

DOLLAR THRIFTY AUTOMOTIVE GROUP INC

Form 425

July 29, 2010

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Filed by Avis Budget Group, Inc.

Commission File No.: 001-10308

Pursuant to Rule 425 under the
Securities Act of 1933, as amended

Subject Company:

Dollar Thrifty Automotive Group, Inc.

Commission File No.: 001-13647

On July 28, 2010, in connection with its offer for Dollar Thrifty Automotive Group, Inc. (Dollar Thrifty), Avis Budget Group, Inc. (Avis Budget) sent the proposed merger agreement below to Dollar Thrifty s counsel.

K&E Draft of July 28, 2010

AGREEMENT AND PLAN OF MERGER

by and among

AVIS BUDGET GROUP, INC.

[ACQUISITION SUB]

AND

DOLLAR THRIFTY AUTOMOTIVE GROUP, INC.

July __, 2010

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this Agreement), dated as of July , 2010, is by and among Avis Budget Group, Inc., a Delaware corporation (Parent), [Acquisition Sub], a Delaware corporation and a wholly owned subsidiary of Parent (Merger Sub), and Dollar Thrifty Automotive Group, Inc., a Delaware corporation (the Company).

WITNESSETH:

WHEREAS, the respective boards of directors of Parent, Merger Sub and the Company have (i) determined that it is in the best interests of their respective companies and their stockholders to consummate the merger of Merger Sub with and into the Company (the Merger) and (ii) approved and declared advisable this Agreement and the Merger, upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, immediately prior to the execution of this Agreement, the Company terminated the Agreement and Plan of Merger, dated as of April 25, 2010, by and among Hertz Global Holdings, Inc., HDTMS, Inc. and the Company (the Prior Merger Agreement); and

WHEREAS, Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, representations, warranties and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

ARTICLE I

THE MERGER

Section 1.01 The Merger. Upon the terms and subject to the conditions set forth herein, and in accordance with the relevant provisions of the Delaware General Corporation Law (the DGCL), at the Effective Time, Merger Sub shall be merged with and into the Company. Following the Effective Time, the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving entity in the Merger (the Surviving Entity) and shall succeed to and assume all the rights and obligations of the Company and Merger Sub in accordance with the DGCL.

Section 1.02 Consummation of the Merger; Effective Time. The closing of the Merger (the Closing) will take place at 10:00 a.m., New York time, on the second business day following the satisfaction or waiver by the party entitled to the benefit thereof, of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to their satisfaction, or waiver by the party entitled to the benefit thereof, at the Closing), or on such other date and at such other time as the parties may mutually agree, at the offices of Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, NY 10006. Upon the terms and subject to the conditions set forth herein, as soon as practicable on the Closing Date, the parties shall cause the Merger to be consummated by filing

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with the Secretary of State of the State of Delaware a duly executed certificate of merger (the Certificate of Merger), as required by the DGCL. The Merger shall become effective at such time as the Certificate of Merger is filed with the Secretary of State of the State of Delaware, or at such other time as Parent and the Company shall agree and shall specify in the Certificate of Merger. The date on which the Closing occurs pursuant to this Section 1.02 is referred to herein as the Closing Date and the time the Merger becomes effective pursuant to this Section 1.02 is referred to herein as the Effective Time .

Section 1.03 Effects of the Merger. The Merger shall have the effects set forth herein and in the applicable provisions of the DGCL.

Section 1.04 Certificate of Incorporation and Bylaws. At the Effective Time and by virtue of the Merger, the Company Certificate shall be amended to be identical to the certificate of incorporation of Merger Sub in effect immediately prior to the Effective Time, except (i) for Article FIRST, which shall read "The name of the corporation is Dollar Thrifty Automotive Group, Inc. ", (ii) that the provisions of the certificate of incorporation of Merger Sub relating to the incorporator of Merger Sub shall be omitted and (iii) as otherwise required by Section 6.04(a), and as so amended shall be the amended and restated certificate of incorporation of the Surviving Entity until thereafter amended in accordance with applicable Law and this Agreement. At the Effective Time, the Company Bylaws shall be amended to be identical to the bylaws of Merger Sub in effect immediately prior to the Effective Time, except as otherwise required by Section 6.04(a), and as so amended shall be the bylaws of the Surviving Entity until thereafter amended in accordance with applicable Law and this Agreement.

Section 1.05 Directors and Officers. The directors of Merger Sub immediately prior to the Effective Time and the persons designated as officers by Parent in writing to the Company at least three business days prior to the Closing Date shall be the directors and officers, respectively, of the Surviving Entity, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Entity.

ARTICLE II

EFFECT OF THE MERGER ON CAPITAL STOCK

Section 2.01 Effect on Capital Stock.

(a) At the Effective Time, by virtue of the Merger and without any further action on the part of Parent, Merger Sub, the Company or any holder of any of the following securities:

(i) subject to Section 2.02(e), each share of common stock, par value \$0.01 per share, of the Company (the Company Common Stock) that is issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares and shares to be canceled in accordance with Section 2.01(a)(ii)) shall be converted into the right to receive:

(A) 0.6543 (the Exchange Ratio) validly issued, fully paid and nonassessable shares of common stock, par value \$0.01 per share, of Parent (Parent Common Stock, such shares of Parent Common Stock issued or issuable pursuant to this Section 2.01(a)(i)(A), the Stock Consideration); and

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(B) an amount in cash equal to \$39.25 minus the Special Dividend Per Share Amount (the Cash Consideration, and together with the Stock Consideration, the Merger Consideration).

