UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9095 / December 17, 2009

SECURITIES EXCHANGE ACT OF 1934
Release No. 61194 / December 17, 2009

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3085 / December 17, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13723

In the Matter of

JOHN M. KISS, CPA,

Respondent.

ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, 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

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 4C[1] and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 102(e)(1)(iii) of the Commission's Rules of Practice[2] against John M. Kiss ("Kiss" or "Respondent").

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[1] 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 thereunder.

[2] Rule 102(e)(1) provides, in pertinent part, that:

> The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found…

II.

In anticipation of the institution of these proceedings, Kiss 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, Kiss consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, 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 ("Order"), as set forth below.

III.

On the basis of this Order and Kiss' Offer, the Commission finds[3] that:

Summary

1. This matter involves violations of the federal securities laws by Kiss in connection with the 2001 and 2002 audits of Bally Total Fitness Holding Corporation ("Bally") conducted by Ernst & Young LLP ("E&Y") while Kiss served as the engagement partner on those audits. Kiss was the engagement partner on E&Y's audits of Bally from 1996 through and including 2002.

2. In connection with Bally's 2001-2002 financial statements, Bally engaged in fraudulent financial accounting, including prematurely recognizing revenue and improperly deferring costs, which overstated income and inflated stockholders' equity. Bally also made false and misleading disclosures regarding a $55 million special charge in its 2002 Form 10-K. On November 30, 2005, Bally filed its 2004 Form 10-K, which restated its previously reported financial statements for 2002 and 2003, and selected financial data for 2000 and 2001.

3. Kiss knew or should have known that E&Y's unqualified audit opinions regarding Bally's 2001-2002 financial statements -- which stated that E&Y had conducted its audits in accordance with auditing standards generally accepted in the United States ("GAAS") and that Bally's financial statements were presented in conformity with accounting principles generally accepted in the United States ("GAAP") -- were false because E&Y's audits of Bally's financial

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* * *

> (iii) to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

[3] 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.

statements were not performed in accordance with GAAS and Bally's financial statements were not presented in conformity with GAAP.

4. As a result of the false and misleading audit opinions, Kiss was a cause of Bally's violations of Sections 17(a)(2) and (3) of the Securities Act, and was a cause of and willfully[4] aided and abetted Bally's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13. Kiss also was a cause of E&Y's violation of Section 10A(b) of the Exchange Act by not bringing to the attention of Bally's Audit Committee Bally's false and misleading disclosures of the $55 million special charge.

Respondent

5. Kiss is, and was at all relevant times, a Certified Public Accountant licensed in Illinois. He worked in the Chicago office of E&Y during the relevant period and was the engagement partner in charge of E&Y's audits of Bally from 1996 through and including 2002. Kiss retired from E&Y in January 2008.

Issuer

6. Bally Total Fitness Holding Corporation, a Delaware corporation, purported to be the largest, and only nationwide, commercial operator of fitness centers. At all relevant times, Bally's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange ("NYSE"). The NYSE delisted Bally's common stock on June 8, 2007. After filing for reorganization under Chapter 11 of the Bankruptcy Code, on September 17, 2007, Bally emerged as a privately held reorganized entity. On February 28, 2008, the Commission filed a settled injunctive action against Bally in the United States District Court for the District of Columbia, charging Bally with violating Section 17(a) of the Securities Act, Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-1, 13a-11 and 13a-13 thereunder. The District Court issued permanent injunctions on May 8, 2008.

Background

7. For many years up until it resigned in 2004, E&Y audited Bally's financial statements. Bally's principal source of revenue was selling gym membership contracts, which provided customers access to gyms in exchange for the payment of both a one-time initiation fee and monthly dues. The one-time fee was typically several thousand dollars, while the monthly dues typically were less than $10 per month. Most of Bally's customers financed their initiation fees. To maintain their memberships, customers were required to pay their initiation fee in full and pay monthly dues. The initiation fees were Bally's biggest source of revenue. The obligation to pay the initiation fee was legally enforceable; there was no legal obligation to pay monthly dues beyond the initial contract period.

[4] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

8. E&Y recognized Bally as a risky audit and, from at least 1996 through 2003, designated Bally as a "close monitoring" account because Bally presented a risk that created "a significant chance the firm [E&Y] will suffer damage to its reputation, monetarily, or both." Bally was designated a close monitoring account for several reasons, including, among other things, that Bally's managers were former E&Y audit partners who were "difficult" and had "historically been aggressive in selecting accounting principles and determining estimates;" the managers placed undue emphasis on maintaining stock prices; management used "(un)reliable . . . estimation process[es] or questionable judgments;" and Bally's compensation plans placed undue emphasis on reported earnings. E&Y's internal guidance notes that a "history of 'aggressive' applications of accounting policies could indicate a predisposition to misstate the financial statements."

