OPTIGENEX INC.
Age Management Sciences
www.optigenex.com

333 River Street
Suite 912
Hoboken, NJ 07030
Tel: 201-653-5195
Email: [redacted]

15 April 2014

VIA EMAIL & FEDERAL EXPRESS

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Ms. Lisa D. Levey
Secretary
The Depository Trust Company
55 Water Street
New York, NY 10041-0099

Re: Proposed Rule Change
File No. SR-DTC-2013-11
and
Optigenex Inc.
Deposit Restriction on CUSIP 683886303

Ms. Murphy and Ms. Levey:

This letter addresses DTC's letter of 11 April 2014 ("April 11 Letter," copy attached) in reply to recent correspondence to DTC from the undersigned concerning the above referenced rule change and its possible impact on our company, Optigenex Inc., in connection with the Deposit Restriction imposed 4 August 2011 on CUSIP 683886303 (identifying OPGX shares).

We apologize at the outset for the unusual step we are taking in addressing our reply not only to Ms. Levey, the author of the April 11 letter, but to the Commission as well. Our concern is that time is of the essence in this matter, inasmuch as the 21 day period for public comment on Amendment No. 2 to the above Proposed Rule Change is about to expire. While we appreciate DTC's effort to address our queries, we feel that the Corporation's letter underscores significant procedural and fairness gaps that would be left untouched by the new rule, if adopted in its present form without the clarifications that we have requested. For the Commission's benefit, the gaps as we see them, along with the specific suggestions we offer, are summarized by the Comment Letters of Louis A. Brilleman, dated 14 January 2014 and 10 April 2014, respectively.[1]

We are cognizant of the possibility, indeed perhaps the likelihood, that Optigenex may be one of the few still active issuers, if not the only the only such issuer, in danger of being affected adversely and unfairly by the Proposed Rule Change if adopted without needed clarifications. For this reason, we appreciate all the more DTC's effort to alleviate the concerns we have raised. However, notwithstanding DTC's doubtless intention to administer in a faithful manner any rule that may be passed, the language of this rule as it is now drafted is the core of a problem that cannot be solved by subjective fair mindedness alone. The Proposed Rule Change was meant precisely to eliminate disparities of treatment and outcome that typically, albeit unintentionally follow when there are no rules, or when the rules that have been put in place are not adequate. This rule, if passed without clarification, will likely exacerbate, without reason or justification, the disparities for a limited few, including Optigenex.

To the extent that the Commission and DTC are willing to examine the Proposed Rule Change in the context of a rather singular case in which we believe the rule is apt, for want of clarity, to be misapplied or else applied in a manner inconsistent with the fairness intent of its framers, the following is offered.

DTC's 11 April 2014 letter comes in response to a self-explaining letter from the undersigned dated 19 March 2014 (copy attached) and presents a chronology of events involving the deposit chill on CUSIP 683886303 that, since August of 2011, has prevented acceptance of deposits of Optigenex shares ("the Issue," as referred to by DTC) for book entry. First notice to Optigenex from DTC of the deposit chill came in the form of DTC's letter of 21 September 2012 (copy attached to DTC's April 11 letter). This was some 12 months after imposition of the deposit chill.

[1] Mr. Brilleman acts as outside securities counsel to Optigenex.

According to DTC, the deposit chill initially was imposed when deposits into the DTC system of Optigenex shares deemed unusually large were noticed during a period of time between January 2009 and June 2011. Our understanding of a deposit chill is that it is a precautionary measure to be employed at DTC's discretion to help ensure that all shares in the public float are eligible, i.e., freely tradable, so that they can be registered in the name of DTC's nominee and properly deposited into the fungible bulk for that issue. In our case, DTC did not advise Optigenex or request explanation of the deposits (so as to be able to determine whether the securities in question were freely tradable) until 21 September, 2012. Notably, the Corporation's September 2012 letter came by way of a response to inquiries initiated in or about August 2012 by outside securities counsel for Optigenex.

DTC's September 2012 letter precipitated a series of exchanges over several months between DTC's outside counsel and outside counsel for Optigenex, in which the latter cooperated by providing extensive information and documentation to DTC concerning the deposits in question. Although DTC's April 11 letter does not specify, at the end of this process, i.e., in or about December 2012, counsel for Optigenex was led to understand by counsel for DTC that the data furnished was satisfactory to DTC as to the deposits. However, in January 2013, DTC's counsel advised counsel for Optigenex of DTC's concern regarding certain issuances in 2009 made pursuant to Rule 504 and Delaware law. Based upon an enforcement action commenced in August 2012 by the Commission in the Southern District of New York against parties not including Optigenex, over transactions that did not include the 2009 stock issuances by Optigenex being brought into question by DTC in January 2013, DTC's counsel advised that Optigenex would have to establish a basis for registration exemption other than Delaware law – for the stated reason that, as part of its case in the pending Southern District enforcement action, the Commission was challenging Delaware law overall as a valid basis for registration exemptions under Rule 504.

Optigenex understands DTC's position. Notwithstanding the fact that the focus of the Southern District action concerns charges of fraud against the defendants in that case, and that those charges, as well as the transactions underlying them, involve neither Optigenex nor Optigenex shares, DTC is bound by the Commission's views in respect of Delaware law until such time that a court rules otherwise. As such, we recognize and accept, without agreeing with the Commission's views on Delaware law, DTC's inability to recognize a Rule 504 exemption based on Delaware law. However, although DTC speaks in terms of fair procedures that were offered by the Corporation to establish on some alternative basis that the deposited shares of Optigenex stock in question are freely tradable, for Optigenex, the fairness, through no particular fault of DTC, was illusory at best.

As stated, Optigenex's first notice of a question or potential problem in respect of Delaware law came in January 2013, when DTC's counsel advised Optigenex's counsel of the aforementioned enforcement proceeding against other parties. From that moment onward, the continuing imposition of a deposit chill on Optigenex was a result, not of any alleged wrongdoing by Optigenex, but rather, of *protocol.* Delaware law remains valid unless and until it is repealed or the Commission's position is upheld by a court of competent jurisdiction, and that court's determination in turn is upheld on appeal. But still, for reasons of protocol, DTC cannot accept Delaware law, and so, for Optigenex, a fair opportunity to establish that deposited shares in question are freely tradable in effect does not exist, because eligibility rests on a statute that DTC is not in a position to recognize, and because Optigenex knows of no other basis besides Delaware law on which an exemption from registration can be established.

Fairness to Optigenex in this case is illusory (also through no fault of DTC) in another way as well. Once Optigenex realized that it would not be able to substantiate the eligibility of the deposited shares under Delaware law until the Commission's challenges have worked their way through the judicial process, it became clear that the deposit chill might go on indefinitely – given that there is no guaranty the Southern District judge before whom the Commission's enforcement proceeding is pending will take up or decide the question of whether the Delaware statute at issue does or does not meet Rule 504 requirements. It very well may be the result that the court will decline a ruling either way in that regard, and instead confine the case, and its rulings therein, to the specific fraud and other allegations made against the defendants by the Commission. Moreover, there is no predicting the course that the Southern District's rulings, regardless of what they are, may take on appeal – much less can anyone speculate on a timetable for final resolution of the matter (indeed assuming the case ends at the trial court level with a determination either way on the validity of the Delaware statute).

Faced with this host of uncertainties ahead, Optigenex inquired of DTC whether the Corporation would accept a "buyback" and retirement by Optigenex of shares in the public float commensurate in amount with the shares in question that were deposited into the DTC system under the Delaware law-based registration exemption. To this offer and suggestion, DTC said no. Whereupon, counsel for Optigenex was told, in effect, that *fungibility* of shares is simply an operational concept intended to facilitate the ability of DTC to record large trading volumes by means of book entry, rather than by traditional means involving physical transfers of untold numbers of paper certificates evidencing stock ownerships. According to DTC, fungibility does not provide a means by which an issuer can rectify the introduction of ineligible shares (or, in this case, "potentially" ineligible shares) into the public float, regardless of whether the act was intentional or merely inadvertent, through a reduction of the float by a like amount of shares.

For Optigenex, what this translates to is that in order to "cleanse" the float, the exact shares thought to be ineligible (assuming the Commission's position on Delaware law ultimately is upheld) must be identified and retired. However, the same doctrine of *fungibility* that enables DTC to perform its book entry functions precludes Optigenex from complying in the manner just stated. When DTC records deposited shares in the name of its nominee, those shares, along with all other shares of that same security in the float, become ledger entries. As DTC states in its April 11 letter, this means that *"each participant to whose DTC account the securities have been credited has a pro rata interest in DTC's inventory of that issue, but none of the securities on deposit are identifiable to any particular participant.* [footnote omitted]"

In effect, DTC requires that Optigenex must identify a handful of specific dollar bills buried in a mountainous stack of singles from which all of the serial numbers have been removed. The system by which DTC operates precludes the corrective measure upon which DTC insists. Again, whereas Optigenex generally understands and accepts DTC's view that any ineligible shares in the float serve to "taint" the entirety, a fairness analysis requires at least a passing consideration of the utter impossibility in our case of identifying the shares in question, which amount to no more than .005% of the total of all Optigenex shares on deposit with DTC. Fairness, moreover, also ought to weigh several other factors, including:

(a) the fact that Optigenex restructured the company two years ago and eliminated all convertible floating rate debt;

(b) the fact that the company's debt (approximately $6 Million) was retired and replaced by common shares that will be registered, but that are now being penalized because they cannot be deposited;

(c) the fact that the transaction referred to by DTC in its 11 April letter involved a single note for the of sum of $35,000, approximately half of which the company paid back without conversions; and

(d) the fact that, under the Proposed Rule Change, a global lock would already have been in place against Optigenex well in excess of a year ago - meaning that, but for the fact that the procedures now being proposed were not applied to Optigenex, our company would by this time be eligible for a lifting of all restrictions. Instead, we face an uncertain future that evidently will include a global lock – but exactly when this added new restriction will be imposed is anyone's guess, since the "triggering" event, if any, upon which the global lock should have been imposed, i.e., Optigenex's inability to establish an alternative basis for registration exemption in the absence of the availability

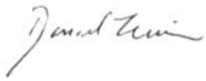
> of Delaware law, happened some 14 or 15 months ago. Whatever outcome prevails, the one thing certain is that fairness and uniformity will not have been achieved by a rule that (as DTC agrees) was not drafted to cover the situation.

DTC may have outlined for Optigenex a "procedure," but it cannot be said to be fair within the meaning of *International Power*.

In sum, notwithstanding the pendency of a rule change that no doubt will come as a welcome statement of clarity to certain issuers in certain situations, Optigenex seems likely, despite the change, to remain subject to the static and debilitating cloud of a deposit chill that has been in place for more than 31 months without any respite in sight. Optigenex cannot meet DTC's requirements for lifting this restriction because, by definition, those requirements are *incapable* of being met. But because no procedure was in place (or if a procedure was in place, it wasn't applied to Optigenex), DTC never elevated the deposit chill to the level of a global lock. Accordingly, Optigenex faces an additional six months or one year of restriction in the form of a global lock – the "effective prerequisite" under the Proposed Rule for a return to normal trading status. DTC's position in response to our request for consideration for "time served" is that there is a fundamental difference between a deposit chill and a global lock, such that the former cannot serve in place of the latter. However true that statement may be in principle, it takes no account of the balancing of interests against fundamental fairness that powerful procedural tools of the type available to DTC must have in order to ensure that, in the end, their use accomplishes more good than bad.

Again, we do not specifically fault DTC in this regard, because it is clear that the Proposed Rule does not, despite the intention of its drafters, provide for the necessary balancing of interests and fairness in all cases. We simply ask that the Proposed Rule be re-examined in the light of important factors that individual cases, such as ours, may shed.

Respectfully,



Daniel Zwiren
President and CEO

Edward Petraglia
General Counsel

DAZ/EGP/mp
Attachments
cc: Isaac Montal, Esq.
Louis A. Brilleman, Esq.

DTCC

55 WATER STREET
NEW YORK, NY 10041-0099

TEL: 212-855-3281
llevey@dtcc.com

April 11, 2014

VIA FEDERAL EXPRESS AND EMAIL

Optigenex Inc.
333 River Street
Suite 912
Hoboken, NJ 07030
Attn: Daniel Zwiren, President & CEO
Edward Petraglia, General Counsel

Dear Messrs. Zwiren and Petraglia:

This letter is in response to the March 19, 2014 letter (the "March 19, 2014 Letter") sent by Daniel Zwiren, President and CEO of Optigenex, Inc. ("Optigenex"), and Edward Petraglia, General Counsel of Optigenex to Isaac Montal, Esq., Managing Director and Deputy General Counsel of The Depository Trust & Clearing Corporation ("DTCC").

Background

On November 21, 2012, The Depository Trust Company ("DTC") sent Optigenex, Inc. ("Optigenex") a notice (the "Notice") regarding the deposit transaction restriction (a "Deposit Chill") imposed on CUSIP 683886303 (the "Issue"). (Ex. 1.[1]) The Notice set forth the reasons why DTC had imposed the Deposit Chill and the fair procedures available to Optigenex if it sought to have DTC release the Deposit Chill.

Thereafter, as described in detail below, there have been various communications between the Issuer and its outside counsel, and DTC and its counsel, in respect of Optigenex's challenge to the Deposit Chill. In addition to responding to the March 19, 2014 Letter, this letter sets forth a summary of the fair procedures that DTC has afforded Optigenex in connection with its challenge to the Deposit Chill.

Basis for the Deposit Chill

The Notice set forth the basis for imposing the Deposit Chill. DTC detected unusually large deposits of the predecessor CUSIPs to the Issue, CUSIPs 683886105 and 683886204 (the "Predecessor Issues"), into the DTC system during the period January 2, 2009 to June 21, 2011. These deposits amounted to 1,190,987,107 shares of the Predecessor Issues, representing a

[1] The abbreviation "Ex." followed by a number refers to exhibits accompanying this letter.

substantial percentage of the outstanding float. A list of the deposits was attached as Exhibit A to the Notice (the "Exhibit A Deposits").

For the reasons described below, the volume and timing of the Exhibit A Deposits raised substantial questions as to whether these securities were freely tradeable, a prerequisite for shares to be deemed eligible for DTC's book-entry services. Therefore, DTC determined to stop accepting additional deposits of the Issue and imposed the Deposit Chill on August 4, 2011.

The Deposit Chill was imposed consistent with applicable law, including, without limitation, Section 17A of the Securities Exchange Act of 1934, as amended ("Section 17A"), 15 U.S.C. §§ 78q-1, *et seq.*; the Bank Secrecy Act, 31 U.S.C. §§ 5311 *et seq.*; as well as Rule 5 of DTC's Rules and Section 1 of DTC's Operational Arrangements.[2] Deposit Chills are the subject of a SEC Investor Bulletin.[3]

Governing Principles

DTC, the nation's central securities depository, is a clearing agency registered with the Securities and Exchange Commission ("SEC") under Section 17A.[4] Congress enacted Section 17A in 1975 in order to create a uniform national system for the prompt and accurate clearance and settlement of securities transactions (the "National Clearance and Settlement System").[5] In order to achieve that goal, Congress vested the SEC with authority to regulate all persons involved in processing securities transactions and every facet of the securities handling process, including clearing agencies.

As a registered clearing agency, DTC is obligated to operate pursuant to its rules, as approved by the SEC, which are designed, *inter alia*, "to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest."[6]

In accordance with its rules, DTC accepts deposits of eligible securities from its participants, credits those securities to the depositing participant's respective DTC accounts, and effects book-entry movements of those securities pursuant to the instructions of the participants to whose accounts the securities are credited. The deposited eligible securities are registered in DTC's nominee's name, Cede & Co. (making DTC's nominee the registered owner of the securities). The eligible securities deposited at DTC are held in fungible bulk; *i.e.*, each participant to whose DTC account the securities have been credited has a *pro rata* interest in DTC's inventory of that issue, but none of the securities on deposit are identifiable to any particular participant.[7]

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[2] DTC's Rules may be found at http://www.dtcc.com/en/legal/rules-and-procedures.aspx. DTC's Operational Arrangements may be found at http://dtcc.com/~/media/Files/Downloads/Settlement-Asset-Services/Underwriting/operational-arrangements.ashx.

[3] Available at http://www.sec.gov/investor/alerts/dtcfreezes.pdf.

[4] *See* SEC Release No. 20221 (Sept. 23, 1983), 48 Fed. Reg. 45167 (Oct. 3, 1983).

[5] Section 17A(a)(2)(A), 15 U.S.C. §78q-1(a)(2)(A).

[6] Section 17A(b)(3)(F), 15 U.S.C. § 78q-1(b)(3)(F).

[7] *See* SEC Release No. 34-19678 (Apr. 15, 1983), 48 Fed. Reg. 17603, 17605, n.5 (Apr. 25, 1983) (describing fungible bulk); *see also* N.Y. UNIFORM COMMERCIAL CODE, § 8-503, OFF. CMT. 1 ("... . all entitlement holders have a pro rata interest in whatever positions in that financial asset the intermediary holds").

DTC Rule 5 addresses whether securities are eligible for DTC's book-entry services.

> *Section 1.* An Eligible Security shall only be a Security accepted by the Corporation, in its sole discretion, as an Eligible Security. The Corporation shall accept a Security as an Eligible Security only (a) upon a determination by the Corporation that it has the operational capability and can obtain information regarding the Security necessary to permit it to provide its services to Participants and Pledgees when such Security is Deposited and (b) upon such inquiry, or based upon such criteria, as the Corporation may, in its sole discretion, determine from time to time. . . .
>
> *Section 2.* An Eligible Security which the Corporation in its sole discretion, determines no longer meets the requirements of Section 1 of this Rule shall cease to be an Eligible Security . . . .

While it is inherent in Rule 5 that DTC retains the discretion to limit services with respect to a security that otherwise remains eligible, additionally DTC Rule 6 states that DTC "may limit certain services to particular issues of Eligible Securities."

DTC's Operational Arrangements also address eligibility. As stated in Section I ("Eligibility Requirements"), all issuers of securities deposited at DTC, agents and underwriters are required to adhere to the requirements stated in the Operational Arrangements, and "in circumstances where these requirements cannot be met, DTC can choose to deny eligibility."

Section I.A.2 of the Operational Arrangements enumerates the general requirements for eligibility:

> Generally, the issues that may be made eligible for DTC's book-entry delivery and depository services are those that: (i) have been registered with the [SEC] pursuant to the Securities Act of 1933, as amended ("Securities Act"); (ii) are exempt from registration pursuant to a Securities Act exemption that does not involve transfer or ownership restrictions; or (iii) are eligible for resale pursuant to Rule 144A or Regulation S (and otherwise meet DTC's eligibility criteria).

This provision reflects an essential feature of DTC eligibility criteria: the security must be *freely tradeable* (*i.e.*, issued pursuant to an effective registration statement or exempt from the registration requirements without any restriction on ownership or transfer); otherwise, it cannot properly be registered in the name of DTC's nominee and deposited into DTC's fungible bulk for that issue.[8]

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[8] *See supra* p. 2 and n. 7.

Legal opinions of issuer's counsel are an essential feature of the DTC eligibility review process for securities that are presented for eligibility as exempt from registration. Section I.B.2 of the Operational Arrangements provides that DTC, in making eligibility determinations, will decide whether the issuer must provide an opinion from outside counsel in order "to substantiate the legal basis for eligibility."[9] DTC may further require legal opinions after eligibility has been granted in connection with various corporate actions or reorganizations and, as directly applicable here, "in the sole discretion of DTC . . . in other circumstances, to protect DTC and its Participants from risk." *Id.*

The essence of Section I.A.2 and Section I.B.2's opinion requirement is that in making securities eligible for DTC's book entry services and in accepting subsequent deposits, DTC must be satisfied that the security is freely tradeable and thus appropriate for inclusion in DTC's fungible bulk for such issue.

When DTC detects activities suggesting possible violations of Section 5 of the Securities Act or other applicable provisions of law relating to the free tradeability of deposited securities, DTC, consistent with Section 17A and other provisions of federal law, takes appropriate action to ensure compliance with its eligibility requirements and to ensure that its facilities are not utilized to facilitate such improper activity. One such action is imposition of a Deposit Chill.

In monitoring deposit activity, to ensure that securities deposited at DTC are freely tradeable, DTC is mindful that various regulatory agencies have identified unusually large deposits of unregistered shares of thinly-traded securities—similar to the Exhibit A Deposits—as a red flag for possible improper distribution of securities.

For instance, the SEC, in pursuing an enforcement action with respect to illegal sales of penny stocks, has highlighted "sales that represented a high percentage of trading volume or of an issuer's public float."[10]

Similarly, the Financial Industry Regulatory Authority, Inc. ("FINRA") has advised brokers that large share deposits of penny stocks are suggestive of potential violations of the securities laws:

> FINRA reminds firms of their responsibilities to ensure that they comply with the federal securities laws and FINRA rules when

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[9] Section I.A.1 of the Operational Arrangements further specifies that such counsel must be "an experienced securities practitioner, licensed to practice law in the relevant jurisdiction and in good standing in any bar to which such practitioner is admitted. Such counsel must be engaged in an independent private practice (i.e. not in-house counsel) and may not have a beneficial ownership interest in the security for which the opinion is being provided or be an officer, director or employee of the Issuer. DTC reserves the absolute discretion to approve or reject the counsel issuing the opinion which is being delivered to DTC."

[10] *See e.g.* Order Making Finding And Imposing Remedial Sanctions, *In the Matter of Ronald S. Bloomfield, et al.*, SEC Rel. No. 34-62750 (Aug 20, 2010), available at: http://www.sec.gov/litigation/admin/2010/34-62750.pdf (enumerating red flags relating to how penny stocks were sold, including (a) repeated delivery in and selling to the public of privately obtained shares of penny stocks; (b) selling within weeks of receipt; (c) selling while promotional activity was occurring; and (d) sales that represented a high percentage of trading volume or of an issuer's public float.).

> participating in unregistered resales of restricted securities. These responsibilities are particularly important in situations where the surrounding circumstances place the firm on notice that it may be participating in illegal, unregistered resales of restricted securities, such as when a customer physically deposits certificates or transfers in large blocks of securities and the firm does not know the source of the securities.[11]

(Emphasis added.)

Other federal regulatory agencies have taken a similar approach. The Financial Crimes Enforcement Network ("FinCen") has recognized that, "substantial deposit, transfer or journal of very low-priced and thinly traded securities" implicates anti-money laundering monitoring concerns.[12]

DTC Afforded Optigenex the Opportunity to Address DTC's Eligibility Concerns

As part of the fair procedures available to issuers who seek to challenge a Deposit Chill, DTC gives the affected issuer the opportunity to submit a legal opinion from the issuer's counsel and other documentation confirming that the deposited shares are, in fact, freely tradeable. As explained above, DTC's Operational Arrangements specifically contemplates that DTC will obtain legal opinions from issuer's counsel in order to address and satisfy DTC's concerns regarding eligibility, and further specifies DTC's expectations regarding issuer's counsel.

In this case, the Notice gave Optigenex a full and fair opportunity to submit a legal opinion confirming that the Exhibit A shares were, in fact, freely tradeable:

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[11] *See* Financial Industry Regulatory Authority, Inc., *Regulatory Notice 09-05, available at* http://www.finra.org/Industry/Regulation/Notices/2009/P117713. *See also* Review Of Disciplinary Action Taken By FINRA, *In the Matter of the Application of World Trade Financial Corp., et al.*, SEC Release No. 34-66114, Jan 6, 2012, *available at* http://sec.gov/litigation/opinions/2012/34-66114.pdf (sustaining FINRA violations and sanctions, where customers deposited large blocks of a recently issued, little known stock into firm accounts and directed the registered representative to sell shortly thereafter, and the registered representative failed to inquire whether the proposed sales qualified for an exemption from registration and were not part of an unlawful distribution.); Order Accepting Settlement, *Dept. of Enforcement v. NevWest Securities Corp et al.*, NASD Case No. E0220040112-01 (Mar. 13, 2007), *available at* http://wwv.sec.gov/about/offices/ocie/am12007/nasdnev-nevwest.pdf (finding that NevWest failed to adequately implement anti-money laundering (AML) procedures, by failing to adequately perform due diligence, file Suspicious Activity Reports, or cease trading in multiple accounts owned and controlled by a customer, regarding over 500 transactions involving more than 250 billion shares of a sub-penny stock.)

[12] Financial Crimes Enforcement Network *The SAR Activity Review: Trends Tips & Issues*, Issue 15, pp. 23-25 (BSA Advisory Group, May 2009), *available at* http://fincen.gov/news_room/rp/files/sar_tti_15.pdf, *citing* Financial Industry Regulatory Authority, Inc., *Regulatory Notice 09-05*, http://www.finra.org/Industry/Regulation/Notices/2009/P117713; *see also* Financial Crimes Enforcement Network *The Role of Domestic Shell Companies in Financial Crime and Money Laundering* (2006), *available at* http://www.fincen.gov/LLCAssessment_FINAL.pdf ("These "pump and dump" schemes often involve shell companies with low market capitalization whose stock trades at pennies per share on the "pink sheets" (www.pinksheets.com), OTC Bulletin Board, or other over-the-counter trading and information systems. One indicator of this scheme is concentrated trading in normally thinly traded stocks.").

In order for DTC to make a determination as to whether to lift the Deposit Chill, DTC requires that you submit a written response (the "Response") to this notice. The Response must include a legal opinion ("Legal Opinion"), addressed to DTC, in support and confirmation that the Issue satisfies DTC eligibility requirements. A form of the Legal Opinion that DTC requires is attached hereto as Exhibit B.

The Legal Opinion must be furnished by an independent attorney who is in good standing in each jurisdiction in which he is admitted to practice and with the Securities and Exchange Commission and who certifies that he (i) is not an employee or officer of the Issuer: (ii) does not own shares nor options or warrants to buy shares of the Issuer; (iii) is not a holder of any debt securities issued by the Issuer; and (iv) has not entered into any loan or financing transactions with the Issuer. DTC reserves the right to approve counsel upon whose opinion DTC is being asked to rely for confirmation that securities are eligible for DTC book-entry and depository services and otherwise in determining whether or not to lift the Deposit Chill.

Optigenex's Response to the Notice

On or about October 18, 2012, DTC received a submission from Optigenex's outside counsel, Louis Brilleman, Esq., which included a letter from Chief Executive Officer Daniel Zwiren and a legal opinion dated October 18, 2012 (the "October 18, 2012 Legal Opinion"). (Ex. 2.)

On November 21, 2012, outside securities counsel for DTC, Walter Van Dorn sent Mr. Brilleman a letter (the "November 21, 2012 Response"), which requested additional information and documentation to facilitate DTC's review process. (Ex. 3.)

On December 20, 2012, Mr. Brilleman sent a package (the "December 20, 2012 Submission") to Mr. Van Dorn, in response to his conversation with Brian Lee, Esq., an associate of Mr. Van Dorn's, relating to additional information regarding the registration and/or exemption from registration of the securities. (Ex. 4.) The December 20, 2012 Submission included a letter providing "additional detail" as well as documentation requested by Mr. Lee.

Mr. Lee reviewed the submitted documentation and on December 26, 2012, asked Mr. Brilleman to submit any additional documentation related to the issuance of securities in reliance on Rule 504 of the Securities Act.

On January 8, 2013, Mr. Brilleman sent a letter and package to Mr. Van Dorn, containing documents relating to the issuance of shares under Rule 504 (the "January 8, 2013 Submission"). (Ex. 5.) The January 8, 2013 Submission included documentation reflecting issuances made pursuant to Rule 504 of the Securities Act and Section 7309(b)(8) of the Delaware Securities Act ("DSA").

Mr. Van Dorn informed Mr. Brilleman of an enforcement action brought by the SEC against E-Lionheart Associates LLC, d/b/a Fairhills Capital. See *SEC v. Edward Bronson et al.*, 12-cv-6421 (S.D.N.Y., filed August 22, 2012) (the "E-Lionheart Enforcement Action"). (Ex. 6.) In the complaint, the SEC alleged that E-Lionheart did not properly rely on Section 7309(b)(8) of the DSA, and the SEC further took the position that Section 7309(b)(8) of the DSA is not an exemption that meets the requirements of Rule 504(b)(1)(iii) under the Securities Act. As such, Mr. Van Dorn indicated that Optigenex must specify and establish an alternative basis to conclude that shares of Optigenex issued pursuant to Section 7309(b)(8) of the DSA are freely tradeable under the Securities Act.

On or about March 21, 2013, outside counsel for DTC, Aimee Bandler, Esq., was contacted by Optigenex's special counsel, Gina Austin, Esq., who sought clarification as to what was required to address the Deposit Chill.

On April 5, 2013, Ms. Austin contacted Ms. Bandler to follow-up on the next steps of the process. (Ex. 7.)

On April 8, 2013, Ms. Bandler emailed Ms. Austin a new form of legal opinion. (Ex. 8.) Ms. Bandler indicated that the legal opinion must still address whether any of the issuances relied on Section 7309(b)(8) of the DSA, and if so, must establish an alternative basis for free tradeability of those shares.

On April 11, 2013, Ms. Austin emailed DTC requesting an extension of time to May 15, 2013 to respond to the Notice Letter. (Ex. 9.) DTC granted the request. (*Id.*)

On April 16, 2013, Ms. Austin sent Ms. Bandler a letter (the "April 18, 2013 Letter") outlining Optigenex's "interpretation of the 504 exemption as it related to Delaware," and set forth, in part, arguments are to why Section 7309(b)(8) of the DSA meets the requirements of Rule 504(b)(1)(iii). (Ex. 10.)

On April 23, 2013, Ms. Bandler sent Ms. Austin a letter (the "April 23, 2013 Letter"), reiterating the SEC's allegations in the E-Lionheart Enforcement Action, and more specifically, that according to the SEC, Section 7309(b)(8) of the DSA failed as a *per se* matter to satisfy Rule 504(b)(1)(iii). As such, DTC could not adjudicate the allegations of the SEC and could not, as requested by Ms. Austin "reconsider the applicability of the Delaware 504 exemption." (Ex. 11.) The April 23, 2013 Letter provided Optigenex with an additional twenty business to submit the required Legal Opinion.

On April 28, 2013, Ms. Austin emailed Ms. Bandler requesting clarification regarding the form of the Legal Opinion. (Ex. 12.) The following day, Ms. Austin requested a phone call and Ms. Bandler directed her to Elizabeth Walsh, Esq., an associate of Ms. Bandler. (Ex. 13.)

On May 29, 2013, Ms. Austin emailed Ms. Bandler, requesting an extension of time for Optigenex to respond to the Notice until such time as the court rules on the motion to dismiss filed in the E-Lionheart Enforcement Action. (Ex. 14.) On May 30, 2013, DTC granted the extension to twenty business days after the court files an order resolving the motion to dismiss in the E-Lionheart Enforcement Action. (Ex. 15.)

In its opinion in *In the Matter of the Application of International Power Group, Ltd.* ("*IPWG*"),[13] the SEC ruled that issuers are persons within the meaning of Section 17A(b)(3)(H) of the Exchange Act and ruled that DTC is obligated to provide issuers with fair procedures in connection with the suspension of book-entry services for an eligible security (a "Global Lock").[14]

On December 5, 2013, DTC filed with the SEC a proposed rule change pursuant to Section 19(b)(1) of the Exchange Act,[15] and Rule 19b-4 thereunder (the "Filing"). The Filing specified the proposed fair procedures DTC will provide to issuers of securities deposited at DTC for book entry services when DTC imposes or intends to impose certain restrictions on further deposit and/or book entry transfer of those securities.[16]

Mr. Brilleman filed a comment letter to the Filing on January 14, 2014 (the "Brilleman Comment Letter").[17] On or about January 27, 2014, Mr. Brilleman contacted Ms. Bandler and requested a conference to "discuss the issuer's current situation." (Ex. 16.) Prior to the call, Mr. Brilleman forwarded a powerpoint titled, "Optigenex Inc. – Deposit Chill and Adverse Consequence" to Ms. Bandler. (Ex. 17.) On or about January 31, 2014, Ms. Bandler told Mr. Brilleman that she appreciated the effort put into the powerpoint about the current status of Optigenex, but DTC is bound by the allegations of the SEC in the E-Lionheart Enforcement Action as they related to Section 7309(b)(8) of the DSA and cannot entertain a position that directly contradicts such allegations. Mr. Brilleman indicated that they are unable to offer an alternative exemption to Section 7309(b)(8) of the DSA for those issuances.

On February 10, 2014, DTC filed its Response to Comments to the Filing (the "Response").[18] The Response addressed several points contained in the Brilleman Comment Letter. Among other things, Mr. Brilleman had commented that the proposed rules do not provide fair procedures for Deposit Chills imposed prior to the *IPWG* opinion.[19] In the Response, DTC stated that the proposed rules do not explicitly govern fair procedures for Deposit Chills or Global Locks imposed prior to *IPWG*, as the SEC only required DTC "to adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H), which may be applied uniformly in any *future* such issuer cases."[20] However, notwithstanding the SEC's directive that procedures be adopted for issuer cases *subsequent* to *IPWG*, DTC's Response stated that for securities that were restricted prior to *IPWG*, if the issuer requests review of the restriction, DTC provides that issuer with the same fair procedures as to an issuer whose securities are subject to a

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[13] *In the Matter of the Application of Int'l Power Group, Ltd. For Review of Action Taken by The Depository Trust Co.*, SEC Release No. 34-66611, 2012 SEC LEXIS 844 (Mar. 15, 2012).

[14] *See IPWG*, 2012 SEC LEXIS 844, at *24. The Commission did not address the subject of Deposit Chills. DTC has nonetheless determined to provide fair procedures to issuers in connection with Deposit Chills.

[15] 15 U.S.C. § 78s (b)(l), as amended.

[16] Proposed Rules 22(A) and 22(B) may be downloaded from the DTCC Web site, http://www.dtcc.com/legal/sec-rule-filings.aspx.

[17] Available at http://www.sec.gov/comments/sr-dtc-2013-11/dtc201311-7.pdf.

[18] Available at: http://www.sec.gov/comments/sr-dtc-2013-11/dtc201311-9.pdf. A copy is attached hereto as Ex. 18.

[19] *See* Brilleman Comment Letter at 1.

[20] *See* Response at 13, citing *IPWG*, 2012 SEC LEXIS 844, at *32 (emphasis added).

post-*IPWG* restriction.[21] DTC intends to follow the same process in the event the proposed rules are approved.

In the Brilleman Comment Letter, Mr. Brilleman also requested that under the proposed rules, a Deposit Chill, especially one imposed prior to *IPWG*, be lifted automatically after a certain period from the date of its imposition.[22] In its Response, DTC reiterated that an issuer subject to a pre-*IPWG* Deposit Chill, upon the issuer's request, is provided the same procedures available for issuer subject to a post-*IPWG* Deposit Chill.[23] Therefore, under the proposed rules, if an issuer subject to a post-*IPWG* Deposit Chill declines to submit a legal opinion or is unable to respond to the notice satisfactorily, a Global Lock will be imposed and may subsequently be released after the applicable six month/one year waiting period from the date of the imposition of the Global Lock, as set forth in proposed Rule 22(B).[24] In the event the proposed rules are approved, the same procedure could be invoked by an issuer subject to a pre-*IPWG* Deposit Chill.

March 19, 2014 Letter

In the March 19, 2014 Letter, Optigenex requested clarification as to DTC's response to the Brilleman Comment Letter, specifically, the applicability of proposed Rule 22(B) §§ 1(b) and 4 to Optigenex. DTC believes that it has already addressed these points both in its Response, as well as in this letter's summary of fair procedures provided to Optigenex. However, DTC will nonetheless address some of the apparent misunderstandings in the March 19, 2014 Letter. **Please note that proposed Rule 22(A) and proposed Rule 22(B) have not been approved by the SEC and DTC's answers are based on the SEC's hypothetical approval of the proposed rules in the current form.**

In the event the proposed rules are approved, and Optigenex is unable to provide a satisfactory response to the Notice pursuant to Rule 22(A)§ 2(b), its securities would be subject to a Global Lock pursuant to Rule 22(A) § 2(c)(ii). Optigenex's securities would then be subject to the release provisions of proposed Rule 22(B) § 4, just as would an issuer subject to a post-*IPWG* Deposit Chill. Per Rule 22(B) § 4, the applicable one year/six month waiting period would run from the date of the imposition of the Global Lock.

Optigenex's argument that a Deposit Chill should be released one year after its imposition ignores the securities law principle underlying proposed Rule 22(B). As set forth in the Filing, the concept underlying the release of a Global Lock after the passage of six months or one year (from the appropriate starting date) was developed by analogy to the safe harbor provision of Securities Act Rule 144, which, under certain circumstances, permits the unregistered resale of

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[21] *See* Response at 13.
[22] *See* Brilleman Comment Letter at 2.
[23] *See* Response at 13.
[24] *See id.*

restricted securities (as defined under paragraph (a)(3) of the Rule) after expiration of the relevant holding period.[25]

By arguing that a Deposit Chill should be released one year after its imposition, Optigenex ignores the Rule 144 analogy and the significance of the immobilization of the securities in order to fulfill the waiting period under Rule 22(B) § 4. A Deposit Chill does not immobilize DTC's inventory of the security, and does not affect the book entry services or trading of securities so as to emulate a 'holding period' under Rule 144, and as such is insufficient to fulfill the requirements of the release provisions of Rule 22(B) § 4.

***

We hope this letter has provided the necessary clarity. We remain available for further discussion on any procedural questions regarding the proposed rules.

Sincerely,

Lisa D. Levey
Secretary, The Depository Trust Company

[25] *See* Filing at 10. The Filing also notes that, again by reference to Rule 144, this approach is not applicable to an issuer that is, or was, a shell company as defined in Rule 144(i)(1), unless the issuer has filed the specified disclosure required by Rule 144(i)(2).

EXHIBIT 1

DTCC

55 WATER STREET
NEW YORK, NY 10041-0099

TEL: 212-855-3298
[redacted]

September 21, 2012

By Federal Express

Louis Brilleman, Esq.
Louis A. Brilleman, P.C.
1140 Avenue of the Americas, 9th Floor
New York, NY 10036

Re: Deposit Chill on Optigenex, Inc. /CUSIP 683886303

Dear Mr. Brilleman:

This letter is in response to your recent inquiries to The Depository Trust Company ("DTC") regarding the imposition by DTC of a deposit transaction restriction (the "Deposit Chill") on CUSIP 683886303 (the "Issue"), issued by Optigenex, Inc. (the "Issuer"). DTC has imposed the Deposit Chill, as of August 4, 2011, in order to prevent additional deposits of the Issue for depository and book-entry transfer services for the reasons set forth below. This letter sets forth the concerns of DTC and the procedure you must follow to respond to this notice. The requirements set forth herein are necessary but may not be sufficient for the Deposit Chill to be lifted and DTC reserves the right to require further information and/or legal responses and opinions as may arise out of its review of your submission(s) in response hereto.

Basis for Deposit Chill

The Deposit Chill was imposed consistent with Rule 5 of DTC's Rules; Section 1 of DTC's Operational Arrangements[1] and applicable law, including, without limitation, Section 17A of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78q-1, *et seq.* and the Bank Secrecy Act, 31 U.S.C. §§ 5311 *et seq.*

DTC has detected various unusually large deposits of the predecessor CUSIPs 683886105 and 683886204 (the "Predecessor Issues") during the period of June 2, 2009 to the date of the Deposit Chill. More particularly, 1,190,987,107 shares of the Predecessor Issues, representing a substantial percentage of the outstanding float, were deposited at DTC during this period. (A list of the deposits is attached hereto as Exhibit A.) The volume and timing of the deposits raise substantial questions as to whether those shares were tradeable without

[1] DTC's Rules may be found at http://www.dtcc.com/legal/rules_proc/dtc_rules.pdf. DTC's Operational Arrangements may be found at http://www.dtcc.com/downloads/legal/rules_proc/eligibility/operational.arrangements.memo.pdf.

restriction under the Securities Act of 1933, as amended (the "Securities Act"), a prerequisite for shares being deposited into the DTC system for depository and book-entry services.

Submission

In order for DTC to make a determination as to whether to lift the Deposit Chill, DTC requires that you submit a written response (the "Response") to this notice. The Response must include a legal opinion ("Legal Opinion"), addressed to DTC, in support and confirmation that the Issue satisfies DTC eligibility requirements. A form of the Legal Opinion that DTC requires is attached hereto as Exhibit B.

The Legal Opinion must be furnished by an independent attorney who is in good standing in each jurisdiction in which he is admitted to practice and with the Securities and Exchange Commission and who certifies that he (i) is not an employee or officer of the Issuer: (ii) does not own shares nor options or warrants to buy shares of the Issuer; (iii) is not a holder of any debt securities issued by the Issuer; and (iv) has not entered into any loan or financing transactions with the Issuer. DTC reserves the right to approve counsel upon whose opinion DTC is being asked to rely for confirmation that securities are eligible for DTC book-entry and depository services and otherwise in determining whether or not to lift the Deposit Chill.

The Response may also include any other materials you deem relevant to DTC's determination whether to lift the Deposit Chill.

* * *

It is necessary for you to submit the Response within twenty (20) business days from the date of this notice. DTC will thereafter review the Response and may, as noted above, respond to you with further inquiries or with a determination, in either case, within thirty (30) business days of receipt of the Response. If the Response is not received within the above timeframe, the Deposit Chill decision will be deemed final. Such determination, however, shall in no way limit DTC's rights to take any other action it deems appropriate with respect to the Issue.

