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August 30, 2016

Brent J. Fields, Secretary
United States Securities and Exchange Commission
Division of Trading and Markets
100 F Street, NE
Washington, D.C. 20549

In Re: Release No. 34-77991; SR-DTC-2016-003 (the "Proposing Release")

Dear Mr. Fields:

On August 22, 2016 Depository Trust Company ("DTC") submitted a letter responding to our prior letter dated August 11, 2016 providing comments on an application by DTC under the Securities Exchange Act of 1934, as amended (the "Exchange Act") seeking approval of Rule 33 ("Rule 33") by the Securities and Exchange Commission ("SEC"). In its response to our letter, DTC claims that Rule 33 is necessary to the self-regulatory function of DTC to protect "the clearing agency and its stakeholders" [1]. DTC admits the core of its concern is to protect its stakeholders by retaining unfettered discretion[2] to avert imminent harm to the banks and financial institutions that own DTC. Now that DTC has acknowledged its goal is unfettered discretion to protect the financial institution owners of DTC, we believe the SEC cannot approve such Rule in its present form. The SEC clearly has directed DTC to adopt fair processes that protect issuers and investors affected by DTC action, not DTC stakeholders.

In the response DTC also asserts that actual issuer, investor and law firm experience with DTC is somehow irrelevant to the rulemaking processes of the SEC. We believe experiences such as ours needs to be heard by the SEC staff and is the very reason regulatory rulemaking is required to seek public comment.

In response to DTC's comments we note that nowhere in the SEC release does the SEC direct DTC to adopted rules to protect DTC or DTC's financial institution owners and DTC has not articulated how exercising discretionary authority satisfies its obligation for a fair process "in accordance with its needs and circumstances". What we see is that DTC has been directed, unequivocally, to adopt fair processes for issuers and investors. Continuing to accept unfettered discretion to overstep federal and state investigations so DTC may jump in front of securities regulatory enforcement bodies and the courts cannot be fair. The very history of International Power, which remains chilled to this day, is proof positive that DTC discretion to impose a circuit breaker type remedy on its own is so fundamentally flawed as to be incapable of becoming "fair" merely by layering in processes permitting cure of an ill-conceived or hasty act merely by imbuing "notice" and "appeal" rights. Further, under the proposal, DTC places the burden of proving innocence on the issuer to refute DTC's suspicions or vague concerns about actions of third parties. The standard for exercise of discretion has historically been used by DTC to the

[1] It is unclear how Rule 33 is necessary to protect the clearing firm and DTC stakeholders. Our initial letter cites substantial authority that DTC maintains immunity from suit in most cases under applicable law and DTC has not cited the harm to DTC or its stakeholders that would ensue absent adoption of Rule 33.
[2] Section (d) of the proposed rule.

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disadvantage of small issuers and is too low a hurdle, and the history many issuers have had with removal of chills at DTC confirms that bar is set too high. Rule 33 does not address the discretionary standard for imposition of a chill as parts (a) – (c) have established, nor the standard for continuation, reviews or appeals which should be strictly limited by the SEC to establish the fairness standard mandated by prior decisions.

International Power remains illustrative of the problem. On September 30, 2009 DTC imposed a chill on International Power, exercising its discretion based on SEC action against third-parties. The SEC had filed a complaint against alleged wrongdoers in a fraudulent scheme to remove restrictive legends on securities. Included in the alleged scheme were securities that represented less than 3% of the outstanding shares of International Power. No claim was or has since been made that International Power or its officers or directors or any other investors had any role or culpability. International Power has tried unsuccessfully in numerous ways and on numerous occasions since 2012 to clear the chill. In 2012 DTC suggested that it would remove the chill if International Power cleared itself with the SEC - that it would "lift the suspension on the provision of services for [International Power] securities once the matter of the unregistered IPWG shares is resolved between IPWG and the SEC" – although it was never the subject of claims asserted by the SEC. To seek guidance from the SEC, IPWG thereupon sought a no action letter (a highly unusual step for DTC removal since the SEC does not normally rule on private matters or ongoing investigations in this way). The SEC directed that it is for the issuer and DTC to work out legality issues, and declined to issue no action relief. DTC's circularity of thinking is apparent. It can take its own action denying vital services to issuers, demand SEC regulators act in a manner that is not the norm, and even though an issuer is not the subject of pending or threatened action need not remove a chill. Based upon the dozens of inquiries this firm alone receives it is likely that hundreds of issuers face the same or similar dilemma to this very day. Rule 133 does not speak to the steps an issuer or investor would face in convincing DTC to remove a discretionary chill.

At no time has DTC posited any rationale specific to International Power that warranted the action it took was ever necessary to protect DTC or its stakeholders over and above the issuer or its investors whilst the SEC was investigating third parties or taking action against the culpable parties that held its shares. Thus, International Power and its other investors are but innocent victims and were innocent of wrongdoing all along. There is no better exposition of the dangers of discretion than the International Power facts. DTC is not all-knowing and all-seeing when it comes to its foresight nor does it possess superior skills or resources to the traditional regulatory channels already in existence that understand the importance of protecting innocent bystanders.

As for rights to appeal, we believe International Power requires that appeals should be heard by parties independent of DTC, much like the processes adopted by the national securities exchanges. We would suggest that representatives of the securities bar, Securities Transfer Association, transfer agents, clearing and settlement firms, auditors, and business people, under the guidance of DTC General Counsel, should constitute the panel of hearing officers making recommendations for imposition and removal of chills, continuations and appeals whenever DTC acts. We would be more than happy to recommend or serve on such a committee to assure that fair processes are observed. We believe when the SEC said "fair" rules they meant the rules and exercise of practices to be adopted had to be fair to issuers and investors, and not take into consideration the convenience of DTCs own internal processes or the

protection of its stakeholders from unknown harms, as seems to be the principal motivation. On a final note, DTC fails completely to propose rules that provide any relief rights or right to be heard by investors themselves although they are the most impacted by the decisions. The right to be heard and to an appeal must be extended to investors who are in the best position to assert their innocence and seek avoidance or removal of chills. Without extending rights to investors, the proposal is flawed.

The SEC should require DTC to undertake a study and submit all of its statistics surrounding imposition and removal of chills with the basis for each chill since 2012 and the outcome of the matter leading to the chill prior to adopting any rule. Without this information the SEC cannot fairly assess the important issues raised. In doing so DTC should not be permitted to minimize the significance of the statistics stemming from its actions by citing the infinitesimal percentage of outstanding shares or issuances in which its actions impact issuers to message how effectively it performs overall as this distorts the central cause of ensuring issuer and investor protection. As there is no genuine dispute that only a tiny fraction of all issuers and securities transactions have been the subject of DTC chills/locks. DTC often is known to minimize the significance on affected parties when addressing the SEC at small business forums held by the SEC diverting attention from the central issue. An affected issuer or investor is not helped merely because DTC clears trades successfully for the vast number of other issuers – a fact with which there is complete agreement, but irrelevant.

We believe the new Rule 33 "(d)" proposal leaves DTC in exactly the same place as before. Without more - elimination of discretion/establishment of clear and unambiguous requirements that a regulator or court order direct DTC to impose a chill /lock upon a showing that irreparable harm for failing to act and fair standards for imposition and appeals –there is nothing new in proposed Rule 33 that protects issuers and investors.

Respectfully,

Harvey J. Kesner

Enclosures:

International Power No Action Request
DTC Correspondence

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
TRADING AND MARKETS

February 28, 2013

Norman B. Arnoff
Law Offices of Norman B. Arnoff
60 East 42nd Street, Suite 435
New York, New York 10165

Dear Mr. Arnoff:

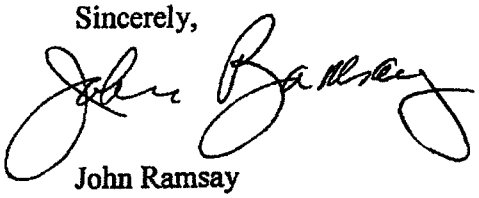
In your letter dated July 9, 2012 ("Letter"), on behalf of International Power Group Ltd. and its officers, directors, and affiliated persons (collectively, "IPWG"), you request, among other things, that the Staff of the Division of Trading and Markets (the "Division") of the U.S. Securities and Exchange Commission (the "Commission")

> review the undisputed and operative facts; apply both law and equity, especially in respect to the remedial policies of the Federal Securities Laws; and issue a No-Action Letter that the Staff will not recommend any enforcement action against either IPWG or the DTC for any claims of unlawful trading in unregistered securities arising from certain offers and sales of IPWG securities on August 17, 2009.

Reference is made in your Letter to the Opinion and Order of the Commission, dated March 15, 2012 (the "Opinion and Order"), for the prior history and facts pertinent to this matter. You further represent that IPWG has made an application to DTC for a review and an evidentiary hearing, as contemplated by the Opinion and Order. Capitalized terms used in this letter but not otherwise defined have the same meaning as in the Letter.

The Division is responsible for assisting the Commission in maintaining fair, orderly, and efficient markets and, among other things, providing day-to-day oversight of major securities market participants, including clearing agencies. Based on the facts presented in your Letter, it is the view of the Staff that in order to provide you with the "no-action" letter you request, we would have to make a determination, among other things, as to whether particular offers and sales of a specified class of securities would result in the sale of unregistered securities. As this and other matters that would need to be considered in addressing your request involve factual inquiries that are outside the Division's purview and are best resolved by counsel and the parties involved through the investigation and determination of facts more readily available to them, we are unable to provide you with the assurances you request.

Sincerely,



John Ramsay
Acting Director

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917-912-1165
(nbarnoff@aol.com)

July 9, 2012

Robert Cook, Division Director
Division of Trading And Markets
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: International Power Group Ltd ("IPWG")
Request For No-Action Letter

Dear Director Cook,

I am the attorney for International Power Group Ltd. ("IPWG").This letter should be deemed by the Staff as a request for a No-Action Letter that will in consequence have the restrictions now imposed since September 30, 2009 by the Depository Trust Company ("DTC") upon the transfer, clearance, and provision for services in respect to IPWG's securities, including but not limited to the non-custodial depository book entry services relating to IPWG shares on deposit at the DTC, removed. Reference is made to the Opinion and Order of the United States Securities and Exchange Commission ("SEC") dated March 15, 2012, annexed hereto as Exhibit A, for the prior history and material facts pertinent to this matter. If the restrictions will continue in effect, not merely IPWG but its public shareholders will continue to be severely prejudiced by the DTC's imposition of a "chill" on the trading in the markets of IPWG's securities.

While application is also being made to the DTC for an immediate review and an evidentiary hearing in accord with constitutional due process and the "fairness requirements of Section 17A(b)(3)(H) of the Securities Exchange Act of 1934" ("the '34 Act"), the issuance of a No-Action Letter will render such a hearing unnecessary because the material facts are not in dispute and what is required is guidance on the law by the SEC. This letter, however, reserves all rights to make additional submissions and to present evidence at a hearing if necessary that must be consistent with due process in view of DTC's status as a "state actor" or quasi-governmental agency.

DTC acknowledges the facts are not in dispute and that IPWG and its officers, directors, and affiliates were not in any way culpable with respect to the events that led to the imposition of the restrictions that were imposed September 30, 2009 to ostensibly protect the market and the public investors from transactions in unregistered securities. The DTC takes the position that the only relevant issues are those of law and the more appropriate manner of addressing the issues is for IPWG to seek guidance from the SEC by making a request for a No-Action Letter.

The facts upon which the DTC based and continues to base its denial of essential services notwithstanding, the passage of close to three (3) years are set forth in the Complaint in the action, SEC v K&L International Enterprises Inc. et al., Case No. 609-CV-1638-31KRS, filed in September 2010 in the United States District Court for the Middle District of Florida, Orlando Division, attached hereto as Exhibit B. The Named Defendants in the action (that do **not** include IPWG and any of its officers, directors or affiliates) engaged in a fraudulent scheme whereby these Named Defendants in connection with the securities of other issuers as well; fraudulently removed restrictive legends from IPWG's securities and then sold them into the public marketplace. The SEC complaint alleges (to which there is no dispute in connection with this request for a No-Action Letter) that the Named Defendants were responsible for sales of eighty-one (81) million shares on August 17, 2009 (which was less than three percent (3%) of both the float and of the outstanding number of shares) and did not then or now present the risk of a secondary distribution of unregistered securities.

It is not disputed and in fact conceded by DTC that IPWG had no role or culpability in respect to the unregistered securities transactions on August17, 2009. Nonetheless DTC imposed and continues to impose from September 30, 2009 to date a denial of essential services for a public company in order to have a public market with transparency and integrity.

This matter has the utmost urgency to my client IPWG and the broad base of public shareholders, who invested in IPWG stock with the understanding and expectation that they had and would have shares that could be traded freely in the capital markets, other than those restrictions that could or would be justified under applicable securities laws and the rules and regulations pursuant thereto. In addition to the SEC, every "state actor" as the DTC is, undertakes and is assigned responsibilities in order to maintain the fairness and integrity of our capital markets. The comprehensive "chill" that the DTC imposed now close to three (3) years ago with respect to the essential services it was to provide in regard to the trading of IPWG shares had not at the time and no longer has justification in law or equity.

The SEC in its Opinion dated March15, 2012 (Administrative Proceeding File No.3-13687) held a "registered clearing agency['s]... [suspension of] book-entry closing and settlement services with respect to... [IPWG] constitutes a denial or limitation of [the] clearing agency's services with respect to any *person*"; a category sufficiently broad to include IPWG and those who hold and seek equity interests in IPWG. In fact, the SEC's Opinion notes "that the Commission has previously included 'issuers' as persons 'having or seeking to have access to facilities of a registered clearing agency". The Commission in its Opinion March15, 2012 held the '34 Act, Section 17A(b)(3)(H) "... requires clearing agency rules to provide fair procedures with respect to 'the prohibition or limitation by the clearing agency of *any person* with respect to access to services offered by the clearing agency'." IPWG has both standing to raise the issue and entitlement to the relief of having the restrictions removed.

DTC's **sole** basis for the categorical and blanket "chill" is the "fungible bulk" rationale. See page 9 of the DTC's Response To Order Directing Filing Of Additional Briefs In Connection With Motion For A Stay, dated December 21, 2009, i.e. "... securities on deposit at DTC are held in 'fungible bulk' and it is not feasible to distinguish between unregulated IPWG shares that are exempt from registration requirements and those that are not". This logic is seriously flawed as a matter of law. In fact, it is wholly inconsistent with settled principles of the federal securities law. The Integration Doctrine, which is settled law, does **not** justify the chill nor apply because the securities transactions in issue were caused solely by the Named Defendants in SEC v K&L International Enterprises Inc. et al. (Case No.6-09 CV-1638, GAP-KRS{Middle District of Florida, filed September 24, 2009}) and not the issuer, its control persons or its affiliates.

The securities and transactions in issue were "not part of a single plan of financing"; not part of "offerings made at or about the same time"; the same type of consideration was not involved; and the securities and transactions in issue were not part of a series of offerings made for the same general purpose. In fact, the transactions in issue were subsequent to any offerings by the issuer and/or persons in control of or affiliated with the issuer, IPWG. See Professor Louis Loss and Joel Seligman's well recognized treatise, Fundamentals of Securities Regulation, Third Edition, 1995, Chapter 3C, Integration, pages 278-282. Integration is the means of analysis and does not justify a blanket chill on the entire "float" or "outstanding shares".

What is also clear (and cannot be disputed as if a court were to take judicial notice), is the SEC was in a position to know all the relevant facts and did **not** commence any enforcement action against IPWG or its officers, or directors (individually or as a group) in relation to the Signature Leisure transactions or seek in rem relief in respect to IPWG securities or further transactions in those securities. This is implicit in the SEC's Opinion April 9, 2010, i.e. that "... given the apparent continued ability of many investors to purchase and sell IPWG securities" it was **not** warranted by law or equity or in the public interest for the SEC to institute an enforcement action against IPWG, its controlling group or affiliated persons or entities other than against the non-affiliated Named Defendants in the K&L Complaint.

Neither IPWG, its control persons, or any affiliates were Named Defendants in the SEC's K&L International Enterprises Inc. action. It is settled law innocent parties are **not** subject to draconian relief, even if such relief can be granted in respect to the identifiable wrongdoers. See Dell v Bernard, 218 Ill.App.3d 719,578 N.E.3d 1053, 1991 Ill. App. Lexis 1383,161 Ill Dec. 407 (1991). The facts of the cited case are in the analogous context of an unregistered broker selling an issuer's registered or properly exempt securities with the court holding the relief sought was not to be granted with respect to the issuer or other innocent parties. IPWG and its shareholders are innocent parties and should not be placed in a position of continuous disadvantage the restrictions imposed by the DTC.

Generally Accepted Accounting Principles ("GAAP") in the pricing of inventory use the customary means of LIFO (Last-In- First-Out) or FIFO (First–In-First-Out) as an appropriate means of dealing with indistinguishable inventory in "fungible bulk." In the present context there should be reliable methodologies to differentiate between the registered and unregistered-non-exempt securities and transactions based upon the filings, timing, and circumstances of the activity in the stock.

However, even in this context, this is unnecessary because the SEC commenced an action and the United States District Court in the Middle District of Florida and enjoined **only** the Named Defendants who were the **exclusive** source of the unregistered shares in regard to the transactions in issue. No report has been made that the injunction enjoining the illegal and unregistered securities transactions or Penny Stock transactions has been violated and therefore it is reasonable to conclude that neither the float nor the outstanding has been further "contaminated" and the public subject to an unregistered distribution since the entry of the SEC's judgment.

The strongest point for consideration, however, is that if the SEC and the United States District Court believed the public investors and the markets were and are still at risk with respect to an unregistered distribution of securities they each had the power to effect a suspension of trading in IPWG stock. If that is the case, how then can the DTC (a quasi-governmental agency) impose and continue to impose the chill against this precedent and impose the more draconian relief that neither the SEC sought nor the Federal Court ordered? DTC argues in its brief submitted to the SEC that should the SEC invalidate the chill it will entail unnecessary and burdensome structural changes for the DTC. However, even if true, this has little or no weight in comparison to the DTC presumptively ignoring SEC precedent and the DTC purporting to grant its own prophylactic relief beyond that ordered by the United States District Court.

Close to three (3) years have elapsed since the Signature Leisure incident where unregistered securities were unlawfully sold by persons and entities other than IPWG, its management, the board and anyone that could be considered an affiliate of IPWG. Indisputably the transactions were without the knowledge or participation of IPWG or anyone associated with it. An exemption pursuant to section 4(1) of the Securities Act of 1933, i.e. "transactions by a person other than an issuer, underwriter, or dealer" will apply to the transactions post the removal of the "chill".

If the customary holding period of two (2) years under SEC Rule 144 is an acceptable measure that any taint with respect to the events and transactions no longer exists, then there is an independent justification for removal of the DTC's chill to ostensibly protect the markets and its public investors from unregistered securities transactions. Furthermore even if the purported taint persists to this point in time it is not justification for a continuous and indefinite denial of IPWG's access to and essential services being provided by DTC that is a practical necessity for a developing public company. See Fundamentals of Securities Regulation, Loss and Seligman, Little Brown 1995, Chapter 3D, Rule 144, pages 338-339.

