

**UNITED STATES OF AMERICA  
BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934  
Release No. 57303 / February 11, 2008**

**ACCOUNTING AND AUDITING ENFORCEMENT  
Release No. 2783 / February 11, 2008**

**ADMINISTRATIVE PROCEEDING  
File No. 3-12953**

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| <b>In the Matter of</b>     | : | <b>ORDER INSTITUTING PUBLIC</b>       |
|                             | : | <b>ADMINISTRATIVE PROCEEDINGS</b>     |
|                             | : | <b>PURSUANT TO RULE 102(e) OF THE</b> |
| <b>Robert A. Fish, CPA,</b> | : | <b>COMMISSION'S RULES OF</b>          |
|                             | : | <b>PRACTICE, MAKING FINDINGS, AND</b> |
|                             | : | <b>IMPOSING REMEDIAL SANCTIONS</b>    |
| <b>Respondent.</b>          | : |                                       |
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**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative proceedings be, and hereby are, instituted against Robert A. Fish (“Respondent” or “Fish”) pursuant to Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.<sup>1</sup>

**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

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<sup>1</sup> Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in . . . improper professional conduct.

the subject matter of these proceedings, 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<sup>2</sup> that:

#### A. RESPONDENT

**Fish**, 60, resides in Rockville Centre, New York. Fish, now retired, is a certified public accountant licensed to practice in the states of New York, New Jersey and Connecticut. As PricewaterhouseCoopers' ("PwC") engagement partner for the audits of Take-Two Interactive Software, Inc.'s ("Take-Two") financial statements from fiscal year 1994 to 2001, Fish served as the engagement partner assigned to audit Take-Two's financial statements as of and for the fiscal year ended October 31, 2000 ("fiscal year 2000"). On December 13, 2000, Fish signed the PwC audit report containing an unqualified audit opinion accompanying Take-Two's fiscal year 2000 financial statements included in Take-Two's 2000 Form 10-K filed with the Commission on January 29, 2001.

#### 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 video game consoles as well as the personal computer. Prior to July 31, 2006, Take-Two's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and traded on the NASDAQ NMS under the symbol "TTWO." 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 has traded on the NASDAQ Global Market. During the relevant period, Take-Two's fiscal year ended on October 31.

#### C. SUMMARY

Take-Two engaged in a fraudulent scheme to inflate its reported revenues during, among other periods, fiscal year 2000. Specifically, by engaging in transactions that involved parking several hundred thousand video games with multiple distributors,<sup>3</sup>

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<sup>2</sup> The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

<sup>3</sup> During these parking transactions, Take-Two shipped video games to different distributors at or near the end of a fiscal quarter or fiscal year, recorded revenue from these shipments as if they were sales, and then accepted returns of the shipments (some of which were disguised as purchases of new inventory) in subsequent reporting periods.

Take-Two improperly recognized approximately \$26 million in revenues during fiscal year 2000 (including \$11 million from sales recognized at interim periods, which were subsequently returned and reversed before year end). Take-Two inflated its after-tax fiscal year 2000 earnings by at least \$5 million, or 19%, as a result of inflating its reported fiscal year 2000 revenues by \$15.4 million. In addition, during the same period, Take-Two did not comply with Generally Accepted Accounting Principles (“GAAP”) because it failed to establish proper reserves for video game returns. As a result, Take-Two improperly inflated its reported assets and net income.<sup>4</sup> Take-Two’s fiscal year 2000 financial statements were not fairly presented in all material respects in conformity with GAAP.

Fish was PwC’s engagement partner assigned to audit Take-Two’s financial statements for fiscal year 2000, and was the engagement partner on PwC’s audits of Take-Two’s financial statements starting in fiscal year 1994. Fish signed PwC’s audit report accompanying Take-Two’s fiscal year 2000 financial statements included in Take-Two’s 2000 Form 10-K filed with the Commission. In performing the Take-Two audit for fiscal year end 2000, Fish departed from Generally Accepted Auditing Standards (“GAAS”). Fish did not exercise due professional care and professional skepticism, and failed to obtain sufficient competent evidential matter in his audit testing of Take-Two’s accounts receivable balance as of October 31, 2000. A material portion of those receivables were part of Take-Two's fraudulent parking transactions, meaning they were receivables for which Take-Two would never be paid because the product had not actually been sold.

