



## 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, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

## III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

1. Dwyer, age 57, was Chief Financial Officer (“CFO”) of Bally Total Fitness Holding Corporation (“Bally”) from May 1994 to April 2004, when he was forced to resign. Prior to his employment at Bally, Dwyer was an audit partner in the Chicago office of Ernst & Young LLP. At all relevant times, Dwyer was a certified public accountant.

2. Bally 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 Securities Exchange Act of 1934 (“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.

3. On December 17, 2009, the Commission filed a complaint against Dwyer in SEC v. John W. Dwyer, 09-CV-2386 (CKK)(D.D.C.). On December 22, 2009, the court entered an order permanently enjoining Dwyer, by consent, from violating Section 17(a) of the Securities Act of 1933, and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

4. The Commission’s complaint alleges, among other things, that during the relevant time period, Dwyer violated the anti-fraud provisions, and aided and abetted Bally’s violations of the reporting, record-keeping, and internal controls provisions, of the Federal securities laws. The complaint also alleges that Dwyer is responsible for Bally’s materially false and misleading statements about its financial condition in filings with the Commission and in other public statements. These materially false and misleading statements portrayed Bally’s financial condition (its net worth) and its performance (its income) as being materially better than they actually were during the relevant period.

**IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Dwyer's Offer.

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

Dwyer is suspended from appearing or practicing before the Commission as an accountant.

By the Commission.

Elizabeth M. Murphy  
Secretary