UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8581 / June 9, 2005

SECURITIES EXCHANGE ACT OF 1934
Release No. 51809 / June 9, 2005

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2260 / June 9, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11947

In the Matter of	:	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934**
Robert M. Blau,	:	
Respondent.	:	

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Robert M. Blau ("Blau" or "Respondent").

II.

In anticipation of the institution of this proceeding, Respondent has submitted an Offer of Settlement (the "Offer") that the Commission has determined to accept. Solely for the purpose of this proceeding and any other proceeding brought by or on behalf of the Commission or in which the Commission is a party, and prior to a hearing pursuant to the Commission's Rules of Practice, 17 C.F.R. § 201.100 *et seq*., Respondent, without admitting or denying the findings contained herein, except that Respondent admits to the jurisdiction of the Commission over him and over the subject matter of this proceeding, consents to the issuance of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist-Order Pursuant to Section 8A of the

Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 ("Order").

III.

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

A. RESPONDENT

Robert M. Blau, 50, of Long Beach, New York, has been Vice President of Sales at Take-Two Interactive Software, Inc. ("Take-Two" or the "Company") since July 1998, and held that position during the relevant period.

B. RELEVANT ENTITY

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. Take-Two's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and is currently listed on NASDAQ under the symbol "TTWO." For its fiscal year ended October 31, 2003, Take-Two reported over $1 billion in revenue.

C. SUMMARY

This proceeding against Blau arises from his participation in a financial and accounting fraud by Take-Two. Take-Two inflated its revenues during its 2000 and 2001 fiscal years through fraudulent sales and improper accounting practices, including numerous "parking" transactions in which the Company shipped several hundred thousand video games to different distributors at or near the end of a fiscal quarter or fiscal year, fraudulently recorded revenue from the shipments as if they were sales, and then accepted returns of the shipments in subsequent reporting periods. Some of the returns associated with this practice were not accounted for by the Company as returns in the later reporting period (*i.e.*, they were not netted against sales). Instead, these returns were disguised as the purchase of new inventory. Take-Two used these artifices to materially inflate its reported revenues and profits. The parking transactions allowed Take-Two to consistently meet or exceed analysts' predictions regarding its earnings per share during all four quarters of fiscal year 2000.

Take-Two's parking transactions were largely orchestrated by the Company's Chief Operating Officer ("COO") but Blau, at the COO's direction, arranged several of

[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.

the parking transactions and created the necessary paperwork to disguise the returns as purchases of new inventory.[2]

Through the fraudulent transactions that Blau participated in, Take-Two was able to materially overstate its reported revenue and/or earnings on two annual and five quarterly reports filed with the Commission in fiscal years 2000 and 2001. In February 2002, Take-Two restated its financial statements for its fiscal year ended October 31, 2000 and the first three quarters of its fiscal year 2001 to correct for the parking transactions that the Company had used to inflate its revenues.[3]

As a result of the conduct described above and detailed below, Blau violated Section 17(a) of the Securities Act, Sections 10(b) and 13(b)(5) of the Exchange Act and Exchange Act Rules 10b-5 and 13b2-1. Blau also caused violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Exchange Act Rules 13a-1, 13a-13, 12b-20 and 13b2-2.[4]

D. FACTS

From 2000 through July 31, 2001 Take-Two engaged in parking transactions with video game distributors Capitol Distributing ("Capitol"), Corner Distributors ("Corner"), SJS Group LTD ("SJS"), About Time Distributors ("About Time"), and Pioneer Distributors ("Pioneer"). These parking transactions resulted in Take-Two's recognition of approximately $60 million of fraudulent revenue.

Take-Two conducted the largest parking transactions with Capitol. On October 31, 2000, Take-Two's fiscal year end, Take-Two shipped 230,000 video games to Capitol with the understanding that the entire shipment would be returned. Take-Two improperly recorded $5.4 million as revenue from the shipment – which at that time was Take-Two's largest sale ever. In subsequent reporting periods, Capitol returned the entire shipment,

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[2] Simultaneously with the issuance of this Order, the Commission filed a settled civil action in the United States District Court for the Southern District of New York against Take-Two's COO, Larry Muller, for his role in the Company's fraud.

[3] In February 2004, Take-Two again restated its financial statements, this time to correct for its failure to set aside reserves for future price concessions during fiscal year 2000 through the end of the third quarter of fiscal year 2003. The Company's February 2004 restatement also corrected for the improper accounting treatment of approximately 88 additional sales transactions during 2000 and 2001 that had inflated its revenues.

[4] Simultaneously with the issuance of this Order, the Commission filed a settled civil complaint against Blau in the United States District Court for the Southern District of New York. Blau has consented to a judgment in that action (which alleges that he violated Section 13(b)(5) of the Exchange Act) ordering him to: (a) pay disgorgement in the amount of $52,653, plus prejudgment interest thereon and (b) pay a civil penalty in the amount of $50,000.

and the Company arranged for the return to be made through an affiliate of Capitol. Take-Two disguised the return as a purchase of "assorted product" from that Capitol affiliate with an invoice that made no reference to specific titles or descriptions of the product.