Additionally, Fish failed to exercise due professional care and professional skepticism in testing Take-Two’s reserve accounting for video game returns. Of the five transactions Fish examined to test for possible cutoff errors and to ensure items had not been shipped at year end (and subsequently returned) in order to increase fiscal year 2000 sales, four had product return rates of at least 75% when Take-Two’s historical reserve for returns was only 5%. Fish failed to investigate these transactions and did not compare

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<sup>4</sup> 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. SEC v. Take-Two Interactive Software, Inc., et al., Civil Action No. 1:05-CV-5443 (DLC) (S.D.N.Y. June 9, 2005), Litigation Release No. 19260. 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. In the Matter of Robert M. Blau, Securities Act of 1933 Release No. 8581, Securities Exchange Act of 1934 (“Exchange Act”) Release No. 51809, Litigation Release No. 19260 (June 9, 2005). In the Matter of James H. David, Jr., CPA, Exchange Act Release No. 51895, Accounting and Auditing Enforcement Release No. 2262 (June 21, 2005).

the returns to the original sales invoices. Had he done so, he would have discovered that Take-Two had not set aside sufficient reserves to account for expected returns.

Fish reasonably should have known that Take Two's fiscal year 2000 financial statements had not been prepared in conformity with GAAP. He nonetheless signed an audit report on Take-Two's fiscal year 2000 financial statements containing an unqualified audit opinion that Take-Two's financial statements were fairly presented in all material respects in conformity with GAAP, based on PwC's audit in accordance with GAAS. Fish did not comply with GAAS in the conduct of the audit and engaged in improper professional conduct under Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

#### **D. FACTS**

1. Take-Two fraudulently inflated its revenues and after-tax earnings in its fiscal year 2000 financial statements. Take-Two arranged with several distributors to ship several hundred thousand computer and video game units at or near the end of a fiscal quarter or the fiscal year and have the distributors park the video games with no intention to sell them. Take-Two then improperly recorded these shipments as sales revenue and accounts receivable with the understanding that all or substantially all of the same games shipped would be returned in the next fiscal reporting period. As part of the fraudulent scheme, Take-Two shipped, and took back, games that were often outdated and that typically would not have been purchased by distributors in the quantities shipped in the normal course of business.

2. This fraudulent scheme enabled the Company to recognize approximately \$26 million in revenues during fiscal year 2000 from products it shipped but never actually sold. The scheme also enabled the Company to report after-tax fiscal year 2000 earnings that were inflated by at least \$5 million, or 19%.

3. Take-Two also failed to maintain adequate reserves for video game returns. This allowed Take-Two to artificially inflate its reported assets and net income.

4. Take-Two restated its financial statements for fiscal year 2000 in February 2002 and again in February 2004 to correct for, among other things, the fraudulent revenue recognition associated with the Company's numerous parking transactions. The February 2004 restatement also corrected for the Company's improper reserve accounting.

5. Fish, who first became PwC's engagement partner for Take-Two's audit in 1994, served as the engagement partner on the audit of Take-Two's financial statements for fiscal year 2000. On December 13, 2000, Fish signed the PwC audit report containing an unqualified audit opinion accompanying Take-Two's fiscal year 2000 financial statements included in Take-Two's 2000 Form 10-K filed with the Commission.

6. In planning for the audit of Take-Two's fiscal year 2000 financial statements, Fish appropriately identified risks presented by the audit and planned the conduct of the audit to address them. In fact, the plan referred specifically to revenue recognition and accounts receivable reserves as "areas of higher risk which will be given special attention." However, Fish did not properly respond to those risks in his audit testing as he failed to exercise due professional care and professional skepticism, and failed to obtain sufficient competent evidential matter. As a result, Fish improperly represented in the audit report that he had conducted the audit in accordance with GAAS and opined that the Take-Two financial statements were fairly presented in all material respects in conformity with GAAP.