In view of the SEC injunction in place in respect to the Named Defendants in the K&L Enterprises Inc. action and no indication of IPWG's culpable involvement in the transactions that were the predicate for the SEC injunctive action there is to the greatest extent possible no further danger to the public interest of unregistered and non-exempt securities being traded in the public marketplace and the "chill" should be at once removed as it is seriously damaging IPWG and its current shareholders. Access to the markets by public investors is critical to the transparency and integrity of the capital markets and the current situation resulting from DTC's position as to IPWG's securities is materially inconsistent with the foregoing and against the public interest.

Both the IPWG and the DTC recognize and acknowledge based upon the DTC's position to date that the issues presented by the request for the No-Action Letter can **only** be resolved with the

guidance of the SEC. The March 15, 2012 SEC Opinion provides in pertinent part and in evidence of the foregoing; the following:

> *"DTC added that it would 'lift the suspension on the provision of services for IPWG securities once the matter of the unregistered IPWG shares is resolved between IPWG and the SEC. In that regard DTC urges {IPWG} to address its concerns to the SEC'."* (Emphasis Added.)

Accordingly, the only way that the unjustified "chill" will be removed is for the Division of Trading and Markets to review the undisputed and operative facts; apply both law and equity, especially in respect to the remedial policies of the Federal Securities Laws; and issue a No-Action Letter that the Staff will not recommend any enforcement action against IPWG, its officers, directors, and affiliated persons; as well as the DTC for any claims of unlawful trading in unregistered securities, directly or indirectly arising from the acts and transactions involving IPWG shares on August 17, 2009. This will again allow IPWG securities to be traded in the ordinary and regular course in the market and is wholly consistent with the public interest. This matter has been seriously delayed to the undue detriment of my client, IPWG, and its shareholders. An immediate resolution is necessary that can only be accomplished expeditiously by the SEC issuing a No-Action Letter. Thank you in advance for an anticipated prompt response.

Respectfully,

s/

Norman B. Arnoff

(W/enclosure SEC Opinion & Order March 15, 2012
and Complaint in SEC v K&L Enterprises et al.)

Cc: Gregg M. Mashberg Esq., Proskauer Rose LLP.
Attorney For the DTC

Elizabeth Murphy, Secretary
U.S. Securities & Exchange Commission

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Gregg M. Mashberg Esq.
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July 5, 2012

Re: **International Power Group Ltd ("IPWG")**

Dear Mr. Mashberg:

This letter should be deemed by you and your client to be a formal demand to remove **forthwith** the restrictions imposed by your client, the Depository Trust Company ("DTC"), upon the transfer, clearance, and the provision for services in respect to IPWG's securities, including but not limited to the non-custodial depository book entry services with respect to IPWG shares on deposit at the DTC,. in accord with the Opinion and Order of the United States Securities and Exchange Commission ("SEC"), dated March 15, 2012. If the suspension is not removed forthwith, demand is made for an **immediate** review and an evidentiary hearing in accord with constitutional due process and the "fairness requirements of Section 17A(b)(3)(H) of the Securities Exchange Act of 1934" ("the '34 Act"). This letter also reserves all rights to make additional submissions and to present evidence at a hearing that must be consistent with due process in view of DTC's status as a "state actor" or quasi-governmental agency.

This matter has the utmost urgency to my client IPWG and the broad base of public shareholders, who invested in IPWG stock with the understanding and expectation that they had and would have shares that could be traded freely in the capital markets, other than those restrictions that could or would be justified under applicable securities laws and the rules and regulations promulgated pursuant thereto. .In addition to the SEC, every "state actor" as the DTC is, undertakes and is assigned responsibilities in order to maintain the fairness and integrity of our capital markets. The comprehensive "chill" that the DTC imposed now over two (2) years ago with respect to the essential services it was to provide in regard to the trading of IPWG shares had not at the time and no longer has justification in law or equity.

The SEC in its Opinion dated March15, 2012(Administrative Proceeding File No.3-13687) held a "registered clearing agency['s]... [suspension of] book-entry closing and settlement services with respect to.....[IPWG] constitutes a denial or limitation of [the] clearing agency's services with respect to any *person*"; a category sufficiently broad to include IPWG and those who hold and seek equity interests in IPWG. In fact, the SEC's Opinion notes "that the

Commission has previously included 'issuers' as persons 'having or seeking to have access to facilities of a registered clearing agency." The Commission in its Opinion March15, 2012 held the 34 Act, Section 17A(b)(3)(H) "...requires clearing agency rules to provide fair procedures with respect to' the prohibition or limitation by the clearing agency of *any person* with respect to access to services offered by the clearing agency.' "

DTC's **sole** basis for the categorical and blanket "chill" is the "fungible bulk" rationale. See page 9 of the DTC's Response To Order Directing Filing Of Additional Briefs In Connection With Motion For A Stay, dated December 21, 2009 i.e."...securities on deposit at DTC are held in 'fungible bulk' and it is not feasible to distinguish between unregulated IPWG shares that are exempt from registration requirements and those that are not." This logic is seriously flawed as a matter of law. In fact, it is wholly inconsistent with settled principles of the federal securities law. The Integration Doctrine, which is settled law, does **not** justify the chill nor apply because the securities transactions in issue were independently effected by the Named Defendants in SEC v K&L International Enterprises Inc. et.al. Case No.6-09 CV-1638, GAP-KRS (Middle District of Florida, filed September 24, 2009) and not the issuer, its control persons or its affiliates.

The securities and transactions in issue were "not part of a single plan of financing'; not part of "offerings made at or about the same time"; the same type of consideration was not involved; and the securities and transactions in issue were not part of a series of offerings made for the same general purpose." In fact, the transactions in issue were subsequent to any offerings by the issuer and/or persons in control of or affiliated with the issuer, IPWG. See Professor Louis Loss and Joel Seligman's well recognized treatise, Fundamentals of Securities Regulation, Third Edition, 1995, Chapter 3C, Integration, pages 278-282. Integration is the means of analysis and does not justify a blanket chill on the entire "float" or "outstanding shares".

What is also clear (and cannot be disputed as if a court were to take judicial notice), is the SEC was in a position to know all the relevant facts and did **not** commence any enforcement action against IPWG or its officers, or directors (individually or as a group) in relation to the Signature Leisure transactions or seek in rem relief in respect to IPWG securities or further transactions in those securities. This is implicit in the SEC's Opinion April 9, 2010 i.e. that "....given the apparent continued ability of many investors to purchase and sell IPWG securities" it was **not** warranted by law or equity or in the public interest for the SEC to institute an enforcement action against IPWG, its controlling group or affiliated persons or entities other than against the non-affiliated Named Defendants in the K&L Complaint.

Neither IPWG, its control persons, or any affiliates were Named Defendants in the SEC's K&L Enterprises action. It is settled law innocent parties are **not** subject to draconian relief, even if such relief can be granted in respect to the identifiable wrongdoers. See Dell v Bernard, 218 Ill.App.3d 719,578 N.E.3d 1053, 1991 Ill. App. Lexis 1383,161 Ill Dec. 407 (1991). The facts of the cited case are in the analogous context of an unregistered broker selling an issuer's registered or properly exempt securities with the court holding the relief sought was not to be granted with respect to the issuer or other innocent parties.

Generally Accepted Accounting Principles ("GAAP") in the pricing of inventory use the customary means of LIFO (Last-In- First-Out) or FIFO (First –In-First-Out) as an appropriate means of dealing with indistinguishable inventory in "fungible bulk." In the present context there should be reliable methodologies to differentiate between the registered and unregistered-non-exempt securities and transactions based upon the filings, timing, and circumstances of the activity in the stock. However, even in this context, this is unnecessary because the SEC commenced an action and the United States District Court in the Middle District of Florida enjoined **only** the Named Defendants who were the exclusive source of the unregistered shares in regard to the transactions in issue. No report has been made that the injunction enjoining the illegal and unregistered securities transactions or Penny Stock transactions has been violated and therefore it is reasonable to conclude that neither the float nor the outstanding has been further "contaminated" and the public subject to an unregistered distribution since the entry of the SEC's judgment..

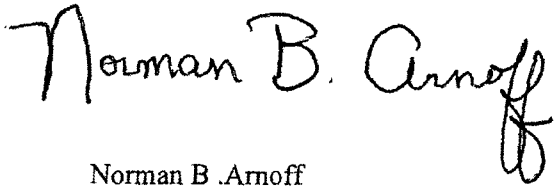
The strongest point for your client's consideration, however; is that if the SEC and the United States District Court believed the public investors and the markets were at risk with respect to an unregistered distribution of securities they each had the power to effect a suspension of trading in IPWG stock. If that is the case, how then can the DTC (a quasi-governmental agency) impose and continue to impose the chill against this precedent and impose the more draconian relief that neither the SEC sought nor the Federal Court ordered. DTC argues in its brief submitted to the SEC that should the SEC invalidate the chill it will entail unnecessary and burdensome structural changes for the DTC. However, even if true, this has little or no weight in comparison to the DTC presumptively ignoring SEC precedent and the DTC purporting to grant its own prophylactic relief beyond that ordered by the United States District Court.

Over two (2) years have elapsed since the Signature Leisure incident where unregistered securities were unlawfully sold by persons and entities other than IPWG, its management ,board and anyone that could be considered an affiliate of IPWG. Indisputably the transactions were without the knowledge or participation of IPWG or anyone associated with it. An exemption pursuant to section 4(1) of the Securities Act of 1933 i.e. " transactions by a person other than the issuer ,underwriter, or dealer" will apply to all the transactions post the removal of the "chill".

In the event IPWG or any of its control persons or affiliates make a distribution of securities as that is term is defined under applicable law IPWG will file a registration statement with the SEC and/or comply with applicable exemptions and give DTC reasonable notice to the extent that the transactions are under IPWG's control and/or it has knowledge or reasonable notice of these transactions. Accordingly, for this and other reasons stated, there is to the greatest extent possible no further danger to the public interest of unregistered and non-exempt securities being traded in the public marketplace and the "chill" should be at once removed as it is seriously damaging IPWG and its current shareholders. Access to the markets by public investors is critical to the transparency and integrity of the capital markets and the current situation resulting from DTC's position as to IPWG's securities is materially inconsistent with the foregoing and against the public interest.

If the "chill" is not removed forthwith and the services restored, IPWG, on behalf of itself and its public and innocent shareholders, **demands an immediate, fair, and due process hearing** as mandated by the SEC Opinion March 15,2012. Please advise, and thank you for your anticipated courtesy and cooperation. This matter has been seriously delayed to the undue detriment of my client and its shareholders and immediate resolution is necessary.

Respectfully,



Norman B .Arnoff

(W/enclosure SEC Opinion & Order March 15, 2012)
Cc: Elizabeth Murphy, Secretary,
U.S. Securities & Exchange Commission

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES AND EXCHANGE ACT OF 1934
Rel. No. 66611 / March 15, 2012

Admin. Proc. File No. 3-13687

In the Matter of the Application of

INTERNATIONAL POWER GROUP, LTD.
c/o John Benvengo, CEO/President
1420 Celebration Blvd., Suite 313
Celebration, FL 34747

For Review of Action Taken by

DEPOSITORY TRUST COMPANY

OPINION OF THE COMMISSION

REGISTERED CLEARING AGENCY PROCEEDING

Denial of Access to Services

Registered clearing agency suspended book-entry clearing and settlement services with respect to issuer's securities held by clearing agency's Participants. *Held*, suspension constitutes denial or limitation of clearing agency's services with respect to any person, and proceeding is *remanded* to clearing agency in order to provide the requisite fair procedure.

APPEARANCES:

John Benvengo, CEO and President, for International Power Group, LTD.
Gregg M. Mashberg, of Proskauer Rose LLP, New York, NY, for the Depository Trust Company.

Appeal filed: November 16, 2009
Last brief received: June 28, 2010

International Power Group, Ltd. ("IPWG") has appealed from a decision of The Depository Trust Company ("DTC"), a registered clearing agency,[1] to suspend indefinitely book-entry clearing and settlement services to its Participants with respect to IPWG's common stock. DTC challenges IPWG's right to Commission review of DTC's decision.

I.

DTC provides clearing and settlement services for its "Participants," *i.e.*, broker-dealers and other firms that satisfy the requirements of DTC Rule 2, with respect to the Participants' trades of "Eligible Securities."[2] In order to make a new issue of securities DTC eligible, DTC requires issuers to submit an Eligibility Questionnaire, which, among other things, requires the issuer to provide information about the issue's registration or exemption status.[3] DTC provides two levels of services to its Participants for "Eligible Securities": (1) a "full range of depository services," including "book-entry delivery and settlement through [DTC's] Underwriting Service," and (2) a "limited DTC service such as its Custody Service."[4] IPWG's common stock was granted status as an Eligible Security. Prior to September 30, 2009, DTC provided the full range of services to its Participants for IPWG's common stock.

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[1] DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation. DTC, as a registered clearing agency, falls within the definition of a self-regulatory organization ("SRO"). 15 U.S.C. § 78c(a)(26). DTC provides clearance, settlement, custodial, underwriting, registration, dividend, and proxy services for a substantial portion of all equities, corporate and municipal debt, exchange-traded funds, and money market instruments available for trading in the United States. In 2010, DTC processed 295,000,000 book-entry transfers of securities worth $273.8 trillion.

[2] DTC Rule 5 defines an "Eligible Security" as "a Security accepted by the [DTC], in its sole discretion, as an Eligible Security. The [DTC] shall accept a Security as an Eligible Security only (a) upon a determination by the [DTC] 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 [DTC] may, in its sole discretion, determine from time to time."

[3] DTC's Operational Arrangements, Section I.A.1, state, "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 United States Securities and Exchange Commission ('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)."

[4] DTC Operational Arrangements Section I.

On September 24, 2009, the Commission filed a complaint in the United States District Court for the Middle District of Florida against a number of defendants (the "Civil Litigation").[5] Neither IPWG nor any of its officers or directors was named as a defendant. The complaint alleged that four issuers, including IPWG, issued shares of common stock to the defendants named in the complaint (the "Complaint Defendants") without adhering to the registration requirements of Section 5 of the Securities Act of 1933.[6] The Complaint Defendants, in turn, sold the shares to the public in unregistered transactions when no exemption from registration was available.

As relevant here, the complaint alleged that IPWG assigned to Complaint Defendant Signature Leisure, Inc. ("Signature") "about $270,000 of alleged debt that [IPWG] owed to one of its officers for loans he supposedly made to the company." The complaint further alleged that the debt agreements included convertibility provisions under which Signature could convert the debt into IPWG stock. The complaint alleged that Signature exercised these conversion rights and that IPWG issued over 162,000,000 shares to Signature. The complaint states, "As of August 17, 2009, Signature Leisure has sold less than half of these shares to the investing public. On information and belief, it maintains control of the remaining shares. Moreover, under the second agreement, about $80,000 in 'debt' remains for possible conversion [into] more than one hundred million shares of International Power stock."[7]

On September 30, 2009, DTC issued an "Important Notice" to its Participants that stated, "As a result of [the Civil Litigation], DTC has suspended all services, except Custody Services, for the below-referenced issues," which included the common shares of IPWG. IPWG, when it learned of the Important Notice, requested DTC to provide a hearing, pursuant to DTC Rule 22, on the suspension of services announced by the Important Notice.[8] DTC denied IPWG's request on November 3, 2009.

DTC stated that Rule 22(f) was not applicable to the suspension announced in the

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[5] *SEC v. K&L Int'l. Enters., Inc. et al.*, No. 6:09-CV-1638-31KR (M.D. Fla. Sept. 28, 2009), Lit. Rel. No. 21224.

[6] 15 U.S.C. § 77e.

[7] The court entered, pursuant to settlement, a final judgment as to the Complaint Defendants on May 12, 2010. Under the terms of the settlement, Signature agreed, without admitting or denying the allegations of the complaint, to (1) an injunction against future violations of Section 5 of the Securities Act; (2) pay disgorgement in the amount of $716,904, plus prejudgment interest thereon in the amount of $16,456.52; (3) pay a civil penalty in the amount of $50,000 under Section 20(d) of the Securities Act; and (4) a three-year bar from participating in an offering of penny stock under Section 20(g) of the Securities Act.

[8] DTC Rule 22(f) provides an opportunity for Interested Persons to be heard on "any determination of the [DTC] that an Eligible Security shall cease to be such." IPWG, as an issuer of securities traded using DTC's services, is an "Interested Person" under DTC Rule 22.

Important Notice. According to DTC, IPWG common stock remained an "Eligible Security" under DTC's Rules because DTC continued to provide custodial services for IPWG common stock.[9] DTC added that it would "lift the suspension on the provision of services for IPWG securities once the matter of the unregistered IPWG shares is resolved between IPWG and the SEC. In that regard, DTC urges [IPWG] to address its concerns to the SEC." DTC did not explain what action IPWG should seek from the Commission. IPWG filed the instant appeal.[10]

II.

IPWG's appeal raises two issues: (1) whether the Commission has jurisdiction to review the suspension as a limitation on access to services under Section 19(f) of the Securities Exchange Act of 1934;[11] and (2) whether IPWG has standing to request Commission review under Section 19(d) of the Exchange Act. Exchange Act Section 19(f) authorizes Commission review of SRO action prohibiting or limiting "any person with respect to access to services offered by [the SRO] or any member thereof." Exchange Act Section 17A(b)(3)(H) further requires clearing agency rules to provide fair procedures with respect to "the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency." The statutes do not specify who is included within the class of "any person" entitled to fair procedures and Commission review if they are denied or limited "with respect to access to services offered by" a clearing agency,[12] and we are unaware of any precedent

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[9] DTC confirmed in its brief that it has no express provision for reviewing denials or limitations on access other than those set forth in Rule 22.

[10] In connection with IPWG's appeal, in March 2010, DTC requested oral argument before the Commission. IPWG did not oppose DTC's request for oral argument. On June 3, 2010, the Commission determined that, "based on the unique facts and circumstances of [IPWG's] appeal," it was appropriate to exercise the Commission's discretion to grant DTC's oral argument request. Oral argument was initially scheduled to occur in April 2011, but IPWG requested a delay of the date of the oral argument because its counsel had withdrawn from representing IPWG in this appeal. The oral argument was re-scheduled for July 2011. However, IPWG subsequently informed the Commission that it did not intend to appear at oral argument, and the Commission determined that, under the circumstances, it was appropriate to cancel the oral argument. DTC did not object to the cancellation of oral argument.

[11] Because DTC's action was not disciplinary in nature, the Commission does not have jurisdiction under Section 19(e) of the Exchange Act.

