

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10572 / November 7, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 84548 / November 7, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18887

In the Matter of

ITG INC. and
ALTERNET SECURITIES,
INC.,

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
8A OF THE SECURITIES ACT OF 1933,
AND SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against ITG Inc. and AlterNet Securities, Inc. (“AlterNet”) (collectively, “ITG” or “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer of Settlement (“Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

Summary

1. This matter involves violations of the federal securities laws by ITG Inc. and its affiliated broker-dealer AlterNet in connection with the operation of POSIT, an alternative trading system ("ATS")² that is also commonly referred to as a "dark pool."

2. From 2010 until 2017, ITG failed to establish adequate safeguards and procedures to protect the confidential trading information of POSIT subscribers.³ During this time, ITG improperly disclosed confidential trading information of POSIT subscribers in a variety of ways described below, including by sending three daily written reports containing POSIT trading information outside the firm.

3. From 2010 through mid-2015, ITG sent two such reports, immediately before the market opened every trading day, to approximately seven subscribers and three firms that were not subscribers, all of which engaged in high-frequency trading ("HFT"). These reports identified, for the prior trading day and based on POSIT's order and execution activity, the top 100 symbols for which POSIT received immediate-or-cancel orders⁴ (the "Top 100 Sent Report") and the top 100 symbols in which there were POSIT executions involving an IOC order on the prior trading day (the "Top 100 Filled Report"), and together with the Top 100 Sent Report, the "Top 100 Reports", based on aggregate share volume. ITG informed some HFT firms that they could use the Top 100 Reports to identify "potential unsatisfied liquidity needs" in POSIT.

¹ The findings herein are made pursuant to Respondents' respective Offers and are not binding on any other person or entity in this or any other proceeding.

² Rule 300(a) of Regulation ATS promulgated under the Exchange Act provides that an ATS is "any organization, association, person, group of persons, or system: (1) [t]hat constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Exchange Act Rule 3b-16]; and (2) [t]hat does not: (i) [s]et rules governing the conduct of subscribers other than the conduct of subscribers' trading on such [ATS]; or (ii) [d]iscipline subscribers other than by exclusion from trading." Regulation ATS, Rule 300(a), 17 C.F.R. § 242.300(a). Rule 301(a) of Regulation ATS provides that an ATS must comply with Rule 301(b) of Regulation ATS, unless the ATS is registered as a national securities exchange or qualifies for another enumerated exclusion. During the relevant period, POSIT was not registered as a national securities exchange and did not qualify for an enumerated exclusion. Therefore, it was required to comply with the provisions of Regulation ATS, including Rule 301(b), to benefit from the exemption from the definition of "exchange" set forth in Rule 3a1-1(a)(2) under the Exchange Act.

³ "Subscriber" is used throughout to refer both to participants of the ATS that entered orders directly into the ATS and participants whose orders were entered into the ATS by ITG through ITG's algorithms.

⁴ An Immediate-Or-Cancel ("IOC") order is an order to buy or sell a security that must be executed immediately. Any portion of an IOC order that cannot be filled immediately should be cancelled.

4. From June 2009 until 2017, ITG also sent to subscribers that used ITG's algorithms, as frequently as daily, reports that highlighted up to 15 securities traded through ITG during the prior seven trading days, including in POSIT, tailored to identify the securities in which ITG believed each subscriber might have an interest in trading (the "Execution Venue Reports").

5. The Top 100 Filled Report and Execution Venue Report did not screen out executions from subscribers that had opted out of having their trades advertised.

6. Until late 2013, a large number of ITG's employees, including many of its sales and trading staff who were not involved in the operation of the ATS, had the ability to access POSIT trading data for all subscribers. In late 2013, ITG restricted high touch trading personnel from accessing POSIT trading data other than their own activity. After late 2013, ITG gradually took additional steps to restrict access by employees with sales responsibilities, although certain personnel with sales responsibilities continued to have access to certain POSIT data until 2017 beyond what had been disclosed to subscribers.

7. Additionally, POSIT execution data was disseminated throughout ITG in a variety of ways, including, prior to mid-2013, by "hooting" through the intercom system to the firm's U.S. desks and emailing to sales and trading personnel the ticker and size of certain large executions. Later, information about certain large executions was shared with ITG sales personnel through instant messaging.