Please be advised that DTC's receipt of the Response, Legal Opinion, and any further information or documentation as may be required will not automatically result in the determination to lift the Deposit Chill. The outcome of DTC's review and determination may be to continue the Deposit Chill, in which case you will be provided with the reason(s) for not releasing the Deposit Chill.

Sincerely,

Donald Maj

EXHIBIT A
Optigenex, Inc.

	CUSIP	SECURITY DESCRIPTION	BUSINESS DATE	DEPOSIT SOURCE	CERTIFICATE QUANTITY	CERTIFICATE VALUE	REGISTRANT
1	683886105	OPTIGENEX, INC.	Jun 2, 2009	STS	4,800	$ 360	AJW OFFSHORE LTD
2	683886105	OPTIGENEX, INC.	Jun 2, 2009	STS	20,400	$ 1,530	AJW OFFSHORE LTD
3	683886105	OPTIGENEX, INC.	Jun 2, 2009	STS	14,200	$ 1,065	AJW QUALIFIED PARTNER
4	683886105	OPTIGENEX, INC.	Jun 2, 2009	STS	600	$ 45	NEW MILLENNIUM CAPITAL
5	683886105	OPTIGENEX, INC.	Jun 3, 2009	STS	104,451	$ 6,528	TRENRASP LLC
6	683886105	OPTIGENEX, INC.	Jun 4, 2009	STS	14,752	$ 922	AJW OFFSHORE LTD
7	683886105	OPTIGENEX, INC.	Jun 4, 2009	STS	62,695	$ 3,918	AJW OFFSHORE LTD
8	683886105	OPTIGENEX, INC.	Jun 4, 2009	STS	43,640	$ 2,728	AJW QUALIFIED PARTNER
9	683886105	OPTIGENEX, INC.	Jun 4, 2009	STS	1,844	$ 115	NEW MILLENNIUM CAPITAL
10	683886105	OPTIGENEX, INC.	Jun 5, 2009	STS	17,766	$ 888	AJW OFFSHORE LTD
11	683886105	OPTIGENEX, INC.	Jun 5, 2009	STS	75,507	$ 3,775	AJW OFFSHORE LTD
12	683886105	OPTIGENEX, INC.	Jun 5, 2009	STS	52,559	$ 2,628	AJW QUALIFIED PARTNER
13	683886105	OPTIGENEX, INC.	Jun 5, 2009	STS	2,221	$ 111	NEW MILLENNIUM CAPITAL
14	683886105	OPTIGENEX, INC.	Jun 11, 2009	STS	17,766	$ 888	AJW OFFSHORE LTD
15	683886105	OPTIGENEX, INC.	Jun 11, 2009	STS	75,507	$ 3,775	AJW OFFSHORE LTD
16	683886105	OPTIGENEX, INC.	Jun 11, 2009	STS	52,559	$ 2,628	AJW QUALIFIED PARTNER
17	683886105	OPTIGENEX, INC.	Jun 11, 2009	STS	2,221	$ 111	NEW MILLENNIUM CAPITAL
18	683886105	OPTIGENEX, INC.	Jun 15, 2009	STS	17,766	$ 1,332	AJW OFFSHORE LTD
19	683886105	OPTIGENEX, INC.	Jun 15, 2009	STS	75,507	$ 5,663	AJW OFFSHORE LTD
20	683886105	OPTIGENEX, INC.	Jun 15, 2009	STS	52,559	$ 3,942	AJW QUALIFIED PARTNER
21	683886105	OPTIGENEX, INC.	Jun 15, 2009	STS	2,221	$ 167	NEW MILLENNIUM CAPITAL
22	683886105	OPTIGENEX, INC.	Jun 18, 2009	STS	20,421	$ 1,787	AJW OFFSHORE LTD
23	683886105	OPTIGENEX, INC.	Jun 18, 2009	STS	86,788	$ 7,594	AJW OFFSHORE LTD
24	683886105	OPTIGENEX, INC.	Jun 18, 2009	STS	60,411	$ 5,286	AJW QUALIFIED PARTNER
25	683886105	OPTIGENEX, INC.	Jun 18, 2009	STS	2,553	$ 223	NEW MILLENNIUM CAPITAL
26	683886105	OPTIGENEX, INC.	Jun 22, 2009	STS	20,421	$ 1,532	AJW OFFSHORE LTD
27	683886105	OPTIGENEX, INC.	Jun 22, 2009	STS	86,788	$ 6,509	AJW OFFSHORE LTD
28	683886105	OPTIGENEX, INC.	Jun 22, 2009	STS	60,411	$ 4,531	AJW QUALIFIED PARTNER
29	683886105	OPTIGENEX, INC.	Jun 22, 2009	STS	2,553	$ 191	NEW MILLENNIUM CAPITAL
30	683886105	OPTIGENEX, INC.	Jun 25, 2009	STS	86,788	$ 6,509	AJW OFFSHORE LTD
31	683886105	OPTIGENEX, INC.	Jun 25, 2009	STS	20,421	$ 1,532	AJW PARTNERS LLC
32	683886105	OPTIGENEX, INC.	Jun 25, 2009	STS	60,411	$ 4,531	AJW QUALIFIED PARTNER
33	683886105	OPTIGENEX, INC.	Jun 25, 2009	STS	2,553	$ 191	NEW MILLENNIUM CAPITAL
34	683886105	OPTIGENEX, INC.	Jun 26, 2009	STS	86,788	$ 5,424	AJW OFFSHORE LTD
35	683886105	OPTIGENEX, INC.	Jun 26, 2009	STS	20,421	$ 1,276	AJW PARTNERS LLC
36	683886105	OPTIGENEX, INC.	Jun 26, 2009	STS	60,411	$ 3,776	AJW QUALIFIED PARTNER
37	683886105	OPTIGENEX, INC.	Jun 26, 2009	STS	2,553	$ 160	NEW MILLENNIUM CAPITAL
38	683886105	OPTIGENEX, INC.	Jun 30, 2009	STS	23,472	$ 1,174	AJW OFFSHORE LTD
39	683886105	OPTIGENEX, INC.	Jun 30, 2009	STS	99,754	$ 4,988	AJW OFFSHORE LTD
40	683886105	OPTIGENEX, INC.	Jun 30, 2009	STS	69,437	$ 3,472	AJW QUALIFIED PARTNER
41	683886105	OPTIGENEX, INC.	Jun 30, 2009	STS	2,934	$ 147	NEW MILLENNIUM CAPITAL

EXHIBIT A
Optigenex, Inc.

	CUSIP	SECURITY DESCRIPTION	BUSINESS DATE	DEPOSIT SOURCE	CERTIFICATE QUANTITY	CERTIFICATE VALUE	REGISTRANT
42	683886105	OPTIGENEX, INC.	Jul 6, 2009	STS	99,754	$ 3,741	AJW OFFSHORE LTD
43	683886105	OPTIGENEX, INC.	Jul 6, 2009	STS	23,472	$ 880	AJW PARTNERS LLC
44	683886105	OPTIGENEX, INC.	Jul 6, 2009	STS	69,437	$ 2,604	AJW QUALIFIED PARTNER
45	683886105	OPTIGENEX, INC.	Jul 6, 2009	STS	2,934	$ 110	NEW MILLENNIUM CAPITAL
46	683886105	OPTIGENEX, INC.	Jul 8, 2009	STS	23,472	$ 1,760	AJW OFFSHORE LTD
47	683886105	OPTIGENEX, INC.	Jul 8, 2009	STS	99,754	$ 7,482	AJW OFFSHORE LTD
48	683886105	OPTIGENEX, INC.	Jul 8, 2009	STS	69,437	$ 5,208	AJW QUALIFIED PARTNER
49	683886105	OPTIGENEX, INC.	Jul 8, 2009	STS	2,934	$ 220	NEW MILLENNIUM CAPITAL
50	683886105	OPTIGENEX, INC.	Jul 10, 2009	STS	27,974	$ 1,748	AJW OFFSHORE LTD
51	683886105	OPTIGENEX, INC.	Jul 10, 2009	STS	118,888	$ 7,431	AJW OFFSHORE LTD
52	683886105	OPTIGENEX, INC.	Jul 10, 2009	STS	82,756	$ 5,172	AJW QUALIFIED PARTNER
53	683886105	OPTIGENEX, INC.	Jul 10, 2009	STS	3,497	$ 219	NEW MILLENNIUM CAPITAL
54	683886105	OPTIGENEX, INC.	Jul 14, 2009	STS	118,888	$ 5,944	AJW OFFSHORE LTD
55	683886105	OPTIGENEX, INC.	Jul 14, 2009	STS	27,974	$ 1,399	AJW PARTNERS LLC
56	683886105	OPTIGENEX, INC.	Jul 14, 2009	STS	82,756	$ 4,138	AJW QUALIFIED PARTNER
57	683886105	OPTIGENEX, INC.	Jul 14, 2009	STS	3,497	$ 175	NEW MILLENNIUM CAPITAL
58	683886105	OPTIGENEX, INC.	Jul 14, 2009	STS	192,000	$ 9,600	TRENRASP LLC
59	683886105	OPTIGENEX, INC.	Jul 15, 2009	STS	192,000	$ 9,600	TRENRASP LLC
60	683886105	OPTIGENEX, INC.	Jul 16, 2009	STS	118,888	$ 5,944	AJW OFFSHORE LTD
61	683886105	OPTIGENEX, INC.	Jul 16, 2009	STS	27,974	$ 1,399	AJW PARTNERS LLC
62	683886105	OPTIGENEX, INC.	Jul 16, 2009	STS	82,756	$ 4,138	AJW QUALIFIED PARTNER
63	683886105	OPTIGENEX, INC.	Jul 16, 2009	STS	3,497	$ 175	NEW MILLENNIUM CAPITAL
64	683886105	OPTIGENEX, INC.	Jul 22, 2009	STS	118,888	$ 4,458	AJW OFFSHORE LTD
65	683886105	OPTIGENEX, INC.	Jul 22, 2009	STS	27,974	$ 1,049	AJW PARTNERS LLC
66	683886105	OPTIGENEX, INC.	Jul 22, 2009	STS	82,756	$ 3,103	AJW QUALIFIED PARTNER
67	683886105	OPTIGENEX, INC.	Jul 22, 2009	STS	3,497	$ 131	NEW MILLENNIUM CAPITAL
68	683886105	OPTIGENEX, INC.	Jul 24, 2009	STS	152,415	$ 5,716	AJW OFFSHORE LTD
69	683886105	OPTIGENEX, INC.	Jul 24, 2009	STS	35,862	$ 1,345	AJW PARTNERS LLC
70	683886105	OPTIGENEX, INC.	Jul 24, 2009	STS	106,093	$ 3,978	AJW QUALIFIED PARTNER
71	683886105	OPTIGENEX, INC.	Jul 24, 2009	STS	4,483	$ 168	NEW MILLENNIUM CAPITAL
72	683886105	OPTIGENEX, INC.	Jul 28, 2009	STS	152,415	$ 7,621	AJW OFFSHORE LTD
73	683886105	OPTIGENEX, INC.	Jul 28, 2009	STS	35,862	$ 1,793	AJW PARTNERS LLC
74	683886105	OPTIGENEX, INC.	Jul 28, 2009	STS	106,093	$ 5,305	AJW QUALIFIED PARTNER
75	683886105	OPTIGENEX, INC.	Jul 28, 2009	STS	4,483	$ 224	NEW MILLENNIUM CAPITAL
76	683886105	OPTIGENEX, INC.	Jul 30, 2009	STS	152,415	$ 7,621	AJW OFFSHORE LTD
77	683886105	OPTIGENEX, INC.	Jul 30, 2009	STS	35,862	$ 1,793	AJW PARTNERS LLC
78	683886105	OPTIGENEX, INC.	Jul 30, 2009	STS	106,093	$ 5,305	AJW QUALIFIED PARTNER
79	683886105	OPTIGENEX, INC.	Jul 30, 2009	STS	4,483	$ 224	NEW MILLENNIUM CAPITAL
80	683886105	OPTIGENEX, INC.	Aug 5, 2009	STS	182,790	$ 9,139	AJW OFFSHORE LTD

EXHIBIT A
Optigenex, Inc.

	CUSIP	SECURITY DESCRIPTION	BUSINESS DATE	DEPOSIT SOURCE	CERTIFICATE QUANTITY	CERTIFICATE VALUE	REGISTRANT
81	683886105	OPTIGENEX, INC.	Aug 5, 2009	STS	43,009	$ 2,150	AJW PARTNERS LLC
82	683886105	OPTIGENEX, INC.	Aug 5, 2009	STS	127,236	$ 6,362	AJW QUALIFIED PARTNER
83	683886105	OPTIGENEX, INC.	Aug 5, 2009	STS	5,376	$ 269	NEW MILLENNIUM CAPITAL
84	683886105	OPTIGENEX, INC.	Aug 6, 2009	STS	182,790	$ 4,570	AJW OFFSHORE LTD
85	683886105	OPTIGENEX, INC.	Aug 6, 2009	STS	43,009	$ 1,075	AJW PARTNERS LLC
86	683886105	OPTIGENEX, INC.	Aug 6, 2009	STS	127,236	$ 3,181	AJW QUALIFIED PARTNER
87	683886105	OPTIGENEX, INC.	Aug 6, 2009	STS	5,376	$ 134	NEW MILLENNIUM CAPITAL
88	683886105	OPTIGENEX, INC.	Aug 10, 2009	STS	182,790	$ 11,424	AJW OFFSHORE LTD
89	683886105	OPTIGENEX, INC.	Aug 10, 2009	STS	43,009	$ 2,688	AJW PARTNERS LLC
90	683886105	OPTIGENEX, INC.	Aug 10, 2009	STS	127,236	$ 7,952	AJW QUALIFIED PARTNER
91	683886105	OPTIGENEX, INC.	Aug 10, 2009	STS	5,376	$ 336	NEW MILLENNIUM CAPITAL
92	683886105	OPTIGENEX, INC.	Aug 11, 2009	STS	182,790	$ 22,849	AJW OFFSHORE LTD
93	683886105	OPTIGENEX, INC.	Aug 11, 2009	STS	43,009	$ 5,376	AJW PARTNERS LLC
94	683886105	OPTIGENEX, INC.	Aug 11, 2009	STS	127,236	$ 15,904	AJW QUALIFIED PARTNER
95	683886105	OPTIGENEX, INC.	Aug 11, 2009	STS	5,376	$ 672	NEW MILLENNIUM CAPITAL
96	683886105	OPTIGENEX, INC.	Aug 13, 2009	STS	227,126	$ 22,713	AJW OFFSHORE LTD
97	683886105	OPTIGENEX, INC.	Aug 13, 2009	STS	53,441	$ 5,344	AJW PARTNERS LLC
98	683886105	OPTIGENEX, INC.	Aug 13, 2009	STS	158,097	$ 15,810	AJW QUALIFIED PARTNER
99	683886105	OPTIGENEX, INC.	Aug 13, 2009	STS	6,680	$ 668	NEW MILLENNIUM CAPITAL
100	683886105	OPTIGENEX, INC.	Aug 17, 2009	STS	227,126	$ 22,713	AJW OFFSHORE LTD
101	683886105	OPTIGENEX, INC.	Aug 17, 2009	STS	53,441	$ 5,344	AJW PARTNERS LLC
102	683886105	OPTIGENEX, INC.	Aug 17, 2009	STS	158,097	$ 15,810	AJW QUALIFIED PARTNER
103	683886105	OPTIGENEX, INC.	Aug 17, 2009	STS	6,680	$ 668	NEW MILLENNIUM CAPITAL
104	683886105	OPTIGENEX, INC.	Aug 19, 2009	STS	227,126	$ 25,552	AJW OFFSHORE LTD
105	683886105	OPTIGENEX, INC.	Aug 19, 2009	STS	53,441	$ 6,012	AJW PARTNERS LLC
106	683886105	OPTIGENEX, INC.	Aug 19, 2009	STS	158,097	$ 17,786	AJW QUALIFIED PARTNER
107	683886105	OPTIGENEX, INC.	Aug 19, 2009	STS	6,680	$ 752	NEW MILLENNIUM CAPITAL
108	683886105	OPTIGENEX, INC.	Aug 24, 2009	STS	227,126	$ 42,586	AJW OFFSHORE LTD
109	683886105	OPTIGENEX, INC.	Aug 24, 2009	STS	53,441	$ 10,020	AJW PARTNERS LLC
110	683886105	OPTIGENEX, INC.	Aug 24, 2009	STS	158,097	$ 29,643	AJW QUALIFIED PARTNER
111	683886105	OPTIGENEX, INC.	Aug 24, 2009	STS	6,680	$ 1,253	NEW MILLENNIUM CAPITAL
112	683886105	OPTIGENEX, INC.	Aug 27, 2009	STS	272,369	$ 44,260	AJW OFFSHORE LTD
113	683886105	OPTIGENEX, INC.	Aug 27, 2009	STS	64,087	$ 10,414	AJW PARTNERS LLC
114	683886105	OPTIGENEX, INC.	Aug 27, 2009	STS	189,590	$ 30,808	AJW QUALIFIED PARTNER
115	683886105	OPTIGENEX, INC.	Aug 27, 2009	STS	8,011	$ 1,302	NEW MILLENNIUM CAPITAL
116	683886105	OPTIGENEX, INC.	Aug 31, 2009	STS	272,369	$ 40,855	AJW OFFSHORE LTD
117	683886105	OPTIGENEX, INC.	Aug 31, 2009	STS	64,087	$ 9,613	AJW PARTNERS LLC
118	683886105	OPTIGENEX, INC.	Aug 31, 2009	STS	189,590	$ 28,438	AJW QUALIFIED PARTNER
119	683886105	OPTIGENEX, INC.	Aug 31, 2009	STS	8,011	$ 1,202	NEW MILLENNIUM CAPITAL

EXHIBIT A
Optigenex, Inc.

	CUSIP	SECURITY DESCRIPTION	BUSINESS DATE	DEPOSIT SOURCE	CERTIFICATE QUANTITY	CERTIFICATE VALUE	REGISTRANT
120	683886105	OPTIGENEX, INC.	Sep 2, 2009	STS	150,960	$ 18,870	AJW OFFSHORE LTD
121	683886105	OPTIGENEX, INC.	Sep 2, 2009	STS	35,520	$ 4,440	AJW PARTNERS LLC
122	683886105	OPTIGENEX, INC.	Sep 2, 2009	STS	105,080	$ 13,135	AJW QUALIFIED PARTNER
123	683886105	OPTIGENEX, INC.	Sep 2, 2009	STS	4,440	$ 555	NEW MILLENNIUM CAPITAL
124	683886105	OPTIGENEX, INC.	Sep 4, 2009	STS	150,960	$ 16,983	AJW OFFSHORE LTD
125	683886105	OPTIGENEX, INC.	Sep 4, 2009	STS	121,409	$ 13,658	AJW OFFSHORE LTD
126	683886105	OPTIGENEX, INC.	Sep 4, 2009	STS	35,520	$ 3,996	AJW PARTNERS LLC
127	683886105	OPTIGENEX, INC.	Sep 4, 2009	STS	28,567	$ 3,214	AJW PARTNERS LLC
128	683886105	OPTIGENEX, INC.	Sep 4, 2009	STS	105,080	$ 11,822	AJW QUALIFIED PARTNER
129	683886105	OPTIGENEX, INC.	Sep 4, 2009	STS	84,510	$ 9,507	AJW QUALIFIED PARTNER
130	683886105	OPTIGENEX, INC.	Sep 4, 2009	STS	3,571	$ 402	NEW MILLENNIUM CAPITAL
131	683886105	OPTIGENEX, INC.	Sep 8, 2009	STS	4,440	$ 555	NEW MILLENNIUM CAPITAL
132	683886105	OPTIGENEX, INC.	Sep 9, 2009	STS	28,567	$ 3,214	AJW OFFSHORE LTD
133	683886105	OPTIGENEX, INC.	Sep 9, 2009	STS	121,409	$ 13,658	AJW OFFSHORE LTD
134	683886105	OPTIGENEX, INC.	Sep 9, 2009	STS	84,510	$ 9,507	AJW QUALIFIED PARTNER
135	683886105	OPTIGENEX, INC.	Sep 9, 2009	STS	3,571	$ 402	NEW MILLENNIUM CAPITAL
136	683886105	OPTIGENEX, INC.	Sep 10, 2009	STS	150,960	$ 15,096	AJW OFFSHORE LTD
137	683886105	OPTIGENEX, INC.	Sep 10, 2009	STS	35,520	$ 3,552	AJW PARTNERS LLC
138	683886105	OPTIGENEX, INC.	Sep 10, 2009	STS	105,080	$ 10,508	AJW QUALIFIED PARTNER
139	683886105	OPTIGENEX, INC.	Sep 10, 2009	STS	4,440	$ 444	NEW MILLENNIUM CAPITAL
140	683886105	OPTIGENEX, INC.	Sep 11, 2009	STS	121,409	$ 9,106	AJW OFFSHORE LTD
141	683886105	OPTIGENEX, INC.	Sep 11, 2009	STS	28,567	$ 2,143	AJW PARTNERS LLC
142	683886105	OPTIGENEX, INC.	Sep 11, 2009	STS	84,510	$ 6,338	AJW QUALIFIED PARTNER
143	683886105	OPTIGENEX, INC.	Sep 11, 2009	STS	3,571	$ 268	NEW MILLENNIUM CAPITAL
144	683886105	OPTIGENEX, INC.	Sep 14, 2009	STS	218,781	$ 16,409	AJW OFFSHORE LTD
145	683886105	OPTIGENEX, INC.	Sep 14, 2009	STS	51,478	$ 3,861	AJW PARTNERS LLC
146	683886105	OPTIGENEX, INC.	Sep 14, 2009	STS	152,288	$ 11,422	AJW QUALIFIED PARTNER
147	683886105	OPTIGENEX, INC.	Sep 14, 2009	STS	6,435	$ 483	NEW MILLENNIUM CAPITAL
148	683886105	OPTIGENEX, INC.	Sep 15, 2009	STS	109,169	$ 9,552	AJW OFFSHORE LTD
149	683886105	OPTIGENEX, INC.	Sep 15, 2009	STS	25,687	$ 2,248	AJW PARTNERS LLC
150	683886105	OPTIGENEX, INC.	Sep 15, 2009	STS	75,990	$ 6,649	AJW QUALIFIED PARTNER
151	683886105	OPTIGENEX, INC.	Sep 15, 2009	STS	3,211	$ 281	NEW MILLENNIUM CAPITAL
152	683886105	OPTIGENEX, INC.	Sep 16, 2009	STS	218,781	$ 21,878	AJW OFFSHORE LTD
153	683886105	OPTIGENEX, INC.	Sep 16, 2009	STS	51,478	$ 5,148	AJW PARTNERS LLC
154	683886105	OPTIGENEX, INC.	Sep 16, 2009	STS	152,288	$ 15,229	AJW QUALIFIED PARTNER
155	683886105	OPTIGENEX, INC.	Sep 16, 2009	STS	6,435	$ 643	NEW MILLENNIUM CAPITAL
156	683886105	OPTIGENEX, INC.	Sep 21, 2009	STS	340,189	$ 29,767	AJW OFFSHORE LTD
157	683886105	OPTIGENEX, INC.	Sep 21, 2009	STS	80,045	$ 7,004	AJW PARTNERS LLC
158	683886105	OPTIGENEX, INC.	Sep 21, 2009	STS	236,798	$ 20,720	AJW QUALIFIED PARTNER

EXHIBIT A
Optigenex, Inc.

	CUSIP	SECURITY DESCRIPTION	BUSINESS DATE	DEPOSIT SOURCE	CERTIFICATE QUANTITY	CERTIFICATE VALUE	REGISTRANT
159	683886105	OPTIGENEX, INC.	Sep 21, 2009	STS	10,006	$ 875	NEW MILLENNIUM CAPITAL
160	683886105	OPTIGENEX, INC.	Sep 22, 2009	STS	340,189	$ 25,514	AJW OFFSHORE LTD
161	683886105	OPTIGENEX, INC.	Sep 22, 2009	STS	80,045	$ 6,003	AJW PARTNERS LLC
162	683886105	OPTIGENEX, INC.	Sep 22, 2009	STS	236,798	$ 17,760	AJW QUALIFIED PARTNER
163	683886105	OPTIGENEX, INC.	Sep 22, 2009	STS	10,006	$ 750	NEW MILLENNIUM CAPITAL
164	683886105	OPTIGENEX, INC.	Sep 25, 2009	STS	224,400	$ 16,830	AJW OFFSHORE LTD
165	683886105	OPTIGENEX, INC.	Sep 25, 2009	STS	52,800	$ 3,960	AJW PARTNERS LLC
166	683886105	OPTIGENEX, INC.	Sep 25, 2009	STS	156,200	$ 11,715	AJW QUALIFIED PARTNER
167	683886105	OPTIGENEX, INC.	Sep 25, 2009	STS	6,600	$ 495	NEW MILLENNIUM CAPITAL
168	683886105	OPTIGENEX, INC.	Sep 29, 2009	STS	57,120	$ 3,570	AJW OFFSHORE LTD
169	683886105	OPTIGENEX, INC.	Sep 29, 2009	STS	13,440	$ 840	AJW PARTNERS LLC
170	683886105	OPTIGENEX, INC.	Sep 29, 2009	STS	39,760	$ 2,485	AJW QUALIFIED PARTNER
171	683886105	OPTIGENEX, INC.	Sep 29, 2009	STS	1,680	$ 105	NEW MILLENNIUM CAPITAL
172	683886105	OPTIGENEX, INC.	Sep 30, 2009	STS	283,069	$ 17,692	AJW OFFSHORE LTD
173	683886105	OPTIGENEX, INC.	Sep 30, 2009	STS	66,605	$ 4,163	AJW PARTNERS LLC
174	683886105	OPTIGENEX, INC.	Sep 30, 2009	STS	197,038	$ 12,315	AJW QUALIFIED PARTNER
175	683886105	OPTIGENEX, INC.	Sep 30, 2009	STS	8,326	$ 520	NEW MILLENNIUM CAPITAL
176	683886105	OPTIGENEX, INC.	Oct 1, 2009	STS	152,275	$ 9,517	AJW OFFSHORE LTD
177	683886105	OPTIGENEX, INC.	Oct 1, 2009	STS	35,829	$ 2,239	AJW PARTNERS LLC
178	683886105	OPTIGENEX, INC.	Oct 1, 2009	STS	105,995	$ 6,625	AJW QUALIFIED PARTNER
179	683886105	OPTIGENEX, INC.	Oct 1, 2009	STS	4,479	$ 280	NEW MILLENNIUM CAPITAL
180	683886105	OPTIGENEX, INC.	Oct 5, 2009	STS	283,069	$ 14,153	AJW OFFSHORE LTD
181	683886105	OPTIGENEX, INC.	Oct 5, 2009	STS	152,275	$ 7,614	AJW OFFSHORE LTD
182	683886105	OPTIGENEX, INC.	Oct 5, 2009	STS	66,605	$ 3,330	AJW PARTNERS LLC
183	683886105	OPTIGENEX, INC.	Oct 5, 2009	STS	35,829	$ 1,791	AJW PARTNERS LLC
184	683886105	OPTIGENEX, INC.	Oct 5, 2009	STS	197,038	$ 9,852	AJW QUALIFIED PARTNER
185	683886105	OPTIGENEX, INC.	Oct 5, 2009	STS	105,995	$ 5,300	AJW QUALIFIED PARTNER
186	683886105	OPTIGENEX, INC.	Oct 5, 2009	STS	8,326	$ 416	NEW MILLENNIUM CAPITAL
187	683886105	OPTIGENEX, INC.	Oct 5, 2009	STS	4,479	$ 224	NEW MILLENNIUM CAPITAL
188	683886105	OPTIGENEX, INC.	Oct 8, 2009	STS	435,344	$ 27,209	AJW OFFSHORE LTD
189	683886105	OPTIGENEX, INC.	Oct 8, 2009	STS	102,434	$ 6,402	AJW PARTNERS LLC
190	683886105	OPTIGENEX, INC.	Oct 8, 2009	STS	303,033	$ 18,940	AJW QUALIFIED PARTNER
191	683886105	OPTIGENEX, INC.	Oct 8, 2009	STS	12,804	$ 800	NEW MILLENNIUM CAPITAL
192	683886105	OPTIGENEX, INC.	Oct 13, 2009	STS	435,344	$ 21,767	AJW OFFSHORE LTD
193	683886105	OPTIGENEX, INC.	Oct 13, 2009	STS	102,434	$ 5,122	AJW PARTNERS LLC
194	683886105	OPTIGENEX, INC.	Oct 13, 2009	STS	303,033	$ 15,152	AJW QUALIFIED PARTNER
195	683886105	OPTIGENEX, INC.	Oct 13, 2009	STS	12,804	$ 640	NEW MILLENNIUM CAPITAL
196	683886105	OPTIGENEX, INC.	Oct 16, 2009	STS	3,240	$ 203	AJW OFFSHORE LTD
197	683886105	OPTIGENEX, INC.	Oct 16, 2009	STS	11,526	$ 720	AJW OFFSHORE LTD

EXHIBIT A
Optigenex, Inc.

	CUSIP	SECURITY DESCRIPTION	BUSINESS DATE	DEPOSIT SOURCE	CERTIFICATE QUANTITY	CERTIFICATE VALUE	REGISTRANT
198	683886105	OPTIGENEX, INC.	Oct 16, 2009	STS	76,680	$ 4,793	AJW PARTNERS LLC
199	683886105	OPTIGENEX, INC.	Oct 16, 2009	STS	272,779	$ 17,049	AJW PARTNERS LLC
200	683886105	OPTIGENEX, INC.	Oct 16, 2009	STS	25,920	$ 1,620	AJW QUALIFIED PARTNER
201	683886105	OPTIGENEX, INC.	Oct 16, 2009	STS	92,207	$ 5,763	AJW QUALIFIED PARTNER
202	683886105	OPTIGENEX, INC.	Oct 16, 2009	STS	110,160	$ 6,885	NEW MILLENNIUM CAPITAL
203	683886105	OPTIGENEX, INC.	Oct 16, 2009	STS	391,879	$ 24,492	NEW MILLENNIUM CAPITAL
204	683886105	OPTIGENEX, INC.	Oct 20, 2009	STS	502,039	$ 31,377	AJW OFFSHORE LTD
205	683886105	OPTIGENEX, INC.	Oct 20, 2009	STS	118,127	$ 7,383	AJW PARTNERS LLC
206	683886105	OPTIGENEX, INC.	Oct 20, 2009	STS	349,459	$ 21,841	AJW QUALIFIED PARTNER
207	683886105	OPTIGENEX, INC.	Oct 20, 2009	STS	14,766	$ 923	NEW MILLENNIUM CAPITAL
208	683886105	OPTIGENEX, INC.	Oct 21, 2009	STS	502,039	$ 31,377	AJW OFFSHORE LTD
209	683886105	OPTIGENEX, INC.	Oct 21, 2009	STS	118,127	$ 7,383	AJW PARTNERS LLC
210	683886105	OPTIGENEX, INC.	Oct 21, 2009	STS	349,459	$ 21,841	AJW QUALIFIED PARTNER
211	683886105	OPTIGENEX, INC.	Oct 21, 2009	STS	14,766	$ 923	NEW MILLENNIUM CAPITAL
212	683886105	OPTIGENEX, INC.	Oct 23, 2009	STS	16,972	$ 1,273	AJW OFFSHORE LTD
213	683886105	OPTIGENEX, INC.	Oct 23, 2009	STS	401,668	$ 30,125	AJW PARTNERS LLC
214	683886105	OPTIGENEX, INC.	Oct 23, 2009	STS	135,775	$ 10,183	AJW QUALIFIED PARTNER
215	683886105	OPTIGENEX, INC.	Oct 23, 2009	STS	577,044	$ 43,278	NEW MILLENNIUM CAPITAL
216	683886105	OPTIGENEX, INC.	Oct 28, 2009	STS	577,044	$ 36,065	AJW OFFSHORE LTD
217	683886105	OPTIGENEX, INC.	Oct 28, 2009	STS	135,775	$ 8,486	AJW PARTNERS LLC
218	683886105	OPTIGENEX, INC.	Oct 28, 2009	STS	401,668	$ 25,104	AJW QUALIFIED PARTNER
219	683886105	OPTIGENEX, INC.	Oct 28, 2009	STS	16,972	$ 1,061	NEW MILLENNIUM CAPITAL
220	683886105	OPTIGENEX, INC.	Nov 6, 2009	STS	577,044	$ 36,065	AJW OFFSHORE LTD
221	683886105	OPTIGENEX, INC.	Nov 6, 2009	STS	135,775	$ 8,486	AJW PARTNERS LLC
222	683886105	OPTIGENEX, INC.	Nov 6, 2009	STS	401,668	$ 25,104	AJW QUALIFIED PARTNER
223	683886105	OPTIGENEX, INC.	Nov 6, 2009	STS	16,972	$ 1,061	NEW MILLENNIUM CAPITAL
224	683886105	OPTIGENEX, INC.	Nov 10, 2009	STS	175,440	$ 8,772	AJW OFFSHORE LTD
225	683886105	OPTIGENEX, INC.	Nov 10, 2009	STS	41,280	$ 2,064	AJW PARTNERS LLC
226	683886105	OPTIGENEX, INC.	Nov 10, 2009	STS	122,120	$ 6,106	AJW QUALIFIED PARTNER
227	683886105	OPTIGENEX, INC.	Nov 10, 2009	STS	5,160	$ 258	NEW MILLENNIUM CAPITAL
228	683886105	OPTIGENEX, INC.	Nov 11, 2009	STS	24,480	$ 1,224	AJW OFFSHORE LTD
229	683886105	OPTIGENEX, INC.	Nov 11, 2009	STS	5,760	$ 288	AJW PARTNERS LLC
230	683886105	OPTIGENEX, INC.	Nov 11, 2009	STS	17,040	$ 852	AJW QUALIFIED PARTNER
231	683886105	OPTIGENEX, INC.	Nov 11, 2009	STS	720	$ 36	NEW MILLENNIUM CAPITAL
232	683886105	OPTIGENEX, INC.	Nov 12, 2009	STS	552,564	$ 27,628	AJW OFFSHORE LTD
233	683886105	OPTIGENEX, INC.	Nov 12, 2009	STS	130,015	$ 6,501	AJW PARTNERS LLC
234	683886105	OPTIGENEX, INC.	Nov 12, 2009	STS	384,628	$ 19,231	AJW QUALIFIED PARTNER
235	683886105	OPTIGENEX, INC.	Nov 12, 2009	STS	16,252	$ 813	NEW MILLENNIUM CAPITAL
236	683886105	OPTIGENEX, INC.	Nov 13, 2009	STS	24,480	$ 1,224	AJW OFFSHORE LTD

EXHIBIT A
Optigenex, Inc.

	CUSIP	SECURITY DESCRIPTION	BUSINESS DATE	DEPOSIT SOURCE	CERTIFICATE QUANTITY	CERTIFICATE VALUE	REGISTRANT
237	683886105	OPTIGENEX, INC.	Nov 13, 2009	STS	5,760	$ 288	AJW PARTNERS LLC
238	683886105	OPTIGENEX, INC.	Nov 13, 2009	STS	17,040	$ 852	AJW QUALIFIED PARTNER
239	683886105	OPTIGENEX, INC.	Nov 13, 2009	STS	720	$ 36	NEW MILLENNIUM CAPITAL
240	683886105	OPTIGENEX, INC.	Nov 16, 2009	STS	552,564	$ 27,628	AJW OFFSHORE LTD
241	683886105	OPTIGENEX, INC.	Nov 16, 2009	STS	130,015	$ 6,501	AJW PARTNERS LLC
242	683886105	OPTIGENEX, INC.	Nov 16, 2009	STS	384,628	$ 19,231	AJW QUALIFIED PARTNER
243	683886105	OPTIGENEX, INC.	Nov 16, 2009	STS	16,252	$ 813	NEW MILLENNIUM CAPITAL
244	683886105	OPTIGENEX, INC.	Nov 17, 2009	STS	238,784	$ 8,954	AJW OFFSHORE LTD
245	683886105	OPTIGENEX, INC.	Nov 17, 2009	STS	56,184	$ 2,107	AJW PARTNERS LLC
246	683886105	OPTIGENEX, INC.	Nov 17, 2009	STS	166,212	$ 6,233	AJW QUALIFIED PARTNER
247	683886105	OPTIGENEX, INC.	Nov 17, 2009	STS	7,023	$ 263	NEW MILLENNIUM CAPITAL
248	683886105	OPTIGENEX, INC.	Nov 18, 2009	STS	552,564	$ 27,628	AJW OFFSHORE LTD
249	683886105	OPTIGENEX, INC.	Nov 18, 2009	STS	130,015	$ 6,501	AJW PARTNERS LLC
250	683886105	OPTIGENEX, INC.	Nov 18, 2009	STS	384,628	$ 19,231	AJW QUALIFIED PARTNER
251	683886105	OPTIGENEX, INC.	Nov 18, 2009	STS	16,252	$ 813	NEW MILLENNIUM CAPITAL
252	683886105	OPTIGENEX, INC.	Nov 19, 2009	STS	238,784	$ 11,939	AJW OFFSHORE LTD
253	683886105	OPTIGENEX, INC.	Nov 19, 2009	STS	56,184	$ 2,809	AJW PARTNERS LLC
254	683886105	OPTIGENEX, INC.	Nov 19, 2009	STS	166,212	$ 8,311	AJW QUALIFIED PARTNER
255	683886105	OPTIGENEX, INC.	Nov 19, 2009	STS	7,023	$ 351	NEW MILLENNIUM CAPITAL
256	683886105	OPTIGENEX, INC.	Nov 20, 2009	STS	552,564	$ 20,721	AJW OFFSHORE LTD
257	683886105	OPTIGENEX, INC.	Nov 20, 2009	STS	130,015	$ 4,876	AJW PARTNERS LLC
258	683886105	OPTIGENEX, INC.	Nov 20, 2009	STS	384,628	$ 14,424	AJW QUALIFIED PARTNER
259	683886105	OPTIGENEX, INC.	Nov 20, 2009	STS	16,252	$ 609	NEW MILLENNIUM CAPITAL
260	683886105	OPTIGENEX, INC.	Nov 23, 2009	STS	238,784	$ 8,954	AJW OFFSHORE LTD
261	683886105	OPTIGENEX, INC.	Nov 23, 2009	STS	56,184	$ 2,107	AJW PARTNERS LLC
262	683886105	OPTIGENEX, INC.	Nov 23, 2009	STS	166,212	$ 6,233	AJW QUALIFIED PARTNER
263	683886105	OPTIGENEX, INC.	Nov 23, 2009	STS	7,023	$ 263	NEW MILLENNIUM CAPITAL
264	683886105	OPTIGENEX, INC.	Nov 25, 2009	STS	791,348	$ 29,676	AJW OFFSHORE LTD
265	683886105	OPTIGENEX, INC.	Nov 25, 2009	STS	186,199	$ 6,982	AJW PARTNERS LLC
266	683886105	OPTIGENEX, INC.	Nov 25, 2009	STS	550,840	$ 20,657	AJW QUALIFIED PARTNER
267	683886105	OPTIGENEX, INC.	Nov 25, 2009	STS	23,275	$ 873	NEW MILLENNIUM CAPITAL
268	683886105	OPTIGENEX, INC.	Nov 30, 2009	STS	791,348	$ 29,676	AJW OFFSHORE LTD
269	683886105	OPTIGENEX, INC.	Nov 30, 2009	STS	186,199	$ 6,982	AJW PARTNERS LLC
270	683886105	OPTIGENEX, INC.	Nov 30, 2009	STS	550,840	$ 20,657	AJW QUALIFIED PARTNER
271	683886105	OPTIGENEX, INC.	Nov 30, 2009	STS	23,275	$ 873	NEW MILLENNIUM CAPITAL
272	683886105	OPTIGENEX, INC.	Dec 2, 2009	STS	114,240	$ 2,856	AJW OFFSHORE LTD
273	683886105	OPTIGENEX, INC.	Dec 2, 2009	STS	874,153	$ 21,854	AJW OFFSHORE LTD
274	683886105	OPTIGENEX, INC.	Dec 2, 2009	STS	26,880	$ 672	AJW PARTNERS LLC
275	683886105	OPTIGENEX, INC.	Dec 2, 2009	STS	205,683	$ 5,142	AJW PARTNERS LLC

EXHIBIT A
Optigenex, Inc.

