

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 58637 / September 24, 2008**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 2886 / September 24, 2008**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13237**

**In the Matter of**

**ROBERT L. SAXTON, CPA**

**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 Robert L. Saxton (“Saxton” 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 him 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 finds<sup>1</sup> that:

#### **Respondent**

1. **Robert L. Saxton**, age 54, is a resident of Las Vegas, Nevada. Saxton served as chief financial officer ("CFO") of Bally from March 2000 through March 2005 when he became executive vice president of sales. Saxton left Bally in July 2006. Saxton became licensed as a certified public accountant in Nevada in 1984, but his license expired in 1989 and his current status is inactive.

#### **Related Party**

2. **Bally Technologies, Inc.** ("Bally"), a Nevada corporation headquartered in Las Vegas, Nevada, has been in business since 1968 and operates on a fiscal year that ends on June 30. During the relevant time period, Bally designed, manufactured, and distributed gaming machines and monitoring systems for casinos. Bally's common stock is registered with the Commission under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange.

#### **Background**

3. While Saxton was CFO, Bally materially misstated its reported revenue in its financial statements for the year ended June 30, 2003 and the first two quarters of 2004. Bally included its misleading 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.

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

#### **Bally's Bill and Hold Transactions**

5. 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

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<sup>1</sup> 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.

<sup>2</sup> 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*.

were awaiting approval from New Jersey state regulators, which was required before the games could be operated on a casino floor.

6. 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 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.

7. Bally improperly recorded revenue on a bill and hold basis on one individual customer transaction in the fourth quarter of 2003, three individual customer transactions in the first quarter of 2004, and one individual customer transaction in the second quarter of 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.

8. 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.

9. 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.

10. Saxton was ultimately responsible for assuring the accuracy of Bally's periodic and current filings while he served as Bally's CFO. Saxton knew that Bally had recognized revenue on bill and hold transactions, but he did not take sufficient steps to ensure that this revenue was recognized in accordance with GAAP. Saxton reviewed and signed filings with the Commission in which Bally materially overstated its revenues as a result of improper revenue recognition on a

bill and hold basis. In addition, Saxton certified Bally's Form 10-K for the year ended June 30, 2003 and Forms 10-Q for the quarters ended September 30, 2003 and December 31, 2003.

### **Improper Disclosure Relating to Bill and Hold Transactions**

11. 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 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.

12. 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.

13. Saxton was ultimately responsible for Bally's improper disclosures. He reviewed Bally's filings with the Commission, but did not take sufficient steps to ensure that the filings accurately and completely disclosed Bally's revenue recognition policy. Moreover, Saxton, who participated in the April 21, 2004 earnings call, knew that Bally had decided to stop recognizing revenue on a bill and hold basis, but Saxton did not take sufficient steps to ensure that the reason for Bally's missed guidance was accurately disclosed.

### **Books, Records, and Internal Controls**

14. As described above, Bally improperly recorded revenue for the year ended June 30, 2003 and for the quarters ended September 30, 2003 and December 31, 2003. Therefore, its books, records, and accounts did not, in reasonable detail, accurately and fairly reflect its transactions and dispositions of assets. Saxton was ultimately responsible for Bally's books, records, and accounts, but failed to take the steps necessary to assure their accuracy.

15. Bally failed to implement internal accounting controls relating to its recording of revenue that were sufficient to provide reasonable assurances that its accounts were accurately stated in conformity with GAAP. Saxton was ultimately responsible for Bally's internal accounting controls but failed to take the steps necessary to assure their sufficiency.

## Violations

16. As a result of the conduct described above, Bally violated and Saxton caused Bally to violate 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.

17. As a result of the conduct described above, Bally violated and Saxton caused Bally to violate 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.

18. As a result of the conduct described above, Bally violated and Saxton caused Bally to violate 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 GAAP.

19. Rule 13b2-1 under the Exchange Act prohibits any person from, directly or indirectly, falsifying or causing to be falsified any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act. Bally's books, records, and accounts were subject to Section 13(b)(2)(A) of the Exchange Act. As a result of the conduct described above, Saxton violated Rule 13b2-1 under the Exchange Act.

20. Rule 13a-14 under the Exchange Act requires financial officers to certify in quarterly and annual Commission filings that, among other things, they have read the filing; that it does not contain any untrue statements, or omissions, of material facts; and that the filing fairly presents the financial condition and results of operations and cash flows of the issuer. As a result of the conduct described above, Saxton violated Rule 13a-14 under the Exchange Act.

## IV.

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

Accordingly, it is hereby ORDERED that:

Pursuant to Section 21C of the Exchange Act, Respondent Saxton cease and desist from 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, 13a-13 thereunder and from committing or causing any violations of Exchange Act Rules 13a-14 and 13b2-1.

By the Commission.

Florence E. Harmon  
Acting Secretary