

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 90741 / December 21, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20182

In the Matter of

ITG CANADA CORP.
n/k/a Virtu ITG Canada Corp.

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTION 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 that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against ITG Canada Corp., *n/k/a* Virtu ITG Canada Corp. (“ITG Canada” 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C 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 concern ITG Canada's role in causing a U.S. executing broker (the "Executing Broker") to violate the order-marking and locate requirements of Regulation SHO of the Exchange Act.

2. From August 2016 to October 2017 (the "relevant period"), ITG Canada served as an intermediary broker and routed for execution sale orders that its customer, Cormark Securities Inc. ("Cormark"), had entered into ITG Canada's execution management system as "long" sales. At the time more than 200 of these "long" sale orders were entered, the seller, Cormark's customer, was not "deemed to own" the stock being sold and did not have a net long position in the stock. Thus, these orders should have been marked as "short" sales under Regulation SHO. In routing the sale orders with incorrect order-marking information to the Executing Broker, ITG Canada caused the Executing Broker to mismark sale orders as "long," in violation of Rule 200(g) of Regulation SHO.

3. In the case of approximately 80 orders that ITG Canada had routed to the Executing Broker as "long" sales, ITG Canada received information that Cormark's customer had failed to deliver shares by the scheduled settlement date. After repeated failures to deliver, it was not reasonable for ITG Canada to continue to rely on Cormark's order-marking information without additional inquiry.

4. As the sale orders from Cormark were, in fact, short sales, ITG Canada also caused the Executing Broker's violations of Rule 203(b)(1) of Regulation SHO, because the Executing Broker neither borrowed nor located shares available for borrowing prior to effecting those short sales.

Respondent

5. ITG Canada Corp. *n/k/a* Virtu ITG Canada Corp. ("ITG Canada"), a Canadian corporation headquartered in Toronto, Canada, is a broker-dealer registered with several provincial securities regulators. During the relevant period, ITG Canada served as an intermediary broker and routed orders from Cormark to the Executing Broker to be executed on

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.

U.S. exchanges. On March 1, 2019, ITG Canada was acquired by a financial firm and renamed Virtu ITG Canada Corp.²

Other Relevant Entity

6. Cormark Securities Inc. (“Cormark”), a Canadian corporation headquartered in Toronto, Canada, is a registered investment dealer in several Canadian provinces.

ITG Canada Routed Sale Orders with Incorrect Order-Marking Information, Despite Failures to Deliver

7. During the relevant period, ITG Canada received numerous orders from its customer, Cormark, to sell securities of Issuers A, B, and C (collectively, the “Issuers”) on U.S. exchanges. On more than 200 occasions, Cormark entered “long” sale orders into ITG Canada’s execution management system to sell the securities of the Issuers, when, at the time of order entry, Cormark’s customer was not “deemed to own” the stock under Regulation SHO and did not have a net long position in the stock to cover the sales.³

8. ITG Canada validated the sale orders by confirming that Cormark’s trade ticket included the necessary information, including that each order was marked as a “long” or “short” sale. Based on the order-marking information from Cormark, ITG Canada routed these orders to the Executing Broker in the U.S. as “long” sales, which, in turn, marked the orders as such and executed them on a U.S. exchange.

9. During the relevant period, ITG Canada received notice that certain of these purported “long” sales had failed to settle by the scheduled settlement date because Cormark’s customer did not have sufficient shares to settle the trades. In the first month that ITG Canada routed “long” sale orders of Issuer A’s stock, it received notice that nine trades had failed to settle by the scheduled settlement due to insufficient shares. In a little more than a year of trading, ITG Canada received notice that approximately 80 sale trades had failed because Cormark’s customer did not have sufficient shares of Issuers A, B, and C to settle the trades by the scheduled settlement date.

10. ITG Canada notified Cormark of these failures to deliver but continued to accept Cormark’s “long” sales orders without question and continued to route the “long” sale orders from Cormark to the Executing Broker to be executed as “long” sales. After repeated failures to deliver, it was not reasonable for ITG Canada to continue to rely on Cormark’s order-marking information for orders to sell the securities of the Issuers absent further inquiry.

² After ITG Canada was acquired, the new head of ITG Canada and the new Chief Compliance Officer undertook efforts to increase awareness and share information with its employees about cross-border regulations and cross-border compliance issues.

³ Regulation SHO was designed, in part, to reduce failures to deliver—and to prevent “naked” short selling, *i.e.*, selling short without having borrowed the securities to make delivery. *See* Short Sales, Exch. Act Rel. No. 34-50103 (July 28, 2004); Amendments to Regulation SHO, Exch. Act Rel. No. 34-60388 at 6, 9 (July 27, 2009).

Legal Analysis

ITG Canada Caused the Executing Broker's Violations of Rule 200(g) of Regulation SHO

11. Rule 200(g) of Regulation SHO requires executing broker-dealers to mark all sell orders of any equity security as “long,” “short,” or “short exempt.” 17 C.F.R. § 242.200(g).

12. An order to sell may be marked “long” only if two conditions are met. First, the seller must be “deemed to own” the security pursuant to Rule 200(a) through (f) of Regulation SHO. 17 C.F.R. §§ 242.200(a)-(f), 242.200(g)(1). A person is “deemed to own” a security only to the extent that he has a net long position in such security. 17 C.F.R. § 242.200(c). Second, an order may be marked “long” only if the broker-dealer either has possession or control of the security to be delivered or reasonably expects that the security will be in the broker-dealer’s physical possession or control no later than the settlement of the transaction. 17 C.F.R. § 242.200(g)(1).

13. In determining whether it is reasonable to rely on a customer’s representations that sale orders should be marked as “long,” the broker-dealer has an affirmative obligation to obtain and consider information from its own records and other relevant sources helpful to making a reasonableness determination. Amendments to Regulation SHO, Exch. Act Rel. No. 34-60388 at n.33 (July 31, 2009). Such information includes “a customer’s prior assurances . . . [of] its share ownership, or delivery of shares by settlement date.” *Id.* As noted in the Regulation SHO Adopting Release, “[i]t may be unreasonable for a broker-dealer to treat a sale as long where orders marked ‘long’ from the same customer repeatedly required borrowed shares for delivery or result in ‘failures to deliver.’” Short Sales, Exch. Act Rel. No. 34-50103 at n.111 (Sept. 7, 2004).

14. After being notified of repeated failures to deliver on the purported “long” sales, it was not reasonable for ITG Canada to continue to rely on Cormark’s representations that the sale orders should be marked as “long” absent further inquiry. ITG Canada routed orders to sell the Issuers’ common stock from Cormark to the Executing Broker as “long” sales when, at the time of order entry, the seller was not “deemed to own” the stock under Regulation SHO and did not have a net long position in the stock. Consequently, all such sale orders should have been marked as “short.” As a result, the Executing Broker mismarked all of these sales as “long” sales in violation of Rule 200(g).

15. The Commission may order any person that “is, was, or would be” a cause of another person’s violation of Regulation SHO, “due to an act or omission the person knew or should have known would contribute to such violation,” to cease and desist from committing or causing such violation and future violation of Regulation SHO. 15 U.S.C. § 78u-3(a).

16. As a result of the conduct described above, ITG Canada caused the Executing Broker’s violations of Rule 200(g) of Regulation SHO. ITG Canada routed sale orders with inaccurate order-marking information to the Executing Broker, and the Executing Broker relied on that information in mismarking the sale orders as “long” sales. Furthermore, after being notified of failures to deliver on certain of the sales, ITG Canada should have known that

continuing to relay incorrect order-marking information would contribute to mismarkings by the Executing Broker.

ITG Canada Caused the Executing Broker's Violations of Rule 203(b)(1) of Regulation SHO

17. Rule 203(b)(1) of Regulation SHO prohibits a broker-dealer from accepting a short sale order in an equity security from another person or effecting a short sale in an equity security for its own account, unless the broker-dealer has “(i) [b]orrowed the security, or entered into a bona-fide arrangement to borrow the security; or (ii) [r]easonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) [d]ocumented compliance with this [requirement].” 17 C.F.R. § 242.203(b)(1). This is generally referred to as the “locate” requirement.

18. Since the Executing Broker incorrectly marked the relevant sale orders as “long” when the seller was, in fact, selling short, the Executing Broker did not obtain a locate in connection with those sale orders. Consequently, the Executing Broker violated Rule 203(b)(1) of Regulation SHO.

19. As a result of the conduct described above, ITG Canada caused the Executing Broker's violations of Rule 203(b)(1) of Regulation SHO. ITG Canada routed inaccurate order-marking information to the Executing Broker, indicating that the relevant sale orders should be marked as “long,” and the Executing Broker relied on that information in failing to obtain a locate, as required under Rule 203(b)(1) for short sales.

20. After being notified of failures to deliver, ITG Canada should have known that continuing to relay incorrect order-marking information to the Executing Broker would contribute to the Executing Broker's failure to obtain a locate in violation of Rule 203(b)(1).

Findings

21. Based on the foregoing, the Commission finds that ITG Canada caused the Executing Broker's violations of Rules 200(g) and 203(b)(1) of Regulation SHO.

Undertaking

22. Respondent has cooperated and has undertaken to continue to cooperate with any subsequent investigation by the Enforcement Division regarding the subject matter of this Order, and with any related enforcement action. In determining whether to accept the Offer, the Commission has considered this undertaking.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent ITG Canada's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent ITG Canada Corp. cease and desist from committing or causing any violations and any future violations of Rules 200(g) and 203(b)(1) of Regulation SHO.

B. Respondent ITG Canada Corp. shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$200,000 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

C. 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, AMK-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying ITG Canada Corp. 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 Jennifer S. Leete, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

D. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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.

By the Commission.

Vanessa A. Countryman
Secretary