

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10677 / August 29, 2019

SECURITIES EXCHANGE ACT OF 1934
Release No. 86809 / August 29, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19395

In the Matter of

Wendy Katz

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933 AND SECTION
15(b) 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 Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), against Wendy Katz (“Katz” 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 her 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 and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“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 Katz's role in the violations by ITG Inc. ("ITG") of Section 17(a)(3) of the Securities Act.

2. From at least 2011 through September 2014, ITG's securities lending desk engaged in improper practices involving the pre-release of American Depositary Receipts ("ADRs"). In particular, 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 foreign 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.²

3. Katz worked on ITG's securities lending desk during the relevant period, and her primary responsibility was to obtain pre-released ADRs from Depositaries and lend them to counterparties. Katz understood that when she obtained pre-released ADRs, ITG did not own the corresponding foreign shares and she did not take reasonable steps to determine whether the counterparties borrowing the pre-released ADRs owned the foreign shares. The result of this conduct was the issuance of ADRs that in many instances were not backed by ordinary shares as required for the relevant pre-release transaction. This conduct violated Section 17(a)(3) of the Securities Act of 1933 ("Securities Act").

Respondent

4. Wendy Katz, age 42, resides in Scarsdale, New York. Katz worked on the securities lending desk of ITG from November 2011 to February 2015. She held a Series 99 license. She has no disciplinary history.

Other Relevant Entity

5. During the relevant period, ITG was a Delaware corporation, was registered with the Commission as a broker-dealer, had its principal executive offices in New York, NY, and was a wholly-owned subsidiary of Investment Technology Group, Inc., a publicly-traded corporation whose equity securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange. On January 12, 2017, the Commission

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.

² *Matter of ITG Inc.*, Sec. Act Rel. No. 10279 (Jan. 12, 2017).

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 and failed reasonably to supervise associated persons on its securities lending desk within the meaning of Section 15(b)(4)(E) of the Exchange Act in connection with its pre-release practices described below.

Background

ITG’s Pre-Release Practices

6. From at least 2011 through September 2014, ITG’s securities lending desk obtained ADRs from four Depositaries in “pre-release” transactions and in turn loaned them to counterparties.

7. In pre-release transactions, a market participant obtains newly-issued ADRs from a Depository (as opposed to purchasing existing ADRs on the market) without simultaneously delivering the corresponding foreign shares to the Depository’s custodian. Pre-release transactions are provided for in deposit agreements (“Deposit Agreements”), which establish and govern ADR facilities, and in pre-release agreements (“Pre-Release Agreements”) entered into by Depositaries and third parties, typically broker-dealers. The Pre-Release Agreements, consistent with the Deposit 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 Obligations”).

8. Despite the obligations provided for in the Deposit Agreements and Pre-Release Agreements, ITG was negligent in failing to take reasonable steps to determine whether ITG’s securities lending desk personnel complied with the Pre-Release Obligations. ITG itself did not own ordinary shares in connection with any pre-release transaction with a Depository. Nor did ITG’s securities lending desk personnel take reasonable steps to determine whether the counterparty to whom ITG lent the pre-released ADRs (or their customers) owned corresponding ordinary shares.

9. In effect, ITG securities lending personnel treated the pre-released ADRs as if they were ordinary shares used in typical securities lending transactions. Accordingly, ITG securities lending personnel routinely obtained pre-released ADRs without taking any steps to comply with the Pre-Release Obligations.

10. As a result of the conduct described above, and as previously found by the Commission in the ITG Order, ITG willfully 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.

Wendy Katz's Conduct

11. Prior to her time at ITG, Katz worked at a Depository from 2005 to 2011. At the Depository, Katz's primary responsibilities included providing pre-released ADRs to Pre-Release Brokers (like ITG), including providing those brokers quotes on borrowing costs for pre-released ADRs. Katz also coordinated with brokers who were interested in signing Pre-Release Agreements, including sending them drafts of the Pre-Release Agreements and related documents. Overall, Katz's role required her to have a general understanding of pre-release practices, including the mechanics of pre-release transactions and the Pre-Release Obligations.

12. In November 2011, Katz left the Depository to join ITG where she served as the primary person conducting pre-release ADR transactions on ITG's securities lending desk. Upon joining ITG, Katz became the person who had the most experience dealing with pre-release transactions. She understood that there was a general requirement that ITG or its customer satisfy the Pre-Release Obligations.

13. At ITG, counterparties approached ITG, including by contacting Katz directly, seeking to borrow ADRs. Katz would in turn, seek to obtain those ADRs exclusively through pre-release transactions with Depositories. Katz was aware that ITG itself did not own the foreign shares, but she did not take steps to determine whether ITG's counterparties owned the foreign shares. Katz understood that ITG obtained pre-released ADRs under Pre-Release Agreements, which provided for the Pre-Release Obligations, and lent them to counterparties pursuant to standard master securities loan agreements ("MSLAs"). The MSLAs did not specifically address pre-released ADRs, nor did they contain any provisions requiring compliance with any of the Pre-Release Obligations. Although this practice at ITG predated Katz's arrival, Katz nevertheless should have understood that, under these circumstances, ITG's counterparties were not, for example, assigning right, title, and interest in foreign shares to the Depositories.

14. Several of the Depositories required ITG to sign annual certifications ("Certifications") stating that ITG was complying with the Pre-Release Obligations. On several occasions, Katz received these Certifications and provided them to her supervisor for signature. Katz, who should have understood that ITG was not complying with the Pre-Release Obligations, did not raise ITG's non-compliance with anyone at ITG.

15. Based on the circumstances above, Katz should have understood that ITG was obtaining and lending pre-released ADRs in transactions where neither ITG nor its counterparties complied with the Pre-Release Obligations.

Violations

16. As result of the conduct described above, Respondent willfully³ violated Section 17(a)(3) of the Securities Act, which prohibits, in the offer or sale of securities, engaging in any

³ "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act "means no more than that the person charged with the duty knows what he is

transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IV.

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

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

- A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act.
- B. Respondent is censured.
- C. Respondent is hereby:
 - a. Barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, with the right to apply for reentry after eighteen (18) months to the appropriate self-regulatory organization, or if there is none, to the Commission.
 - b. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry 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.
- D. Respondent shall pay a civil money penalty in the amount of \$20,000 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 \$6,667 within 30 days of the entry of this order; the second installment of \$6,667 within 180 days of the entry of this order; and the third and

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.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

final installment of \$6,666 within 1 year of the entry of this order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

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 Katz 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.

E. 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, she shall not argue that she is entitled to, nor shall she 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 she 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.

F. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$20,000 based upon her 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 she 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.

Vanessa A. Countryman
Secretary