

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100229762**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: ITG Inc., Respondent
CRD No. 29299

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, ITG Inc., submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

ITG Inc. ("ITG" or the "Firm") has been a member of FINRA since January 8, 1992 and its registration remains in effect. ITG is a wholly-owned subsidiary of Investment Technology Group, Inc. and operates as a self-clearing securities broker. In this capacity, the Firm provides equity trading and research services to institutional investors, broker-dealers, money managers and alternative investment funds in the United States.

RELEVANT DISCIPLINARY HISTORY

Between April 1, 2006 and September 30, 2006, the Firm effected 371 short sales in equity securities in contravention of Rule 203(b) (1) of Regulation SHO ("Reg SHO"). Pursuant to a Letter of Acceptance, Waiver and Consent signed by the Firm on October 13, 2008, and accepted by FINRA on November 7, 2008, the Firm consented to a censure and a \$15,000 fine. In the Matter of ITG Inc., AWC No. 20060051917-01 (Nov. 7, 2008).

OVERVIEW

For the period between January 1, 2007 through December 31, 2011, Enforcement staff reviewed ITG's compliance with the July 15, 2008 Emergency Short Sale Order issued by the Securities and Exchange Commission and the use of certain exemptions to the locate requirement of Rule 203(b)(1) of Regulation SHO.

Between July 22, 2008 and August 12, 2008, ITG executed 1,562 customer short sale orders in the securities of 16 financial services companies identified in an emergency order issued by the SEC on July 15, 2008 without having borrowed or arranged to borrow the security in violation of Section 12(k) (4) of the Securities Exchange Act of 1934. The Firm also failed to implement a supervisory system reasonably designed to achieve compliance with the SEC's July 15, 2008 Emergency Order in violation of NASD Rules 3010 and 2110.

In addition, between January 1, 2007 and May 24, 2010, the Firm failed to comply with Rule 203(b)(1) of Reg SHO in that it effected no less than 25,362 short sales in equity securities without reasonable grounds to believe the securities being sold short would be borrowed and available for delivery. Furthermore, between January 1, 2007 and August 24, 2010, the Firm also failed to implement a supervisory system reasonably designed to achieve compliance with Rule 203(b) (1) in violation of NASD Rules 3010, 2110 and FINRA Rule 2010.

Lastly, between January 1, 2007 and December 31, 2011, the Firm violated NASD Rule 3010 by failing to implement adequate written supervisory procedures that were reasonably designed to achieve compliance with Rule 203(b)(1) in violation of NASD Rules 3010, 2110 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

A. ITG Executed Customer Short Sale Orders in Contravention of a Securities and Exchange Commission Emergency Order

1. The July 15, 2008 Emergency Order

Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 (the "Exchange Act"), the SEC on July 15, 2008 issued an emergency order adopting a temporary rule to Reg SHO that imposed enhanced borrowing and delivery requirements on short sales of the equity securities of various financial institutions (the "July Emergency Order"). The July Emergency Order provided, in pertinent part, that no person could effect a short sale in the publicly traded securities of certain "Substantial Financial Firms" unless such person or its agent borrowed or arranged to borrow the security or otherwise had the security available to borrow in its inventory prior to effecting such short sale. An appendix to the July Emergency Order specifically identified 19 financial firms as "Substantial Financial Firms." The July Emergency Order took effect on Monday, July 21,

2008 and expired on Tuesday, August 12, 2008 (the "July Emergency Order Period").

Section 12(k) (4) provides that "[n]o member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in contravention of an order of the Commission under this subsection unless such order has been stayed, modified, or set aside..."

NASD Conduct Rule 2110 provides that "[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade."

During the July Emergency Order Period, the Firm failed to comply with the July Emergency Order in that it executed 1,562 short sale orders (15,143 executions) in the securities of 16 of the 19 financial services companies covered by the July Emergency Order without having borrowed or pre-borrowed the shares prior to execution. The Firm obtained commissions totaling approximately \$14,000 for effecting these short sale transactions.

Based upon the Firm's failure to be in compliance with an order of the Securities and Exchange Commission, the Firm violated Section 12(k) (4) of the Exchange Act and NASD Rule 2110.

B. The Firm Violated SEC Rule 203(b) (1) of Regulation SHO.

1. Reg SHO's Locate Requirement

Rule 203(b)(1) of Reg SHO states that, subject to certain exceptions, a "broker or dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker or dealer has: (i) Borrowed the security, or entered into a bona-fide arrangement to borrow the security; or (ii) Reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) Documented compliance with this paragraph (b)(1)."

Reg SHO requires a broker-dealer to have reasonable grounds to believe the security can be borrowed so that it can be delivered in time for settlement before effecting a short sale in that security. Identifying a source from which to borrow such security is generally referred to as obtaining a "locate." Reg SHO requires that the "locate" must be obtained and documented prior to effecting the short sale.

