

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 80996 / June 22, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18042

In the Matter of

Anthony Portelli

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS, PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), against Anthony Portelli (“Portelli” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of Respondent's failure reasonably to supervise personnel on ITG Inc.'s ("ITG") securities lending desk with respect to their violations of Section 17(a)(3) of the Securities Act of 1933 ("Securities Act").

2. From at least 2011 through most of 2014, ITG's securities lending desk engaged in improper practices involving the pre-release of American Depositary Receipts ("ADRs"). In particular, associated persons on ITG's securities lending desk had an ongoing practice of obtaining, and then lending, pre-released ADRs from depositary banks ("Depositaries") without taking reasonable steps to determine whether the requisite number of ordinary shares was owned and custodied by the person on whose behalf the pre-released ADRs were being obtained. The result of this conduct was the issuance of ADRs that in many instances were not backed by ordinary shares. This conduct violated Section 17(a)(3) of the Securities Act.

3. During the relevant period, Portelli, ITG's Head of Operations, was directly responsible for supervising the securities lending desk's supervisors and overseeing the desk generally. For the relevant period, Portelli failed to take reasonable steps to address whether ITG personnel under his supervision confirmed ownership of the underlying ordinary shares that purportedly backed the ADRs to be pre-released. As a result, under Section 15(b)(6) of the Exchange Act, Portelli failed reasonably to supervise employees assigned to ITG's securities lending desk, who were subject to his supervision, with a view to preventing violations of Section 17(a)(3) of the Securities Act by such persons, who committed violations of Section 17(a)(3).

Respondent

4. Anthony Portelli, age 60, resides on Staten Island, New York. Portelli was a managing director of ITG from March 2010 to October 2016. He holds Series 7, 24, 27, and 63 licenses. He has no disciplinary history.

Other Relevant Entity

5. ITG, a Delaware corporation, is registered with the Commission as a broker-dealer, and its principal executive offices are in New York, New York. ITG is a wholly owned subsidiary of Investment Technology Group, Inc., a publicly traded corporation whose equity securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange. On January 17, 2017, the Commission filed a settled Order Instituting Administrative and Cease-and-Desist Proceedings against ITG ("ITG Order"). In the ITG Order, the Commission found that ITG violated Section 17(a)(3) of the Securities Act in connection with its pre-release practices described below.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Background

ITG's Pre-Release Transactions

6. From at least 2011 through September 2014, ITG's securities lending desk had a matched book securities lending operation, whereby ITG obtained securities from a bank or broker-dealer and in turn lent them to another broker-dealer. ITG primarily obtained the ADRs in connection with its matched book lending from one of four Depositories in "pre-release" transactions.

7. In pre-release transactions, a market participant obtains newly issued ADRs from the Depository (as opposed to purchasing existing ADRs on the market) before that participant delivers the corresponding foreign shares to the Depositories' custodian, as it is normally required to do. Pre-release transactions are provided for in depository agreements ("Depository Agreements"), which establish and govern ADR programs, and in pre-release agreements ("Pre-Release Agreements") entered into by Depositories and third parties, typically broker-dealers. The Pre-Release Agreements, consistent with the Depository Agreements, typically require the broker-dealer receiving the pre-released ADRs (or its customer on whose behalf the broker-dealer is acting) to own the ordinary shares that evidence the ADRs, and to assign all beneficial right, title, and interest in those ordinary shares to the Depository while the pre-release transaction is outstanding (the "Pre-Release Representations").

8. In connection with the Pre-Release Agreements, Depositories A, B, and C required ITG to sign certifications ("Certifications") stating that it was complying with the terms of the Pre-Release Agreements.

9. Despite the obligations provided for in the Pre-Release Agreements and Certifications, associated persons on ITG's securities lending desk were negligent in failing to take reasonable steps to determine whether ITG complied with the Pre-Release Representations. ITG itself did not own ordinary shares in connection with any pre-release transaction with a Depository. Nor did ITG's securities lending desk take reasonable steps to determine whether the broker-dealer counterparties to whom ITG lent the pre-released ADRs (or their customers) owned corresponding ordinary shares.

