UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 55696 / May 2, 2007

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2605 / May 2, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12627

In the Matter of	:	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934**
Terry M. Phillips,	:	
Respondent.	:	

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Terry M. Phillips ("Phillips" 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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

A. RESPONDENT

Phillips, 48, of Midlothian, Virginia, is the founder, 20 percent owner and principal operator of Capitol Distributing, L.L.C. ("Capitol") and the founder and 50 percent owner of Phillips Land Company ("PLC").

B. RELEVANT ENTITIES

1. Capitol is a privately-owned video game distributor organized as a limited liability company under the laws of the Commonwealth of Virginia. It was founded by Phillips in 1999. During the relevant period, Capitol had approximately ten employees.

2. PLC is a Virginia company 50 percent owned and principally operated by Phillips, has no employees and, in the ordinary course of business, has no involvement in the purchase, sale, or distribution of video games.

3. Take-Two Interactive Software, Inc. ("Take-Two") is a Delaware corporation headquartered in New York, New York. Take-Two develops, markets and publishes interactive entertainment software games for the personal computer as well as video game consoles. Since July 31, 2006, Take-Two's common stock has been registered with the Commission pursuant to Section 12(b) of the Exchange Act and currently trades on the NASDAQ NMS under the symbol "TTWO."

C. SUMMARY

Take-Two and certain of its officers committed numerous violations of the anti-fraud, financial reporting and recordkeeping provisions of the federal securities laws to inflate reported revenue during fiscal years 2000 and 2001.[2] Phillips was a cause of some of those violations which resulted from certain transactions between Take-Two, Capitol and PLC. Specifically, in four separate transactions with Capitol during that period, Take-Two fraudulently recorded as sales approximately $15 million in revenue

---

[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.

[2] On June 1, 2005, the Commission authorized and simultaneously settled civil actions in federal court against Take-Two and several present and former members of senior management, obtaining injunctions, disgorgement, civil penalties, and officer and director bars. The Commission also authorized, and simultaneously settled, an administrative cease-and-desist proceeding against one officer and a Rule 102(e)(3) administrative proceeding against the former Chief Financial Officer.

from shipments of games to Capitol that Capitol parked and subsequently returned without making any effort to sell. In two of the transactions, Capitol created invoices falsely describing the returns as "purchases" of "assorted product" by Take-Two from PLC. In those two transactions, Take-Two also provided the funds to Capitol or PLC that those entities then used to cover checks they wrote to Take-Two to purportedly "pay" for the games.

Based on his participation in certain aspects of these transactions, Phillips was a cause of Take-Two's violations of Sections 10(b), 13(a) and 13(b)(2)(A) of the Exchange Act and Exchange Act Rules 10b-5, 12b-20, 13a-1, 13a-13 and 13b2-1.[3]

D. FACTS

1. From October 31, 2000 through at least July 31, 2001, Capitol accepted several hundred thousand video games from Take-Two with the understanding that it would temporarily warehouse or "park" the games until a subsequent Take-Two reporting period, and then return the games to Take-Two. Take-Two improperly recorded and reported approximately $15 million in revenue associated with these parking transactions.

2. Phillips and Take-Two began discussing Capitol's participation in the parking arrangement in July 2000. In an e-mail dated July 25, 2000, Phillips explained to two Capitol employees that "we can take whatever [Take-Two] needs to ship . . . [I]f it is a huge amount we will need to find someplace to stick it . . . but it shouldn't be a problem."

3. In October 2000, Take-Two discussed the first parking transaction with Phillips. A Take-Two representative asked Phillips if he had another company that Take-Two could issue a purchase order to for the games in lieu of Capitol sending the games back as a return. Phillips mentioned PLC. Phillips instructed a Capitol employee to work out the details with the Take-Two representative.

4. On October 31, 2000, the last day of Take-Two's fiscal year, Capitol accepted shipment of 230,000 video games from Take-Two with the understanding that Capitol would park them for a short time and then return the shipment to Take-Two. The games shipped to Capitol were selected by Take-Two based on Take-Two's warehouse inventory at the time. Capitol had no input regarding the games it accepted. Take-Two improperly recorded $5.4 million as revenue from the shipment – the most revenue from a single sale that Take-Two had recognized up to that time.

[3] Simultaneously with the issuance of this Order, Phillips, without admitting or denying the allegations of the complaint, has consented to a judgment in an action filed against Phillips and Capitol in the United States District Court for the District of Columbia ordering him to pay a civil penalty in the amount of $50,000.

5. Phillips knew that Capitol made no effort to sell the games. Instead, Capitol returned all 230,000 games to Take-Two over the next two reporting periods. When the games were returned, Capitol provided Take-Two with invoices that falsely described the games as purchases of "assorted product" from Phillips' company PLC. Take-Two used those invoices to conceal in its books and records the fact that the October 31, 2000 "sale" had been returned in its entirety. PLC had no employees, no inventory, and did not distribute video games in the ordinary course of business.

6. Take-Two provided Capitol or PLC with money to make purported "payments" for the games to bolster the appearance that the shipments to Capitol were legitimate sales. For example, on December 20, 2000, Take-Two wired $2,557,239 to PLC. Six days later, PLC sent Take-Two a check for $2,557,137, purportedly in partial payment for the games associated with the October 31, 2000 transaction.

7. On February 28, 2001, Capitol accepted a second shipment of approximately 175,000 video games from Take-Two. Take-Two improperly recorded the transaction as a $4.6 million sale – second in revenue only to the October 31, 2000 transaction in Take-Two's history up to that time. All 175,000 games were subsequently returned to Take-Two with invoices that again falsely described the return as a purchase of "assorted product" from PLC. Capitol again used funds provided by Take-Two to purportedly "pay" for the games. Take-Two wired Capitol $4,594,100 on April 26, 2001 and Capitol sent Take-Two a check for the same amount the next day.

8. On April 27, 2001, three days before the end of Take-Two's second fiscal quarter, Capitol accepted approximately 55,000 games from Take-Two. Take-Two recorded $1.76 million as revenue from the purported sale. After the end of the quarter, Capitol returned all these games to Take-Two.

9. On July 31, 2001, the last day of Take-Two's third fiscal quarter, Capitol accepted a shipment of more than 85,000 games from Take-Two. Take-Two recorded more than $3 million as revenue from the purported sale. After the end of the quarter, Capitol returned all these games to Take-Two.

E. LEGAL ANALYSIS

Section 21C(a) of the Exchange Act specifies that a respondent is a cause of another's violation if the respondent knew or should have known that his act or omission would contribute to such violation.

Section 10(b) of the Exchange Act and Rule 10b-5 thereunder proscribe a variety of fraudulent practices. An issuer or individual may violate these provisions by either intentionally or recklessly making materially false or misleading statements in connection with the purchase or sale of securities. *Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988). To violate Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, a defendant must act with scienter, *Aaron v. SEC*, 446 U.S. 680, 695, 701-02 (1980), which the Supreme Court has defined as "a mental state embracing intent to deceive,

manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n. 12 (1976). Scienter of a company's management is imputed to the company. *See, e.g., SEC v. Manor Nursing Centers*, 458 F.2d 1082, 1089-96 (2d Cir. 1972).

Take-Two violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by using the transactions with Capitol to materially inflate its operating results, and by filing and releasing to the public periodic reports, registration statements and press releases that were materially false and misleading, and that misrepresented Take-Two's financial condition. Based on his conduct described above, Phillips was a cause of Take-Two's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Section 13(a) of the Exchange Act and Exchange Act Rules 13a-1 and 13a-13 thereunder require all issuers with securities registered under Section 12 of the Exchange Act to file annual and quarterly reports on Forms 10-K and 10-Q respectively. Exchange Act Rule 12b-20 requires that, in addition to the information expressly required to be included in such reports, the issuer include such additional material information as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading. The obligation to file these periodic reports includes the obligation to ensure that they are complete and accurate in all material respects. *See, e.g., SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 913 (1979). No showing of scienter is required to establish violations of these provisions. *Id.* at 1167. Information regarding the financial condition of a company is presumptively material. *SEC v. Blavin*, 760 F.2d 706, 711 (6th Cir. 1985).

Take-Two violated Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1 and 13a-13 thereunder when, as a result of the parking transactions with Capitol described above, it filed with the Commission materially false and misleading annual reports on Forms 10-K for the fiscal years ending October 31, 2000 and October 31, 2001, and quarterly reports on Forms 10-Q for the quarters ending April 30, 2001 and July 31, 2001, which contained inflated operating results. Based on his conduct described above, Phillips was a cause of Take-Two's violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1 and 13a-13 thereunder.

Section 13(b)(2)(A) of the Exchange Act 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." Exchange Act Rule 13b2-1 prohibits direct or indirect falsification or causing falsification of books, records, or accounts subject to Section 13(b)(2)(A). No showing of scienter is required to establish violations of Exchange Act Section 13(b)(2)(A) (*see SEC v. World-Wide Coin Investments, Ltd.*, 567 F. Supp. 724, 749 (N.D. Georgia 1983)) or Exchange Act Rule 13b2-1 (*see SEC v. McNulty*, 137 F.3d 732, 740-41 (2d Cir. 1998)).

Take-Two failed to make and keep accurate books, records and accounts with respect to its transactions with Capitol. It also used those transactions to falsify its books and records. Based on his conduct described above, Phillips was a cause of Take-Two's violations of Section 13(b)(2)(A) of the Exchange Act and Exchange Act Rule 13b2-1.

IV.

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

Accordingly, it is hereby ORDERED that:

Pursuant to Section 21C of the Exchange Act, Respondent Phillips shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Exchange Act Rules 10b-5 and 13b2-1; and from causing any violations and any future violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1 and 13a-13.

By the Commission.

Nancy M. Morris
Secretary