issuer A's books.

39. Issuer A reclassified amounts from the executive's loan account into a note receivable from a purportedly unrelated party on Issuer A's books, based on a claim that the note receivable related to a line of credit provided to that entity. Issuer A amended the note receivable several times. Issuer A also continued to increase the balance on the note receivable via a series of transactions in Issuer A's cash on hand account, including after Issuer A went public in 2018. As of December 31, 2018, the then-outstanding note receivable totaled approximately \$3.8 million. In 2019, the executive issued a personal guarantee for the outstanding note receivable, and subsequently purchased the note receivable from Issuer A using shares of Issuer A.

40. Respondent was aware of the liability for the staff loan program, the transfer of the balance to the executive's loan account, and the removal of the staff loan liability from Issuer A's books and records. Respondent was also aware of the line of credit with the unrelated party, the notes receivable, and the executive's personal guarantee and purchase of the outstanding note.

41. Notwithstanding this knowledge, there is insufficient audit evidence that Respondent or his staff took adequate steps to: understand the operation of the staff loan program by Issuer A; evaluate whether it was proper not to disclose it in Issuer A's financial statements audited by Friedman; or gather adequate audit evidence to ensure that all transactions were properly recorded in Issuer A's books and records. Respondent failed to obtain any formal documentation evidencing that the executive had agreed to assume the liability for the amounts relating to the staff loan program. Respondent also failed to ensure the engagement team performed any procedures to verify that the liability was legally assumed by the executive and appropriately removed from the books and records of Issuer A.

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<sup>8</sup> Issuer A filed a Form 8-K announcing a change in auditor and that there were no disagreements with Friedman.

42. In addition, Respondent failed to obtain adequate information to understand the underlying business purpose for the notes receivable with the purportedly unrelated party. Respondent also failed to ensure the audit staff gathered appropriate audit evidence to validate the notes receivable, including failing to vouch the transfer of cash or assets from Issuer A to the purportedly unrelated party.

***Respondent Failed to Obtain Sufficient Appropriate Audit Evidence, and Failed to Document Procedures Performed Relating to VIEs for the 2018 and 2019 Audits (AS 1105 and AS 1215).***

43. In 2018 and 2019, Issuer A had transactions with multiple related parties that had characteristics of variable interest entities (VIEs) but which were not classified as VIEs by Issuer A and not consolidated into Issuer A's financial statements and related disclosures. Generally accepted accounting principles (GAAP) indicate that a VIE is defined as a legal entity subject to consolidation according to the variable interest entities model. The application of the VIE guidance should be based on substantive terms, transactions, and arrangements.<sup>9</sup>

44. During the 2018 and 2019 audits, Respondent was aware of transactions with related parties that had characteristics indicating their potential status as VIEs, including the lack of adequate equity capital and issues of whether the holders of the equity interests of the companies had the power to direct the activities of the entity. Notwithstanding this, Respondent failed to perform and document sufficient procedures to evaluate the VIE status of these related parties and whether the entities should be consolidated.

***Respondent Failed to Properly Audit Related Party Transactions for the 2017 through 2019 Audits (AS 2410).***

45. From 2018 to 2019, Issuer A made at least \$1,400,000 in payments to a related party partially owned by one of its executives, pursuant to a service agreement between Issuer A and the related party. The invoices from the related party to Issuer A lacked detail of the services provided and instead only contained generic descriptions such as "service fee" or "professional fee."

46. Respondent failed to design and perform sufficient audit procedures to identify and evaluate these related party transactions during the 2018 and 2019 audits. Specifically, Respondent failed to ensure the audit staff confirmed the underlying business purpose and services rendered in connection with these related party payments. Respondent thus failed to design procedures to identify and obtain an adequate understanding of Issuer A's relationships and transactions with its related parties as required by Section 10A(a)(2) of the Exchange Act and AS 2410.

47. Issuer A also had numerous transactions with another related party partially owned by an executive. By December 31, 2017, Issuer A had extended approximately \$6 million to this related party in the form of trade receivables. However, Issuer A did not have a regular trading relationship with this related party. Eventually, the outstanding receivable balance was converted into a promissory note between Issuer A and the related party. In 2019,

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<sup>9</sup> ASC Topic 810, *Consolidation*.

an executive of Issuer A issued a personal guarantee for the note, then later purchased the note using shares of Issuer A.

48. Respondent failed to design and to perform sufficient audit procedures to identify and evaluate these related party transactions during the 2017, 2018, and 2019 audits. Specifically, Respondent failed to confirm the existence of a trading relationship between Issuer A and the related party that supported the large outstanding trade receivable balance. Respondent thus failed to design procedures to identify and obtain an adequate understanding of Issuer A's relationships and transactions with its related parties as required by Section 10A(a)(2) of the Exchange Act and AS 2410.