	CUSIP	SECURITY DESCRIPTION	BUSINESS DATE	DEPOSIT SOURCE	ERTIFICATE QUANTITY	CERTIFICATE VALUE	REGISTRANT
276	683886105	OPTIGENEX, INC.	Dec 2, 2009	STS	79,520	$ 1,988	AJW QUALIFIED PARTNER
277	683886105	OPTIGENEX, INC.	Dec 2, 2009	STS	608,479	$ 15,212	AJW QUALIFIED PARTNER
278	683886105	OPTIGENEX, INC.	Dec 2, 2009	STS	25,710	$ 643	NEW MILLENNIUM CAPITAL
279	683886105	OPTIGENEX, INC.	Dec 2, 2009	STS	3,360	$ 84	NEW MILLENNIUM CAPITAL
280	683886105	OPTIGENEX, INC.	Dec 4, 2009	STS	874,153	$ 32,781	AJW OFFSHORE LTD
281	683886105	OPTIGENEX, INC.	Dec 4, 2009	STS	205,683	$ 7,713	AJW PARTNERS LLC
282	683886105	OPTIGENEX, INC.	Dec 4, 2009	STS	608,479	$ 22,818	AJW QUALIFIED PARTNER
283	683886105	OPTIGENEX, INC.	Dec 4, 2009	STS	25,710	$ 964	NEW MILLENNIUM CAPITAL
284	683886105	OPTIGENEX, INC.	Dec 7, 2009	STS	114,240	$ 4,284	AJW OFFSHORE LTD
285	683886105	OPTIGENEX, INC.	Dec 7, 2009	STS	26,880	$ 1,008	AJW PARTNERS LLC
286	683886105	OPTIGENEX, INC.	Dec 7, 2009	STS	79,520	$ 2,982	AJW QUALIFIED PARTNER
287	683886105	OPTIGENEX, INC.	Dec 7, 2009	STS	3,360	$ 126	NEW MILLENNIUM CAPITAL
288	683886105	OPTIGENEX, INC.	Dec 8, 2009	STS	923,376	$ 34,627	AJW OFFSHORE LTD
289	683886105	OPTIGENEX, INC.	Dec 8, 2009	STS	217,265	$ 8,147	AJW PARTNERS LLC
290	683886105	OPTIGENEX, INC.	Dec 8, 2009	STS	642,742	$ 24,103	AJW QUALIFIED PARTNER
291	683886105	OPTIGENEX, INC.	Dec 8, 2009	STS	27,158	$ 1,018	NEW MILLENNIUM CAPITAL
292	683886105	OPTIGENEX, INC.	Dec 15, 2009	STS	1,037,616	$ 25,940	AJW OFFSHORE LTD
293	683886105	OPTIGENEX, INC.	Dec 15, 2009	STS	244,145	$ 6,104	AJW PARTNERS LLC
294	683886105	OPTIGENEX, INC.	Dec 15, 2009	STS	722,262	$ 18,057	AJW QUALIFIED PARTNER
295	683886105	OPTIGENEX, INC.	Dec 15, 2009	STS	30,518	$ 763	NEW MILLENNIUM CAPITAL
296	683886105	OPTIGENEX, INC.	Dec 16, 2009	STS	1,037,616	$ 25,940	AJW OFFSHORE LTD
297	683886105	OPTIGENEX, INC.	Dec 16, 2009	STS	244,145	$ 6,104	AJW PARTNERS LLC
298	683886105	OPTIGENEX, INC.	Dec 16, 2009	STS	722,262	$ 18,057	AJW QUALIFIED PARTNER
299	683886105	OPTIGENEX, INC.	Dec 16, 2009	STS	30,518	$ 763	NEW MILLENNIUM CAPITAL
300	683886105	OPTIGENEX, INC.	Dec 21, 2009	STS	1,184,495	$ 29,612	AJW OFFSHORE LTD
301	683886105	OPTIGENEX, INC.	Dec 21, 2009	STS	278,705	$ 6,968	AJW PARTNERS LLC
302	683886105	OPTIGENEX, INC.	Dec 21, 2009	STS	824,501	$ 20,613	AJW QUALIFIED PARTNER
303	683886105	OPTIGENEX, INC.	Dec 21, 2009	STS	34,838	$ 871	NEW MILLENNIUM CAPITAL
304	683886105	OPTIGENEX, INC.	Dec 23, 2009	STS	1,184,495	$ 44,419	AJW OFFSHORE LTD
305	683886105	OPTIGENEX, INC.	Dec 23, 2009	STS	278,705	$ 10,451	AJW PARTNERS LLC
306	683886105	OPTIGENEX, INC.	Dec 23, 2009	STS	824,501	$ 30,919	AJW QUALIFIED PARTNER
307	683886105	OPTIGENEX, INC.	Dec 23, 2009	STS	34,838	$ 1,306	NEW MILLENNIUM CAPITAL
308	683886105	OPTIGENEX, INC.	Dec 28, 2009	STS	1,184,495	$ 44,419	AJW OFFSHORE LTD
309	683886105	OPTIGENEX, INC.	Dec 28, 2009	STS	278,705	$ 10,451	AJW PARTNERS LLC
310	683886105	OPTIGENEX, INC.	Dec 28, 2009	STS	824,501	$ 30,919	AJW QUALIFIED PARTNER
311	683886105	OPTIGENEX, INC.	Dec 28, 2009	STS	34,838	$ 1,306	NEW MILLENNIUM CAPITAL
312	683886105	OPTIGENEX, INC.	Dec 29, 2009	STS	1,184,495	$ 29,612	AJW OFFSHORE LTD
313	683886105	OPTIGENEX, INC.	Dec 29, 2009	STS	278,705	$ 6,968	AJW PARTNERS LLC
314	683886105	OPTIGENEX, INC.	Dec 29, 2009	STS	824,501	$ 20,613	AJW QUALIFIED PARTNER

EXHIBIT A
Optigenex, Inc.

	CUSIP	SECURITY DESCRIPTION	BUSINESS DATE	DEPOSIT SOURCE	CERTIFICATE QUANTITY	CERTIFICATE VALUE	REGISTRANT
315	683886105	OPTIGENEX, INC.	Dec 29, 2009	STS	34,838	$ 871	NEW MILLENNIUM CAPITAL
316	683886105	OPTIGENEX, INC.	Jan 5, 2010	STS	1,354,144	$ 50,780	AJW OFFSHORE LTD
317	683886105	OPTIGENEX, INC.	Jan 5, 2010	STS	318,622	$ 11,948	AJW PARTNERS LLC
318	683886105	OPTIGENEX, INC.	Jan 5, 2010	STS	942,590	$ 35,347	AJW QUALIFIED PARTNER
319	683886105	OPTIGENEX, INC.	Jan 5, 2010	STS	39,828	$ 1,494	NEW MILLENNIUM CAPITAL
320	683886105	OPTIGENEX, INC.	Jan 7, 2010	STS	1,354,144	$ 50,780	AJW OFFSHORE LTD
321	683886105	OPTIGENEX, INC.	Jan 7, 2010	STS	318,622	$ 11,948	AJW PARTNERS LLC
322	683886105	OPTIGENEX, INC.	Jan 7, 2010	STS	942,590	$ 35,347	AJW QUALIFIED PARTNER
323	683886105	OPTIGENEX, INC.	Jan 7, 2010	STS	39,828	$ 1,494	NEW MILLENNIUM CAPITAL
324	683886105	OPTIGENEX, INC.	Jan 21, 2010	STS	1,354,144	$ 33,854	AJW OFFSHORE LTD
325	683886105	OPTIGENEX, INC.	Jan 21, 2010	STS	318,622	$ 7,966	AJW PARTNERS LLC
326	683886105	OPTIGENEX, INC.	Jan 21, 2010	STS	942,590	$ 23,565	AJW QUALIFIED PARTNER
327	683886105	OPTIGENEX, INC.	Jan 21, 2010	STS	39,828	$ 996	NEW MILLENNIUM CAPITAL
328	683886105	OPTIGENEX, INC.	Feb 17, 2010	STS	6,400,000	$ 160,000	GENDARME CAPITAL
329	683886105	OPTIGENEX, INC.	Feb 18, 2010	STS	1,674,429	$ 41,861	AJW OFFSHORE LTD
330	683886105	OPTIGENEX, INC.	Feb 18, 2010	STS	393,983	$ 9,850	AJW PARTNERS LLC
331	683886105	OPTIGENEX, INC.	Feb 18, 2010	STS	1,165,534	$ 29,138	AJW QUALIFIED PARTNER
332	683886105	OPTIGENEX, INC.	Feb 18, 2010	STS	49,248	$ 1,231	NEW MILLENNIUM CAPITAL
333	683886105	OPTIGENEX, INC.	Feb 24, 2010	STS	1,674,429	$ 41,861	AJW OFFSHORE LTD
334	683886105	OPTIGENEX, INC.	Feb 24, 2010	STS	393,983	$ 9,850	AJW PARTNERS LLC
335	683886105	OPTIGENEX, INC.	Feb 24, 2010	STS	1,165,534	$ 29,138	AJW QUALIFIED PARTNER
336	683886105	OPTIGENEX, INC.	Feb 24, 2010	STS	49,248	$ 1,231	NEW MILLENNIUM CAPITAL
337	683886105	OPTIGENEX, INC.	Feb 26, 2010	STS	1,674,429	$ 41,861	AJW OFFSHORE LTD
338	683886105	OPTIGENEX, INC.	Feb 26, 2010	STS	393,983	$ 9,850	AJW PARTNERS LLC
339	683886105	OPTIGENEX, INC.	Feb 26, 2010	STS	1,165,534	$ 29,138	AJW QUALIFIED PARTNER
340	683886105	OPTIGENEX, INC.	Feb 26, 2010	STS	49,248	$ 1,231	NEW MILLENNIUM CAPITAL
341	683886105	OPTIGENEX, INC.	Mar 2, 2010	STS	2,003,749	$ 50,094	AJW OFFSHORE LTD
342	683886105	OPTIGENEX, INC.	Mar 2, 2010	STS	471,470	$ 11,787	AJW PARTNERS LLC
343	683886105	OPTIGENEX, INC.	Mar 2, 2010	STS	1,394,767	$ 34,869	AJW QUALIFIED PARTNER
344	683886105	OPTIGENEX, INC.	Mar 2, 2010	STS	58,934	$ 1,473	NEW MILLENNIUM CAPITAL
345	683886105	OPTIGENEX, INC.	Mar 8, 2010	STS	2,003,749	$ 25,047	AJW OFFSHORE LTD
346	683886105	OPTIGENEX, INC.	Mar 8, 2010	STS	471,470	$ 5,893	AJW PARTNERS LLC
347	683886105	OPTIGENEX, INC.	Mar 8, 2010	STS	1,394,767	$ 17,435	AJW QUALIFIED PARTNER
348	683886105	OPTIGENEX, INC.	Mar 8, 2010	STS	58,934	$ 737	NEW MILLENNIUM CAPITAL
349	683886105	OPTIGENEX, INC.	Mar 22, 2010	STS	2,003,749	$ 50,094	AJW OFFSHORE LTD
350	683886105	OPTIGENEX, INC.	Mar 22, 2010	STS	471,470	$ 11,787	AJW PARTNERS LLC
351	683886105	OPTIGENEX, INC.	Mar 22, 2010	STS	1,394,767	$ 34,869	AJW QUALIFIED PARTNER
352	683886105	OPTIGENEX, INC.	Mar 22, 2010	STS	58,934	$ 1,473	NEW MILLENNIUM CAPITAL
353	683886105	OPTIGENEX, INC.	Mar 29, 2010	STS	2,003,749	$ 50,094	AJW OFFSHORE LTD

EXHIBIT A
Optigenex, Inc.

	CUSIP	SECURITY DESCRIPTION	BUSINESS DATE	DEPOSIT SOURCE	CERTIFICATE QUANTITY	CERTIFICATE VALUE	REGISTRANT
354	683886105	OPTIGENEX, INC.	Mar 29, 2010	STS	471,470	$ 11,787	AJW PARTNERS LLC
355	683886105	OPTIGENEX, INC.	Mar 29, 2010	STS	1,394,767	$ 34,869	AJW QUALIFIED PARTNER
356	683886105	OPTIGENEX, INC.	Mar 29, 2010	STS	58,934	$ 1,473	NEW MILLENNIUM CAPITAL
357	683886105	OPTIGENEX, INC.	Apr 6, 2010	DAM	27	$ 0	DENNIS ROBERT RINALDI
358	683886105	OPTIGENEX, INC.	Apr 20, 2010	STS	4,444,444	$ 55,556	EVAN GREENBERG
359	683886105	OPTIGENEX, INC.	Apr 20, 2010	STS	4,444,444	$ 55,556	ZACHARY MCADOO
360	683886105	OPTIGENEX, INC.	May 18, 2010	DAM	400	$ 5	Robert E. Lee
361	683886204	OPTIGENEX, INC.	Dec 13, 2010	DWAC	79,766	$ 359	Unknown
362	683886204	OPTIGENEX, INC.	Dec 13, 2010	DWAC	638,124	$ 2,872	Unknown
363	683886204	OPTIGENEX, INC.	Dec 13, 2010	DWAC	1,887,783	$ 8,495	Unknown
364	683886204	OPTIGENEX, INC.	Dec 13, 2010	DWAC	2,712,027	$ 12,204	Unknown
365	683886204	OPTIGENEX, INC.	Dec 16, 2010	DWAC	5,847,953	$ 50,877	Unknown
366	683886204	OPTIGENEX, INC.	Dec 17, 2010	DWAC	79,766	$ 471	Unknown
367	683886204	OPTIGENEX, INC.	Dec 17, 2010	DWAC	638,124	$ 3,765	Unknown
368	683886204	OPTIGENEX, INC.	Dec 17, 2010	DWAC	1,887,783	$ 11,138	Unknown
369	683886204	OPTIGENEX, INC.	Dec 17, 2010	DWAC	2,712,027	$ 16,001	Unknown
370	683886204	OPTIGENEX, INC.	Dec 22, 2010	DWAC	88,106	$ 370	Unknown
371	683886204	OPTIGENEX, INC.	Dec 22, 2010	DWAC	704,844	$ 2,960	Unknown
372	683886204	OPTIGENEX, INC.	Dec 22, 2010	DWAC	2,085,163	$ 8,758	Unknown
373	683886204	OPTIGENEX, INC.	Dec 22, 2010	DWAC	2,995,587	$ 12,581	Unknown
374	683886204	OPTIGENEX, INC.	Dec 29, 2010	DWAC	96,467	$ 289	Unknown
375	683886204	OPTIGENEX, INC.	Dec 29, 2010	DWAC	771,732	$ 2,315	Unknown
376	683886204	OPTIGENEX, INC.	Dec 29, 2010	DWAC	2,283,040	$ 6,849	Unknown
377	683886204	OPTIGENEX, INC.	Dec 29, 2010	DWAC	3,279,861	$ 9,840	Unknown
378	683886204	OPTIGENEX, INC.	Jan 7, 2011	DWAC	101,270	$ 162	Unknown
379	683886204	OPTIGENEX, INC.	Jan 7, 2011	DWAC	810,156	$ 1,296	Unknown
380	683886204	OPTIGENEX, INC.	Jan 7, 2011	DWAC	2,396,711	$ 3,835	Unknown
381	683886204	OPTIGENEX, INC.	Jan 7, 2011	DWAC	3,443,163	$ 5,509	Unknown
382	683886204	OPTIGENEX, INC.	Jan 12, 2011	DWAC	106,313	$ 138	Unknown
383	683886204	OPTIGENEX, INC.	Jan 12, 2011	DWAC	850,500	$ 1,106	Unknown
384	683886204	OPTIGENEX, INC.	Jan 12, 2011	DWAC	2,516,062	$ 3,271	Unknown
385	683886204	OPTIGENEX, INC.	Jan 12, 2011	DWAC	3,614,625	$ 4,699	Unknown
386	683886204	OPTIGENEX, INC.	Jan 13, 2011	DWAC	6,944,444	$ 13,194	Redwood Management, Inc.
387	683886204	OPTIGENEX, INC.	Jan 14, 2011	DWAC	111,608	$ 167	Unknown
388	683886204	OPTIGENEX, INC.	Jan 14, 2011	DWAC	892,860	$ 1,339	Unknown
389	683886204	OPTIGENEX, INC.	Jan 14, 2011	DWAC	2,641,377	$ 3,962	Unknown
390	683886204	OPTIGENEX, INC.	Jan 14, 2011	DWAC	3,794,655	$ 5,692	Unknown
391	683886204	OPTIGENEX, INC.	Jan 20, 2011	DWAC	9,615,384	$ 7,692	Redwood Management, Inc.
392	683886204	OPTIGENEX, INC.	Jan 20, 2011	DWAC	122,354	$ 98	Unknown
393	683886204	OPTIGENEX, INC.	Jan 20, 2011	DWAC	978,828	$ 783	Unknown
394	683886204	OPTIGENEX, INC.	Jan 20, 2011	DWAC	2,895,699	$ 2,317	Unknown

EXHIBIT A
Optigenex, Inc.

	CUSIP	SECURITY DESCRIPTION	BUSINESS DATE	DEPOSIT SOURCE	CERTIFICATE QUANTITY	CERTIFICATE VALUE	REGISTRANT
395	683886204	OPTIGENEX, INC.	Jan 20, 2011	DWAC	4,160,019	$ 3,328	Unknown
396	683886204	OPTIGENEX, INC.	Jan 25, 2011	DWAC	135,629	$ 122	Unknown
397	683886204	OPTIGENEX, INC.	Jan 25, 2011	DWAC	1,085,028	$ 977	Unknown
398	683886204	OPTIGENEX, INC.	Jan 25, 2011	DWAC	3,209,874	$ 2,889	Unknown
399	683886204	OPTIGENEX, INC.	Jan 25, 2011	DWAC	4,611,369	$ 4,150	Unknown
400	683886204	OPTIGENEX, INC.	Jan 26, 2011	DWAC	9,722,222	$ 7,778	Redwood Management, Inc.
401	683886204	OPTIGENEX, INC.	Jan 27, 2011	DWAC	135,629	$ 176	Unknown
402	683886204	OPTIGENEX, INC.	Jan 27, 2011	DWAC	1,085,028	$ 1,411	Unknown
403	683886204	OPTIGENEX, INC.	Jan 27, 2011	DWAC	3,209,874	$ 4,173	Unknown
404	683886204	OPTIGENEX, INC.	Jan 27, 2011	DWAC	4,611,369	$ 5,995	Unknown
405	683886204	OPTIGENEX, INC.	Jan 31, 2011	DWAC	163,515	$ 343	Unknown
406	683886204	OPTIGENEX, INC.	Jan 31, 2011	DWAC	1,308,120	$ 2,747	Unknown
407	683886204	OPTIGENEX, INC.	Jan 31, 2011	DWAC	3,869,855	$ 8,127	Unknown
408	683886204	OPTIGENEX, INC.	Jan 31, 2011	DWAC	5,559,510	$ 11,675	Unknown
409	683886204	OPTIGENEX, INC.	Feb 1, 2011	DWAC	9,523,809	$ 19,048	Redwood Management, Inc.
410	683886204	OPTIGENEX, INC.	Feb 4, 2011	DWAC	163,515	$ 196	Unknown
411	683886204	OPTIGENEX, INC.	Feb 4, 2011	DWAC	1,308,120	$ 1,570	Unknown
412	683886204	OPTIGENEX, INC.	Feb 4, 2011	DWAC	3,869,855	$ 4,644	Unknown
413	683886204	OPTIGENEX, INC.	Feb 4, 2011	DWAC	5,559,510	$ 6,671	Unknown
414	683886204	OPTIGENEX, INC.	Feb 9, 2011	DWAC	11,746,031	$ 9,397	Redwood Management, Inc.
415	683886204	OPTIGENEX, INC.	Feb 10, 2011	DWAC	179,801	$ 144	Unknown
416	683886204	OPTIGENEX, INC.	Feb 10, 2011	DWAC	1,438,404	$ 1,151	Unknown
417	683886204	OPTIGENEX, INC.	Feb 10, 2011	DWAC	4,255,278	$ 3,404	Unknown
418	683886204	OPTIGENEX, INC.	Feb 10, 2011	DWAC	6,113,217	$ 4,891	Unknown
419	683886204	OPTIGENEX, INC.	Feb 14, 2011	DWAC	12,500,000	$ 8,750	Redwood Management, Inc.
420	683886204	OPTIGENEX, INC.	Feb 14, 2011	DWAC	6,715,986	$ 4,701	Unknown
421	683886204	OPTIGENEX, INC.	Feb 14, 2011	DWAC	197,529	$ 138	Unknown
422	683886204	OPTIGENEX, INC.	Feb 14, 2011	DWAC	1,580,232	$ 1,106	Unknown
423	683886204	OPTIGENEX, INC.	Feb 14, 2011	DWAC	4,674,853	$ 3,272	Unknown
424	683886204	OPTIGENEX, INC.	Feb 16, 2011	DWAC	12,500,000	$ 10,000	Redwood Management, Inc.
425	683886204	OPTIGENEX, INC.	Feb 16, 2011	DWAC	216,704	$ 173	Unknown
426	683886204	OPTIGENEX, INC.	Feb 16, 2011	DWAC	1,733,628	$ 1,387	Unknown
427	683886204	OPTIGENEX, INC.	Feb 16, 2011	DWAC	5,128,649	$ 4,103	Unknown
428	683886204	OPTIGENEX, INC.	Feb 16, 2011	DWAC	7,367,919	$ 5,894	Unknown
429	683886204	OPTIGENEX, INC.	Feb 17, 2011	DWAC	10,370,370	$ 7,259	Redwood Management, Inc.
430	683886204	OPTIGENEX, INC.	Feb 23, 2011	DWAC	10,714,285	$ 7,500	Redwood Management, Inc.
431	683886204	OPTIGENEX, INC.	Feb 25, 2011	DWAC	12,037,037	$ 7,222	Redwood Management, Inc.
432	683886204	OPTIGENEX, INC.	Mar 1, 2011	DWAC	12,037,037	$ 8,426	Redwood Management, Inc.
433	683886204	OPTIGENEX, INC.	Mar 4, 2011	DWAC	12,000,000	$ 7,200	Redwood Management, Inc.
434	683886204	OPTIGENEX, INC.	Mar 8, 2011	DWAC	13,333,333	$ 6,667	Redwood Management, Inc.
435	683886204	OPTIGENEX, INC.	Mar 9, 2011	DWAC	14,492,753	$ 7,246	Redwood Management, Inc.
436	683886204	OPTIGENEX, INC.	Mar 16, 2011	DWAC	22,222,222	$ 8,889	Redwood Management, Inc.

EXHIBIT A
Optigenex, Inc.

	CUSIP	SECURITY DESCRIPTION	BUSINESS DATE	DEPOSIT SOURCE	ERTIFICATE QUANTITY	CERTIFICATE VALUE	REGISTRANT
437	683886204	OPTIGENEX, INC.	Mar 22, 2011	DWAC	29,126,213	$ 8,738	Redwood Management, Inc.
438	683886204	OPTIGENEX, INC.	Mar 29, 2011	DWAC	36,111,111	$ 21,667	Redwood Management, Inc.
439	683886204	OPTIGENEX, INC.	Mar 31, 2011	DWAC	36,111,111	$ 14,444	Unknown
440	683886204	OPTIGENEX, INC.	Apr 7, 2011	DWAC	38,888,888	$ 15,556	Redwood Management, Inc.
441	683886204	OPTIGENEX, INC.	Apr 13, 2011	DWAC	44,444,444	$ 13,333	Unknown
442	683886204	OPTIGENEX, INC.	Apr 25, 2011	DWAC	55,555,555	$ 11,111	Unknown
443	683886204	OPTIGENEX, INC.	May 2, 2011	DWAC	55,555,555	$ 16,667	Redwood Management, Inc.
444	683886204	OPTIGENEX, INC.	May 4, 2011	DWAC	55,555,555	$ 11,111	Unknown
445	683886204	OPTIGENEX, INC.	May 10, 2011	DWAC	55,555,555	$ 11,111	Unknown
446	683886204	OPTIGENEX, INC.	May 17, 2011	DWAC	55,555,555	$ 11,111	Redwood Management, Inc.
447	683886204	OPTIGENEX, INC.	May 20, 2011	DWAC	55,555,555	$ 11,111	Redwood Management, Inc.
448	683886204	OPTIGENEX, INC.	May 31, 2011	DWAC	66,666,666	$ 6,667	Redwood Management, Inc.
449	683886204	OPTIGENEX, INC.	Jun 10, 2011	DWAC	88,888,888	$ 8,889	Redwood Management, Inc.
450	683886204	OPTIGENEX, INC.	Jun 21, 2011	DWAC	100,000,000	$ 20,000	Unknown
				Total:	1,190,987,107	$ 4,432,644	

EXHIBIT B

[Letterhead of Company Counsel]

[Date]

The Depository Trust Company
55 Water Street
New York, New York 10041
[USA]
Attn: Underwriting Department

RE: **[Company Name], [Description of Security]**, CUSIP Number: •

Ladies and Gentlemen:

We are counsel to **[Company Name]** (the "Company"). The Company has registered in the name of Cede & Co., a nominee of The Depository Trust Company ("DTC"), **[[•] shares of the [common stock], par value $[•] per share]** of the Company, CUSIP Number: **[•]** (the "Subject Securities"). We are providing this opinion at the request of the Company to confirm that the Subject Securities are eligible for DTC book-entry delivery, settlement and depository services.

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of the following documents:

- the orders and instructions of the Company for the issuance and delivery of the Subject Securities,

- copies of duly executed securities purchase agreements and private placement memoranda used for each private placement of the Subject Securities,

- prior legal opinions submitted to the Company or its transfer agent in connection with the issuance of the Subject Securities, and/or the resale of the Subject Securities, by the initial purchasers,

- accredited investor certifications for each accredited investor who invested in each private placement of the Subject Securities,

- copy of the officer's certificate for each private placement of the Subject Securities,
- copy of the secretary's certificate for each private placement of the Subject Securities,
- a copy of a Certificate of Good Standing of the Company dated as of **[recent date]**,
- a copy of Form D, and evidence of filing with the Securities and Exchange Commission, with respect to each private placement of the Subject Securities and
- any additional documentation or materials used to form a basis for the opinions herein or deemed relevant to DTC's determination regarding the Subject Securities.

We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and such agreements, certificates of public officials, certificates of officers or other representatives of the Company and others and such other statements, documents, certificates and corporate or other records as we have deemed necessary or appropriate as a basis for the opinion set forth herein.

Alternative #1, originally restricted securities

Based upon the foregoing, and our independent legal analysis, we are of the following opinions:

1. The Subject Securities were duly authorized, validly issued and fully paid and are nonassessable.

2. The Subject Securities were originally issued and sold in transactions that were not required to be registered with the Securities and Exchange Commission under the Securities Act of 1933 ("Securities Act"), and the Company received full consideration for the Subject Securities more than **[one year] [six months]** prior to the date hereof.

3. The Subject Securities are as of the date hereof, and were at the time the completion of applicable holding periods under Rule 144(d) following their initial issuance by the Company, transferable without registration under the Securities Act by any holder that (a) is not an "affiliate" of the Company as defined in Rule 144(a)(1) under the Securities Act, (b) has not been an "affiliate" within three months of such transfer and (c) has not acquired the Subject Securities from such an affiliate within **[six months] [one year]** of the date hereof.

- OR -

Alternative #2, originally not restricted securities

Based upon the foregoing, we are of the following opinions:

1. The Subject Securities were duly authorized, validly issued and fully paid and are nonassessable.

2. The Subject Securities were originally issued and sold in transactions registered with the Securities and Exchange Commission under the Securities Act of 1933 ("Securities Act").

3. The Subject Securities are not "restricted securities" as defined in Rule 144(a)(3) under the Securities Act and are as of the date hereof, and were immediately following their initial sale in the above referenced registered public offering, transferable without registration under the Securities Act by any holder that (a) is not and was not an "affiliate" of the Company as defined in Rule 144(a)(1) under the Securities Act and (b) has not and had not been an "affiliate" within 90 days of such sale or transfer.

* * *

This opinion is rendered to you and is solely for your benefit to be used only in connection with the matters stated herein, except that you may deliver copies of this opinion to your professional advisors, to any governmental agency or regulatory authority or if otherwise required by law.

Very truly yours,

_____

[Company Counsel]

FedEx

Shipment Receipt

Address Information

Ship to:	**Ship from:**
Louis Brilleman	Donald Maj
Louis A.Brilleman, P.C.	DTCC
1140 AVENUE OF THE AMERICAS	55 Water Street
FL 9	
NEW YORK, NY	New York, NY
10036-5803	10041
US	US
212-584-7805	2128553298

Shipment Information:
Tracking no.: 799020098852
Ship date: 09/21/2012
Estimated shipping charges: 9.75

Package Information
Service type: Standard Overnight
Package type: FedEx Envelope
Number of packages: 1
Total weight: 0.50 LBS
Declared Value: 0.00 USD
Special Services:
Pickup/Drop-off: Use an already scheduled pickup at my location

Billing Information:
Bill transportation to: DTCC-268
Your reference: 8114
P.O. no.:
Invoice no.:
Department no.:

Thank you for shipping online with FedEx ShipManager at fedex.com.

Please Note

EXHIBIT 2

From: Louis Brilleman [mailto:lbrilleman@lbcounsel.com]
Sent: Thursday, October 18, 2012 12:22 PM
To: Maj, Donald
Cc: Cutaia, Joseph V.; 'Dan Zwiren'
Subject: Optigenex Inc., Common Stock CUSIP Number: 683886303

On behalf of the Company, please see attached response letter and legal opinion.

Thank you.

Louis A. Brilleman, P.C.
1140 Avenue of the Americas, 9th Floor
New York, NY 10036
Phone: 212-584-7805
Fax: 646-380-6635
Email: lbrilleman@lbcounsel.com

OPTIGENEX INC.
333 River Road, Suite 701
Hoboken, NJ 07030

October 18, 2012

The Depository Trust Company
55 Water Street
New York, New York 10041
Attn: Donald Maj

Dear Mr. Maj:

We are writing in response to your letter of September 21, 2012, to our outside legal counsel, Louis Brilleman regarding a deposit chill on the common stock of Optigenex Inc. (the "Company," or "Optigenex").

In your letter you stated that a deposit transaction restriction was imposed as a result of a number of unusually large deposits of the Company's securities ("Subject Shares") that raised substantial questions as to whether those shares were tradeable without restriction under the Securities Act of 1933. Following is the Company's explanation as to why it believes that these shares were properly issued as free trading securities and exempt from registration under the Securities Act as set forth further in the opinion letter by our outside legal counsel attached hereto as **Exhibit A**.

As a preliminary matter, please note that on September 1, 2012 the Company effectuated a 1 for 1,200 reverse split of its issued and outstanding common stock (the "Reverse Split"). As a result, the 1,190,987,107 shares that were the subject of the DTC inquiry (the "Subject Shares") were reduced to 992,489 shares as of that date.

Company Background

The Company was incorporated in the State of Delaware under the name Idunna, Inc. and subsequently changed its name to Kronogen Sciences Inc. on November 21, 2002. On July 30, 2003, following a series of asset acquisitions, Kronogen changed its name to Optigenex Inc.

On July 30, 2004, Optigenex entered into an Asset Purchase Agreement with Vibrant Health International, a Nevada corporation involved in the sale of nutritional supplements. At the time of the transaction, Vibrant was a fully reporting company for SEC purposes. In this transaction, Vibrant purchased all of the assets and assumed all of the liabilities of Optigenex in exchange for shares of common stock representing approximately 94% of the issued and outstanding common stock of Vibrant immediately after the transaction.

Issuance of Convertible Notes

On August 31, 2005, the Company entered into an agreement with four investment funds for the sale in three installments of an aggregate of $4,000,000 of convertible notes (the "Notes"). The Notes bore interest at 8%, matured three years from the date of issuance, and were convertible into shares of common stock at any time at the investors' option at the lower of $3.20, or 60% of the average of the three lowest intraday trading prices for the common stock on the Over-The-Counter Bulletin Board for the 20 trading days ending the day before the conversion date. In addition, the Company granted to the purchasers of the Notes a security interest in substantially all of the Company's assets.

The Company had been filing periodic reports with the SEC since its initial registration statement on Form SB-2 was declared effective in August 2002. In November 2008, the Company filed a Form 15 with the SEC to terminate its registration under the Securities Exchange of 1934. The Company believes that it had no other option than to cease filing its periodic reports as a result of the financial difficulties that were caused in part by the onerous terms of the Notes. This in turn prevented the Company from raising additional capital required to fund its operations and meet its filing obligations.

Retirement of Convertible Notes

In July 2012, the Company completed a transaction that retired all of the remaining outstanding Notes, the principal balance of which plus accrued interest totaled approximately $6,000,000. The Company paid $1,020,000 in cash and issued shares of convertible preferred stock representing 7.5% of the total post-reverse split common equity of the Company to the Funds in exchange for the retirement of all Notes. The Funds also released their security interest in the Company's assets.

The funds for the note repurchase were provided by a group of accredited investors which included an affiliate of one of the Company's main customers, the Company's Chief Executive Officer and four individual investors. In total, the investors received shares of convertible preferred stock representing 52% of the post-reverse split common equity of the Company. The convertible preferred shares automatically converted into shares of common stock upon FINRA approval of the reverse split on September 4, 2012.

As a result of the retirement of the Notes, the Company has eliminated all instruments convertible into shares of common stock. The Company believes that it has closed a difficult chapter and it is now poised to expand its operations and grow its business.

Issuance of Subject Shares

All issuances of Subject Shares were exempt from registration in reliance on Rule 144 promulgated under the Securities Act as the holders of the Notes had satisfied the applicable holding period thereunder. Specifically, since no additional consideration was paid at the time of conversion of the Notes, under Rule 144(d)(3)(ii), the holders were permitted to tack their holding period of the issued shares to the holding period of the Notes. All conversions of the Notes ceased in June 2011. A minute portion of the Subject Shares was issued to one entity upon the conversion of promissory notes originally issued by the Company under Rule 504 promulgated under the Securities Act during a period that the Company was not reporting as discussed above.

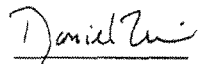
Summary

The Company believes that the Subject Shares were properly issued as free trading securities and exempt from registration under the Securities Act. The Company has cleaned up its balance sheet by retiring the Notes thereby insuring that no additional conversions will occur.

The Company is in the process of filing a registration statement for the resale of the common shares issued in connection with the recent financing. Preparation of that document and the audited and unaudited financial statements required to be included therein is currently underway.

The Company is on the verge of going public again and as a result will operate as a fully reporting entity in accordance with the rules promulgated by the SEC. The Company has made substantial strides over the past two years and has established a presence for its products and technology through several key alliances in the USA as well as in foreign countries. Based on current projections, the Company will likely seek to raise additional capital to expand its operations in the future. Continuation of the deposit chill will severely hamper the Company's ability to raise such additional funds which will negatively impact its plans to grow its business. The Company therefore respectfully requests that the DTC lift the deposit chill.

Very truly yours,



Daniel Zwiren
Chief Executive Officer

Louis A. Brilleman, P.C.
1140 Avenue of the Americas, 9th Floor
New York, NY 10036
Phone: 212-584-7805
Fax: 646-380-6635

October 18, 2012

The Depository Trust Company
55 Water Street
New York, New York 10041
Attn: Underwriting Department

RE: **Optigenex Inc., Common Stock CUSIP Number: 683886303**

Ladies and Gentlemen:

We are counsel to Optigenex Inc., a corporation duly organized and existing under the laws of the State of Delaware (the "Company"). This letter is written at the request of the Company in response to a letter by The Depository Trust Company ("DTC") of September 21, 2012 (the "DTC Letter").

The Company has registered in the name of the nominee of DTC, Cede & Co. 1,190,987,107 shares of common stock, par value $0.01 of the Company, CUSIP Number: 683886303 (the "Common Stock") as set forth on Exhibit A to the DTC Letter. Note that the Company implemented a reverse split of its issued and outstanding shares of Common Stock on a one (1) for one thousand two hundred (1200) basis, effective September 1, 2012 (the "Reverse Split"). As a result of the Reverse Split, the afore-mentioned number of Common Stock was reduced to 992,489 shares as of that date. Such shares of Common Stock as reduced following the Reverse Split are herein referred to as the "Subject Securities").

We are providing this opinion at the request of the Company to confirm that the Subject Securities are eligible for DTC book-entry delivery, settlement and depository services.

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, to the extent applicable, of the following documents:

- The orders and instructions of the Company for the issuance and delivery of the Subject Securities;

- Copies of duly executed securities purchase agreements and private placement memoranda used for the private placements of the Subject Securities;

- Prior legal opinions submitted to the Company or its transfer agent in connection with the issuance of the Subject Securities, and/or resale of the Subject Securities, by the initial purchasers;

- Accredited investor certifications for the accredited investors who invested in the private placements of the Subject Securities;

- Copies of officer's certificates for the private placements of the Subject Securities;

- Copies of secretary's certificates for the private placements of the Subject Securities;

- A copy of the good standing certificate of the Company;

- Any additional documentation or materials used to form a basis for the opinions herein or deemed relevant to DTC's determination regarding the Subject Securities.

We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and such agreements, certificates of public officials, certificates of officers or other representatives of the Company and others, and such other statements, documents, certificates and corporate or other records as we have deemed necessary or appropriate as a basis for the opinion set forth herein.

We have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures, the legal capacity of natural persons and the conformity to the originals of all documents submitted to us as copies. We have also assumed that all documents that we have examined, and that parties other than the Company have executed, have been duly and validly authorized, executed and delivered by, and are legally valid and binding on and enforceable against, each of such parties, and that such parties have obtained all required consents, permits and approvals. As to matters of fact, we have relied on the statements of the Company.

Based upon the foregoing, we are of the opinion that:

1. The Subject Securities were duly authorized, validly issued and fully paid and are non-assessable.

2. The Subject Securities were originally issued and sold in transactions that were not required to be registered with the Securities and Exchange Commission under the Securities Act of 1933 and the Company received full consideration for the Subject Securities more than one year prior to the date hereof.

3. The Subject Securities are as of the date hereof and were at the time of the completion of the applicable holding period under Rule 144(d) following their initial issuance transferable without registration under the Securities Act by any holder that (a) is not an "affiliate" of the Company as defined in Rule 144(a)(1) under the Securities Act, (b) has not been an "affiliate" within three months of such transfer and (c) has not acquired the Subject Securities from such an "affiliate" within one year of such transfer.

This opinion is rendered to you and is solely for your benefit to be used only in connection with the matters stated herein, except that you may deliver copies of this opinion to your professional advisors, to any governmental agency or regulatory authority or if otherwise required by law.

Very truly yours,

Louis A. Brilleman

cc: Dan Zwiren
(Optigenex Inc.)

EXHIBIT 3

From: Van Dorn, Jr., Walter G. [mailto:walter.vandorn@snrdenton.com]
Sent: Wednesday, November 21, 2012 5:30 PM
To: 'lbrilleman@lbcounsel.com'
Cc: Maj, Donald
Subject: DTC Deposit Chill - Optigenex Inc.

Please refer to the attached. Original sent via fed-x. Regards,

Walter G. Van Dorn, Jr.
SNR Denton US LLP
D +1 212 768 6985
M +1 347 922 2276
walter.vandorn@snrdenton.com
snrdenton.com

1221 Avenue of the Americas
New York, NY 10020-1089

SNR DENTON

SNR Denton US LLP
1221 Avenue of the Americas
New York, NY 10020-1089 USA

Walter G. Van Dorn, Jr.
Partner
walter.vandorn@snrdenton.com
D +1 212 768 6985
T +1 212 768 6700
F +1 212 768 6800
snrdenton.com

November 21, 2012

Louis A. Brilleman, Esq.
Louis A. Brilleman, P.C.
1140 Avenue of the Americas, 9th Floor
New York, NY 10036

Re: Optigenex Inc. - DTC Deposit Chill

Dear Mr. Brilleman:

We are counsel to The Depository Trust Company ("DTC"). We understand that as of August 4, 2011, DTC placed a deposit transfer restriction (the "Deposit Chill") on the shares of common stock (the "Shares") CUSIP 683886303 (the "Chilled Issue") of Optigenex Inc. (the "Company"). We further understand that you are requesting that DTC lift the Deposit Chill on the Chilled Issue. In furtherance of the letter to the Company dated September 21, 2012 from Mr. Donald Maj of DTC and your subsequent letter in response dated October 18, 2012, we are writing to you to request additional information and documentation. In order to facilitate DTC's review process, we ask that you please provide us with copies of the following additional documents:

- documentation from the Company's transfer agent showing that 992,489 Shares were registered in the name of Cede & Co., as of the date of your opinion;
- copies of duly executed securities purchase agreements and/or private placement memorandum used for each relevant private placement for the Subject Securities;
- an affidavit that you (i) are not an employee or officer of the Company, (ii) do not own Shares or options or warrants to buy Shares; (iii) are not a holder of any debt securities issued by the Company; and (iv) have not entered into any loan or financing transactions with the Company;
- a statement, if true, that the Company is not obligated to register the Shares under Section 12(g) of the Securities Exchange Act of 1934;
- Accredited Investor certifications for each Accredited Investor who invested in such private placements, as applicable;
- copy of the officer's certificate for each such private placements;
- copy of the secretary's certificate for each such private placement;
- a copy of a recent Certificate of Good Standing from the Company's state of incorporation;

- a copy of Form D, and evidence of filing with the Securities and Exchange Commission, with respect to each such private placement; and

- any additional documentation or materials you deem relevant to DTC's determination regarding the Deposit Chill.

Please send a us copy of the requested materials at your earliest convenience at the address above, and do not hesitate to contact me should you have any further questions about the ongoing legal analysis.

Please be advised that DTC's receipt of the legal opinion and related documents will not automatically result in the removal of the Deposit Chill, that further information may be required and that DTC may, in response to your submission, nevertheless determine not to lift the Deposit Chill.

Thank you for your continued cooperation.

Sincerely,

Walter G. Van Dorn, Jr.

CC: Donald Maj, The Depository Trust & Clearing Corporation

EXHIBIT 4

Louis A. Brilleman, P.C.

1140 Avenue of the Americas, 9th Floor
New York, NY 10036
Phone: 212-584-7805
Fax: 646-380-6635

December 20, 2012

BY FEDERAL EXPRESS

Walter G. Van Dorn, Jr.
SNR Denton US LLP
1221 Avenue of the Americas
New York, New York 10020-1089

RE: **Optigenex Inc.--DTC Deposit Chill**

Dear Mr. Van Dorn:

We are writing in response to your letter of November 21, 2012 and as a follow up to my telephone conference with Brian Lee of your office on December 17, 2012.

