ITG INVESTMENT TECHNOLOGY GROUP

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January 12, 2010

Via Electronic Submission
Elizabeth Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. SR-FINRA-2009-090

Dear Ms. Murphy:

ITG, Inc. ("ITG) would like to comment on the above referenced proposed rule change by the Financial Industry Regulatory Authority ("FINRA") to adopt FINRA Rule 5320 regarding the trading ahead of customer market and limit orders. The proposal is part of a process of developing a consolidated FINRA rulebook that sets a single industry standard for prohibitions against a member trading ahead of customer orders by combining elements of National Association of Securities Dealers, Inc. ("NASD") IM-2110-2 and Rule 2111 (collectively referred to as the "Manning Rule") and New York Stock Exchange ("NYSE") Rule 92. While ITG supports FINRA's intent to create a single rule governing members' treatment of customer orders, we would like to make a brief but important comment on the status of not-held orders under the new rule and interpretation.

The NASD's Manning Rule, which prohibits members from trading ahead of a customer market and limit orders without providing a fill of the customer's order at the same price or better, contained an exception for not-held orders. A not-held order provides a broker-dealer with flexibility through a grant of price and time discretion to exercise its professional judgment in handling the order. Unlike a "held" order, a not-held order does not obligate the broker-dealer to execute the order at the then prevailing market price. For this reason, the NASD recognized that it was illogical to apply the Manning protections to a not-held order and has expressly stated that not-held orders are not subject to the Manning Rule requirements.[1] NYSE Rule 92, the NYSE's rule that

[1] See, e.g., NASD Notice to Members 97-57, which in Question 8 explains that a not-held order is an order voluntarily categorized by a customer as permitting the member to trade at any price without being required to execute the customer order. See, also, Securities Exchange Act Release No. 52226 (August 9, 2005), the approval order for an NASD rule change to prohibit members from trading ahead of customer market

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prohibits trading ahead of customer orders, does not contain an explicit exception for not-held orders. Rule 92 permits, under certain conditions, NYSE member firms to trade along side of customer not-held orders, provided the order originates from an institutional account or the order is for more than 10,000 shares and greater than $100,000 in value.

The proposed rule change by FINRA appears to adopt most of the existing provisions of the Manning Rule. Accordingly, we believe that the prior NASD interpretative guidance regarding the status of not-held orders under the Manning Rule would continue to apply to new FINRA Rule 5320. The proposed rule change does not provide any indication that our understanding in this regard is incorrect. We also believe that FINRA's intended integration of the Manning Rule and NYSE Rule 92 would not abolish the application of the not-held order exception to FINRA Rule 5320. If, however, our assumption is incorrect, then FINRA should state so explicitly in an amendment to the proposed rule change. As such an amendment would be a material change to the existing rule, it would need to be subject to notice and comment.

If the Securities and Exchange Commission's staff has any questions regarding the issue raised in this letter, please call the undersigned at (212) 444-6342.

Sincerely,

Patrick Chi
Chief Compliance Officer

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orders. In that order the SEC notes that the NASD stated, in response to a comment on the proposal regarding the need for an explicit exception for not-held orders, that orders for which a customer has granted the member discretion with respect to time or price would not be considered market orders for purposes of the Manning Rule.