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TAKE TWO INTERACTIVE SOFTWARE INC
Form 10-K/A
March 02, 2004

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K/A

Annual Report Pursuant to Section 13 or 15(d) of the Securities
Exchange Act of 1934
For the fiscal year ended October 31, 2003

OR

Transition Report Pursuant to Section 13 or 15(d) of the Securities
Exchange Act of 1934
For the transition period from ___ to ___

0-29230
(Commission File No.)

TAKE-TWO INTERACTIVE SOFTWARE, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

51-0350842
(I.R.S. Employer
Identification No.)

622 Broadway, New York, New York 10012
(Address of principal executive offices including zip code)

Registrant's telephone number, including area code: (646) 536-2842

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Act:
Common Stock, \$.01 par value

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the Registrant's knowledge, in definitive proxy or information statements in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the Registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes No

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the Registrant's most recently completed second fiscal quarter was approximately \$910,000,000.

As of January 30, 2004, there were 44,578,611 shares of the Registrant's common stock outstanding.

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Documents Incorporated by Reference: None

Item 10. Directors and Executive Officers of the Registrant

Following is information with respect to our executive officers and directors:

Ryan A. Brant, age 32, has been Chairman of the Company since 1993. Mr. Brant served as the Company's Chief Executive Officer from 1993 until February 2001. Mr. Brant received a B.S. degree in Economics from the University of Pennsylvania's Wharton School of Business.

Jeffrey C. Lapin, age 47, has been a director of the Company since November 2002 and Chief Executive Officer of the Company since January 2003. Mr. Lapin served as Vice Chairman of THQ, Inc., a developer and publisher of interactive entertainment software from October 1998 to November 2002, and served as Chief Operating Officer of THQ from August 2000 to November 2002. From July 1996 to October 1998, Mr. Lapin served as President of House of Blues, Inc. Hospitality and Executive Vice President of House of Blues, Inc. Entertainment. From 1986 to June 1996, Mr. Lapin served in various executive capacities with Starwood Hotels & Resorts, most recently from January 1995 to June 1996 as President and Chief Operating Officer, and from May 1991 to January 1995 as President and Chief Executive Officer. Prior to his employment by Starwood, Mr. Lapin was an attorney at Mitchell, Silberberg & Knupp in Los Angeles. Mr. Lapin received a J.D. from Loyola Law School.

Karl H. Winters, age 45, has been Chief Financial Officer of the Company since February 2002. From April 2000 to June 2001, Mr. Winters was the Chief Financial Officer of ModelWire, Inc., a company engaged in marketing imaging database products. From September 1993 to December 1999, Mr. Winters served in various positions, most recently as Vice President of Trace International Holdings, Inc., a private holding company that held significant interests in United Auto Group, Inc., a consolidator of new car dealerships, and Foamex International Inc., a manufacturer of polyurethane products. From 1993 to 1999, Mr. Winters held executive positions at United Auto and Foamex, most recently as United Auto's Chief Financial Officer and Executive Vice President. Trace International filed a petition under Chapter 11 of the United States Bankruptcy Code in July 1999. From 1983 to 1993, Mr. Winters was a Senior Audit Manager for Cooper's & Lybrand. Mr. Winters is a C.P.A. and received an M.B.A. from the University of Michigan and a B.A. in business economics with a concentration in accounting from Calvin College.

Trevor Drinkwater, age 37, has been the Chief Operating Officer of the Company since November 2003. Prior to joining the Company, Mr. Drinkwater served in various executive capacities at Warner Home Video from April 1999 to October 2003, including most recently as Senior Vice President of Domestic Sales. From May 1990 to May 1999, Mr. Drinkwater served in various capacities at The Perrier Group of America. Mr. Drinkwater received a B.S. in Marketing from the University of Colorado.

Oliver R. Grace, Jr., age 50, has been a director of the Company since April 1997. Mr. Grace, a private investor, has been the Chairman of the Board of Andersen Group, Inc., a dental products and video broadcasting equipment manufacturing company, since 1990. Mr. Grace has also been a director of Republic Automotive Parts, Inc., a distributor of replacement parts for the automotive aftermarket, since 1982. Mr. Grace is a general partner of Anglo American Security Fund, L.P., a private investment fund. Mr. Grace received a B.A. in Business Administration from Vanderbilt University.

Robert Flug, age 56, has been a director of the Company since February

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1998. Mr. Flug has been the President and Chief Operating Officer of S.L. Danielle, a women's apparel company, since September 1987. Mr. Flug received a B.S. in Business Administration from New York University.