7. In the course of the fiscal year 2000 audit, Fish failed to exercise due professional care and failed to obtain sufficient competent evidential matter in his effort to verify the existence of Take-Two's accounts receivable balance, the Company's single most important asset, as of October 31, 2000. Take-Two reported total gross domestic accounts receivable of \$104 million as of October 31, 2000. Attempting to verify the existence of the accounts receivable, PwC, under Fish's supervision, sent requests for confirmation of October 31, 2000 accounts receivable balances to 15 of the Company's customers, who owed approximately 70% of the total domestic accounts receivable balance as of October 31, 2000. In response to the 15 confirmation requests sent, PwC received only one confirmation (which turned out to be false) representing \$2 million – less than 2% of the total domestic accounts receivable balance.

8. One of the 14 customers PwC did not receive a confirmation response from was Capitol Distributing L.L.C. ("Capitol"), a new customer at the time, with a balance of \$5.4 million resulting from two sales on October 31, 2000. The Capitol "sales" were parking transactions Take-Two arranged that shipped on the last day of its fiscal year,<sup>5</sup> and were the largest of several such transactions entered into by Take-Two in the fourth quarter of fiscal year 2000 in connection with a fraudulent revenue recognition scheme. Making no attempt to sell the games, Capitol returned all of them after the end of Take-Two's fiscal year 2000 using fraudulent "assorted product" invoices to disguise the return as a purchase of new product from Capitol by Take-Two.<sup>6</sup>

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<sup>5</sup> Take-Two itself provided the cash for Capitol's alleged "purchases."

<sup>6</sup> Capitol is a privately-owned video game distributor organized as a limited liability company under the laws of the Commonwealth of Virginia. On May 2, 2007, the Commission issued an 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 in the matter of Terry M. Phillips ("Phillips"), owner/operator of Capitol, and simultaneously filed a complaint for a civil penalty against Phillips and injunction against Capitol. In the Matter of Terry M. Phillips, Exchange Act Release No. 55696. SEC v. Capitol Distributing, L.L.C. et al., Civil Action No. 1:07-CV-00798 (RMC) (D.D.C. May 2, 2007), Litigation Release No. 20100.

9. Another confirmation response that was not received was from a Canadian distributor with whom Take-Two had a parking arrangement. Included in the October 31, 2000 accounts receivable balance was a \$1.7 million parking transaction sale of product that shipped on October 31, 2000, the last day of Take-Two's fiscal year and the same day that the \$5.4 million of sales were improperly recorded from the Capitol parking transactions. A third confirmation response that was not received was from a Texas-based distributor with whom Take-Two also parked video games. Included in the October 31, 2000 balance was a \$1 million parking transaction sale of product with this distributor on the last day of the fiscal year.

10. In response to the lack of confirmation responses Fish, who had identified accounts receivable as a higher risk audit area for Take-Two, reviewed the subsequent cash receipts as an alternative audit procedure (in addition to examining sales invoices and third party shipping documents) to verify the existence of accounts receivable. However, Take-Two's cash receipts journal showed only \$16 million had been collected as of December 8, 2000. Combined with the amount of the one confirmation response received, Fish verified the existence of only \$18 million, or 17% of the domestic accounts receivable total of \$104 million. Fish's alternative audit procedures were insufficient under GAAS to verify the existence of Take-Two's accounts receivable.

11. Fish knew, or should have known, that Take-Two's records showed, in numerous instances, only aggregate cash collected after October 31, 2000. As a result, Fish knew, or should have known, that he could not be certain whether the cash he examined from November 1 through December 8, 2000 related to the accounts receivable balances that existed as of October 31, 2000, or to sales that were recorded after that date. For example, if the cash received related to sales recorded after October 31, 2000 only, then the testing would only have verified fiscal year 2001 sales, and not fiscal year 2000, which was the year under audit. Likewise, because Fish could not reliably match cash received to specific invoices, he could not determine with any degree of certainty whether any of the cash collected had been applied to accounts that were past due, including by as much as 180 days or more, as of October 31, 2000. Fish, therefore, could not determine with any degree of certainty whether any of these past due accounts were collectible. The fact that Take-Two's records often showed only aggregate cash collected was a red flag to Fish that any subsequent cash receipts testing relying on this data would prove ineffective. However, Fish nonetheless relied on insufficient information from Take-Two and conducted a test that he knew, or should have known, could not verify the existence of Take-Two's accounts receivable or reduce the identified audit risk to an acceptably low level as GAAS requires. Fish's auditing methodology, therefore, was not in accordance with GAAS.