In your letter you requested certain specific documents that will facilitate the review by your client, The Depository Trust Company ("DTC"), of the deposit transfer restriction on the shares of common stock CUSIP No. 683886303 of Optigenex Inc. (the "Company"). Accordingly, per your request, enclosed herewith are the following documents:

- A statement from Interwest Transfer Company, the Company's transfer agent, showing the number of shares registered in the name of Cede & Co. as of October 18, 2012 (please note that the number of shares previously provided to DTC was based on an error as a result of rounding following the one for 1,200 reverse stock split; the real greater number of shares registered in the name of Cede & Co. as of that date was as set forth in the attached statement);

- Copy of the securities purchase agreement (the "Purchase Agreement") providing for the sale of the Notes (as defined below) including accredited investor certifications;

- An affidavit from the undersigned certifying as to the matters requested in your letter;

- Copy of an officer's certificate issued in connection with the execution of the Purchase Agreement;

- Copy of a secretary's officer's certificate issued in connection with the execution of the Purchase Agreement;

- Copy of a recent good standing certificate for the Company; and

- Copy of Note Repurchase Agreement relating to the retirement of the Notes.

In order to understand better the issuance of the shares that were the subject of the DTC inquiry (the "Subject Shares"), it may be useful to reiterate some of the narrative relating to the Company and the

issuance of the Subject Shares that was set forth previously in the Company's response to DTC of October 18, 2012 and to provide some additional detail.

Issuance of Convertible Notes

On August 31, 2005, the Company entered into an agreement with four investors that were all part of the same family of funds (the "Funds") for the sale in three installments of an aggregate of $4,000,000 of convertible notes (the "Notes"). The Notes bore interest at 8%, matured three years from the date of issuance, and were convertible into shares of common stock at any time at the investors' option at the lower of $3.20, or 60% of the average of the three lowest intraday trading prices for the common stock on the Over-The-Counter Bulletin Board for the 20 trading days ending the day before the conversion date. In addition, the Company granted to the purchasers of the Notes a security interest in substantially all of the Company's assets.

Retirement of Convertible Notes

In July 2012, the Company completed a transaction that retired all of the then remaining outstanding Notes, the principal balance of which plus accrued interest totaled approximately $6,000,000. The Company paid $1,020,000 in cash and issued to the Funds shares representing 7.5% of the total post-reverse split common equity of the Company in exchange for the retirement of all Notes. The Funds also released their security interest in the Company's assets. As a result of the retirement of the Notes, the Company has eliminated all instruments convertible into shares of common stock.

The retirement of the Notes took place under a settlement that was overseen by the court appointed liquidator of the Funds, Price Waterhouse Coopers, which also conducted all negotiations regarding the retirement of the Notes on behalf of the Funds. Price Waterhouse Coopers has analyzed and agreed with the outstanding balance of the Notes at various times thereof as set forth on Schedule A to the Note Repurchase Agreement dated July 13, 2012 between the Company and the Funds' liquidators. A copy of such agreement including all exhibits and schedules is enclosed herewith.

Issuance of Subject Shares

Virtually all issuances of Subject Shares were made upon conversion of the Notes and exempt from registration in reliance on Rule 144 promulgated under the Securities Act as the holders of the Notes had satisfied the applicable holding period thereunder. Specifically, since no additional consideration was paid at the time of conversion of the Notes, under Rule 144(d)(3)(ii), the holders were permitted to tack their holding period of the issued shares to the holding period of the Notes. All conversions of the Notes ceased in June 2011. A minute portion of the Subject Shares was issued to one entity upon the conversion of promissory notes originally issued by the Company under Rule 504 promulgated under the Securities Act during a period that the Company was not a reporting entity following the filing of its Form 15 on November 12, 2008.

Registration under the Securities Exchange Act of 1934

As requested in your letter, the undersigned is hereby opining that the Subject Securities are not required to be registered under Section 12(g) of the Securities Exchange Act of 1934, as amended. For purposes of this paragraph, all assumptions and qualifications set forth previously in the opinion letter by the undersigned of October 18, 2012 are applicable.

Summary

The Company intends to file a registration statement for the resale of the common shares issued in connection with its recent financing. Preparation of that document and the audited and unaudited

financial statements required to be included therein is currently underway. The Company believes that it will not be in a position to file that registration statement until it has resolved the deposit chill.

Since the Company intends to go public again, it will resume operating as a fully reporting entity in accordance with the rules promulgated by the SEC. Based on current projections, the Company will likely need to seek to raise additional capital to expand its operations in the future. Continuation of the deposit chill will severely hamper the Company's ability to raise such additional funds which will negatively impact its plans to grow its business. The Company therefore respectfully requests again that the DTC lift the deposit chill.

Very truly yours,

Louis A. Brilleman

cc: Dan Zwiren
(Optigenex Inc.)

EXHIBIT 5

Louis A. Brilleman, P.C.
1140 Avenue of the Americas, 9th Floor
New York, NY 10036
Phone: 212-584-7805
Fax: 646-380-6635

January 8, 2013

BY EMAIL

Brian Lee, Esq.
SNR Denton US LLP
1221 Avenue of the Americas
New York, New York 10020-1089

RE: **Optigenex Inc.--DTC Deposit Chill**

Dear Brian:

In accordance with your request for additional information, please be advised that the total number of Subject Shares (as such term is defined in my letter of December 20, 2012) issued by Optigenex Inc. upon conversion of convertible notes was 12,981,553,144. The total number of Subject Shares issued under Rule 504 promulgated under the Securities Act of 1933, as amended, was 837,056,356. As per your request, documents relating to the issuance of the Subject Shares under Rule 504 are attached to this letter.

Please do not hesitate to contact with questions or concerns regarding the foregoing.

Very truly yours,

Louis A. Brilleman

cc: Dan Zwiren
(Optigenex Inc.)

INTERWEST TRANSFER CO., INC.

1981 MURRAY HOLLADAY RD, STE 100
SALT LAKE CITY, UT 84117
Phone: (801) 272-9294 • Fax: (801) 277-3147

Broker:

OPTIGENEX INC/DWAC FAST AGENT
P O BOX 3521
HOBOKEN, NJ 07030

For:

OPTIGENEX INC - COMMON

Certificates Surrendered

FB143 X 7,714,765,624 FAST BALANCE - CEDE & CO

Certificates Issued

FB144 X 8,514,765,624 FAST BALANCE - CEDE & CO

Extra Information: DWAC DEP 504-D FREE 800,000,000 SHARES FBO GENDARME CAPITAL

Reference Note: RFS

Total Shares Surrendered: *7,714,765,624*

Total Shares Issued: *8,514,765,624*

Issue/Cancel Date: 2/18/2010 ***Transaction ID:*** 22010KR0156

New Certificates Issued: *1*

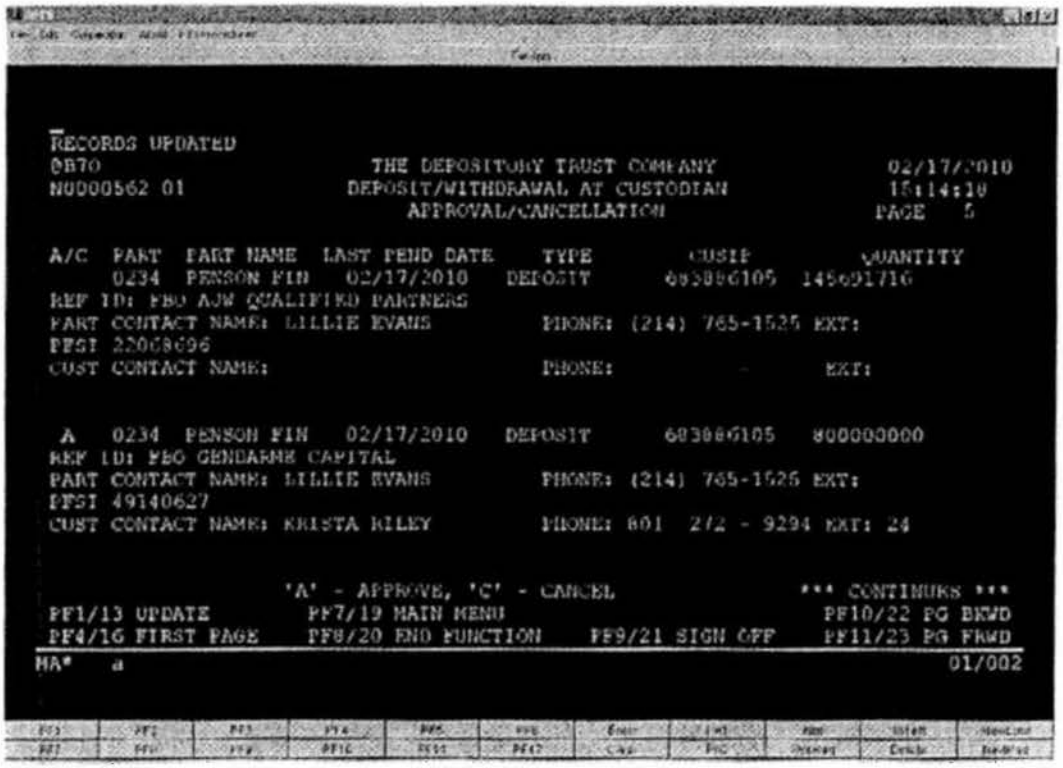
Certificates Surrendered: *1*

Control Log Entry

Company Name: OPTIGENEX INC - COMMON

Transfer ID: 22010KR0156
Company ID: 10547

		Control	*Investment*	*Free Trade*	*Total*	*Reference*
	Beginning Balance	0	9,397,052	8,231,551,845	8,240,948,897	DWAC DEP 504-D FREE
02/18/2010	**Change**	0	0	800,000,000	800,000,000	800,000,000 SHARES FBO GENDARME CAPITAL RES
KR	**New Balance**	0	9,397,052	9,031,551,845	9,040,948,897	See File FB144



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RECORDS UPDATED
0870                    THE DEPOSITORY TRUST COMPANY              02/17/2010
N0000562 01          DEPOSIT/WITHDRAWAL AT CUSTODIAN              15:14:10
                        APPROVAL/CANCELLATION                     PAGE   5

A/C  PART  PART NAME  LAST PEND DATE    TYPE        CUSIP         QUANTITY
     0234  PENSON FIN   02/17/2010   DEPOSIT      683886105   145691716
REF ID: FBO AJW QUALIFIED PARTNERS
PART CONTACT NAME: LILLIE EVANS          PHONE: (214) 765-1525 EXT:
PTSI 22068696
CUST CONTACT NAME:                       PHONE:                EXT:

 A   0234  PENSON FIN   02/17/2010   DEPOSIT      683886105   800000000
REF ID: FBO GENDARME CAPITAL
PART CONTACT NAME: LILLIE EVANS          PHONE: (214) 765-1525 EXT:
PTSI 49140627
CUST CONTACT NAME: KRISTA KILEY          PHONE: 801  272 - 9294 EXT: 24

                  'A' - APPROVE, 'C' - CANCEL                *** CONTINUED ***
PF1/13 UPDATE       PF7/19 MAIN MENU                          PF10/22 PG BKWD
PF4/16 FIRST PAGE   PF8/20 END FUNCTION    PF9/21 SIGN OFF    PF11/23 PG FRWD
MA*   a                                                              01/002
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OPTIGENEX

RES
504-D FREE

800,000,000 SHARES CONFIRMED FBO GENDARME CAPITAL CO

10547/156

ISSUANCE RESOLUTION

CORPORATE RESOLUTION AUTHORIZING THE ISSUANCE OF NEW SHARES FROM NEW STOCK

OPTIGENEX INC.

COMMON STOCK
CLASS OF STOCK

RESOLVED, THAT INTERWEST TRANSFER COMPANY, STOCK TRANSFER AGENT FOR THE ABOVE CLASS OF STOCK FOR THE ABOVE COMPANY, IS AUTHORIZED BY THE COMPANY TO ISSUE THE SHARES DESCRIBED BELOW AND INCREASE THE OUTSTANDING SHARES ON THE BOOKS OF THE COMPANY. THIS ISSUE IS APPROVED AND AUTHORIZED BY THE BOARD OF DIRECTORS.

DATED: FEBRUARY 12, 2010

RECEIVED
FEB 12 2010

ISSUANCE INSTRUCTIONS: (PLEASE TYPE)

REGISTERED NAME & ADDRESS	NUMBER OF SHARES	TYPE OF ISSUE	RESTRICTED OR FREE TRADING	FREE TRADING EXEMPTION (REQUIRED IF FREE TRADING)
GENDARME CAPITAL CO., LLC 9442 CAPITAL OF TEXAS HIGHWAY, NO. ARBORETUM PLAZA ONE, SUITE 500 AUSTIN, TEXAS 78759 ATTN: IAN LAMPHERE	800,000,000	REGULATION D	FREE TRADING	504
REQUIRED INFORMATION	REQUIRED	REQUIRED	REQUIRED	IF FREE TRADING NEED FILING, FILING DATE AND MAY REQUIRE FURTHER DOCUMENTS TO SUPPORT ISSUE.

INCREASING THE NUMBER OF SHARES OUTSTANDING BY A TOTAL OF 800,000,000 SHARES
(NOTE THIS RESOLUTION IS ONLY USED TO INCREASE THE CONTROL BOOK, NOT TO TRANSFER STOCK BETWEEN PARTIES.)

I, THE UNDERSIGNED, QUALIFIED OFFICER OF THE ABOVE COMPANY, CERTIFY THAT THIS IS A TRUE COPY OF A RESOLUTION, SET FORTH AND ADOPTED ON THE BELOW DATE, AND THAT THE SAID RESOLUTION HAS NOT BEEN IN ANY WAY RESCINDED, ANNULLED, OR REVOKED BUT THE SAME IS STILL IN FULL FORCE AND EFFECT.

Daniel Zwiren

OFFICER'S SIGNATURE

DANIEL ZWIREN
OFFICER'S NAME PRINTED

PRESIDENT AND CEO
OFFICER'S TITLE

504 D
Rule

Acty

TELEPHONE NUMBER

FACSIMILE NUMBER

DATE

MAILING INSTRUCTIONS: COMPANY NAME/ATTENTION MAILING ADDRESS TELEPHONE NUMBER	EXPRESS OR MAIL INSTRUCTIONS	EXPRESS NUMBER (IF APPLICABLE)
PENSON FINANCIAL CLEARING/GENDARME CAPITAL Co., LLC 49140627 DTC #0234	DWAC SHARES	

OPTIGENEX, INC.

UNANIMOUS WRITTEN CONSENT OF DIRECTORS
IN LIEU OF SPECIAL MEETING

As of February 8, 2010

Pursuant to the provisions of Delaware General Corporation Law, the undersigned Directors, constituting all of the members of the Board of Directors (the "Board") of Optigenex, Inc., a Delaware corporation, hereby consent to the taking of the following actions without the holding of a meeting and hereby adopt the resolutions attached hereto as Exhibit A effective as of February 8, 2010.

Upon the execution of this Unanimous Written Consent of Directors, in one or more counterparts, by all of the members of the Board, the adoption of the resolutions shall be effective as of the date first above written.

Signed: _____
By: Dan Zwirn, Sole Director

OPTIGENEX, INC.

Officer's Certificate

February 8, 2010

In connection with the Purchase Agreement (the "Agreement") dated February 8, 2010 by and between Optigenex, Inc. (the "Company") and Gendarme Capital Co., LLC (the "Investor(s)"), whereupon the Investor purchases eight hundred million (800,000,000) shares of Common Stock of the Company, the undersigned, Dan Zwiren, President & CEO of the Company, does hereby certify that:

1 He is the duly elected, qualified and acting President & CEO of the Company, is familiar with the facts herein certified, and is duly authorized to certify the same.

2. The representations and warranties of the Company contained in the Agreement (which for purposes of this Certificate are deemed not to include any limitation or qualification with respect to materiality, whether by reference to "material adverse effect" or otherwise) are true and correct on and as of the date hereof, with the same force and effect as though made on and as of the date hereof (except for representations and warranties made as of a specific date, which were true and correct as of such date), except where the failure of such representations and warranties to be true and correct, in the aggregate, would not have a material adverse effect.

3 As of February 8, 2010, Dan Zwiren was the duly elected, qualified and acting President & CEO of the Company, and as of such date, Dan Zwiren executed and delivered the Agreement on behalf of the Company.

4. As of the date hereof approximately (a) 8,000,000,000 shares of Common Stock are issued and outstanding, and (b) 20 billion shares are authorized for issuance.

5. The Company is not:

(a) subject to the reporting requirements of sections 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act");

(b) an investment company; or

(c) a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(d) To the best knowledge of the Company, neither the Company nor a predecessor of the Company; affiliate of the Company; officer, director or general partner of the Company; promoter of the Company presently connected with the Company in any capacity; beneficial owner of 10% or more of any class of equity securities of the Company; underwriter of the securities to be offered or any partner, director or officer of the underwriter is subject to the disqualification provisions of any federal or state securities laws, rules or regulations.

6. In connection with the Company's capital raising efforts, the Company has not sold securities of the Company under Rule 504 with an aggregate offering price in excess of $1,000,000, which amount includes the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under Rule 504, in reliance on any exemption under section 3(b), or in violation of section 5(a), of the Securities Act of 1933, as amended (the "Securities Act"). The Company has made the following private sales of securities of the Company during the immediately preceding 12-month period:

(a) $0.00

7. The Company will not make any offers or sales of securities of the Company that are of the same or a similar class as those offered or sold under the currently contemplated Rule 504 offering involving the Investors (other than those offers or sales of securities under an employee benefit plan as defined in Rule 405 under the Securities Act and except those otherwise allowed under the Securities Act) that would cause the Company to exceed the proceeds allowed it under Rule 504 in any 12 month period.

8. Immediately upon the closing of the sale of securities to the Investors, the Company will file all forms and notices required by any applicable federal or state securities laws, including, but not limited to, filing a Form D with the Securities and Exchange Commission.

9. The securities currently being offered by the Company will be sold only to "accredited investors" as that term is defined in Rule 501 of Regulation D promulgated under the Securities Act which may include "institutional investors" pursuant to the laws of the state of Minnesota.

10. Attached hereto as **Annex A** is a true, correct and complete copy of the certificate of incorporation of the Company, as in effect on the date hereof (the "Certificate of Incorporation"). Attached hereto as **Annex B** is a true, correct and complete copy of the bylaws of the Company, as in effect on the date hereof (the "Bylaws").

11. No meeting of the Company's directors or stockholders has been called or other action taken to limit the corporate power and authority of the Company under the General Corporation Law of the State of Delaware.

12. Attached hereto as **Annex C** is a true, correct and complete copy of the resolutions duly adopted by the Board of Directors of the Company (the "Board") as of February 8, 2010 with respect to the Agreement, which resolutions are in full force and effect, have not been amended, modified or rescinded and are the only resolutions adopted by the Company's directors or stockholders relating to the Agreement.

13. No proceeding for or action relating to the merger, consolidation, liquidation or dissolution of the Company or threatening its existence, or for the sale, lease or exchange of all or substantially all of its assets, has been commenced, taken or threatened, and no meeting of the Company's directors or stockholders has been called or other action taken for such purpose.

14. There is no order or decree of any court or governmental authority binding upon the Company or its property that contains provisions that in any way constrain the ability of the Company to issue, sell or repurchase its securities or enter into any agreement providing for such

issue, sale or repurchase with any person or to enter into any agreement with one or more holders of its securities relating in any way to acquisition, holding, voting or disposing of such securities.

15. No consent, approval, authorization or order of any governmental agency or body is required for the issuance and sale to the Investors by the Company of the Shares by the Agreements, except such as have been obtained.

Unless otherwise defined herein, all capitalized terms used herein are so used with the respective meanings ascribed to them in the Agreement.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first above written.

Dan Zviren
President & CEO

EXHIBIT A

OPTIGENEX, INC.,

RESOLUTIONS OF THE BOARD OF DIRECTORS

Recitals

WHEREAS, the Board of Directors (the "Board") of Optigenex, Inc., a Delaware corporation (the "Company"), desires to accept and ratify a Purchase and Subscription Agreement for the purchase of its common stock, par value $0.00001 per share (the "Common Stock"), from those certain persons and/or entities as provided hereinafter.

NOW, THEREFORE, the following resolutions are hereby adopted by the Board:

Acceptance of Warrant Agreement and Issuance of Common Stock

RESOLVED, that the Chief Executive Officer, the President, or any Vice President of the Company (the "Authorized Officers") is, and each of them hereby is, authorized, in the name and on behalf of the Company, to cause the Company to accept the Subscription Agreement from Gendarme Capital Co., LLC, a Texas corporation. A Copy of the Agreement has previously been delivered to the Board (the "Subscription Agreement")

RESOLVED, that the Authorized Officers are hereby authorized to issue eight hundred million (800,000,000) shares of Common Stock upon the terms and conditions set forth in the Agreement, and to enter into all such necessary accompanying documentation in order to consummate the transaction; and be it further

RESOLVED, that such shares, when so issued, will be duly authorized and validly issued, fully paid and nonassessable, and that part of the consideration received by the Company for such shares determined to be capital shall be equal to the aggregate par value of such shares; and be it further

Miscellaneous

RESOLVED, that the officers of the Company be, and each of them hereby is, authorized, on behalf of the Company, to make all payments and incur all expenses in connection with any transactions contemplated by the forgoing resolutions as they deem, or any of them deems, necessary or appropriate, such payment conclusively to evidence the necessity or appropriateness thereof; and be it further

RESOLVED, that all action heretofore taken on behalf of the Company by any of the officers of the Company in connection with any of the foregoing matters be, and each of them hereby is, in all respects, ratified, confirmed, authorized and approved as action of the Company; and be it further

RESOLVED, that the officers of the Company be, and each of them hereby is, authorized, empowered and directed, on behalf of the Company, to execute and deliver such documents and take all such further actions as they deem, or any of them deems, necessary or appropriate to effect the intent and accomplish the purposes of the foregoing resolutions

CERTIFICATE

I, the undersigned President of Optigenex, Inc., do certify that the above subscribing directors constitute all of the directors of Optigenex, Inc., and that their signatures are genuine.

Dan Zwiren, President

SECURITIES PURCHASE AND SUBSCRIPTION AGREEMENT
OPTIGENEX, INC.

THE SECURITIES WHICH ARE THE SUBJECT OF THIS SECURITIES PURCHASE AGREEMENT (AS IT MAY BE AMENDED FROM TIME TO TIME, THE "AGREEMENT") HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR UNDER THE APPLICABLE SECURITIES LAWS OF ANY STATE AND WILL BE OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THESE LAWS BY VIRTUE OF THE INTENDED COMPLIANCE BY THE ISSUER WITH SECTION 3(b) OF THE SECURITIES ACT, THE PROVISIONS OF RULE 504 REGULATION D UNDER SUCH ACT AND SIMILAR EXEMPTIONS UNDER TEXASOR OTHER STATE LAW. THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE U.S. SECURITIES AND EXCHANGE COMMISSION ("SEC"), ANY STATE SECURITIES COMMISSION OR ANY OTHER REGULATORY AUTHORITY. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THIS DOCUMENTATION IS DISTRIBUTED PURSUANT TO AN EXEMPTION FOR SMALL OFFERINGS UNDER THE RULES AND REGULATION OF THE TEXA$SECURITIES ACT AND IN PARTICULAR TEXAS STATUTES 80A.46(13)(B). THE SECURITIES DIVISION HAS NEITHER REVIEWED OR APPROVED ITS FORM OR CONTENT. THE SECURITIES DESCRIBED HEREIN MAY ONLY BE PURCHASED BY "ACCREDITED INVESTORS" AS DEFINED BY RULE 501 OF REGULATION D AND "INSTITUTIONAL INVESTORS" AS DEFINED BY THE RULES OF THE TEXAS SECURITIES LAWS.

This Agreement has been executed by the undersigned purchaser, **Gendarme Capital Co., LLC**, a Texas company, (hereafter, the "Purchaser") in connection with the private placement of ~~one hundred million (100,000,000)~~ eight hundred million (800,000,000) shares (the "Shares" or the "Securities") of common stock, ~~$0.001~~ .00001 par value per share (the "Common Stock"), of **OPTIGENEX, INC.**, a Texas corporation (hereafter "Company"), a publicly-held and traded corporation formed under the laws of the State of Texas. The Shares are being offered and sold in reliance upon the exemption from securities registration afforded by the provisions of Rule 504 of Regulation D ("Regulation D") as promulgated by the United States Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended (the "1933 Act" or the "Securities Act"), and the Texas Securities Act, Section 5(T) with Rules 109.4(b)(1) and 139.16 of the Texas Administrative Code promulgated there under. This Securities Purchase and Subscription Agreement (this "Agreement") is made as of the 8th day of February, 2010.

Section 1.1 **Purchase and Sale of Shares.** Upon the following terms and conditions, the Company shall issue and sell to the Purchaser, and the Purchaser shall purchase from the Company, eight hundred million (800,000,000) Shares of Common Stock.

Section 1.2 **Purchase Price.** The purchase price shall be $0.00005 per share, for a total purchase price of forty thousand dollars ($40,000.00).

Section 1.3 **Reporting Status; Compliance with Rule 504.** The Company represents and warrants that, as of the date of this Agreement, the Company is not subject to the reporting requirements of Section 13 or 15(d) of the Securities Act of 1934, as amended (the "1934 Act"), the Company is not an investment company or a developmental stage company that has no specific business plan or purpose, and the Company is otherwise in compliance with the requirements of Rule 504 of Regulation D with respect to the offerings contemplated hereby, and is able to and does hereby offer and sell the Shares in accordance with the provisions of Rule 504 and applicable state law.

Section 2.1 **Representations and Warranties of the Purchaser.** The Purchaser makes the following representations and warranties to the Company.

(a) **Accredited and Institutional Investor.** The Purchaser is an "accredited investor" under the definition set forth in Rule 501(a) of Regulation D, promulgated under the Securities Act. As required by

applicable law, prior to the Closing Date, the Purchaser has provided or can provide to the Company reasonable documentation of its status as an "accredited investor."

(b) **Speculative Investment**. The Purchaser is aware that an investment in the Securities is highly speculative and subject to substantial risks. The Purchaser is capable of bearing the high degree of economic risk and the burden of this venture, including, but not limited to, the possibility of complete loss of the Purchaser's investment in the Securities which make liquidation of this investment impossible for the indefinite future.

(c) **Privately Offered**. The offer to acquire the Securities was directly communicated to the Purchaser in such manner that the Purchaser was able to ask questions of and receive answers concerning the terms and conditions of this transaction. At no time was the Purchaser presented with or solicited by or through any leaflet, public promotional meeting, television advertisement, or any other form of general advertising.

(d) **Purchase for Investment**. The Securities are being acquired solely for the Purchaser's own account, for investment purposes, and are not being purchased with view to resale, distribution, subdivision or fractionalization thereof without proper registration with applicable securities administrators or an applicable exemption from such registration. The Purchaser will comply with all applicable laws with respect to any resale of the Securities.

(e) **Access to Information**. Purchaser or Purchaser's professional advisor has been granted the opportunity to ask questions and receive answers from representatives of the Company, its officers, directors, employees and agents concerning the terms and conditions of the offering of Securities, the Company, its business and prospects, and to obtain any additional information which Purchaser or Purchaser's professional advisor deems necessary to verify the accuracy and completeness of the information received.

(f) **Reliance on Own Advisors**. Purchaser has relied on the advice of, or has consulted with, Purchaser's own tax, investment, legal or other advisors and has not relied on the Company or any of its affiliates, officers, directors, attorneys, accountants or any affiliates of any thereof and each other person, if any, who controls any thereof, within the meaning of Section 15 of the Securities Act for any tax or legal advice. The foregoing, however, does not limit or modify Purchaser's right to rely upon representations and warranties of the Company in Section 2.2 of this Agreement and any representations of any third parties acting as agents for or on the Company's behalf.

(g) **Capability to Evaluate**. Purchaser has such knowledge and experience in financial and business matters so as to enable such Purchaser to utilize the information made available to it in connection with the offer of the Securities in order to evaluate the merits and risks of the prospective investment.

(h) **Authority**. The Purchaser (and each of its subsidiaries, if applicable) is a company duly formed and existing in good standing under the laws of the State of Texas and has the requisite corporate power to own its properties and to carry on its business as now being conducted. Purchaser has full power and authority to execute and deliver this Agreement and each other document included herein (if any) for which a signature is required in such capacity and on behalf of the subscribing individual, partnership, trust, estate, corporation or other entity for whom or which Purchaser is executing this Agreement; and to act in accordance with the terms of this Agreement and such other documents (if any).

Section 2.2 **Representations and Warranties of the Company**. The Company hereby makes the following representations and warranties to the Purchaser.

(a) **Organization and Qualification**. The Company's name is Optigenex, Inc. The Company (and each of its subsidiaries, if applicable) is a corporation duly incorporated and existing in good standing under the laws of the state of Texas and has the requisite corporate power to own its properties and to carry on its business as now being conducted. The Company and each subsidiary, if any, is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which the nature of the

business conducted or property owned by it makes such qualification necessary other than those in which the failure so to qualify would not have a Material Adverse Effect. "Material Adverse Effect", for purposes of this Agreement, means any adverse effect on the business, operations, properties, prospects, or financial condition of the entity with respect to which such term is used and which is material to such entity and other entities controlled by such entity taken as a whole.

(b) Authorization; Enforcement. (i) The Company has the requisite corporate power and authority to enter into and perform this Agreement and to issue Securities in accordance with the terms hereof, (ii) the execution and delivery of this Agreement by the Company and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary corporate action, and no further consent or authorization of the Company or its Board of Directors or stockholders is required, (iii) this Agreement has been duly executed and delivered by the Company, (iv) this Agreement constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application) and (v) within thirty (22) days of the Closing Date, any necessary amendment to the Company's Articles of Incorporation authorizing the Company to issue all of the Securities will have been filed with the Secretary of State of the state in which the Company is incorporated and will be in full force and effect, enforceable against the Company in accordance with the terms of such amended Articles of Incorporation.

(c) Authorized Capital; Rights or Commitments to Stock. As of February 8th, 2010 the authorized capital stock of the Company consists of twenty billion shares of Common Stock, of which approximately eight billion shares are issued and outstanding.

All of the outstanding shares of the Company's Common Stock have been validly issued and are fully paid and non-assessable. No shares of Common Stock are entitled to registration rights or preemptive rights, and there are no (I) outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, any shares of capital stock of the Company, (II) contracts, commitments, understandings, or arrangements by which the Company is or may become bound to issue additional shares of capital stock of the Company or (III) options, warrants, scrip, rights to subscribe to, or commitments to purchase or acquire, any shares, or securities (whether notes, debentures, or otherwise, excluding preferred stock) or rights convertible into shares of capital stock of the Company.

(d) Issuance of Securities. The issuance of the Securities has been duly authorized and, when paid for and issued in accordance with the terms hereof, the Shares shall be validly issued, fully paid and non-assessable and entitled to the rights inherent in the Common Stock and as specified herein.

(e) No Conflicts. The Company has furnished or made available to the Purchaser true and correct copies of the Company's Articles of Incorporation as in effect on the date hereof (the "Articles"), and the Company's By Laws, as in effect on the date hereof (the "By-Laws"). The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby do not and will not (i) result in a violation of the Company's Articles or By-Laws or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its subsidiaries is a party, or result in a violation of any federal, state, local or foreign law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations) applicable to the Company or any of its subsidiaries or by which any property or assets of the Company or any of its subsidiaries is bound or affected (except for such conflicts, defaults, terminations, amendments, accelerations, cancellations and violations as would not, individually or in the aggregate, have a Material Adverse Effect); provided that, for purposes of such representation as to federal, state, local or foreign law, rule or regulation, no representation is made herein with respect to any of the same applicable solely to the Purchaser and not to the Company. The business of the Company is not being conducted in violation of any law, ordinance or regulation of any governmental entity, except for violations that either singly or in the aggregate do not and

will not have a Material Adverse Effect. The Company is not required under federal, state or local law, rule or regulation in the United States to obtain any consent, authorization or order of, or make any filing (other than any filing of a vote establishing a class or series of stock with the Secretary of State or similar authority of the state in which the Company is incorporated) or registration with, any court or governmental agency in order for it to execute, deliver or perform any of its obligations under this Agreement or issue and sell the Securities in accordance with the terms hereof, except the filing of Form D with the SEC and the TexasSecurities Commission (if applicable), and the payment of any filing or other fees required by such governing authority(ies); provided that, for purposes of the representation made in this sentence, the Company is assuming and relying upon the accuracy of the relevant representations and agreements of the Purchaser herein. The Company will send a copy of the Form D to the Purchaser once filed with the SEC.

(f) Reporting Status; Financial Statements. The Company is not as of the date hereof subject to the reporting requirements of Sections 13 or 15(d) of the 1934 Act. The Company is not an investment company or a developmental stage company that has no specific business plan or purpose.

(g) No Material Adverse Change. Since at least the date which is twelve (12) months prior to the date of this Agreement, no Material Adverse Effect has occurred or exists with respect to the Company or any of its subsidiaries.

(h) No Undisclosed Liabilities. The Company and its subsidiaries have no material liabilities or obligations not disclosed to the Purchaser other than those incurred in the ordinary course of the Company's or any of its subsidiaries' respective businesses since the date which is forty-five days prior to the date of this Agreement, which, individually or in the aggregate, do not or would not have a Material Adverse Effect on the Company or any of its subsidiaries.

(i) No Undisclosed Events or Circumstances. No event or circumstance has occurred or exists with respect to the Company or any of its subsidiaries or their respective businesses, properties, prospects, operations or financial condition which, under applicable law, rule or regulation, requires public disclosure or announcement by the Company but which has not been so publicly announced or disclosed.

(j) Solicitation. Any solicitation, if any, used in connection with this Offering has been made in accordance with Section 139.16(e) of the Texas Administrative Code.

(k) No Integrated Offering. Neither the Company, nor any of its affiliates, nor any person acting on its or their behalf has, directly or indirectly, made any offers or sales of any of the Company's securities or solicited any offers to buy any of such securities, under circumstances that would prevent the Company from offering the Securities pursuant to Rule 504.

Section 3.1 Securities Compliance. The Company shall to the extent required notify the SEC, the TexasSecurities Commission, the NASD and OTC Pink Sheet Market, in accordance with their requirements, of the transactions contemplated by this Agreement, and shall take all other necessary action and proceedings as may be required by applicable law, rule and regulation, for the legal and valid issuance of the Shares to the Purchaser.

Section 3.2 Registration and Listing. Until at least one (1) year after the Closing Date, the Company will take all action within its power to continue the listing or trading of its Common Stock on the NASDAQ OTC Pinksheet Market (or other principal market) and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the NASD, NASDAQ and Pinksheets.

The covenants set forth in this Section 3.2 shall not be deemed to prohibit a merger, sale of all assets or other corporate reorganization if the entity surviving or succeeding to the Company is bound by this Agreement with respect to its securities issued in exchange for or in replacement of the Shares or the consideration received for or in replacement of the Shares is cash.

Section 3.3 Transfer Agent Instructions.

(a.) Common Stock to be Issued Without Restrictive Legend. Upon the Closing, the Company shall instruct its transfer agent to issue certificates equivalent to the number of Shares to be received by the Purchaser pursuant to this Agreement, without restrictive legend in the name of the Purchaser and in such denominations to be specified by the Purchaser. So long as the Purchaser's representations herein are true and correct at all relevant times, and so long as Purchaser complies with applicable law, the Common Stock shall be freely transferable on the books and records of the Company.

Section 3.4 Use of Proceeds. The Company shall use the proceeds from the sale of the Securities in accordance with the disclosure made on the Form D to be filed with the Securities and Exchange Commission. At the Purchaser's request, the Company will provide the Purchaser a schedule of the exact use of proceeds prior to Closing.

Section 4.1 General Conditions Precedent to the Obligation of the Company to Sell the Shares. The obligation hereunder of the Company to issue and/or sell the Securities to the Purchaser is subject to the satisfaction, at the Closing, of each of the conditions set forth below. These conditions may be waived by the Company in its sole discretion, at any time.

(a) Accuracy of the Purchaser's Representations and Warranties. The representations and warranties of the Purchaser shall be true and correct in all material respects as of the date when made and as of the Closing Date as though made at that time (except for any representations and warranties that are effective as of a particular, specified date).

(b) Performance by the Purchaser. The Purchaser shall have performed all agreements and satisfied all conditions required to be performed or satisfied by the Purchaser at or prior to the Closing.

(c) No Injunction, No Legal Action. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction which prohibits the consummation of any of the transactions contemplated by this Agreement. No legal action, suit or proceeding shall be pending or threatened which seeks to restrain or prohibit the transactions contemplated by this Agreement.

(d) Execution. The Purchaser shall have executed two (2) originals of this Agreement and delivered the same to the Company.

(e) Purchase Price. The Purchaser shall have delivered the applicable Purchase Price for the Shares to be purchased, in accordance with Section 1.2 above.

Section 4.2 General Conditions Precedent to the Obligation of the Purchaser to Purchase the Shares. The obligation hereunder of the Purchaser to acquire and pay for the Securities is subject to the satisfaction, at the Closing, of each of the conditions set forth below. These conditions may be waived by the Purchaser at any time in its sole discretion.

(a) Accuracy of the Company's Representations and Warranties. The representations and warranties of the Company shall be true and correct in all material respects as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that are effective as of a particular, specified date).

(b) Performance by the Company. The Company shall have performed all agreements and satisfied all conditions required to be performed or satisfied by the Company pursuant to this Agreement at or prior to the Closing, unless any such agreement or condition is waived by the Purchaser in writing at or prior to Closing.

(c) Trading and Listing. The Company shall not have received notice of, and trading in the Company's Common Stock shall not have been, suspended by the SEC or a national securities exchange (currently the NASDAQ OTC Pinksheet Market) (except for any suspension of trading of limited duration

agreed to between the Company and the principal exchange on which the Common Stock is traded solely to permit dissemination of material information regarding the Company) or delisted by such exchange, and trading in securities generally as reported by such exchange shall not have at any prior time been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such exchange.

(d) **No Injunction**. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction which prohibits the consummation of any of the transactions contemplated by this Agreement.

(e) **Execution**. The Company shall have executed two (2) originals of this Agreement and delivered the same to the Purchaser.

Section 5.1 **No Legend on Stock**. No certificate representing Shares issued to the Purchaser in connection to this Agreement and the associated Common Stock Warrant shall contain any restrictive legend of any kind.

Section 6.1 **Termination**. This Agreement may be terminated at any time prior to the Closing by the mutual written consent of the Company and the Purchaser. This Agreement may be terminated by action of the respective Board of Directors or other governing body of the Purchaser or the Company at any time if the Closing shall not have been consummated by the fifth (5th) business day following the date of this Agreement, provided that the party seeking to terminate the Agreement is not in breach of the Agreement. This Agreement shall automatically terminate without any further action of either party hereto if the Closing shall not have occurred by the seventh (7th) business day following the date of this Agreement, provided, however, that any such termination shall not terminate the liability of any party which is then in breach of the Agreement.

Section 7.1 **Fees and Expenses**. The Company shall pay the fees, commissions and expenses of its advisers, brokers, finders, counsel, accountants and other experts, if any, and all other expenses associated therewith, in accordance with their respective agreements. The Company shall pay all stamp and other taxes and duties levied in connection with the issuance of the Shares.

Section 7.2 **Specific Enforcement**, Consent to Jurisdiction.

(a) The Company and the Purchaser acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which either of them may be entitled by law or equity.

(b) The Company and the Purchaser each (i) hereby irrevocably submits to the jurisdiction of the United States District Court and other courts of the United States sitting in the State of Texas for the purposes of any suit, action or proceeding arising out of or relating to this Agreement and (ii) hereby waives, and agrees not to assert in any such suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such court, that the suit, action or proceeding is brought in an inconvenient forum or that the venue of the suit, action or proceeding is improper. The Company and the Purchaser each consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing in this paragraph shall affect or limit any right to serve process in any other manner permitted by law.

Section 7.3 **Entire Agreements Amendment**. This Agreement contains the entire understanding of the parties with respect to the matters covered hereby and, except as specifically set forth herein, neither the Company nor the Purchaser makes any representation, warranty, covenant or undertaking with respect

as such matters. No provision of this Agreement may be waived or amended other than by a written instrument signed by the party against whom enforcement of any such amendment or waiver is sought

Section 7.4 **Notices**. Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be effective (a) upon hand delivery or delivery by telex (with correct answer back received), telecopy or facsimile at the address or number designated below (if delivered on a business day during normal business hours where such notice is to be received), or the first business day following such delivery (if delivered other than on a business day during normal business hours where such notice is to be received) or (b) on the second (2nd) business day following the date of mailing by express courier service, fully prepaid, addressed to such address, or upon actual receipt of such mailing, whichever shall first occur.

The addresses for such communications shall be:

to the Company:

Optigenex, Inc.
51 Newark Street, Suite 501
Hoboken, NJ 07030
Attn: Daniel Zwiren

to the Purchaser: At the address set forth at the foot of this Agreement or as specified hereafter in writing by Purchaser.

Gendarme Capital Co., LLC
9442 Capital of Texas Hwy. No.
Arboretum Plaza One, Suite 500
Austin, Texas 78759

Any party hereto may from time to time change its address for notices by giving at least ten (10) days written notice of such changed address to the other party hereto

Section 7.5 **Waivers**. No waiver by either party of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right accruing to it thereafter.