2. *The Firm incorrectly coded eleven customer accounts as exempt from the locate requirement.*

Reg SHO allows for certain categories of short sale orders to be treated as exceptions to the locate requirement. However, the SEC specifically stated that Reg SHO only provided for certain "limited" exceptions to the locate requirement. Between January 1, 2007 and August 24, 2010, the Firm misapplied exceptions to the locate requirement in its trading systems by improperly designating eleven customer accounts as "XMPT" and, thus, exempt from Reg SHO's locate requirement. These exempt accounts had the capability to effect short sale transactions without having to obtain and document a valid locate prior to effecting the short sale.

As a result, between January 1, 2007 and May 24, 2010, five of the improperly exempted customer accounts submitted, for execution, no less than 25,362 short sale orders without a valid locate. Accordingly, the Firm violated Rule 203(b) (1) of Reg SHO by executing no less than 25,362 short sale orders without locates between January 1, 2007 and May 24, 2010. Based upon the Firm's failure to be in compliance with Reg SHO, the Firm also violated NASD Rule 2110 and FINRA Rule 2010.¹

C. **The Firm Violated NASD Rule 3010**

1. *Between July 22, 2008 and August 12, 2008, the Firm failed to implement a supervisory system reasonably designed to achieve compliance with the July Emergency Order.*

NASD Conduct Rule 3010 subsections (a) and (b) require each member firm to establish and maintain a system, including written procedures, to supervise the activities of its employees that is reasonably designed to achieve compliance with the federal securities laws and NASD rules.

The Firm failed to put into place a supervisory system that was reasonably designed to achieve compliance with the July Emergency Order. No less than four customer accounts that the Firm had improperly exempted from Reg SHO's locate requirement maintained that status during the July Emergency Order Period. By maintaining this exempt status, these customer accounts were capable of effecting short sales without having to establish that the shares in question had been borrowed or pre-borrowed prior to execution. Thus, the Firm, by miscoding customer accounts in this fashion, failed to adequately implement system changes that resulted in 1,562 short sale orders being executed during the July Emergency Order Period. Moreover, the Firm's supervisory system failed to include adequate supervisory steps and procedures reasonably designed to detect and prevent violations of the July Emergency Order.

¹ Respondent violated FINRA Conduct Rule 2010 for all violative conduct engaged in after December 14, 2008.

Accordingly, the Firm violated NASD Rules 3010 and 2110 because the Firm failed to implement a supervisory system reasonably designed to achieve compliance with the July Emergency Order.

2. Between January 1, 2007 and August 24, 2010, the Firm failed to implement an adequate supervisory system that was reasonably designed to achieve compliance with Rule 203(b) (1) of Reg SHO.

Between January 1, 2007 and August 24, 2010, the Firm misapplied exceptions to Reg SHO's locate requirement by improperly designating eleven customer accounts as exempt. As a result, from January 1, 2007 through May 24, 2010, five of these accounts effected no less than 25,362 short sale orders without valid locates. The Firm's supervisory system failed to include adequate supervisory steps and procedures reasonably designed to detect and prevent violations of Reg SHO's locate requirements.

Accordingly, the Firm, by miscoding customer accounts as exempt from the locate requirement, failed to implement an adequate supervisory system to achieve compliance with Rule 203(b) (1) between January 1, 2007 and August 24, 2010 in violation of NASD Rules 3010(a), 2110 and FINRA Rule 2010.

3. Between January 1, 2007 and December 31, 2011, the Firm failed to implement adequate written supervisory procedures reasonably designed to achieve compliance with Rule 203(b) (1) of Reg SHO.

The Firm failed to have written supervisory procedures ("WSPs") reasonably designed to achieve compliance with Rule 203(b) (1) of Reg SHO. Specifically, the Firm did not have WSPs regarding the supervisory steps to be taken with respect to the designation of customer accounts as exempt from Rule 203(b)(1) of Reg SHO. Thus, the Firm failed to implement adequate written supervisory procedures reasonably designed to achieve compliance with Rule 203(b) (1) of Regulation SHO in violation of NASD Rules 3010 and 2110 and FINRA Rule 2010.

B. Respondent also consents to the imposition of the following sanctions:

A censure and a fine in the amount of \$300,000 which includes the disgorgement of approximately \$14,000 in commissions received.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Respondent has submitted an Election of Payment form showing the method by which Respondent proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that Respondent

is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against Respondent;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and

until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;

- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that Respondent may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect

of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

10/02/2012
Date:

P. Mats Goebels
Respondent
ITG Inc.

Reviewed by:
P. Mats Goebels
P. Mats Goebels, Esq.
General Counsel
ITG Inc.
380 Madison Ave.
New York, NY 10017

Accepted by FINRA:

10-17-12
Date

Signed on behalf of the
Director of ODA, by delegated authority
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