8. ITG engaged in these practices while representing to subscribers and prospective subscribers that POSIT was a trading venue that allowed subscribers to trade without "signaling their trading intentions" to the market and that ITG would maintain the confidentiality of subscriber order information, and that ITG limited access to POSIT subscribers' confidential trading information.

9. ITG also failed to disclose certain material features of the POSIT ATS. In particular, ITG did not disclose that, from late 2010 until mid-2014, there were two physically separated pools of liquidity within POSIT, known internally as "POSIT 1" and "POSIT 2" or "P1" and "P2. This "P1/P2 structure" prevented certain orders from crossing with one another that otherwise would have crossed if POSIT had not been bifurcated in this way. ITG also did not disclose, from mid-2014 until late 2016, that it had implemented a delay to slow down certain interactions in POSIT by HFT subscribers (referred to herein as the "speedbump").

10. ITG failed to disclose the P1/P2 structure in its responses to questions from some subscribers and prospective subscribers conducting due diligence on the ATS asking whether it classified, segmented, or "tiered" the pool in any way.

11. As a result of the materially misleading statements and omissions of fact described above, ITG Inc. and AlterNet violated Section 17(a)(2) and 17(a)(3) of the Securities Act, antifraud provisions of the federal securities laws.

12. ITG Inc. also violated Rule 301(b)(10) of Regulation ATS, which required it to establish adequate safeguards and procedures to protect the confidential trading information of POSIT subscribers, by permitting broad access to, and the improper sharing of, POSIT order and execution data, as described in more detail below.

13. ITG Inc. also violated Rule 301(b)(2) of Regulation ATS by failing to timely file an amendment on Form ATS to disclose the P1/P2 structure and to disclose the speedbump.

Respondents

14. ITG Inc. is a Delaware corporation and a subsidiary of Investment Technology Group, Inc. (“ITGI”), a publicly-traded corporation whose equity securities are listed on the New York Stock Exchange. ITG Inc. is registered with the Commission as a broker-dealer and its principal executive offices are in New York, New York. Since 1987, ITG Inc. has operated POSIT, an ATS that operates pursuant to Regulation ATS. POSIT is a trading center that accepts, matches, and executes orders to buy and sell equity securities that it receives from POSIT subscribers. POSIT was the 11th- largest ATS as measured by dollar volume of executions with approximately \$63.36 billion in executions during the quarter ending June 30, 2018.

15. AlterNet is a Delaware corporation, an affiliate of ITG and a subsidiary of ITGI with its principal executive offices in New York, New York. AlterNet is a broker-dealer registered with the Commission. AlterNet provides brokerage services to its clients, including algorithmic and electronic trading and traditional sales and trading services. AlterNet sends orders to various market centers, including POSIT, for execution. AlterNet and ITG Inc. share the same office space and technology infrastructure, as well as many of the same employees.

16. In 2015, ITG Inc. and AlterNet entered into a \$20.5 million settlement with the Commission relating to violations of the antifraud provisions of the federal securities laws and Regulation ATS in connection with the operation from April 2010 through July 2011 of “Project Omega”, an undisclosed proprietary trading desk that used the confidential trading data of POSIT subscribers to trade against those subscribers.

Facts

17. POSIT was one of the first dark pools to allow for anonymous and confidential matching of subscriber orders. POSIT subscribers include asset managers and institutional investors, generally referred to as “buy-side” subscribers, and broker-dealers, generally referred to as “sell-side” subscribers.

18. A dark pool is a type of trading center that, among other things, does not display information regarding the orders placed into the pool, or the identities of subscribers that have submitted orders to in the pool. Dark pools are often used by market participants that seek to minimize the price impact of their orders and executions.

ITG's Representations to Customers about POSIT Confidentiality

19. ITG represented POSIT to subscribers and prospective subscribers as a trading venue that maintained the confidentiality of subscriber orders and executions, actively prevented “information leakage,” and protected subscribers from predatory trading. ITG’s “Plain English Guide to Executions in POSIT,” which the firm distributed to subscribers and prospective subscribers and posted on its website from 2014 until 2017, stated:

For the past 27 years, POSIT has been a trusted trading venue that helps protect our institutional clients in the U.S. from signaling their trading intentions, lowers trading costs through meaningful price improvement, and provides protection from potentially “toxic” liquidity. POSIT provides an agency-only crossing solution for our clients to anonymously source quality liquidity while minimizing market impact.

