UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70620 / October 7, 2013

Admin. Proc. File No. 3-15432

In the Matter of the Application of

ATLANTIS INTERNET GROUP CORPORATION
c/o Simon S. Kogan, Esq.
171 Wellington Court, Suite 1J
Staten Island, NY 10314

for Review of Disciplinary Action Taken by

THE DEPOSITORY TRUST COMPANY

ORDER DENYING STAY

I.

Atlantis Internet Group Corporation ("Atlantis" or "the Company") appeals from two actions of The Depository Trust Company ("DTC").[1] On July 8, 2011, DTC stopped accepting additional deposits of Atlantis shares for depository and book-entry transfer services (the "Deposit Chill"). On August 24, 2012, DTC suspended all book-entry services provided to DTC's participants with respect to the shares of Atlantis (the "Global Lock"). Atlantis seeks stays of the Deposit Chill and Global Lock pending the outcome of its appeal.

[1] DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation, a non-regulated holding company. DTC, as a registered clearing agency, falls within the definition of a self-regulatory organization. 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.

II.

A. DTC notified Atlantis of the Deposit Chill, and the parties exchanged written submissions related thereto.

On May 9, 2012, DTC informed Atlantis in writing of the July 8, 2011 Deposit Chill.[2] DTC explained that it "detected that one or more [DTC] participants made unusually large deposits of the [Atlantis] issue during the period of September 9, 2010 to the date of the Deposit Chill" and that "[t]he volume and timing of the deposits [raised] substantial questions as to whether these shares are freely tradable, a prerequisite for shares being deposited into the DTC system for book-entry services." DTC further stated that the Deposit Chill would be released if Atlantis could demonstrate that the sale and transfer of the shares at issue "was made pursuant to an effective registration statement or entitled to an exemption from registration," supported by a legal opinion to that effect, issued by an independent attorney.

In June 2012, Atlantis submitted a proposed legal opinion letter in which it asserted that the majority of the Atlantis shares on deposit at DTC were "freely tradable when deposited with DTC," because the securities had either been offered pursuant to valid exemptions from registration or in debt conversion transactions for which the holding period had passed. Atlantis's June 2012 letter further stated that Atlantis's counsel could not opine as to 74,100,000 Atlantis shares held by brokers, representing "approximately 10% of the total shares in question," but that Atlantis was "not aware of any shares that became free trading without legal opinions in accordance with transfer agent requirements to remove restrictive legend." On July 3, 2012, DTC provided Atlantis with a template of the legal opinion it required, asking that Atlantis's counsel "follow this form as closely as possible." DTC also requested documentation, including copies of executed securities purchase agreements and any applicable private placement memoranda, as well as accredited investor certifications for investors in any private placements of Atlantis stock. Atlantis did not provide the legal opinion letter or any of the additional information DTC requested. Atlantis submitted no further documentation opposing the Deposit Chill from July 2012 until it filed this appeal and stay request.

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[2] In *International Power Group* (the "IPWG Opinion"), where DTC had imposed a Global Lock on the issuer applicant's shares, the Commission found that issuers of securities with respect to which a clearing agency provides clearance and settlement services were "persons" entitled to Commission review of DTC actions denying or limiting them "with respect to access to [DTC] services." *Int'l Power Group, Ltd*., Securities Exchange Act Rel. No. 66611 (Mar. 15, 2012), 2012 SEC LEXIS 844, at *16. The Commission further found that, in order to comply with its statutory obligation to provide fair procedures, DTC must provide notice of its determination to the issuer, specifying the basis for DTC's action, and must also provide the issuer with an opportunity to be heard. *See id.* at *27-31. Prior to the issuance of the IPWG Opinion, DTC took the position that issuers (as non-DTC Participants) were not entitled to notice and an opportunity to be heard when DTC suspended certain of its services with respect to the issuer's securities. Thus, DTC did not provide Atlantis notice of the Deposit Chill when it was initially imposed.

