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UNITED STATES OF AMERICA

Before

THE SECURITIES AND EXCHANGE COMMISSION

Administrative Proceeding File number: 3-15432

In the Matter of the Application of

ATLANTIS INTERNET GROUP CORPORATION

For review of action taken by the

DEPOSITORY TRUST CORPORATION.

PETITIONER'S BRIEF

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PETITIONER'S BRIEF

Petitioner, Atlantis Internet Group Corporation, respectfully submits this brief in support of its Petition for review of the Depository Trust Corporation's("DTC") imposition of a global lock on Petitioner's common stock. Petitioner submits that the Lock should be vacated for three reasons. First, the imposition of a Global Lock on Petitioner's Common Stock exceeds DTC' authority to regulate its participants. Second, the procedures developed by DRTC are inherently unfair and violates Section 17A of the Exchange Act. Third, the issuance of shares to both TJ Management and E-Lionheart pursuant to Rule 504 was appropriate.

STATEMENT OF THE CASE

This case involves the illegal imposition of a global lock on petitioner's common stock by the Depository Trust Corporation. On July 8, 2011, without any notice to petitioner, DTC imposed a deposit chill on Petitioner's common stock. DTC 000034[1]. Initially, the deposit chill was imposed because DTC was concerned about "unusually large deposits during the period of September 9, 2010 to the date of the Deposit chill." DTC0000034. DTC'S letter made no mention of illegal distributions pursuant to Rule 504.

On August 14, 2012, he Commission filed a civil enforcement action again TJ Management alleging that TJ Management engaged in illegal distributions of stock in several companies—including Petitioner. DTC0000050-dtc0000073. Two weeks later, on August 22, 2012, The Commission filed a similar action against E-lionheart.DTC000074-DTC0000087. Two days later, DTC imposed a Global Lock on Petitioner's Common Stock. DTC000088. It is undisputed that no advance notice was provided to Petitioner. The lock was based on allegations in two enforcement actions that some of Petitioner's investors violated Rule 504. The Petitioner was not named as a defendant in these proceedings—merely mentioned as the issuer.

[1] The record contains DTC prefix to all page numbers. Accordingly all references to the Record will include this prefix.

SUMMARY OF THE ARGUMENT

Petitioner submits that both the Deposit Chill and the Global Lock must be vacated for the following reasons. First, nothing in Section17A of the Exchange Act expressly authorizes DTC to limit an issuer's access to the marketplace. Second, the transactions that gave rise to the Global Lock were properly completed under Rue 504. Third, even if TJ Management and E-lionheart violated Rule 504, Rule 508 allows Petitioner to continue to rely on the Rule 504 exemption. Fourth, DTC continues to ignore the Commissions' directive that it develops procedures to protect issuers in the event that DTC wishes to impose a chill. Accordingly, both the deposit chill and the Global Lock must be vacated.

ARGUMENT

I.

THE IMPOSITION OF A GLOBAL LOCK EXCEEDS DTC'S AUTHORITY TO SANCTION PARTICIPANTS.

Nothing in Section17A of the Exchange Act expressly gives a registered Clearing Agency the authority to limit an issuer's access to the marketplace. DTC is a registered Clearing Agency duly registered with the Securities and Exchange Commission. Registered Clearing Agencies exist under the authority granted by Congress in Section 17A of the Exchange Act.

Section 17A is very specific about a clearing agencies abilities to limit a participant's access to its facilities. In pertinent part, Section 17A provides:

> (G) The rules of the clearing agency provide that (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.

15 U.S.C.§78Q-1(b)((3)(G).

Since issuers of securities are not DTC Participants, nothing in the statute gives DTC the authority to discipline an issuer. Further, Section 17A also provides that

> (6) No registered clearing agency shall prohibit or limit access by any person to services offered by any participant therein.

15 U.S.C.§78Q-1(b)(6).

Despite this statutory prohibition, DTC issued a deposit chill and then a Global Lock on Petitioner's Common Stock.

II

DTC'S RULES ARE UNFAIR BECAUSE THEY DO NOT AFFORD PETITIPONER'S SHAREHOLDERS ANY NOTICE AND BECAUSE DTC WILL NOT ALLOW EITHER PETITIONER OR ITS AFFECTED SHAREHOLDERS A MEANINGFUL OPPORTUNITY TO CHALLENGE THE BASIS FOR THE IMPOSITION OF EITHER A DEPOSIT CHILL OR GLOBAL LOCK.