9. In early 2002, E&Y sought to reduce its risk by identifying its riskiest clients and resigning from them or otherwise managing the risk they presented to E&Y. Out of a total of over 10,000 audit clients in North America, E&Y identified Bally as one of the riskiest 18 accounts. These 18 accounts were so-called "National Focus Accounts" and were monitored by the Americas Executive Board. Not only was Bally identified as a National Focus Account, it was identified as the riskiest account in E&Y's Lake Michigan Area.

Bally's Accounting Errors And E&Y's Audit Failures Relating To Fiscal Years 2001 And 2002

10. In connection with fiscal years 2001 and 2002, as well as earlier years, Bally engaged in certain accounting practices relating to its recognition of reactivation revenue, initiation fee revenue, and deferred costs that made its financial statements false and misleading. E&Y issued unqualified audit opinions, in violation of GAAS, in connection with its audits of such financial statements.

Premature Recognition Of Reactivation Revenues

11. Bally recognized revenue from what it called "reactivations," which were payments from Bally members who had completed their initial contract period, but whose memberships were canceled for failure to pay the monthly dues necessary to maintain their membership. Bally did not attempt to recover those dues because there was no legal obligation to pay dues. Accordingly, for those canceled members who had completed the initial contract period, Bally waited at least six months after receiving their last payment and then began soliciting these canceled members to reactivate. Those who accepted the reactivation offers did so, on average, 36 months after having stopped paying monthly dues. The reactivation offers did not contain claims for or seek payment of "past due" amounts. Instead, they asked for either a nominal reactivation fee or no reactivation fee at all, and the payment of monthly dues for a period of future service.

12. Bally's reactivation revenue recognition policy was to project (as of the balance sheet date) the reactivation payments it anticipated receiving in the coming year and then immediately recognize most of these projected payments by improperly allocating them to past

periods. Bally's reactivation revenue recognition policy was not in conformity with GAAP because use of the method enabled Bally to recognize revenue before it was earned and was realized or realizable.[5] Bally recognized revenue before it was earned because, among other things, it barred canceled former members from the gyms, and therefore, had not provided services to those of its canceled members who might reactivate in the future. Additionally, Bally recognized revenue before it was realized or realizable because it was recognizing revenue for reactivations that had not yet occurred, which it anticipated from canceled former members whom it could not identify individually and who had no legal obligation to reactivate or pay Bally anything at all.

13. In short, Bally violated GAAP by recognizing revenue related to the anticipated future payments before the reactivation transactions occurred. The accounting was clearly not in conformity with GAAP, and a reasonable accountant who understood Bally's accrual basis of recognizing revenue for "reactivations" would conclude that it was not in conformity with GAAP, because Bally was recognizing revenue that was not realized or realizable, and had not been earned.

14. For at least six years, E&Y had audited Bally's "reactivation" revenue recognition practices. In each of those years, E&Y provided Bally with an unqualified audit opinion.

15. Kiss knew or should have known that Bally's accounting policy for reactivation revenues was not in conformity with GAAP, yet he caused E&Y to issue unqualified opinions regarding Bally's 2001 and 2002 financial statements in violation of GAAS.[6]

Premature Recognition Of Initiation Fee Revenue

16. Members paid a substantial initiation fee in connection with new membership contracts. Beginning in 1997, Bally recognized initiation fee revenue over the estimated average membership life, which included an estimate for both the average initial contract period and the average renewal period. Bally computed the weighted average expected membership life to be 22 months for financed memberships and 36 months for cash memberships.

17. Bally's 1997 computations of the weighted average expected membership life were flawed. A cursory inspection of the computations would have revealed these flaws. In 1997, E&Y had checked Bally's arithmetic and suggested some minor adjustments, but had failed to test whether Bally's computations produced results that were consistent with reality, and failed to determine that Bally's computation was fundamentally incorrect. The errors in Bally's estimates had the effect of understating the average membership life. As a result, Bally's

[5] *See, e.g.*, Accounting Research Bulletin No. 43, *Restatement and Revision of Accounting Research Bulletins* ("ARB 43"), Chapter 1A (1953); Accounting Principles Board Opinion No. 10, Omnibus Opinion (1966); Statement of Financial Accounting Concepts No. 5, *Recognition and Measurement in Financial Statements of Business Enterprises* (1985); Staff Accounting Bulletin No. 101, *Revenue Recognition in Financial Statements*, Topic 13.A. (1999)("SAB 101").