20. During the period at issue, many subscribers and prospective subscribers conducted due diligence on POSIT’s operations by submitting written due diligence questionnaires to ITG inquiring, among other things, about how ITG ensured the confidentiality of subscriber order information. In written responses to some of these questionnaires, ITG informed subscribers and prospective subscribers that access to order information was strictly limited, that the ATS “closely monitored and evaluated [access] on a regular basis,” and that the ATS’s policies and procedures governing confidentiality and access were “robust” and “thorough.” ITG represented to subscribers that, beyond support staff, sales and trading personnel assigned to the customer’s account had access to order information, but only “limited access to high level aggregated activity in POSIT.” Several subscribers explicitly asked whether their order information was communicated to third parties; ITG represented that it was not.

21. During this same period, in due diligence questionnaires, subscribers and prospective subscribers also asked about how ITG protected the confidentiality of subscriber execution information, and whether the firm advertised their executions in any way. ITG told those subscribers that the firm disclosed executions on third-party trade advertisement platforms, but subscribers could opt-out from this advertising and that the confidentiality of their executions would otherwise be protected. ITG told subscribers that wanted to opt-out of advertising that it would place their names on an internal “do not advertise” list, which was intended to prevent the executions of those subscribers from being disseminated.

22. Additionally, one subscriber specifically asked whether ITG provided “color” on the dark pool’s liquidity to other subscribers or other areas within the firm. ITG responded that it provided “trader views to high touch customers,” but that color “never” included “client trading activity in ITG’s systems or dark pool.”

ITG Improperly Disseminated POSIT Trading Information that Should Have Remained Confidential

23. Notwithstanding its representations to subscribers and prospective subscribers, ITG improperly disseminated certain confidential trading information of POSIT subscribers in a variety of ways, as described in more detail below.

Top 100 Reports

24. Between November 2010 and July 2015, ITG sent approximately seven HFT subscribers and three HFT firms that were not subscribers daily Top 100 Reports that other subscribers did not receive. Each trading day before the market opened, ITG sent these HFT firms a Top 100 Sent Report that listed, based on aggregate share volume, the top 100 symbols sent to POSIT as IOC orders on the prior trading day and a Top 100 Filled Report that listed, based on aggregate share volume, the top 100 symbols in which there were POSIT executions involving an IOC order on the prior trading day.

25. The Top 100 Sent Report did not include orders from HFT subscribers because these subscribers did not send IOC orders, making evident which securities had large aggregate IOC share volumes that were submitted by non-HFT buy-side and sell-side subscribers in the ATS.⁵ Until approximately February 2014, the securities on the Top 100 Reports were listed in descending order of aggregated volume. The logic ITG used to create the Top 100 Reports did not screen out activity from subscribers on the “do not advertise” list, and therefore, the Top 100 Reports contained symbols that would not have been listed had ITG excluded information from subscribers that had specifically requested ITG keep their execution information confidential.

26. ITG suggested that HFT firms could use the information on the Top 100 Reports to identify potential liquidity based on the prior day’s unsatisfied trading interest. An internal e-mail sent by an ITG salesperson in June 2012 to a member of senior ITG management described how he recommended that HFT firms use the information: “I Steer [sic] folks to the top 100 executed and names sent and suggest they cross reference the two for outliers (high on the sent list but not high on the executed list) for potential unsatisfied liquidity needs.”

POSIT Potential Rankings

27. From 2010 through late 2017, ITG sent certain subscribers that accessed POSIT through ITG’s algorithms an execution venue report that included a “POSIT Potential” column, which identified up to 15 securities traded through ITG during the prior seven trading days, including in POSIT. ITG distributed the execution venue reports on a regular basis to its algorithm clients, as frequently as daily. The list was drawn from the most active symbols traded in POSIT and by the subscriber through ITG (in POSIT or through certain ITG algorithms) in terms of (1) total shares executed, (2) largest fill size, and (3) largest percentage of the shares traded as

⁵ Though HFT subscribers sent orders with a time-in-force instruction of “day,” these orders were rapidly cancelled and replaced throughout the trading day.

compared to the security's 21-day average market volume. Next to each symbol, ITG identified the total volume traded in POSIT and through certain ITG algorithms the prior trading day. ITG customized these rankings for each subscriber by more heavily weighting volume traded by the subscriber, excluding the symbols that the subscriber had traded the prior trading day, and more heavily weighting the securities that the subscriber had reported holding on Form 13-F filings with the Commission.