Todd Emmel, age 41, has been a director of the Company since February 2002. Since August 2003, Mr. Emmel has served as Director, Structured Products for John Hancock Financial Services. From November 1999 until June 2002, Mr. Emmel was a First Vice President at Ambac Assurance Corporation, a financial insurance company. From May 1999 to November 1999, Mr. Emmel was Chief Credit Officer at Structured Credit Partners, a private credit arbitrage firm. From March 1998 to May 1999, Mr. Emmel was a Managing Director of DVI Private Capital Group, a private equity fund. From April 1990 to March 1998, Mr. Emmel held various positions at Union Bank of Switzerland, most recently as a Managing Director. Prior to this, Mr. Emmel was an Associate at both Drexel Burnham Lambert, from June 1988 to February 1990, and at E.F. Hutton from July 1987 to February 1988. Mr. Emmel received an M.B.A. from Carnegie Mellon University and a B.S. in accounting from Miami University.

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Mark Lewis, age 54, has been a director of the Company since May 2001. For the fifteen years prior to February 2001, Mr. Lewis held various positions with Electronic Arts, most recently as Senior Vice President of International Operations. Mr. Lewis has been a director of Muse Communications Corp., a broadband technology company, since November 1997. Mr. Lewis received a B.A. in English and graduated Cum Laude from Yale University.

Steven Tisch, age 54, has been a director of the Company since April 2002. Since 1986, Mr. Tisch has been an independent motion picture producer. Mr. Tisch is the Oscar Award winning producer of Forrest Gump, the 1994 winner for Best Picture and the fourth-largest grossing domestic box office film of all time. Since May 2000, Mr. Tisch has been a partner of Escape Artists, a private independent film company, and a director of Classic Media, an owner of franchise entertainment properties. Since June 2002, Mr. Tisch has been a director of Film Roman, Inc., a publicly held television and motion picture production company. From 1976 to 1986, Mr. Tisch was a principal of Tisch/Avnet Productions, a production company with credits such as Risky Business. Mr. Tisch is a member of the Board of Directors of the Tisch School of the Arts at New York University and The Geffen Theatre in Los Angeles. Mr. Tisch received a B.A. in Sociology from Tufts University.

Richard W. Roedel, age 54, has been a director of the Company and Chairman of the Audit Committee since November 2002. From 1999 to 2000, Mr. Roedel was Chairman and Chief Executive Officer of the accounting firm BDO Seidman, LLP, the United States member firm of BDO International. Before becoming Chairman and Chief Executive Officer, he was the Managing Partner of BDO Seidman's New York Metropolitan Area from 1994 to 1999, the Managing Partner of its Chicago office from 1990 to 1994 and an Audit Partner from 1985 to 1990. Mr. Roedel is a co-founder and principal of Pinnacle Ventures LLC, which provides funding and management expertise to privately held companies. Mr. Roedel received a B.S. degree in accounting and economics from The Ohio State University and is a Certified Public Accountant. Mr. Roedel is a director of Brightpoint, Inc. a provider of outsourced services in the wireless telecommunications and data industry, and Dade Behring Holdings, Inc., a medical diagnostics equipment and related product manufacturer.

Section 16(a) Beneficial Ownership Compliance. Based solely on a review of Forms 3, 4 and 5 furnished to the Company with respect to its most recent fiscal year, the Company believes that all reporting persons currently required to file forms under the Securities Exchange Act of 1934 filed such reports, except that

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Mr. Brant was late filing four Forms 4 (four transactions); Mr. Grace was late filing one Form 4 (one transaction); Mr. Flug was late filing two Forms 4 (two transactions); Mr. Emmel was late filing one Form 4 (one transaction); and Mr. Tisch was late filing one Form 4 (one transaction).

Audit Committee. The Company has established an Audit Committee of the Board of Directors consisting of Messrs. Roedel, Flug, Grace and Emmel, each of whom is an "independent" director as defined under the rules of the National Association of Securities Dealers, Inc. Mr. Roedel, who acts as Chairman of the Audit Committee, qualifies as a "financial expert" under federal securities laws.

Code of Ethics. In March 2002, the Company adopted a written code of ethics, as amended, that applies to the Company's principal executive officer, principal financial officer, principal accounting officer or controller and any persons performing similar functions. The Company will provide a copy of its code of ethics to any person without charge upon written request addressed to Take-Two Interactive Software, Inc. 622 Broadway, New York, New York 10012, Attention: Director of Corporate Communications.

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Item 11. Executive Compensation

The following table sets forth the cash compensation paid by the Company during the fiscal years ended October 31, 2001, 2002 and 2003 to its Chief Executive Officer and four most highly compensated executive officers other than its Chief Executive Officer, each of whom was serving at the end of the fiscal year ended October 31, 2003 and whose salary and bonus exceeded \$100,000 (the "Named Executives"):

Summary Compensation Table

| Name and Principal Position | Year Ended October 31, | Annual Compensation | | Other Annual Compensation |
|--|---------------------------|---------------------|---------------|------------------------------|
| | | Salary (\$) | Bonus (\$) | |
| Ryan A. Brant Chairman..... | 2003 | 752,884 | 2,909,500 (2) | -- |
| | 2002 | 641,058 | 1,993,330 | -- |
| | 2001 | 575,000 | 790,000 | -- |
| Jeffrey C. Lapin (4) Chief Executive Officer..... | 2003 | 542,500 | 200,000 | -- |
| Kelly Sumner (5)..... | 2003 | 607,019 | 1,862,500 | -- |
| | 2002 | 473,910 | 450,000 | -- |
| | 2001 | 359,519 | 19,317 | -- |
| Paul Eibeler (6)..... | 2003 | 296,153 | 650,000 | -- |
| | 2002 | 430,385 | 112,500 | -- |
| | 2001 | 353,819 | 95,000 | -- |
| Karl H. Winters | 2003 | 326,250 | 265,000 | -- |

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Chief Financial Officer (7)..... 2002 222,115 207,500 --

-
- (1) The aggregate value of benefits to be reported under the "Other Annual Compensation" column did not exceed the lesser of \$50,000 or 10% of the total of annual salary and bonus reported for the Named Executives.
 - (2) Includes a signing bonus of \$600,000.
 - (3) Includes 150,000 shares of restricted stock.
 - (4) Mr. Lapin joined the Company as Chief Executive Officer in January 2003.
 - (5) Mr. Sumner resigned as Chief Executive Officer in January 2003 and serves in a non-executive capacity.
 - (6) Mr. Eibeler resigned as President in June 2003.
 - (7) Mr. Winters joined the Company in February 2002.

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The following table sets forth information concerning options granted in the fiscal year ended October 31, 2003 to the Named Executives:

Option Grants in Fiscal Year Ended October 31, 2003

| Name | Individual Grants(1) | | | |
|-----------------------|--|---|------------------------|-----------------|
| | Number of Securities Underlying Options Granted(#) | Percent of Total Options Granted to Employees in Fiscal Year(%) | Exercise Price (\$/Sh) | Expiration Date |
| Ryan A. Brant..... | 250,000 | | 22.17 | 04/30/08 |
| | 50,000 | 12 | 34.16 | 09/30/08 |
| Jeffrey C. Lapin..... | 400,000 | 16 | 28.12 | 11/17/07 |
| Kelly Sumner | 100,000 | 4 | 26.06 | 11/12/07 |
| Paul Eibeler..... | 50,000 | 2 | 22.17 | 04/30/08 |
| Karl Winters..... | -- | -- | -- | -- |

- (1) All of the options have a term of five years and vest at various times over the term of the options.
- (2) The potential realizable value columns of the table illustrate values that might be realized upon exercise of options immediately prior to expiration, assuming the common stock appreciates at the compounded rates specified over the term of the options. These numbers do not take into account provisions of certain options providing for termination of the

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option following termination of employment or non-transferability of the options and do not make any provision for taxes associated with exercise. Because actual gains will depend upon, among other things, future performance of the common stock, there can be no assurance that the amounts reflected in this table will be achieved.

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The following table sets forth information concerning the value of options exercised during the fiscal year ended October 31, 2003 and the value of unexercised stock options held by the Named Executives as of October 31, 2003:

Aggregated Option Exercises and Year End Values

| Name ----- | Shares Acquired Exercise (#) ----- | on Value Realized (\$) ----- | Number of Securities Underlying Unexercised Options at October 31, 2003 (#) ----- | | Value of Unexercised In-the-Money Options at October 31, 2003 ----- | |
|------------------|---|------------------------------------|---|------------------------|--|------------------------|
| | | | Exercisable ----- | Unexercisable ----- | Exercisable ----- | Unexercisable ----- |
| Ryan A. Brant .. | 68,662 | 1,012,399 | -- | 175,000 | -- | 2,475,950 |
| Jeffrey C. Lapin | -- | -- | -- | 400,000 | -- | -- |
| Kelly Sumner ... | 685,000 | 9,989,226 | -- | 150,000 | -- | -- |
| Paul Eibeler ... | 405,000 | 5,876,654 | -- | -- | -- | -- |
| Karl Winters ... | 35,000 | 469,981 | 115,000 | 50,000 | 2,475,950 | -- |

*Year-end values for unexercised in-the-money options represent the positive spread between the exercise price of such options and the fiscal year-end market value of the common stock, which was \$39.71 on October 31, 2003.

Director Compensation

For the year ended October 31, 2003, each of Messrs. Flug and Grace received cash compensation of \$90,000 for serving as a non-employee director; each of Messrs. Emmel and Roedel received \$50,000; and each of Messrs. Lewis and Tisch received \$40,000. During fiscal 2003, Mr. Grace received options to purchase 13,000 shares; Mr. Flug received options to purchase 13,000 shares; Mr. Lewis received options to purchase 10,000 shares; Mr. Emmel received options to purchase 13,000 shares; and Mr. Tisch received options to purchase 10,000 shares.

For the fiscal year ending October 31, 2004, each non-employee director is expected to receive cash compensation of \$60,000. In addition, the Chairman of the Audit Committee is expected to receive an additional \$35,000, the Chairman of the Nominating/Corporate Governance Committee is expected to receive an additional \$20,000 and the Chairman of the Compensation Committee is expected to receive an additional \$20,000. Members of the Audit Committee (excluding the Chairman) are expected to receive an additional \$10,000. The Company is currently formulating its plans with respect to the grant of stock-based compensation to non-employee directors for fiscal 2004.

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Employment Agreements

The Company entered into an employment agreement, as amended in May 2003, with Ryan A. Brant for a five-year term ending July 2007. The agreement provides that Mr. Brant is entitled to receive an annual salary of \$750,000 and a bonus of \$150,000 for each fiscal quarter and \$250,000 for each fiscal year, provided that such bonus is approved by the Compensation Committee of the Board of Directors and the Company achieves its projected cash flow and net income targets for each period. Mr. Brant is also entitled to receive a bonus of \$650,000 for each fiscal year, as well as discretionary bonuses approved by the Compensation Committee.

The Company entered into an employment agreement with Jeffrey C. Lapin for a three-year term commencing January 2003. The agreement provides that Mr. Lapin is entitled to receive an annual salary of \$650,000 and a bonus of \$50,000 for each fiscal quarter and \$200,000 for each fiscal year, provided that the Company achieves its business and financial plans for each period. Mr. Lapin is also entitled to receive a bonus of \$200,000 for each fiscal year.

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The Company entered into an employment agreement, as amended, with Kelly Sumner providing for a three-year term ending December 2005. The agreement provides that Mr. Sumner is entitled to an annual salary of \$625,000.

The Company entered into an employment agreement with Karl H. Winters for a three-year term commencing February 2002. The agreement provides that Mr. Winters is entitled to an annual salary of \$300,000 and a bonus based on Mr. Winter's performance in implementing certain objectives of the Audit Committee of the Board of Directors.

The Company has agreed to pay to Trevor Drinkwater an annual salary of \$350,000 plus an annual bonus of \$100,000. The Company also granted Mr. Drinkwater options to purchase 50,000 shares of common stock.

Each employment agreement provides that if employment is terminated under certain circumstances, including in the event of a change of control, the executive will be entitled to certain severance compensation. The employment agreements also contain confidentiality and non-competition provisions.

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Item 12. Security Ownership of Certain Beneficial Owners and Management

The following table sets forth certain information as of February 27, 2004, relating to the beneficial ownership of shares of the Company's common stock by (i) each person or entity who is known by the Company to own beneficially 5% or more of the outstanding common stock, (ii) each director, (iii) each of the Named Executives and (iv) all directors and executive officers as a group.

| Name and Address of Beneficial Owner(1) | Number of Shares of Common Stock Beneficially Owned(2) | Percentage of Out Common Stock Beneficially Owne |
|--|--|--|
|--|--|--|

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| | | |
|---|-----------|-------|
| FMR Corp (3) | 6,435,288 | 14.4% |
| J & W Seligman & Co. Incorporated (3) | 2,867,900 | 6.4 |
| Waddell & Reed Investment Management Company (3) | 2,419,052 | 5.4 |
| Oliver R. Grace, Jr. (4) | 470,880 | 1.0 |
| Ryan A. Brant | 301,670 | * |
| Robert Flug (5) | 100,032 | * |
| Mark Lewis (6) | 20,000 | * |
| Todd Emmel (6) | 35,350 | * |
| Steven Tisch (6) | 35,000 | * |
| Jeffrey C. Lapin (6) | 133,334 | * |
| Richard W. Roedel (6) | 35,000 | * |
| Karl H. Winters (6) | 165,000 | * |
| Kelly Sumner | -- | * |
| Paul Eibeler | -- | * |
| All directors and executive officers as a group (ten persons) (7) | 1,346,266 | 3.0% |

 * Less than 1%.

- (1) Unless otherwise indicated, the address of each beneficial owner is Take-Two Interactive Software, Inc., 622 Broadway, New York, New York 10012.
- (2) Unless otherwise indicated, the Company believes that all persons named in the table have sole voting and investment power with respect to all shares beneficially owned by them. A person is deemed to be the beneficial owner of securities that may be acquired by such person within 60 days from the date of this report upon the exercise of options. Each beneficial owner's percentage ownership is determined by assuming that options that are held by such person (but not those held by any other person) and which are exercisable within 60 days of the date of this report have been exercised.
- (3) Based on Schedules 13G filed with the Securities and Exchange Commission as of February 2004.

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- (4) Includes 381,880 shares owned of record by Anglo American Security Fund, L.P., of which Mr. Grace is a general partner, and options to purchase 89,000 shares held by Mr. Grace.
- (5) Includes 19,600 shares held by S/L/ Danielle, Inc. and 80,432 shares of Common Stock underlying options.

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- (6) Represents shares underlying options
- (7) Includes 643,116 shares underlying options.

Securities Authorized for Issuance under Equity Compensation Plans. The following table sets forth certain information as of October 31, 2003 regarding outstanding options to purchase Common Stock that were outstanding on October 31, 2003.

| Plan Category | (a) Number of securities to be issued upon exercise of outstanding options, warrants and rights | (b) Weighted-average exercise price of outstanding options, warrants and rights | (c) Number of s remaining f issuance un compensati (excluding reflected in |
|--|--|---|--|
| Equity compensation plans approved by security holders | 3,066,056 | \$22.39 | 432, |
| Equity compensation plans not approved by security holders | 1,787,712 (1) | \$16.78 | 215, |
| Total | 4,853,768 | \$20.32 | 647, |

- (1) Includes 1,502,712 shares of common stock underlying individual option grants and 285,000 shares of restricted stock under an Incentive Stock Plan. The options are five years in duration, expire at various dates between December 2003 and November 2007, contain anti-dilution provisions providing for adjustments of the exercise price under certain circumstances and have termination provisions similar to options granted under our stockholder approved plans.

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Item 13. Certain Relationships and Related Transactions

The Company's former principal executive and administrative office, located at 575 Broadway, New York, New York, is approximately 13,300 square feet of office space under a lease with 575 Broadway Corporation, a company controlled by the father of Ryan A. Brant, the Company's Chairman. The Company paid rent of \$474,000 per annum under this lease, which expires in March 2004. The Company believes that the terms of the lease were no less favorable than those that could have been obtained from an unaffiliated party.

Item 14. Principal Accountant Fees and Services

The aggregate fees billed by the Company's independent auditor for the fiscal years ended October 31, 2003 and 2002 are set forth below. The Audit Committee believes that the services performed by the Company's independent auditor were compatible with maintaining such auditor's independence.

2003

2002

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| | | |
|-------------------------|-------------|-------------|
| | ----- | ----- |
| Audit (1) | \$2,927,929 | \$1,729,163 |
| Audit Related (2) | 35,089 | 1,973,543 |
| Tax (3) | 1,852,054 | 947,330 |
| All Other | -- | -- |
| | ----- | ----- |
| Total | \$4,815,072 | \$4,650,036 |

- (1) Includes financial statement and statutory audits. Fiscal 2003 fees also include amounts relating to an SEC investigation and financial statement restatement.
- (2) Includes benefit plan audits. Fiscal 2002 fees include forensic accounting fees as well as fees related to due diligence projects.
- (3) Includes tax compliance, advice and audit assistance. Fiscal 2003 includes additional fees relating to tax planning and compliance.

All services provided to the Company by its independent auditor must be pre-approved by the Audit Committee. None of the Audit Related, Tax or All Other services listed above was approved by the Audit Committee under a "de minimis" exemption from pre-approval provided by applicable law.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of New York, state of New York, on this 27th day of February 2004.

TAKE-TWO INTERACTIVE SOFTWARE, INC.

By: /s/ Karl H. Winters

 Karl H. Winters
 Chief Financial Officer

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