***Respondent Failed to Obtain Sufficient Appropriate Audit Evidence in Connection with a Sale of Assets to a Related Party for the 2018 Audit (AS 1105 and AS 2410).***

49. In 2018, Issuer A removed multiple assets and liabilities from its books, in connection with a sales transaction with a related party connected to one of its executives.

50. Respondent was aware of this transaction during the 2018 audit, but failed to obtain and evaluate sufficient audit evidence to confirm whether the transaction was properly accounted for as a sale under GAAP. Respondent also failed to obtain and evaluate sufficient audit evidence to confirm whether the corresponding liabilities were properly removed from Issuer A's books and records.

***Respondent Failed to Exercise Due Professional Care for the 2017 through 2019 Audits (AS 1015).***

51. As a result of Respondent's conduct described in paragraphs 38 through 50 above, Respondent failed to exercise due professional care and an attitude of professional skepticism as required by AS 1015.

**Violations**

52. Section 10A(a)(2) of the Exchange Act requires each audit to include procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein. No showing of scienter is necessary to establish a violation of Section 10A of the Exchange Act. As a result of the conduct described above, Respondent caused Friedman's violation of Section 10A(a)(2) of the Exchange Act.

53. Rule 2-02(b)(1) of Regulation S-X requires an accountant's report to state "whether the audit was made in accordance with generally accepted auditing standards" ("GAAS").<sup>10</sup> "[R]eferences in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission." See SEC Release No. 34-49708 (May 14, 2004). No showing of scienter is necessary to

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<sup>10</sup> In November 2018, Rule 2-02(b)(1) was amended to refer to "applicable professional standards" instead of GAAS.

establish a violation of Rule 2-02(b)(1) of Regulation S-X. As a result of the conduct described above, Respondent caused Friedman's violation of Rule 2-02(b)(1) of Regulation S-X, because Friedman stated the audits had been conducted in accordance with PCAOB standards, when the audits had not been.

54. Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice provide, in part, that the Commission may 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 either of the following two types of negligent conduct: (1) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or (2) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission. Rule 102(e)(1)(iv)(B). Through the conduct described above, Respondent 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.

55. In determining to accept the Offer, the Commission considered the Respondent's cooperation afforded to the Commission staff.

#### IV.

Pursuant to the Offer, Respondent agrees to additional proceedings in this proceeding to determine what, if any, civil penalties are appropriate under Section 21C of the Exchange Act. In connection with such additional proceedings: (a) Respondent agrees that he will be precluded from arguing that he did not violate the federal securities laws described in this Order; (b) Respondent agrees that he may not challenge the validity of this Order; (c) solely for the purposes of such additional proceedings, the findings made in this Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, documentary evidence, and, if the hearing officer determines it necessary, hearing testimony.

#### V.

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, effective immediately, that:

A. Pursuant to Sections 4C and 21C of the Exchange Act, Respondent shall cease and desist from committing or causing any violations and any future violations of Section 10A(a)(2) of the Exchange Act and Rule 2-02(b)(1) of Regulation S-X.

B. Respondent is denied the privilege of appearing or practicing before the Commission as an accountant.

1. After three years from the date of the Order, Respondent may request that the Commission consider Respondent's reinstatement by submitting an application to the attention of the Office of the Chief Accountant.
2. In support of any application for reinstatement to appear and practice before the Commission as a preparer or reviewer, or a person responsible for the preparation or review, of financial statements of a public company to be filed with the Commission, other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Exchange Act, Respondent shall submit a written statement attesting to an undertaking to have Respondent's work reviewed by the independent audit committee of any public company for which Respondent works or in some other manner acceptable to the Commission, as long as Respondent practices before the Commission in this capacity and will comply with any Commission or other requirements related to the appearance and practice before the Commission as an accountant.
3. In support of any application for reinstatement to appear and practice before the Commission as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Exchange Act, as a preparer or reviewer, or as a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission, Respondent shall submit a statement prepared by the audit committee(s) with which Respondent will be associated, including the following information:
  - a. A summary of the responsibilities and duties of the specific audit committee(s) with which Respondent will be associated;
  - b. A description of Respondent's role on the specific audit committee(s) with which Respondent will be associated;
  - c. A description of any policies, procedures, or controls designed to mitigate any potential risk to the Commission by such service;
  - d. A description relating to the necessity of Respondent's service on the specific audit committee; and
  - e. A statement noting whether Respondent will be able to act unilaterally on behalf of the Audit Committee as a whole.
4. In support of any application for reinstatement to appear and practice before the Commission as an independent accountant (auditor) before the Commission, Respondent must be associated with a public accounting firm

registered with the PCAOB and Respondent shall submit the following additional information:

- a. A statement from the public accounting firm (the “Firm”) with which Respondent is associated, stating that the firm is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002;
  - b. A statement from the Firm with which the Respondent is associated that the Firm has been inspected by the PCAOB and that the PCAOB did not identify any criticisms of or potential defects in the Firm’s quality control system that would indicate that Respondent will not receive appropriate supervision; and
  - c. A statement from Respondent indicating that the PCAOB has taken no disciplinary actions against Respondent since seven (7) years prior to the date of the Order other than for the conduct that was the basis for the Order.
5. In support of any application for reinstatement, Respondent shall provide documentation showing that Respondent is currently licensed as a CPA and that Respondent has resolved all other disciplinary issues with any applicable state boards of accountancy. If Respondent is not currently licensed as a CPA, Respondent shall provide documentation showing that Respondent’s licensure is dependent upon reinstatement by the Commission.
6. In support of any application for reinstatement, Respondent shall also submit a signed affidavit truthfully stating, under penalty of perjury:
- a. That Respondent has complied with the Commission suspension Order, and with any related orders and undertakings, or any related Commission proceedings, including any orders requiring payment of disgorgement or penalties;
  - b. That Respondent undertakes to notify the Commission immediately in writing if any information submitted in support of the application for reinstatement becomes materially false or misleading or otherwise changes in any material way while the application is pending;
  - c. That Respondent, since the entry of the Order, has not been convicted of a felony or a misdemeanor involving moral turpitude that would constitute a basis for a forthwith suspension from appearing or practicing before the Commission pursuant to Rule 102(e)(2);
  - d. That Respondent, since the entry of the Order:

- 1) has not been charged with a felony or a misdemeanor involving moral turpitude as set forth in Rule 102(e)(2) of the Commission's Rules of Practice, except for any charge concerning the conduct that was the basis for the Order;
  - 2) has not been found by the Commission or a court of the United States to have committed a violation of the federal securities laws, and has not been enjoined from violating the federal securities laws, except for any finding or injunction concerning the conduct that was the basis for the Order;
  - 3) has not been charged by the Commission or the United States with a violation of the federal securities laws, except for any charge concerning the conduct that was the basis for the Order;
  - 4) has not been found by a court of the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof to have committed an offense (civil or criminal) involving moral turpitude, except for any finding concerning the conduct that was the basis for the Order; and
  - 5) has not been charged by the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, civilly or criminally, with having committed an act of moral turpitude, except for any charge concerning the conduct that was the basis for the Order.
- e. That Respondent's conduct is not at issue in any pending investigation of the Commission's Division of Enforcement, the PCAOB's Division of Enforcement and Investigations, any criminal law enforcement investigation, or any pending proceeding of a State Board of Accountancy, except to the extent that such conduct concerns that which was the basis for the Order.
- f. That Respondent has complied with any and all orders, undertakings, or other remedial, disciplinary, or punitive sanctions resulting from any action taken by any State Board of Accountancy, or other regulatory body.
7. Respondent shall also provide a detailed description of:
- a. Respondent's professional history since the imposition of the Order, including:
    - 1) all job titles, responsibilities and role at any employer;



- 2) the identification and description of any work performed for entities regulated by the Commission, and the persons to whom Respondent reported for such work; and
  - b. Respondent's plans for any future appearance or practice before the Commission.
8. The Commission may conduct its own investigation to determine if the foregoing attestations are accurate.
  9. If Respondent provides the documentation and attestations required in this Order and the Commission (1) discovers no contrary information therein, and (2) determines that Respondent truthfully and accurately attested to each of the items required in Respondent's affidavit, and the Commission discovers no information, including under Paragraph 8, indicating that Respondent has violated a federal securities law, rule or regulation or rule of professional conduct applicable to Respondent since entry of the Order (other than by conduct underlying Respondent's original Rule 102(e) suspension), then, unless the Commission determines that reinstatement would not be in the public interest, the Commission shall reinstate the respondent for cause shown.
  10. If Respondent is not able to provide the documentation and truthful and accurate attestations required in this Order or if the Commission has discovered contrary information, including under Paragraph 8, the burden shall be on the Respondent to provide an explanation as to the facts and circumstances pertaining to the matter setting forth why Respondent believes cause for reinstatement nonetheless exists and reinstatement would not be contrary to the public interest. The Commission may then, in its discretion, reinstate the Respondent for cause shown.
  11. If the Commission declines to reinstate Respondent pursuant to Paragraphs 9 and 10, it may, at Respondent's request, hold a hearing to determine whether cause has been shown to permit Respondent to resume appearing and practicing before the Commission as an accountant.

## **VI.**

IT IS ORDERED that a public hearing for purposes of taking evidence on the questions set forth in Section IV hereof shall be convened at a time and place to be fixed and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

If Respondent fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him 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.

IT IS FURTHER ORDERED that, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2), the Administrative Law Judge shall issue an initial decision no later than 75 days from the occurrence of one of the following events: (A) The completion of post-hearing briefing in a proceeding where the hearing has been completed; (B) Where the hearing officer has determined that no hearing is necessary, upon completion of briefing on a motion pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250; or (C) The determination by the hearing officer 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 hearing is necessary.

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.

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