28. The data used for the POSIT Potential rankings was drawn from a database containing all executions in POSIT. Early specifications for the generation of the POSIT Potential rankings stated that the rankings should be screened against the "do not advertise" list, but this was not done. The "POSIT Potential" rankings therefore incorporated execution information from POSIT subscribers that had specifically asked ITG to maintain the confidentiality of their executions.

Liquidity Color

29. From 2010 to 2016, ITG also disseminated information about large executions in POSIT, including executions by subscribers on the firm's do not advertise list, to employees who were not involved in operating the ATS or responsible for its compliance with applicable rules. Based on this information, certain members of ITG's electronic sales force contacted subscribers and encouraged them to send more order flow to POSIT.

30. ITG disseminated color on POSIT liquidity within ITG in several ways. Until mid-2013, the securities and size of large executions in POSIT were announced through "hoots": audio announcements that were broadcast through an intercom system to the firm's U.S. desks. These hoots were sometimes followed by e-mails containing the same information and attaching a Bloomberg screenshot of the security's Form 13F holders, identifying the largest institutional holders of the security that had been traded in POSIT. Sales personnel used the information in these hoots and e-mails to encourage them to direct order flow to POSIT. Sales personnel may have also "cold called" prospective subscribers, with the hope that the information would help attract new business to the firm.

31. ITG stopped using "hoots" or e-mails to disseminate this type of information internally in 2013. But the sharing of liquidity color did not cease. By at least 2016, ITG began to use internal Bloomberg chat rooms for ITG sales employees, including senior sales managers. In contrast to the hoots and e-mails, which included only the ticker and size of large POSIT executions, the identities of the subscribers on either side of large trades were shared in these internal Bloomberg group messages.

ITG Permitted Overbroad Access to Systems Containing Confidential POSIT Trading Data

32. From 2010 until 2017, ITG failed to establish adequate safeguards and procedures to appropriately limit access to systems containing POSIT subscribers' confidential trading information.

33. As-of 2012, ITG did not adequately limit access to GATE, a firm system containing all order flow routed through ITG, including open child-level POSIT order information for any subscriber, security, or order in POSIT. All data in GATE was accessible to those ITG employees who had learned to write scripts querying the system for trading information, even those who had no responsibilities for operating the ATS or responsibility for its compliance. Several senior sales people used this functionality to access POSIT trading data.

34. As-of 2013, ITG gave its sales personnel access to POSIT trading information, including live child-level order information, through a different, more user-friendly system called Insight. Sales personnel's access via Insight was limited to clients they were assigned to cover, but the scope of information available to sales personnel for their clients was more detailed than the "high level aggregated activity" described to subscribers in response to questionnaires at the time.

35. Following the rollout of Insight to sales personnel, ITG gradually limited sales employees' access to GATE. Nonetheless, as recently as 2017, certain employees with sales responsibility had access to POSIT trading information through other means that went beyond what had been disclosed to subscribers.

36. As such, ITG failed to establish adequate safeguards and procedures to limit access to confidential trading information of POSIT subscribers to employees as described in its disclosures and to employees of the ATS who operated the system or were responsible for its compliance, as required by Regulation ATS.

ITG Did Not Disclose Certain Material Features of POSIT

37. During the relevant period, ITG failed to disclose material operational and structural features of POSIT to the Commission as required on Form ATS. ITG also failed to disclose the P1/P2 structure to subscribers and prospective subscribers.

The P1/P2 Structure

38. ITG traditionally marketed POSIT to large institutional buy-side firms having a desire to execute large trades anonymously. By 2010, however, in an effort to increase liquidity, volume, and revenue within POSIT, ITG began to onboard larger numbers of sell-side subscribers, including HFT subscribers. The increased order flow began to stress the existing POSIT technological capabilities and created system stability concerns.

