



INVESTMENT
TECHNOLOGY
GROUP

380 Madison Avenue, New York, NY 10017
Tel. 212.588.4000 www.itg.com

October 20, 2011

Via Email

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 20006-1506

**Re: ITG Inc. Comment Letter / FINRA Rule 5210 / Regulatory Notice 11-43;
Indications of Interest**

Dear Ms. Asquith:

ITG Inc. ("ITG" or the "Firm") is pleased to submit comments on proposed amendments to FINRA Rule 5210 (the "Amendments") that would require member firms to receive a customer order in a security before displaying a quotation or indication of interest ("IOI") in the security that purports to represent that the quotation or IOI originated with a customer. The Amendments also would prohibit a firm from continuing to display a quotation or IOI as representing a customer order once the customer order was executed or cancelled. ITG operates POSIT, one of the most prominent alternative trading systems ("ATs") in U.S. equities.

As described in more detail below, while ITG supports the policy objectives behind the Amendments, the Firm believes that the Amendments need to be broadened in some areas and clarified more precisely in others in order to prevent undue restriction of legitimate market activity. More fundamentally, ITG notes that rulemaking concerning IOIs is a novel undertaking by FINRA. Given this novelty, and the complexities around customs and practices of IOI usage, we believe that rulemaking related to IOIs may not be the best means to achieve FINRA's goals.

I. Posting Natural IOIs without Receiving a Customer Order

The Amendments are designed to ensure that quotations or IOIs representing customer interest (often referred to as "natural" interest) truly originate from customer interest and are not merely proprietary trading interest of a member firm. ITG agrees that a broker-dealer should not be able to represent a quotation or IOI as a natural without some indication from a



customer that it may be willing to effect a securities transaction. The Firm, however, believes that customer interest can originate from sources other than an actual order. Specifically, it is common industry practice for ATSs and broker-dealers to communicate IOIs on behalf of customers based on expressions from a customer of a general interest to trade in a security, without receiving an actual order. Similarly, some ATSs communicate IOIs based on information secured from a permitted viewing of a customer's order blotter (*i.e.*, "blotter sweeping"). These methods for communicating customer-based IOIs are services entirely supported and authorized by the customer, who deems such IOIs useful in locating contra-side liquidity for large trading interest.

It would be contrary to customers' interests, industry practice, and actual customer intent to limit the posting of quotes or communication of IOIs representing customer interest to situations where an order has been delivered to a broker-dealer. Indeed, many customers are hesitant to submit actual orders to ATSs or traditional broker-dealers when searching for contra-side liquidity, for fear of information leakage or double-execution risk, among other concerns.

Accordingly, ITG strongly recommends that the Amendments permit a broker-dealer to post a quote or communicate an IOI in a security as a "natural" under the following conditions: (1) the customer indicates to the broker-dealer that it is interested in trading the security; or (2) the broker-dealer is otherwise authorized by a customer to post a quotation or communicate an IOI based on criteria agreed to by the customer (*e.g.*, "blotter sweeping"). Obviously, a broker-dealer would have to maintain documentation to demonstrate that it had received such an indication or authorization.

II. Grace Period for Extinguishing an IOI

Another area where the Amendments could be broadened is the proposed requirement that a broker-dealer cease displaying a quotation or IOI as representing a customer order once the customer order is executed or cancelled. As a practical matter, IOIs generally are not cancelled immediately by broker-dealers upon execution of a customer order, but instead fade away or time out. ITG recognizes that communicating a natural IOI indefinitely when a customer's order has been filled could leave some misimpression to the marketplace. However, it would be burdensome and inefficient to require broker-dealers to immediately cancel an IOI upon execution of the underlying order. An IOI is not a quotation. Unlike a quotation, an IOI is not a firm expression of interest with an associated regulatory obligation. If a market participant



seeks to trade against an IOI that is lingering after a customer order is executed, the market participant will simply receive a “nothing done” response. Moreover, market participants understand the non-firm nature of an IOI, so an IOI that lingers for some small period of time after execution of the underlying order would not present any real confusion to the marketplace.