B. DTC imposed the Global Lock based on a Commission enforcement action.

On August 14, 2012, the Commission filed a complaint alleging that TJ Management Group, LLC ("TJM"), a New York limited liability company, had engaged in a distribution of unregistered shares of eleven companies, including Atlantis, when no valid exemption from registration was available.[3] The complaint alleged, "TJM bought 33.9 million shares of [Atlantis] in eleven unregistered offerings for $435,791 and resold all 33.9 million shares into the public market without registration for $793,879, representing gains of 82%." The complaint further alleged that "[n]o registration statement was in effect and no valid exemption from registration applied to TJM's resale of [Atlantis] shares with a view to distribution." As a result, the Commission alleged that TJM violated Section 5 of the Securities Act of 1933.[4]

Based on the Commission's TJM complaint, on August 24, 2012, DTC imposed the Global Lock with respect to Atlantis's securities. On September 14, 2012, DTC informed Atlantis of the Global Lock in writing.[5] DTC stated that its "records demonstrate that some or all of the [Atlantis shares traded by TJM] were deposited at DTC and commingled with shares of the Issue on deposit at DTC for book entry services. As a result, DTC has imposed the Global Lock in order to prevent, among other things, the unregistered securities from being transferred on the books of DTC." DTC subsequently learned of another Commission enforcement action, alleging that E-Lionheart Associates, LLC, a Delaware limited liability company, had engaged in an illegal purchase and distribution of penny stocks similar to that alleged in the TJM complaint.[6] The complaint in that action stated that E-Lionheart "obtained and illegally resold the stock of approximately 100 companies, reaping profits of more than $10 million while depriving the investing public of the protections of the registration requirements of the securities laws." DTC's records show, and Atlantis does not dispute, that Atlantis shares on deposit at DTC at the time were registered to E-Lionheart.

On September 19, 2012, Atlantis made a timely request for a DTC hearing on the Global Lock. On October 15, 2012, Atlantis submitted a proposed legal opinion letter in which it claimed that the Atlantis securities registered to TJM and E-Lionheart on deposit at DTC "were issued in transactions conducted in accordance with rule 504 of Regulation D and were not

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3 *SEC v. Kahlon, et al.*, No. 4:12-CV00517 (E.D. Tex. Aug. 14, 2012), Lit. Rel. No. 22452 (Aug. 17, 2012).

4 15 U.S.C. § 77e.

5 In the IPWG Opinion, the Commission stated, "If DTC believes that circumstances exist that justify imposing a suspension of services with respect to an issuer's securities in advance of being able to provide the issuer with notice and an opportunity to be heard on the suspension, it may do so. However, in such circumstances, these processes should balance the identifiable need for emergency action with the issuer's right to fair procedures under the Exchange Act. Under such procedures, DTC would be authorized to act to avert an imminent harm, but it could not maintain such a suspension indefinitely without providing expedited fair process to the affected issuer." *Int'l Power*, 2012 SEC LEXIS 844, at *29. Although DTC's written notification here did not expressly state that it had imposed the Global Lock pursuant to such expedited authority, DTC now contends that it "acted quickly to prevent further book-entry movements in [Atlantis's] tainted inventory. Thus, pursuant to the IPWG Opinion, DTC implemented the Global Lock prior to giving Atlantis notice in order to avoid imminent harm."

6 *SEC v. Bronson, et al.*, No. 7: 12-cv-6421 (S.D.N.Y. Aug. 22, 2012), Lit. Rel. No. 22457 (Aug. 23, 2012).

required to be registered with [the Commission]." On October 26, 2012, DTC responded to the proposed Atlantis legal opinion letter, finding "based on the information currently available to [DTC]," the issuances of Atlantis shares to TJM and E-Lionheart did not qualify for the exemption from registration claimed by Atlantis under Rule 504(b)(1)(iii) of Regulation D. This provision exempts from registration offers and sales of securities that are made "exclusively according to state law exemptions from registration that permit general solicitation and general advertising so long as sales are made only to 'accredited investors.'"[7] Specifically, DTC noted that it appeared that TJM and E-Lionheart transactions lacked a "sufficient nexus" to Texas and Delaware, respectively, to permit them to rely on exemptions under the laws of those states. Further, DTC stated that it did not appear that the Texas and Delaware statutes in question permit general solicitation and advertising, as required under Rule 504(b)(1)(iii).