39. To address these concerns and handle the additional order flow, ITG implemented the "P1/P2" structure, in which incoming flow was directed to one of two separate pools of liquidity within POSIT (POSIT1, or "P1," and POSIT2, or "P2") depending on the subscriber and nature of the flow involved. Generally speaking, day orders directed to POSIT by buy-side and certain sell-side subscribers were sent to rest in P1 and orders directed by HFT subscribers were sent to P2; ITG's algorithms could elect to send a child order to P1 or P2. Shortly after implementing the P1/P2 structure, ITG implemented logic whereby IOC orders checked P1 and then P2 sequentially.

40. P1 and P2 were physically separated from one another on different servers and therefore orders in P1 could not interact with orders resting in P2. Therefore, throughout its existence, the P1/P2 structure prevented certain buy and sell orders from crossing that otherwise would have crossed if POSIT had consisted only of a single pool of liquidity.

41. Performance and fill rates differed in each of the pools, at least for certain subscribers. In a May 2014 e-mail exchange, electronic trading employees discussed moving a subscriber from P1 to P2 in order to address the subscriber's complaints about the quality of trade execution it had received in POSIT. One employee circulated a graph to members of the electronic trading team demonstrating that the subscriber's "fill rate [was] vastly improved" once its orders had been moved to P2, and described P1 as providing "improved performance, but lower fill rate." When explaining the "bad performance" the subscriber observed after being moved to P2, the same employee told the subscriber that "a few contra-parties [had] accounted for the vast majority of the underperformance on the passive orders." The employee did not explain the existence of two distinct pools of liquidity within POSIT.

42. None of POSIT's subscribers were told about the existence of P1 and P2 or their performance differences. ITG gave inaccurate or misleading answers in response to questions from several subscribers and/or prospective subscribers about POSIT's structure. For example, one subscriber asked on two occasions whether ITG "tier[ed] specific customers or classifi[ed] clients in any way within the pool?" and then requested that ITG "please provide the methodology for the tiering and describe the advantages and disadvantages of being in higher and lower tiers." ITG responded: "[c]lients are not granted differentiated levels of access within POSIT," even though orders were directed to different pools of liquidity depending on the subscriber and nature of the flow involved.

43. During the period in which the P1/P2 structure was in place, ITG failed to amend its Form ATS to describe the P1/P2 structure.

44. In mid-2014, ITG eliminated the P1/P2 structure. In its place, ITG implemented a new structure in which orders submitted to POSIT were balanced on different servers according to ticker symbol.

The Speedbump

45. In mid-2014, after ITG merged P1 and P2 into a single pool of liquidity, the firm began to apply a delay or "speedbump" to slow down interactions involving orders from certain HFT subscribers that were now able to interact with additional resting flow in the newly merged pool. While delayed by the speedbump, these orders could not cross with certain other orders that might otherwise be available for a match. Orders from the HFT subscribers subject to this logic could interact without delay with IOC orders and orders from other HFT subscribers subject to this logic. ITG failed to amend its Form ATS in a timely fashion to describe the speedbump.

Violations

ITG and AlterNet Made Misrepresentations and Omissions to Subscribers and Potential Subscribers

46. During the relevant period, ITG Inc. and AlterNet promoted their products and services as “reducing market impact” and protecting against “information leakage.” ITG Inc. and AlterNet falsely told their customers that POSIT execution information remained confidential if the subscriber had requested that its trades not be advertised, that subscribers’ trading information was not otherwise communicated to third parties, and that the firm strictly limited access to POSIT order and execution data. ITG Inc. and AlterNet also made misleading statements in response to subscriber questions regarding POSIT’s structure.

ITG Failed to Protect POSIT Subscriber Confidential Trading Information

47. Rule 301(b)(10) of Regulation ATS requires an ATS to “establish adequate safeguards and procedures to protect subscribers’ confidential trading information,” including, “[l]imiting access to the confidential trading information of subscribers to those employees of the alternative trading system who are operating the system or responsible for its compliance with these or any applicable rules.”