[12] Section 19(d)(2) provides that a person "aggrieved" by any SRO action set forth in Section 19(d)(1), including denials or limitations on access, may apply to the Commission for review. There is neither a statutory definition of nor legislative history concerning the term "aggrieved" in the context of Section 19(d). We conclude that whether IPWG has standing as a person "aggrieved" by DTC's action turns on the determination of whether IPWG is "any person"

(continued...)

construing the language in the context of services offered by a clearing agency. We note, however, that the Commission has previously included "issuers" as persons "having or seeking access to facilities of a . . . registered clearing agency."[13]

The legislative history of Sections 19(f) and 17A(b)(3)(H) does not address this issue directly. These provisions were added in the Senate bill.[14] In support of its argument that it is entitled to a process for challenging DTC's suspension of services, IPWG cites the portion of the Senate Report that states, "With respect to non-members, the Committee believes the Exchange Act should be amended to require all self-regulatory agencies to adopt procedures which will afford constitutionally adequate due process to non-members directly affected by self-regulatory action."[15] However, it appears that this statement refers to members and non-members of exchanges and registered securities associations, and thus is not directly apposite to clearing agency participants or non-participants.[16]

In support of its argument that IPWG is not within the class of persons entitled to a process for challenging DTC's actions, DTC looks to another portion of the Senate Report discussing the obligation of clearing organizations to provide fair procedures: "As self-regulatory organizations under this title, registered [clearing organizations have] responsibilities over participants and the conduct of participants."[17] The next sentence in the Report refers the reader back to the Report's discussion of the fair procedures required of registered securities exchanges in the context of disciplinary actions against members of the exchange.[18] However, as DTC acknowledges, the suspension of services with respect to IPWG's securities at issue here was not disciplinary in nature.

The Senate Report states that review is available for exchange or registered security association action that "prohibits or limits any person access to services offered by the self-

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[12] (...continued)
within the meaning of Section 19(f) and Section 17A(b)(3)(H).

[13] Self-Regulatory Organization Proposed Rule Changes, 40 Fed. Reg. 40509, 40510 (Sept. 3, 1975).

[14] S. 249, 94th Cong. (1975) (enacted).

[15] S. Rep. No. 94-75 at 25 (1975), *reprinted in* 1975 U.S.C.C.A.N. 179, 204.

[16] *Compare* Exchange Act Section 3(a)(3) (defining "member" for exchanges and registered securities association), 15 U.S.C. § 78c(a)(3), *with* Section 3(a)(24) (defining "participant" of clearing agency), 15 U.S.C. § 78c(a)(24).

[17] 1975 U.S.C.C.A.N. at 302.

[18] *Id.*

regulatory organization or a member thereof. . . . "[19] Similarly, the Senate Report states that a clearing agency "must provide a fair and orderly procedure with respect to . . . the prohibition or limitation by the clearing agency of access by any person to services offered by the clearing agency."[20] However, neither statement specifically addresses the class of persons who may apply for review or be entitled to fair process.

Where an agency confronts such ambiguity in a statute it administers, the agency's textual construction of a statute is entitled to deference.[21] We first note that the legislative history stressed the importance of any SRO's role and responsibilities, and the consequent need to hold SROs accountable for their actions through the provision of a fair process to hear challenges to their actions. In addition, one of the primary purposes of the 1975 amendments to the Securities Exchange Act of 1934, which created the National System for Clearance and Settlement of Securities ("NSCSS"), was to eliminate the need for the physical transfer of stock certificates in connection with the settlement among brokers and dealers of securities transactions.[22] By reducing the temporal lags between trade of securities and settlement, the NSCSS provides a legal framework in which securities can be traded quickly and efficiently, while reducing the systemic risks that would otherwise exist. Under the NSCSS, registered clearing agencies like DTC maintain contractual relationships with and provide services directly to the holders of the securities traded using the clearing agencies' services, and not the issuers of those securities. Such a framework results in the enhanced efficiencies of a system of centralized clearing of securities trades. Our interpretation of the statute is informed by these overarching goals.

DTC urges that a person must receive a service directly from a registered clearing agency to be a person entitled to Section 19(f) review. DTC asserts that only Participants are such persons because they receive services directly from DTC, IPWG receives no services directly

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[19] *Id.* at 309.

[20] *Id.* at 301.

[21] *See Chevron, U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 & n.11 (1984) (If. . . Congress has not directly addressed the precise question at issue [in a statute administered by a federal agency], . . . the question . . . is whether the agency's answer is based on a permissible construction of the statute"); *Salvatore F. Sodano*, Securities Exchange Act Rel. No. 59141 (Dec. 22, 2008), 94 SEC Docket 12714, 12716 & n.7 ("If the language of a statute entrusted to our administration is ambiguous, our interpretation of the text is entitled to deference by reviewing courts, as long as the interpretation is reasonable.") (citing *SEC v. Zandford*, 535 U.S. 813, 819-20 (2002) (citing *United States v. Mead Corp.*, 533 U.S. 218, 229-30 & n.12 (2001))); *Fin. Planning Ass'n. v. SEC*, 482 F.3d 481, 487 (D.C. Cir. 2007).

[22] *See* 15 U.S.C. § 78q-1(e).

from DTC, and therefore IPWG is not a "person" covered by Section 19(f).[23] However, if DTC were correct about Congress's intent, a more obvious way to achieve that intent would have been to limit Section 19(f) review to denials or limitations of "any [Participant] . . . to access to services offered by [the clearing agency] to such [Participant]. . . ." Congress instead chose the terms "any person" and "with respect to access to services," suggesting a class of persons broader than those with direct access to services themselves. In this regard, Exchange Act Section 17A(b)(3)(H) (which was enacted at the same time as Sections 19(d) and (f)) shows that Congress knew how to differentiate between Participants and non-Participants. Section 17A(b)(3)(H) requires clearing agency rules to provide a fair procedure for "disciplining *participants*, [and] the denial of *participation* to any persons seeking *participation* therein," but then requires such a fair procedure for "the prohibition or limitation by the clearing agency of *any person* with respect to access to services offered by the clearing agency" (emphasis added).

We agree with DTC that the reach of "any person" in Sections 17A(b)(3)(H) and 19(f) is not limitless. However, we believe that issuers occupy a unique position in the regulatory scheme and conclude that "any person" in those provisions must include issuers of securities with respect to which a clearing agency provides clearance and settlement services. In establishing the NSCSS, Congress sought to eliminate the paper transfer of issuers' securities. DTC's role as an SRO and securities depository offering book-entry clearing and settlement services is central in this scheme, and those services are the fundamental ones offered by DTC. We have previously held that to be eligible for review under Sections 19(d) and (f), an SRO's action must deny or limit "the applicant's ability to utilize one of the fundamentally important services offered by the SRO."[24] Any suspension by DTC of clearance and settlement services with respect to an issuer's securities means that all trades in that issuer's stock would require the physical transfer of stock certificates, which affects the issuer of the suspended securities directly, because of the potential impact on liquidity and price for the issuer's stock due to the difficulties and uncertainties inherent in physical transfer of stock certificates.

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[23] In support of this position, DTC notes that Exchange Act Section 6(b)(7), 15 U.S.C. § 78f(b)(7) (governing exchanges), and 15A(b)(8), 15 U.S.C. § 78*o*-3(b)(8) (governing registered securities associations), require fair procedures in the event of "the prohibition or limitation by the [exchange or association] of any person with respect to access to services offered by the [exchange or association] *or a member thereof*." Section 17A(b)(3)(H), as discussed above, does not include the language "or a member thereof." According to DTC, the absence of this language in Section 17A indicates that Congress intended that clearing agencies provide fair procedures only to Participants themselves, not to third parties who may receive services from a "member thereof." (DTC takes the further position that IPWG receives no services from either DTC or any of its Participants.) However, we note that Exchange Act Section 17A(b)(6) prohibits a registered clearing agency from prohibiting or limiting access by any person to services offered by one of its participants. Moreover, this argument does not address the significance of the terms "any person" and "with respect to access to services" in both Exchange Act Sections 19(f) and 17A(b)(3)(H). *See* discussion in text *infra*.

[24] *Morgan Stanley & Co., Inc.*, 53 S.E.C. 379, 385 (1997).

Broker-dealer Participants trading securities subject to a suspension may, of course, be affected by loss of or increased cost of doing business, or difficulties in fulfilling market-making obligations. While these negative impacts of a DTC suspension on a Participant could be remedied by challenging DTC's denial of the Participant's access to services,[25] however, a Participant may have the easier alternative of buying and selling other securities. Individuals who wish to buy or sell securities that have been suspended might be negatively affected as well,[26] but those negative effects are limited in scope. An owner wishing to sell a suspended security may suffer the one-time cost and inconvenience involved in a paper transaction, and a prospective buyer can either accept any cost and inconvenience of a paper transaction or opt to purchase a different security. For an issuer, however, the negative impact of a suspension is of indefinite duration and affects all transactions in its suspended securities.

We also note that DTC includes issuers whose securities cease to be Eligible Securities in the Rule 22 definition of Interested Persons who are entitled to an opportunity to be heard.[27] DTC suggests that, because DTC continues to provide custodial services for IPWG securities, IPWG remains an Eligible Security and is therefore not entitled to an eligibility hearing under DTC Rule 22.[28] However, DTC seems to recognize different degrees of "eligibility." For example, DTC's Operational Arrangements state that a security must either be registered with the Commission or subject to a valid exemption from registration in order for that security "to be made *eligible* for DTC's book-entry delivery and depository services" (emphasis added). The November 3, 2009 letter from DTC counsel to IPWG states that a material portion of the IPWG securities held in DTC custody are neither registered nor exempt (the two criteria for eligibility).

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[25] *But see infra* note 28 (under DTC's interpretation of Rule 22, Participants would not necessarily appear to have the right to challenge suspensions of this type).

[26] IPWG attached, as exhibits to one of its briefs in this appeal, statements from IPWG investors that broker-dealers restricted their ability to buy and sell IPWG shares during the period immediately after DTC suspended clearance and settlement services with respect to IPWG's securities. However, it nonetheless appears that trading continued after the suspension.

[27] The Commission order approving this amendment to Rule 22 states only that the amendment "would authorize an issuer or participant to contest a decision denying or terminating a security's depository-eligibility status." Exchange Act Rel. No. 23498 (Aug. 4, 1986), 36 SEC Docket 386, 387. It does not discuss what constitutes "eligibility" for purposes of fair process.

[28] Under DTC's narrow reading of Rule 22(f), even Participants would not have a right to a hearing to challenge the suspension at issue, notwithstanding DTC's concession that Participants are "persons actually affected by [DTC's] restriction on services." DTC does not address this anomaly other than to state that Participants "may present their concerns to DTC's executives."

DTC's brief to us on appeal further states that tens of millions of unregistered, non-exempt IPWG shares had been deposited at DTC and that "[s]uch non-freely tradable shares are not DTC eligible."

DTC has not articulated an adequate rationale for providing a hearing to an issuer for whose securities DTC will provide no services, but not to an issuer whose securities are denied those clearance and settlement services that go to the heart of DTC's role as a clearing agency. DTC contends that its decision to deny IPWG's hearing request is consistent with DTC's Rules and the purposes of the Exchange Act, because IPWG's continuing status as an Eligible Security allows clearance and settlement services to resume immediately, as soon as IPWG "resolves [the] matter" "of the very serious problem of millions of its unregistered shares having been deposited at DTC." In contrast, according to DTC, if IPWG were no longer an Eligible Security, IPWG would have to re-apply and be confirmed for status as an Eligible Security before such services could resume. DTC has not explained, however, what IPWG must do to "resolve the matter," and, in the meantime, IPWG is substantially affected by the suspension of critical DTC services. IPWG argues, "[t]he only substantive difference between IPWG's indefinite and summary suspension and the determination that IPWG is not an Eligible Security is . . . the lack of procedural and administrative safeguards available to IPWG as an Interested Party [sic] under the summary suspension." Furthermore, consistent with DTC's position that only Participants, not issuers, have a right of Commission review pursuant to Section 19(f), even issuers entitled to a Rule 22 hearing in the event eligibility is either denied or revoked in its entirety would not have a right to challenge the fairness of, or action taken by DTC at the conclusion of, such a hearing. This result seems anomalous, and DTC offers no rationale to explain this outcome.

We conclude, based on the analysis above, that the language "any person with respect to access to services" in Exchange Act Sections 19(f) and 17A(b)(3)(H) requires fair procedures at the registered clearing agency and permits Commission review of denial of access to issuers, such as IPWG, whose securities have been suspended from clearance and settlement services offered by a clearing agency, even if those services are not provided directly to the issuer.[29] DTC's rules cannot control the scope of the statutory terms in Exchange Act Sections 17A(b)(3)(H) or 19(f). Moreover, while DTC does not have a contractual relationship with

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[29] DTC's assertion that it provides services only to its Participants is based in part on its Rule 6, which lists the services it provides and does not include in that list the acceptance of issuer securities as eligible, and in part on its argument that it has contractual relationships only with its Participants, not with issuers.

issuers, it does have a business relationship with them. As noted, DTC requires issuers to provide it with proof that their shares are either registered with the Commission or subject to a valid exemption before DTC will deem the shares eligible and has accorded the right to a Rule 22(f) hearing to issuers whose securities cease to be Eligible Securities under Rule 22.[30]

Accordingly, we find that IPWG is a "person" entitled both to "fair procedures" under Exchange Act Section 17A(b)(3)(H) in connection with DTC's suspension of clearance and settlement services with respect to IPWG's securities held by DTC Participants and to Commission review under Exchange Act Section 19(f) of DTC's suspension determination.

III.

Exchange Act Section 17A(b)(5)(B) states that, when a registered clearing agency determines that "a person shall be . . . prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for . . . prohibition or limitation under consideration and keep a record." Section 19(f) further provides that any Commission review will be based on the record before the self-regulatory organization, suggesting the necessity of compiling a record adequate to support any decision by DTC.

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[30] In support of DTC's position that it owes no fair procedure to issuers like IPWG, DTC states, "Otherwise, the door may be flung open to all those who do business with a participant, including their institutional and retail customers." We believe, based on the analysis above, that DTC's relationships with the issuers of Eligible Securities are distinguishable from those between DTC and the institutional and retail customers of its Participants.

For example, in order to be able to trade securities using DTC's services, individual and retail customers of Participants are not required to provide information directly to DTC, nor is there any direct contact between DTC and those customers. Issuers, on the other hand, must provide DTC with a completed questionnaire in connection with eligibility requests.

Further, DTC has submitted, as an exhibit to its brief, evidence indicating that, on November 20, 2009, several weeks after DTC's suspension of services, trading volume in IPWG's securities was over 5,000,000 shares. Thus, individual shareholders were able to avoid the effects of the suspension by selling their shares, at least as of November 20, 2009. However, unlike individual shareholders, IPWG remains subject to the stigma of the suspension over two years after its initial imposition. Moreover, there might be other long-term effects on IPWG if the lengthy continuation of the suspension affected liquidity and share prices.

For many issuers, DTC does provide some recourse in circumstances such as those in which IPWG finds itself. An issuer may pursue, through a DTC Participant, the withdrawal of its securities from Eligible Security status.[31] Once a Participant's request to withdraw the issuer's securities from eligibility status is granted, the issuer can, with the assistance of a DTC Participant, re-apply for status as an Eligible Security. As part of the re-application for eligibility, the issuer may need to obtain an opinion of counsel stating that its securities were either registered with the Commission or the subject of a valid exemption from registration.[32]

The option of pursuing a withdrawal of and re-application for eligibility through a Participant, however, may not be available to all issuers, especially relatively small companies such as IPWG, simply because Participants may find that not enough of their customers hold the issuer's securities for pursuit of the withdrawal and re-application for eligibility to be worthwhile to the Participant. If an issuer is unable to find a Participant willing to engage in this process with the issuer and also has no independent recourse when denied access by DTC to clearing and settlement services, then, in those circumstances, no person may have a means of challenging DTC's suspension of this central service in the NSCSS and ensuring DTC's accountability for its action. Thus, this indirect route for an issuer to respond to an order denying some but not all services with respect to its securities is not an adequate substitute for a direct opportunity for the issuer to be heard by DTC.

Given the record currently before us, we cannot conclude that DTC provided IPWG with the procedural safeguards required by Section 17A. DTC's Important Notice fails to meet the statutory requirements because (1) it was not sent to IPWG itself, but rather to DTC's Participants;[33] and (2) it merely points to the existence of the Commission's complaint against certain IPWG shareholders without any additional explanation of why the existence of the complaint warrants the suspension of clearance and settlement services with respect to IPWG's securities. Moreover, although Section 17A states that parties such as IPWG must receive an opportunity to be heard, DTC's November 3, 2009 letter responding to IPWG's request for a

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[31] An issuer's securities may be withdrawn from their status as Eligible Securities only with the assistance of a Participant. *See* Exchange Act Rel. No. 47978 (June 4, 2003), 80 SEC Docket 1309, 1310 ("DTC's proposed rule change provides that upon receipt of a withdrawal request from an issuer, DTC will take the following actions: (1) DTC will issue an Important Notice notifying its [P]articipants of the receipt of the withdrawal request from the issuer and reminding [P]articipants that they can utilize DTC's withdrawal procedures if they wish to withdraw their securities from DTC; and (2) DTC will process withdrawal requests submitted by [P]articipants in the ordinary course of business but will not effectuate withdrawals based upon a request from the issuer.").

[32] *See* "Information for Securities to be Made 'DTC-Eligible'," http://www.dtcc.com/products/documentation/asset/Securities_DTCEligibility.pdf, pp. 4-5.

[33] The record indicates that IPWG learned of the suspension a few days after the Important Notice was issued after being informed by a customer of a DTC Participant.

hearing states that "DTC declines [IPWG's hearing] request." The Important Notice also does not specify the expected duration of the suspension, nor does it specify the actions that IPWG must take to remove the suspension.

DTC asserts that it informally provided IPWG "an analogous procedure," implying it has satisfied any Section 17A requirements it may have with respect to IPWG. Specifically, DTC avers that it: (1) provided several oral responses to inquiries from IPWG's counsel regarding the reasons for the suspension of services, as well as possible means of lifting it; (2) reviewed IPWG's October 26, 2009 letter requesting a Rule 22 hearing on the suspension of services; and (3) issued a letter on November 3, 2009, responding to IPWG's October 26 letter, setting forth its reasons for the suspension of services and suggesting possible avenues for its resolution. However, the content of the discussions between DTC and IPWG's counsel are not part of the record currently before the Commission.[34] Moreover, in the November 3, 2009 letter and before us, DTC claims that IPWG should "address its concerns to the SEC" in order to remove the suspension, but, as noted, neither the Important Notice, nor DTC in its briefs on appeal, articulates what relief DTC believes the Commission could provide to an issuer in IPWG's circumstances here.

DTC also states that it was required to act urgently in imposing the suspension because the Commission complaint in the Civil Litigation identified serious concerns that the "fungible bulk" of IPWG securities in DTC custody may have been tainted.[35] 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

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[34] As a result, we do not know whether DTC suggested that IPWG withdraw and re-apply for status as an Eligible Security. In any event, as noted above, this process does not give the issuer the opportunity to contest the validity of the suspension and requires the assistance of a DTC Participant. And there is no indication that any DTC Participant sought to assist IPWG in such a manner here.