12. Fish also failed to exercise due professional care and professional skepticism in testing the adequacy of Take-Two's estimated sales returns reserve at October 31, 2000 as required by GAAS. Take-Two accounted for shipments as sales even though its practice was to accept returns of certain games it had sold. While recording these sales was appropriate in certain circumstances, the Company was

required under GAAP to estimate and record sufficient reserves to account for these returns.

13. As of October 31, 2000, Take-Two reserved for returns at the rate of approximately 5% for the year. During Take-Two's fiscal year end 2000 audit, Fish and others at PwC at his direction performed certain analytical procedures on historical sales returns and examined five specific returns made after year end to test for possible cutoff errors and to ensure items had not been shipped at year end (and subsequently returned) in order to increase fiscal year 2000 sales. Of the five specific returns tested, Fish did not compare the returns with the original sales invoices. Had he done so, he would have discovered that in four of the five instances, more than 75% of the games purportedly purchased had been returned, an amount much greater than the historical return rate, when Take-Two only reserved for returns at the rate of 5%. Fish determined, nonetheless, that Take-Two's reserves were adequate without, for example, examining other returns from fiscal year 2000, or inquiring of the customers regarding these particular sales. In actuality, the four "sales" with abnormally high return rates were parking transactions. Fish's auditing methodology, therefore, was not in accordance with GAAS.

#### **E. LEGAL ANALYSIS**

Rule 102(e)(1)(ii) of the Commission's Rules of Practice provides that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to any person who is found by the Commission to have engaged in improper professional conduct. Rule 102(e)(1)(iv), in relevant part, defines improper professional conduct with respect to persons licensed to practice as accountants as ". . . (B) Either of the following two types of negligent conduct: (1) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which the . . . associated person knows, or should know, that heightened scrutiny is warranted; or (2) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission." An accountant's conduct is highly unreasonable when the accountant fails to employ heightened scrutiny with regard to matters that are important or material, or when warning signs or other factors should alert an accountant to a heightened risk. See, e.g., James Thomas McCurdy, Exchange Act Rel. No. 34-49182 (Feb. 4, 2004), 82 SEC Docket 271, 286, aff'd, McCurdy v. SEC, 396 F.3d 1258 (D.C. Cir. 2005).

Fish's performance on Take-Two's fiscal year end 2000 audit constituted improper professional conduct under each standard of negligent conduct.

#### **The Applicable GAAS Standards**

The Commission's rules require that auditors of public company financial statements adhere to GAAS, which requires that auditors exercise due professional care in performing an audit or review and in preparing the audit report. AU § 230.01. Under

AU § 230.04, “due professional care concerns what the independent auditor does and how well he does it.” Due professional care requires further that the auditor exercise professional skepticism in performing audit and review procedures and gathering and analyzing audit evidence. AU §§ 230.07-.08. “Gathering and objectively evaluating audit evidence requires the auditor to consider the competency and sufficiency of the evidence.” AU § 230.08. Furthermore, in “exercising professional skepticism, the auditor should not be satisfied with less than persuasive evidence because of a belief that management is honest.” AU § 230.09.

GAAS also requires auditors to obtain sufficient competent evidential matter when conducting audits, and that such evidential matter be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit. AU § 326.01. In addition, the auditor should recognize “the possibility that the financial statements may not be fairly presented in conformity with generally accepted accounting principles” and should “consider relevant evidential matter regardless of whether it appears to corroborate or contradict the assertions in the financial statements.” AU § 326.25. For information obtained through the confirmation process to be competent, it must be reliable and relevant. AU § 330.11. When obtaining evidence for assertions not adequately addressed by confirmations, an auditor should consider other audit procedures to complement confirmation procedures or to be used instead of confirmation procedures. AU § 330.12.