In its opposition to Petitioner's motion for a stay, DTC made it clear that it will not permit issuers to challenge any allegation made by the Commission's staff. This position assumes that the Commission's staff is infallible and never makes a mistake. Sadly, history demonstrates that the staff is not infallible and does make mistakes. *E.g. In the Matter of Russo Securities and Ferdinand Russo, Exchange Act Release34-39181 (SEC, October 1, 1997).* In fact the staff's mistake in that case was so egregious that respondent was awarded attorney fees under the Equal Access to Justice Act. 5 U.S.C. § 504. *In the Matter of Russo Securities, Inc.* Exchange Act Release 34-42121(SEC Oct, 9, 1998). In light of this history, issuer s and other parties adversely affected by deposit chills and Global Locks must be permitted to challenge the allegations that form the basis for the chill or Lock in order to remove the imposition of the chill or lock.

The Supreme Court has held that "[a] fundamental requirement of due process is 'the opportunity to be heard.' G*rannis v. Ordean*, 234 U.S. 385, 394 (1914). It is an opportunity which must be granted at a meaningful time and in a meaningful

manner.*Armstrong v Manzo*, 380 US 545, 552, (1965). The Court also recognized. An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Milliken v. Meyer*, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278, 132 A.L.R. 1357; *Grannis v. Ordean*, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363; *Priest v. Board of Trustees of Town of Las Vegas*, 232 U.S. 604, 34 S.Ct. 443, 58 L.Ed. 751; *Roller v. Holly*, 176 U.S. 398, 20 S.Ct. 410, 44 L.Ed. 520. The notice must be of such nature as reasonably to convey the required information, *Grannis v. Ordean, supra*, and it must afford a reasonable time for those interested to make their appearance, *Roller v. Holly, supra*, and *cf. Goodrich v. Ferris,* 214 U.S. 71, 29 S.Ct. 580, 53 L.Ed. 914. But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met the constitutional requirements are satisfied. 'The criterion is not the possibility of conceivable injury, but the just and reasonable character of the requirements, having reference to the subject with which the statute deals.' *Mullane v Cent. Hanover Bank & Trust Co.*, 339 US 306, 314-15 (1950). Thus, if DTC wants to use the pendency of regulatory proceedings against third parties to justify the imposition of a restriction on the securities of an issuer they must afford the issuer an opportunity to present its objections to the allegations that form the justification for the restriction. In the

appropriate case, this would include allowing the issuer to litigate the issues raised in the regulatory proceeding. Due process requires nothing less.

In this case, DTC admits that Petitioner timely requested a hearing. That hearing has not been held. Instead DTC simply refuses to discuss the possibility that the Commission's position in the *Kahlon* and *Bronson cases* might be wrong. Since due process requires the Petitioner be afforded the opportunity to challenge the Commission allegations, DTC's imposition of a deposit chill and the imposition of a Global Lock must be vacated.

III.

THE SHARES ISSUED TO TJ MANAGEMENT GROUP, LLC, E-LIONHEART ASSOC., LLC AND FAIRHILLS CAPITAL OFFSHORE WERE PROPERLY ISSUED AS FREE TRADING SHARES PURSUANT TO RULE 504 AND THE RELEVANT STATE LAW EXEMPTIONS.

After the Commission filed its complaints in the *Kehlon* and *Bronson* matters DTC, again without notice or an opportunity to be heard, imposed a Global Lock on Petitioner's common stock. The reason that was given for the imposition of the initial Global Lock was the Commission's allegation that the shares that were issued to TJ Management, E-Lionheart and Fairhills were improperly issued as free trading. In their complaints, the Commission alleged that these investor's resale of the shares

without registration violated section 5 of the securities act of 1933. The Commission did not name Petitioner in either of their lawsuits.

a. The shares issued to TJ Management were properly issued as free trading.

