



## U.S. Securities and Exchange Commission

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

**SECURITIES ACT OF 1933**  
Release No. 8552 / March 4, 2005

**SECURITIES EXCHANGE ACT OF 1934**  
Release No. 51320 / March 4, 2005

**ACCOUNTING AND AUDITING ENFORCEMENT**  
Release No. 2202 / March 4, 2005

**ADMINISTRATIVE PROCEEDING**  
File No. 3-11845

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

### I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public 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 TALX Corporation ("Respondent" or "TALX").<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 that Respondent has admitted the Commission's jurisdiction over it and over the subject matters set forth herein, Respondent has consented to the entry of this Order Instituting

Proceedings Pursuant to Section 8A of the Securities Act of 1933 and 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>2</sup> that:

1. TALX Corporation, a Missouri corporation with its principal place of business in St. Louis, Missouri, provides automated employment verification services and automated employee self-service applications. TALX became public in 1996 and its common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act. The company's fiscal year ends March 31, and it files reports on Forms 10-K and 10-Q. TALX common stock is quoted on the NASDAQ National Market System.

2. During fiscal 2001, and through a secondary offering of common stock completed on August 3, 2001, TALX placed emphasis on meeting its internal and external financial projections, and highlighted its earnings growth to the market. For example, in an October 2000 investor conference call concerning the company's 2001 second quarter earnings, a TALX executive stated, "We believe that the trend of the last 7 quarters of delivering substantial [earnings per share] increases, and 3 quarters of delivering 50 plus percent quarter over quarter increases, will continue." Similarly, on January 17, 2001, TALX announced a 50% increase in its third quarter earnings per share ("EPS") and a 53% increase in its EPS for the nine months ended December 31, 2000.

3. During early 2001, TALX began to consider raising additional capital through a secondary stock offering. On April 25, 2001, TALX announced it had met its fourth quarter and year ended March 31, 2001 EPS target, and that its EPS had grown by more than 50%. After informing the market in its April 26, 2001 investor conference call that TALX expected its 2001 earnings trend to continue through 2002, TALX set the stage for a secondary offering.

4. On June 22, 2001, TALX filed an S-3 registration statement with the Commission. On June 28, 2001, TALX filed its 2001 Form 10-K. TALX filed three amendments to its S-3 registration statement in July and August 2001, two of which incorporated the financial statements contained in TALX's 2001 Form 10-K. TALX's 2001 financial results were also contained in TALX's Forms 10-K filed on July 1, 2002 and May 22, 2003, and in TALX's Forms 8-K filed on July 16 and July 18, 2001 and on June 25, 2002.

5. On July 18, 2001, TALX reported record first quarter 2002 earnings with earnings growth exceeding 50%. Between April 2000 and August 3, 2001, TALX's stock price had climbed 240%, from approximately \$10 to \$34. Between April 26, 2001 and August 3, 2001, TALX's stock price had increased from approximately \$26 to \$34. On August 3, 2001, TALX filed with the Commission a prospectus and completed its secondary offering of 2.95 million shares of common stock for \$32 per share, raising approximately \$82 million for the company.

6. TALX met its 2001 financial targets and increased its stock price through accounting misstatements which inflated falsely TALX's financial performance. TALX's misstatements involved an improper bill and hold transaction and other premature revenue recognition; capitalizing costs relating to a patent infringement claim that should have been expensed; and expensing bonuses in the wrong period. As a result of these misstatements, TALX overstated fiscal 2001 income by approximately \$2.1 million, or 65%.<sup>3</sup>

7. First, TALX used a fraudulent bill and hold transaction to inflate fiscal

2001 income. In early fiscal 2001, TALX desired to characterize a transaction with a TALX Customer Premises System ("CPS") client as a "bill and hold" sale. The transaction did not meet the requirements of a bill and hold sale under generally accepted accounting principles ("GAAP") because the bill and hold was not at the customer's request; there was no valid business purpose; the customer refused to take title to the TALX systems until delivery; and normal billing terms were modified. As a consequence, TALX improperly recognized \$52,000 of income in the second quarter ended September 30, 2000.

8. Second, TALX recognized fraudulently implementation service revenue on CPS transactions. TALX recognized CPS implementation service revenue using the percentage-of-completion method of accounting. Under that method, TALX should have recognized revenue, costs, and gross profit as it progressed toward completion on CPS projects. TALX, however, did not have sufficient internal controls or other accounting policies and procedures in place to measure and record accurately the work performed on CPS projects and therefore to recognize the appropriate amount of service revenue. The breakdown in internal controls allowed TALX to recognize prematurely implementation service revenue and manipulate the revenue to meet earnings targets. As a result, TALX overstated CPS service income by \$358,000, or 11%, in 2001. Without this revenue, TALX would have missed its EPS targets for the quarters ended September 30, 2000 and December 31, 2000, and for the year ended March 31, 2001, instead of meeting or exceeding its targets as it reported.