48. From 2010 through 2017, ITG failed to limit POSIT access to individuals operating the ATS or responsible for its compliance and to those individuals it had described to subscribers. Instead, ITG allowed access to POSIT confidential trading information to a much wider range of individuals, including sales and high touch trading employees beyond what it described in its disclosures to subscribers. Furthermore, ITG disseminated confidential trading information in a variety of ways without subscriber consent, including through the Top 100 reports sent to certain HFT firms, POSIT Potential rankings sent to certain subscribers that used ITG’s algorithms, and hoots, e-mails, and Bloomberg messages sent to sales and/or trading employees.

ITG Failed to Amend its Form ATS Filings

49. Rule 301(b)(2) of Regulation ATS requires an ATS to “file an amendment on Form ATS at least 20 calendar days prior to implementing a material change to the operation of the alternative trading system.”

50. ITG failed to amend the POSIT Form ATS in a timely manner to describe the P1/P2 structure and failed to disclose the speedbump in Form ATS filings prior to 2016, even though the implementation of these features constituted material changes to the ATS’s operations.

Remedial Action

51. Earlier in the relevant period, ITG took some steps to improve its controls around access to, and misuse of, POSIT subscribers' confidential trading information. As described above, ITG gradually restricted access to systems containing POSIT trading information, though as recently as 2017, certain sales employees still retained access beyond what had been disclosed to subscribers.

52. By 2017 and early 2018, ITG was under new management; among other changes, ITG had a new chief executive officer, new chief compliance officer, and new POSIT management. Under the guidance of new management and compliance personnel, ITG implemented a series of changes related to POSIT, including enhancing the firm's internal policies and procedures related to POSIT operations and access to POSIT data, and overhauling its training and oversight of employees. Certain of the most significant changes include the following:

53. ITG established additional safeguards and procedures to limit access to confidential trading information of POSIT subscribers. ITG has also taken steps, including by implementing a quarterly certification process, to ensure that access remains appropriately restricted.

54. ITG amended its Form ATS to include, among other things, a description of the speedbump. ITG has also implemented an annual sub-certification process requiring relevant personnel to certify the accuracy of the Form ATS.

55. ITG revised its written supervisory procedures and implemented training programs to ensure that relevant personnel understand their obligations to protect confidential trading information of POSIT subscribers.

56. ITG strengthened its processes around the completion of client questionnaires, which includes Legal and Compliance review.

57. ITG terminated the external distribution of any reports containing POSIT subscribers' confidential trading information.

58. In determining to accept the Offers, the Commission considered remedial acts undertaken by Respondents and cooperation afforded the Commission staff.

Statutory and Rule Violations

59. As a result of the conduct described above, ITG Inc. and AlterNet willfully⁶ violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit, directly or indirectly, in the offer or sale of securities obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading and engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

60. As a result of the conduct described above, ITG Inc. willfully violated:

- a. Rule 301(b)(2) of Regulation ATS, which requires an ATS to file an initial operation report on Form ATS at least 20 days prior to commencing operation as an alternative trading system and to file an amendment on Form ATS at least 20 calendar days prior to implementing a material change to the operation of the ATS, within 30 days after the end of a quarter when information contained in an initial operation report filed on Form ATS becomes inaccurate (if it has not been previously reported as an amendment on Form ATS), and promptly upon discovering that an initial operation report filed on Form ATS or an amendment on Form ATS was inaccurate when filed; and
- b. Rule 301(b)(10) of Regulation ATS, which requires an ATS to establish adequate safeguards and procedures to protect subscribers' confidential trading information and to adopt and implement adequate oversight procedures to ensure that the safeguards and procedures for protecting subscribers' confidential trading information are followed.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in the Offers of ITG Inc. and AlterNet.

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. ITG Inc. and AlterNet cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

⁶ 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)).

B. ITG Inc. cease and desist from committing or causing any violations and any future violations of Rules 301(b)(2) and 301(b)(10) of Regulation ATS.

C. ITG Inc. and AlterNet are censured.

D. ITG Inc. and AlterNet shall, within ten days of the entry of this Order, jointly and severally, pay a civil money penalty in the amount of \$12,000,000, to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717 and/or SEC Rule of Practice 600. Payment must be made in one of the following ways:

- 1) ITG Inc. and AlterNet may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- 2) ITG Inc. and AlterNet 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) ITG Inc. and AlterNet 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 ITG Inc. and AlterNet as Respondents 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 Joseph G. Sansone, Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

By the Commission.

Brent J. Fields
Secretary