In the in the *Kehlon* complaint, the Commission alleged that TJ Management could not rely on Texas law because it had no relationship to Texas. In their subscription documents, however, TJ Management represented that it was a limited liability corporation organized under the laws of the state of Texas. *See* DTC 00000114-dtc0001050. Without any information to the contrary, Petitioner's reliance on this representation can only be categorized as reasonable. Thus, Petitioner was entitled to rely upon the exemption from registration provided by 7 Texas administrative code 109.13. The Commission never questioned the fact that Texas administrative code 109.13 permits general solicitation. Thus, the shares issued to TJ Management were properly issued as free trading securities under Rule 504 (B) (1) (iii).

b. The shares issued to E-Lionheart and Fairhills Capital were properly issued as free-trading.

Just as was alleged in the *Kehlon case,* in its case against Ed Bronson and E-lionheart and Fairhills Capital, the Commission alleged that E-Lionheart and Fairhills Capital could not rely on Delaware state exemptions to justify issuing the shares as free-trading under Rule 504. The sales of securities from the Issuers to E-

Lionheart qualified for the Rule 504(b)(iii) exemption because these sales were made exclusively according to an exemption from registration contained in the Delaware Securities Act. The Delaware Securities Act prohibits the offer or sale of any security in Delaware unless (1) it is registered, (2) *the security or transaction is exempt,* or (3) the security is a federally covered security. *See* Del. Code Ann. tit. 6, § 73-202 (emphasis added). The exemption the E-Lionheart Defendants claimed is located at Section 73-207(b) (8) of the Delaware Securities Act. That section provides:

> Any offer or sale to a bank, savings institution, trust company, insurance company, investment company ... , pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

Del. Code Ann. tit. 6, § 73-207(b)(8).

The sales of securities from Petitioner to E-Lionheart qualified for the Rule 504(b)(iii) exemption because they were made exclusively according to an exemption from registration contained in the Delaware Securities Act. The Delaware Securities Act prohibits the offer or sale of any security in Delaware unless (1) it is registered, (2) *the security or transaction is exempt,* or (3) the security is a federally covered security. *See* Del. Code Ann. tit. 6, § 73-202 (emphasis added). The exemption the E-Lionheart Defendants claimed is located at Section 73-207(b)(8) of the Delaware Securities Act. That section provides:

> The following transactions are exempted from § 73-202 ... of this title: ... (8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company ..., pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

Del. Code Ann. tit. 6, § 73-207(b)(8). The SEC alleged, however, that the initial offer and sale from Petitioner to E-Lionheart did not qualify under the Rule 504(b)(1)(iii) exemption for two reasons. First, the SEC alleged that the relevant offers and sales "had either no nexus, or an insufficient nexus, to Delaware," and that Rule 504(b) (1)(iii)'s exemption was therefore unavailable. Second, the SEC alleged that the Delaware Securities Act "does not permit 'general solicitation and general advertising,' as required by Rule 504(b) (1)(iii)" and, therefore, Rule 504(b)(1)(iii)'s exemption was ... unavailable. In both cases, the Commission's position is wrong.

i. Petitioner's offers and sales were made "exclusively according to state law exemptions from registration."

The SEC's assertion that "the securities offerings had either no nexus, or an insufficient nexus, to Delaware" is irrelevant as a matter of law. Nothing in Rule 504(b)(I)(iii) requires that the offer or sale occur in, or have any connection to, the state in which the issuer is claiming an exemption. The Rule merely requires that the sale be made *"exclusively according to"* a state law exemption.

Thus, the parties must only *agree* that the offer and sale was being made according to the Delaware Securities Act.

It is perhaps axiomatic that "A court interpreting a regulation must begin "with the language of the [regulation] itself." *Caraco Pharm. Labs., Ltd. v. Novo NordiskAIS,* 132 S. Ct. 1670, 1680 (2012) (quoting *United States v. Ron Pair Enterprises, Inc.,* 489 U.S. 235, 241 (1989)). Unless otherwise defined, words in a statute or regulation "will be interpreted as taking their ordinary, contemporary, common meaning." *Bilski v. Kappas,* 130 S. Ct. 3218, 3226 (2010) (internal quotation marks and citations omitted). When interpreting a regulation, courts "must presume" that an agency says what it means and means what it says. *See Barnhart v. Sigmon Coal Co.,* 534 U.S. 438, 461-62 (2002) (quoting *Conn. Nat. Bank v. Germain,* 503 U.S. 249, 253-54 (1992)). Indeed, courts "will not alter the text in order to satisfy the policy preferences of the" agency. *Id.* at 462.