Section 7.6 **Headings**. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

Section 7.7 **Governing Law**. This Agreement is deemed made, and the transactions contemplated herein are deemed to have taken place in, the State of Texas. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Texas without regard to such state's principles of conflict of laws.

Section 7.8 **Survival**. The representations and warranties of the Company and the Purchaser contained in herein and the agreements and covenants set forth in Sections 1.1 through 1.4, 3.1 through 3.5 and 7.1 through 7.16 shall survive for a period of three (3) years after the Closing Date.

Section 7.9 **Publicity**. The Company agrees that it will not disclose, and will not include in any public announcement, the name of the Purchaser without its consent, unless and until such disclosure is required by law or applicable regulation, and then only to the extent of such requirement.

Section 7.10 **NASDAQ**. The term "NASDAQ" or "NASDAQ OTC Pinksheet Market" herein refers to the principal market on which the Common Stock of the Company is traded. If the Common Stock is listed on a securities exchange, or if another market becomes the principal market on which the Common

Stock is traded or through which price quotations for the Common Stock are reported, the term "NASDAQ" or "NASDAQ OTC Pinksheet Market" shall be deemed to refer to such exchange or other principal market.

Section 7.11 **Acceptance**. Execution and delivery of this Agreement by the Purchaser shall constitute an offer to purchase the Shares, which offer, unless previously revoked by the Purchaser, may be accepted or rejected by the Company, in its sole discretion for any cause or for no cause and without liability to the Purchaser. The Company shall indicate acceptance of this Agreement by signing as indicated on the signature page hereof.

Section 7.12 **Binding Agreement**. Upon acceptance of this Agreement by the Company, the Purchaser agrees that it may not cancel, terminate or revoke any agreement of the Purchaser made hereunder, and that this Agreement shall survive the death or disability of the Purchaser and shall be binding upon heirs, successors, assigns, executors, administrators, guardians, conservators or personal representatives of the Purchaser.

Section 7.13 **Incorporation by Reference**. All information set forth on the signature page is incorporated as integral terms of this Agreement.

Section 7.14 **Counterparts**. This Agreement may be signed in multiple counterparts, which counterparts shall constitute one and the same original instrument.

Section 7.15 **Severability**. If any portion of this Agreement shall be held illegal, unenforceable void or voidable by any court, each of the remaining terms hereof shall nevertheless remain in full force and effect as a separate contract.

Section 7.16 **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the Purchaser has executed this Agreement on the date set forth below.

[SIGNATURE PAGE FOLLOWS]

DATED:

February 8, 2010

COMPANY: OPTIGENEX, INC.

By: _____
Dan Zwiren, President

PURCHASER: GENDARME CAPITAL CO., LLC

By: _____
Ian Lamphere, Vice President

Law Offices of Cassandra Armento, Esq.

112 South Main Street, Box# 219
Stowe, Vermont 05672
561.308.2702 phone
561.282.6685 fax
CASELAW1@aol.com

February 11, 2010

VIA FAX (#) (801) 277-3147
AND REGULAR U.S. MAIL
Interwest Transfer Co., Inc.
1981 East Murray Holladay Road
Suite 100
Salt Lake City, UT 84117

Attn: Julie Felix

Re: **Issuance of eight hundred million (800,000,000) shares of common stock of Optigenex, Inc.., a Delaware Corporation, (the "Shares") to Gendarme Capital Co., LLC, which is a company residing in the state of Texas.**

To Whom It May Concern:

We have acted as special counsel to Gendarme Capital Co., LLC, a Texas company (the "Purchaser") in connection with a subscription agreement and the purchase of eight hundred million shares of common stock of Optigenex, Inc., a Delaware corporation (the "Company"). We have been requested to prepare this opinion letter regarding the issuance of the common stock in the Company. The Company is issuing the shares to Gendarme Capital Co., LLC (*the "Purchaser" and an "accredited investor" as defined in Rule 501(a)(1)-(4), (7), and (8) promulgated by the Securities and Exchange Commission under the Securities Act of 1933, and Securities Act of 1934 (together the "Securities Act" or the "Act") and as amended and made effective in subsequent Release Numbers 33-6389, 33-6437, 33-6663, 33-6758, and 33-6825)* in an offering exempt from registration pursuant to Rule 504 promulgated under Regulation D of the Securities Act of 1933, as amended, and the Texas Securities Act, Section 5(T) with Rules 109.4(b)(1) and 139.16 of the Texas Administrative Code promulgated there under (the "Offering").

In rendering this opinion we reviewed such documents as we deemed necessary regarding the offering including the Subscription Agreement, Articles and By-Laws of the Company and amendments thereto, corporate books and records, including but not limited to, minutes of directors meetings and resolutions of the Company's Board of Directors related to the authorization and issuances of the Shares in connection with the Offering. We have viewed a certificate of the Company's President verifying that the Company is (i) not a reporting company under the 1934 Securities and Exchange Act; (ii) an operating company with a specific business plan; and (iii) has not sold securities pursuant to exemption under Rule 504 within the past twelve calendar months in an aggregate dollar amount that would preclude the contemplated sales of Shares under that rule. In

addition we have made such investigations, and have considered such questions of law, as we considered necessary and appropriate for the purposes of rendering this opinion. In all such examinations, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as copies and the authenticity of all originals of such documents submitted as copies. As to all questions of fact relevant to this opinion, we have relied upon representations made by the Company, Gendarme Capital Co., LLC and their respective agents and have assumed that the answers, representations and warranties made are true and correct. Furthermore, we have reviewed all applicable federal and state laws and rules and regulations as necessary and appropriate, including, but not limited to Securities and Exchange Commission Regulation D (especially Rules 501, 502, 503, 504 thereunder), and the Texas Securities Act, Section 5(T) with Rules 109.4(b)(1) and 139.16 of the Texas Administrative Code promulgated there under.

A. **Basis of Our Legal Opinion.** The following is the basis for our supporting legal opinion for the requested issuance and delivery of the Shares free of any restrictive legend.

The opinions expressed below are subject to the factual qualifications set forth below:

1. ***New Rule 504***

Section 5 of the Securities Act requires (with certain defined exceptions), that all securities involved in original distribution by the issuer must be registered. Regulation D promulgated under Section 3(b) of the Act provides various means under which an issuer not subject to the reporting requirements of Sections 13 and 15(d) of the Act, and which is neither and investment company nor a blank check company may make an offer and sale of securities without registration upon satisfaction of certain requirements. Rule 504 is available to any company that, at the time of offering:

a. is not a "reporting company" under the Securities and Exchange Act, and is not subject to reporting requirements under Sections 13 and 15(d) of the Act.
b. is not a development stage company that either had no specific business plan or purpose or had indicated that its business plan was to engage in a merger or acquisition with an unidentified company or entity;
c. within the last twelve calendar months, the dollar amount of any offering exempt from registration, as under Rule 504 of Regulation D, may not have exceeded one million dollars;
d. each investor is a bona fide resident of the state(s) where the offering is made; and
e. the investor was not, prior to, nor would be subsequent to, the offering an "affiliate" of the issuer within the meaning of Rule 144(a)(1) under the Securities Act.
f. Revisions to Rule 504 were effected on April 7, 1999 prohibiting general solicitation and general advertising of the offering by the issuer. Furthermore, the revisions provided that securities issued under the Rule be restricted, unless one of the following conditions

specific to state laws relevant to the offering are met:

i. the offer is made exclusively in one or more states that provide for the registration of the securities, and require the public filing and delivery to investors of a substantive disclosure document before sale, and are made in accordance with those state provisions;

ii. the offer is made in one or more states that have no provision for the registration of the securities or the public filing or delivery of a disclosure document before sale, if the securities have been registered in at least one state that provides for such registration, public filing and delivery before sale, offers and sales are made in that state in accordance with such provisions, and the disclosure document is delivered before sale to all purchasers (including those in the states that have no such procedure); or

iii. the offer is made exclusively according to state law exemptions from registration that permit general solicitation and general advertising so long as sales are made only to "accredited investors" as defined in Rule 501(a).

If any of these state standards are met, consistent with Rule 504, the shares issued pursuant to the offering need not be restricted and may be traded in secondary transactions if either registered or exempt from the registration requirements of the Act. Accordingly, the shares issued pursuant to such an offering may be issued by the Company without restrictive legend as to resale and may be delivered to the Purchaser upon full payment of the associated purchase price, unless the Purchaser were to become an affiliate of the Company as defined in the Securities Exchange Act of 1933.

Finally, Rule 504 of Regulation D requires that Form D be filed by the Company within 15 days from the date of the first sale of securities under the Offering, though there is no penalty for late filing.

2. ***Texas State Statutes.***

The Texas State Securities Board, pursuant to Section 5(T) of the Texas Securities Act, promulgated Rules 109.4(b)(1) and 139.16 exempting offers and sales to "accredited investors" from the state securities registration requirements of Section 7 of the Texas Securities Act. Known as the "Individual Accredited Investor Exemption," Texas Rule 139.16(1) exempts from state registration requirements the offer and sale of securities by an issuer to an "accredited investor" as defined in Rule 501(a) of the U.S. Securities Act of 1933. Furthermore, Rule 139.16(e) provides for general "Limited Use Advertisements" to be used "in connection with an offering under this section [139.16(1)]" that can "be disseminated by any means, direct or indirect."

By virtue of the aforementioned, and the provisions of Rule 504 of Regulation D,

the offering and sale of the Shares will be exempt from registration and the certificates representing the Shares are not required to bear a restrictive legend, since the Shares issuable upon the exemption provided by Rule 504 of the Securities Act will be sold to an accredited investor pursuant to Rule 504 and issued "[e]xclusively according to [a] state law exemption from registration that permit[s] general solicitation and general advertising so long as sales are made only to 'accredited investors'". Therefore, the Shares may be issued as "free trading" shares, i.e. free of any restrictive legend pursuant to this Rule 504 and Texas Securities Statutes.

B. **Legal Opinion.** Accordingly, based upon the above we are of the opinion as follows with respect to the issuance of the Shares:

1. The Company is incorporated in the State of Delaware and is not a reporting company subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended.

2. The prescribed number of originals and copies of Form D, together with applicable filing fees, were, timely filed with the Securities and Exchange Commission.

3. Within the twelve month period prior to the date of this opinion, the Company has not made any offers or sales of securities in the United States unless such offers and sales have been registered under the Securities Act of 1933, as amended (the "Act"), or such that the aggregate value of any shares sold in the prior twelve month period under an exemption from registration, together with the value of the Shares shall not exceed an aggregate of $1,000,000.

3. General solicitation or advertising, if any, will be conducted by the Company in accordance with Texas Statutes and Rule 139.16(e) promulgated there under.

4. The Company relied upon Regulation D in connection with the offering and sale of the Shares. The Company's reliance on Regulation D in connection with such offerings and sales was for purposes only of such offerings and sales. The Company has represented and required the Purchaser to represent that such offerings and sales were not a part of any plan to evade any otherwise applicable registration provisions of the Act.

5. The Company is and at all times has been aware that reliance upon Regulation D does not obviate the need to comply with any applicable state law relating to the offer and sale of securities.

6. At no time has the Company been an "investment company" with the meaning of the federal securities laws, and was not a development stage company that either had no specific business plan or purpose or had indicated that its business plan was to engage in a merger or acquisition with an unidentified company or entity.

7. The Shares, when issued will be validly issued, are fully paid and are non-assessable.

8. The sale of the Shares will not exceed the aggregate amount of $1,000,000 (which the Company has represented to be true) and other facts given to us by management are true and correct.

9. All conditions of Rule 504 and the applicable Texas Statutes are met (as they relate to the facts given to us and based on our review of the Subscription Documents). Consequently, the issuance of the Shares will be exempt from registration pursuant to Rule 504 of Regulation D and the applicable Texas Statutes.

10. The Company, through the Board of Directors, have taken all necessary and required corporate action to cause the issuance and delivery of the Shares in accordance with the Subscription Agreement and Offering documents. Further, that the Shares when issued in accordance with the Subscription Agreements and this opinion, will be duly authorized, validly issued and non-assessable.

11. The Purchaser is not (a) the issuer, (b) an underwriter of the issuer with respect to the shares and as defined in Section 2(11) of the Securities Act or (c) an affiliate of the issuer with the meaning of Rule 144(a)(1) under the Securities Act.

12. The Purchaser is an "accredited investor" as defined by Rule 501(a) of Regulation D.

13. Upon issuance of the Shares, the Purchaser shall own less than 9.99% of the total issued and outstanding shares of the Company's common stock.

14. Consequently, with respect to the foregoing opinions, when issued, the Shares may be issued without a restrictive legend, may be delivered to the Investor in accordance with the Subscription Agreements, and may be freely traded in accordance with all applicable federal and state securities laws, except by affiliates of either company.

Our above opinions are subject to the following qualifications:

1. Members of our firm are qualified to practice law in the States of Vermont and Massachusetts and we express no opinion as to the laws of any jurisdictions except for those Vermont and Massachusetts, the securities laws of Texas referred to herein and the United States of America referred to herein. For the purposes of rendering this opinion, we have assumed that if a court applies the laws of a jurisdiction (other than the Texas securities laws referred to herein) other than the laws of Vermont and Massachusetts, the laws of such other jurisdiction are identical in all material respects to the comparable laws of the States of Vermont and Massachusetts.

2. The opinions set forth herein are expressed as of the date hereof and remains valid so long as the documents, instruments, records and certificates we have examined and relied upon as noted above, are unchanged and the assumptions we have made, as noted above, are valid.

In accordance with this opinion, upon receipt of any issuance resolution of the Company in

the name of Gendarme Capital Co., LLC please issue the Shares without restrictive legend in the name of:

Gendarme Capital Co., LLC
9442 Capital of Texas Hwy No.
Arboretum Plaza One, Suite 500
Austin, TX 78759

And DWAC to:

Pension Financial Clearing: 0234 / Gendarme Capital Co., LLC: 49140627

OC Securities, Inc.
22672 Lambert Street, Suite 602
Lake Forest, CA 92630
FBO: Gendarme Capital Co., LLC/Acct. No. 49140627

This opinion is being furnished by us as outside counsel to the Company and to the transfer agent and registrar of the Company's common stock and is solely for your use and benefit, and may not be disclosed to or relied upon by anyone else without our written consent in each instance.

Very truly yours,

Cassandra Armento

Cassandra Armento, Esq
112 South Main Street, Box# 219
Stowe, Vermont 05672
561.308.2702 phone
561.790.0906 fax
CASELAW1@aol.com

INTERWEST TRANSFER CO., INC.

1981 MURRAY HOLLADAY RD, STE 100
SALT LAKE CITY, UT 84117
Phone: (801) 272-9294 • Fax: (801) 277-3147

Broker:	*For:*
OPTIGENEX INC/DWAC FAST AGENT P O BOX 3521 HOBOKEN, NJ 07030	OPTIGENEX INC - COMMON

Certificates Surrendered	Certificates Issued
FB63 X 333,544,153 FAST BALANCE - CEDE & CO	FB64 X 346,600,509 FAST BALANCE - CEDE & CO

Extra Information: DWAC DEP 504-D FREE 13,056,356 SHARES FBO TRENRASP
Reference Note: NOTE CONVERSION

Total Shares Surrendered: *333,544,153* *Total Shares Issued:* *346,600,509*

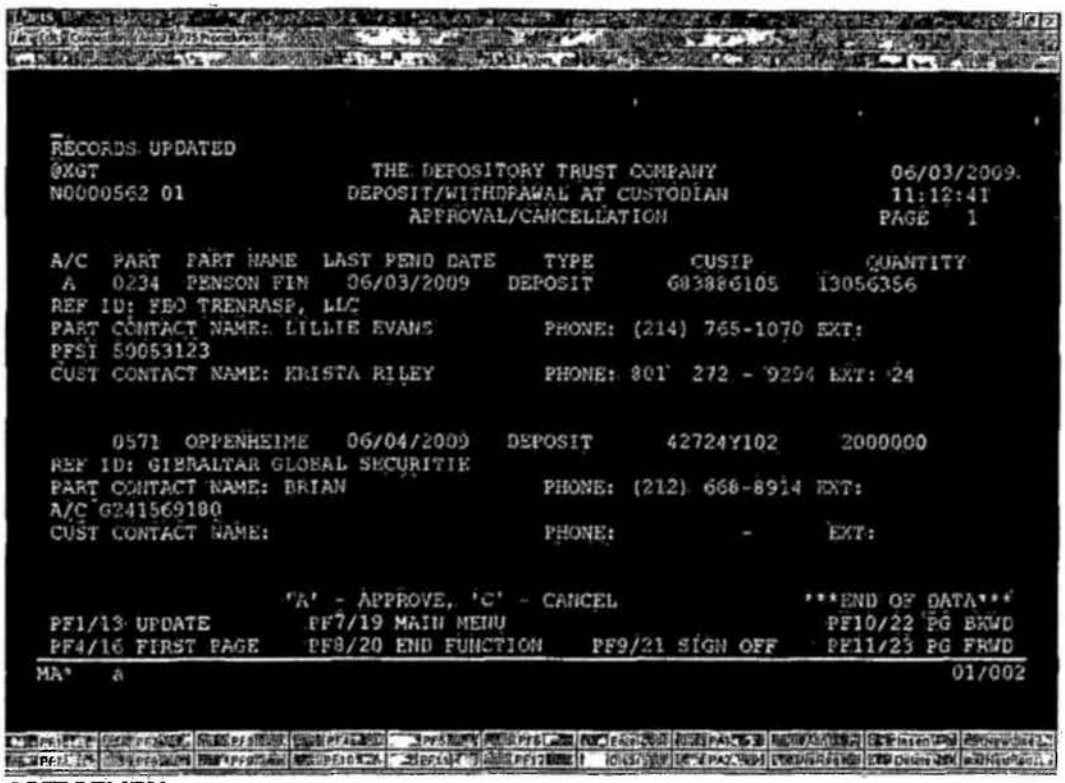
Issue/Cancel Date: 6/4/2009 *Transaction ID:* 62009KR0033
New Certificates Issued: *1*
Certificates Surrendered: *1*

Control Log Entry

Transfer ID: 62009KR0033

Company Name: OPTIGENEX INC - COMMON *Company ID:* 10547

		Control	*Investment*	*Free Trade*	*Total*	*Reference*
	Beginning Balance	0	9,397,052	333,801,874	343,198,926	DWAC DEP-504-D FREE; 13,056,356 SHARES FBO TRENRASP NOTE CONVERSION See File FB64
06/04/2009	Change	0	0	13,056,356	13,056,356	
KR	New Balance	0	9,397,052	346,858,230	356,255,282	



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RECORDS UPDATED
@XGT                          THE DEPOSITORY TRUST COMPANY                  06/03/2009
N0000562 01                 DEPOSIT/WITHDRAWAL AT CUSTODIAN                 11:12:41
                                APPROVAL/CANCELLATION                       PAGE   1

A/C  PART  PART NAME  LAST PEND DATE    TYPE        CUSIP         QUANTITY
 A   0234  PENSON FIN   06/03/2009    DEPOSIT      683886105    13056356
REF ID: FBO TRENRASP, LLC
PART CONTACT NAME: LILLIE EVANS          PHONE: (214) 765-1070 EXT:
PFSI 59053123
CUST CONTACT NAME: KRISTA RILEY          PHONE: 801  272 - 9294 EXT: 24

     0571  OPPENHEIME   06/04/2009    DEPOSIT      42724Y102     2000000
REF ID: GIBRALTAR GLOBAL SECURITIE
PART CONTACT NAME: BRIAN                 PHONE: (212) 668-8914 EXT:
A/C G241569180
CUST CONTACT NAME:                       PHONE:          -     EXT:

                  'A' - APPROVE, 'C' - CANCEL                  ***END OF DATA***
PF1/13 UPDATE       PF7/19 MAIN MENU                            PF10/22 PG BKWD
PF4/16 FIRST PAGE   PF8/20 END FUNCTION    PF9/21 SIGN OFF      PF11/23 PG FRWD
MA*   a                                                                 01/002
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OPTIGENEX

NOTE CONVERSION
504-D FREE

13,056,356 SHARES CONFIRMED FBO TRENRASP

105-47/33 KR

ISSUANCE RESOLUTION

CORPORATE RESOLUTION AUTHORIZING THE ISSUANCE OF NEW SHARES FROM NEW STOCK

OPTIGENEX INC.

COMMON STOCK
CLASS OF STOCK

RESOLVED, THAT INTERWEST TRANSFER COMPANY, STOCK TRANSFER AGENT FOR THE ABOVE CLASS OF STOCK FOR THE ABOVE COMPANY, IS AUTHORIZED BY THE COMPANY TO ISSUE THE SHARES DESCRIBED BELOW AND INCREASE THE OUTSTANDING SHARES ON THE BOOKS OF THE COMPANY. THIS ISSUE IS APPROVED AND AUTHORIZED BY THE BOARD OF DIRECTORS.

DATED: JUNE 2, 2009

ISSUANCE INSTRUCTIONS: (PLEASE TYPE)

REGISTERED NAME & ADDRESS	NUMBER OF SHARES	TYPE OF ISSUE	RESTRICTED OR FREE TRADING	FREE TRADING EXEMPTION (REQUIRED IF FREE TRADING)
TRENRASP	13,056,356	504	FREE TRADING	144
REQUIRED INFORMATION	REQUIRED	REQUIRED	REQUIRED	IF FREE TRADING NEED FILING, FILING DATE AND MAY REQUIRE FURTHER DOCUMENTS TO SUPPORT ISSUE.

INCREASING THE NUMBER OF SHARES OUTSTANDING BY A TOTAL OF 13,056,356 SHARES.
(NOTE-THIS RESOLUTION IS ONLY USED TO INCREASE THE CONTROL BOOK, NOT TO TRANSFER STOCK BETWEEN PARTIES.)

I, THE UNDERSIGNED, QUALIFIED OFFICER OF THE ABOVE COMPANY, CERTIFY THAT THIS IS A TRUE COPY OF A RESOLUTION, SET FORTH AND ADOPTED ON THE BELOW DATE, AND THAT THE SAID RESOLUTION HAS NOT BEEN IN ANY WAY RESCINDED, ANNULLED, OR REVOKED BUT THE SAME IS STILL IN FULL FORCE AND EFFECT.

OFFICER'S SIGNATURE

DANIEL ZWIREN
OFFICER'S NAME PRINTED

PRESIDENT AND CEO
OFFICER'S TITLE

TELEPHONE NUMBER

FACSIMILE NUMBER

DATE

RECEIVED
JUN - 3 2009

MAILING INSTRUCTIONS: COMPANY NAME/ATTENTION MAILING ADDRESS TELEPHONE NUMBER	EXPRESS OR MAIL INSTRUCTIONS	EXPRESS NUMBER (IF APPLICABLE)
RUSHMORE CAPITAL C/O DENIS PETERSON 160 SUMMIT AVENUE MONTVALE NEW JERSEY 07645	DWAC SHARES	

OPTIGENEX, INC.

Executive Officer's Certificate

I hereby certify that I am the duly elected, qualified and incumbent President of the undersigned Company, that I am authorized by the Company to make, execute and deliver this Certificate and that I am personally familiar with the following facts. On behalf of the Company in my capacity set forth above, I hereby certify to the Company's securities counsel and the Company's transfer agent, the following:

1. The Company is a corporation organized under the laws of the state of its incorporation and is in good standing therein.

2. The Company is not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the "'34 Act"); is not an investment company; and is not a development stage company as referred to in Rule 504(a)(3) of Regulation D, under the Securities Act of 1933, as amended (the "'33 Act").

3. In the past 12 months from the date hereof, the Company sold no shares (the "Subject Shares") of Common Stock in a transaction exempt from the registration requirements of the '33 Act, under Rule 504 of Regulation D promulgated under the '33 Act.

4. There are a total of **343,198,926** number of shares of common stock issued and outstanding of the Company as of the date of this Officer's Certificate.

5. The Company has not sold securities in the twelve months previous to the date of this Certificate under Rule 504 of Regulation D in excess of one million ($1,000,000) and the dollar value of any securities issued by the Company in the previous 12 months was $ ZERO.

6. With the exception of the Subject Shares or pursuant to the provisions of its outstanding securities, the Company has no agreements or understandings with any party relating to the issuance of its Common Stock.

7. The Company is not making and does not currently propose to make a public offering of its Common Stock.

8. The Company agrees not to authorize and/or issue any Securities until the funds for the shares of Common Stock being issued pursuant to the Subscription Agreement dated the same date herewith (the "Shares") have been disbursed to the Company.

9. The statements made in this certificate are true and correct, and made with the knowledge that the Company's securities counsel will be relying on this Certificate.

10. The shares of Common Stock being issued pursuant to the Subscription Agreement dated the same date herewith (the "Shares") are fully paid and non-assessable.

11. The Company will file a Form D covering the sale of the Shares as specified under Regulation D.

12. The Company has made no sales of the Shares in states other than Delaware..

13. To the best of my knowledge and belief, neither the Company nor any of its predecessors is (a) subject to any order, judgment, or decree of any court restraining or enjoining the Company from engaging in any conduct or practice in connection with the purchase or sale of any security; or (b) subject to a United States Postal Service false representation order within the past five (5) years.

14. To the best of my knowledge and belief, no officer or director of the Company or owner of more than ten percent (10%) or more of the Company's Common Stock has been convicted within the previous ten (10) years of any felony in connection with the purchase or sale of any security, nor has any such officer, director or owner of securities been subject to a United States Postal Service false representation order within the past five (5) years.

IN WITNESS WHEREOF, the undersigned authorized officer of the Company has executed this Certificate.

OPTIGENEX, INC.
A Delaware Company

By: _____
Daniel Zwiren
President, CEO, Secretary

Dated: this 2nd day of June, 2009

Witness:

_____
Name:
Title:

EXHIBIT A

NOTICE OF HOLDER CONVERSION

(To Be Executed by the Registered Holder in order to Convert the Note)

The undersigned hereby elects to convert the attached Convertible Note into *free* trading shares of common stock (the "Common Stock"), of **OPTIGENEX, INC.** (the "Company") according to the conditions hereof, as of the date written below. No fee will be charged to the holder for any conversion, except for such transfer, if any.

Conversion Request:

6/1/09
Date to Effect Conversion

13,056,356
Number of *FREE* trading shares of Common Stock to be issued

Trenrasp, LLC

By: _____

Michael Gelmon

Rule 144(b)(1) seller's Representation Letter

Date: 6·1·09

Re: SEC Rule 144(b)(1) Sale of 13,056,356 shares of the Common Stock (the "Shares")

of OPGX (the "Company")

To Whom It May Concern:

In connection with the sale referenced above, the undersigned represents that:

1. The undersigned is not now nor has the undersigned been within the preceding three months an affiliate of the Company.
2. The undersigned has beneficially owned the Shares for at least one year excluding any period during which the undersigned has a short position in, or an option to dispose of, any securities of the Company.
3. The sale of the Shares complies in all respects with the undersigned's requirements under Rule 144(b)(1)

The undersigned agrees to notify you immediately if any of the representations provided becomes inaccurate before this sale is completed. The undersigned further agrees that the proceeds of this sale may not be paid until transfer of the Shares free of any transfer restrictions has been completed.

Thrasp

Name of Seller

Signature of Seller

Title of Signatory (if applicable)

EXHIBT A

NOTICE OF HOLDER CONVERSION

(To Be Executed by the Registered Holder in order to Convert the Note)

The undersigned hereby elects to convert the attached Convertible Note into *free* trading shares of common stock (the "Common Stock"), of **OPTIGENEX, INC.** (the "Company") according to the conditions hereof, as of the date written below. No fee will be charged to the holder for any conversion, except for such transfer, if any.

Conversion Request:

6/1/09
Date to Effect Conversion

13,056,356
Number of *FREE* trading shares of Common Stock to be issued

Trenrasp, LLC

By: _____

Michael Gelmon

Rule 144(b)(1) seller's Representation Letter

Date: 6-1-09

Re: SEC Rule 144(b)(1) Sale of 13,056,356 shares of the Common Stock (the "Shares")

of OPGX (the "Company")

To Whom It May Concern:

In connection with the sale referenced above, the undersigned represents that:

1. The undersigned is not now nor has the undersigned been within the preceding three months an affiliate of the Company.
2. The undersigned has beneficially owned the Shares for at least one year excluding any period during which the undersigned has a short position in, or an option to dispose of, any securities of the Company.
3. The sale of the Shares complies in all respects with the undersigned's requirements under Rule 144(b)(1)

The undersigned agrees to notify you immediately if any of the representations provided becomes inaccurate before this sale is completed. The undersigned further agrees that the proceeds of this sale may not be paid until transfer of the Shares free of any transfer restrictions has been completed.

Thrsrap

Name of Seller

Signature of Seller

Title of Signatory (if applicable)

THE SOURLIS LAW FIRM
Securities and Corporate Attorneys

Virginia K. Sourlis, Esq., MBA*
Philip Magri, Esq.+
Joseph M. Patricola, Esq.+#

* Licensed in NJ
+ Licensed in NY
# Licensed in DC

The Galleria
2 Bridge Avenue
Red Bank, New Jersey 07701
(732) 530-9007 Fax (732) 530-9008
www.SourlisLaw.com
Virginia@SourlisLaw.com

April 13, 2009

Interwest Transfer Company, Inc.

Re: OPTIGENEX, INC. (the "Company" or "Issuer")
Delaware Legal Opinion for the Issuance of 504 Shares of Common Stock

Dear Sir or Madam:

We have been requested to provide you with a legal opinion as corporate securities counsel for the Company with respect to a 504 Convertible Note dated January 9, 2009 (the "Note") that is convertible up to 252,659,260 *free*-trading common shares, **which at this time**, Trenrasp, LLC, the holder of the Note, wishes to convert a portion of the Note into **11,870,494** shares of common stock ("Shares"); Trenrasp is authorized to transact business within the State of Delaware (individually, the "Purchaser" and collectively the "Purchasers"), in an offering exempt from registration under the Securities Act of 1933 (the "Securities Act") pursuant to Rule 504 of Regulation D promulgated thereunder, Sections 7309(b)(8) of the Delaware Securities Act, and Section 510(a)(1) of Part E under the Rules and Regulations Pursuant to the Delaware Securities Act.

In connection with this opinion, we have reviewed applicable federal and state laws, rules and regulations and have made such investigations and examined such documents and material related to the Company and the Purchaser as we have deemed necessary and appropriate under the circumstances, including, but not limited to, the following:

1. SEC Regulation D, especially Rules 501, 502, 503 and 504 thereunder.
2. Section 7309(b)(8) of the Delaware Securities Act, and Section 510(a)(1) of Part E under the Rules and Regulations Pursuant to the Delaware Securities Act.
3. Articles of Incorporation of the Company as filed with the State of Delaware and Bylaws adopted by the Company.
4. Various corporate books and records, including minutes of directors meetings and resolutions of the Company's Board of Directors related to the authorization and issuances of the Shares;
5. A certificate of the Company's president stating that the Company:
   a. is not a reporting company under the 1934 Securities Exchange Act;
   b. is an operating company with a specific business plan; and

c. has not sold securities pursuant to exemption under Rule 504 within the past twelve (12) calendar months in an aggregate dollar amount that would preclude the contemplated sales of Shares under that rule.

6. Subscription Agreement executed by the Purchaser, including various representations of the parties therein.

The Law

Rule 504 Exemption.

Section 5 of the Securities Act requires with certain exceptions, that all securities involved in an original distribution by the issuer must be registered. Regulation D promulgated under Section 3(b) of the Securities Act provides several means by which an issuer which is not subject to the reporting requirements of Section 13 and 15(d) of the Securities Exchange Act and is neither an investment company nor a blank check company may make an offer and sale of securities without registration upon satisfaction of certain requirements.

Rule 504 is available to any company that, at the time of the offering:

1. is not a "reporting company";

2. is not a development stage company that either had no specific business plan or purpose or had indicated that its business plan was to engage in a merger or acquisition with an unidentified company or entity;

3. if the issuer has utilized Rule 504 within the last twelve calendar months, the dollar amount of the offering may not have exceeded $1,000,000;

4. each investor is a bona fide resident of the state(s) where the offering is made; and

5. the investor was not, prior to, nor would be subsequent to, the offering an "affiliate" of the issuer.

On April 7, 1999, revisions to Rule 504 went into effect that prohibit general solicitation and general advertising of the offering by the issuer and which provide that securities issued under the Rule will be restricted, unless certain specified conditions are met. These conditions are:

1. the shares issued pursuant to the offering are issued under a state law exemption requiring public filing and delivery of a disclosure statement (often termed Offering Materials) prior to offer and sale; or

2. the shares issued pursuant to the offering are issued under a state law exemption that permits general solicitation and general advertising, available in only a minority of the states (including Delaware), when the offer is limited to only accredited investors as defined in Rule 501(a) of Regulation D.

If either state standard is met, consistent with Rule 504, the shares issued pursuant to the offering are not restricted and are freely tradable on any secondary market.

Consequently, the shares issued pursuant to such an offering may be issued by the Company without affixing to the associated stock certificate a restrictive legend as to resale, may be delivered to the Purchaser upon full payment of the associated purchase price and may be freely traded unless the Purchaser were to become an affiliate of the Company (perhaps through later purchases or their principals were to be become an officer or director of the Company).

Rule 504 of Regulation D requires a filing within 15 days of the date of commencement of a given offering period. While there is no penalty for a late filing, the Company will need to file a Form D with regard to this new offering period.

Delaware Exemption.

Section7309(b)(8) of the Delaware Securities Act provides for an exemption from the registration and notice filing requirements set forth in Sections 7304, 7309A, and 7312 of the Delaware Securities Act where the transaction involves any offer or sale to an institutional buyer.

Section 510(a)(1) of Part E under the Rules and Regulations Pursuant to the Delaware Securities Act defines "Institutional Buyer" to include an "accredited investor" as defined in SEC Rule 501(a)(1)-(4), (7) and (8), excluding, however, any self-directed employee benefit plan with investment decisions made solely by persons that are "accredited investors" as defined by Rule 501(a)(5)-(6) . Pursuant to SEC Rule 501(a)(8), an entity in which all of the equity owners are "accredited" (as defined in Rule 501(a)(5)-(6)) comes within the definition of "accredited investor".

The Delaware applicable exemption does not prohibit general advertising or general solicitation and therefore, the exemption allows general advertising and general solicitation.

Therefore, the Delaware Securities Act provides for an exemption from the registration and notice filing requirements as set forth in Section 7304, 7309A, and 7312 of the Delaware Securities Act where the investor is a validly formed business entity in which all of its equity owners are accredited in accordance with Rule 501(a)(5)-(6)). Not exempted under this provision are sales to individuals who are accredited investors under SEC Rule 501(a) (5) and (6).

No filings are required and there is no restriction prohibiting general advertising or general solicitation or requiring investment intent.

<u>Legal Opinion</u>

Based on the foregoing, and subject to the qualifications set forth herein, it is our opinion that:

The Company is not a reporting company under the 1934 Securities Exchange Act., and intends to make an offering for purchased securities for its own account, which, if aggregated with all securities sold during the preceding 12 months, will not exceed $1,000,000.

The Purchaser is (i) an accredited investor as defined in Rule 501(a) of Regulation D of the Act and Section 510(a)(1) of Part E under the Rules and Regulations Pursuant to the Delaware Securities Act (ii) an "institutional buyer" as set forth in Section7309(b)(8) of the Delaware Securities Act and Section 510(a)(1) of Part E under the Rules and Regulations Pursuant to the Delaware Securities Act, (iii) is purchasing the Shares for its own account and

was not formed for the specific purpose of acquiring the Shares, and therefore has complied with applicable federal and state law and qualifies for the exemption from registration set forth in the Securities Act pursuant to Rule 504 of Regulation D, Section7309(b)(8) of the Delaware Securities Act and Section 510(a)(1) of Part E under the Rules and Regulations Pursuant to the Delaware Securities Act

Further, the Purchaser is **not** (i) the Issuer, (ii) an underwriter of the Issuer with respect to the Shares (within the meaning of Section 2(11) of the Securities Act) (iii) an affiliate of the Issuer (within the meaning of Rule 144(a)(1) under the Securities Act, (iv) acting in concert within the meaning of Rule 144(e)(3)(vi) nor will they be acting in concert between the Purchasers and any affiliates of the Company or any other persons involving public sales of the Company's unregistered common shares under Rule 144, (v) in common ownership with any of the Purchasers of the respective companies in this offering, nor has any affiliation with any officers or affiliates of the Company, accordingly, the Shares may be issued and delivered to the Purchaser upon full payment of the associated purchase price without a restrictive legend under the Securities Act of 1933, as amended.

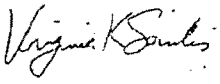
As to matters of fact, we have relied on information obtained from public officials, officers of the Company, and other sources, and we represent that all such sources were believed to be reliable. We have relied upon the Company's assurances that it shall make reasonable inquiry to determine that the prospective Purchaser has a legitimate investment intent in purchasing the Shares, and the Purchaser's representations as to its net worth and investment intent. The undersigned is licensed only in the State of New Jersey and this opinion covers, in part, Delaware statutory law, where the undersigned is not licensed.

We have made no independent attempt to verify facts provided us and set forth herein and that all signatures, documents or copies submitted to us are genuine and authentic. This opinion is limited to and conditioned upon, the facts as stated herein as of the date hereof. I disclaim any undertaking to advise you if changes in law or fact which may affect the continued correctness of any of my opinions occur as of a later date.

This opinion is solely for the use of the Company and its transfer agent, and may not be published or provided to any other person or entity without written permission from the undersigned.

Very truly yours,

The Sourlis Law Firm



Virginia K. Sourlis, Esq.

PROMISSORY NOTE

January 9, 2009

New York, NY **$34,109**

FOR VALUE RECEIVED, the undersigned, **OPTIGENEX, INC.**, a Delaware corporation (the "Company"), promises to pay to **TRENRASP, LLC**, a Delaware limited liability company (the "Lenders") at 1000 N. West Street, Suite 1200, Wilmington, DE 19801 or other address as the Lender shall specify in writing, the principal sum of **Thirty-Four Thousand One Hundred and Nine Dollars ($34,109)** and interest at the annual rate of twelve percent (12%) on the unpaid balance pursuant to the following terms:

1. **Principal and Interest.** For value received, the Company hereby promises to pay to the order of the Lender in lawful money of the United States of America and in immediately available funds the principal sum of Forty-Two Thousand Eight Hundred Eighty-Six Dollars and Seventy Seven Cents ($38,202.08), together with interest on the unpaid principal of this note at the rate of twelve percent (12%) per year (computed on the basis of a 365-day year and the actual days elapsed) from the date of this Promissory Note (the "Note") until paid.

2. **Principal and Interest Payments.** All principal and accrued interest shall be due and payable on January 8, 2010 in cash; provided, however, in the event that the Company receives any financing from any other source all proceeds received in connection with any such financing shall be paid to the Lender until such time that all outstanding principal and accrued interest has been paid to the Lender. All payment amounts shall be first applied to interest, if any, and then to the balance to principal.

3. **Right of Prepayment.** Notwithstanding the payments pursuant to Section 2, the Company at its option shall have the right to prepay a portion or all outstanding principal of the Note. There shall be no prepayment fee or penalty.

4. **Conversion.**

(a) At any time on or prior to the Maturity Date, any amount of the unpaid Principal Amount (the "Conversion Amount") may be converted into up to 252,659,260 *free*-trading and unrestricted shares of Common Stock of the Company.

(b) In the event that the Principal Amount on this Note is converted into Common Stock in accordance with the terms of this Section 3, the Company shall promptly issue to the Noteholder a certificate representing the shares of Common Stock into which the obligations of the Company under this Note have been converted, which certificate shall be free of any legends restricting the transfer of such certificate or the shares of Common stock represented thereby, unless otherwise contemplated.

(c) No certificates representing fractional shares of Common Stock shall be issued to Noteholder upon conversion of principal due hereunder into Common Stock, no dividend or

distribution of the Company shall relate to fractional share interests and such fractional share interests will not entitle the Noteholder to vote or to any rights as a stockholder of the Company. The Noteholder shall pay to Company cash in lieu of any fractional shares of Common Stock resulting from conversion of any principal due hereunder, concurrently with the issuance to Noteholder of the Common Stock to which such fractional shares relate.

5. **Waiver and Consent**. To the fullest extent permitted by law and except as otherwise provided herein, the Company waives demand, presentment, protest, notice of dishonor, suit against or joinder of any other person, and all other requirements necessary to charge or hold the Company liable with respect to this Note.

6. **Costs, Indemnities and Expenses**. In the event of default as described herein, the Company agrees to pay all reasonable fees and costs incurred by the Lender in collecting or securing or attempting to collect or secure this Note, including reasonable attorneys' fees and expenses, whether or not involving litigation, collecting upon any judgments and/or appellate or bankruptcy proceedings. The Company agrees to pay any documentary stamp taxes, intangible taxes or other taxes which may now or hereafter apply to this Note or any payment made in respect of this Note, and the Company agrees to indemnify and hold the Lender harmless from and against any liability, costs, attorneys' fees, penalties, interest or expenses relating to any such taxes, as and when the same may be incurred.

7. **Secured Nature of the Note**. This Note is secured by the collateral provided pursuant to the Security Agreement and Intellectual Property Security Agreement of even date herewith between the Company and the Lender (collectively, the "Security Agreement").