[35] "Fungible bulk" means that there are no specifically identifiable shares directly owned by DTC Participants. Rather, each Participant owns a *pro rata* interest in the aggregate number of shares of a particular issuer held at DTC. Each customer of a DTC Participant owns a *pro rata* interest in the shares in which the DTC Participant has an interest. DTC argues that it is necessary to suspend clearance and settlement services to all of IPWG's shares held in DTC custody, not just the shares held by the Complaint Defendants, because it is impossible for DTC to distinguish which shares are freely tradable and which are not, since the shares are held in DTC's "fungible bulk" of IPWG securities.

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.[36]

DTC argues that process beyond that already provided to IPWG would serve no purpose. The reason for DTC's suspension (*i.e.*, the existence of the Commission's 2009 complaint) is uncontroverted and therefore, DTC contends, there are no relevant facts in dispute. Further, DTC claims that IPWG's culpability for the violations that served as the basis for the Commission's complaint was immaterial to the determination to suspend clearance and settlement services with respect to IPWG's securities.

However, several specific issues, which we consider important in making a determination whether DTC's actions were consistent with the purposes of the Exchange Act, remain unaddressed by the record of DTC's action that we currently have before us.[37] The lack of a record below makes it impossible for the Commission to assess the merits of these issues. For these reasons, it is necessary to remand the proceeding to DTC for such consideration.

IV.

Based on our review of the record and the applicable authorities discussed above, we conclude that IPWG is entitled to Commission review of DTC's suspension of clearance and settlement services with respect to IPWG's common shares, and that DTC did not provide IPWG with adequate fair procedure in connection with the suspension. In accordance with these determinations, we remand this proceeding to DTC for development of the record in accordance with this opinion and for further consideration, pursuant to procedures that accord with the

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[36] DTC may design such processes in accordance with its own internal needs and circumstances. It may look for guidance to the processes provided: (1) under Federal Rule of Civil Procedure 65(a) and (b), Fed. R. Civ. P. 65(a) and (b), with respect to requests for preliminary injunctions and temporary restraining orders; and (2) under FINRA Rule 9558 with respect to actions authorized by Section 15A(h)(3) of the Exchange Act. These processes include (1) specification of the type of evidence that must be included in an initial notice to justify immediate action; and (2) processes that provide an expedited opportunity for the opposing party to be heard.

[37] For example, in support of its argument that the suspension of clearance and settlement services with respect to all IPWG shares, and not only those held by the Complaint Defendants, was unnecessarily draconian, IPWG argues that the remedies available to individuals who purchase securities sold in violation of Section 5 of the Securities Act of 1933 provide adequate protection of the public against the sales of unregistered securities. DTC does not respond to this IPWG argument, other than to reiterate that it is impossible to distinguish between the holders of particular shares in the "fungible bulk." IPWG could also address whether its securities currently are registered or exempt from registration.

fairness requirements of Section 17A(b)(3)(H) of the Exchange Act, of the determination to suspend all services, except custody services, for the common shares of IPWG. In addition, we believe that DTC should 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. We do not intend to suggest any view on the outcome of this remand.

An appropriate order will issue.[38]

By the Commission (Chairman SCHAPIRO and Commissioners WALTER, AGUILAR, PAREDES and GALLAGHER).

Elizabeth M. Murphy
Secretary

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[38] We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

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June 14, 2010

BY FAX and FEDERAL EXPRESS

Ms. Elizabeth M. Murphy
Secretary
United States Securities and
Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Administrative Proceeding File No. 3-13687

Dear Ms. Murphy:

Enclosed for filing please find the original and three copies of The Depository Trust & Clearing Corporation's Response To The Commission's April 13, 2010 Order Scheduling Briefs. This document was filed with your office by facsimile this afternoon.

The Commission's cooperation is greatly appreciated.

Respectfully,

Gregg M. Mashberg

Cc (by fax and Federal Express): Dorhan Lee LLP

Norman B. Arnoff
nbarnoff@aol.com
300 East 56th Street
New York, New York 10022
212- 751-0064
917-912-1165

December 18, 2009

Robert Murphy, Esq.
Staff Attorney, Branch Chief
United States Securities and
Exchange Commission
New York Regional Office
Three World Financial Center, Suite 400
New York, NY 10281

Re: In the Matter of International Power Group (NY-8013)

Dear Mr. Murphy,

Our conversation of Monday was not satisfactory. My client-company's forward progress and the interests of the IPWG public investors (now numbering in excess of 3500 investors) need more clarification of the issues that the SEC staff has concerns about and therefore we requested an informal meeting not intending to restrict the scope of the investigation; terminate the investigation; or extract information from the staff inappropriately but merely for us to better focus upon the issues not only for the company but most significantly the public investors. IPWG and its Board and officers have and will continue to cooperate; as you must understand however cooperation in the regulatory and investigative context requires an informed dialogue with meaningful communication from the staff to give better focus to the company's cooperation.

As you can also well understand a public company involved with foreign governments, funding sources, and other persons and parties has to make complete, accurate, and fully explanatory disclosures including the status of a pending SEC investigation or else have its prospects and those of its public investors impaired. The context that IPWG and its current management now confront because the lack of clarity and specificity with respect to the issues has placed the company in an untenable position for its future. The company's efforts at full disclosure are not only practically impossible but highly detrimental because of this lack of specifity.

The Order of Investigation is dated November 20,2008 .Reference should be made to Paragraphs II A, B, and C i.e. "possible" violations of Section 5 (the registration provisions of the Securities Act of 1933 {the 33 Act}); "possible" violations of Section 17(a) of the 33 Act and Section 10(b) of the Securities Exchange Act of 1934 {the 34 Act}),the anti-fraud provisions of the 33 and 34 Acts; and "possible" violations of Section 13(a) of the 34 Act and Rules 12b,20,13a-1,13a-11 and 13a-13 in connection with "possible" false and misleading filings and reports .There is a total want of specificity to these key operative paragraphs and they do not give educative notice of what particular transactions or reports present issues regarding the statutory and rule provisions identified by the formal order that the Staff asked the Commission to authorize so it could conduct the investigation.

No person and no other entity other than IPWG is identified as an actual participant in any identifiable transaction at any given point in time and no report or filing is identified specifically as "possibly" false and misleading. Mr. Casey's and your reference to the subpoenas and document requests as a way of ascertaining what the staff is focused in upon is flawed because it is the formal order which is the customary and prime instrument to set the parameters of the investigation. The three (3) key paragraphs are not sufficiently clear to facilitate the kind of cooperation current management desires or to effect remedial measures where necessary and institute the internal controls that will give the SEC comfort and be consistent with the needs and interest of its many public investors.

Fraud and misconduct allegations under Federal Rules of Civil Procedure ("FRCP") 9(b) require specificity in pleadings and court papers when such charges are made in the United States District Courts, where the Commission litigates its cases. This is to give the adversary notice of what he, she, or it has to answer; which is basic fairness when significant business and reputation interests are implicated. This is the case whether the context is civil litigation in the federal courts or providing those called upon to be responsive to the SEC and who do elect to fully cooperate with the staff in an investigation pursuant to a formal order as IPWG's current management has now chosen.

No one is suggesting or requiring the staff to draft a formal order of investigation with the specificity of a complaint in the United States District Courts but the order does have to have a modicum of intelligibility so that public companies and their current management can focus upon what conceivably needs to be addressed and remedied. As long as cooperation is given credence; not merely upon the issue of sanctions but whether the Commission brings or does not bring a case, a meaningful dialogue is mandatory for the Commission's processes. Reference should be made to the Seaboard factors, among which is cooperation and which the absence of clarity undermines.

For all the foregoing reasons since you have declined to meet and it is our intention to make a formal submission to the Commission in the next few weeks I need you now to specify the transactions and persons or entities that raise the issues of violations of Section 5 of the '33 Act in Paragraph II A of the Formal Order.

Further in respect to Paragraph II B you need to specify those transactions and persons who "possibly" defrauded and/or were "possibly" defrauded, so appropriate remedies can be pursued. What material misstatements or omissions to state material facts in connection with the purchase or sale of what "certain securities" were made and/or occurred? In respect Paragraph II C you need to identify those specific SEC filings and press releases from the numerous filings and reports over several years that raise issues for you and your colleagues otherwise you cannot expect to receive an informed response addressing your concerns.

My client and its public investors, certainly after over a year from when the Formal Order of Investigation was issued by the Commission are entitled to have the staff clarify the issues with greater specificity and clarity as to the persons, parties, and transactions that constituted the "possible" violations of the Federal Securities Law provisions cited. As a result of my review along with other counsel and professionals, I do not believe the company through its current management engaged in conduct that violated the federal and state securities laws. If there were violations they were not knowing and willful nor did they cause loss to public investors. It is for those reasons that I want to be sure of the foregoing conclusion and now request the staff's clarification of the issues; solely in order to put the company on a track fully consistent with the interest of its public investors and in order to assure that the company and its current management is in compliance with all applicable laws. Please give this letter the full consideration it deserves and requires.

Thank you for your anticipated courtesy and cooperation.

Respectfully

Norman B. Arnoff

Norman B. Arnoff.

cc John Benvengo , President and CEO of IPWG

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 66611 / March 15, 2012

Admin. Proc. File No. 3-13687

In the Matter of the Application of

INTERNATIONAL POWER GROUP, LTD.
c/o John Benvengo, CEO/President
1420 Celebration Blvd., Suite 313
Celebration, FL 34747

For Review of Action Taken by

DEPOSITORY TRUST COMPANY

ORDER REMANDING PROCEEDING TO REGISTERED CLEARING AGENCY

On the basis of the Commission's opinion issued this day, it is

ORDERED that this proceeding with respect to International Power Group, Ltd. be, and it hereby is, remanded to The Depository Trust Company for further consideration.

By the Commission.

Elizabeth M. Murphy
Secretary

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES AND EXCHANGE ACT OF 1934
Rel. No. 66611 / March 15, 2012

Admin. Proc. File No. 3-13687

In the Matter of the Application of

INTERNATIONAL POWER GROUP, LTD.
c/o John Benvengo, CEO/President
1420 Celebration Blvd., Suite 313
Celebration, FL 34747

For Review of Action Taken by

DEPOSITORY TRUST COMPANY

OPINION OF THE COMMISSION

REGISTERED CLEARING AGENCY PROCEEDING

Denial of Access to Services

Registered clearing agency suspended book-entry clearing and settlement services with respect to issuer's securities held by clearing agency's Participants. *Held*, suspension constitutes denial or limitation of clearing agency's services with respect to any person, and proceeding is *remanded* to clearing agency in order to provide the requisite fair procedure.

APPEARANCES:

John Benvengo, CEO and President, for International Power Group, LTD.
Gregg M. Mashberg, of Proskauer Rose LLP, New York, NY, for the Depository Trust Company.

Appeal filed: November 16, 2009
Last brief received: June 28, 2010

International Power Group, Ltd. ("IPWG") has appealed from a decision of The Depository Trust Company ("DTC"), a registered clearing agency,[1] to suspend indefinitely book-entry clearing and settlement services to its Participants with respect to IPWG's common stock. DTC challenges IPWG's right to Commission review of DTC's decision.

I.

DTC provides clearing and settlement services for its "Participants," *i.e.*, broker-dealers and other firms that satisfy the requirements of DTC Rule 2, with respect to the Participants' trades of "Eligible Securities."[2] In order to make a new issue of securities DTC eligible, DTC requires issuers to submit an Eligibility Questionnaire, which, among other things, requires the issuer to provide information about the issue's registration or exemption status.[3] DTC provides two levels of services to its Participants for "Eligible Securities": (1) a "full range of depository services," including "book-entry delivery and settlement through [DTC's] Underwriting Service," and (2) a "limited DTC service such as its Custody Service."[4] IPWG's common stock was granted status as an Eligible Security. Prior to September 30, 2009, DTC provided the full range of services to its Participants for IPWG's common stock.

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[1] DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation. DTC, as a registered clearing agency, falls within the definition of a self-regulatory organization ("SRO"). 15 U.S.C. § 78c(a)(26). DTC provides clearance, settlement, custodial, underwriting, registration, dividend, and proxy services for a substantial portion of all equities, corporate and municipal debt, exchange-traded funds, and money market instruments available for trading in the United States. In 2010, DTC processed 295,000,000 book-entry transfers of securities worth $273.8 trillion.

[2] DTC Rule 5 defines an "Eligible Security" as "a Security accepted by the [DTC], in its sole discretion, as an Eligible Security. The [DTC] shall accept a Security as an Eligible Security only (a) upon a determination by the [DTC] 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 [DTC] may, in its sole discretion, determine from time to time."

[3] DTC's Operational Arrangements, Section I.A.1, state, "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 United States Securities and Exchange Commission ('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)."

[4] DTC Operational Arrangements Section I.

On September 24, 2009, the Commission filed a complaint in the United States District Court for the Middle District of Florida against a number of defendants (the "Civil Litigation").[5] Neither IPWG nor any of its officers or directors was named as a defendant. The complaint alleged that four issuers, including IPWG, issued shares of common stock to the defendants named in the complaint (the "Complaint Defendants") without adhering to the registration requirements of Section 5 of the Securities Act of 1933.[6] The Complaint Defendants, in turn, sold the shares to the public in unregistered transactions when no exemption from registration was available.

As relevant here, the complaint alleged that IPWG assigned to Complaint Defendant Signature Leisure, Inc. ("Signature") "about $270,000 of alleged debt that [IPWG] owed to one of its officers for loans he supposedly made to the company." The complaint further alleged that the debt agreements included convertibility provisions under which Signature could convert the debt into IPWG stock. The complaint alleged that Signature exercised these conversion rights and that IPWG issued over 162,000,000 shares to Signature. The complaint states, "As of August 17, 2009, Signature Leisure has sold less than half of these shares to the investing public. On information and belief, it maintains control of the remaining shares. Moreover, under the second agreement, about $80,000 in 'debt' remains for possible conversion [into] more than one hundred million shares of International Power stock."[7]

On September 30, 2009, DTC issued an "Important Notice" to its Participants that stated, "As a result of [the Civil Litigation], DTC has suspended all services, except Custody Services, for the below-referenced issues," which included the common shares of IPWG. IPWG, when it learned of the Important Notice, requested DTC to provide a hearing, pursuant to DTC Rule 22, on the suspension of services announced by the Important Notice.[8] DTC denied IPWG's request on November 3, 2009.

DTC stated that Rule 22(f) was not applicable to the suspension announced in the

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[5] *SEC v. K&L Int'l. Enters., Inc. et al.*, No. 6:09-CV-1638-31KR (M.D. Fla. Sept. 28, 2009), Lit. Rel. No. 21224.

[6] 15 U.S.C. § 77e.

[7] The court entered, pursuant to settlement, a final judgment as to the Complaint Defendants on May 12, 2010. Under the terms of the settlement, Signature agreed, without admitting or denying the allegations of the complaint, to (1) an injunction against future violations of Section 5 of the Securities Act; (2) pay disgorgement in the amount of $716,904, plus prejudgment interest thereon in the amount of $16,456.52; (3) pay a civil penalty in the amount of $50,000 under Section 20(d) of the Securities Act; and (4) a three-year bar from participating in an offering of penny stock under Section 20(g) of the Securities Act.

[8] DTC Rule 22(f) provides an opportunity for Interested Persons to be heard on "any determination of the [DTC] that an Eligible Security shall cease to be such." IPWG, as an issuer of securities traded using DTC's services, is an "Interested Person" under DTC Rule 22.

Important Notice. According to DTC, IPWG common stock remained an "Eligible Security" under DTC's Rules because DTC continued to provide custodial services for IPWG common stock.[9] DTC added that it would "lift the suspension on the provision of services for IPWG securities once the matter of the unregistered IPWG shares is resolved between IPWG and the SEC. In that regard, DTC urges [IPWG] to address its concerns to the SEC." DTC did not explain what action IPWG should seek from the Commission. IPWG filed the instant appeal.[10]

II.

IPWG's appeal raises two issues: (1) whether the Commission has jurisdiction to review the suspension as a limitation on access to services under Section 19(f) of the Securities Exchange Act of 1934;[11] and (2) whether IPWG has standing to request Commission review under Section 19(d) of the Exchange Act. Exchange Act Section 19(f) authorizes Commission review of SRO action prohibiting or limiting "any person with respect to access to services offered by [the SRO] or any member thereof." Exchange Act Section 17A(b)(3)(H) further requires clearing agency rules to provide fair procedures with respect to "the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency." The statutes do not specify who is included within the class of "any person" entitled to fair procedures and Commission review if they are denied or limited "with respect to access to services offered by" a clearing agency,[12] and we are unaware of any precedent

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[9] DTC confirmed in its brief that it has no express provision for reviewing denials or limitations on access other than those set forth in Rule 22.

[10] In connection with IPWG's appeal, in March 2010, DTC requested oral argument before the Commission. IPWG did not oppose DTC's request for oral argument. On June 3, 2010, the Commission determined that, "based on the unique facts and circumstances of [IPWG's] appeal," it was appropriate to exercise the Commission's discretion to grant DTC's oral argument request. Oral argument was initially scheduled to occur in April 2011, but IPWG requested a delay of the date of the oral argument because its counsel had withdrawn from representing IPWG in this appeal. The oral argument was re-scheduled for July 2011. However, IPWG subsequently informed the Commission that it did not intend to appear at oral argument, and the Commission determined that, under the circumstances, it was appropriate to cancel the oral argument. DTC did not object to the cancellation of oral argument.

[11] Because DTC's action was not disciplinary in nature, the Commission does not have jurisdiction under Section 19(e) of the Exchange Act.

[12] Section 19(d)(2) provides that a person "aggrieved" by any SRO action set forth in Section 19(d)(1), including denials or limitations on access, may apply to the Commission for review. There is neither a statutory definition of nor legislative history concerning the term "aggrieved" in the context of Section 19(d). We conclude that whether IPWG has standing as a person "aggrieved" by DTC's action turns on the determination of whether IPWG is "any person"

(continued...)

construing the language in the context of services offered by a clearing agency. We note, however, that the Commission has previously included "issuers" as persons "having or seeking access to facilities of a . . . registered clearing agency."[13]

The legislative history of Sections 19(f) and 17A(b)(3)(H) does not address this issue directly. These provisions were added in the Senate bill.[14] In support of its argument that it is entitled to a process for challenging DTC's suspension of services, IPWG cites the portion of the Senate Report that states, "With respect to non-members, the Committee believes the Exchange Act should be amended to require all self-regulatory agencies to adopt procedures which will afford constitutionally adequate due process to non-members directly affected by self-regulatory action."[15] However, it appears that this statement refers to members and non-members of exchanges and registered securities associations, and thus is not directly apposite to clearing agency participants or non-participants.[16]

In support of its argument that IPWG is not within the class of persons entitled to a process for challenging DTC's actions, DTC looks to another portion of the Senate Report discussing the obligation of clearing organizations to provide fair procedures: "As self-regulatory organizations under this title, registered [clearing organizations have] responsibilities over participants and the conduct of participants."[17] The next sentence in the Report refers the reader back to the Report's discussion of the fair procedures required of registered securities exchanges in the context of disciplinary actions against members of the exchange.[18] However, as DTC acknowledges, the suspension of services with respect to IPWG's securities at issue here was not disciplinary in nature.