A comparison of the language of the three subsections of Rule 504(b)(1) demonstrates that an agreement that a transaction be made according to the laws of a state is all the nexus that is required by Rule 504(b)(1)(iii). Both subsection (i) and subsection (ii) of SEC Rule 504(b)(1) require that the offers and sales are made *"in one or more states"* that either "provide for

the registration of the securities," 17 C.F.R. § 230.504(b)(l)(i), or "have no provision for the registration of the securities" so long as the securities have been registered in at least one state that provides for registration, *id.* § 230.504(b) (l) (ii). In contrast, Rule 504(b) (1) (iii) does not require that the offers or sales be made "in one or more states." Rather, it merely provides that the offers or sales must be made *"according to state law exemptions."* In other words, Rules 504(b)(1)(i) and (ii) require the offer or sale to be made "in the state" in which the securities are registered, whereas Rule 504(b)(1)(iii) does not. A side-by-side comparison of the three subsections of SEC Rule 504(b) illustrates this point. Rule 504(b) states that to qualify for an exemption, without, *inter alia,* being subject to resale restrictions, the offers and sales of securities must be made:

Rule504(b)(l) (i)	"Exclusively *in one or more states* that provide for the registration of the securities, and require the public filing and delivery to investors of a substantive disclosure document before sale, and are made in accordance with those state provisions."

Rule 504(b)(l)(ii)	*"In one or more states* that have no provision for the registration of the securities or the public filing or delivery of a disclosure document before sale, *if the securities have been registered in at least one state* that provides for such registration, public filing and delivery before sale, *offers and sales are made in that state* in accordance with such provisions, and the disclosure document is delivered before sale to all purchasers (including those in the states that have no such procedure."
Rule 504(b)(l)(iii)	"Exclusively *according to state law exemptions* from registration that permit general solicitation and advertising so long as the sales are made only to 'accredited investors' as defined in§ 230.501(a)."

In sum, Rule 504(b)(1)(iii) does not require that the sale or offer occur within the state. Rather, it requires that the issuer and investor agree that the offer or sale is being made in conformity with or according to an exemption from registration pursuant to the Delaware Securities Act. According to the Commission's Bronson Complaint, this is precisely what happened. The subscription agreements prepared by E-Lionheart expressly provide that the sale was being made pursuant to exemptions from registration under Rule 504(b)(1)(iii) and Delaware Securities Act § 73- 207(b)(8).

In any event, Petitioner's offers and sales of securities to E-Lionheart had a sufficient nexus to Delaware for an independent reason. While the

Delaware Securities Act is silent as to, and Delaware courts have yet to opine on, the ability of a Delaware entity to avail itself of the protection of Delaware securities laws when negotiating an agreement to purchase securities, in other relevant contexts, Delaware has taken an expansive view of what constitutes sufficient nexus with Delaware.

For example, in similar circumstances, when one party to a contract is a Delaware entity and the parties agree that Delaware law would apply to any disputes, Delaware courts will find sufficient nexus to Delaware even when the relevant transactions took place entirely outside of Delaware. *See Coface Collections N. Am. Inc. v. Newton,* 430 Fed. App'x 162, 167 (3d Cir. 2011) (noting that Delaware courts will find that Delaware has a "substantial relationship to [a] transaction" adopting a Delaware choice-of-law provision where only one party to the contract is organized under the laws of Delaware and regardless of where the transaction took place).

Additionally, pursuant to statute, contracts involving amounts of $100,000 or more that adopt a Delaware choice-of-law provision are "conclusively ... presumed" to have a "significant, material and reasonable relationship" with Delaware. Del. Code Ann. tit. 6, §2708(c); *see also Total Holdings USA, Inc. v. Curran Composites, Inc.,* 999 A.2d 873,

883 (Del Ch. 2009); *ABRY Partners V, L.P. v. F&W Acquisition LLC,* 891A.2d1032, 1046 (Del. Ch. 2006) (finding a material relationship to Delaware even though the entities were headquartered in Massachusetts and Rhode Island, and the transaction occurred in Massachusetts). As Delaware courts have stated, a Delaware citizen "ought to be able to use [Delaware] law as a common language for [its] commercial relationships, particularly when those relationships involve interstate commerce and do not center in any material manner on the geography of any particular party's operational headquarters." *ABRY Partners V, L.P.,* 891 A.2d at 1049-50. In the Bronson case, the SEC alleged that an insufficient nexus with Delaware existed because (1) E-Lionheart was headquartered in New York and the transactions occurred out of that office, (2) *"many"* of the issuers "had no business operations in Delaware[,]" and (3) the transfer agents were not located in Delaware. Delaware courts are not likely to agree with this reasoning. "The idea that a state's interests are only implicated by physical contacts is outmoded in all sorts of ways." *Total Holdings USA,* 999 A.2d at 883.