8. **Event of Default**. An "Event of Default" shall be deemed to have occurred upon the occurrence of any of the following: (i) the Company should fail for any reason or for no reason to make any payment of the principal, interest, costs, indemnities, or expenses pursuant to this Note within ten (10) days of the date due as prescribed herein; (ii) any default, whether in whole or in part, in the due observance or performance of any obligations or other covenants, terms or provisions to be performed by the Lender under this Note or under the Security Agreement, or any other related agreements hereunder between the Company and the Lender of even date herewith which is not cured by the Company by any applicable cure period therein, (iii) a breach of any representations or warranties in the Security Agreement, or (iii) the Lender shall: (1) make a general assignment for the benefit of its creditors; (2) apply for or consent to the appointment of a receiver, trustee, assignee, custodian, sequestrator, liquidator or similar official for itself or any of its assets and properties; (3) commence a voluntary case for relief as a debtor under the United States Bankruptcy Code; (4) file with or otherwise submit to any governmental authority any petition, answer or other document seeking: (A) reorganization, (B) an arrangement with creditors or (C) to take advantage of any other present or future applicable law respecting bankruptcy, reorganization, insolvency, readjustment of debts, relief of debtors, dissolution or liquidation; (5) file or otherwise submit any answer or other document admitting or failing to contest the material allegations of a petition or other document filed or otherwise submitted against it in any proceeding under any such applicable law, or (6) be adjudicated a bankrupt or insolvent by a court of competent jurisdiction. Upon an Event of Default (as defined above), the entire principal balance and accrued interest outstanding under this Note, and all other obligations of the Company under this Note, shall be immediately due and payable without

any action on the part of the Lender, interest shall accrue on the unpaid principal balance at twenty-four percent (24%) per year or the highest rate permitted by applicable law, if lower, and the Lender shall be entitled to seek and institute any and all remedies available to it.

9. **Maximum Interest Rate**. In no event shall any agreed to or actual interest charged, reserved or taken by the Lender as consideration for this Note exceed the limits imposed by New York law. In the event that the interest provisions of this Note shall result at any time or for any reason in an effective rate of interest that exceeds the maximum interest rate permitted by applicable law, then without further agreement or notice the obligation to be fulfilled shall be automatically reduced to such limit and all sums received by the Lender in excess of those lawfully collectible as interest shall be applied against the principal of this Note immediately upon the Lender's receipt thereof, with the same force and effect as though the Company had specifically designated such extra sums to be so applied to principal and the Lender had agreed to accept such extra payment(s) as a premium-free prepayment or prepayments.

10. **Issuance of Capital Stock**. So long as any portion of this Note is outstanding, the Company shall not, without the prior written consent of the Lender, (i) issue or sell shares of common stock or preferred stock without consideration or for a consideration per share less than the bid price of the common stock determined immediately prior to its issuance, (ii) issue any warrant, option, right, contract, call, or other security instrument granting the holder thereof, the right to acquire common stock without consideration or for a consideration less than such common stock's bid price value determined immediately prior to it's issuance, (iii) enter into any security instrument granting the holder a security interest in any and all assets of the Company, or (iv) file any registration statement on Form S-8.

11. **Cancellation of Note**. Upon the repayment by the Company of all of its obligations hereunder to the Lender, including, without limitation, the principal amount of this Note, plus accrued but unpaid interest, the indebtedness evidenced hereby shall be deemed canceled and paid in full. Except as otherwise required by law or by the provisions of this Note, payments received by the Lender hereunder shall be applied first against expenses and indemnities, next against interest accrued on this Note, and next in reduction of the outstanding principal balance of this Note.

12. **Severability**. If any provision of this Note is, for any reason, invalid or unenforceable, the remaining provisions of this Note will nevertheless be valid and enforceable and will remain in full force and effect. Any provision of this Note that is held invalid or unenforceable by a court of competent jurisdiction will be deemed modified to the extent necessary to make it valid and enforceable and as so modified will remain in full force and effect.

13. **Amendment and Waiver**. This Note may be amended, or any provision of this Note may be waived, provided that any such amendment or waiver will be binding on a party hereto only if such amendment or waiver is set forth in a writing executed by the parties hereto. The waiver by any such party hereto of a breach of any provision of this Note shall not operate or be construed as a waiver of any other breach.

14. **Successors**. Except as otherwise provided herein, this Note shall bind and inure to the benefit of and be enforceable by the parties hereto and their permitted successors and assigns.

15. **Assignment.** This Note shall not be directly or indirectly assignable or delegable by the Company. The Lender may assign this Note as long as such assignment complies with the Securities Act of 1933, as amended.

16. **No Strict Construction.** The language used in this Note will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any party.

17. **Further Assurances.** Each party hereto will execute all documents and take such other actions as the other party may reasonably request in order to consummate the transactions provided for herein and to accomplish the purposes of this Note.

18. **Notices, Consents, etc.** Any notices, consents, waivers or other communications required or permitted to be given under the terms hereof must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one (1) trading day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to Company:
OPTIGENEX, Inc.
750 Lexington Avenue
6th Floor
New York, NY 10022
Phone: (212) 905 0189

If to the Lender:
Trenrasp, LLC
1000 N. West Street, Suite 1200
Wilmington, DE 19801
Telephone: (302) 295-4889
Facsimile: (302) 295-4801

or at such other address and/or facsimile number and/or to the attention of such other person as the recipient party has specified by written notice given to each other party three (3) trading days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient facsimile number and an image of the first page of such transmission or (C) provided by a nationally recognized overnight delivery service, shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

19. **Remedies, Other Obligations, Breaches and Injunctive Relief.** The Lender's remedies provided in this Note shall be cumulative and in addition to all other remedies available to the Lender under this Note, at law or in equity (including a decree of specific performance and/or other injunctive relief), no remedy of the Lender contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy and nothing herein shall limit the

Lender's right to pursue actual damages for any failure by the Company to comply with the terms of this Note. No remedy conferred under this Note upon the Lender is intended to be exclusive of any other remedy available to the Lender, pursuant to the terms of this Note or otherwise. No single or partial exercise by the Lender of any right, power or remedy hereunder shall preclude any other or further exercise thereof. The failure of the Lender to exercise any right or remedy under this Note or otherwise, or delay in exercising such right or remedy, shall not operate as a waiver thereof. Every right and remedy of the Lender under any document executed in connection with this transaction may be exercised from time to time and as often as may be deemed expedient by the Lender. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Lender and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Lender shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, and specific performance without the necessity of showing economic loss and without any bond or other security being required.

20. **Governing Law; Jurisdiction.** THIS NOTE SHALL BE ENFORCED, GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICT OF LAWS. THE BORROWER HEREBY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES FEDERAL COURTS LOCATED IN NEW YORK, NEW YORK WITH RESPECT TO ANY DISPUTE ARISING UNDER THIS NOTE, THE AGREEMENTS ENTERED INTO IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. BOTH PARTIES IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH SUIT OR PROCEEDING. BOTH PARTIES FURTHER AGREE THAT SERVICE OF PROCESS UPON A PARTY MAILED BY FIRST CLASS MAIL SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON THE PARTY IN ANY SUCH SUIT OR PROCEEDING. NOTHING HEREIN SHALL AFFECT EITHER PARTY'S RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW. BOTH PARTIES AGREE THAT A FINAL NON-APPEALABLE JUDGMENT IN ANY SUCH SUIT OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON SUCH JUDGMENT OR IN ANY OTHER LAWFUL MANNER. THE PARTY WHICH DOES NOT PREVAIL IN ANY DISPUTE ARISING UNDER THIS NOTE SHALL BE RESPONSIBLE FOR ALL FEES AND EXPENSES, INCLUDING ATTORNEYS' FEES, INCURRED BY THE PREVAILING PARTY IN CONNECTION WITH SUCH DISPUTE.

21. **No Inconsistent Agreements.** None of the parties hereto will hereafter enter into any agreement, which is inconsistent with the rights granted to the parties in this Note.

22. **Third Parties.** Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties to this Note and their respective permitted successor and assigns, any rights or remedies under or by reason of this Note.

23. **Waiver of Jury Trial. AS A MATERIAL INDUCEMENT FOR THE LENDER TO LOAN TO THE COMPANY THE MONIES HEREUNDER, THE COMPANY HEREBY**

WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING RELATED IN ANY WAY TO THIS AGREEMENT AND/OR ANY AND ALL OF THE OTHER DOCUMENTS ASSOCIATED WITH THIS TRANSACTION.

24. **Entire Agreement**. This Note (including any recitals hereto) set forth the entire understanding of the parties with respect to the subject matter hereof, and shall not be modified or affected by any offer, proposal, statement or representation, oral or written, made by or for any party in connection with the negotiation of the terms hereof, and may be modified only by instruments signed by all of the parties hereto.

[REMAINDER OF PAGE INTENTIONALY LEFT BLANK]

IN WITNESS WHEREOF, this Promissory Note is executed by the undersigned as of the date hereof.

OPTIGENEX, INC.

By: _____
Daniel Zwiren
President, CEO, Secretary

Acknowledged and Agreed to:

NOTE HOLDER:

Trenrasp, LLC

By: _____
Edward Bronson
Sole Member and Manager

EXHIBIT A

NOTICE OF HOLDER CONVERSION

(To be Executed by the Registered Holder in order to Convert the Note)

The undersigned hereby, elects to convert the attached Convertible Note into *free* trading shares of common stock (the "Common Stock"), of **OPTIGENEX**, INC. (the "Company") according to the conditions hereof, as of the date written below. No fee will be charged to the holder for any conversion, except for such transfer taxes, if any.

Conversion request:

_____

Date to Effect Conversion

_____

Number of *FREE*-trading shares of Common Stock to be Issued

Trenrasp, LLC

By: _____

Edward Bronson
Sole Member and Manager

EXHIBIT 6

ANDREW M. CALAMARI
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
3 World Financial Center – Suite 400
New York, New York 10281-1022
(212) 336-1100

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	**12 Civ. _____**
v.	**COMPLAINT**
EDWARD BRONSON and E-LIONHEART ASSOCIATES, LLC, d/b/a FAIRHILLS CAPITAL,	**ECF CASE**
Defendants	
and	
FAIRHILLS CAPITAL, INC.,	
Relief Defendant.	

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendants Edward Bronson ("Bronson") and E-Lionheart Associates, LLC, d/b/a Fairhills Capital ("E-Lionheart") (collectively, "Defendants"), and relief defendant Fairhills Capital, Inc. ("FCI") ("Relief Defendant"), alleges:

SUMMARY

1. Since at least August 2009, Defendants have engaged in a scheme to purchase billions of shares of stock from small companies and illegally resell those shares to the investing public, without complying with the registration requirements of the federal securities laws. The

federal registration requirements protect investors by promoting full disclosure of information deemed necessary for informed investment decisions. Investors were deprived of such protections by Defendants' misconduct. Bronson and E-Lionheart have reaped more than $10 million in profits from these illegal sales.

VIOLATIONS

2. By virtue of the foregoing conduct and as alleged further herein, Bronson and E-Lionheart, directly or indirectly, singly or in concert, have violated, and unless restrained and enjoined will again violate, Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a) and 77e(c)].

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

3. The Commission brings this action pursuant to the authority conferred upon it by Section 20 of the Securities Act [15 U.S.C. § 77t].

4. The Commission seeks a final judgment (a) permanently restraining and enjoining Defendants from violating Sections 5(a) and 5(c) of the Securities Act; (b) ordering Defendants and Relief Defendant, on a joint and several basis, to disgorge their ill-gotten gains with prejudgment interest thereon; (c) ordering Defendants to pay civil money penalties, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)]; and (d) permanently prohibiting Defendants from participating in any offering of penny stock, pursuant to Section 20(g) of the Securities Act [15 U.S.C. § 77t(g)].

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d) and 77v(a)]. Defendants, directly or indirectly, singly or in concert, have made use of the means or instruments of transportation or

communication in interstate commerce, or of the mails, in connection with the transactions, acts, practices and courses of businesses alleged herein.

6. Venue lies in the Southern District of New York, pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)]. Bronson resides in this District, and E-Lionheart's principal place of business is in this District.

FACTS

Defendants

7. **Bronson**, age 46, resides in Ossining, New York. Bronson is the sole managing member of E-Lionheart, an entity he used to facilitate his illegal stock sales.

8. **E-Lionheart**, formed in 2005 as a Delaware limited liability company, also does business as "Fairhills Capital." E-Lionheart is registered in the State of New York as a foreign limited liability company. Bronson is the sole managing member of E-Lionheart. At all times relevant to this Complaint, E-Lionheart has maintained its sole physical office in White Plains, New York.

Relief Defendant

9. **FCI** was formed in 2010 as a Delaware corporation, and maintains a registered business address in White Plains, New York at the same location as E-Lionheart. Bronson is the President and owner of FCI. FCI was unjustly enriched by Bronson's transfer to FCI of at least $600,000 of the proceeds from the illegal stock sales described herein.

Background

10. The Defendants in this case obtained and illegally resold the stock of approximately 100 companies, reaping profits of more than $10 million while depriving the investing public of the protections of the registration requirements of the securities laws. The

companies that issued these shares typically had limited assets, low share prices, and little or no analyst coverage. The stocks of these issuers traded only in the "over-the-counter" market and were quoted on OTC Link, an electronic quotation and trading system. At all relevant times, the stocks of these issuers were "penny stocks" as defined by Section 3(a)(51)(A) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78c(a)(51)(A)], meaning that, among other things, they traded below five dollars per share and were not listed on a national securities exchange.

11. Section 5 of the Securities Act prohibits any person, directly or indirectly, from offering or selling any security unless a registration statement is filed as to such offer, and is in effect as to such sale, or unless an exemption from registration is available. A registration statement is made publicly available and is required to include disclosures of financial and business information about the company and the particular securities that are being offered and sold.

12. Unless an exemption from registration is available, a registration statement is required for each new offer or sale of securities by any person. In this case, no registration statements were filed or in effect in connection with either the initial issuance of shares to Defendants or Defendants' sales of those shares to the public and no exemptions from registration were available to Defendants for their sales of those securities to the public.

13. Certain statutory provisions of the Securities Act and Commission regulations provide exemptions or safe harbors from the federal registration requirement. States have also enacted laws, known as "blue sky laws," that regulate the offer and sale of securities by imposing state-level registration requirements and exemptions from registration. Certain of the federal exemptions from registration are designed to achieve uniformity between state and federal

exemptions in order to facilitate capital formation that is consistent with the protection of investors. One such exemption, Rule 504(b)(1)(iii), adopted as part of Regulation D, 17 C.F.R. § 230.501 et seq. (1999) ("Rule 504(b)(1)(iii)"), provides an exemption for certain limited offers and sales of securities only if the offers and sales are made "[e]xclusively according to state law exemptions from registration that permit general solicitation and general advertising so long as sales are made only to 'accredited investors' as defined in [Rule] 501(a)." Accredited investors are investors who meet certain income or net worth requirements.

14. Defendants purported to rely upon Rule 504(b)(1)(iii) in connection with their sales of securities. However, the state law exemption Defendants selected and purportedly relied upon was inapplicable to Rule 504(b)(1)(iii). Accordingly, neither the issuers' initial offers and sales to Defendants nor Defendants' subsequent offers and sales to the investing public qualified as exempt from registration pursuant to Rule 504(b)(1)(iii).

Defendants' Illegal Stock Sales

15. Defendants' illegal operation typically followed the same pattern. Operating from E-Lionheart's office in White Plains, New York, Bronson, or E-Lionheart personnel acting at Bronson's direction, "cold called" OTC Link quoted companies to ask if they were interested in obtaining capital. If the company was interested, Bronson, or E-Lionheart personnel acting at his direction, would offer to buy stock in the company at a rate that was deeply discounted from the price the company's stock was then trading at.

16. If a company expressed interest, Bronson (or E-Lionheart personnel acting at his direction) prepared a subscription agreement and other documents to effect the transaction. In certain instances, Defendants prearranged with the company to purchase multiple "tranches" of the company's securities in the future once Defendants were able to sell earlier tranches into the

public market.

17. Typically, Defendants began immediately reselling the shares to the investing public through a broker within days of receiving the shares from the company. No registration statement was filed or in effect as to any of these sales at the time Bronson and E-Lionheart sold those shares to the public and no valid exemption was available. As a result, investors purchasing shares did not have access to all of the information that a registration statement would have provided and in many instances were deprived of even the basic information of the new issuance of millions of shares by the company and the dilution effect thereof. On average, the Defendants were able to generate proceeds from their illegal resales that were approximately double the price at which E-Lionheart had acquired the shares.

18. Bronson and E-Lionheart repeated this pattern with approximately 100 issuers, often purchasing and unlawfully reselling multiple "tranches" of securities from any given issuer.

The Purported Registration Exemption

19. Despite all of Defendants' activities taking place in New York, and irrespective of the location of the company's business, the subscription agreement represented that the company was making an offering of its stock that was exempt from registration because it was being made pursuant to Rule 504(b)(1)(iii) of Regulation D and a Delaware state law exemption from registration, Section 7309(b)(8) of the Delaware Securities Act [Redesignated as § 73-207(b)(8) of the Delaware Securities Act on November 14, 2011].

20. Before the securities were issued to E-Lionheart, an attorney referred and/or paid by Bronson, but purportedly acting on the company's behalf, provided an opinion letter to the company's transfer agent asserting that the securities could be issued without a restrictive legend.

Companies use transfer agents to keep track of the individuals and entities that own their stock. In the absence of a registration statement, transfer agents will issue stock certificates bearing a "restrictive legend" – indicating limitations on the transfer or sale of the security – unless the transfer agent receives assurances in the form of an attorney opinion letter that adequately explains why it is lawful to issue the certificates without a restrictive legend. However, the absence or removal of a restrictive legend on a stock certificate merely makes the transfer of the certificate possible, not lawful.

21. These attorney opinion letters claimed that Section 7309(b)(8) of the Delaware Securities Act [now §73-207(b)(8)] purportedly satisfied the requirements of Section 504(b)(1)(iii) of Regulation D, thereby supposedly permitting the issuance of "freely tradable" securities without a restrictive legend. The attorney providing the opinion letter typically was not licensed to practice law in Delaware.

22. Despite their attempt to invoke a Delaware state law exemption in the subscription agreements and attorney opinion letters, the securities offerings had either no nexus, or an insufficient nexus, to Delaware. Bronson and E-Lionheart, both residents of New York State, did not prepare, negotiate or execute any of the subscription agreements or other transactional documents in Delaware. The securities were sent to E-Lionheart's business address in White Plains, New York. Many of the companies that issued the securities had no business operations in Delaware. The attorney opinion letters were not typically prepared by attorneys licensed to practice law in Delaware. Nor were any of the transfer agents to whom the opinion letters were sent located in Delaware. As such, Defendants' purchase of securities could not have been made pursuant to, or in reliance upon, any Delaware state law exemptions from registration. Rule 504(b)(1)(iii)'s exemption was therefore unavailable.

23. The Delaware exemption on which Defendants claimed reliance is also not an exemption that meets the requirements of Rule 504(b)(1)(iii). Rule 504(b)(1)(iii) requires that the state law exemption from registration be an exemption that "permit[s] general solicitation and general advertising." Section 7309(b)(8) [now §73-207(b)(8)] of the Delaware Securities Act – the state law exemption referenced in the subscription agreements – pertains solely to offers or sales that are exclusively made to several specifically enumerated types of institutions (including certain accredited investors that are not natural persons). This state law exemption does not permit "general solicitation and general advertising," as required by Rule 504(b)(1)(iii), and the Delaware Securities Act prohibits solicitation without registration or an applicable exemption. Rule 504(b)(1)(iii)'s exemption was therefore unavailable to Defendants' transactions.

24. In addition, the Defendants' quick resales were in violation of an existing Delaware exemption that *is* compatible with the requirements of Rule 504(b)(1)(iii) – Section 503 of the Delaware Rules and Regulations [Rules and Regulations Pursuant to the Delaware Securities Act, §503]. Any resales of securities made in reliance on this exemption must satisfy a twelve month holding period, with which Defendants did not comply.

The Illegal Profits

25. Defendants' resales of the stock of ICBS, Ltd. (ticker "ICBT"), a small company, exemplify the mechanics of the illegal stock distribution operation and the resulting unlawful profits obtained by Bronson and E-Lionheart.

26. On February 3, 2010, E-Lionheart entered into a subscription agreement with ICBT in which E-Lionheart purchased 60,000,000 ICBT shares for $30,000. On February 8, 2010, Defendants deposited the ICBT shares in E-Lionheart's brokerage account.

27. On February 10, 2010, just two days later, Defendants sold 46,230,009 of these shares to the investing public through E-Lionheart's broker. The next day, Defendants sold the remaining 13,769,991 shares through E-Lionheart's broker. No registration statement was filed or in effect as to such offers and sales thus depriving the market of relevant information – and no valid exemption from registration was available for Defendants' sales. Bronson and E-Lionheart obtained gross sales proceeds of approximately $58,000 and illegal profits of $28,000.

28. Approximately three months later, on May 14, 2010, E-Lionheart entered into a subscription agreement with ICBT in which E-Lionheart purchased another 110,000,000 ICBT shares for $30,000. On May 18, 2010, Defendants deposited these shares in E-Lionheart's brokerage account. On May 21, 2010, just three days later, Defendants sold 50,000,000 of these shares to the public through E-Lionheart's broker. Four days after that, on May 25, 2010, Defendants sold the remaining 60,000,000 shares to the public through E-Lionheart's broker. No registration statement was filed or in effect as to these transactions – and no valid exemption was available for Defendants' sales. Bronson and E-Lionheart obtained gross sales proceeds of approximately $45,600 and illegal profits of $15,600.

29. Defendants engaged in at least 11 additional transactions with ICBT of similar type between September 2009 and May 2011 and resold the shares to the public without registration or a valid exemption. In total, Defendants' unregistered and illegal sales of ICBT stock to the public netted gross sales proceeds of approximately $960,000 and illegal profits of $325,000.

30. Since August 2009, Defendants have engaged in similar illegal resales of the stock of over one hundred other companies. In the aggregate, Defendants have entered into hundreds of transactions, involving the sale of billions of shares to the investing public, without a

registration statement being filed or in effect and with no valid exemption from registration available for Defendants' sales of securities. The following table summarizes the transactions by Defendants in the stock acquired from just ten of these issuers during the two-year period August 2009 to August 2011:

Issuer Name	Acquisition Period	Resale Period	# of Sham 504(b)(1)(iii) Transactions w/ Issuer	# of Shares Defendants Illegally Resold (Approx.)	Gross Proceeds from Resales (Approx.)	Net Profits (Approx.)
Sierra Gold Corp.	8/09 – 4/11	8/09 – 5/11	30	1.1 billion	$1,713,000	$836,000
Cannon Exploration Inc.	8/10 – 12/10	8/10 – 1/11	11	2.9 billion	$1,304,000	$745,000
LIGATT Security Int'l Inc.	1/10 – 2/11	1/10 – 4/11	23	2.6 billion	$994,000	$591,000
International Power Group Ltd	10/09 – 5/11	10/09 – 6/11	18	2.6 billion	$1,253,000	$579,000
Russell Industries Inc.	6/09 – 12/10	8/09 – 12/10	22	4.2 billion	$855,000	$503,000
GoIP Global Inc.	9/09 – 3/11	10/09 – 4/11	20	400 million	$1,117,000	$431,000
Hall of Fame Beverages Inc.	5/10 – 3/11	5/10 – 4/11	13	2.2 billion	$1,002,000	$404,000
Green Globe Int'l Inc.	6/10 – 2/11	6/10 – 6/11	19	1.6 billion	$661,000	$298,000
Lecere Corp.	6/10 – 4/11	6/10 – 5/11	7	3.2 billion	$598,000	$281,000
Imagexpres Corp.	9/09 – 5/10	10/09 – 8/10	7	2 billion	$476,000	$147,000
TOTAL			170	22.8 billion	$9,973,000	$4,815,000

31. Through this action, the Commission seeks disgorgement of all ill-gotten gains generated from all of the Defendants' unregistered sales of securities.

Relief Defendant FCI

32. Bronson is the President and owner of FCI. Bronson registered FCI to do business in New York on December 14, 2010. Less than one week later, on December 20, 2010, Bronson transferred $10,000 from the E-Lionheart brokerage account he used to custody the proceeds of his illegal transactions to a bank account maintained in the name of FCI.

33. In December 2010, Bronson also transferred title to a 2011 Mercedes Benz SUV from his name to FCI's name. FCI also holds title to a 2011 Land Rover, a 2007 Ferrari 599 and a 1982 Rolls Royce Silver Spur.

34. On February 10, 2011, Bronson transferred an additional $600,000 from E-Lionheart's custodial brokerage account to FCI's bank account. FCI, however, does not have any legitimate claim to the more than $600,000 in unlawful profits Bronson transferred to this entity's bank account.

35. None of the shares illegally sold by Bronson and E-Lionheart were transactions on FCI's behalf and none of the proceeds transferred to FCI were in return for any other consideration. The overwhelming majority of transactions in FCI's bank account, from the account's inception through at least June 30, 2011, were transfers to-and-from E-Lionheart's principal bank account. One of the few transfers out of FCI's bank account not directed at E-Lionheart's bank account concerned a $35,000 payment to an attorney acting on behalf of GoIP Global, Inc. in connection with its sale of $35,000 of its securities to E-Lionheart, not FCI. This payment to IP Global, Inc.'s attorney came just one day after Bronson seeded FCI's bank account with $600,000 in illegal profits from E-Lionheart's custodial brokerage account.

36. Bronson is using the FCI bank account to hold certain proceeds of his illegal trading activity and to facilitate that activity.

FIRST CLAIM FOR RELIEF
Violations of Sections 5(a) and 5(c) of the Securities Act
(Against Bronson and E-Lionheart)

37. Paragraphs 1 through 36 are re-alleged and incorporated by reference as if fully set forth herein.

38. Defendants, singly or in concert, directly or indirectly, made use of the means or

instruments of transportation or communication in interstate commerce or of the mails to offer and to sell securities when no registration statement had been filed or was in effect as to such offers and sales of such securities and no exemption from registration was available.

39. By reason of the activities described herein, Defendants, singly or in concert, directly or indirectly, have violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

SECOND CLAIM FOR RELIEF
(Unjust Enrichment Against Relief Defendant FCI)

40. Paragraphs 1 through 36 are re-alleged and incorporated by reference as if fully set forth herein.

41. In the manner described above, Relief Defendant FCI has obtained proceeds from Defendants' unlawful conduct under circumstances in which it is not just, equitable or conscionable for FCI to retain these ill-gotten gains. FCI gave no consideration for its receipt of these ill-gotten gains and has no legitimate claim to these funds. As a consequence, FCI has been unjustly enriched.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court issue a Final Judgment:

I.

Permanently enjoining and restraining Defendants, their agents, servants, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from, directly or indirectly, violating Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

II.

Ordering each of the Defendants and the Relief Defendant to disgorge, with prejudgment interest thereon, all ill-gotten gains received directly or indirectly as a result of the misconduct alleged in this Complaint, on a joint and several basis.

III.

Ordering Defendants to each pay civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)].

IV.

Imposing a permanent bar on Defendants from participating in any offering of penny stock pursuant to Securities Act Section 20(g) [15 U.S.C. § 77t(g)].

V.

Granting such other and further relief as this Court may deem just, equitable and appropriate.

Dated: New York, NY
August 22, 2012

David Rosenfeld
Andrew M. Calamari
Attorneys for the Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
3 World Financial Center – Suite 400
New York, New York 10281
(212) 336-1100

Of Counsel:
Wendy B. Tepperman (teppermanw@sec.gov)
Kevin McGrath (mcgrathk@sec.gov)
William Edwards (edwardsw@sec.gov)

EXHIBIT 7

From: Austin, Gina <gaustin@austinlegalgroup.com>
Sent: Friday, April 05, 2013 11:20 AM
To: Bandler, Aimee Taub
Cc: sdesantis@dtcc.com; Cutaia, Joseph V.
Subject: Optigenex

Importance: High

Hi Aimee,

We spoke back on March 21, 2013 regarding the DTCC chill currently placed on Optigenex. It was my understanding from that conversation that you were going to follow-up with persons at DTCC at let me know what the final steps were going to be for Optigenex so that we didn't have to continue this process of "endless homework assignments."

I realize that you have been on vacation. However, my clients are very anxious to keep this process moving and put this behind them. Please advise as soon as possible. Optigenex has very important strategic meetings coming up in the next two weeks and it is imperative that any uncertainty is clarified.

Thank you for your prompt attention to this matter.

Gina Austin
Austin Legal Group, APC
619.368.4800 (c) | 619.924.9600 (o)
gaustin@austinlegalgroup.com

EXHIBIT 8

From: Bandler, Aimee Taub
Sent: Monday, April 08, 2013 4:14 PM
To: 'Austin, Gina'
Subject: Optigenex

Dear Gina:

As discussed, DTC has recently changed its procedures with regard to the review of deposit chills. While the opinion in the form attached as Exhibit B to the notice letter will still be accepted, in lieu of submitting such an opinion, you may submit the revised form of legal opinion attached hereto.

Please note that the legal opinion must address whether any of the issuances covered by the legal opinion relied on Rule 504(b)(i),(ii), or (iii) under the Securities Act, and if so, must provide a citation to the state securities law relied upon. In addition, in light of the litigation *SEC v. Edward Bronson et al.*, 12-cv-6421 (S.D.N.Y., filed August 22, 2012), if an issuance did rely on Section 7309(b)(8) of the Delaware Securities Act, the legal opinion must specify and establish an alternative basis upon which to conclude that such shares were freely tradeable under the Securities Act.

Aimee

#Template Opinion 3.13.D...

Aimee T. Bandler
Attorney at Law

Proskauer
Eleven Times Square
New York, NY 10036-8299
d 212.969.3247
f 212.969.2900
abandler@proskauer.com

[Letterhead of Outside Counsel acceptable to DTC]

[Date]

The Depository Trust Company
55 Water Street
New York, New York 10041
[USA]
Attn: Underwriting Department

RE: **[Company Name], [Description of Security]**, CUSIP Number: •

Ladies and Gentlemen:

We are counsel to **[Company Name]** (the "Company") and are providing this opinion letter to The Depository Trust Company ("DTC") at the request of the Company. Securities issued by the Company, CUSIP Number **[•]** (the "Subject CUSIP") have been deposited for book-entry delivery, settlement and depository services (the "Services") at DTC, registered in the nominee name of DTC, Cede & Co. (the "Subject Securities"), which include, without limitation, the deposits identified in Exhibit A to the notice letter sent by DTC to the Company dated **[insert date]** and attached again hereto (the "Exhibit A Securities"). We are providing this opinion letter at the request of the Company to confirm that the each of Subject Securities, including the Exhibit A Shares, were, at the date of deposit at DTC, eligible under the Rules and Procedures of DTC to be deposited for the Services.

In connection with rendering this opinion letter, we have examined originals or copies, certified or otherwise identified to our satisfaction, of the following documents, as necessary in order to form our opinion:

- the orders and instructions of the Company for the issuance and delivery of the Subject Securities,

- copies of duly executed securities purchase agreements and private placement memoranda used for any private placement of the Subject Securities,

- prior legal opinions submitted to the Company or its transfer agent in connection with the issuance of the Subject Securities, and/or the resale of the Subject Securities, by the initial purchasers thereof,

- accredited investor certifications for each accredited investor who invested in any private placement of the Subject Securities,

- relevant books and records of the Company's transfer agent(s),

- a copy of a Certificate of Good Standing of the Company dated as of **[recent date]**,

- a copy of Form D, and evidence of filing thereof with the Securities and Exchange Commission, with respect to each private placement of the Subject Securities, and

- any additional documentation or materials used to form a basis for the opinions herein or deemed relevant to DTC's determination regarding the Subject Securities.

We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and such agreements, certificates of public officials, certificates of officers or other representatives of the Company and others and such other statements, documents, certificates and corporate or other records as we have deemed necessary or appropriate as a basis for the opinion set forth herein.

Based upon the foregoing, and our independent legal analysis, we are of the opinion that the Exhibit A Securities when issued by the Company, and all other shares of the Subject CUSIP when issued by the Company beginning from the date that is five years prior to the date of this letter, either:

(1) were not "restricted securities" under Rule 144(a)(3) following their issuance, or

(2) those securities that were "restricted securities" under Rule 144(a)(3) following their issuance are listed on Appendix 1 hereto, and with respect to such securities: (a) all certificates or electronic records evidencing such restricted securities bore appropriate restrictive legends or the electronic equivalents reflecting such restrictions under the Securities Act of 1933, as amended; (b) such restrictive legends or electronic equivalents were not removed therefrom except by reasonable and customary procedures designed to verify the proper legal basis for such removal, including, where appropriate, verification by valid legal opinions from independent counsel to the Company in support of such removal.

* * *

This opinion letter is rendered to you and is solely for your benefit to be used only in connection with the matters stated herein, except that you may deliver copies of this opinion to your professional advisors, to any governmental agency or regulatory authority or if otherwise required by law.

Very truly yours,

_____

[Outside Counsel to the Company]

Exhibit A

Appendix 1

Issuances of Restricted Certificates

Certificate Nos./Range	Issuance Date	Securities Act Exemption(s)

EXHIBIT 9

From: Bandler, Aimee Taub
Sent: Wednesday, May 29, 2013 11:45 AM
To: 'Austin, Gina'
Subject: FW: VOIP-Pal Deposit Chill
Attachments: DOC.PDF

Gina:

Do you require a further extension of time to submit a response for Optigenex or VOIP-pal? Our records indicate they are nearing or past the due date.

Aimee

Aimee T. Bandler
Attorney at Law

Proskauer
Eleven Times Square
New York, NY 10036-8299
d 212.969.3247
f 212.969.2900
abandler@proskauer.com

From: Maj, Donald [mailto:dmaj@dtcc.com]
Sent: Monday, April 15, 2013 4:00 PM
To: 'Austin, Gina'
Cc: Bandler, Aimee Taub
Subject: RE: VOIP-Pal Deposit Chill

Ms. Austin,
Please see the attached letter. Per your request, we will grant you an extension until May 15, 2013 to provide the required submission and legal opinion. However, if the requested materials are not received by that date, the Deposit Chill decision will be deemed final, subject to DTC's right to reevaluate the eligibility status of the Issue in DTC's system.

Sincerely,
Donald Maj

From: Austin, Gina [mailto:gaustin@austinlegalgroup.com]
Sent: Thursday, April 11, 2013 5:06 PM
To: Maj, Donald
Cc: Aimee T Bandler (abandler@proskauer.com)
Subject: RE: VOIP-Pal Deposit Chill

Donald,

I am requesting an extension until May 15 to respond to DTC's request for additional information regarding VOIP-Pal.

Please confirm.

Gina Austin

Gina M. Austin
AUSTIN LEGAL GROUP, APC | 3990 Old Town Ave., Ste A112, San Diego, CA 92110 |
Ofc: 619-924-9600 | Cell 619-368-4800 | Fax 619-881-0045

DTCC

55 WATER STREET
NEW YORK, NY 10041-0099

TEL: 212-855-3298
dmaj@dtcc.com

April 15, 2013

By Email

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave
11810 NE 34th St.
Ste A112
San Diego, CA 92110
Attn: Gina Austin

Re: Voip-Pal.Com, Inc./CUSIP 92862Y109

Dear Ms. Austin:

We are in receipt of your correspondence dated April 11, 2013 requesting an extension of time to answer our letter dated November 15, 2012 regarding the deposit transaction restriction (the "Deposit Chill") on CUSIP 92862Y109 (the "Issue"), issued by Voip-Pal.Com, Inc. (the "Issuer").

Per your request, we will grant you an extension until May 15, 2013 to provide the required submission and legal opinion. However, if the requested materials are not received by that date, the Deposit Chill decision will be deemed final, subject to DTC's right to reevaluate the eligibility status of the Issue in DTC's system.

Sincerely,

Donald Maj

EXHIBIT 10

From: Austin, Gina <gaustin@austinlegalgroup.com>
Sent: Tuesday, April 16, 2013 2:35 PM
To: Bandler, Aimee Taub
Subject: Please see attached
Attachments: 13-0415 Ltr re 504 exemption.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Aimee,

Please see attached letter regarding our interpretation of the 504 exemption as it relates to Delaware.

Thank you.

Gina

Gina M. Austin
AUSTIN LEGAL GROUP, APC | 3990 Old Town Ave., Ste A112, San Diego, CA 92110 |
Ofc: 619-924-9600 | Cell 619-368-4800 | Fax 619-881-0045

Austin Legal Group
LAWYERS
3990 OLD TOWN AVE, STE A-112
SAN DIEGO, CA 92110

LICENSED IN CALIFORNIA & HAWAII
TELEPHONE
(619) 550-2330

FACSIMILE
(619) 881-0045

Writer's Email:
gaustin@austinlegalgroup.com

April 16, 2013

Ms. Aimee Bandler
Proskauer Rose LLP
Eleven Times Square
(Eighth Avenue & 41st Street)
New York, NY 10036-8299

Re: Optigenex

Dear Ms. Bandler:

This letter is a follow up to our telephone conversation of April 11, 2013 regarding the Depository Trust Company's ("DTC") interpretation of current litigation filed by the Securities and Exchange Commission (the "Commission") related to Rule 504 of Regulation D ("Rule 504"). Specifically, you stated that DTC has interpreted the complaint filed in *Securities and Exchange Commission v. Edward Bronson and E-Lionheart Associates, LLC d/b/a Fairhills Capital and Fairhills Capital, Inc.* (U.S. District Court Southern District of New York, filed August 22, 2012) (the "Bronson Complaint") as prohibiting the use of the Rule 504 exemption in the state of Delaware. The purpose of this letter is to provide a basis for rejecting a blanket exclusion of Rule 504 in Delaware.

Bronson Complaint

In the district court complaint filed in *Bronson*, the Commission alleges that, beginning in or about August of 2009, Bronson and the other named defendants (collectively also referred to "Bronson") schemed to purchase billions of shares of stock from small companies, illegally reselling them thereafter to the investing public without meeting registration requirements under federal law. According to the Commission, Bronson purported to rely upon Rule 504 and Delaware state law to avoid registration in connection with these sales. However, says the Commission, the Delaware law exemption that Bronson purported to rely on in compliance with subsection (b)(1)(iii) of Rule 504 in actuality, according to the Commission, was unavailable.

The Commission proffers essentially three separate arguments as to why it believes a Rule 504 exemption was not available in any of the *Bronson* transactions. Initially, the Commission asserts that Bronson's corporate activities had insufficient nexus to Delaware to allow him to rely on Delaware law in meeting Rule 504(b)(1)(iii). Next, the Commission argues that the Delaware exemption on which Bronson relied does not meet the requirements of Rule 504, insofar as the Delaware exemption does not permit "general solicitation and general

advertising." Lastly, avers the Commission, the turnaround sales by Bronson violated Delaware's 12 month holding period requirement.

The Commission, however, does not suggest that Rule 504 is *per se* inapplicable in Delaware. Rather, the Commission alleges that under the specific facts in the Bronson Complaint, where general solicitation and general advertising were utilized, Delaware's state law exemption does not allow for general solicitation and advertising in conjunction with immediate resale and, therefore, states the Commission, Rule 504(b)(1)(iii)'s exemption was unavailable to the defendants.

Rule 504

Title 17 of the Code of Federal Regulations section 230.504 ("Rule 504") provides an exemption for limited offerings and sales of securities not exceeding $1,000,000. The exemption is available to issuers who are not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and are not an investment company or a development stage company, so long as certain conditions are met.

Rule 504 (b) specifies the conditions that must be satisfied to utilize the exemption are sections 230.501 and 230.502 (a), (c), and (d), except the provisions of §230.502 (c) [prohibition of solicitation] and (d) [securities issued as restricted] will not apply, so long as one of the following conditions is met: (i) the offer and sale is made "[e]xclusively in one or more states that provide for the registration of the securities, and require the public filing and delivery to investors of a substantive disclosure document before sale, and are made in accordance with those state provisions" (Rule 504 (b)(1)(i)); (ii) the offer and sale is made "[i]n one or more states that have no provision for the registration of the securities or the public filing or delivery of a disclosure document before sale, if the securities have been registered in at least one state that provides for such registration, public filing and delivery before sale, offers and sales are made in that state in accordance with such provisions, and the disclosure document is delivered before sale to all purchasers (including those in the states that have no such procedure)" (Rule 504 (b)(1)(ii)); or (iii) the offer and sale is made "[e]xclusively according to state law exemptions from registration that permit general solicitation and general advertising so long as sales are made only to "accredited investors" as defined in § 230.501(a)." (Rule 504 (b)(1)(iii)).

The express purpose of the Rule 504(b)(1) conditions is to allow for general solicitation *or* the issuance of unrestricted securities. (SEC Release 33-7644.) If the offering is exempt at the state level, the issuer must comply with the federal general solicitation and resale restrictions, unless the sale is to an accredited investor. If sales are to accredited investors, then general solicitation is available, so long as state law provides for it. Nothing in Rule 504(b)(1)(iii) requires the state law exemption to authorize general solicitation and advertising; however, in order to utilize general solicitation and advertising, the state law exemption must provide for it.

Alternatively, if the conditions identified in Rule 504(b)(1) are not satisfied, the exemption does not evaporate. Rather, the exemption from registration remains and all conditions of section 230.502 (a), (c), and (d) are applicable. In other words, the exemption from registration is for offers and sales of securities not exceeding $1,000,000, so long as there is no general solicitation and the securities issued are restricted.

Delaware Exemption

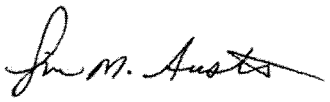
The relevant Delaware state law exemption applicable to the Optigenex offer and sale of securities is Delaware Securities Act §73-207(b)(8) – offer or sale to institutional buyer.[1] Section 510(a)(1) of Part E of the Rules and Regulations Pursuant to the Delaware Securities Act defines "Institutional Buyer" to include an "accredited investor" as defined in SEC Rule 5-1(a)(1)-(4), (7), and (8). Pursuant to Rule 501(a)(8), an entity in which all of the equity owners are "accredited" (as defined in Rule 501(a)(5)-(6)) comes within the definition of "accredited investor." Further, §73-207(b)(8) does not prohibit general solicitation or require a specific investment intent. While there is no express authorization of general solicitation in §73-207(b)(8), neither is there a prohibition as in other sections of Delaware state law.

Delaware Securities Act §73-207(b)(8) therefore meets the requirements of Rule 504(b)(1)(iii). Even under the narrowest of constructions, Delaware §73-207(b)(8) and Rule 504(b)(1) would allow an exemption from state registration and federal registration, so long as there was no general solicitation and the securities were issued as restricted.

CONCLUSION

In view of the forgoing, we are requesting DTC reconsider the applicability of the Delaware 504 exemption in light of the specific facts and circumstances surrounding the use of the exemption by Optigenex. Please contact me directly with any questions or concerns.

Sincerely,
AUSTIN LEGAL GROUP, APC



Gina M. Austin, Esq.

cc: Client

[1] The Delaware exemption for offers to less than 25 people (subsequently repealed January 14, 2011) would also have been applicable at the time the securities were issued. This state law exemption is also silent as to general solicitation as well as resale restrictions.

EXHIBIT 11

Copy, Main

From: Bandler, Aimee Taub
Sent: Tuesday, April 23, 2013 4:53 PM
To: 'Austin, Gina'
Subject: RE: Please see attached
Attachments: 4.23.13 Optigenex ltr.PDF

Gina:

Please see attached.

Thank you.

Aimee T. Bandler
Attorney at Law

Proskauer
Eleven Times Square
New York, NY 10036-8299
d 212.969.3247
f 212.969.2900
abandler@proskauer.com

From: Austin, Gina [mailto:gaustin@austinlegalgroup.com]
Sent: Tuesday, April 16, 2013 2:35 PM
To: Bandler, Aimee Taub
Subject: Please see attached

Aimee,

Please see attached letter regarding our interpretation of the 504 exemption as it relates to Delaware.

Thank you.

Gina

Gina M. Austin
AUSTIN LEGAL GROUP, APC | 3990 Old Town Ave., Ste A112, San Diego, CA 92110 |
Ofc: 619-924-9600 | Cell 619-368-4800 | Fax 619-881-0045

Proskauer Proskauer Rose LLP Eleven Times Square New York, NY 10036-8299

Aimee T. Bandler
Attorney at Law
d 212 969.3247
f 212.969.2900
abandler@proskauer com
www proskauer com

April 23, 2013

VIA EMAIL
Gina Austin, Esq.
Austin Legal Group
3990 Old Town Avenue, Suite A-112
San Diego, CA 92100

Dear Ms. Austin,

This letter is in response to your letter of April 16, 2013 (the "April 16, 2013 Letter"), following up on our phone call of April 11, 2013 (the "April 11, 22013 Call"), regarding the deposit transaction restriction (the "Deposit Chill") on CUSIP 683886303 (the "Issue"), issued by Optigenex, Inc. (the "Issuer").

On the April 11, 2013 Call, I spoke to you regarding the enforcement action brought by the SEC against E- Lionheart Associates LLC, d/b/a Fairhills Capital, *SEC v. Edward Bronson et al.*, 12-cv-6421 (S.D.N.Y., filed August 22, 2012) (the "E-Lionheart Enforcement Action"). I explained that the SEC alleged that E-Lionheart purchased shares of stock from small companies and unlawfully resold such shares to the public in violation of the securities laws by improperly relying on Section 7309(b)(8) of the Delaware Securities Act (the "DSA"). I further explained that, in addition to allegations regarding E-Lionheart's lack of nexus to the state of Delaware, the SEC took the position that Section 7309(b)(8) of the Delaware Securities Act is not an exemption that meets the requirements of Rule 504(b)(1)(iii) under the Securities Act of 1933, as amended. I pointed you to paragraph 23 of the complaint (the "Complaint"):

> The Delaware exemption on which Defendants claimed reliance is also not an exemption that meets the requirements of Rule 504(b)(l)(iii). Rule 504(b)(l)(iii) requires that the state law exemption from registration be an exemption that "permit[s] general solicitation and general advertising." Section 7309(b)(8) [now §73-207(b)(8)] of the Delaware Securities Act-the state law exemption referenced in the subscription agreements -pertains solely to offers or sales that are exclusively made to several specifically enumerated types of institutions (including certain accredited investors that are not natural persons). This state law exemption does not permit "general solicitation and general advertising," as required by Rule 504(b)(l)(iii), and the Delaware Securities Act prohibits solicitation without registration or an

> applicable exemption. Rule 504(b)(l)(iii)'s exemption was therefore unavailable to Defendants' transactions.

I indicated that the SEC alleged that Section 7309(b)(8) of the DSA failed as *per se* matter to satisfy Rule 504(b)(1)(iii). You asserted that this was an incorrect reading of the complaint, and I requested that you send me your assertion in writing.

The April 16, 2013 Letter, however, states that that "DTC has interpreted the complaint . . . as prohibiting the use of the Rule 504 exemption in the state of Delaware." Your statements on this subject are in error, and if there was any misunderstanding this letter should provide clarification.

With respect to Section 7309(b)(8) of the DSA, the Delaware state law exemption at issue in the E-Lionheart Enforcement Action, and the exemption at issue to the Optigenex offer and sale of securities, as explained above, the SEC alleges that it is not an exemption which meets the requirements of Rule 504(b)(1)(iii). In order to meet the requirements of Rule 504(b)(1)(iii), the state law exemption must "permit general solicitation and general advertising so long as sales are made only to 'accredited investors' as defined in Rule 501(a)."

The SEC Complaint does not state, and it is not the position of DTC, that no exemption provided by Delaware law could meet the requirements of Rule 504(b)(1)(iii). DTC also understands that Rule 504 is available without regard to the identity of the state law exemption relied upon if the issuer complies with the conditions of Rule 502 (c) and (d), so that the purchasers acquire "restricted securities" as defined under Rule 144(a)(3), and complies with Rule 144 or another basis provided under the Securities Act for effecting resales. We have not understood your communications to state that the issuer relied upon a different exemption under Delaware law that meets the requirements of Rule 504(b)(1)(iii). Nor do we read your communications at stating that the issuer complied with Rule 502(c) and (d), such that any resales complied with Rule 144 or another basis for such resales under the Securities Act.

Your position as we understand it is based on Section 7309(b)(8) of the DSA and Rule 504(b)(1)(iii). In response to those arguments, DTC cannot adjudicate the allegations of the SEC, and cannot, as you request, "reconsider the applicability of the Delaware 504 exemption in light of the specific facts and circumstances surrounding the use of the exemption by Optigenex."

* * *

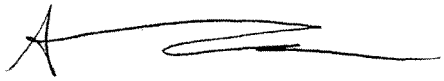
As such, per my email of April 8, 2013, please submit a legal opinion (the "Legal Opinion") either in the form attached as Exhibit B to DTC's notice letter of September 12, 2012, or in the form attached to that email.

Please note that the Legal Opinion must address whether any of the issuances covered by the Legal Opinion relied on Rule 504(b)(i),(ii), or (iii) under the Securities Act, and if so, must provide a citation to the state securities law relied upon. In addition, in light of the litigation *SEC v. Edward Bronson et al.*, 12-cv-6421 (S.D.N.Y., filed August 22, 2012), if an issuance did rely on Section 7309(b)(8) of the Delaware Securities Act, the Legal Opinion must specify and

establish an alternative basis upon which to conclude that such shares were freely tradeable under the Securities Act.

Please submit the Legal Opinion within twenty (20) business days from the date of this letter. If the Legal Opinion is not received within the above timeframe, the Deposit Chill decision will be deemed final. Such determination, however, shall in no way limit DTC's rights to take any other action it deems appropriate with respect to the Issue.

Sincerely,



Aimee T. Bandler

EXHIBIT 12

Copy, Main

From: Austin, Gina <gaustin@austinlegalgroup.com>
Sent: Sunday, April 28, 2013 9:08 PM
To: Bandler, Aimee Taub
Subject: RE: Please see attached

Aimee,

The draft template that you provided does not provide an area for the further analysis that you requested regarding an alternative exemption for transactions that originally relied on Rule 504. Historically, any letter that I have submitted that didn't strictly adhere to the template provided was rejected.

Please advise.

Gina

From: Bandler, Aimee Taub [mailto:abandler@proskauer.com]
Sent: Tuesday, April 23, 2013 1:53 PM
To: Austin, Gina
Subject: RE: Please see attached

Gina:

Please see attached.

Thank you.

Aimee T. Bandler
Attorney at Law

Proskauer
Eleven Times Square
New York, NY 10036-8299
d 212.969.3247
f 212.969.2900
abandler@proskauer.com

From: Austin, Gina [mailto:gaustin@austinlegalgroup.com]
Sent: Tuesday, April 16, 2013 2:35 PM
To: Bandler, Aimee Taub
Subject: Please see attached

Aimee,

Please see attached letter regarding our interpretation of the 504 exemption as it relates to Delaware.

Thank you.

Gina

Gina M. Austin
AUSTIN LEGAL GROUP, APC | 3990 Old Town Ave., Ste A112, San Diego, CA 92110 |
Ofc: 619-924-9600 | Cell 619-368-4800 | Fax 619-881-0045

==========

EXHIBIT 13

Copy, Main

From: Bandler, Aimee Taub
Sent: Wednesday, May 01, 2013 1:59 PM
To: 'Austin, Gina'
Cc: Walsh, Elizabeth Crimer
Subject: RE: Please see attached

Gina:

My colleague Liz Walsh (202.416.5868), cc'd here, will be reviewing the opinion, once its submitted, so you should contact her as to any questions regarding the form, etc.

Thanks.
Aimee

From: Austin, Gina [mailto:gaustin@austinlegalgroup.com]
Sent: Monday, April 29, 2013 12:32 PM
To: Bandler, Aimee Taub
Subject: RE: Please see attached

Do you have time for a phone call today regarding Optigenex?

Gina

From: Bandler, Aimee Taub [mailto:abandler@proskauer.com]
Sent: Tuesday, April 23, 2013 1:53 PM
To: Austin, Gina
Subject: RE: Please see attached

Gina:

Please see attached.

Thank you.

Aimee T. Bandler
Attorney at Law

Proskauer
Eleven Times Square

New York, NY 10036-8299
d 212.969.3247
f 212.969.2900
abandler@proskauer.com

From: Austin, Gina [mailto:gaustin@austinlegalgroup.com]
Sent: Tuesday, April 16, 2013 2:35 PM
To: Bandler, Aimee Taub
Subject: Please see attached

Aimee,

Please see attached letter regarding our interpretation of the 504 exemption as it relates to Delaware.

Thank you.

Gina

Gina M. Austin
AUSTIN LEGAL GROUP, APC | 3990 Old Town Ave., Ste A112, San Diego, CA 92110 |
Ofc: 619-924-9600 | Cell 619-368-4800 | Fax 619-881-0045

==========

EXHIBIT 14

Copy, Main

From: Austin, Gina <gaustin@austinlegalgroup.com>
Sent: Wednesday, May 29, 2013 2:15 PM
To: Bandler, Aimee Taub
Subject: RE: VOIP-Pal Deposit Chill

Thank you Aimee. I believe both companies are going to need extensions until the litigation regarding the 504 issuance is settled. I see there was a motion to dismiss the SEC v. Bronson case filed in March. The court has not yet ruled with regard to that motion.

Also, I sent an email to Susan asking what DTC's procedures are with regard to curing shares that have been issued in violation of Section 5. If the SEC determines that the 504 transactions were invalid then DTC must have a process to cure. You (and Susan) have stated that DTC would not consider cancellation of shares a cure. The response that I received was the "DTC will not offer legal advise." Clearly that is not what I was seeking and was simply an avoidance response as DTC likely does not have a process. I had several suggestions (e.g. register all shares currently held by CEDE on a Form 10, or issue a new class of common, register that class, and provide a 1:1 stock swap for all shares held by CEDE, etc.) The only response I have received is that DTC will not offer legal advise.

At this point the issuers would like an extension at least until the court has ruled on the SEC v. Bronson case. If we decide to move forward through the administrative process for declaratory relief with regard to the "cure" procedures for shares issued in violation of section 5, I believe the process creates an automatic stay with regard to any DTC pending actions but I have to confirm that.

Please advise what additional information you need from me to request an extension pending the outcome of the SEC v. Bronson litigation.

Gina

From: Bandler, Aimee Taub [mailto:abandler@proskauer.com]
Sent: Wednesday, May 29, 2013 8:45 AM
To: Austin, Gina
Subject: FW: VOIP-Pal Deposit Chill

Gina:

Do you require a further extension of time to submit a response for Optigenex or VOIP-pal? Our records indicate they are nearing or past the due date.

Aimee

Aimee T. Bandler
Attorney at Law

Proskauer
Eleven Times Square
New York, NY 10036-8299
d 212.969.3247
f 212.969.2900
abandler@proskauer.com

From: Maj, Donald [mailto:dmaj@dtcc.com]
Sent: Monday, April 15, 2013 4:00 PM
To: 'Austin, Gina'
Cc: Bandler, Aimee Taub
Subject: RE: VOIP-Pal Deposit Chill

Ms. Austin,
Please see the attached letter. Per your request, we will grant you an extension until May 15, 2013 to provide the required submission and legal opinion. However, if the requested materials are not received by that date, the Deposit Chill decision will be deemed final, subject to DTC's right to reevaluate the eligibility status of the Issue in DTC's system.

Sincerely,
Donald Maj

From: Austin, Gina [mailto:gaustin@austinlegalgroup.com]
Sent: Thursday, April 11, 2013 5:06 PM
To: Maj, Donald
Cc: Aimee T Bandler (abandler@proskauer.com)
Subject: RE: VOIP-Pal Deposit Chill

Donald,

I am requesting an extension until May 15 to respond to DTC's request for additional information regarding VOIP-Pal.

Please confirm.

Gina Austin

Gina M. Austin
AUSTIN LEGAL GROUP, APC | 3990 Old Town Ave., Ste A112, San Diego, CA 92110 |
Ofc: 619-924-9600 | Cell 619-368-4800 | Fax 619-881-0045

==========

EXHIBIT 15

DTCC

571 Washington Blvd, 12th Floor
Jersey City, NJ 07310

TEL: 212-855-3298
dmaj@dtcc.com

May 30, 2013

By FEDERAL EXPRESS
Gina M. Austin
AUSTIN LEGAL GROUP, APC
3990 Old Town Ave., Ste A112
San Diego, CA 92110

Re: Imposition of Deposit Chill on Optigenex, Inc./CUSIP 92862Y109

Dear Ms. Austin:

The Depository Trust Company ("DTC") is in receipt of your email dated May 29, 2013 to Aimee Bandler, Esq., outside counsel to DTC, regarding the deposit restriction (the "Deposit Chill") on CUSIP 683886303 (the "Issue"), issued by Optigenex, Inc. (the "Issuer").

In your email, you request an extension "at least until the court has ruled on the SEC v. Bronson case." It is DTC's understanding that you are referring to the motion to dismiss (the "Motion to Dismiss") filed by Edward Bronson, E-Lionheart Associates, LLC, and Fairhills Capital, Inc., in the action *SEC v. Edward Bronson et al., 12-cv-6421* (S.D.N.Y.).

Your request for an extension of time to respond is granted. You must submit a legal opinion ("Legal Opinion"), either in the form attached as Exhibit B to DTC's notice letter of September 12, 2012, or in the form provided to you by Ms. Bandler on April 8, 2013, within twenty (20) business days from the date of the filing of an order resolving the Motion to Dismiss. If the Legal Opinion is not received within the above timeframe, the Deposit Chill decision will be deemed final.

* * *

DTC reserves all rights including the right, if it deems appropriate, to take action with respect to the Issue without notice.

Please be advised that DTC's receipt of any legal opinion, information or documentation as may be required will not automatically result in the determination to lift the Deposit Chill. The outcome of DTC's review and determination may be to continue the Deposit Chill, in which case you will be provided with the reason(s) for not releasing the Deposit Chill.

Sincerely,

Donald Maj

EXHIBIT 16

From: Louis Brilleman <lbrilleman@lbcounsel.com>
Sent: Monday, January 27, 2014 5:26 PM
To: Bandler, Aimee Taub
Subject: RE: Optigenex

Ms. Bandler:

I am reaching out to you on the assumption that you still represent The DTC in this matter. In light of recent new rule proposals aimed at resolving deposit chills and other DTC disciplinary actions, I would like to schedule a conference with you to discuss the issuer's current situation.

If you are no longer involved in this matter, please advise whom I should be contacting.

Thank you.

Louis A. Brilleman, P.C.
1140 Avenue of the Americas, 9th Floor
New York, NY 10036
Phone: 212-584-7805
Fax: 646-380-6635
Email: lbrilleman@lbcounsel.com
Website: www.brillemanlaw.com

From: Bandler, Aimee Taub [mailto:abandler@proskauer.com]
Sent: Friday, April 05, 2013 11:28 AM
To: lbrilleman@lbcounsel.com; Austin, Gina
Subject: Optigenex

Ms. Austin and Mr. Brilleman:

We understand that Mr. Brilleman had been communicating with SNR Denton with respect to the deposit chill on the above issue, and that Ms. Austin has been in contact with DTC and our firm. Please clarify who is currently representing the issuer.

Thank you.

Aimee T. Bandler
Attorney at Law

Proskauer
Eleven Times Square
New York, NY 10036-8299
d 212.969.3247
f 212.969.2900
abandler@proskauer.com

EXHIBIT 17

Copy, Main

From: Louis Brilleman <lbrilleman@lbcounsel.com>
Sent: Thursday, January 30, 2014 10:40 PM
To: Bandler, Aimee Taub
Subject: RE: Optigenex
Attachments: DTC OPGX Discussion.pptx

In preparation of our call, I thought the attached slides may be helpful as an outline of matters to be discussed.

Louis A. Brilleman, P.C.
1140 Avenue of the Americas, 9th Floor
New York, NY 10036
Phone: 212-584-7805
Fax: 646-380-6635
Email: lbrilleman@lbcounsel.com
Website: www.brillemanlaw.com

From: Bandler, Aimee Taub [mailto:abandler@proskauer.com]
Sent: Thursday, January 30, 2014 10:36 AM
To: 'lbrilleman@lbcounsel.com'
Subject: RE: Optigenex

12pm tomorrow works. Thank you for your flexibility.

Aimee T. Bandler
Attorney at Law

Proskauer
Eleven Times Square
New York, NY 10036-8299
d 212.969.3247
f 212.969.2900
abandler@proskauer.com

From: Louis Brilleman [mailto:lbrilleman@lbcounsel.com]
Sent: Thursday, January 30, 2014 10:34 AM
To: Bandler, Aimee Taub
Subject: RE: Optigenex

Let's do tomorrow at 12 pm?

Louis A. Brilleman, P.C.
1140 Avenue of the Americas, 9th Floor
New York, NY 10036
Phone: 212-584-7805
Fax: 646-380-6635
Email: lbrilleman@lbcounsel.com
Website: www.brillemanlaw.com

From: Bandler, Aimee Taub [mailto:abandler@proskauer.com]
Sent: Thursday, January 30, 2014 10:16 AM
To: 'lbrilleman@lbcounsel.com'
Subject: RE: Optigenex

Mr. Brilleman - apologies, but a conflict has come up. I can have a call today before 2pm, or tomorrow before 12:30. Please let me know what works for you,

Aimee T. Bandler
Attorney at Law

Proskauer
Eleven Times Square
New York, NY 10036-8299
d 212.969.3247
f 212.969.2900
abandler@proskauer.com

From: Louis Brilleman [mailto:lbrilleman@lbcounsel.com]
Sent: Tuesday, January 28, 2014 1:53 PM
To: Bandler, Aimee Taub
Subject: RE: Optigenex

OK thanks

Louis A. Brilleman, P.C.
1140 Avenue of the Americas, 9th Floor
New York, NY 10036
Phone: 212-584-7805
Fax: 646-380-6635
Email: lbrilleman@lbcounsel.com
Website: www.brillemanlaw.com

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From: Bandler, Aimee Taub [mailto:abandler@proskauer.com]
Sent: Tuesday, January 28, 2014 1:34 PM
To: 'lbrilleman@lbcounsel.com'
Subject: RE: Optigenex

3pm on January 30 works. I will call you at 212-584-7805.

Aimee

Aimee T. Bandler
Attorney at Law

Proskauer
Eleven Times Square
New York, NY 10036-8299
d 212.969.3247
f 212.969.2900
abandler@proskauer.com

From: Louis Brilleman [mailto:lbrilleman@lbcounsel.com]
Sent: Monday, January 27, 2014 6:07 PM
To: Bandler, Aimee Taub
Subject: RE: Optigenex

Thursday 3pm works for me.

Please confirm.

Thank you.

Louis A. Brilleman, P.C.
1140 Avenue of the Americas, 9th Floor
New York, NY 10036
Phone: 212-584-7805
Fax: 646-380-6635
Email: lbrilleman@lbcounsel.com
Website: www.brillemanlaw.com

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From: Bandler, Aimee Taub [mailto:abandler@proskauer.com]
Sent: Monday, January 27, 2014 5:51 PM
To: 'lbrilleman@lbcounsel.com'
Subject: RE: Optigenex

Mr. Brilleman:

As you know, the proposed rules have not yet been approved nor implemented, and DTC's position in relation to Optigenex has not changed. But I am happy to schedule a time for a call, if you feel it would be useful. I have availability this Thursday, anytime between 2-4pm. If those times don't work for you, please suggest others.

Aimee Bandler

Aimee T. Bandler
Attorney at Law

Proskauer
Eleven Times Square
New York, NY 10036-8299
d 212.969.3247
f 212.969.2900
abandler@proskauer.com

From: Louis Brilleman [mailto:lbrilleman@lbcounsel.com]
Sent: Monday, January 27, 2014 5:26 PM
To: Bandler, Aimee Taub
Subject: RE: Optigenex

Ms. Bandler:

I am reaching out to you on the assumption that you still represent The DTC in this matter. In light of recent new rule proposals aimed at resolving deposit chills and other DTC disciplinary actions, I would like to schedule a conference with you to discuss the issuer's current situation.

If you are no longer involved in this matter, please advise whom I should be contacting.

Thank you.

Louis A. Brilleman, P.C.
1140 Avenue of the Americas, 9th Floor
New York, NY 10036
Phone: 212-584-7805
Fax: 646-380-6635
Email: lbrilleman@lbcounsel.com
Website: www.brillemanlaw.com

you have received this electronic mail message in error, please contact us immediately and take the steps necessary to delete the message completely from your computer system. Thank you.

From: Bandler, Aimee Taub [mailto:abandler@proskauer.com]
Sent: Friday, April 05, 2013 11:28 AM
To: lbrilleman@lbcounsel.com; Austin, Gina
Subject: Optigenex

Ms. Austin and Mr. Brilleman:

We understand that Mr. Brilleman had been communicating with SNR Denton with respect to the deposit chill on the above issue, and that Ms. Austin has been in contact with DTC and our firm. Please clarify who is currently representing the issuer.

Thank you.

Aimee T. Bandler
Attorney at Law

Proskauer
Eleven Times Square
New York, NY 10036-8299
d 212.969.3247
f 212.969.2900
abandler@proskauer.com

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Optigenex Inc.

Deposit Chill and Adverse Consequences

January 2014

Timeline

- 2009: Company issued shares in four Rule 504 offerings to two different investors
- Securities purchase agreements were executed containing all customary investment representations on the part of the investors
- Legal Opinions were issued

Timeline (cont.)

- September 2012: Company counsel received letter from DTC advising that a deposit chill had been imposed on the Company's stock as of August 2011
- The stated reason for the deposit chill was DTC's concern regarding large numbers of shares issued upon conversion of certain convertible notes
- Extensive written and telephone communications ensued between Company counsel and DTC counsel, SNR Denton
- As requested, documents and legal opinions were submitted to DTC counsel and upon review found to be satisfactory, except as they related to the Company's 504 transactions

Timeline (cont.)

- DTC counsel based its refusal to lift the deposit chill on two pending SEC cases commenced in 2011 against parties alleged to have distributed unregistered shares purchased from companies without valid exemption from registration
- Company was not a party to these cases and was not mentioned

Timeline (cont.)

- January 2014: deposit chill remains in effect
- The Company has issued and outstanding 28,425,057 shares of common stock of which approximately 995,000 shares are free trading
- The number of shares as to which DTC has raised concerns is less than 5,000

Issues to be Discussed

- The Company is growing but needs to raise additional capital to expand which it is unable to do pending the deposit chill
- The SEC cases that were cited as the basis for DTC's refusal to lift the chill Company are ongoing and will likely be settled and therefore be of no benefit to the Company
- Interesting fact: SNR Denton is representing one of the defendants in one of the SEC cases

Issues to be Discussed (cont.)

- The Company is being unfairly punished for the actions of third parties, i.e. the 504 purchasers:
  - Purchase agreements were executed among the Company and the 504 purchasers that included customary investments reps and covenants not to distribute the shares in violation of applicable law
  - Legal opinions were issued that the Company was entitled to rely on
  - The SEC cases were commenced long after the Company's 504 transactions were completed
  - The Company did not know and had no reason to know that it was dealing with what turned out to be bad actors years after the fact
  - Even if the 504 purchasers turned out to be bad actors years after the completion of the transactions, no allegations of wrongdoing in the 504 transactions were ever leveled against the Company

Conclusion

- The Company's strong frustration is rooted in the unfairness of DTC's position in that:
  - it is being victimized as a result of the actions of others and
  - there have been no allegations of wrongdoing on the part of the Company
- All Company securities transactions that were scrutinized by DTC counsel were found to have been properly documented which is a clear indication that the Company is careful with its documentation used in its financing transactions
- The Company is growing its business and it markets its products in over 16 countries based on the therapeutic value of its patented technology
- There needs to be a quick resolution of this DTC matter to ensure the Company's survival

EXHIBIT 18

DTCC
Securing Today. Shaping Tomorrow.

ISAAC MONTAL
Managing Director & Deputy General Counsel

55 WATER STREET
NEW YORK, NY 10041-0099
TEL: 212 855 3253
FAX: 212 855 3265
[redacted]
www.dtcc.com

February 10, 2014

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Response to Comments: Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Specify Procedures Available to Issuers of Securities Deposited at DTC for Book Entry Services When DTC Imposes or Intends To Impose Restrictions on the Further Deposit and/or Book Entry Transfer of Those Securities; Release No. 34-71132; File No. SR-DTC-2013-11

Dear Ms. Murphy:

On December 5, 2013, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission (the "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"),[1] and Rule 19b-4 thereunder (the "Filing"). The Filing specified the proposed fair procedures DTC will provide to issuers of securities deposited at DTC for book entry services when DTC imposes or intends to impose certain restrictions on further deposit and/or book entry transfer of those securities.[2] On December 18, 2013, pursuant to Section 19(b)(1) of the Exchange Act, the Commission published notice of the Proposed Rule Change in the Federal Register.[3] During the subsequent comment period, a number of commentators submitted letters to the Commission in response to the Filing (collectively, the "Comment Letters").[4]

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[1] 15 U.S.C. § 78s (b)(l), as amended.

[2] Proposed Rules 22(A) and 22(B) are annexed as Exhibit 5 to the Filing and may be downloaded from the DTCC Web site, http://www.dtcc.com/legal/sec-rule-filings.aspx.

[3] *See* Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Specify Procedures Available to Issuers of Securities Deposited at DTC for Book Entry Services When DTC Imposes or Intends To Impose Restrictions on the Further Deposit and/or Book Entry Transfer of Those Securities, Securities Exchange Act Release No. 71132 (December 18, 2013); 78 FR 77755 (Dec. 24, 2013). Citations in this letter to the Filing will be to the Notice of Filing published on the Commission's Web site, http://www.sec.gov/rules/sro/dtc/2013/34-71132.pdf.

[4] Comment Letters were submitted by (i) Suzanne H. Shatto ("Shatto") (December 20, 2013); (ii) DTCC Bigbake ("Bigbake") (December 27, 2013); (iii) Brenda Hamilton ("Hamilton") (January 8, 2014) (Bigbake and Hamilton are referred to collectively as the "Commenters"); (iv) Simon Kogan ("Kogan")

[redacted]

DTC has considered carefully the points made in the Comment Letters and appreciates this opportunity to respond.

1. ***Section 17A(b)(3)(H) of the Exchange Act Does Not Require a Testimonial or Oral Hearing When Issuers Challenge the Imposition of Restrictions on Services***

Sichenzia argues that pursuant to the Commission's opinion in *In the Matter of the Application of International Power Group, Ltd.* ("*IPWG*")[5] issuers subject to a Deposit Chill[6] or Global Lock have a right to a testimonial hearing pursuant to DTC's Rule 22 ("Rule 22").[7] This argument is based on an overly broad interpretation of the *IPWG* opinion, a misapplication of Rule 22, and is inconsistent with the governing provisions of Section 17A(b)(3)(H) of the Exchange Act.[8]

Section 17A(b)(3)(H) requires clearing corporations, such as DTC, to provide "persons" with "fair procedures" when restricting services.[9] Section 17A(b)(5)(B) requires that fair procedures include notice, the opportunity to be heard upon the specific grounds for denial or prohibition or limitation of services under consideration and the maintenance of a record.[10] Section 17A does not specify the nature of the fair procedures and does not require a clearing corporation to provide an affected person with a testimonial or oral hearing or review by a hearing panel.

In *IPWG* the Commission ruled that issuers are persons within the meaning of Section 17A(b)(3)(H) and ruled that DTC is obligated to provide issuers with fair procedures in connection with a Global Lock.[11] The Commission ordered DTC "to adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H), which may be applied uniformly in any future such issuer cases."[12] Despite Sichenzia's

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(December 22, 2013); (v) Sichenzia Ross Friedman Ference LLP ("Sichenzia") (January 14, 2014); (vi) Louis Brilleman ("Brilleman") (January 14, 2014); and (vii) The Securities Transfer Association, Inc. ("STA") (January 14, 2014). The Comment Letters are available at http://www.sec.gov/comments/sr-dtc-2013-11/dtc201311.shtml.

[5] *In the Matter of the Application of Int'l Power Group, Ltd. For Review of Action Taken by The Depository Trust Co.*, SEC Release No. 34-66611, 2012 SEC LEXIS 844 (Mar. 15, 2012).

[6] Capitalized terms used but not defined herein shall have the meanings ascribed to those terms in the Filing.

[7] *See* Sichenzia comment letter at 2-3 (proposing that "DTC amend the Proposed Rule to state that companies subject to a Deposit Chill or Global Lock are considered an "Interested Person" for the purpose of DTC Rule 22").

[8] Rule 22 provides that DTC Participants are entitled to review of certainly disciplinary actions by a three-member panel. DTC Rules 22 and 6 also provide that issuers are entitled to review by a three-member panel where DTC determines not to accept their securities as eligible for DTC services or revokes a prior determination that the securities were DTC-eligible. Neither Rule 22 nor Rule 6 refer to Global Locks or Deposit Chills which are restrictions on services to securities previously made eligible for DTC services.

[9] *See* Exchange Act, Section 17A(b)(3)(H), 15 U.S.C. § 78q-1(b)(3)(H).

[10] *See* Exchange Act, Section 17A(b)(5)(B), 15 U.S.C. §78q-1(b)(5)(B).

[11] *See IPWG*, 2012 SEC LEXIS 844, at *24. The Commission did not address the subject of Deposit Chills. DTC has nonetheless determined to provide fair procedures to issuers in connection with Deposit Chills.

[12] *Id.* at *32.

assertion to the contrary, the Commission did not direct DTC to apply Rule 22 to issuers of Globally Locked securities or otherwise specify the nature of the fair procedures that DTC must provide to issuers. Notably, the Commission did refer to Rule 22 in *IPWG*,[13] but did not conclude that DTC should apply these (or any particular) procedures to issuers seeking to challenge a Global Lock. Rather than requiring a Rule 22 hearing, the Commission left the specifics of the fair procedures to DTC, directing it to "adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H), which may be applied uniformly in any future such issuer cases." The Filing codifies DTC's response to the Commission's mandate.

In its only post-*IPWG* ruling regarding DTC's obligations under Section 17A(b)(3)(H), the Commission similarly did not require DTC to apply Rule 22 procedures to an issuer challenging a Global Lock or require that DTC otherwise provide any form of testimonial or oral hearing before a panel.[14] In *ATIG*, a globally locked issuer sought a stay pending a decision on the merits of its claim that DTC had imposed a Global Lock in violation of Section 17A(b)(3)(H). In deciding the stay motion, the Commission recited in detail the fair procedures that DTC had provided to the issuer, which did not include Rule 22 procedures or any sort of testimonial or oral hearing.[15] On the basis of those procedures,[16] the Commission denied the request for a stay, stating that "it did not appear to be a strong likelihood that [the issuer] will succeed on the merits" of the Petition.[17]

The STA and Kogan further argue that the DTC restriction process fails to meet constitutionally prescribed due process standards.[18] They are incorrect for several

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[13] *See, e.g., id.* at *22.

[14] *See In the Matter of the Application of Atlantis Internet Group Corp.*, For Review of Disciplinary Action Taken by The Depository Trust Co., SEC Release No. 34-70620, Admin Proc. File No. 3-15431, 7 (Oct. 7, 2013) ("*ATIG*"), available at http://www.sec.gov/litigation/opinions/2013/34-70620.pdf.

[15] The Commission observed that:

> DTC informed Atlantis in writing that it had imposed the Deposit Chill because "unusually large deposits" of Atlantis shares at DTC raised "substantial questions as to whether [the] shares are freely tradable." DTC provided Atlantis a template of a legal opinion letter that was required to lift the Deposit Chill, but Atlantis never submitted one.
>
> After learning of the Commission enforcement action against TJM, DTC imposed a Global Lock on Atlantis's shares. DTC informed Atlantis in writing that it had done so based on allegations that TJM had engaged in an unregistered distribution of Atlantis shares when no exemption from registration was available. Atlantis requested a hearing, and DTC reviewed a proposed legal opinion letter Atlantis submitted in an effort to lift the Global Lock.

ATIG at 7.

[16] The Commission also noted that "DTC's statutory mandate to 'protect investors and the public interest' through accurate settlement of transactions which outweighs any harm that [the issuer] may have suffered as a result of the Deposit Chill and Global Lock."

[17] *ATIG* at 7. The parties in the *ATIG* proceeding are awaiting the Commission's determination on the merits of *ATIG's* petition.

[18] *See, e.g.*, Kogan comment letter at 4; STA comment letter at 5.

reasons. As noted above, DTC's obligations as a clearing corporation are established by Section 17A(b)(3)(H) and not by the standards of the Fourteenth Amendment's due process clause. DTC is not a state actor and not subject to constitutional requirements. In any event, even if due process standards did apply, DTC's fair procedures provide issuers with the process that is due, and an evidentiary or oral hearing would still not be required.[19]

2. *Internal Appeals are Neither Appropriate Nor Necessary*

(A)

In addition to Sichenzia seeking a Rule 22-type hearing when DTC makes an initial decision to impose restrictions, the STA requests that when the initial decision to impose a restriction is made, the issuer should be granted an internal appeal to a DTC hearing panel and be "afforded the due process protections" under Rule 22.[20] The STA's reasoning is that: (1) the "opportunity for an appeal will assure all those participating in the decision-making process give serious consideration to their responsibilities;" and (2) although an appeal to the Commission is available, it is "impractical" given the time delays and costs.[21] These arguments are groundless.

First, the STA's suggestion that an internal appeal is necessary to ensure "seriousness" is without merit. DTC devotes substantial human and financial resources to its compliance function relative to restrictions. Second, to the extent that the STA purportedly is concerned with delays and costs, the STA contradicts its own argument by requesting that an additional level of review be injected into the review process. The most expeditious and cost efficient manner to proceed is for DTC to make its determination as set forth in the proposed rules and then, if adverse to the issuer, for the issuer to appeal the determination to the Commission.

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[19] *See generally Mathews v. Eldridge*, 424 U.S. 319, 348-49 (1976) ("The judicial model of an evidentiary hearing is neither a required, nor even the most effective, method of decision making in all circumstances. The essence of due process is the requirement that 'a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it' ... [and]... procedures [must] be tailored, in light of the decision to be made, to 'the capacities and circumstances of those who are to be heard,' to insure that they are given a meaningful opportunity to present their case.") (citations omitted); *Chauffeur's Training Sch., Inc. v. Spellings*, 478 F.3d 117 (2d Cir. 2007) (holding that Department of Education not required to hold oral hearing before assessing against school; record could be established by written submissions, under the Administrative Procedure Act); *Dominion Energy Brayton Point, LLC v. Johnson*, 443 F.3d 12, 13 (1st Cir. 2006) (finding that Environmental Protection Agency not required to hold formal evidentiary hearing before denying request for a thermal variance; deferred to EPA's determination that no evidentiary hearing even in light of language of Clean Water Act requiring "public hearing"); *Basciano v. Herkimer*, 605 F.2d 605 (2d Cir. 1978) (holding that oral hearing was not required for City's Employees' Retirement System's Medical Division denial of accident disability retirement benefits to plaintiff; evidence can be presented as effectively in writing as orally; benefits of a trial-type hearing outweighed by substantial fiscal and administrative burdens on agency).

[20] *See* STA comment letter at 5.

[21] *Id.*

(B)

In further advocating for an internal appeal process, the STA references rules issued by FINRA and NASADQ that allow for some manner of internal appeal in what the STA mistakenly refers to as "similar contexts."[22] In propounding this argument, the STA fundamentally misunderstands the roles played by FINRA and NASDAQ in the securities industry as compared to the role played by DTC. As explained below, these comparisons are inapposite.

FINRA is a national securities association charged with oversight of member securities firms in order to "safeguard the investing public against fraud and bad practices."[23] FINRA has a specific disciplinary and adjudicatory mandate to "prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade. . . ."[24] FINRA disciplines registered brokers, detects and prevents violations of the securities laws, including fraudulent activities such as insider trading, resolves securities disputes among brokers and investors including arbitrations and mediations around the country.[25]

NASDAQ is a national securities exchange, registered by the Commission under Section 6 of the Exchange Act.[26] As a national securities exchange, NASDAQ, like FINRA, also has a specific disciplinary and adjudicatory statutory mandate "to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade . . .."[27] In addition, NASDAQ has "broad discretionary authority over the initial and continued listing of securities in NASDAQ in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest."[28]

DTC has a different role in the securities industry. It is a registered clearing corporation with a mandate "to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible. . ."[29] DTC does not perform a policing function to root out fraudulent and manipulative conduct in violation of the securities laws. There is no basis to compare FINRA and NASDAQ's adjudicatory procedures arising from their policing functions with the fair procedures provided by DTC for compliance with its eligibility standards.

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[22] *See* STA comment letter at 5.
[23] *See* http://www.finra.org/AboutFINRA/WhatWeDo/.
[24] Exchange Act, Section 15A(b)(6), 15 U.S.C. § 78o–3(b)(6).
[25] http://www.finra.org/AboutFINRA/.
[26] *See* 15 U.S.C. §§ 78f & 78c(a)(26); Findings, Opinion, and Order of the Comm'n, Exch. Act. Rel. No. 53, 128 (Jan. 13, 2006), 71 Fed. Reg. 3,550 (Jan. 23, 2006).
[27] Exchange Act, Section 6(b)(5), 15 U.S.C. § 78f(b)(5).
[28] NASDAQ Rule 5100.
[29] Exchange Act, Section 17A(b)(3)(A), 15 U.S.C. § 78q-1(b)(3)(A).

Turning to the STA's specific references to FINRA Rule 6490 and NASDAQ Rule 5815, the STA fails to recognize a fundamental procedural difference between these rules of a securities exchange and a national securities association and DTC's proposed Rules 22(A) and 22(B). The FINRA and NASDAQ adjudicatory procedures involve appeals from fact-intensive determinations. In contrast, DTC's procedures, as described in the Filing, are premised on straightforward legal presentations and are not predicated on intensive fact finding, as is the case with FINRA regulatory intervention or NASDAQ disciplinary actions.

FINRA Rule 6490 grants FINRA "regulatory authority" and "discretionary power" to not process a corporate action based on a detailed factual inquiry into the governing factors, including "indicators of potential fraud."[30] The FINRA appeal process arises from this fact finding process and, even at that, consists only of *written* submissions, not a testimonial or oral hearing as sought here by the STA.