9. Third, TALX fraudulently capitalized costs relating to a patent infringement claim. On or about March 13, 2001, TALX entered into a license agreement with the patent holder relating to the claim. TALX's payment to the patent holder included payment for claimed past use of the patented technology, which was a period cost requiring immediate recognition under GAAP. In its 2001 Form 10-K financial statements, however, TALX capitalized the payment. By capitalizing the payment, TALX overstated income by \$1.6 million, or 49%, in fiscal year 2001. Had TALX properly expensed the \$1.6 million, TALX would have fallen short of its previously announced 50% earnings growth rate.

10. Fourth, TALX fraudulently expensed bonuses paid to three executives. On or about April 12, 2001, three TALX executives gave up half their fiscal year 2001 bonuses, in aggregate totaling \$158,000. One month later, on or about May 15, 2001, TALX paid bonuses totaling \$158,000 to the executives. GAAP requires that administrative salaries be expensed in the period of the event when the cost occurred. The reinstated bonuses should have been expensed in fiscal 2001, but TALX improperly expensed them in fiscal 2002. As a result, TALX overstated its fiscal 2001 income by \$158,000, or 5%.

11. Further, prior to and in its 2001 fiscal year, TALX used the percentage-of-completion method of accounting for certain other service transactions. Pursuant to GAAP, the service revenue should have been recognized on a straight-line basis. After TALX's auditors brought this to the company's attention, TALX restated its revenue. As a result of using the wrong method of revenue recognition, TALX overstated income by approximately \$2 million in 2001.

12. The combined misstatements, including the intentional misstatements and the unintentional use of the wrong revenue

recognition method, resulted in TALX overstating its 2001 income by approximately 122%. As a consequence, TALX should have reported an earnings decline for fiscal 2001, not the inflated 56% growth originally reported. Further, the combined misstatements inflated artificially TALX's 2001 stock price leading up to TALX's August 3, 2001 secondary offering. Without the combined misstatements, TALX would have received less than the \$82 million realized in its secondary offering.

13. As a result of the conduct described herein, TALX made material financial misrepresentations in Forms 8-K, 10-K and 10-Q for fiscal years 2001 through the second quarter of 2004, and in its fiscal 2002 registration statement.

14. Section 17(a) of the Securities Act makes it unlawful in the offer or sale of any securities, directly or indirectly, to employ any device, scheme, or artifice to defraud; to obtain money or property by means of any untrue statement of a material fact, or to omit to state a material fact necessary in order to make any statements made, in light of the circumstances under which they were made, not misleading; or to engage in any transaction, practice, or course of business which operates or may be operating as a fraud or deceit upon the purchaser. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit the misrepresentation of or misleading omission of material facts in connection with the purchase or sale of securities. By engaging in the conduct described herein, TALX committed violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

15. Section 13(a) of the Exchange Act requires all issuers with securities registered under Section 12 of the Exchange Act to file periodic and other reports with the Commission containing such information as the Commission's rules prescribe. Pursuant to Section 13(a), the Commission promulgated Rules 13a-1, 13a-11, and 13a-13 that require issuers to file annual, current and quarterly reports, respectively. The reporting requirements necessarily include the requirement that the issuer supply accurate information. In addition, Rule 12b-20 requires that reports contain such further material information as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading. As a result of the conduct described herein, TALX committed violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

16. Section 13(b)(2)(A) of the Exchange Act states that every Section 12 registrant must "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." As a result of the conduct described herein, TALX violated Section 13(b)(2)(A) of the Exchange Act.

17. Section 13(b)(2)(B) states that every issuer must "devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that . . . (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements . . . ." As a result of the conduct described herein, TALX violated Section 13(b)(2)(B) of the Exchange

Act.

#### IV.

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

Accordingly, it is hereby ORDERED that Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Sections 10(b), 13(a), and 13(b)(2) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

IT IS FURTHERED ORDERED that Respondent shall, within ten days of the entry of this Order, pay disgorgement in the amount of \$1. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Clerk of the Court, United States District Court for the Eastern District of Missouri; (C) hand-delivered or mailed to the Clerk of the Court, United States District Court for the Eastern District of Missouri, 111 S. 10<sup>th</sup> Street, St. Louis, Missouri 63102; and (D) submitted under cover letter that identifies that the payment shall be deposited into the Court Registry Investment System

("CRIS") account established for the action titled *Securities and Exchange Commission vs. TALX Corporation*, a copy of which cover letter and money order or check shall be sent to Donald M. Hoerl, Associate Director, and Ian S. Karpel, Branch Chief, Division of Enforcement, Securities and Exchange Commission, 1801 California Street, Suite 1500, Denver, Colorado 80202-2648.

By the Commission.

Jonathan G. Katz  
Secretary

<sup>1</sup> This matter is related to a civil action, *Securities and Exchange Commission v. TALX Corporation*, which was filed simultaneously and in which TALX has consented to pay a \$2,500,000 penalty. The Commission anticipates that the penalty in the civil action will be added to disgorgement in this action, in order to create a Fair Fund to compensate investors.

<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> All references to income are pre-tax.

<http://www.sec.gov/litigation/admin/33-8552.htm>