Accordingly, ITG believes that the Amendments should not require the termination of an IOI upon the execution or cancellation of the underlying customer order. This requirement would saddle the industry with unnecessary burdens and create inefficiencies by potentially requiring broker-dealers to generate and issue additional electronic communications to the markets. However, if FINRA intends to move forward with such a requirement, ITG recommends that the Amendments provide a grace period to extinguish an IOI. Specifically, an IOI representing a customer’s interest would need to be extinguished within a required period of time (*e.g.*, 60 seconds) after orders exhausting all the interest have been executed and the customer has not indicated a continuing interest in trading or seeking contra-side liquidity.

III. Natural IOI Should Include Customer Order of a Broker-Dealer Client

An area where the Amendments could provide more clarity concerns the definition of customer interest. The Regulatory Notice 11-43 states that a “natural” IOI is generally considered to refer either to customer interest a firm represents on an agency basis or to proprietary interest that was established to facilitate a customer order or as part of an execution of a customer order on a riskless principal basis. ITG agrees generally with this description of a natural IOI, but believes that a customer order should include not only an order from a non-broker-dealer customer but also from a client that is a broker-dealer. As the operator of an ATS, ITG treats broker-dealer clients in the same way as buy-side clients for purposes of defining an IOI or quote as a “natural.” As FINRA knows, a broker-dealer’s order does not always represent the proprietary trading interests of the broker-dealer or ATS handling the order. On the contrary, a substantial portion of the order flow received by an ATS or broker-dealer could be customer orders of a broker-dealer client or a mix of customer and proprietary orders from that broker-dealer client. An ATS or broker-dealer would have no way of knowing the ultimate source of the orders received from a broker-dealer client.



IV. Application of Proposed Rule to Alternative Trading Systems

Similarly, additional clarity is needed as to how Rule 5210.01(d) will apply to ATSS. It seems as if this provision should not apply to an IOI issued by an ATS, since an ATS is not a FINRA member firm. The broker-dealer sponsor of the ATS is actually the FINRA member. Moreover, an ATS issuing or displaying an IOI is doing so as agent on behalf of a "subscriber"¹ and not necessarily a customer. Hence, the Amendments should apply to the FINRA members who send an order or IOI to an ATS, not to the ATS itself. If FINRA believes otherwise, it should explain the legal basis for this position. Finally, even if FINRA is seeking to apply the Amendments to ATSS that issue IOIs, it should bear in mind that an ATS views its clients as "subscribers", not "customers" regardless of whether the client is a broker-dealer or a buy-side institution. Hence, an ATS should be able to represent an IOI as a natural, regardless of the character of the subscriber.

V. Unprecedented Regulatory Obligations Concerning IOIs

The Amendments introduce novel concepts of treating IOIs as firm quotations in the market place, thereby burdening the industry with unprecedented regulatory obligations when seeking contra-side liquidity for customer orders. Given the current industry practice and the general understanding in the market place regarding the non-firm nature and the underlying trading interests of IOIs, ITG maintains that further regulation in this area is not warranted. ITG is unaware of overarching concerns regarding fraudulent conduct and/or manipulation related to the use of IOIs in the markets. If such concerns and/or regulatory issues are present, the Securities and Exchange Commission and FINRA should be able to address them through the application of federal anti-fraud regulations and existing rules of self regulatory organizations governing member firm conduct.

¹ The term 'subscriber' is defined by Rule 300(b) of Regulation ATS as any person that has entered into a contractual agreement with an alternative trading system to access such alternative trading system for the purpose of effecting transactions in securities or submitting, disseminating, or displaying orders on such alternative trading system, including a customer, member, user, or participant in an alternative trading system. A subscriber, however, shall not include a national securities exchange or national securities association. 17 CFR § 240.300(b).



ITG appreciates the opportunity to provide its views on the Amendments. Should you have any questions or require further clarification regarding the above, please do not hesitate to contact us at (800) 215-4484.

Sincerely,

A handwritten signature in cursive script that reads "P. Mats Goebels".

P. Mats Goebels
Managing Director
General Counsel

A handwritten signature in cursive script that reads "James P. Selway III".

James P. Selway III
Managing Director
Head of Liquidity Management