On November 5, 2012, Atlantis submitted a response to DTC's determination, attaching copies of subscription agreements and legal opinion letters, and maintaining that the issuance of Atlantis stock to TJM and E-Lionheart was exempt from registration under Rule 504. In an email exchange on December 2 and 3, 2012, Atlantis continued to press its argument that the issuances were exempt from registration, and DTC responded that it found Atlantis's arguments unpersuasive for the reasons provided in its October 26 determination letter.

Subsequently, Atlantis proposed various solutions to the Global Lock involving registering its shares with the Commission. For example, Atlantis proposed to file a registration statement with the Commission for the shares at issue. DTC responded that, if Atlantis did so, "DTC would accept that as a resolution of the matter and release the chill." But Atlantis never filed a registration statement. Later, in April 2013, Atlantis "contemplat[ed] a registered transaction involving a reverse merger with a public shell; or a similar transaction designed to eliminate any restrictions on transferability of Atlantis's common shares." DTC informed Atlantis that it had consulted with the Commission staff, which "advised DTC that [the Commission staff] are not of the view that such a transaction would result in freely tradable shares." On or about June 4, 2013, Atlantis returned to its December 2012 proposal to file a registration statement. It wrote to the Commission staff requesting "its position regarding the use of Form S-4 to register shares to be issued in exchange for all outstanding shares issued." Ultimately, however, "[Atlantis was] advised by SEC staff that Atlantis . . . would not be issued a no-action letter with respect to its issuing shares pursuant to a new registration statement that would be used to replace DTC's existing inventory."[8] Shortly thereafter, Atlantis filed its appeal and stay request.

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[7] 17 C.F.R. § 230.504(b)(1)(iii).

[8] This is according to an August 15, 2013 email from DTC to Atlantis's counsel. In support of its stay request, Atlantis does not address its attempts to resolve the Global Lock by registering its shares with the Commission.

III.

Rule 401 of the Commission's Rules of Practice governs our consideration of stays.[9] When reviewing requests for a stay, we consider: 1) the likelihood that the moving party will eventually succeed on the merits of its appeal; 2) the likelihood that the moving party will suffer irreparable harm without a stay; 3) the likelihood that another party will suffer substantial harm as a result of the stay; and 4) the impact of a stay on the public interest.[10] The moving party has the burden of establishing that a stay is warranted.[11] After considering the stay factors, we have determined that it is appropriate to deny Atlantis's stay request.

A.

Atlantis argues that it is likely to succeed on the merits of its appeal for essentially three reasons. First, Atlantis claims that DTC, as a registered clearing agency, does not have statutory authority under Section 17A of the Exchange Act to "discipline an issuer," contending that DTC is only authorized to discipline its participants. Second, Atlantis argues, contrary to the Commission's position in the TJM and E-Lionheart enforcement actions, that the Atlantis shares in question were offered pursuant to valid registration exemptions, under state law exemptions in Texas and Delaware, respectively. Third, Atlantis argues that "[DTC] has failed to develop fair and equitable procedures to provide issuers with notice and an opportunity to be heard prior to the imposition of a chill despite being ordered to do so by the Commission."

DTC contends that Atlantis is unlikely to succeed on the merits of its appeal. DTC contends that, "[a]s a registered clearing agency and self-regulatory organization, [it] must operate pursuant to its Commission-approved rules." According to DTC, these rules "do not authorize it to provide book-entry services to securities that are not freely tradable and thus do not satisfy DTC's eligibility requirements."[12] As discussed above, DTC determined that the issuances of Atlantis shares to TJM and E-Lionheart did not qualify for an exemption from

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[9] 17 C.F.R. § 201.401.