10. In effect, ITG's securities lending personnel treated the pre-released ADRs as if they were ordinary shares used in typical securities lending transactions. Accordingly, ITG's securities lending personnel routinely obtained pre-released ADRs without taking any steps to comply with the Pre-Release Representations. Moreover, given the circumstances in which ITG obtained and lent pre-released ADRs, ITG's securities lending personnel should have recognized the likelihood that ITG was acting as a conduit through which its counterparties were obtaining and the Depositories were issuing ADRs that were not evidenced by any ordinary shares held for the benefit of the Depository. For example, securities lending personnel routinely obtained pre-released ADRs through the Pre-Release Agreements and then lent them to counterparties pursuant to standard master securities loan agreements ("MSLAs"). The MSLAs did not address pre-released ADRs, and did not contain any provisions requiring compliance with any of the Pre-Release Representations.

11. As result of the conduct described above, and as previously found by the ITG Order, ITG willfully² violated Section 17(a)(3) of the Securities Act, which prohibits, in the offer or sale of securities, engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. In addition, ITG securities lending personnel violated Section 17(a)(3) of the Securities Act by engaging in the conduct described above.

Anthony Portelli's Conduct

12. Portelli, ITG's Head of Operations from 2010 to late 2014, supervised ITG's securities lending desk, which was co-headed by two individuals, during that time and had the authority to affect the conduct of ITG's securities lending desk associated persons. In his capacity as Managing Director and Head of Operations, Portelli's responsibilities included signing the Certifications representing that ITG was in compliance with the Pre-Release Agreements.

13. From 2011 through 2014, Portelli knew that ITG securities lending personnel under his supervision routinely obtained pre-released ADRs without taking any reasonable steps to comply with the Pre-Release Representations. For example, Portelli knew that these ITG securities lending personnel routinely obtained pre-released ADRs through the Pre-Release Agreements and then lent them to counterparties pursuant to standard MSLAs that did not address pre-released ADRs, and did not contain any provisions requiring compliance with any of the Pre-Release Representations. Consistent with the firm's use of such MLSAs, he was not aware of anyone at ITG confirming whether counterparties complied with the Pre-Release Representations. Nor was he aware of any other procedures at ITG addressing compliance with the Pre-Release Agreements.

14. If Portelli had taken reasonable steps to follow-up with respect to the handling of ITG's pre-release transactions by securities lending desk personnel, it is likely that he would have prevented and detected ITG's securities lending desk personnel's ongoing misconduct.

Anthony Portelli's Cooperation

15. In determining to accept the Offer, the Commission considered the cooperation afforded Commission staff.

Failure Reasonably to Supervise

16. Section 15(b)(4)(E) of the Exchange Act provides for the imposition of a sanction against a broker or dealer who has failed reasonably to supervise, with a view to preventing

² A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

violations of the securities laws, another person who commits such a violation, if such other person is subject to his supervision. Section 15(b)(6)(A)(i) incorporates by reference Section 15(b)(4)(E) and provides for the imposition of sanctions against persons associated with a broker or dealer who have failed reasonably to supervise.

17. As a result of the conduct described above, Respondent Portelli failed reasonably to supervise members of ITG's securities lending desk with a view to preventing and detecting their violations of the federal securities laws.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Portelli's Offer.

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

- A. Respondent is censured.
- B. Respondent shall be, and, hereby is, subject to the following limitations on his activities:
 - 1. Respondent shall not act in a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.
 - 2. Respondent may apply to act in such a supervisory capacity after eighteen (18) months to the appropriate self-regulatory organization, or if there is none, to the Commission.

Any application to act in such a supervisory capacity will be subject to the applicable laws and regulations governing the reentry process, and permission to act in such a supervisory capacity may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

C. Respondent shall pay a civil money penalty in the amount of \$100,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment of penalty shall be made in three installments as follows: Respondent shall make the first installment of \$30,000 within 30 days of the entry of this order; the second installment of \$30,000 within 90 days of this order; and the third and final installment of \$40,000 within 180 days of the entry of this order. If any payment is not

made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Anthony Portelli as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Sanjay Wadhwa, Senior Associate Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

E. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$100,000 based upon his cooperation and agreement to cooperate in a Commission

investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement (“Division”) obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary