

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58636 / September 24, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2885 / September 24, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13236

In the Matter of

**BALLY TECHNOLOGIES,
INC.,**

Respondent.

**ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS PURSUANT TO SECTION
21C OF THE SECURITIES EXCHANGE ACT
OF 1934, MAKING FINDINGS, AND
IMPOSING A CEASE-AND-DESIST ORDER**

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 Bally Technologies, Inc. (“Bally” 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Respondent

1. **Bally**, a Nevada corporation based in Las Vegas, Nevada, designs, manufactures and distributes gaming machines and monitoring systems for casinos. Bally operates on a fiscal year that ends on June 30. Bally's common stock is registered under Section 12(b) of the Exchange Act. Bally trades on the New York Stock Exchange.

Background

2. Bally materially misstated its reported revenue in its financial statements for the fiscal year ended June 30, 2003, the first two quarters of fiscal 2004, and the second and third quarters of fiscal 2005. Bally included its improper financial results in press releases and filings with the Commission relating to these periods. Bally also made materially misleading disclosures and omissions in certain filings and public statements during the relevant period. In December 2005 and November 2006, Bally restated its financial results for the affected periods.

3. Bally's reported revenues were misstated due to its improper recognition of revenue on a bill and hold basis and revenue recognition on other transactions that was improper under Generally Accepted Accounting Principles ("GAAP").²

Bally's Bill and Hold Transactions

4. Bally accounted for two types of transactions on a bill and hold basis. First, Bally recognized revenue on a bill and hold basis on several individual sales to specific customers. Second, Bally routinely recognized revenue on a bill and hold basis for games sold to New Jersey casinos that were stored at quarter end in its Atlantic City, New Jersey warehouse. These games were awaiting approval from New Jersey state regulators, which was required before the games could be operated on a casino floor.

5. Bally's improper bill and hold sales to both specific and New Jersey customers resulted in the overstatement of its reported net sales revenue by \$8.4 million in the fourth quarter of fiscal 2003 and by \$8.8 million and \$10.2 million in the first and second quarters of fiscal 2004. As a result, Bally should have reported net income from continuing operations for the fourth quarter of fiscal 2003 of \$12.2 million, rather than the \$15 million that it did report. In the first

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 A bill and hold sale is one in which delivery has not occurred, and requires adherence to specific criteria before revenue can be recognized on the transaction. *See In the Matter of Stewart Parness*, Accounting and Auditing Enforcement Rel. No. 108 (August 5, 1986), Staff Accounting Bulletin 104, *Revenue Recognition*.

quarter of fiscal 2004, Bally should have reported a net loss from continuing operations of \$0.1 million rather than income of \$2.6 million. In the second quarter of fiscal 2004, Bally should have reported net income from continuing operations of \$11.1 million rather than the \$14.2 million it did report. In addition, these bill and hold sales led to a \$.06 overstatement of Bally's reported earnings per share ("EPS") for the fourth quarter of fiscal 2003 and \$.05 and \$.06 cent overstatements of Bally's reported quarterly EPS numbers in the first and second quarters of fiscal 2004, respectively.

6. Bally improperly recorded revenue on a bill and hold basis on one individual customer transaction in the fourth quarter of fiscal 2003, three individual customer transactions in the first quarter of fiscal 2004, and one individual customer transaction in the second quarter of fiscal 2004. Bally improperly recorded revenue on the New Jersey transactions throughout this period as well. Bally improperly recognized revenue on each of these transactions because it failed to meet one or more of the bill and hold criteria.

7. For each transaction, Bally could not demonstrate that the customer requested that the transaction take place on a bill and hold basis. Bally also failed to meet the requirement of a fixed schedule for delivery on each of the bill and hold transactions. In four cases, Bally relied on alleged delivery schedules that were indefinite and insufficient for purposes of GAAP. Moreover, in three of the transactions, true risk of ownership had not passed to the customers. Bally also failed to meet the criterion requiring completeness of the equipment in its bill and hold transactions with one customer. Finally, Bally failed to segregate the bill and hold inventory for at least one transaction.

8. Bally also improperly recognized revenue on a bill and hold basis for games it sold to New Jersey customers when the games were stored in its New Jersey warehouse at quarter end. The games were manufactured in Nevada and shipped, by Bally, to its New Jersey warehouse, to await inspection by state regulators. The New Jersey games did not qualify for bill and hold revenue recognition and Bally's records do not support such revenue recognition. Specifically, Bally failed to meet the criteria relating to risk of ownership passing to the buyer, fixed schedule for delivery, and customer request that the transaction be on a bill and hold basis.

Improper Disclosure Relating to Bill and Hold Transactions

9. Bally did not disclose its use of bill and hold practices, which it should have disclosed under GAAP, in any of its public filings during fiscal 2003 and 2004. Instead, Bally's 2003 and 2004 Forms 10-K and Forms 10-Q for 2004 contained the misleading disclosure that "[r]evenue from sales of gaming machines is generally recognized at the time products are shipped and title has passed to the customer." This disclosure was misleading since it failed to explain that Bally recognized revenue on a bill and hold basis.

10. Moreover, when the company stopped recognizing revenue on a bill and hold basis, the company's disclosures regarding its failure to meet earnings guidance for the quarter were misleading. In its earnings press release dated April 21, 2004 and attached to a Form 8-K filed the same day, Bally disclosed that "1,250 units to be delivered in the March 2004 quarter were delayed

until the June quarter at the request of three customers, due primarily to the delay in the completion of their new or expanded gaming facilities being constructed.” However, these units were not delayed due to construction. Instead, the revenue for these units was not recognized in the quarter because Bally decided to stop recognizing revenue on a bill and hold basis. The company made a similar disclosure in its earnings release call on April 21, 2004.

11. In addition, Bally’s disclosures regarding its first restatement were misleading. In its Form 10-K for the year ended June 30, 2005, Bally stated that revenue recognition adjustments were made because “the [c]ompany identified instances where the timing or amount of revenue recognized was not in accordance with SOP 97-2,” which Bally had recently adopted. In reality, revenue recognition was improper under any GAAP, including the accounting policies that the company was using at the time revenue was first recognized.

Other Transactions Involving Improper Revenue Recognition Under GAAP

12. For the quarter ended December 31, 2004, Bally improperly recognized approximately \$3.8 million of revenue on a first shipment of games to an Oklahoma company that had agreed to purchase 1,500 video poker games over the course of three quarters, beginning with the second quarter ended December 31, 2004. Such revenue recognition was improper for two reasons. First, as of the quarter end, Bally was aware that the customer could not meet its payment obligations without a loan from its bank and that the customer’s loan application remained pending. Collectibility of the receivable from the customer therefore was not reasonably assured, as required by GAAP. Second, Bally had not fulfilled its obligation to obtain approval of the games by an independent testing agency, which was necessary for the games to be legally operated in Oklahoma. The delivery of the games to the customer therefore was not complete as of the quarter end.

13. For the quarter ended March 31, 2005, Bally improperly recognized approximately \$6.8 million of revenue on two additional shipments of games to the Oklahoma customer. The recognition of revenue on the second shipment was improper because that shipment was stored temporarily at a Bally warehouse in Oklahoma and was not actually delivered to the customer until April 6, 2005. More generally, shortly after the close of the quarter—and before Bally issued its earnings release and filed its 10-Q—it became clear that the customer likely would not be able to meet its payment obligations under the parties’ contract. On April 7, 2005, Bally learned that the customer’s bank would not advance additional funds until the customer placed a high percentage of games in tribal casinos and that the customer’s efforts to place games were going poorly. By the end of April, Bally was considering a 12 month payment plan for the customer, but doubted the customer’s ability to make payments under such an arrangement, even if it involved shifting the bulk of their payment obligations to a balloon payment at the end of the term. Under these circumstances, Bally had no basis for concluding that collection of amounts billed to the customer was reasonably assured under GAAP.

14. For the quarter ended December 31, 2004, Bally also improperly recognized \$5.65 million in revenue on the capital lease of 375 games to a casino located in Washington. The recognition of revenue was improper due to, among other things, a lack of persuasive evidence

that an arrangement existed, as required by GAAP. Bally relied on purchase orders issued by the casino and other documents to recognize the revenue on the 375 games. These purchase orders and other documents, however, did not reflect certain important terms of the transaction, notably that the casino wanted to purchase, not lease the games, and the sale price that was eventually agreed upon for the 375 games.

Violations

15. As a result of the conduct described above, Bally violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission information, documents, and annual, current, and quarterly reports as the Commission may require, and mandate that current and periodic reports contain such further material information as may be necessary to make the required statements not misleading.

16. Because Bally improperly recorded revenue, its books, records and accounts did not, in reasonable detail, accurately and fairly reflect its transactions and dispositions of assets.

17. In addition, Bally failed to implement internal accounting controls relating to its revenue accounts which were sufficient to provide reasonable assurances that these accounts were accurately stated in accordance with generally accepted accounting principles.

18. As a result of the conduct described above, Bally violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

19. Lastly, as a result of the conduct described above, Bally violated Section 13(b)(2)(B) of the Exchange Act, which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles.

Bally's Remedial Efforts

20. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

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

Accordingly, it is hereby ORDERED that:

Pursuant to Section 21C of the Exchange Act, Respondent Bally cease and desist from committing or causing any violations and any future 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.

By the Commission.

Florence E. Harmon
Acting Secretary