[10] *See, e.g., Cuomo v. Nuclear Regulatory Comm'n*, 772 F.2d 972, 974 (D.C. Cir. 1988); *Intelispan, Inc.*, Exchange Act Rel. No. 42738, 54 SEC 629, 2000 SEC LEXIS 855, at *5 (May 1, 2000). Neither Atlantis nor DTC addresses the third factor (whether another party will suffer substantial harm as a result of the stay) in their filings related to Atlantis's stay motion.

[11] *See, e.g., Millenia Hope, Inc.*, Exchange Act Rel. No. 42739, 2000 SEC LEXIS 854, at *3 (May 1, 2000) ("The party requesting the stay has the burden of proof.").

[12] 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." DTC's Operational Arrangements, Section 1.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)."

registration, which is consistent with the Commission's position in the TJM and E-Lionheart enforcement actions. DTC further argues that it has not denied Atlantis due process. DTC believes that it gave Atlantis the requisite notice of the Deposit Chill and Global Lock, explained the basis for these actions, explained how Atlantis could have these regulatory actions lifted, and corresponded with the Company on multiple occasions regarding its proposed attempts to lift the Deposit Chill and Global Lock.

In support of its claim that DTC's Deposit Chill and Global Lock have caused irreparable harm to Atlantis, the Company relies primarily on two sworn Declarations from its Chief Executive Officer, Donald Bailey (the "Bailey Declarations"). The Bailey Declarations state that, as a result of the Global Lock, the Company is unable to raise capital, which "threatens [Atlantis's] ability to continue as a going concern." More specifically, although without additional substantiating evidence, one of the Bailey Declarations contends that "[b]ecause of the Global Lock an attempt to take . . . control of the Company was launched by some disgruntled shareholders who believed management was not doing enough to have the Global Lock removed." Bailey also states, "Before the Global Lock, the Company's common stock was trading at considerably higher prices and volumes." Bailey further contends that the Global Lock has rendered the Company unable to run its business effectively, claiming that Atlantis "cannot hire experienced personnel, it cannot complete its audits, and it cannot attend many expos and conventions in order to demonstrate its products and acquire clients." Bailey also contends that the Company lost a license agreement after the other party to the agreement discovered the Global Lock. Atlantis also claims that it has suffered irreparable harm because DTC is immune from suits for damages based on DTC's regulatory actions and, therefore, Atlantis cannot recover monetary compensation for the harm caused by the Deposit Chill and Global Lock.

DTC counters that the Deposit Chill has been in place for over two years and the Global Lock for a year. Because DTC's actions had been in place for such a long time without a request for a stay, DTC argues that the "emergency relief" Atlantis now seeks is not justified. DTC also contends that Bailey's claims about the harm to Atlantis's business are "conclusory," noting that Bailey and Atlantis have cited an "illegal takeover attempt of [Atlantis]," rather than the Global Lock, as the cause of the Company's "suffer[ing]" in a recent press release. According to DTC, "Atlantis has thus attributed its alleged financial woes to corporate in-fighting, not DTC." DTC also introduces evidence suggesting that, despite the Global Lock, the volume of trading in Atlantis stock was "substantial" during the period after the Deposit Chill and Global Lock were imposed.

Atlantis contends that a stay would serve the public interest because it "will send a powerful message to [DTC] that it cannot continue to ignore its [due process] obligations" and will "prevent[] [DTC] from imposing guilt by association that is anathema to due process." It claims that a stay would "enable [Atlantis] to raise the capital it needs to expand its operations into new tribal gaming markets where it will generate new jobs."

DTC argues that its actions were necessary in furtherance of its statutory obligation "to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest." DTC contends that "DTC's processing of transactions where its inventory is tainted with ineligible, non-freely tradable shares would not constitute 'accurate' settlement of transactions. Nor would DTC fulfill its mandate to 'protect investors and the public interest' if shares distributed illegally could continue to change hands at DTC during the months and years during [which] the Commission's litigation efforts are ongoing."

B.