[6] *See* AICPA's Codification of Auditing Standards AU § 508, *Reports on Audited Financial Statements*, ("AU § 508").

member life estimates improperly accelerated revenue recognition and distorted the economic reality of Bally's business.

18. These errors continued through the relevant period. Kiss knew or should have known that by recognizing initiation fee revenue from financed contracts over 22 months, Bally was improperly recognizing revenue before it was earned and realized or realizable in contravention of GAAP, yet he caused E&Y to issue unqualified opinions regarding Bally's 2001 and 2002 financial statements in violation of GAAS.

Deferral Of Member Acquisition Costs

19. Bally deferred certain of its costs associated with acquiring new members and recognized such costs over the same period that it deferred initiation fee revenue.

20. GAAP requires that any costs deferred must be direct and incremental to the acquisition of a new contract or activities directly related to such acquisitions (i.e., they would not have been incurred "but for" the acquisition of the contract). Costs associated with acquiring new members are properly deferrable to the extent that they were direct and incremental to the acquisition of a new member contract, while all other costs must be expensed as incurred.[7] Bally, however, improperly deferred certain costs that were not eligible for deferral.

21. Kiss knew or should have known that Bally was improperly deferring certain member acquisition costs; nonetheless, he caused E&Y to issue unqualified opinions regarding Bally's 2001 and 2002 financial statements in violation of GAAS.

E&Y's Audits Were Deficient And Not Performed In Accordance With GAAS

22. E&Y's audits of Bally's reactivation revenues, initiation fee revenues and deferred acquisition costs were deficient and not performed in accordance with GAAS. As an initial matter, Kiss knew that Bally was a risky client due to, among other things, management's aggressive accounting policies. On the client continuance forms, Kiss repeatedly identified aggressive accounting by Bally's management as one of the principal reasons for Bally's riskiness. In 1997, he wrote: "Management has a history of being aggressive from an accounting standpoint." As part of the client continuance process in 1998, he wrote that he wanted to discuss with E&Y management, inter alia, Bally's "aggressive [management]."

23. In response to a request for an "[e]xplanation of risk factors," Kiss wrote in 1999, "There are a number of former EY employees at the Company. The CEO and CFO have historically taken some aggressive accounting positions." In 2000, Kiss' "explanation of risk factors" provided, in relevant part: "Management is very focused on meeting or beating the

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[7] *See* Statement of Financial Accounting Standards No. 91, *Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases,* (Dec. 1986); FASB Technical Bulletin No. 90-1, *Accounting for Separately Priced Extended Warranty and Product Maintenance Contracts,* (Dec. 1990); and SAB 101, Topic 13.A.

Street's EPS. This at times leads to aggressive accounting practices." In 2001, Kiss explained, "management tends to be aggressive in their accounting."

24. From at least 1996, E&Y annually identified Bally as a "close-monitoring" account. Each year, E&Y's partners and management assessed the level of risk presented by each of its audit clients, including Bally, as part of E&Y's "client continuance process." Higher risk accounts were denominated "close-monitoring accounts."

25. E&Y prepared, and Kiss read and concurred in, a memorandum in connection with the FY 2000 audit, which concluded, improperly, that Bally's reactivation revenue accrual "does not appear to be precluded by SAB 101." The memorandum indicated that (a) members who did not pay dues after the initial contract period were barred from the gyms after a grace period, and (b) these members had no legally enforceable obligation to pay dues after the initial contract period or to reactivate their memberships. Kiss knew or should have known that these facts undermined and contradicted the conclusion that the reactivation accrual "does not appear to be precluded by SAB 101." In concluding that Bally's reactivation revenue policy was in conformity with GAAP, Kiss failed to reasonably assess whether Bally's financial statements were presented in conformity with GAAP, as required by GAAS.

26. Initiation fee revenue was the largest component of Bally's revenue. In 1997, Bally had committed to the Commission staff that the company would periodically update its member life estimates. Contrary to that commitment, Bally failed to update its member life estimates throughout the period that Kiss remained as engagement partner.