Similarly, Delaware courts have held that Delaware's long-arm statute applies to a foreign entity where, among other things, "the parties expressly agreed that Delaware law governed their agreement." *Aeroglobal Capital Mgmt.,*

LLC v. Cirrus Indus., Inc., 871 A.2d 428, 438 (Del. 2005). Here the parties expressly agreed in the subscription agreement that the Delaware Securities Act would apply.

In the Bronson litigation, the SEC alleged that Section 73-207(b)(8) of the Delaware Securities Act does not permit "general solicitation and advertising." This interpretation, however ignores the plain language of the Delaware Securities Act and, consequently, misreads Section 73-207(b) (8).

Section 73-207(b) (8) applies to "any *offer* or sale" made to an enumerated list of companies and individuals. The Delaware Securities Act, in turn, defines an "offer" and "offer to sell" as including *"every* attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value." Del. Code Ann. tit. 6, § 73-103(a) (17) (a) (emphasis added). Surely, "every attempt or offer to dispose of, or solicitation of an offer to buy" means advertising generally and soliciting by any means. Moreover, "when the word 'includes' is employed in defining a word or term, the definition is not limited to the meaning given, but in appropriate cases the word or term may be defined in any way not inconsistent with the definition given." *Id.* at§73-103(b) (2). In other words, the use of "includes" in this definition means "offer" and "offer to sell" should be read

broadly to include any kind of offer, including by means of "general solicitation and advertising."

In any event, even if the statute did not provide this broad and all-encompassing definition of an offer, Section 73-207(b)(8) still must be read to "permit" general solicitation and advertising, because it does not *prohibit* such solicitation and advertising. It is axiomatic that unless something is prohibited by statute, it is permitted. *See, e.g., Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 957 (Del. 1985) ("Merely because the General Corporation Law is silent as to a specific matter does not mean that it is prohibited."). Thus, because neither the exemption at Section 73-207(b) (8) nor the general definition at Section 73-103(b)(2) (or any other section) prohibits general solicitation or advertising, the Delaware Securities Act permits it. Under these circumstances, the shares issued to E-Lionheart and Fairhills Capital were properly issued as free-trading under Rule 504.

IV.

DTC REFUSES TO RECOGNIZE THE IMPACT OF RULE 508 THAT PROTECTS ISSUERSFROM LOSING THE RULE 504 EXEMPTION FOR INSIGNIFICANT DEVIATIONS.

In his November 2, 2012 letter to Walter Van Dorn, counsel for Petitioner specifically argued that Rule 508 of Regulation D applied to the offers and sales to E-lionheart.DTC0000111-dtc0000112. Without any analysis, counsel for DTC rejected the argument. Petitioner submits that Rule 508 allows Petitioner to rely on the 504 exemption to issue free-trading shares to E-lionheart Associates.

Rule 508 provides:

> (a) A failure to comply with a term, condition or requirement of § 230.504, § 230.505 or § 230.506 will not result in the loss of the exemption from the requirements of section 5 of the Act for any offer or sale to a particular individual or entity, if the person relying on the exemption shows:
> (1) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and
> (2) The failure to comply was insignificant with respect to the offering as a whole, provided that any failure to comply with paragraph (c) of § 230.502, paragraph (b)(2) of § 230.504, paragraphs (b)(2)(i) and (ii) of § 230.505 and paragraph (b)(2)(i) of § 230.506 shall be deemed to be significant to the offering as a whole; and
> (3) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of § 230.504, § 230.505 or § 230.506.
> (b) A transaction made in reliance on § 230.504, § 230.505 or § 230.506 shall comply with all applicable terms, conditions and requirements of Regulation D. Where an exemption is established

> only through reliance upon paragraph (a) of this section, the failure to comply shall nonetheless be actionable by the Commission under section 20 of the Act.

