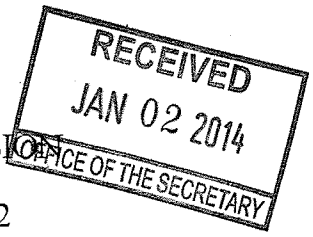
UNITED STATES OF AMERICA

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 REPLY BRIEF

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Preliminary Statement

Petitioner, Atlantis Internet Group Corporation ("Atlantis") respectfully submitsthis ReplyBrief in further supportofits Petition forreview ofthe Depository TrustCorporation's ("DTC") imposition of a global lock on Petitioner's common stock. Petitioner submits that the Lock should be vacated for three reasons. First, sinceDTC's procedureshave not been approved by the Commission, the imposition

of the deposit chill and then the Global Lock is both illegal (and ??). Second, even if the procedures had been approved, DTC did not follow them. Third, the procedures developed by DTC are inherently unfair and violate Section 17A of the Exchange Act.

Supplemental Statement of the Case

In what best can be described as a paltry attempt to demonstrate grudging reverence to the requirements of Section 17A of the Exchange Act, DTC filed a proposed rule change, proposing rules that would govern the imposition of deposit chills and global locks. *See* Exchange Act Release 34-71132 (SEC, December 18, 2013). Apparentlybelieving that the proposed rules codify DTC's practices, since the Commission ordered DTC to develop fair procedures in the *International Power Group* case, , DTC insiststhe Petitioner was afforded fair procedures herein. In what can only be described as hubris, Respondent asks the Commission to take notice of the filing. Respondent submits that the after–the-fact filing is totally irrelevant to these proceedings.

SUMMARY OF THE ARGUMENT

Respondent argues that since Section 17A allows it to limit access to its facilities, the deposit chill and Global Lock are legal. They are wrong. Imposition of the chill and the lock would only be legal if DTC had afforded Petitioner fair procedures that were fully vetted through the 19B process. The procedures that were provided to Petitioner were not; therefore the imposition of the chill and the lock were, and remain, illegal. Second, DTC insists that because the process afforded Atlantis was extensive it was fair. Even assuming that the procedures DTC followed comport with rules they file, the procedures are not fair.

Finally, DTC refuses to permit issuers the opportunity to challenge allegations that there might have been a Section 5 violation. Instead, DTC insists that issuers who are not named as respondents in the enforcement actions must treat the allegations contained in the complaint as findings against the issuer. This is fundamentally unfair. If DTC wishes to use the allegations as sufficient to justify the imposition of either a deposit chill or global lock they must afford the issuer a forum in which to test the allegations.

ARGUMENT

I.

DTC'S IMPOSITION OF A DEPOSIT CHILL AND GLOBAL LOCK ON PETITIONER'S COMMON STOCK IS ILLEGAL BECAUSE THE PROCEDURES USED BY DTC WERE NEVER APPROVED BY THE SECURITIES AND EXCHANGE COMMISION.

Section 19B of the Exchange Act states that all rules of self-regulatory agencies, such as the DTC, be approved by the commission prior to implementation. Since the procedures used by DTC to implement a deposit chill and, subsequently, a Global Lock on Petitioner's Common Stock were never approved by the SEC, the imposition of the chill and then the lock were both illegal.

Section 19 of the Exchange Act sets forth a detailed process by which self-regulatory agency rules and procedures are approved by the Securities and Exchange Commission, 15 USC 78. Section 19b requires that the Agency file the rules with the Commission. The rules are then published in the federal register and the public is allowed to comment on the rules for a minimum of 45 days. 15 USC 78, (b) (2) (a) (i). Section 19(b) (1) also provides "No proposed rule change shall take effect unless approved by the Commission..." Here, the rules under which the deposit chill and Global Lock were imposed were not even filed until **after** Petitioner filed its Petition for Review, some two years after imposition of the deposit chill, and over a year after imposition of the Global Lock. The rules under which DTC imposed the chill

and the lock on Petitioner's common stock were both illegal, accordingly, both the chill and the lock must be vacated.

II.

EVEN ASSUMING THAT THE PROCEDURES DEVELOPED BY DTC ARE FAIR, DTC FAILED TO FOLLOW THEM WHEN THEY IMPOSED THE DEPOSIT CHILL AND THE LOCK ON PETITIONER'S COMMON STOCK.

Even if the Commission determines that the procedures outlined in DTC's rule proposal are fair, the chill and the lock must still be vacated because DTC did not follow its own procedures. First DTC's procedures required it to give the issuer notice of its intent to impose a chill at least 20 days before the chill is imposed. Exchange Act Release 34-71132(SEC, DECEMBER 18, 2013) Proposed Rule 22A. Here it is undisputed that DTC did not give Petitioner any notice prior July 9, 2011,—the date on which DTC admits it imposed a deposit chill on DTC 000034, petitioner's common stock. Indeed, Petitioner received no notice until 11 months after the chill was imposed. ProposedRule 22A requires that the notice within 3 business days after the chill was imposed. Exchange Act Release 34-71132(SEC, DECEMBER 18, 2013) 15, Similarly, DTC imposed the Global lock on August 24, 2012, DTC 0000088, but did not notify Petitioner's counsel until September 14, 2012. DTC 0000093. Once again, theproposed rulesrequire notice within 3 business days after imposition of a Global Lock. Exchange Act Release 34-71132(SEC, DECEMBER 18, 2013)

Thus, even if the proposed rules were in effect, the imposition of the chill and the lock would both be illegal. DTC's rule filing acknowledges that it cannot maintain a Global Lock imposed prior to notice indefinitely without affording the affected issuer "fair" procedures. Exchange Act Release 34-71132(SEC, DECEMBER 18, 2013) 13. The only procedures that DTC appears willing to contemplate, however, are an extensive period of exchanging opinion letters, and comments without ever getting to the heart of the issue—whether the issuer violated Section (?) by making an illegal distribution of its securities in violation of Section 5 of the Securities Act of 1933.

Indeed, in this case, although DTC admitted that Petitioner's hearing request was timely, it refused to hold a hearing, stating bluntly that it will not afford issuers an alternative forum in which to challenge allegations of wrongdoing. DTC BRIEF at 18. Since, however, Petitioner was not named in either of the enforcement proceedings that gave rise to the imposition of the Lock; DTC is denying Petitioner ANY forum in which to challenge the allegation of wrongdoing. Since DTC is not following the procedures they developed, the imposition of the chill and the Lock are inherently unfair and must be vacated.

III

. DTC'S RULES ARE UNFAIR BECAUSE THEY DO NOT AFFORD PETITIONER'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.

DTC suggests that because Petitioner was given multiple opportunities to submit opinions establishing the facts that all of the shares held in CEDE's fungible mass its procedures were fair. DTC clearly misses the point. Fair procedures require notice and a meaningful opportunity to be heard PRIOR to the imposition of either the chill or the lock. DTC suggests that the rules they developed contemplate an iterative process that reflects the needs of issuers to consult with DTC in providing the factual information and legal representations required to satisfy DTC's eligibility standards. DTC Brief at 13.

What DTC fails to recognize is that by the time a restriction is imposed, the securities that gave rise to the restriction have already been disposed of by the depositing party. Thus, only innocent shareholders are directly affected by the imposition of a restriction. For the most part, these are downstream purchasers or investors who purchased the stock in the open market. It is these innocent shareholders who are most directly affected by the lack of liquidity. DTC's rule proposals do not provide this affected constituency any avenue through which they can redress the imposition of the restriction. DTC should acknowledge this

constituency and provide them with a means to obtain relief from the restriction. Once these shareholders have held the securities for the Rule 144 holding period, perhaps the relief could be afforded by treating their sale as a transaction not involving the issuer, underwriter or dealer under Rule 144.

A. The proposed rules do not provide for adequate notice.

DTC's so-called fair procedures allow DTC to impose a deposit chill and/or Global Lock without providing prior notice and an opportunity to be heard. Nothing in Section 17A authorizes DTC to restrict an issuer's access to its facilities without prior notice. By its own terms, however, this section cannot apply to issuers. First, this section only applies to participants in the clearing agency. Thus, DTC can only suspend broker-dealer participants. Second, issuers are generally not subject to regulation by an "appropriate regulatory agency." Presumably, the Securities and Exchange Commission would be the agency that would regulate the issuer – assuming that the issuer has a class of security registered under either the Securities Act of 1933 or the Securities Exchange Act of 1934. This leaves issuers that trade on OTC Markets Pink Sheets without an appropriate regulatory agency.

Second, the proposed rules do not provide for contemporaneous notice to both the issuer and the Commission. It is this contemporaneous notice that triggers the ability of the issuer to seek a stay of the restriction. This notice also requires DTC

to articulate the danger to the clearing agency. The proposed rules do not require DTC to articulate the dangers it faces. All the proposals require is that DTC provide notice of the restriction and the reasons for the restriction. If DTC wants to impose a chill prior to notice it must be required to clearly articulate the risks that it believes it is exposed to if the chill is not imposed.

Historically, when DTC has not been able to deliver its notice of a chill to an issuer, it chose to deliver the notice to the issuer's transfer agent. This form of substituted service is not reasonably calculated to provide notice to the issuer. Thus, the procedures used by DTC to provide notice to Petitioner were not reasonably calculated to give Petitioner notice of the impending actions

B. The Proposed Rules Do Not Provide Any Guidance As To What Imminent Harm Will Justify The Imposition Of A Chill Or A Lock Before Providing Notice To The Issuer.

DTC believes that it is entitled to impose a restriction to protect itself and the public from imminent harm. To date, DTC has not provided any guidance with respect to the level of threat that would justify the imposition of a chill or lock prior to providing the issuer with notice. Historically, DTC imposed chills and locks based upon m e r e allegations that third party investors violated Section 5 by illegally purchasing shares under Rule 504, and then immediately reselling those shares in the open market. DTC never articulated

how it could be harmed by continuing to allow transactions in the issuer's securities to occur. DTC should be required to clearly outline the minimum showing of imminent harm that would be needed to justify the imposition of a restriction prior to providing the issuer with notice. Ideally, if DTC wishes to summarily impose a restriction on the securities of an issuer, it should develop procedures for an expedited proceeding. Those procedures should mirror FINRA'S rules governing Notices of Suspension contained in Rule 9552 of FINRA's Code of Procedure. There is no reason why DTC could not have adopted Rule 9552 to cover imposition of restrictions on issuers. Had Rule 9552 been so adopted, the issuer would have proper notice that a chill or lock is imminent, be able to demand a hearing, be able to develop a full and complete record to support any petition for review, and it would have the opportunity to address allegations of wrongdoing and argue that the restrictions go far beyond what is needed to protect DTC's fungible mass. DTC's failure to consider this alternativeprocedure – one that has already been vetted and approved by the Commission--is simply inexplicable.

Since the procedures that DTC used to impose the chill and the lock on Petitioner's common stock were inherently unfair, the Commission Chill and the Lock must both be vacated.

IV

DTC MUST PROVIDE ISSUERS WITH A FORUM IN WHICH TO DEFEND THEMSELVES AGAINST ALLEGATIONS THAT THEIR SECURITIES WERE DISTRIBUTED IN VIOLATION OF SECTION 5 OF THE SECURITIES ACT OF 1933.

DTC insists that it can impose restrictions whenever a regulator alleges that an investor in a company was engaged in an illegal distribution. DTC latches on to these allegations and imposes restrictions on issuers before those allegations are proven. DTC's proposed rules make it clear that DTC has no interest in providing issuers with a venue in which the issuer can challenge allegations of a Section 5 violation. Thus, DTC makes it clear that while it will give lip service to requirements of due process, it has no intentions of providing issuers with a meaningful opportunity to be heard.

The Supreme Court has held that "[a] fundamental requirement of due process is 'the opportunity to be heard.' *Grannis 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*, supra, 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 basis for the restrictions.

In its opposition brief, 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. *See, In the Matter of Russo Securities and Ferdinand Russo, Exchange Act Release 34-39181 (SEC, October 1, 1997).* In fact, the staff's mistake in that case was so egregious thatrespondent 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, issuers 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.

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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.

CONCLUSION

The well-settled law and application of same in the cases cited by Petitioner clearly outline why the methods and practices imposed by DTC fall woefully short of the legal guidelines established to govern cases similar to the instant matter. Since DTC's rules and procedures are inherently unfair and have never been approved by the Commission; and, in addition, operate to deprive Petitioner of due process, the petition should be granted, and the imposition of both the deposit chill and Global Lock should be vacated.

Dated: Staten Island, New York
January 2, 2014

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CERTIFICATE OF COMPLIANCE

Simon Kogan, herby certifies that the within brief contains 3,171 words and was prepared using Microsoft Word 2013.

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