27. Kiss knew of Bally's failure to keep that commitment. In letters to Bally's management, E&Y formally requested Bally to update its member life computations in 1998, 2001, and 2002, but Bally never did so. In response to the 2001 request, Bally asserted that the 1997 calculations were still "an appropriate approximation of the current historical average membership length" because the original calculation constituted a "35-year historical average." In fact, the 1997 calculation did not constitute a 35-year historical average, but reflected an average from a much smaller pool of data. Kiss knew or should have known that Bally's representations regarding the 1997 calculation were false and should not have been relied on as persuasive evidence supporting its opinion.[8]

28. E&Y and Kiss failed to perform adequate audit procedures with regard to the renewal period estimate and the resulting amortization period.[9] Rather, E&Y simply carried forward the 1997 estimates pertaining to the average renewal period. Given the critical nature of this accounting estimate, Kiss' failure to obtain from the Company an update or to arrive at its own independent estimate constitutes a departure from GAAS.

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[8] *See* AU § 230, *Due Professional Care*; AU § 326, *Evidential Matter* ("AU § 326"); AU § 333A, *Management Representations.*

[9] *See* AU § 342, *Auditing Accounting Estimates*.

29. Kiss also knew or should have known of Bally's arbitrary and unsupported allocation of various costs to the deferred member acquisition cost pool, but failed to perform adequate audit procedures with regard to those deferred member acquisition costs.

30. Kiss knew or should have known that Bally's 2001 and 2002 financial statements were not presented in conformity with GAAP, but he failed to qualify the audit opinion or issue an adverse opinion as required by GAAS.

E&Y Seeks To Reduce Its Risk

31. In 2001 and 2002, a series of widely-known financial scandals led E&Y to assess its audit risks and the firm took steps to identify and resign from or focus on certain of its riskiest clients. Internally, E&Y was communicating the dangers of retaining high risk clients, but even though E&Y identified Bally as one of its riskiest clients during the 2002 client continuance process, E&Y did not resign from Bally. Instead, E&Y tried to reduce the risk that Bally's accounting practices posed to E&Y by, among other things, insisting for the first time that Bally record the numerous accounting errors that had "historically been [placed by E&Y] on the summary of audit differences."

32. From July 2002 through March 2003, E&Y, including Kiss, had numerous internal communications and meetings regarding the risks posed by Bally generally, as well as particular risky accounting issues, including, among other things, Bally's revenue recognition estimates. Bally was the subject of a series of meetings with E&Y management, and Bally was placed on a list of National Focus Accounts for Americas Executive Board attention.

Bally's False And Misleading Disclosures Regarding A $55 Million Charge In Fiscal Year 2002

33. As of 2002, Bally's allowance for doubtful accounts ("ADA") had long been on E&Y's list of concerns regarding aggressive accounting. Bally's estimate of the ADA was another area in which Bally's management's estimates appeared aggressive. Year in and year out, from 1997 through 2002, Bally consistently used a 41% reserve rate, despite changes in the economy and in market conditions. The resulting ADA was always at the low end of the range that E&Y had deemed to be reasonable.

34. During the third quarter of 2002, Kiss and others at E&Y determined that Bally's collections had deteriorated substantially, and they advised Bally that it needed to increase its ADA in order to cover the shortfall resulting from the deteriorating collections. Bally insisted that no change be made to the ADA until the fourth quarter to allow it time to obtain waivers of debt covenants provisions from Bally's lenders.

35. During the fourth quarter of 2002, Bally agreed to increase its ADA by $55 million and ultimately presented it as a "special charge" in Bally's year-end financial statements. In its 2002 Form 10-K, including in the notes to the financial statements, Bally made false and misleading disclosures regarding the reasons for the charge, and Kiss knew or should have known that the disclosures were improper. The reason for the charge cited in the

Form 10-K was that Bally's estimation was based on an accelerated monetization scenario which would result in collecting less than book value. No mention was made of the deterioration of the collectability of Bally's accounts receivable portfolio, which had been identified by E&Y as requiring Bally to take a charge.

36. The $55 million special charge virtually eliminated Bally's 2002 earnings. Kiss knew or should have known that Bally's disclosures failed to disclose accurately the reasons for the "special charge," yet he did not object and he caused E&Y to issue an unqualified audit opinion upon Bally's 2002 financial statements in violation of GAAS.[10] Kiss also failed to cause E&Y to inform Bally's Audit Committee about Bally's false and misleading disclosures, and no such information was provided to Bally's Audit Committee.