Final resolution must await the Commission's determination on the merits of Atlantis's appeal. Based on the briefs and exhibits the parties have filed so far, however, there does not appear to be a strong likelihood that Atlantis will succeed on appeal. DTC informed Atlantis in writing that it had imposed the Deposit Chill because "unusually large deposits" of Atlantis shares at DTC raised "substantial questions as to whether [the] shares are freely tradable." DTC provided Atlantis a template of a legal opinion letter that was required to lift the Deposit Chill, but Atlantis never submitted one.

After learning of the Commission enforcement action against TJM, DTC imposed a Global Lock on Atlantis's shares. DTC informed Atlantis in writing that it had done so based on allegations that TJM had engaged in an unregistered distribution of Atlantis shares when no exemption from registration was available. Atlantis requested a hearing, and DTC reviewed a proposed legal opinion letter Atlantis submitted in an effort to lift the Global Lock. DTC determined that the exemptions from registration Atlantis claimed were not valid, and it maintained the Global Lock. Subsequently, Atlantis proposed resolutions to the Global Lock involving the registration of its shares with the Commission. DTC engaged in ongoing discussions with Atlantis and, where relevant, the Commission staff, stating that, if Atlantis was able to register its shares, DTC would lift the Global Lock.

Atlantis has also failed to meet its burden of proof regarding the claim that it will suffer irreparable harm without a stay. Atlantis's claim of irreparable harm is undermined by the fact that it waited over two years from imposition of the Deposit Chill and almost one year from the imposition of the Global Lock to seek a stay. Further, as DTC notes, Bailey himself has attributed the Company's recent business difficulties to reasons other than actions taken by DTC. And, as the Commission has repeatedly stated, "the fact that an applicant may suffer financial detriment does not rise to the level of irreparable injury warranting issuance of a stay."[13] Moreover, it is not clear based on the parties' filings that the Deposit Chill and Global Lock are

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[13] *See, e.g., Harry W. Hunt*, Exchange Act Rel. No. 68755, 2013 SEC LEXIS 297, at *16 n.27 (Jan. 29, 2013) (citing *Robert J. Prager*, Exchange Act Rel. No. 50634, 2004 SEC LEXIS 2578, at *2 (Nov. 4, 2004); *William Timpinaro*, Exchange Act Rel. No. 29927, 1991 SEC LEXIS 2544, at *8 (Nov. 12, 1991) ("'The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough.'") (quoting *Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958))).

responsible for the risk, if any, to Atlantis's ability to continue to operate as a going concern.[14] In any event, DTC's statutory mandate to "protect investors and the public interest" through accurate settlement of transactions outweighs any harm that Atlantis has suffered as a result of the Deposit Chill and Global Lock.[15]

Accordingly, IT IS ORDERED that Atlantis Internet Group Corporation's motion to stay the Deposit Chill and Global Lock imposed by the Depository Trust Company be, and it hereby is, denied.

For the Commission by the Office of the General Counsel, pursuant to delegated authority.

Elizabeth M. Murphy
Secretary

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[14] We have previously held that the destruction of a business could provide a sufficient basis to support a stay. *Scattered Corp.*, 52 SEC 1314, 1997 SEC LEXIS 2748, at *15 n.15 (Apr. 28, 1997) (citing *Bunker Ramo*, Exchange Act Rel. No. 14606, 1978 SEC LEXIS 1932, at *12 (Mar. 24, 1978) (stay necessary to preserve status quo ante); *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 n.2 (D.C. Cir. 1977) (destruction of a business constituted "irreparable injury" for purposes of stay of permanent injunction)). Atlantis has failed, however, to make such a showing here.

[15] DTC has requested oral argument in connection with Atlantis's stay request. Rule 451(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.451(a), provides that oral argument will be allowed in a case of this type only if the Commission determines that it will significantly aid the decisional process. Oral argument is not necessary in this matter, as the stay request can be decided on the basis of the papers filed by the parties. Accordingly, DTC's request for oral argument is hereby denied.