(ii) each share of Company Common Stock that immediately prior to the Effective Time is owned by Parent, Merger Sub, the Company (as treasury stock or otherwise) or any of their respective Subsidiaries shall be canceled without any consideration being exchanged therefor; and

(iii) each share of common stock, par value \$0.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one validly issued, fully paid and nonassessable share of common stock, par value \$0.01 per share, of the Surviving Entity.

(b) All of the shares of Company Common Stock converted into the right to receive the Merger Consideration pursuant to this Article II shall no longer be outstanding, and shall automatically be canceled and shall cease to exist, as of the Effective Time, and each certificate (each, a Certificate) or book-entry share (each, a Book-Entry Share) previously representing any such shares of Company Common Stock shall thereafter represent only the right to receive the Merger Consideration (and cash in lieu of any fractional share of Parent Common Stock), into which the shares of Company Common Stock represented by such Certificate or Book-Entry Share shall have been converted pursuant to this Section 2.01 and Section 2.02(e), as well as any dividends to which holders of Company Common Stock have become entitled in accordance with Section 2.02(c).

(c) If, between the date of this Agreement and the Effective Time, the outstanding shares of Company Common Stock or Parent Common Stock shall have been increased, decreased, changed into or exchanged for a different number or kind of shares or securities as a result of a reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar change in capitalization (but excluding any change that results from (i) the exercise of stock options or the conversion into Parent Common Stock or Company Common Stock of other equity awards relating to the Parent Common Stock or Company Common Stock or (ii) the grant of stock-based compensation to directors or employees of Parent or (other than any such grants not made in accordance with the terms of this Agreement) the Company or their respective Subsidiaries under Parent's or the Company's, as applicable, stock option or compensation plans or arrangements), the Merger Consideration shall be appropriately and proportionately adjusted to reflect such reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar change in capitalization.

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Section 2.02 Exchange of Certificates.

(a) Exchange Agent. At or prior to the Effective Time, Parent shall deposit, or shall cause to be deposited, on behalf of Merger Sub, with a bank or trust company designated by Parent with the Company's prior consent, which consent shall not be unreasonably withheld or delayed (the Exchange Agent), in trust for the benefit of the holders of Company Common Stock for exchange in accordance with this Article II through the Exchange Agent: (i) evidence of such number of shares of Parent Common Stock in book-entry form that is sufficient to deliver, and Parent shall instruct the Exchange Agent to timely deliver, the aggregate Stock Consideration; (ii) immediately available funds sufficient to pay, and Parent shall instruct the Exchange Agent to timely pay, the aggregate Cash Consideration (together with, to the extent then determinable, any cash payable in lieu of fractional shares of Parent Common Stock pursuant to Section 2.02(e)) and (iii) from time to time as needed, additional cash sufficient to pay cash in lieu of fractional shares pursuant to Section 2.02(e) and any dividends and other distributions pursuant to Section 2.02(c) (such shares of Parent Common Stock and aggregate Cash Consideration, together with any dividends or other distributions with respect thereto with a record date after the Effective Time pursuant to Section 2.02(c) and any cash payments in lieu of any fractional shares of Parent Common Stock pursuant to Section 2.02(e), being hereinafter referred to as the Exchange Fund).

(b) Exchange Procedures. As promptly as practicable after the Effective Time, and in any event within five business days thereafter, Parent shall cause the Exchange Agent to mail to each holder of record of shares of Company Common Stock whose shares of Company Common Stock were converted into the right to receive the Merger Consideration pursuant to Section 2.01(a)(i): (i) a letter of transmittal in customary form (which shall specify that delivery shall be effected, and risk of loss and title to Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent and which shall have such other provisions as Parent and the Company may agree) and (ii) instructions for use in surrendering the Certificates (or affidavits of loss in lieu thereof) or Book-Entry Shares in exchange for book-entries representing shares of Parent Common Stock comprising the Stock Consideration portion of the Merger Consideration and cash comprising the Cash Consideration portion of the Merger Consideration, any dividends or other distributions to which holders of Certificates or Book-Entry Shares are entitled pursuant to Section 2.02(c) and cash in lieu of any fractional shares of Parent Common Stock to which such holders are entitled pursuant to Section 2.02(e). Upon surrender of a Book-Entry Share or a Certificate for cancellation to the Exchange Agent, together with such letter of transmittal, duly completed and validly executed, and/or such other documents as may be reasonably required by the Exchange Agent, the holder of such Book-Entry Share or Certificate shall be entitled to receive in exchange therefor (A) a book-entry representing that number of whole shares of Parent Common Stock that such holder has the right to receive pursuant to the provisions of this Article II after taking into account all the shares of Company Common Stock then held by such holder under all such Book-Entry Shares or Certificates so surrendered and (B) a check for the cash that such holder is entitled to receive pursuant to the provisions of this Article II, including (1) the Cash Consideration portion of the Merger Consideration, (2) any dividends or other distributions to which such holder is entitled pursuant to Section 2.02(c) and (3) cash in lieu of any fractional shares of Parent Common Stock to which such holder is entitled pursuant to Section 2.02(e), and the Book-Entry Share or Certificate so surrendered shall forthwith be canceled. In the event of a transfer of ownership of shares of Company Common Stock that is not registered in the transfer records of the Company, (x) a book-entry representing that number of whole shares of Parent Common Stock comprising the Stock Consideration portion of the Merger Consideration and (y) a check for the proper amount of cash (1) comprising the Cash Consideration portion of the Merger Consideration, (2)

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comprising any dividends or other distributions to which such holder is entitled pursuant to Section 2.02(e) and (3) in lieu of any fractional shares of Parent Common Stock to which such holder is entitled pursuant to Section 2.02(e), shall be issued to a person other than the person in whose name the Certificate so surrendered is registered, if, upon prese