NASDAQ Rule 5815 applies to listing and delisting determinations. NASDAQ utilizes its broad discretion "to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on NASDAQ inadvisable or unwarranted in the opinion of NASDAQ, even though the securities meet all enumerated criteria for initial or continued listing on NASDAQ."[31] NASDAQ Rule 5815 provides that the issuer may request in writing that the hearing panel review the matter in a written or an oral hearing. Again, as in the case of the FINRA rule cited by the STA, the NASDAQ internal appellate process arises from detailed fact finding by the regulator in order to render the underlying decision. Indeed, reflecting the fact intensive nature of the review, NASDAQ requires the applicant to pay an upfront $10,000 fee in order to cover the costs of reviewing the contentious factual record.[32]

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[30] *See* Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed FINRA Rule 6490 (Processing of Company-Related Actions), To Clarify the Scope of FINRA's Authority When Processing Documents Related to Announcements for Company-Related Actions for Non-Exchange Listed Securities and To Implement Fees for Such Services, 74 Fed. Reg. 68648, 68649 (December 17, 2009); *see* FINRA Rule 6490(d)(3) (detailing the deficiency determination factors: (i) the issuer provided incomplete or inaccurate documentation; (ii) issuer fulfilled its reporting requirements; (iii) FINRA has actual knowledge that the issuer or related party to the corporate action are the subject of a pending, adjudicated or settled regulatory action or investigation by a federal, state or foreign regulatory agency, or a self-regulatory organization; or a civil or criminal action related to fraud or securities laws violations; (iv) FINRA has knowledge that the issuer or related party may be potentially involved in fraudulent activities related to the securities markets and/or pose a threat to public investors; or (v) that there is significant uncertainty in the settlement and clearance process for the security).

[31] NASDAQ Rule 5100.

[32] NASDAQ Rule 5815(a)(3) requires payment of a $10,000 hearing fee. In explaining the basis for this high fee, NASDAQ enumerated "significant Staff time and resources to prepare for and conduct hearings and appeals. . . .In addition, appeals have become more complicated and contentious than when fees were last modified. . . . . In response to increasing complexities, NASDAQ has made new hires in its investigatory group and on several occasions engaged an outside law firm or an investigative firm to assist in connection with matters under review." Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify Fees For Review

In stark contrast, DTC's review processes in connection with Deposit Chills and Global Locks do not arise from contested factual records, as is the case with the referenced FINRA and NASDAQ procedures. DTC's proposed Rules 22(A) and 22(B) do not contemplate that DTC will engage in independent fact finding. Rather, the proposed rules place the responsibility on the issuer which is subject to a Deposit Chill or Global Lock to demonstrate that it meets DTC's requirements to avoid the restriction. In the case of Deposit Chills the burden is on the issuer's counsel to demonstrate that the securities satisfy DTC's eligibility requirements, as described in detail in the Filing.[33] So long as the issuer's proffered legal opinion is consistent with DTC's eligibility criteria, the restriction will be avoided or lifted. DTC does not engage in a factual investigation in any way analogous to the FINRA and NASDAQ regulatory oversight processes. Issuer's counsel is obligated to determine the relevant facts and provide its opinion accordingly.

The analysis in the case of Global Locks is even more straightforward. It only requires that the issuer demonstrate that it was misidentified as the defendant named in the proceeding and its shares are not the subject of the applicable enforcement proceeding.[34] There is no fact finding.

Thus, as reflected in proposed Rules 22(A) and 22(B) and explained in detail in the Filing, DTC's process for determinations regarding Deposit Chills and Global Locks focus on the legal question of DTC eligibility. Again, the DTC process is not analogous to the fact finding underlying FINRA Rule 5815 and NASDAQ Rule 6490 proceedings. These procedures do not constitute models for DTC.[35]

(C)

Finally, the STA's request for "one additional modification"[36] is highly inappropriate. The STA requests that the three-person Rule 22 panel include "one person that is employed by, or a partner of, a registered transfer agent."[37] First, it presupposes the need for some type of testimonial or oral hearing before a panel which, as noted above, is neither legally required nor practically indicated. Second, this proposal is rife

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of Delisting Determinations and Appeal of Panel Decisions, Securities Exchange Act Release No. 34-68676; File No. SR-NASDAQ-2013-004, 4 (January 16, 2013); *see also* FINRA Rule 6490(c) (requiring payment of a $4,000 fee review fee).

[33] *See* Filing at 4-5 (quoting DTC's Operational Arrangements, Section I.A.2).

[34] *See* Filing at 10-11.

[35] In urging that DTC should provide issuers with an internal appellate review process (STA comment letter at 5), the STA fails to note that the internal appeal under NASDAQ Rule 6490 often takes longer than six months. *See* Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change to Modify Certain Disclosure Requirements to Require Issuers to Publicly Describe the Specific Basis and Concern Identified by NASDAQ When a Listed Issuer Does Not Meet a Listing Standard and Give NASDAQ the Authority to Make a Public Announcement When a Listed Issuer Fails to Make a Public Announcement, Securities Exchange Act Release No. 34-68343, File No. SR-NASDAQ-2012-118, 6 (December 3, 2012) ("[The] Exchange's rules give listed issuers the right to appeal a delisting determination or public reprimand letter. This process at the first appeal level involving a hearing panel review can take up to six months.").

[36] STA comment letter at 5.

[37] *Id.* at 6.

with inherent conflicts. Certain transfer agents have been found to issue physical or electronic certificates without proper diligence and oversight, thereby contributing to and even facilitating the distribution of securities that may not satisfy DTC eligibility requirements and are nevertheless deposited into DTC's system. There is no principled basis for blurring the respective functions of transfer agents and DTC under Section 17A.

3. *DTC Has Met the Standards Articulated by the Commission to Impose Restrictions Prior to Notice*

Kogan and Sichenzia comment that DTC's "right" under the proposed rules to impose a Deposit Chill or Global Lock prior to giving notice should be restricted, at minimum, to a clearly defined "imminent harm or injury" to DTC.[38]

In the first instance, DTC believes that it has addressed adequately the imminent harm issue in its Filing.[39] DTC has provided meaningful standards to justify imposition of restrictions in those cases where prior notice is not feasible. These provisions have been developed in keeping with DTC's statutory mandate as a registered clearing agency to "remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest."[40]

In *IPWG*, the Commission ruled that a case-by-case analysis, rather than a set of defined circumstances, should inform DTC's determination to impose a restriction prior to notice:

> If DTC believes that circumstances exist that justify imposing a suspension of services with respect to an issuer's securities in advance of being able to provide the issuer with notice and an opportunity to be heard on the suspension, it may do so. However, in such circumstances, these processes should balance the identifiable need for emergency action with the issuer's right to fair procedures under the Exchange Act. Under such procedures, DTC would be authorized to act to avert an imminent harm, but it could not maintain such a suspension indefinitely without providing expedited fair process to the affected issuer.[41]

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[38] *See* Kogan comment letter at 3; Sichenzia comment letter at 4.

[39] *See* Filing at 13-14; proposed Rule 22(A) §2; proposed Rule 22(B) §2.

[40] Exchange Act, Section 17A(b)(3)(F), 15 U.S.C. § 78q-1(b)(3)(F). DTC is also a self-regulatory organization; *See* Exchange Act, Section 3(a)(26), 15 U.S.C. § 78c(a)(26).

[41] *See* Filing at 13-14, citing *IPWG*, 2012 SEC LEXIS 844, at *29 (footnote omitted); *see also ATIG* at 3, fn. 5 (noting that DTC may, consistent with *IPWG*, impose a Deposit Chill or Global Lock without advance notice in order to avert an imminent harm). Additionally, in terms of "expedited fair process," the proposed rules already provide an expedited timeframe for review for restrictions imposed prior to notice. Specifically, where the Deposit Chill was imposed prior to notice, DTC is required to provide a decision within ten business days of receiving a response from an issuer, rather than the usual allotted twenty business days. *See* proposed Rule 22(A) §2(c).

As explained in the Filing, to facilitate book-entry transfer and other services that DTC provides for its Participants, DTC holds securities deposited for book-entry services in fungible bulk.[42] DTC maintains a robust monitoring system for monitoring compliance with governing law including, without limitation, the relevant provisions of the Bank Secrecy Act ("BSA").[43] When its monitoring system detects that Participants may be in the process of currently and consistently depositing ineligible securities into the system, DTC may impose a Deposit Chill without prior notice to stop further deposits of such ineligible securities. This is essential in order to protect DTC participants, the banks and broker dealers that hold securities on the books of DTC, and their customers, the investing public, from having their indirect holding of securities compromised by the inclusion of improperly offered securities. Nonetheless, consistent with the *IPWG* opinion, proposed Rule 22(A) provides issuers with the opportunity – *on an expedited basis* – to demonstrate that the securities are, in fact, eligible for continued DTC services.[44] Over the past months, as DTC has developed and tested this procedure, in the majority of cases DTC has given prior notice to issuers.

Similarly, when DTC becomes aware that the Commission has commenced a proceeding alleging recent violations of Section 5 of the Securities Act or other applicable provisions of law relating to the free tradeability of securities deposited at DTC, a Global Lock may be imposed before giving notice based upon the Commission's categorical findings that the shares have been distributed illegally. Thus, where the Commission alleges that not only was the proffered exemption from registration illegitimate, but that no other valid exemption was available, it is appropriate to impose the Global Lock as soon as possible. Otherwise, DTC will continue to process transactions in an issue where the Commission has already determined that the shares are not freely tradeable and DTC's fungible bulk is tainted,[45] and in doing so, expose the marketplace to harm in contravention to its statutory mandate. Proposed Rule 22(B) provides the issuer with an expedited opportunity to demonstrate that a mistake has been made.[46] Again, as the new procedures have been developed and tested, and as would be expected consistent with the exercise of prudent judgment, DTC has given prior notice to issuers in the majority of cases.

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[42] *See* Filing at 3.

[43] *See* Filing at 5, citing 31 U.S.C. 5318 (authorizing Secretary of the Treasury to require financial institutions to establish AML procedures); 31 CFR 1020.210 (AML standards for certain financial institutions); *see also* 31 CFR 500.202 (prohibiting, inter alia, dealing in a security registered in the name of a person subject to Office of Foreign Asset Controls sanctions).

[44] *See* proposed Rule 22(A) § 2(c).

[45] Shatto queries whether DTC should "sequester" or mark certificates so that the "suspected securities would not find their way back to any market." Shatto comment letter at 1. This proposal is not feasible, given that the securities are held in fungible bulk.

[46] *See* proposed Rule 22(B) § 2(c).

4. *It Would Neither Be Appropriate Nor Feasible For DTC to Provide a Forum For Issuers to Mount a Collateral Attack on the Commission's Allegations in Pending Enforcement Actions*

(A)

Kogan comments that when DTC relies on the filing of an enforcement action alleging violation of Section 5 of the Securities Act as the basis for imposing a Global Lock, DTC is required to provide a duplicative and competing forum for the issuer to litigate the same allegations asserted in the regulatory proceeding.[47] Kogan fails to provide any authority for this proposition. DTC does not possess adjudicatory powers or authority with respect to marketplace participants. As a registered clearing corporation, DTC is bound by the Securities Act, the Exchange Act, the relevant provisions of the BSA, and the positions taken by law enforcement and regulatory agencies, such as the Commission, and cannot be in the position of second guessing, or undermining regulatory or law enforcement initiatives. Any such requirement would be improper from legal, regulatory and public policy perspectives.[48]

(B)

Alternatively, noting that "enforcement proceedings can drag on for years"[49] or that in some cases "Commission's staff may not be willing to provide any certainty as to the status of an action,"[50] the STA and Sichenzia protest that a Global Lock should be lifted one year after its imposition, or that the issuer be able to re-apply for eligibility, even where there is an ongoing enforcement proceeding relating to the securities. Again, as noted above, this Section 19(b) rule approval process is not the proper forum for interested parties to address their concerns regarding the timing of the regulatory process. In any event, this argument ignores the fact that DTC is bound by the federal statutes and securities laws as well as determinations underlying law enforcement and regulatory enforcement decisions and cannot front-run the ultimate resolution of either.

5. *The DTC Officer Has the Requisite Level of Skill and Independence*

The STA expresses concern[51] that the Officer, as defined in Section 3.1 of DTC's Bylaws, will not be sufficiently skilled or independent to make Deposit Chill

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[47] *See* Kogan comment letter at 5.

[48] *Cf. FDIC v. Mallen*, 486 U.S. 230, 240-241 (1988) (holding that determination by independent body, such as grand jury indictment, provided basis to justify FDIC's suspension of employee without separate pre-suspension hearing; finding that the due process afforded with respect to suspension comported with constitutional due process); *Plaza Health Labs., Inc. v. Perales*, 878 F.2d 577, 583 (2d Cir. 1989) (holding that statute providing that Medicaid provider could be suspended on basis of indictment without any hearing comported with constitutional due process); *Gilbert v. Homar*, 520 U.S. 924, 934 (1997) (holding that criminal charges may provide basis for employee suspension without prior hearing because "an independent third party has determined that there is probable cause to believe the employee committed a serious crime"; finding that suspension of employee comported with constitutional due process).

[49] Sichenzia comment letter at 4.

[50] STA comment letter at 6-7.

[51] *See* STA comment letter at 4.

determinations. This concern is unfounded. Section 3.1 of DTC Bylaws describes the employees who serve as "officers of the Corporation" and makes clear that they are high ranking and charged with substantial responsibility. As far as "independence" is concerned, the proposed rule provides that the reviewing Officer cannot have had any role in the underlying decision to impose the restriction. The Officer will be identified to the issuer and, presumably, if the individual is deemed not suitable by the issuer, for whatever reason, that may be included in the issuer's appeal to the Commission.

The STA also urges that the "initiation of an action to impose chills should be authorized by a [*sic*] senior officers of DTC designated by the Board of DTC, or its Chief Executive Officer, to take such actions."[52] This proposal is unnecessary. Under DTC's long established procedures (that will continue under the proposed rules), the decision to impose restrictions is made by appropriate delegation of authority to a senior-level committee composed of officers drawn from DTC's Operations, Risk Management, Product Management, Application Development and Maintenance, Legal and Compliance Departments.

Finally, the STA again distorts the *IPWG* opinion, by comparing proposed Rule 22(A)'s officer review provision to FINRA Rule 9558 (Summary Proceedings for Actions Authorized by Section 15A(h)(3) of the Exchange Act).[53] FINRA Rule 9558 was referenced in passing by the Commission in *IPWG* specifically as guidance as to the notice process in connection with emergency actions. The Commission did not cite Rule 9558 to set standards for who may serve as a reviewing officer. Had the Commission intended to do so for emergency actions or otherwise, it could have done so.

6. *Issuers, Not DTC, Are Obligated to Make Disclosures to Investors*

The Commenters express concern that investors might not be able to obtain accurate information from issuers or brokers, and propose that DTC provide public disclosure about issuers which are subject to service restrictions, or even possible service restrictions. The Commenters propose a variety of mechanisms, such as a public database identifying currently restricted issuers, advance notice of DTC's contemplated restrictions before DTC makes a determination, and the disclosure of all DTC and issuer correspondence related to a determination relating to a restriction.[54] Although the Commenters recognize that such a burden should be fairly placed on the issuers, they represent that investors suffer when the issuers are, at best, non-accessible or confused, or at worst, untruthful.[55]

While DTC understands the concern of the Commenters that issuers fail to communicate information to shareholders, this obligation cannot be shifted to DTC. When imposing a Deposit Chill or Global Lock, DTC notifies the issuer and its transfer

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[52] *Id.*
[53] *Id.*
[54] *See* Bigbake comment letter at 1; Hamilton comment letter at 1-2.
[55] *Id.*

agent.[56] In addition, when imposing a Global Lock, DTC distributes an Important Notice to its Participants through electronic means. Thus, DTC notifies the involved parties and it would be inappropriate to excuse issuers and others from their obligations to otherwise notify concerned parties.

We note that Important Notices, including those relating to Global Locks, are publically available on DTC's Web site. DTC is in the process of evaluating the potential impact of similar disclosure regarding Deposit Chills, and will determine whether that disclosure is appropriate.

7. *The Form of the Restriction Notice is Appropriate*

The STA and Kogan offer misguided recommendations regarding the restriction notice letter under the proposed rules. First, the STA "believe[s] the Proposed Rule Changes should be revised to state that DTC will provide 'the reason(s) for the [Deposit Chill or Global Lock] in light of DTC's Eligibility Requirements . . .' as opposed to 'the reason(s) for the [Deposit Chill or Global Lock], including the legal authority upon which it was imposed.'"[57] The proposed rules provide that the notice will contain the reasons for the restriction, as well as the required form of response, so that the issuer is able to respond to the issues raised in the notice. This explicitly includes references to DTC's eligibility standards. Indeed, DTC has been using such forms of notice and STA members exposed to these notices are well aware that the notices *do* cite to legal and regulatory authority, and *do* set forth the basis for the restriction as it relates to free tradeability and DTC's eligibility standards.

Kogan comments that (i) the proposed rules do not provide for contemporaneous notice to the Commission and thus denies the issuer the ability to seek a stay, and (ii) that when DTC is unable to deliver the notice to the issuer, it should not deliver the notice to the transfer agent,[58] but rather to the registered agent for the service of process or the Secretary of State in the state of incorporation.[59] First, DTC need not replicate in its rules requirements of the Commission's Rules of Practice.[60] Indeed, Kogan, as counsel for the issuer in *ATIG* faced no procedural barrier in seeking a stay of DTC's decision in that proceeding.

As to Kogan's second point, Section 3(d) of proposed Rule 22(A) and Section 5(c) of proposed Rule 22(B) already specifically provide for service on either the "agent for the service of process designated by the issuer or to the Secretary of State or any state securities agency of the State in which the issuer is incorporated."

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[56] The STA commented that notice should be contemporaneously provided to the transfer agent. This is and will continue to be DTC's practice. The Filing inadvertently omitted this reference and DTC is filing a corrective amendment herewith.

[57] STA comment letter at 4.

[58] The STA also commented that notice should be contemporaneously provided to the transfer agent. This is DTC's current practice, and its omission from the Filing was inadvertent and will be the subject of an amendment.

[59] Kogan comment letter at 3.

[60] *See* Rule 420(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.420.

8. *The Proposed Rules Are Not Required to Govern Restrictions Imposed Prior to the IPWG Opinion*

Brilleman comments that the proposed rules do not provide fair procedures for Deposit Chills imposed prior to the *IPWG* opinion.[61] The proposed rules do not explicitly govern fair procedures for Deposit Chills or Global Locks imposed prior to *IPWG*, which required DTC "to adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H), which may be applied uniformly in any *future* such issuer cases."[62] Nevertheless, for securities that were restricted prior to the *IPWG* opinion, if the issuers have requested review, DTC has been following these procedures, and will continue to provide the same fair procedures as for securities which are subject to restrictions post-*IPWG*.

Brilleman additionally requests that a Deposit Chill, especially one imposed prior to *IPWG*, be lifted automatically after a certain period from the date of its imposition.[63] For chills imposed after the *IPWG* opinion, if the issuer declines to submit a legal opinion or is unable to respond to the notice satisfactorily, a Global Lock will be imposed and may subsequently be released after the applicable six month/one year waiting period as set forth in proposed Rule 22(B).[64] For chills imposed before *IPWG*, DTC will offer those same procedures upon request by the issuer.

9. *The Defined Scope of the Proposed Rules is Appropriate*

The STA and Sichenzia query what fair procedures are available to an issuer which is subject to a restriction on deposits or book-entry services for reasons other than those described in the preambles to the proposed rules.[65] The proposed rules clearly demonstrate that while DTC cannot foreclose the possibility that it would find it necessary to impose a Global Lock or Deposit Chill under other circumstances, the fair procedures contained in the rules "shall be applicable" in such circumstances:

> No provision of this Rule 22[(A)/(B)] shall:
> ...
> be deemed to require the Corporation to take any action, refrain from taking any action or disclose any information that is prohibited to be disclosed, or otherwise do anything that is inconsistent with its obligations under the Securities Act, the Bank Secrecy Act or any rules, regulations or guidance promulgated thereunder, including rules or regulations promulgated by OFAC or executive orders related thereto; ***provided however*, that if the Corporation imposes a [Deposit**

[61] *See* Brilleman comment letter at 1.
[62] *IPWG*, 2012 SEC LEXIS 844, at *32 (emphasis added).
[63] *See* Brilleman comment letter at 2.
[64] *See* proposed Rule 22(B) § 4.
[65] *See* STA comment letter at 3 (proposing changes to the preamble to Rule 22(A)); Sichenzia comment letter at 3-4 ("[W]e propose that the procedures in Proposed Rule 22(A) and Proposed Rule 22(B) apply to any type of Deposit Chill or Global Lock, regardless of the reason for its imposition.").

Chill/Global Lock] under such circumstances, the procedures set forth in this Rule [22(A)/22B] shall be applicable, unless prohibited by or inconsistent with governing law . . . .[66]

This comment by the STA and Sichenzia is incorrect.

Finally, the STA attempts to utilize this rule approval process for unrelated purposes. It seeks "fairness in other contexts," particularly with respect to transfer agent access to DTC's Fast Automated Securities Transfer (FAST) System.[67] This comment has nothing to do with proposed Rules 22(A) and 22(B) and is therefore inappropriate. DTC is prepared to address other issues with the STA in the appropriate forum.

* * *

Based on the foregoing, DTC believes that the proposed rules are consistent with the Section 17A and the *IPWG* opinion. Subject to the filed amendment adding provision for notice to transfer agents, DTC urges that the proposed rules be approved as originally filed.

Sincerely,

[66] Proposed Rule 22(A) § 3(b)(iii); proposed Rule 22(B) § 5(b)(iii)) (emphasis added).
[67] *See* STA comment letter at 7, n. 3.

OPTIGENEX INC.
Age Management Sciences
www.optigenex.com

333 River Street
Suite 912
Hoboken, NJ 07030
Tel: 201-653-5195
Email: dzwiren@optigenex.com
epetraglia@optigenex.com

19 March 2014

VIA EMAIL

Isaac Montal, Esq.
Managing Director &
Deputy General Counsel
The Depository Trust and Clearing Corporation
55 Water Street
New York, NY 10041-0099

Re: Proposed Rule Change
File No. SR-DTC-2013-11

Mr. Montal:

This letter addresses DTC's response of 10 February 2014 ("DTC Response") to the Securities and Exchange Commission concerning the rule change proposed by DTC in December 2013 (the "Filing") and issued by the Commission on 18 December 2013 as a "Notice of Proposed Rule Change." The Notice was published in the Federal Register on 24 December 2013.

Reference in this letter is made also to comments dated 14 January 2014 submitted to the Commission by Louis A. Brilleman, Esq., DTC's consolidated response to all public comments dated 10 February 2014 ("DTC Response"), and to a DTC-released document bearing a month date of September 2013 entitled, *"DTC Service Restrictions on Certain Book-Entry Securities – Procedures for Affected Issuers"* (the "White Paper").

1. Preface

Mr. Brilleman, aforementioned, is outside securities counsel for Optigenex Inc. (OPGX), a company that, since 4 August 2011, has been under a deposit transaction restriction on CUSIP 683886303 (the "Optigenex Deposit Restriction") imposed by DTC. Mr. Brilleman also is one of the commentators on the proposed rule.

In taking the liberty of inquiring into that portion of the aforementioned DTC Response addressing Mr. Brilleman's comments, Optigenex appreciates that the DTC document is directed to the Commission, for the *Commission's* benefit, and that it is *not* intended as a DTC statement on specific pending matters, nor is it an invitation to open a "dialogue" with individual issuers potentially affected by DTC views in respect of the proposed rule. Although Optigenex is one such issuer potentially affected by the rule, our purpose herein is the same as that of every other commentator on the Filing – i.e., to gain a clear understanding of the proposed rule and how it is intended to function.

This letter is not intended to elicit comments from DTC about how Optigenex "might be treated" under the proposed rule, if adopted. But given that the questions contained in this letter might, in fact, be so narrow as to perhaps be of no practical significance in any case before DTC *other* than that of Optigenex, it seems prudent to the undersigned to seek to address our questions initially to DTC, on the chance that they are capable of easy clarification raising no issue potentially affecting whether the proposed rule should be adopted. A response by DTC to the inquiries herein therefore hopefully will obviate the need for a follow-up comment to the Commission.

2. Comments to the Commission by Louis A. Brilleman, Esq.

Included among the comments to which DTC has provided a response to the Commission are those contained in Mr. Brilleman's letter of 14 January. The Brilleman letter is included in the official file posted on line by the Commission at its web site under the heading: *"Comments on DTC Rulemaking."*

In his capacity as outside securities counsel to Optigenex, Mr. Brilleman has been in periodic communication over the past 18 months with DTC and with DTC's outside counsel, including Dentons US LLP (Formerly SNR Denton) and the Proskauer Rose law firm, in connection with

the Optigenex Deposit Restriction. As the Optigenex Deposit Restriction continues to remain in place today, more than 31 months after first having been imposed by DTC, Mr. Brilleman's comments, in the main, are intended to highlight what could be "gray areas" of concern not only to Optigenex, but also to any other issuer similarly situated who wonders when, if ever, the *"chill"* imposed on it will be lifted.

The Brilleman comments seek to ascertain whether the particular impact of deposit restrictions imposed on issuers in cases occurring *prior to* the Commission's opinion in *In the Matter of the Application of International Power Group, Ltd.,* SEC Release No. 34-66611, 2012 SEC LEXIS 844 (Mar. 15, 2012)(*"International Power"*) were considered. Specifically, Mr. Brilleman's concern is that the impact:

(a) May not have been contemplated in drafting the proposed rule, but perhaps should have been considered; or

(b) If contemplated, may not fully or adequately be addressed by the rule, as proposed; or

(c) In actuality, is no consequence, because the problem perceived in Mr. Brilleman's letter simply is one of misunderstanding on the part of the letter writer.

In respect of the proposed rule, Mr. Brilleman highlights what he views as a potential gap into which certain companies might fall under the proposed rule, if adopted.

Referencing deposit restrictions by the commonly used colloquial term, "deposit chills," the Brilleman letter essentially makes two separate, but related observations about the impact of the proposed rule on issuers that were subject to deposit restrictions imposed prior to *International Power*. These observations are recited, respectively, in the two paragraphs quoted below:

> *[O]ne important aspect that has not been addressed in the proposed rule is the case of issuers whose securities were subjected to a deposit chill prior to [International Power]….[D]uring that period, DTC typically did not communicate directly with issuers or their shareholders. Therefore, if there was an eligibility concern regarding a particular security, neither the issuer nor the holder of the security would find out about DTC's refusal to deposit or transfer it until much later…. This also caused serious delays in affected companies' ability to challenge the deposit chill.*
>
> *"[C]ompanies [that were] unable to persuade DTC to lift the deposit chill…will now [under the rule being proposed] need the additional imposition of a global lock followed by a six month or one year waiting period…. By that time, it may*

> *be too late to salvage what is left…. [I]t would serve the public interest…to have a deposit chill lifted automatically after a certain period of time, as in the case of a global lock; at least for those deposit chills imposed prior to International Power."*

(3) Questions Regarding DTC's Response to the Brilleman Comments

In addressing Mr. Brilleman's comments, DTC states:

> *"The proposed rules do not explicitly govern fair procedures for Deposit Chills or Global Locks imposed prior to IPWG [International Power], which required DTC 'to adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H)[of the Securities Exchange Act of 1934], which may be applied uniformly in any future such issuer cases.' Nevertheless, for securities that were restricted prior to the IPWG opinion, if the issuers have requested review, DTC has been following these procedures, and will continue to provide the same fair procedures as for securities which are subject to restrictions post-IPWG."* [Footnote omitted]

DTC initially identifies *"Deposit Chills"* and *"Global Locks"* imposed prior to *International Power* by naming each of these two restrictions separately. It then candidly points out that, as to both of these restrictions, the proposed rule does not *"explicitly govern"* in a case that occurred prior to *International Power*. Although DTC does not link the foregoing statement directly to *International Power*, presumably, DTC impliedly is making reference to the wording of the Commission's directive to DTC that it must adopt fair procedures *"that may be applied uniformly in…future…issuer cases." (Emphasis added.)* But in terms of the language of the new procedures DTC is seeking to have adopted, there appears no guidance either in the proposed rule or in the White Paper in respect of the handling of pre-*International Power* cases or regarding the different circumstances and histories that might be involved in those cases. The only mention is contained in the DTC Response, wherein, in its reply to Mr. Brilleman's comments, DTC states that, for such cases, it will *"provide the same fair procedures."*

Our questions to DTC.

Although we recognize that DTC has no obligation in response to this letter to answer questions regarding the proposed rule, we nevertheless ask the following in order to gain a clearer understanding of the proposed rule, and (as previously said), in so doing, hopefully obviate any

need for submitting to the Commission comments in follow-up to the original comments filed by Mr. Brilleman.

(1) Could DTC please provide reasonable clarity on what is meant by *"the same fair procedures,"* insofar as DTC intends that the proposed rule, if adopted, shall apply to pre-*International Power* cases?

(2) For an issuer not under a global lock, but nevertheless presently subject to a deposit restriction imposed on it prior to *International Power*, could DTC please specify from what point, assuming any, will the one year period discussed in proposed Section 1(b) of Rule 22(B), if adopted, be measured?

(3) As to questions (1) and (2) above, in the absence, as DTC acknowledges, of *"explicit"* language in the proposed rule, could DTC please amplify its responses by providing, as to each, a statement of how DTC believes the response is consistent with the Commission's directive in *International Power* for *"fair procedures"* to be *"adopt[ed]"* and *"applied uniformly?"*

(4) So as to avoid mistake or misunderstanding, could DTC please confirm for Optigenex that, if adopted, proposed Section 1(a) of Rule 22(B), which, as stated by the Commission, *"refers to a Global Lock based on an Enforcement Proceeding with respect to an issue of securities that DTC determines were deposited at DTC[,]"* is not intended to apply in factual circumstances such as those involving Optigenex? [1]

Foundation for our questions.

In essence, our inquiries apply to any case where a deposit restriction was imposed *without* the notice now contemplated by the proposed rule as a new procedure, and in which the deposit restriction, although never replaced by a global lock – another new procedure now contemplated under the proposed rule for any case in which the issuer *"fails to respond or respond*

[1] Question (4) arises because DTC has made Optigenex aware of an ongoing "enforcement proceeding" by the Commission involving other parties and other transactions. As we understand, the only issue in that other proceeding deemed to be of relevance to Optigenex is the Commission's challenge therein to state law based registration exemptions asserted by certain parties to that proceeding who purported to rely on the Delaware exemption statute. It is our view that subsection (a) of Section 1 is inapplicable, not only because the subsection references global locks, as opposed to deposit restrictions, but more importantly, because there exists no enforcement proceeding anywhere in connection with the Optigenex deposit restriction. Nevertheless, in view of the perhaps somewhat unusual history behind the deposit restriction currently imposed on Optigenex, as well as DTC's acknowledgement, in effect, that the "Optigenex situation" is not covered *"explicitly"* by the proposed rule, we would appreciate having DTC's confirmation in this regard so as to ensure a correct understanding of the proposed subsection.

adequately" to the DTC notice – also was never lifted, but rather, became what might aptly be called (at least in the case of Optigenex) a deposit restriction in perpetuity.

Prior to *International Power*, there was no unambiguous set of procedures in place to identify why or when DTC would replace a deposit restriction with a global lock, nor, for the issuer, was there any identifiable point in time after which the issuer reasonably could anticipate that either restriction, once imposed, would be lifted. The proposed rule now being considered by the Commission purports to address each such concern; however, as written, the rule is premised upon a new procedure whereby the deposit restriction, if successfully countered by the issuer, will be lifted; whereas if the issuer's response is inadequate (or nonexistent), it will be replaced by a global lock.

Perhaps not readily apparent from a reading of Mr. Brilleman's comments or from the DTC Response is the fact that, before *International Power*, imposition of a global lock did not necessarily follow from the imposition of a deposit restriction where DTC had determined that the issuer, despite opportunity, failed to establish that the issue meets DTC's eligibility requirements and that the shares involved are freely tradable. In such a case, the restriction was not lifted, but the *form* of the restriction imposed, i.e., a deposit restriction, wasn't necessarily replaced by the more comprehensive global lock restriction. This, of course, would be contrary to the procedure going forward that is now being considered for post-*International Power* cases.

In essence, the proposed rule, as written, is silent on the dichotomy between the way things were done before and the way things are to be done in the future. But as Mr. Brilleman points out in his comment letter, the effect of *any* restriction on a small company in need of access to capital markets is significant to the point where the difference to that entity between a global lock and a deposit restriction is, for practical purposes, negligible. Either restriction, if not lifted at some reasonable point, will threaten the company's existence. In the pre-*International Power* case of a deposit restriction having never been replaced by DTC with a global lock, under the proposed rule, the issuer falls not into one category or another, but into a crevice where the restriction, quite literally, might stand forever (although the issuer, burdened as such, in all likelihood won't last quite so long).

Optigenex presently exists under just such burden of a deposit restriction imposed prior to *International Power* that has neither been lifted nor replaced by a global lock. Under the proposed rule, as drafted, the company is, in effect, "off radar." Although we recognize that, from a subjective standpoint, the impact of the proposed rule on Optigenex ordinarily would not be relevant to commentary on the merits of the proposal, if facts involved in respect of the deposit restriction imposed upon Optigenex arguably disclose an unforeseen and unintentional gap or deficiency in the proposed rule insofar as the rule is intended by its drafters

and/or by the Commission to function, it would seem reasonable to examine that effect – at least to the extent that reasonable scrutiny might assist either in clarifying misconceptions or in providing guidance for modifying the rule so as to correct the deficiencies and achieve the intended purpose.

A brief summary of the facts involving the Optigenex deposit restriction perhaps may serve to put the statement above in appropriate context for purposes of establishing why our queries are relevant to a consideration of the substance, purpose and intent of the proposed rule.

- In July 2012, Optigenex restructured the company, retiring all convertible debt held by the company's secured lenders and issuing restricted common shares to a group of qualified new investors.
- Management discovered at that time that there was a deposit restriction on the company, as to which it previously was unaware.
- Further inquiry led to receipt of a letter from DTC dated 21 September 2012 advising that on 4 August 2011 DTC had imposed the restriction based upon its detection of certain large volume deposits of the company's shares.
- What followed thereafter were several months of exchanges between DTC's outside counsel and outside counsel for Optigenex involving submission by Optigenex of numerous documents and substantial information regarding the deposits, as well as about the company, its business and its prospects for future operation and growth.
- Based on the exchanges between counsel, by January 2013, management believed that its submissions in respect of the deposits in question had been deemed satisfactory to DTC and, accordingly, the company anticipated imminent lifting of the restriction. However, in February 2013, counsel for Optigenex was advised by DTC's counsel that the Commission had filed certain actions against Rule 504 investors in which, *inter alia*, the availability of a state law-based registration exemption under Rule 504 in Delaware was being challenged. According to DTC, the Commission's position in the litigation that Delaware law cannot serve as a valid basis for an exemption meant that a single transaction in 2009, noted by DTC, involving issuance by Optigenex of group of shares, which subsequently entered the market under a Rule 504 exemption based on Delaware law, were on that basis ineligible. Accordingly, DTC asked Optigenex for a new legal opinion substantiating the eligibility of the shares on grounds other than the Delaware law-based grounds that had been relied upon by the attorney who originally reviewed the transaction.

- Given DTC's position on Delaware law due to the ongoing litigation, Optigenex was unable to comply because the transaction in question had been structured based upon Delaware law and the company's attorneys advised management that no other basis for exemption could be asserted.
- As a result, the deposit restriction was not lifted, and, in fact, the restriction remains in place today, *albeit* for reasons other than the original reason for its imposition.
- In the 31 months since its having first being imposed by DTC, the ongoing deposit restriction burdening Optigenex has precluded access by the company to capital markets, while the company's shares in the float are traded minimally and, at best, on a sporadic basis.

The deposit restriction imposed by DTC as a precautionary measure because of large volume deposits, began seven months prior to *International Power*. Accordingly, at that time, DTC had not yet been advised by the Commission that issuers are entitled to procedural safeguards that include notice, as well as other safeguards. Although DTC's reasons may have changed over time, the same restriction still remains in effect.

Specifically, as we understand, a pending litigation involving a Commission challenge, albeit one in a case directed at *other* parties under *different* facts and in *different* circumstances, to a Delaware statute that also once formed the basis of an exemption involving certain securities issued by Optigenex is the reason today why the deposit restriction on Optigenex, first generated in August of 2011 as a precautionary measure because of large volume deposits, has not been lifted. The litigation in question involving Delaware law is *Securities and Exchange Commission v. Edward Bronson, et al, __Civ. ___ (S.D.N.Y. 2012*). Optigenex is not a party to that litigation, and was not involved in any transaction at issue in that case. In that action, our understanding is that the Commission's averments include a challenge to Delaware state law as a viable basis for a registration exemption under Rule 504 of Regulation D. In 2010, Rule 504 and the same Delaware statute were relied upon in a transaction involving Optigenex securities.

Unless and until the matter being litigated is resolved *against* the Commission on Delaware law, DTC essentially has told Optigenex that DTC is bound by the Commission's views in respect of the statute in question and, as such, DTC will not accept statements, evidence or representations from Optigenex to support the eligibility of the Optigenex securities in question for a registration exemption based upon a "Delaware exemption."

While Optigenex understands the reason why DTC cannot accept Delaware law at this time, DTC's position in this regard, which was first taken, or at least first disclosed to Optigenex in the course of communications between Mr. Brilleman (outside securities counsel for Optigenex) and Dentons US LLP (DTC's outside counsel) on 7 February 2013, from that point onward effectively deprived the company of any meaningful opportunity to respond to the deposit restriction, inasmuch as Delaware law would not be considered by DTC until resolution of a case to which Optigenex is not a party and over which Optigenex obviously has no control.

Importantly, the decision not to lift the deposit chill because of the unsettled status of Delaware law was a determination made by DTC at some point after *International Power*. (The Commission's decision in *International Power* was handed down in March 2012, whereas the *Bronson* complaint, which forms the gravamen of DTC's position in respect of Optigenex, was not filed by the Commission until August 2012.) Given that the restriction on Optigenex initially had to do only with large volume deposits, the restriction as it was later based on the Delaware law uncertainty constituted, in effect, a separate and/or substitute "grounds" for imposing the restriction – this notwithstanding that the restriction has been one imposed continuously on Optigenex since August 2011. Unlike the precautionary measure initially taken in response to the "large deposits," the "Delaware law"-based restriction materialized only after *International Power* had already directed DTC to afford procedural safeguards to issuers. As evidenced by the proposed rule, one such safeguard, at least going forward, is that an issuer's failure to respond or respond adequately to a deposit restriction notice will result in the imposition by DTC of a global lock, but that such global lock, once imposed, may be lifted by DTC after one year.

In the case of Optigenex, the safeguards were not afforded to the company, either with respect to the initial rationale for imposing the deposit restriction prior to *International Power*, or with respect to the "Delaware law" rationale that was subject to *International Power*. Although the new rule may indeed provide for the necessary safeguards, it is not clear to the undersigned whether DTC agrees or, if DTC does agree, how the rule, once adopted, will be interpreted and applied so as to accomplish that goal in cases like that of Optigenex and others similarly situated.

At the risk of repeating a point already made, we believe that for purposes of fairness and uniformity of application, the issuer's inability to respond ought to be treated no less favorably than a "non-response," especially in circumstances where the inability does not arise by any fault of the issuer and where, paradoxically, the "consequences" of a non-response (as contemplated

by the new rule) actually serve to *shorten* (to the length of one year) what otherwise can be an indeterminately long period of restriction. Having never had a global lock imposed on it, there is no "one year period" from which Optigenex can mark the duration of the restriction under which it presently labors.

The procedure of imposing a global lock when the issuer fails to respond either was not a DTC procedure in February 2013 (or, for that matter, in August 2011), or else it was a procedure, but not one that was disclosed or applied to Optigenex. Either way, the result has been to keep Optigenex in *limbo*. Had the same deposit restriction been imposed on Optigenex after *International Power*, or had DTC replaced the deposit restriction at some point with a global lock, the one year period contemplated under the new rule by now would have been met.

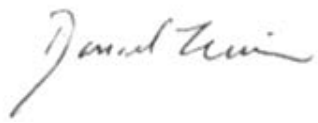
Optigenex believes that any change to the rules, if adopted, ought to gauge fully the impact of the past deficiencies, as well as the non-uniform practices of the past that led to the promulgation of a change. Optigenex is concerned that if given an erroneous interpretation, the proposed rule before the Commission might exacerbate, rather than resolve past deficiencies by adding yet an additional one year to the burden Optigenex has already been shouldering now for 31 months. This almost assuredly would occur should DTC decide that the rule, once adopted, somehow provides that the deposit restriction on Optigenex suddenly should be replaced by a global lock carrying its own "one year" period under the new rule. Apart from the gross unfairness that such a decision would work on Optigenex in light of the inordinate length of time that the deposit restriction has already been in place, and setting aside the substantial negative impact the restriction has had on our company in the public markets during that same period, if, under the rule, as proposed, it is thought that a global lock on Optigenex at any time might have been appropriate, that lock should have been placed on Optigenex long ago, and certainly no later than the date on which the *Bronson* case first came to DTC's attention. That date, having been well over a year ago, leads inevitably to a conclusion that if a global lock, either now in 2014 or at some arbitrary date in the future, is placed on Optigenex due to the "*Bronson* effect" on a transaction that occurred back in 2009, the action, in essence, will be punitive in nature.

In sum, if the proposed rule somehow is interpreted so as to not allow application of the "one year" rule to deposit restrictions imposed prior to *International Power*, we believe that the rule creates a gap that worsens, rather than curses, the procedural deficiencies found by the Commission. Alternatively, if the proposed rule properly may be interpreted so as to allow application of the procedures for lifting a global lock to deposit restrictions imposed prior to

International Power, then the undersigned see no reason why the proposed rule should not be adopted.

We are grateful for your attention to this letter and, in light of the late pending status of the proposed rule, we look forward to a reply at your earliest opportunity.

Respectfully,



Daniel Zwiren
President & CEO

Edward Petraglia
General Counsel

DTC/EGP/mp

cc: Louis A. Brilleman, Esq.