When the auditor has not received replies to positive confirmation requests, he or she should apply alternative procedures to the nonresponses to obtain the evidence necessary to reduce audit risk to an acceptably low level. AU § 330.31. When examining accounts receivable, “alternative procedures may include examination of subsequent cash receipts (including matching such receipts with the actual items being paid), shipping documents or other client documentation to provide evidence for the existence assertion.” AU § 330.32. Finally, after any alternative procedures have been performed, the auditor should evaluate the combined evidence provided by the confirmations and alternative procedures, considering in particular “the nature of any exceptions, including the implications, both quantitative and qualitative, of those exceptions . . . .” AU § 330.33.

**Fish Engaged in Improper Professional Conduct by Failing to Exercise Due Professional Care and Professional Skepticism, and Failed to Obtain Sufficient Competent Evidential Matter as Required by GAAS**

Fish departed from GAAS in his auditing of Take-Two’s accounts receivable, which was Take-Two’s single most important asset. As previously discussed, Fish sent out 15 requests for confirmation to test a reported \$104 million in domestic Company receivables as of October 31, 2000. In response to the 15 requests for confirmation sent, only one confirmation was returned for \$2 million – less than 2% of the total domestic accounts receivable balance, which was a red flag to Fish that he should have investigated further. Among the 14 confirmations outstanding were three that included parking transaction sales worth over \$8 million that shipped on October 31, the last day



of the fiscal year. In response to the lack of confirmations, Fish employed a subsequent cash receipts testing methodology that was not in accordance with GAAS because he knew, or should have known, that Take-Two had no way of reliably applying cash receipts to specific invoices. Fish failed to exercise due professional care because the alternative procedures employed were insufficient to reduce audit risk to an acceptably low level as GAAS requires. AU §§ 230.01, 330.31. Fish also failed to obtain sufficient competent evidential matter regarding Take-Two's accounts receivable and relied on alternative audit procedures that could not effectively verify the Company's accounts receivable balance. AU §§ 326.01, 330.12, 330.31 and 330.32. Fish's departures from GAAS constituted improper professional conduct.

In conducting his fiscal year end 2000 audit, Fish failed to exercise due professional care and professional skepticism by failing to respond appropriately to the fact that Take-Two accepted returns at a rate exceeding 75%, far in excess of the Company's reserves for a 5% rate of return. Although Fish and others at PwC at his direction performed certain analytical procedures on historical sales returns and examined five specific returns made after year end, Fish did not compare the returns to the original sales invoices. Had he done so, he would have discovered that in four of the five instances, more than 75% of the games purportedly purchased had been returned when Take-Two only reserved for returns at the rate of 5%. Fish's conduct constituted improper professional conduct.

By departing from GAAS in his testing of Take-Two's accounts receivable and reserve accounting for returns, Fish engaged in improper professional conduct.

### **Failure to Render an Accurate Audit Report**

In conducting an audit, an auditor is required to state in the auditor's report whether, in the auditor's opinion, the financial statements are fairly presented in all material respects in conformity with GAAP. AU §§ 410 and 411. An auditor may express that the financial statements are presented in conformity with GAAP only when the auditor has formed such an opinion on the basis of an audit performed in accordance with GAAS. AU § 508.07.

Based on the foregoing, in connection with the audit of Take-Two's fiscal year 2000 financial statements, Fish failed to render an accurate audit report when he opined that Take-Two's financial statements had been prepared in conformity with GAAP and the audit had been performed in accordance with GAAS. In fact, the financial statements were not in conformity with GAAP, and the audit was not performed in accordance with GAAS.

## **F. FINDINGS**

Based on the foregoing, the Commission finds that Respondent engaged in improper professional conduct (as set forth under Rules 102(e)(1)(iv)(B)(1) and (2) of the

Commission's Rules of Practice) pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

#### IV.

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

Accordingly, it is hereby ORDERED that, effective immediately:

A. Respondent is denied the privilege of appearing or practicing before the Commission as an accountant.

B. After one year from the date of this order, Respondent 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 Respondent's 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) Respondent, 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) Respondent, 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 the Respondent's or the firm's quality control system that would indicate that the Respondent will not receive appropriate supervision;

(c) Respondent 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) Respondent acknowledges his responsibility, as long as Respondent 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.

C. The Commission will consider an application by Respondent 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 Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Nancy M. Morris  
Secretary