17 C.F.R. § 230.508.

Petitioner submits that Rule 508 insulates Petitioner from E-lionheart's alleged improper use of Delaware' accredited investor exemption. Petitioner submits that Rule 508 applies for three reasons. First, the alleged violation had nothing to do with any regulatory provision designed to protect E-lionheart. Second, the alleged violation was that E-lionheart did no maintain sufficient ties to Delaware to rely on the Delaware's Accredited Investor exemption. The merits of this allegation aside, this alleged violation had little to do with the offering as a whole and should be viewed as insignificant. Finally, in each case, Petitioner obtained specific representations that E-Lionheart was organized under the laws of Delaware and obtained legal opinions that issuance of the shares in reliance on rule 504 was appropriate. Thus, the Petitioner made a good faith attempt to comply with all of the requirements of Rule 504. Under these circumstances, Rule 508 protects the Peitioner's exemption under Rule 504 of Regulation D. Since Rule 508 preserves Petitioner's exemption under Rule 504, the shares held by Cede & Co. are properly free-trading and the Global Lock should be reversed.

1. 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.

In *International Power Group, Ltd.* Exchange Act Release34-66611,(SEC March 15, 2012), The Securities Exchange Commission ordered DTC to develop procedures to provide notice and an opportunity to be heard. Indeed, the Commission only ordered DTC to do that which Section 17A required it to have done already. Section 17A(b)(5) provides

> (A) In any proceeding by a registered clearing agency to determine whether a participant should be disciplined (other than a summary proceeding pursuant to subparagraph (C) of this paragraph), the clearing agency shall bring specific charges, notify such participant of, and give him an opportunity to defend against such charges, and keep a record. A determination by the clearing agency to impose a disciplinary sanction shall be supported by a statement setting forth--
>
> (i) Any act or practice in which such participant has been found to have engaged, or which such participant has been found to have omitted;
>
> (ii) The specific provisions of the rules of the clearing agency which any such act or practice, or omission to act, is deemed to violate; and
>
> (iii) The sanction imposed and the reasons therefore.
>
> (B) In any proceeding by a registered clearing agency to determine whether a person shall be denied participation

> or 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 denial or prohibition or limitation under consideration and keep a record. A determination by the clearing agency to deny participation or prohibit or limit a person with respect to access to services offered by the clearing agency shall be supported by a statement setting forth the specific grounds on which the denial or prohibition or limitation is based.

15U.S.C.§78Q-1(b)(5).

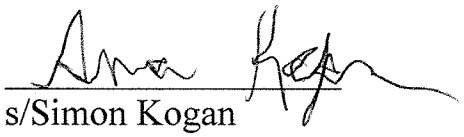
Not surprisingly, DTC has chosen to ignore both statutory mandate and this Commission's order. No rule filings have been made. Instead, despite having no legislative authority to do so, DTC imposes a chill without notice to the issuer. They then create impediments to issuers seeking to resolve the chill. For example, in Petitioner's case, DTC has expressed "concern" about certain large deposits of Petitioner's common stock. When Petitioner sought to assuage those concerns, DTC demanded supplemental legal opinions covering deposits by certain shareholders. Several of those shareholders were not identified by DTC. Thus, DTC is asking for the impossible -- a legal tradability opinion for unidentified shareholder. DTC's informal procedure provide no redress whatsoever to those stakeholders that suffer the most from the imposition of a deposit chill and Global Lock- innocent downstream purchasers of the stock sold to them by TJ Management and E-lionheart. Indeed, it is almost impossible to identify those shareholders since dtc's subsidiary Cede holds the share in a single fungible mass. These shareholders are

not only denied notice, they are left with no avenue to seek redress. DTC'S procedures are therefore inherently unfair and its actions must be reversed.

CONCLUSION

Since the imposition of the deposit chill and Global Lock violates the clear language of Section 17A and because their imposition are based on unproven allegations against third parties, DTC's actions must be reversed and the deposit chill and Global Lock vacated.

Dated: Staten Island, New York
November 18, 2013



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CERTIFICATE OF COMPLIANCE

Simon Kogan, herby certifies that the within brief contains 4,621 words and was prepared using Microsoft Word 2013.

Dated: Staten Island, N.Y.
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