Blau, at the direction of the Company's COO, contacted Capitol's owner/operator to arrange the parking transactions and to arrange for the returns to be made through a Capitol affiliate. Blau actually approved the returns and utilized fraudulent "assorted product" invoices and purchase orders to disguise the returns as purchases of new inventory.

On February 23, 2001, the COO emailed Blau that, in order to "spike" the business before the end of the month, a substantial order had to ship to Capitol in the next three days. Five days later, on February 28, 2001, Take-Two shipped approximately 175,000 video games to Capitol and improperly recorded $4.6 million in revenue – Take-Two's second largest sale at that time. The entire shipment was subsequently returned. Again, in an effort to conceal the fact that the original shipment was not an actual sale, Blau arranged for the return to be made through the same Capitol affiliate and utilized an invoice that made no reference to specific titles or descriptions to disguise the return as a purchase of "assorted product."

In all, Take-Two executed approximately $15 million of parking transactions with Capitol. Take-Two executed similar parking transactions with other distributors as follows: (1) eleven transactions with Corner for over $10 million; (2) ten transactions with SJS for over seven million dollars; (3) nine transactions with About Time for nearly seven million dollars; and (4) fourteen transactions with Pioneer for over five million dollars. In these transactions, similar to the Capitol transactions, Blau arranged the shipments, approved the returns and utilized misleading "assorted product" invoices and purchase orders to disguise the returns as purchases of new inventory.[5]

E. LEGAL ANALYSIS

Section 17(a) of the Securities Act prohibits a person, in connection with the offer or sale of a security, from making untrue statements of a material fact or omitting to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading. To violate Section 17(a)(1) of the Securities Act, a party 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). Blau violated Section 17(a) by participating and acquiescing in sales transactions with knowledge or reckless disregard of their fraudulent nature from at least 2000 through most of 2001. These transactions resulted in fraudulent recognition of millions

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[5] Blau received emails discussing returns from Pioneer between 2000 and 2001, including one referring to video games as "Take 2's parked goods."

of dollars of revenue from the false characterization of parking and returns as purported sales of nearly $60 million worth of video games, and material misrepresentation of the Company's financial position to investors.

Section 10(b) of the Exchange Act and Rule 10b-5 thereunder proscribe fraudulent practices in connection with the purchase or sale of securities. An issuer or individual violates these provisions by intentionally or recklessly making material misstatements or omissions in Commission filings which may be relied upon by investors in purchasing the issuer's securities. *Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988). To violate Section 10(b) and Rule 10b-5, a party must act with scienter. *See Aaron,* 446 U.S. 680. Blau violated Section 10(b) and Rule 10b-5 by his knowing or reckless participation in fraudulent sales and parking transactions, which permitted Take-Two to materially misrepresent its financial position to investors.

Exchange Act Section 13(b)(5) prohibits knowing falsification of corporate books, records, or accounts and circumvention of internal controls. 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). Blau violated Section 13(b)(5) and Rule 13b2-1 by knowingly employing fraudulent purchase orders to disguise returns as purchases of new inventory, resulting in falsification of Take-Two's books, records and accounts subject to Section 13(b)(2)(A).

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. Rule 12b-20 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 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). Information regarding the financial condition of a company is presumptively material. *SEC v. Blavin,* 760 F.2d 706, 711 (6th Cir. 1985).

Take-Two filed materially false and misleading annual reports on Forms 10-K with the Commission, attributable directly to its parking transactions, for the fiscal years ending October 31, 2000 and October 31, 2001. The Company filed materially false and misleading quarterly reports on Forms 10-Q with the Commission, attributable directly to its parking transactions, for the quarters ending January 31, April 30 and July 31, 2000, and April 30 and July 31, 2001. Blau caused these violations of Section 13(a) and Rules 13a-1, 13a-13 and 12b-20 by substantially assisting the fraud through his participation, knowledge and acquiescence in parking transactions which resulted in the filing of materially false and misleading reports with knowledge that his conduct was part of an overall activity that was improper.

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." Section 13(b)(2)(B) requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain the accountability of assets. Take-Two failed to make and keep such books, records and accounts and to devise and maintain the required internal accounting controls. Blau caused Take-Two's violations by his participation, knowledge and acquiescence in fraudulent sales and parking transactions that he knew, or was reckless in not knowing, would cause such violations.

Exchange Act Rule 13b2-2 prohibits a director or officer of an issuer from, directly or indirectly, making or causing to be made a materially false or misleading statement to an accountant in connection with an audit, review, or examination of the issuer's financial statements. Blau participated in, knew of and acquiesced in fraudulent sales and parking transactions that he knew, or was reckless in not knowing, would result in false representations to accountants during an audit or review of Take-Two's financial statements. Blau, therefore, caused Take-Two's officers to violate Rule 13b2-2.

IV.

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

Accordingly, it is hereby ORDERED that:

Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Blau shall cease and desist from committing or causing any violation and any future violation of Section 17(a) of the Securities Act, Sections 10(b) and 13(b)(5) of the Exchange Act and Exchange Act Rules 10b-5, 13b2-1 and 13b2-2; and from causing any violation and any future violation of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Exchange Act Rules 13a-1, 13a-13 and 12b-20.

By the Commission.

Jonathan G. Katz
Secretary