The Senate Report states that review is available for exchange or registered security association action that "prohibits or limits any person access to services offered by the self-

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[12] (...continued)
within the meaning of Section 19(f) and Section 17A(b)(3)(H).

[13] Self-Regulatory Organization Proposed Rule Changes, 40 Fed. Reg. 40509, 40510 (Sept. 3, 1975).

[14] S. 249, 94th Cong. (1975) (enacted).

[15] S. Rep. No. 94-75 at 25 (1975), *reprinted in* 1975 U.S.C.C.A.N. 179, 204.

[16] *Compare* Exchange Act Section 3(a)(3) (defining "member" for exchanges and registered securities association), 15 U.S.C. § 78c(a)(3), *with* Section 3(a)(24) (defining "participant" of clearing agency), 15 U.S.C. § 78c(a)(24).

[17] 1975 U.S.C.C.A.N. at 302.

[18] *Id.*

regulatory organization or a member thereof. . . . "[19] Similarly, the Senate Report states that a clearing agency "must provide a fair and orderly procedure with respect to . . . the prohibition or limitation by the clearing agency of access by any person to services offered by the clearing agency."[20] However, neither statement specifically addresses the class of persons who may apply for review or be entitled to fair process.

Where an agency confronts such ambiguity in a statute it administers, the agency's textual construction of a statute is entitled to deference.[21] We first note that the legislative history stressed the importance of any SRO's role and responsibilities, and the consequent need to hold SROs accountable for their actions through the provision of a fair process to hear challenges to their actions. In addition, one of the primary purposes of the 1975 amendments to the Securities Exchange Act of 1934, which created the National System for Clearance and Settlement of Securities ("NSCSS"), was to eliminate the need for the physical transfer of stock certificates in connection with the settlement among brokers and dealers of securities transactions.[22] By reducing the temporal lags between trade of securities and settlement, the NSCSS provides a legal framework in which securities can be traded quickly and efficiently, while reducing the systemic risks that would otherwise exist. Under the NSCSS, registered clearing agencies like DTC maintain contractual relationships with and provide services directly to the holders of the securities traded using the clearing agencies' services, and not the issuers of those securities. Such a framework results in the enhanced efficiencies of a system of centralized clearing of securities trades. Our interpretation of the statute is informed by these overarching goals.

DTC urges that a person must receive a service directly from a registered clearing agency to be a person entitled to Section 19(f) review. DTC asserts that only Participants are such persons because they receive services directly from DTC, IPWG receives no services directly

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[19] *Id.* at 309.

[20] *Id.* at 301.

[21] *See Chevron, U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 & n.11 (1984) (If . . . Congress has not directly addressed the precise question at issue [in a statute administered by a federal agency], . . . the question . . . is whether the agency's answer is based on a permissible construction of the statute"); *Salvatore F. Sodano*, Securities Exchange Act Rel. No. 59141 (Dec. 22, 2008), 94 SEC Docket 12714, 12716 & n.7 ("If the language of a statute entrusted to our administration is ambiguous, our interpretation of the text is entitled to deference by reviewing courts, as long as the interpretation is reasonable.") (citing *SEC v. Zandford*, 535 U.S. 813, 819-20 (2002) (citing *United States v. Mead Corp.*, 533 U.S. 218, 229-30 & n.12 (2001))); *Fin. Planning Ass'n. v. SEC*, 482 F.3d 481, 487 (D.C. Cir. 2007).

[22] *See* 15 U.S.C. § 78q-1(e).

from DTC, and therefore IPWG is not a "person" covered by Section 19(f).[23] However, if DTC were correct about Congress's intent, a more obvious way to achieve that intent would have been to limit Section 19(f) review to denials or limitations of "any [Participant] . . . to access to services offered by [the clearing agency] to such [Participant]. . . ." Congress instead chose the terms "any person" and "with respect to access to services," suggesting a class of persons broader than those with direct access to services themselves. In this regard, Exchange Act Section 17A(b)(3)(H) (which was enacted at the same time as Sections 19(d) and (f)) shows that Congress knew how to differentiate between Participants and non-Participants. Section 17A(b)(3)(H) requires clearing agency rules to provide a fair procedure for "disciplining *participants*, [and] the denial of *participation* to any persons seeking *participation* therein," but then requires such a fair procedure for "the prohibition or limitation by the clearing agency of *any person* with respect to access to services offered by the clearing agency" (emphasis added).

We agree with DTC that the reach of "any person" in Sections 17A(b)(3)(H) and 19(f) is not limitless. However, we believe that issuers occupy a unique position in the regulatory scheme and conclude that "any person" in those provisions must include issuers of securities with respect to which a clearing agency provides clearance and settlement services. In establishing the NSCSS, Congress sought to eliminate the paper transfer of issuers' securities. DTC's role as an SRO and securities depository offering book-entry clearing and settlement services is central in this scheme, and those services are the fundamental ones offered by DTC. We have previously held that to be eligible for review under Sections 19(d) and (f), an SRO's action must deny or limit "the applicant's ability to utilize one of the fundamentally important services offered by the SRO."[24] Any suspension by DTC of clearance and settlement services with respect to an issuer's securities means that all trades in that issuer's stock would require the physical transfer of stock certificates, which affects the issuer of the suspended securities directly, because of the potential impact on liquidity and price for the issuer's stock due to the difficulties and uncertainties inherent in physical transfer of stock certificates.

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[23] In support of this position, DTC notes that Exchange Act Section 6(b)(7), 15 U.S.C. § 78f(b)(7) (governing exchanges), and 15A(b)(8), 15 U.S.C. § 78*o*-3(b)(8) (governing registered securities associations), require fair procedures in the event of "the prohibition or limitation by the [exchange or association] of any person with respect to access to services offered by the [exchange or association] *or a member thereof*." Section 17A(b)(3)(H), as discussed above, does not include the language "or a member thereof." According to DTC, the absence of this language in Section 17A indicates that Congress intended that clearing agencies provide fair procedures only to Participants themselves, not to third parties who may receive services from a "member thereof." (DTC takes the further position that IPWG receives no services from either DTC or any of its Participants.) However, we note that Exchange Act Section 17A(b)(6) prohibits a registered clearing agency from prohibiting or limiting access by any person to services offered by one of its participants. Moreover, this argument does not address the significance of the terms "any person" and "with respect to access to services" in both Exchange Act Sections 19(f) and 17A(b)(3)(H). *See* discussion in text *infra*.

[24] *Morgan Stanley & Co., Inc.*, 53 S.E.C. 379, 385 (1997).

Broker-dealer Participants trading securities subject to a suspension may, of course, be affected by loss of or increased cost of doing business, or difficulties in fulfilling market-making obligations. While these negative impacts of a DTC suspension on a Participant could be remedied by challenging DTC's denial of the Participant's access to services,[25] however, a Participant may have the easier alternative of buying and selling other securities. Individuals who wish to buy or sell securities that have been suspended might be negatively affected as well,[26] but those negative effects are limited in scope. An owner wishing to sell a suspended security may suffer the one-time cost and inconvenience involved in a paper transaction, and a prospective buyer can either accept any cost and inconvenience of a paper transaction or opt to purchase a different security. For an issuer, however, the negative impact of a suspension is of indefinite duration and affects all transactions in its suspended securities.

We also note that DTC includes issuers whose securities cease to be Eligible Securities in the Rule 22 definition of Interested Persons who are entitled to an opportunity to be heard.[27] DTC suggests that, because DTC continues to provide custodial services for IPWG securities, IPWG remains an Eligible Security and is therefore not entitled to an eligibility hearing under DTC Rule 22.[28] However, DTC seems to recognize different degrees of "eligibility." For example, DTC's Operational Arrangements state that a security must either be registered with the Commission or subject to a valid exemption from registration in order for that security "to be made *eligible* for DTC's book-entry delivery and depository services" (emphasis added). The November 3, 2009 letter from DTC counsel to IPWG states that a material portion of the IPWG securities held in DTC custody are neither registered nor exempt (the two criteria for eligibility).

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[25] *But see infra* note 28 (under DTC's interpretation of Rule 22, Participants would not necessarily appear to have the right to challenge suspensions of this type).

[26] IPWG attached, as exhibits to one of its briefs in this appeal, statements from IPWG investors that broker-dealers restricted their ability to buy and sell IPWG shares during the period immediately after DTC suspended clearance and settlement services with respect to IPWG's securities. However, it nonetheless appears that trading continued after the suspension.

[27] The Commission order approving this amendment to Rule 22 states only that the amendment "would authorize an issuer or participant to contest a decision denying or terminating a security's depository-eligibility status." Exchange Act Rel. No. 23498 (Aug. 4, 1986), 36 SEC Docket 386, 387. It does not discuss what constitutes "eligibility" for purposes of fair process.

[28] Under DTC's narrow reading of Rule 22(f), even Participants would not have a right to a hearing to challenge the suspension at issue, notwithstanding DTC's concession that Participants are "persons actually affected by [DTC's] restriction on services." DTC does not address this anomaly other than to state that Participants "may present their concerns to DTC's executives."

DTC's brief to us on appeal further states that tens of millions of unregistered, non-exempt IPWG shares had been deposited at DTC and that "[s]uch non-freely tradable shares are not DTC eligible."

DTC has not articulated an adequate rationale for providing a hearing to an issuer for whose securities DTC will provide no services, but not to an issuer whose securities are denied those clearance and settlement services that go to the heart of DTC's role as a clearing agency. DTC contends that its decision to deny IPWG's hearing request is consistent with DTC's Rules and the purposes of the Exchange Act, because IPWG's continuing status as an Eligible Security allows clearance and settlement services to resume immediately, as soon as IPWG "resolves [the] matter" "of the very serious problem of millions of its unregistered shares having been deposited at DTC." In contrast, according to DTC, if IPWG were no longer an Eligible Security, IPWG would have to re-apply and be confirmed for status as an Eligible Security before such services could resume. DTC has not explained, however, what IPWG must do to "resolve the matter," and, in the meantime, IPWG is substantially affected by the suspension of critical DTC services. IPWG argues, "[t]he only substantive difference between IPWG's indefinite and summary suspension and the determination that IPWG is not an Eligible Security is . . . the lack of procedural and administrative safeguards available to IPWG as an Interested Party [sic] under the summary suspension." Furthermore, consistent with DTC's position that only Participants, not issuers, have a right of Commission review pursuant to Section 19(f), even issuers entitled to a Rule 22 hearing in the event eligibility is either denied or revoked in its entirety would not have a right to challenge the fairness of, or action taken by DTC at the conclusion of, such a hearing. This result seems anomalous, and DTC offers no rationale to explain this outcome.

We conclude, based on the analysis above, that the language "any person with respect to access to services" in Exchange Act Sections 19(f) and 17A(b)(3)(H) requires fair procedures at the registered clearing agency and permits Commission review of denial of access to issuers, such as IPWG, whose securities have been suspended from clearance and settlement services offered by a clearing agency, even if those services are not provided directly to the issuer.[29] DTC's rules cannot control the scope of the statutory terms in Exchange Act Sections 17A(b)(3)(H) or 19(f). Moreover, while DTC does not have a contractual relationship with

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[29] DTC's assertion that it provides services only to its Participants is based in part on its Rule 6, which lists the services it provides and does not include in that list the acceptance of issuer securities as eligible, and in part on its argument that it has contractual relationships only with its Participants, not with issuers.

issuers, it does have a business relationship with them. As noted, DTC requires issuers to provide it with proof that their shares are either registered with the Commission or subject to a valid exemption before DTC will deem the shares eligible and has accorded the right to a Rule 22(f) hearing to issuers whose securities cease to be Eligible Securities under Rule 22.[30]

Accordingly, we find that IPWG is a "person" entitled both to "fair procedures" under Exchange Act Section 17A(b)(3)(H) in connection with DTC's suspension of clearance and settlement services with respect to IPWG's securities held by DTC Participants and to Commission review under Exchange Act Section 19(f) of DTC's suspension determination.

III.

Exchange Act Section 17A(b)(5)(B) states that, when a registered clearing agency determines that "a person shall be . . . prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for . . . prohibition or limitation under consideration and keep a record." Section 19(f) further provides that any Commission review will be based on the record before the self-regulatory organization, suggesting the necessity of compiling a record adequate to support any decision by DTC.

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[30] In support of DTC's position that it owes no fair procedure to issuers like IPWG, DTC states, "Otherwise, the door may be flung open to all those who do business with a participant, including their institutional and retail customers." We believe, based on the analysis above, that DTC's relationships with the issuers of Eligible Securities are distinguishable from those between DTC and the institutional and retail customers of its Participants.

For example, in order to be able to trade securities using DTC's services, individual and retail customers of Participants are not required to provide information directly to DTC, nor is there any direct contact between DTC and those customers. Issuers, on the other hand, must provide DTC with a completed questionnaire in connection with eligibility requests.

Further, DTC has submitted, as an exhibit to its brief, evidence indicating that, on November 20, 2009, several weeks after DTC's suspension of services, trading volume in IPWG's securities was over 5,000,000 shares. Thus, individual shareholders were able to avoid the effects of the suspension by selling their shares, at least as of November 20, 2009. However, unlike individual shareholders, IPWG remains subject to the stigma of the suspension over two years after its initial imposition. Moreover, there might be other long-term effects on IPWG if the lengthy continuation of the suspension affected liquidity and share prices.

For many issuers, DTC does provide some recourse in circumstances such as those in which IPWG finds itself. An issuer may pursue, through a DTC Participant, the withdrawal of its securities from Eligible Security status.[31] Once a Participant's request to withdraw the issuer's securities from eligibility status is granted, the issuer can, with the assistance of a DTC Participant, re-apply for status as an Eligible Security. As part of the re-application for eligibility, the issuer may need to obtain an opinion of counsel stating that its securities were either registered with the Commission or the subject of a valid exemption from registration.[32]

The option of pursuing a withdrawal of and re-application for eligibility through a Participant, however, may not be available to all issuers, especially relatively small companies such as IPWG, simply because Participants may find that not enough of their customers hold the issuer's securities for pursuit of the withdrawal and re-application for eligibility to be worthwhile to the Participant. If an issuer is unable to find a Participant willing to engage in this process with the issuer and also has no independent recourse when denied access by DTC to clearing and settlement services, then, in those circumstances, no person may have a means of challenging DTC's suspension of this central service in the NSCSS and ensuring DTC's accountability for its action. Thus, this indirect route for an issuer to respond to an order denying some but not all services with respect to its securities is not an adequate substitute for a direct opportunity for the issuer to be heard by DTC.

Given the record currently before us, we cannot conclude that DTC provided IPWG with the procedural safeguards required by Section 17A. DTC's Important Notice fails to meet the statutory requirements because (1) it was not sent to IPWG itself, but rather to DTC's Participants;[33] and (2) it merely points to the existence of the Commission's complaint against certain IPWG shareholders without any additional explanation of why the existence of the complaint warrants the suspension of clearance and settlement services with respect to IPWG's securities. Moreover, although Section 17A states that parties such as IPWG must receive an opportunity to be heard, DTC's November 3, 2009 letter responding to IPWG's request for a

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[31] An issuer's securities may be withdrawn from their status as Eligible Securities only with the assistance of a Participant. *See* Exchange Act Rel. No. 47978 (June 4, 2003), 80 SEC Docket 1309, 1310 ("DTC's proposed rule change provides that upon receipt of a withdrawal request from an issuer, DTC will take the following actions: (1) DTC will issue an Important Notice notifying its [P]articipants of the receipt of the withdrawal request from the issuer and reminding [P]articipants that they can utilize DTC's withdrawal procedures if they wish to withdraw their securities from DTC; and (2) DTC will process withdrawal requests submitted by [P]articipants in the ordinary course of business but will not effectuate withdrawals based upon a request from the issuer.").

[32] *See* "Information for Securities to be Made 'DTC-Eligible'," http://www.dtcc.com/products/documentation/asset/Securities_DTCEligibility.pdf, pp. 4-5.

[33] The record indicates that IPWG learned of the suspension a few days after the Important Notice was issued after being informed by a customer of a DTC Participant.

hearing states that "DTC declines [IPWG's hearing] request." The Important Notice also does not specify the expected duration of the suspension, nor does it specify the actions that IPWG must take to remove the suspension.

DTC asserts that it informally provided IPWG "an analogous procedure," implying it has satisfied any Section 17A requirements it may have with respect to IPWG. Specifically, DTC avers that it: (1) provided several oral responses to inquiries from IPWG's counsel regarding the reasons for the suspension of services, as well as possible means of lifting it; (2) reviewed IPWG's October 26, 2009 letter requesting a Rule 22 hearing on the suspension of services; and (3) issued a letter on November 3, 2009, responding to IPWG's October 26 letter, setting forth its reasons for the suspension of services and suggesting possible avenues for its resolution. However, the content of the discussions between DTC and IPWG's counsel are not part of the record currently before the Commission.[34] Moreover, in the November 3, 2009 letter and before us, DTC claims that IPWG should "address its concerns to the SEC" in order to remove the suspension, but, as noted, neither the Important Notice, nor DTC in its briefs on appeal, articulates what relief DTC believes the Commission could provide to an issuer in IPWG's circumstances here.

DTC also states that it was required to act urgently in imposing the suspension because the Commission complaint in the Civil Litigation identified serious concerns that the "fungible bulk" of IPWG securities in DTC custody may have been tainted.[35] 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

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[34] As a result, we do not know whether DTC suggested that IPWG withdraw and re-apply for status as an Eligible Security. In any event, as noted above, this process does not give the issuer the opportunity to contest the validity of the suspension and requires the assistance of a DTC Participant. And there is no indication that any DTC Participant sought to assist IPWG in such a manner here.

[35] "Fungible bulk" means that there are no specifically identifiable shares directly owned by DTC Participants. Rather, each Participant owns a *pro rata* interest in the aggregate number of shares of a particular issuer held at DTC. Each customer of a DTC Participant owns a *pro rata* interest in the shares in which the DTC Participant has an interest. DTC argues that it is necessary to suspend clearance and settlement services to all of IPWG's shares held in DTC custody, not just the shares held by the Complaint Defendants, because it is impossible for DTC to distinguish which shares are freely tradable and which are not, since the shares are held in DTC's "fungible bulk" of IPWG securities.

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.[36]

DTC argues that process beyond that already provided to IPWG would serve no purpose. The reason for DTC's suspension (*i.e.*, the existence of the Commission's 2009 complaint) is uncontroverted and therefore, DTC contends, there are no relevant facts in dispute. Further, DTC claims that IPWG's culpability for the violations that served as the basis for the Commission's complaint was immaterial to the determination to suspend clearance and settlement services with respect to IPWG's securities.

However, several specific issues, which we consider important in making a determination whether DTC's actions were consistent with the purposes of the Exchange Act, remain unaddressed by the record of DTC's action that we currently have before us.[37] The lack of a record below makes it impossible for the Commission to assess the merits of these issues. For these reasons, it is necessary to remand the proceeding to DTC for such consideration.

IV.

Based on our review of the record and the applicable authorities discussed above, we conclude that IPWG is entitled to Commission review of DTC's suspension of clearance and settlement services with respect to IPWG's common shares, and that DTC did not provide IPWG with adequate fair procedure in connection with the suspension. In accordance with these determinations, we remand this proceeding to DTC for development of the record in accordance with this opinion and for further consideration, pursuant to procedures that accord with the

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[36] DTC may design such processes in accordance with its own internal needs and circumstances. It may look for guidance to the processes provided: (1) under Federal Rule of Civil Procedure 65(a) and (b), Fed. R. Civ. P. 65(a) and (b), with respect to requests for preliminary injunctions and temporary restraining orders; and (2) under FINRA Rule 9558 with respect to actions authorized by Section 15A(h)(3) of the Exchange Act. These processes include (1) specification of the type of evidence that must be included in an initial notice to justify immediate action; and (2) processes that provide an expedited opportunity for the opposing party to be heard.

[37] For example, in support of its argument that the suspension of clearance and settlement services with respect to all IPWG shares, and not only those held by the Complaint Defendants, was unnecessarily draconian, IPWG argues that the remedies available to individuals who purchase securities sold in violation of Section 5 of the Securities Act of 1933 provide adequate protection of the public against the sales of unregistered securities. DTC does not respond to this IPWG argument, other than to reiterate that it is impossible to distinguish between the holders of particular shares in the "fungible bulk." IPWG could also address whether its securities currently are registered or exempt from registration.

fairness requirements of Section 17A(b)(3)(H) of the Exchange Act, of the determination to suspend all services, except custody services, for the common shares of IPWG. In addition, we believe that DTC should 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. We do not intend to suggest any view on the outcome of this remand.

An appropriate order will issue.[38]

By the Commission (Chairman SCHAPIRO and Commissioners WALTER, AGUILAR, PAREDES and GALLAGHER).

Elizabeth M. Murphy
Secretary

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[38] We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

ADMINISTRATIVE PROCEEDING
FILE NO. 3-13686

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of	:
	:
INTERNATIONAL POWER GROUP, LTD	:
	:
	:
For Review of Action Taken By	:
	:
THE DEPOSITORY TRUST COMPANY	:
	:
	:

RESPONSE OF THE DEPOSITORY TRUST COMPANY TO THE COMMISSION'S APRIL 13, 2010 ORDER SCHEDULING BRIEFS

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ADMINISTRATIVE PROCEEDING
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RESPONSE OF THE DEPOSITORY TRUST COMPANY TO THE COMMISSION'S APRIL 13, 2010 ORDER SCHEDULING BRIEFS

Respondent, The Depository Company,[1] for its response to the Security and Exchange Commission's (the "Commission") April 13, 2010 Order directing the parties to file additional briefs addressing certain questions in connection with this appeal (the "April Order"), respectfully sets forth as follows:[2]

[1] The regulated entity responsible for the actions at issue in this proceeding is The Depository Trust Company ("DTC"), a wholly owned subsidiary of The Depository Trust & Clearing Corporation. Prior pleadings in this matter had identified the respondent to be The Depository Trust & Clearing Corporation. The Commission has correctly identified the respondent to be DTC.

[2] IPWG commenced this proceeding by filing its November 10, 2009 Application for Commission Review and Motion for a Stay (the "Application"). DTC's Response to the Application was filed on November 23, 2009 (the "DTC November Response"). IPWG filed its "Reply to Response for Review and Motion for a Stay" on December 9, 2009 (the "IPWG December Reply"). On December 16, 2009, the Commission issued its Order Directing the Filing of Additional Briefs in Connection with Motion for Stay ("December 16 Order"). DTC filed its response on December 21, 2009 ("DTC December Response"), as did IPWG. On May 9, 2010, the Commission issued its Order Denying Stay, pursuant to which it denied IPWG's request for an emergency stay of DTC's actions with respect to IPWG shares. Thereafter, the Commission issued the April Order.

Introduction and Overview

This appeal arises out of the determination of DTC to suspend certain services to its participants in connection with shares of petitioner International Power Group, Ltd. ("IPWG") on deposit at DTC. On September 24, 2009, the Commission filed an enforcement action, captioned *United States Securities and Exchange Commission v. K&L International Enterprises, Inc., et al.*, Case No. 6:09-CV-1638 GAP-KRS (M.D. Fla., filed September 24, 2009) ("*K&L*") (Application, Ex. B). In *K&L*, the Commission alleged that IPWG (and other issuers) "issued unregistered shares of common stock" to the defendants (the "Complaint Defendants") "when no exemption from registration was available in violation of Section 5 of the Securities Act of 1933." (December 16 Order, p. 1.) The Commission further alleged that the Complaint Defendants sold unregistered, non-exempt IPWG shares to the public and that the Complaint Defendants still "maintain control" of approximately one-half of the shares issued by IPWG. *Id.*[3]

In connection with carrying out its compliance obligations, as required by applicable law, DTC determined, based upon the allegations in *K&L* and review of DTC records, that tens of millions of unregistered, non-exempt shares that IPWG had issued to the Complaint Defendants in *K&L* had been deposited at DTC. (DTC November Response, ¶22, Ex. B.) Such non-freely tradeable shares are not DTC eligible.[4]

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[3] By judgment filed May 17, 2010, the Signature World Wide defendants and Carnes settled the Commission's *K&L* enforcement action. The settlement included, *inter alia*, disgorgement and injunctions against violations of Section 5 of the Securities Act of 1933, 15 U.S.C. §77e.

[4] Securities that are unregistered or otherwise not exempt from registration requirements are not eligible for DTC's book-entry services:

> 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 United States Securities and Exchange Commission ("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

DTC took prompt action. Consistent with its obligations as a registered clearing agency "to protect investors and the public interest,"[5] and consistent with the Bank Secrecy Act ("BSA") and anti-money laundering legislation,[6] DTC suspended further book-entry services with respect to IPWG shares (along with the shares of the other issuers identified by the Commission in its *K&L* complaint), pending resolution of the Commission's allegations. (*See* DTC November Response, ¶2; Application, Ex. D.)

On September 30, 2009, DTC issued an "Important Notice to Participants, Depository Facilities and Pledgee Banks" (the "Important Notice," Application, Ex. A) notifying them of the suspensions. The Important Notice set forth the essential reason for the suspension of services to DTC's participants with respect to the shares of IPWG and the other issues identified therein: the Commission's allegations in the *K&L* case (a link to the complaint was included in the release).

This is the narrow and uncontroverted basis upon which DTC made its decision, now challenged by IPWG. There were no factual issues to be resolved. It was irrelevant to DTC's decision whether IPWG was complicit in the Section 5 violations alleged by the Commission in *K&L* or whether IPWG was a defendant in that litigation (which it understood IPWG was not). DTC did not base its decision on whether IPWG had engaged in any wrongful conduct. DTC's determination was based on the *Commission's* determination that IPWG shares had been sold in violation of Section 5 and the indisputable evidence that these shares had been deposited at DTC.

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resale pursuant to Rule 144A or Regulation S (and otherwise meet DTC's eligibility criteria)

DTC's Operational Arrangements § I.A.1. (annexed to December DTC Response as Ex. C) DTC's Operational Arrangements are filed with the Commission.

[5] Securities Exchange Act of 1934 ("Exchange Act"), §17A(b)(3)(F), 15 U.S.C. §78q-1(b)(3)(F)

[6] *See* 12 U.S.C. §§1818(s), 31 U.S.C. §§5311-5330.

DTC is resolute that its system should not be utilized in furtherance of illegal conduct, particularly where that conduct has been uncovered and challenged by the Commission.

IPWG challenged DTC's action first by telephone calls from IPWG's counsel to DTC and its counsel, culminating in IPWG's counsel's letter to DTC dated October 26, 2009 (the "October 26 Letter," Application, Ex. C). DTC duly considered this appeal and instructed its counsel to reply, resulting in the November 3, 2009 letter from DTC's counsel to IPWG's counsel (the "November 3 Letter," Application, Ex. D). Noting that DTC's counsel had discussed these issues previously with IPWG's current and predecessor counsel, DTC's counsel's November 3 Letter set forth the basis for DTC's determination to suspend non-custodial services and explained why a hearing pursuant to DTC Rule 22 was not applicable. Moreover, referring to prior discussions with IPWG's present and former counsel, the November 3 Letter explained that the suspension would be lifted once IPWG had resolved the matter of the unregistered, non-exempt shares.

DTC thus duly considered and responded to IPWG's challenge to the suspension of services. Although DTC's Commission-approved rules make no provision for addressing an issuer's complaints in a situation like this, DTC duly considered IPWG's October 26 Letter and repeatedly explained that IPWG's asserted lack of culpability for the problem was not material to DTC's decision. As communicated to IPWG's counsel, the dispositive issue was that, based on the Commission's allegations in *K&L*, DTC determined that unregistered and non-exempt IPWG securities had been deposited into DTC's system, thereby contaminating its fungible bulk of IPWG inventory. On that controlling fact, there has never been any dispute.

Significantly, in this connection, IPWG has represented to the Commission, in response to a direct question,[7] that IPWG shares "*other than the Complaint Defendants*[ ]" are registered or otherwise exempt from registration.[8] In other words, IPWG does not contest the Commission's allegations in *K&L* that the162 million shares it issued to the Complaint Defendants were not freely tradeable – some substantial portion of which have ended up as part of DTC's fungible bulk and which precipitated the restrictions at issue in this proceeding.

IPWG's allegations that "it is impossible for IPWG to meaningfully address or rectify any potential deficiencies in its activities . . . ." (Application, p. 4) and that "DTC has failed to afford IPWG even a modicum of due process in addressing the suspension of services for IPWG shares" (IPWG December Reply, ¶1), thus ring hollow. IPWG's arguments have been duly heard and vetted. DTC advised IPWG repeatedly and precisely the basis for its action and what has to be done to solve it so that full services could be restored to its participants for this issue. Even assuming that IPWG was an unwitting victim of the Complaint Defendants' actions, the responsibility to rectify the situation must remain with IPWG.

Even if the Commission were to determine that Section 17A(b)(3)(H)[9] is applicable to this case (which, as DTC explains below, it is not), DTC provided IPWG with a fair procedure in considering and denying its appeal. In reality, DTC's determination to suspend services to its participants regarding IPWG shares was akin to a determination as a matter of law; no further process and certainly no evidentiary hearing was required. The Commission's inquiry as to the

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[7] December 16 Order at 3.

[8] *See* Petitioner International Power Group, Ltd. Additional Brief in Connection with Motion for Stay, dated December 21, 2009, pp. 2-3 (emphasis added).

[9] Securities Exchange Act of 1934 ("Exchange Act") Section 17A(b)(3)(H), 15 U.S.C. §78q-1(b)(3)(H).

obligation of a clearing agency to provide a fair procedure thus arises in the absence of any genuine factual dispute.

* * *

In seeking leave for oral argument before the Commission,[10] DTC identified the potentially far-reaching implications of a determination that non-participants are entitled to compel DTC to provide full hearing rights. Indeed, pursuant to DTC Rule 22, as approved by the Commission, hearings are available only in specifically enumerated instances, none of which exist here.

Were the Commission to extend hearing rights to issuers and, by implication, other third parties who may claim that DTC provides them with services (at least indirectly), the consequences could be substantial. DTC has legal relationships with institutions only as set forth in its Rules. It does not provide services to third parties such as IPWG. The issue now before the Commission threatens to impact that fundamental principle of the indirect holding system.[11]

DTC does not have the infrastructure nor personnel necessary to provide evidentiary hearings to an indefinite number of issuers or other non-participants that may see themselves as aggrieved by DTC's ordinary course operations. Personnel might have to be diverted from other essential responsibilities in providing clearance and settlement services and, under any circumstances, new personnel would need to be hired in order to perform this function. Senior executive time would inevitably be diverted from other pressing obligations relating to the clearance and settlement function. DTC's Commission-approved fee structure might have to be

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[10] *See* DTC's Motion for Oral Argument Before the Commission, date March 19, 2010. The Commission granted that motion by Order Granting Oral Argument, dated June 3, 2010.

[11] *See, e.g.*, N.Y.U.C.C. § 8-115 Off. Cmt. 4 ("... one of the fundamental principles of the Article 8 indirect holding system rules is that a securities intermediary owes duties only to its own entitlement holders.").

adjusted to take into account the need to devote resources to providing evidentiary hearings for non-participants. Absent some underlying necessity, which is clearly not present here, any benefits are not justified by the costs to the clearance and settlement system.

Even beyond the potentially unmanageable and costly administrative burden, any ruling here recognizing the existence of some legal relationship between DTC and non-participants (beyond what already exists in DTC's Rules) might open the door to baseless third-party damages claims against registered clearing agencies.[12]

[12] The application of any broadened hearing function is virtually as limitless as the imaginations of non-participants seeking, for one reason or another, to challenge the nation's centralized clearing and settlement system. For example, DTCC recently ended years of costly litigation, brought by several micro-cap issuers (like IPWG), based on spurious accusations that DTCC's Commission-approved systems result in the marketplace being flooded with "phantom shares." *See, e.g., Pet Quarters, Inc. v. Depository Trust & Clearing Corporation*, 559 F.3d 772 (8th Cir. 2009); *Whistler Invests., Inc. v. Depository Trust & Clearing Corp.*, 539 F.3d 1159 (9th Cir. 2008); *Nanopierce Tech., Inc. v. Depository Trust & Clearing Corp.*, 168 P.3d 73 (Nev. 2007), *cert. denied*, 128 S. Ct. 2428, 171 L. Ed. 2d 229 (2008). The Commission appeared as *amici curiae* in support of DTCC in each of these appeals, including participating in oral argument in *Whistler* and *Nanopierce*. Each of these copy cat cases (and others) was dismissed on grounds of federal preemption. DTC is concerned that issuers or other non-participants could attempt to utilize a determination in this proceeding to open another front for baseless challenges to the National Clearance and Settlement System.

RESPONSE TO THE COMMISSION'S APRIL ORDER[13]

1) Exchange Act Section 19(f) authorizes Commission review if a self regulatory organization prohibits or limits "any person with respect to access to services offered by the self-regulatory organization or any member thereof, ..." (Emphasis added)

> *(a) Does the DTC's suspension of book-entry and settlement services to IPWG constitute a limitation in respect to access to services to "any person," including the DTC's Participants?*

(a) In literal terms, DTC did not "suspend[d] [] book-entry and settlement services to IPWG . . . ." As a registered clearing agency and securities depository, DTC provides services to the persons that constitute its participants.[14] DTC suspended services *to its participants* who would otherwise utilize DTC's services to process transactions in the IPWG shares they had in their DTC accounts.[15] This is not meant to be hyper-technical or nit-picking; it goes to a fundamental issue in this proceeding; *i.e.*, DTC does not provide services to third-parties such as issuers.

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[13] Note that in repeating below the questions contained in the April Order, we have omitted the footnotes.

[14] As stated by the Commission in approving DTC's application for registration as a clearing agency DTC:

> [A]ccepts deposits of securities from broker-dealers, banks and other financial institutions (collectively referred to as "Participants"); credits those securities to the general free accounts of the depositing Participants; and, pursuant to instructions of the Participants, effects book-entry deliveries of securities (including pledges) among Participants (and participating pledgee banks). *See, e.g., DTC, Participant Operating Procedures*, §§ B and C. The physical securities deposited with a securities depository are held in a fungible bulk, no significant portion of which is identified or identifiable to a particular participant or pledgee; each participant or pledgee having securities of a given issue credited to its account has a pro-rata interest in the physical securities of the issue held in custody by the securities depository in its nominee name. *See* June 4 SEC Order at 35041. Depositories also may provide facilities for payment by Participants to other Participants in connection with book-entry deliveries of securities.

SEC Rel. No. 19678, 48 Fed. Reg. 17603, 17604, n. 5 (April 25, 1983); *see also, e.g.*, New York U.C.C. §8-102 OFF. CMT. 14 ("clearing corporations hold[] securities for their participants, banks acting as securities custodians, and brokers holding securities on behalf of their customers."); *id.*, § 8-115 OFF CMT 4 (*supra* n. 10); *Olde Monmouth Stock Transfer Co., Inc., v. Depository Trust & Clearing Corporation* , 485 F. Supp. 2d 387, 388 (S.D.N.Y. 2007) (describing DTC).

[15] DTC makes securities eligible for its services in order "to provide its services to Participants and Pledgees when such Security is Deposited." *See* DTC Rule 5, Section 1; *see also* DTC Rule 6 (making clear that services with respect to eligible securities are provided to participants).

Accordingly, there was "a limitation in access to services" to a "person" – any DTC participant with IPWG shares credited to its DTC account.

> *(b) How do the parties interpret the meaning of the phrase "with respect to access to services offered by the self-regulatory organization ["SRO"]?"*

(b) This phrase refers to the services offered by the SRO to its members (here, services provided by DTC to its participants). The language must be interpreted in the context of the legislative and regulatory scheme as a whole. That scheme contemplates that SROs provide services to their members. *See, supra* p.8. Petitioner's argument, that the clause "with respect to," "necessarily includes persons and the effects on those persons outside the relationship between DTC and its Participants," is as conclusory as it is self-serving.[16] It is non-sensical that this non-descript phrase could supersede the substantial authority supporting the principle that clearing agencies provide services to their participants – not third parties. Particularly in the context of the indirect holding system, where the legal relationships among the actors are clearly defined by Article 8 of the U.C.C., the phase "with respect to" does not mean "in any way relating to," as petitioner seems to suggest. Rather, it refers to something specific, as it does when used by litigants in stipulating to adjourn a defendant's time "to answer or move *with respect* to the complaint." The adjournment does not apply to other deadlines, although those deadlines may relate to the complaint; it applies to the time for responding to the complaint. Nothing compels or justifies the unlimited interpretation that petitioner posits.

In any event, the notion that an issuer – who typically would have no direct relation to the DTC participants who act for the beneficial owners of its shares – could properly characterize

[16] *See* Petitioner International Power Group, Ltd. Brief in Connection with Application for Commission Review, dated March 13, 2010, at 3-4 ("Pet. Br.").

itself as a DTC "service-receiver," is baseless. Participants provide services to *their* customers, which typically means institutional and retail investors. There is nothing in the record to suggest that IPWG was ever a customer of any DTC participant or had even an *indirect* relation to any DTC services. Rather, IPWG actually seeks to stand in the shoes of the DTC participants who are the persons actually affected by the restriction on services.

> *(c) Does the phrase "with respect to access to services offered by the self-regulatory organization" require that such services be provided directly from the SRO to the person seeking review?*

(c) Yes. This conclusion is demanded by the foundational concept: DTC provides services to its participants. Otherwise, the door may be flung open to all those who do business with a participant, including their institutional and retail customers.

Ultimately, in response to the Commission's focus on this phraseology, the language itself cannot support the expansion of a SRO's obligations to non-members. Unless the statute provides support for such a construction, which it does not, it cannot be predicated on this particular language.

2) *Review under Exchange Act Section 19(f) of SRO actions involving "the prohibition or limitation . . . with respect to access to services offered" requires the Commission to determine, among other things, that the "rules [of the SRO] are, and were applied in a manner, consistent with the purposes of [the Exchange Act]." For example, if the Commission finds that an SRO action "imposes any burden on competition not necessary or appropriate in furtherance of the purposes of [the Exchange Act,]" the Commission "shall set aside" the SRO action. Section 17A(a) further sets forth the purposes of the Exchange Act with respect to the formation of a national system for the clearance and settlement of securities transactions, including, among other things, "the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, . . . [the avoidance of] unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors, . . . and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents."*

> *Is DTC's action at issue here consistent with the purposes of the Exchange Act?*

DTC's actions are completely consistent with the purposes of the Exchange Act.

In 1975, Congress amended the Exchange Act by adopting Section 17A.[17] Congress mandated that the fractured nature of the securities industry's post-trade securities handling system be replaced with "uniform standards and procedures for clearance and settlement. . . ."[18] Section 17A contained specific findings regarding the need for the "prompt and accurate" clearance and settlement of securities transactions in order to protect investors and those acting on behalf of investors.[19] In order to implement these Congressional policies, Congress vested the Commission with the centralized decision-making authority to preside over a uniform national system in an effort to "increase efficiency and reduce risk."[20]

DTC, the nation's principal securities depository, plays a key role in the National Clearance and Settlement System. It operates an automated, centralized system for book-entry movement of securities positions in the accounts of its participants, who are the beneficial owners of the securities deposited at DTC. By serving as record holder of trillions of dollars of securities, DTC enables the automated movement of securities positions without the need to transfer paper indicia of ownership. In the words of the Commission, "by facilitating the prompt and accurate settlement of securities transactions, DTC serves a *critical* function in the National Clearance and Settlement System."[21]

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[17] *See* 15 U.S.C. §§ 78q, *et seq.*

[18] *See* 15 U.S.C. § 78q-1(a)(1)(D); *see also* S. Rep. No. 94-75, 1975 U.S.C.C.A.N. 179, 183-84 ("Senate Report").

[19] *See* 15 U.S.C. § 78q-1(a)(1)(A).

[20] *See* 15 U.S.C. § 78q-1(a)(2)(A)(i).

[21] *See* SEC Rel. No. 34-47978, 68 Fed. Reg. 35037, at 35041 and n.62 (June 4, 2003)(emphasis added).

Once deposited at DTC, securities become part of DTC's "fungible bulk," making it impossible in this case to distinguish between IPWG shares that are freely tradeable and those that are not. As explained by the Commission:

> The physical securities deposited with a securities depository are held in a fungible bulk, no significant portion of which is identified or identifiable to a particular participant or pledgee; each participant or pledgee having securities of a given issue credited to its account has a pro-rata interest in the physical securities of the issue held in custody by the securities depository in its nominee name.

SEC Rel. No 19678, 48 Fed. Reg. 17603, 17604, n. 5 (April 25, 1983); *see also* SEC Rel. No. 34-47978, 68 Fed. Reg. 35037, 34041; N.Y. Uniform Commercial Code § 8-503(b) and OFF. CMT 1.

The actions taken by DTC in response to allegations by the Commission that scores of millions of unregistered, non-exempt IPWG shares had entered the marketplace are completely consistent with DTC's "critical" role in the National Clearance and Settlement System. It is essential that the securities industry be confident of the integrity of the fungible bulk for each issue on deposit. That is, as the legal holder of the vast percentage of the nation's publicly traded securities, DTC must ensure that the shares eligible for its book entry services are freely tradeable. In a situation as presented here, where DTC has determined that a substantial portion of its inventory is not freely tradeable, and millions more non-freely tradeable shares were in the hands of alleged fraudsters,[22] it is certainly consistent with DTC's obligations under Section 17A to "increase efficiency and reduce risk,"[23] to have taken decisive action.

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[22] *See K&L* Complaint, ¶44.

[23] *See* 15 U.S.C. § 78q-1(a)(2)(A)(i).

It is also essential in this context to emphasize that DTC's actions in connection with IPWG shares were consistent with its anti-money laundering obligations.[24] In general terms, the federal anti-money laundering statute sets "minimum standards"[25] that are designed to further "[t]he enhancement of partnerships between the private financial sector and law enforcement agencies with regard to the prevention and detection of money laundering and related financial crimes...."[26] The deposit of millions of unregistered, non-exempt IPWG shares thus implicates important concerns for DTC in complying with the underlying purposes of the federal anti-money laundering scheme. Irrespective of IPWG's complicity in the underlying unlawful conduct, it is apparent that DTC's facilities were being utilized to facilitate conduct proscribed by federal law. Not only were DTC's actions in this case consistent with the Exchange Act, but DTC was furthering the important Congressional goals underlying the extensive BSA/AML scheme.[27]

3) *Under Exchange Act Section 17A(b)(3)(H), the DTC is required to provide a "fair procedure" with respect to "the prohibition or limitation by [the DTC] of any person with respect to access to services offered by [the DTC]." (Emphasis added)*

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[24] *See supra* n.6

[25] *See* 31 U.S.C. §5318(l)(1)

[26] 31 U.S. C. §5341(b)(4).

[27] *Cf.* Federal Financial Institutions Examination Council, Bank Secrecy Act/ Anti-Money Laundering Examination Manual (2010), at 76 (bank "should continue to review suspicious activity to determine whether other actions may be appropriate . . . such as terminating a relationship with the customer or employee . . . .); Remarks by James H. Freis, Jr. Director, Financial Crimes Enforcement Network , U.S. Department of the Treasury 2010 AML Conference New York, NY May 20, 2010, *available at* http://www.fincen.gov/news_room/speech/pdf/20100520.pdf ("a single weak actor can be the vulnerability that allows the infection of tainted funds to be introduced into the formal financial system."); Remarks by Lori A. Richards, "Money Laundering: It's on the SEC's Radar Screen," Conference on Anti-Money Laundering Compliance for Broker-Dealers Securities Industry Association May 8, 2001, *available at* http://www.sec.gov/news/speech/spch486.htm ("The use of the U.S. financial system by criminals to facilitate fraud could well taint our vibrant capital markets – which fuel our economy and hold the savings of our nation's investors. Moreover, as you know, securities firms face potential civil and criminal exposure when their firms are used to launder profits derived from illegal activities.").

(a) Does the DTC's suspension of book-entry and settlement of IPWG stock amount to a "prohibition or limitation by the DTC of any person (including the DTC's Participants) with respect to services offered by the DTC?"

(a) Yes – with respect to its participants. DTC's action limited the ability of its participants with a position in IPWG to process transactions in that issue through DTC. The Important Notice was thus directed to its participants (and depository facilities and pledgee banks) – not issuers or other third parties. Indeed, if DTC "refuses to accept a Security as an Eligible Security or determines that an Eligible Security shall cease to be such, [DTC] *shall give notice thereof to all Participants and Pledgees* . . . ." DTC Rule 5, Section 3 (emphasis added). There is no requirement that the affected issuer be notified. These services are not provided to the issuer who, in any event, likely has no beneficial ownership interest in the eligible securities.

(b) Is it significant that the language of Section 17A(b)(3)(H) differs from the language of analogous provisions in Exchange Act Sections 6(b)(7) (governing exchanges) and 15A(b)(8) (governing registered securities associations), which require fair procedures in the event of "the prohibition or limitation by the [exchange or association] of any person with respect to access to services offered by the [exchange or association] <u>or a member thereof</u>." (Emphasis added)

(b) Yes. The language in Sections 6 and 15A reflect Congress' directive that not only members are entitled to fair procedures, but those third parties who obtain services from members are also subject to such procedures. Under recognized principles of statutory construction, the absence of this phrase from Section 17A(b)(3)(H) should be interpreted as a determination that fair procedures are provided to members, not third parties who obtain services from "a member thereof." *See, e.g., Negusie v. Holder*, __ U.S. __, 129 S.Ct. 1159, 1180, 173 L.Ed.2d 20 (2009)("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts

intentionally and purposely in the disparate inclusion or exclusion") quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)) (additional citations omitted).

As a non-participant, IPWG could only arguably receive the benefit of DTC services by obtaining services "offered by ... a member" of the depository and thus, given the absence of the phrase from Section 17A(b)(3)(H), is not an intended beneficiary of the fair procedures requirement. But perhaps even more to the point, even if the "or a member thereof" clause were read into Section 17A(b)(3)(H) (which it clearly should not), IPWG is still outside the scope of the provision: IPWG has presented no evidence that it received any services from *any participant of DTC.*

In challenging the DTC suspension, IPWG seeks to stand in the shoes of DTC participants. It cannot possibly have been Congress' intent that those who have no relation to the clearing agency and, moreover, no relation to clearing agency participants, are authorized to invoke any fair procedure requirements.[28]

In addition to the Commission's well-placed focus on the difference between Section 17A(b)(3)(H) on one hand and Sections 6(b)(7) and 15A(b)(8) on the other, comparison of Section 17A to other subsections of Sections 6 and 15A supports DTC's position that the fair procedure provisions of Section 17A(b)(3)(H) are directed to clearing agency participants and persons seeking to become participants. They are not directed third parties, such as issuers.

According to the Senate Committee on Banking, Housing and Urban Affairs, in considering the legislation that became Section 17A:

[28] IPWG's December Reply (¶6) characterized DTC's challenged action as a "disciplinary action." That misnomer should not be adopted by the Commission. DTC does not "discipline" issuers, nor is it authorized to do so. DTC exercised its authority and obligations to protect the clearance and settlement system from the infusion of unregistered and non-exempt shares into its IPWG inventory, based on the Commission's allegations in *K&L.*

> This subsection [pertaining to "fair procedures"] contains procedures and standards analogous to Sections 6(c) and (d) and 15A(g) and (h) of the Exchange Act concerning the authority and responsibility of national securities exchanges and registered securities associations with respect to the eligibility of members, denials of membership, disciplinary procedures, prohibitions or limitations on access and summary actions. As self-regulatory organizations under this title, registered [sic] responsibilities over participants and the conduct of participants. For an analysis of these provisions, see the analysis of section 6 supra.

S. Rep. No. 94-75, 1975 U.S.C.C.A.N. 179 (analyzing S. 249). Section 6(c) and (d) and Section 15A(g) and (h), of course, pertain to membership and discipline of members of registered exchanges and registered securities associations, and persons associated with members, respectively. In both of these provisions, deemed to be "analogous" to disciplinary and related provisions applicable to clearing agencies under the provision that was to become Section 17A(b)(3)(H), the only "persons" who may be disciplined or "prohibited or limited with respect to access to services" offered by an exchange or association, are "members" thereof.[29] And, under both analogous statutes, the "persons" who may become "members," are strictly limited to broker-dealers.[30] In the context of clearing agencies, the persons "analogous" to an exchange or association's members are the clearing agencies' participants. By a parity of reasoning, therefore, Section 17A(b)(3)(H) has no applicability to issuers and other non-participants.

There is additional support in Sections 6 and 15A for DTC's interpretation of Section 17A(b)(3)(H). In addition to Congress' use of the phrase "or a member thereof" in Sections 6(b)(7) and 15A(b)(8), Congress otherwise indicated it knew how to broaden the reach of the statute to non-SRO members when that was its intent. Sections 6(b)(5) and 15A(b)(6) specifically reference third parties in providing that exchange and association rules should not be

[29] Section 6(d)(2); Section 15A(h)(2). "Associated" persons are also subject to the procedural safeguards established under Sections 6 and 15A. There is no analogous class of protected "Associated" persons established under Section 17A(b)(3)(H).

[30] Section 6(c)(1); Section 15A(g).

"designed to permit unfair discrimination between customers, issuers, brokers, or dealers ...." By contrast, Section 17A(b)(3)(H) does not specifically identify any person other than those who obtain services from the clearing agency, *i.e.*, its members, as being subject to the fair procedures. The fair conclusion to reach from the inconsistent use of language in these otherwise "analogous" provisions of Section 17A is that the fair procedures requirement was not intended to apply to non-members/participants. *See Negusie v. Holde.*

In sum, the Senate Report's identification of Section 17A(b)(3)(H) with Sections 6 and 15A supports the conclusion that Section 17A(b)(3)(H) should only be applied to clearing agency participants and those seeking to become participants.

4) *Exchange Act Sections 19(d)(1) and 19(d)(2) "state that an SRO action that prohibits or limits any person with respect to access to services offered by the SRO "shall be subject to review" by the Commission, among other things, "upon application by any person aggrieved thereby."*

Is IPWG a "person aggrieved" by the DTC's suspension of services and, therefore, a party that may properly request a review of the suspension, regardless of whether the DTC provides any services directly to IPWG?

No. For all the reasons DTC has set forth herein, IPWG cannot be deemed a "person aggrieved," as it does not receive services from DTC.[31]

5) *In its November 3, 2009, letter denying IPWG's hearing request, the DTC explained that the DTC had suspended non-custodial services for IPWG's securities "based on information [alleged in the Civil Litigation]. Based on the SEC's allegations, it is apparent that a material portion [of] IPWG securities deposited at DTC were unregistered, not freely tradeable and should not have been deposited at DTC."*

What is the significance of that determination on IPWG's ability to obtain a hearing under DTC Rule 22(f), requiring that the DTC provide Interested Persons with an opportunity to be heard on DTC determinations that an Eligible Security "ceases to be such?"

[31] Additionally, as noted earlier, IPWG has not produced any evidence that it utilized services from DTC participants in connection with transactions in IPWG shares that have been credited to participants' DTC accounts.

DTC's Rule 22, as approved by the Commission, applies to issuers in one specific situation, and one specific situation only: cessation of eligibility.[32] That did not happen here. Although book-entry processing has been suspended, IPWG shares remain eligible for book-entry services, participant accounts continue to reflect positions in IPWG and DTC is continuing to provide full custody services for IPWG shares. If eligibility had ceased, positions in IPWG in participants' DTC accounts would have been subject to reversal and custody services would have terminated. Moreover, if it were determined that eligibility would be reinstated, IPWG would have to go through the eligibility process.[33] Under current circumstances, by contrast, eligibility can be reinstated immediately.

6) *DTC Rule 6 permits DTC to "limit certain services to particular issues of Eligible Securities." What fair process is DTC required to provide under Exchange Act Section 17A(b)(3)(H) and consistent with the purposes of the Exchange Act generally if the DTC acts pursuant to Rule 6?*

To the extent that the limitation on services does not implicate the provisions of Rule 22, DTC's SEC-approved rules do not provide any express review process. However, DTC recognizes that Section 17A(b)(3)(H) requires that its participants (as opposed to non-participants) be accorded fair procedures to the extent that DTC limits services. The procedure

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[32] Rule 22 provides, in relevant part:

> Right to Contest Decisions
>
> *Section 1.* A Participant or Pledgee, applicant to become a Participant or Pledgee or issuer of a Security, as the case may be (an "Interested Person"), shall have an opportunity to be heard on any decision of the Corporation:
> (a) which proposes to deny the applicant's application to become a Participant or Pledgee;
> (b) to cease to act for the Participant pursuant to Rule 10, 11 or 12;
> (c) to summarily suspend and close the Accounts of the Participant or Pledgee pursuant to the Exchange Act;
> (d) to terminate its agreement with the Pledgee, as provided in Section 3 of Rule 2;
> (e) which proposes to impose a disciplinary sanction pursuant to Rule 21; or
> (f) any determination of the Corporation that an Eligible Security shall cease to be such.

[33] *See* DTC Rule 5, Section 1 (providing standards for eligibility).

provided under such circumstances depends on the specific facts presented. Under any circumstances, the participant is able to present all of its concerns regarding any limitation of services to DTC executives, including senior staff and counsel's office and ultimately its board of directors. DTC would meet with the participant and/or its counsel and provide a full statement of its reasons for the challenged action, including in writing if necessary. All documents relating to the process would be maintained by DTC.

Further, Section 8 of Rule 22 contemplates that a hearing may be held regarding any matter even if not otherwise within the ambit of Rule 22: "A Panel may at any time establish procedures for a hearing not otherwise provided for by these Rules with respect to any action or proposed action of [DTC]." Depending on the circumstances presented, a Rule 22 hearing could be held in order to adjudicate a participant's challenge to a determination by DTC to limit services to an otherwise eligible security. Again, this is a matter that must be handled on a case-by-case basis.

It also should be emphasized in this context and in light of question No. 7, that DTC informally provided roughly an analogous procedure in considering IPWG's challenge to the suspension.

7) *If the Commission were to find that a person were a "person aggrieved" by a DTC action under DTC Rule 5 that resulted in a limitation or prohibition of services, what type of fair process is DTC required to provide to such an aggrieved person, pursuant to Exchange Act Section 17A(b)(3)(H) and the purposes of the Exchange Act generally?*

Assuming the Commission were to determine that Section 17A(b)(3)(H) were to apply to third-parties, DTC does not believe that there is an automatic evidentiary hearing requirement consistent with Rule 22 procedures for every "person aggrieved" by a DTC action under Rule 5.

As noted above, depending on the nature of the action and the factual record presented, far less process may be due than a full blown quasi-judicial hearing.

The IPWG dispute currently before the Commission is a case in point. As noted earlier, although IPWG was not afforded an evidentiary hearing, IPWG's arguments were duly considered and the factual record upon which the decision to suspend book-entry services was fully developed. Given the uncontroverted grounds upon which DTC made its decision, even if IPWG were deemed to be a "person aggrieved," DTC does not believe that additional fair procedures would have been required by Section 17A(b)(3)(H). *Indeed, beyond insisting that it was entitled to a hearing, IPWG has not identified what factual issues underlying DTC's decision are in dispute and would justify additional fair procedures.*

DTC has repeatedly advised IPWG and its counsel that it recognizes that IPWG was not a defendant in the *K&L* litigation. It has made clear that IPWG's culpability for the Section 5 violations alleged by the Commission was immaterial to DTC's decision to suspend book-entry services. Rather, DTC's determination was grounded on (i) the Commission's averments in *K&L* and (ii) review of its own records confirming that millions of shares IPWG had issued to the Complaint Defendants in *K&L* had been deposited at DTC and intermingled into DTC's fungible bulk. Thereafter, DTC took full account of the oral and written arguments advanced by IPWG and its counsel, including its counsel's October 26 Letter appealing DTC's decision (Application, Ex. C), After due consideration, DTC instructed its counsel to reply to IPWG's appeal letter, setting forth the reasons why DTC adopted the suspension and the suggested

mechanism for resolving the problem promptly. Even if IPWG were determined to be an "aggrieved person," the procedures accorded were sufficient.[34]

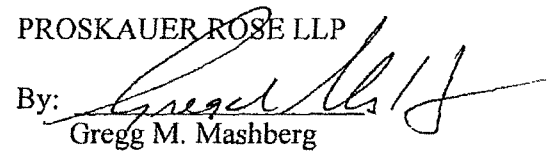
That, of course, is not to say that a different "person aggrieved" by a Rule 5 determination based on a materially different factual record might not be entitled to different or additional fair procedures, including an evidentiary hearing. DTC submits that the record before the Commission on IPWG's appeal, where the governing facts are clear and undisputed, is not appropriate for laying down a blanket rule. Under any circumstances, the process that is due is a matter that should be considered on a case-by-case basis. Certainly, if the Commission were to determine that issuers are entitled to rights under Section 17A(b)(3)(H), any appeal from the clearing agency's action would enable the Commission to determine whether the fair procedures provided were adequate.

CONCLUSION

IPWG's appeal should be dismissed and DTC's challenged action should be upheld.

New York, N.Y.
June 14, 2010

PROSKAUER ROSE LLP

By: 

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[34] *See generally Pennsylvania v. Riley*, 84 F.3d 125, 130 (3d Cir. 1996) ("An administrative agency need not provide an evidentiary hearing when there are no disputed material issues of fact."); 2 Am Jur 2d Administrative Law § 300 ("an administrative agency need not provide an evidentiary hearing when there are no disputed material issues of fact or when the dispute can be resolved adequately from a paper record."). Given the narrow and uncontroverted facts upon which DTC's actions were taken, and the need to take prompt action to protect the National Clearance and Settlement System, the post-suspension review process undertaken here provided IPWG with the requisite fair procedure.

FILED

2009 SEP 24 AM 10: 48

DISTRICT COURT
DIST OF FL

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

K&L INTERNATIONAL ENTERPRISES, INC., SIGNATURE LEISURE, INC., SIGNATURE WORLDWIDE ADVISORS, LLC, STEPHEN W. CARNES, LAWRENCE A. POWALISZ, ENZYME ENVIRONMENTAL SOLUTIONS, INC. and JARED E. HOCHSTEDLER,

Defendants.

_____/

Case No. 6:09-CV-1638-31KRS

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff United States Securities and Exchange Commission alleges as follows:

NATURE OF THE CASE

1. Defendants Stephen Carnes and Lawrence Powalisz, in collaboration with the other defendants, are selling billions of shares of stock in "microcap" companies to the investing public without adhering to the registration requirements of Section 5 of the Securities Act of 1933 ("Securities Act"). (Carnes, Powalisz and their companies, Signature Leisure, Inc., Signature Worldwide, Inc. and K&L International Enterprises, Inc., are collectively referred to in this complaint as the "Stock Distributor Defendants.")

2. The microcap companies include Defendant Enzyme Environmental Solutions, Inc., Revenge Designs, Inc., Cross Atlantic Commodities, Inc. and

International Power Group, Ltd. (the "Issuer Companies"). The Issuer Companies each have stock listed on the "Pink Sheets" or the "Over-the-Counter" Bulletin Board. Each is controlled primarily by one person, with limited operational histories and minimal revenue.

3. The scheme involves a series of transactions between the Stock Distributor Defendants and the Issuer Companies with the same essential characteristics: First, the Stock Distributor Defendant either purports to lend money to an Issuer Company or the Issuer Company identifies a "debt" owed to its officer that it assigns to the Stock Distributor Defendant. Second, the Stock Distributor Defendant pays the Issuer Company or an affiliate of the company. Third, to reduce or eliminate the loan or the assigned debt, the Issuer Company issues shares of its stock to the Stock Distributor Defendant. Fourth, the Stock Distributor Defendant immediately dumps the shares into the public market. For all of the transactions described in this complaint, the Stock Distributor Defendant sold the Issuer Company's stock into the public market less than six months after it received such stock.

4. This scheme has proven extraordinarily lucrative for the Stock Distributor Defendants. In approximately two years, they have generated more than $7 million in illegal profits. Their stock distributions do not, however, adhere to the registration and public disclosure requirements of the federal securities laws. Because no registration statements were filed in conjunction with the issuance and resale of Issuer Company stock, prospective investors never received important information to which they were legally entitled before deciding whether to purchase an Issuer Company's stock – such as the company's audited financial statements, information about the management's

business history, the dilution impact a distribution would have on existing shareholders, and a description of principal risks that could arise and affect the value of the company's shares.

5. The Commission brings this lawsuit to put an immediate halt to defendants' ongoing violations of the Securities Act, to prevent further harm to investors, and to seek disgorgement and civil penalties from defendants stemming from their violations of the federal securities laws.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act.

7. Venue lies in this Court pursuant to Section 22(a) of the Securities Act. Defendants, directly or indirectly, have made and are making use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts, practices and courses of business alleged herein in the Middle District of Florida.

DEFENDANTS

8. **Stephen W. Carnes**, age 45, is a resident of Apopka, Florida. He is the president, principal executive officer and principal accounting officer of Signature Leisure and the managing member of Signature Worldwide.

9. **Signature Leisure, Inc.** is a Colorado corporation with its principal place of business in Casselberry, Florida.

10. **Signature Worldwide Advisors, LLC** is a Minnesota limited liability company with a business address in Champlin, Minnesota and a mailing address in Casselberry, Florida.

11. **Lawrence A. Powalisz**, age 45, is a resident of Winter Park, Florida. Powalisz is the sole officer of K&L.

12. **K&L International Enterprises, Inc.** is a Florida corporation located in Casselberry, Florida. The company purports to be a direct marketing business primarily focusing on telemarketing services.

13. **Jared E. Hochstedler**, age 33, is a resident of Fort Wayne, Indiana and is Enzyme's Chief Executive Officer and sole director and officer.

14. **Enzyme Environmental Solutions, Inc.**, a Nevada corporation and one of the "Issuer Companies," is located in Fort Wayne, Indiana and purportedly produces enzyme-based products used for cleaning, odor control and dietary supplements.

THE ISSUER COMPANIES

15. **Cross Atlantic Commodities, Inc.**, a Nevada corporation located in Weston, Florida, purports to develop, market and distribute "life enhancement products" and other merchandise through direct marketing and retail/wholesale distributors.

16. **International Power Group, Ltd.**, a Delaware corporation located in Celebration, Florida, purports to operate a "waste to energy" business that provides environmentally-friendly waste management and, in the process, produces cost-effective electricity.

17. **Revenge Designs, Inc.**, a Nevada corporation, is located in Decatur, Indiana and purportedly designs and develops modification packages for cars.

FACTS

18. The transactions between the Stock Distributor Defendants and the Issuer Companies take one of two forms: (a) a promissory note in which the Stock Distributor Defendant agrees to loan money directly to an Issuer Company (Paragraphs 19 through 24); and (b) a so-called "wrap-around agreement" in which a Stock Distributor Defendant agrees to purchase an alleged debt that the Issuer Company supposedly owes to its officer or affiliate (Paragraphs 25 through 44).

THE REVENGE DESIGNS PROMISSORY NOTES

19. **Promissory Notes with Signature Leisure.** In September 2007, Revenge Designs entered into a promissory note with Signature Leisure. Revenge Designs agreed to pay Signature Leisure $322,000, consisting of $300,000 in debts that Revenge Designs already owed to Signature Leisure, and about $22,000 in new loan proceeds.

20. Under the terms of the note, Revenge Designs' indebtedness could be repaid either in cash or in shares of Revenge Designs' common stock, at Signature Leisure's option. Under the latter option, "[t]he debt will be converted to Borrower's common stock at a 50% (fifty percent) discount from the opening bid price on the date Lender converts the debt to Borrowers common stock."

21. Between November 2007 and February 2008, Signature Leisure accepted repayment in the form of discounted Revenge Designs stock. Signature Leisure submitted five conversion requests, which resulted in Revenge Designs' issuance of about 195 million shares of its stock to Signature Leisure. Signature Leisure received more shares than it was entitled to under the stock conversion formula. Shortly after receiving the shares from Revenge Designs, Signature Leisure transferred the stock to

other individuals and entities, who, on information and belief, promptly resold the stock into the public market.

22. **Promissory Notes with K&L.** From September 2007 through January 2008, Revenge Designs entered into 13 promissory notes with K&L. Under the terms of the notes, K&L loaned Revenge Designs approximately $420,000. K&L also had the option of accepting repayment in cash or in Revenge Designs stock, calculated "at a 50% discount, based on the opening bid from September 14, 2007 of $.005 (one half of a cent)" or similar formula.

23. K&L opted to be repaid in discounted shares of Revenge Designs stock. From October 2007 through February 2008, K&L sent Revenge Designs seven conversion requests, resulting in Revenge Designs' issuance of about 352 million shares of its stock to K&L.

24. From November 5, 2007 to March 7, 2008, K&L resold nearly all the shares of Revenge Designs stock into the public market, yielding net profits of almost $1 million. K&L made nearly all of these sales within days or weeks of receiving the Revenge Designs stock.

THE WRAP-AROUND AGREEMENTS: AN OVERVIEW

25. Issuer Companies Cross Atlantic, Revenge Designs, International Power, and defendant Enzyme Environmental have entered into a series of wrap-around agreements with Stock Distributor Defendants K&L, Signature Leisure and Signature Worldwide. The details of such transactions are set forth in Paragraphs 27 through 44 below.

26. As a general matter, these wrap-around agreements work as follows: First, the transaction is predicated upon a debt the Issuer Company allegedly owes to one of its officers for more than one year, either for unpaid salary or a loan. The Issuer Company and its officer (or another affiliate) agrees to assign the debt to a Stock Distributor Defendant . The agreement modifies the purported original debt "to include a convertibility provision allowing [the Stock Distributor Defendant] to convert [the debt that the Issuer Company now owes to the Stock Distributor Defendant] into common voting stock" based upon a formula set forth in the agreement. Second, the Stock Distributor Defendant signs a promissory note agreeing "to purchase the debt due and owed" to the officer for an amount equal to, or for a percentage of, the debt, generally within a one-year period. Third, the Stock Distributor Defendant requests that the Issuer Company convert the debt into shares of an Issuer Company and the Issuer Company issues shares to the Stock Distributor Defendant, usually at a significant discount and without adherence to the convertibility formula. Fourth, before or after the request, the Stock Distributor Defendant pays cash to the Issuer Company or its officer. Fifth, in a matter of days or weeks after issuance, the Stock Distributor Defendant resells the stock into the public market, reaping enormous profits.

THE CROSS ATLANTIC WRAP-AROUND AGREEMENTS

27. Cross Atlantic entered into wrap-around agreements with K&L in April May and July 2008, and with Signature Worldwide in April 2008.

28. Under the agreements, certain officers of Cross Atlantic assigned to K&L and Signature Worldwide alleged debts they were owed by Cross Atlantic for past services rendered. As consideration for the purported debt assignments, K&L and

Signature Worldwide agreed to pay those officers and employees an amount equal to the alleged debts. Thereafter, pursuant to the terms of those notes, K&L and Signature Worldwide paid Cross Atlantic, respectively, about $226,704 and $31,210.

29. The agreements contained convertibility provisions under which K&L and Signature Worldwide could convert the debts that Cross Atlantic allegedly owed them into shares of stock. Shortly after the agreements were signed, K&L and Signature sent Cross Atlantic a series of conversion requests; Cross Atlantic issued more than 1.4 billion shares to K&L and more than 74 million shares to Signature Worldwide.

30. Within about six weeks of receiving Cross Atlantic stock, K&L and Signature Worldwide each resold the stock into the public market. All told, the sales comprised about 37% of the outstanding, publicly available shares of Cross Atlantic.

THE REVENGE DESIGNS WRAP-AROUND AGREEMENTS

31. In May and August 2008, Revenge Designs entered into two wrap-around agreements with K&L.

32. Under the agreements, Revenge Designs and its officer assigned to K&L $345,000 in alleged debts, representing loans supposedly made to Revenge Designs by its officer through another one of his companies. As consideration for the debt assignments, K&L signed promissory notes in which it agreed to pay Revenge Designs' affiliate an amount equal to the alleged debts. Thereafter, K&L paid the affiliate $195,000, which the affiliate passed on to Revenge Designs.

33. The agreements contained convertibility provisions that allowed K&L to convert the debts into stock at a 33% discount relative to market price. Shortly after the

agreements were signed, K&L made a series of conversion requests to Revenge Designs; Revenge Designs issued 965 million shares of its stock to K&L.

34. Within about six weeks after receiving the Revenge Designs stock, K&L sold the stock into the public market. These sales constituted more than 43% of the shares of Revenge Designs stock outstanding in the public market (not including shares previously acquired under the promissory notes).

THE ENZYME ENVIRONMENTAL WRAP-AROUND AGREEMENTS

35. From January through June 2008, Enzyme entered into two wrap-around agreements with K&L and one with Signature Worldwide.

36. Under the agreements, Enzyme and Hochstedler assigned to K&L and Signature Worldwide $915,635 in debts that Enzyme allegedly owed Defendant Hochstedler, Enzyme's sole officer and director. K&L and Signature Worldwide also signed promissory notes in which they agreed to pay Hochstedler $651,564. Between February 2008 and June 2009, K&L and Signature Worldwide paid about $347,000 to Enzyme and $245,000 to Hochstedler.

37. The agreements contained convertibility provisions that allowed K&L and Signature Worldwide to convert the debts that Enzyme owed to them into shares of Enzyme stock, issued at a discount. From February 2008 and June 2009, K&L and Signature Worldwide sent a total of 18 conversion requests to Enzyme, and Enzyme issued more than 1.8 billion shares to K&L and Signature Worldwide.

38. Within eight weeks of receiving the Enzyme stock, K&L resold the stock to the investing public, generating more than $4.9 million in sales proceeds. Similarly, within the time span of approximately 21 days in July 2008, Signature Worldwide sold

approximately 130,000,000 of its 400,000,000 shares, generating about $69,977 in proceeds. Collectively, K&L and Signature Worldwide have sold at least 88% of Enzyme's outstanding shares into the public market.

39. In June 2009, Enzyme entered into new wrap-around agreements with Signature Worldwide and K&L. Once again, the agreements are based on debts that Enzyme allegedly owes to Hochstedler—now in amounts exceeding $2.3 million. The agreements provide for the conversion of assigned debts into discounted Enzyme stock.

40. Hochstedler received $500,000 from K&L on June 8, 2009; he received an additional $700,000 from a company controlled by Carnes on June 25, 2009. As of July 6, 2009, Enzyme has processed two conversion requests and issued about 200 million additional shares of Enzyme stock to Signature Worldwide and K&L Since these conversions reduced the $2.3 million debt by a mere $165,000, over $2 million in "debt" remains for possible conversion to discounted Enzyme stock.

THE INTERNATIONAL POWER WRAP-AROUND AGREEMENTS

41. In February and March 2009, Signature Leisure entered into two wrap-around agreements with International Power.

42. Under the agreements, International Power assigned to Signature Leisure about $270,000 of alleged debt that International Power owed to one its officers for loans he supposedly made to the company. Signature Leisure signed promissory notes in consideration for the assignment and thereafter paid the officer about $126,000.

43. The agreements include a convertability provision under which Signature Leisure can convert the debt into shares of stock, calculated at a 50% discount. Pursuant to this provision, Signature Leisure has sent International Power several conversion

requests, and International Power has issued least 162 million shares of its stock to Signature Leisure.

44. As of August 17, 2009, Signature Leisure has sold less than half of these shares to the investing public. On information and belief, it maintains control of the remaining shares. Moreover, under the second agreement, about $80,000 in "debt" remains for possible conversion – more than one hundred million shares of International Power stock.

COUNT I

DEFENDANTS' OFFER AND SALE OF UNREGISTERED SECURITIES IN VIOLATION OF SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT

(Against Defendants K&L International Enterprises, Inc., Signature Leisure, Inc., Signature Worldwide Advisors, LLC, Stephen W. Carnes and Lawrence A. Powalisz)

45. Paragraphs 1 through 44 are re-alleged and incorporated by reference.

46. Defendants K&L International Enterprises, Inc., Signature Leisure, Inc., Signature Worldwide Advisors, LLC, Stephen W. Carnes and Lawrence A. Powalisz, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities through the use or medium of any prospectus or otherwise as to which no registration statement was in effect; or made use of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise securities as to which no registration statement had been filed.

47. The shares of Cross Atlantic, International Power, Revenge Designs and Enzyme that the aforementioned defendants offered and sold are "securities" as that term is defined in Section 2(a)(1) of the Securities Act.

48. By reason of the foregoing, each of the aforementioned defendants violated and, unless restrained and enjoined, will continue to violate, Sections 5(a) and 5(c) of the Securities Act.

49. Each defendant was a necessary participant or a substantial factor in the aforementioned unregistered offerings. Carnes and Powalisz signed the agreements and made the conversion requests on behalf of K&L, Signature Leisure and Signature Worldwide. They controlled the bank accounts that made the payments to the Issuer Companies and the brokerage accounts that received and sold the Issuer Companies' stock.

COUNT II

DEFENDANTS' OFFER AND SALE OF UNREGISTERED SECURITIES IN VIOLATION OF SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT

(Against Defendants Enzyme Environmental Solutions, Inc. and Jared E. Hochstedler)

50. Paragraphs 1 through 44 are re-alleged and incorporated by reference.

51. Defendants Enzyme Environmental Solutions, Inc. and Jared E. Hochstedler, directly or indirectly, made use of means or instruments of transportation or communication in interstate commerce or of the mails to sell securities through the use or medium of any prospectus or otherwise as to which no registration statement was in effect; or made use of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise securities as to which no registration statement had been filed.

52. The shares of Enzyme that the aforementioned defendants offered and sold are "securities" as that term is defined in Section 2(a)(1) of the Securities Act.

53. By reason of the foregoing, each of the aforementioned defendants violated and, unless restrained and enjoined, will continue to violate, Sections 5(a) and 5(c) of the Securities Act.

54. Each defendant was a necessary participant or a substantial factor in the aforementioned unregistered offerings. Hochstedler signed the agreements on Enzyme's behalf, directed its transfer agent to issue conversion stock to K&L and Signature Worldwide, and controlled the bank accounts that received payments.

REQUEST FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

A.

Find that defendants committed the violations alleged.

B.

Enter a permanent injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, enjoining defendants from violating, directly or indirectly, each of the provisions of law and rules alleged in the complaint.

C.

Order defendants to disgorge all ill-gotten gains, including pre-judgment interest and post-judgment interest, resulting from the violations alleged herein.

D.

Order defendants to pay civil penalties pursuant to Section 20(d) of the Securities Act in an amount to be determined by the Court.

E.

Order barring defendants K&L International Enterprises, Inc., Signature Leisure, Inc., Signature Worldwide Advisors, LLC, Stephen W. Carnes and Lawrence A. Powalisz from participating in an offering of penny stock pursuant to Section 20(g) of the Securities Act.

F.

Grants such other and further relief as this Court deems just and appropriate.

JURY TRIAL DEMANDED

The Commission hereby requests a trial by jury.

September 24, 2009

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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