<u>Violations</u>

37. Section 17(a)(2) of the Securities Act prohibits obtaining money or property by means of untrue statements of material fact or misleading omissions of material fact in the offer or sale of securities. Section 17(a)(3) of the Securities Act prohibits engaging in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon the purchaser in the offer or sale of securities. Information is material where there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision. *Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988). Establishing violations of Section 17(a)(2) and 17(a)(3) does not require a showing of scienter. *Aaron v. SEC*, 446 U.S. 680, 697 (1980).

38. Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11 and 13a-13 thereunder require all issuers with securities registered under Section 12 of the Exchange Act to file annual, quarterly and current reports on Form 10-K, Form 8-K and Form10-Q respectively. Exchange Act Rule 12b-20 further requires that, in addition to the information expressly required to be included in such reports, the issuer must 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 that they be complete and accurate in all material respects. *See, e.g., SEC v. IMC Int'l, Inc.*, 384 F. Supp. 889, 893 (N.D. Tex.), *aff'd mem.*, 505 F.2d 733 (5th Cir. 1974). No showing of scienter is necessary to establish a violation of Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, 13a-13 and 12b-20. *See SEC v. McNulty*, 137 F.3d 732, 740-741 (2d Cir. 1998).

39. 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."

40. Bally violated Sections 17(a)(2) and (3) of the Securities Act and Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder by, among other things, prematurely recognizing income and improperly deferring costs which

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[10] *See* AU § 431, *Adequacy of Disclosure in Financial Statements*; AU § 508.

resulted in its books and records being false, failing to maintain accurate books and records and including material false and misleading financial statements and information in annual, quarterly and current reports filed with the Commission in connection with fiscal years 2001 and 2002.

41. Kiss was a cause of and/or aided and abetted Bally's violations. For each of the years 2001-2002, Kiss was a cause of E&Y issuing audit reports containing unqualified opinions stating that E&Y had conducted an audit of the company's annual financial statements in accordance with GAAS and that Bally's financial statements were presented in conformity with GAAP. These audit reports were included in Bally's Forms 10-K for 2001-2002. However, Kiss knew or should have known that E&Y's audit reports were false and misleading because E&Y failed to conduct its audits in accordance with GAAS and Bally was engaged in accounting practices and disclosures that were not in conformity with GAAP.

42. In auditing Bally's accounting practices relating to reactivation revenue, initiation fee revenue and deferred acquisition costs, Kiss failed under GAAS to exercise due professional care and skepticism, failed to obtain sufficient competent evidential matter, and substituted managements' representations for competent evidence supporting the accounting. Kiss never insisted that Bally provide support for certain of these estimates, nor did Kiss perform sufficient audit procedures to test and determine whether these accounting actions resulted in appropriate revenue. Had he done so, he would have reasonably determined that these accounting practices were not in conformity with GAAP.

43. Kiss also knew or should have known that Bally was making false and misleading disclosures in connection with its $55 million special charge. Kiss did not propose that Bally correct its improper accounting in the quarterly financial statements that E&Y reviewed during 2001-2002. Accordingly, Kiss was a cause of Bally's violations of Sections 17(a)(2) and (3) of the Securities Act and was a cause of and aided and abetted Bally's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

44. Kiss also was a cause of E&Y's violation of Section 10A(b) of the Exchange Act in connection with Bally's failure to disclose that the $55 million special charge recorded in its FY 2002 financial statements was due to a deterioration in the collectability of the Company's receivables and E&Y's failure to report this illegal act to the Audit Committee.

Findings

As a result of the conduct described above, Kiss was a cause of Bally's violations of Sections 17(a)(2) and (3) of the Securities Act and was a cause of and willfully aided and abetted Bally's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder. Kiss also was a cause of E&Y's violation of Section 10A(b) of the Exchange Act by not ensuring that E&Y brought to the attention of Bally's Audit Committee Bally's false and misleading disclosures of the $55 million special charge.

IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that**:**

A. Kiss 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 from causing any violations and any future violations of Sections 10A(b), 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder;

B. Kiss is denied the privilege of appearing or practicing before the Commission as an accountant pursuant to Rule 102(e)(1)(iii);

C. After 3 years from the date of this order, Kiss may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Kiss' work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Kiss, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Kiss, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in Kiss' or the firm's quality control system that would indicate that Kiss will not receive appropriate supervision;

(c) Kiss has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Kiss acknowledges his responsibility, as long as Kiss appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Kiss to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Kiss' character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Elizabeth M. Murphy
Secretary