

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090174025-01**

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

RE: David Lawrence Gabai, Respondent
Registered Representative
CRD No. 1423723

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, David Lawrence Gabai ("Gabai" or "Respondent"), submit 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, 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

The Respondent entered the securities industry in 1985. Respondent was registered with a FINRA member firm at all times relevant to this AWC. Respondent was most recently registered with a FINRA member firm from September 26, 2011 until October 15, 2012, when his employer firm filed a Form U5 terminating his registration with FINRA. Respondent is not currently registered with a FINRA member firm, but he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of the FINRA By-Laws. Respondent does not have any disciplinary history.

SUMMARY

From January 2, 2009 through June 15, 2010 (the "review period"), the staff of the Trading Analysis Group of FINRA's Department of Market Regulation (the "staff") reviewed Respondent's trading activity in National Technical Systems, Inc. ("NTSC"), a Nasdaq National Market Security. As a result of their review, the staff found that Respondent marked-the-open, marked-the-close, and effected wash trades and pre-arranged trades in NTSC to support the stock price, all in willful violation of Section 10(b) of the Securities Exchange Act of 1934 (the

“Exchange Act”) and Rule 10b-5 thereunder, and in violation of FINRA Rules 2010 and 2020, and NASD Rules 3310 and IM-3310.

FACTS AND VIOLATIVE CONDUCT

1. During the review period, Respondent, who held significant quantities of NTSC shares in his personal brokerage accounts, used and employed deceptive, fraudulent, and manipulative devices and schemes involving the purchase and sale of NTSC. More specifically, Respondent, through the use of his personal and other brokerage accounts, marked the open and closing prices of NTSC, and engaged in pre-arranged trading and wash sales, in an attempt to create a false or misleading appearance of active trading relating to the market for NTSC and manipulate the price of NTSC. Among other things, Respondent’s misconduct enabled him to avoid margin calls concerning the NTSC shares he held in his personal brokerage accounts.

Marking the Close and Marking the Open Violations

2. During the review period, as set forth on Exhibit A, which is incorporated herein by reference, Respondent effected 25 trades that set the closing price of NTSC and effected a total of seven trades that set the opening price in NTSC during the same period.
3. Respondent’s violative marking the close and marking the open transactions occurred on various days during the review period. For example:
 - a. On February 6, 2009, Respondent marked the close of NTSC by effecting a 150 share wash trade between two of his personal brokerage accounts. On this date, NTSC opened at \$3.38, traded as low as \$3.31, and had a total media reported volume of 4,400 shares. At 15:53, Respondent entered an all-or-none (“AON”) limit order to buy 150 shares of NTSC at \$3.59 in one of his personal brokerage accounts. Subsequently at 15:59:26, Respondent entered an identical AON order on the opposite side of the market in another one of his personal brokerage accounts. Respondent’s orders executed against each other at 15:59:27 at \$3.59, setting the closing price of NTSC \$0.19 higher than the previous trade.
 - b. On February 12, 2009 at 15:57, Respondent marked the close of NTSC by effecting a 110 share order to buy NTSC in one of his personal brokerage accounts. On this date, NTSC opened at \$3.40, its low, and had a total media reported volume of 1,200 shares. Respondent entered an AON limit order to buy 110 shares of NTSC at \$3.51 in one of his personal brokerage accounts. The order executed at 15:57, setting the closing price of NTSC \$0.21 higher than the previous day’s close.
 - c. On March 9, 2009, NTSC opened on a low price of \$3.02 and had a total media reported volume of 1,700 shares. At 15:28:42, Respondent purchased 200 shares of NTSC at \$3.05 in his wife’s brokerage account, setting the closing price of NTSC \$0.03 higher than the previous trade. In addition, on March 11, 2009, at

15:53:15, Respondent set the closing price of NTSC at \$3.25 with a 110 share purchase of NTSC in his personal brokerage account setting the closing price of NTSC \$0.23 higher than the previous trade.

Matched Order Activity

4. During the review period, as set forth on Exhibit B, which is incorporated herein by reference, Respondent effected 25 pairs of matched orders or pre-arranged trades in NTSC. In 16 of the 25 instances, Respondent and another registered representative effected matched trades between the brokerage accounts of Respondent's customers and the brokerage accounts of the other registered representative's customers. The matched orders were typically effected at prices that were equal to or higher than the prior trade price for NTSC shares.
5. Respondent's violative matched orders or pre-arranged trades took place on various days during the review period. For example:
 - a. On January 21, 2009 at 15:01, Respondent entered an AON limit order to sell 105 shares of NTSC at \$3.70. Subsequently, another registered representative entered an AON limit order to buy 105 shares in the account of his wife. The orders executed against each other at 15:55, setting the closing price of NTSC \$0.05 higher than the previous trade.
 - b. On February 17, 2009 at 15:59, Respondent entered an AON limit order to sell 105 shares of NTSC at \$3.45. At the same time, another registered representative entered an AON limit order to buy 105 shares in the account of one of his customers. The orders executed against each other at 15:59, setting the closing price of NTSC \$0.21 higher than the previous trade.
 - c. On March 12, 2009 at 11:16, Respondent entered an AON limit order to buy 400 shares of NTSC at \$3.15. At the same time, another registered representative entered an AON limit order to sell 400 shares in the account of one of his customers. The orders executed against each other at 11:16, setting the opening price of NTSC \$0.13 higher than the previous trade.

Wash Trades

6. During the review period, Respondent effected five pairs of wash trades in NTSC that took place within his personal brokerage accounts or between his personal brokerage accounts. The wash trades involved no change in beneficial ownership and were effected by Respondent to create a false or misleading appearance of active trading relating to the market for NTSC and manipulate the price of NTSC.
 - a. On February 6, 2009, Respondent effected a 150 share wash trade between two of his personal brokerage accounts. On this date, Respondent entered an AON limit

order to buy 150 shares of NTSC at \$3.59 in one of his personal brokerage accounts, and Respondent also entered an identical AON order on the opposite side of the market in another one of his personal brokerage accounts. Respondent's orders executed against each other at 15:59:27 at \$3.59, setting the closing price of NTSC \$0.19 higher than the previous trade.

- b. On February 18, 2009, Respondent effected a 105 share wash trade between two of his personal brokerage accounts. On this date, Respondent entered an AON limit order to buy 105 shares of NTSC at \$3.46 in one of his personal brokerage accounts, and Respondent also entered an identical AON order on the opposite side of the market in another one of his personal brokerage accounts. Respondent's orders executed against each other at 15:59:27 at \$3.59, setting the closing price of NTSC \$0.22 higher than the previous trade.
 - c. On February 24, 2009, Respondent effected a 110 share wash trade between two of his personal brokerage accounts. On this date, Respondent entered an AON limit order to buy 110 shares of NTSC at \$3.45 in one of his personal brokerage accounts, and Respondent also entered an identical AON order on the opposite side of the market in another one of his personal brokerage accounts. Respondent's orders executed against each other at 13:25:34 at \$3.45, setting the closing price of NTSC \$0.04 higher than the previous trade.
 - d. On March 4, 2009, Respondent effected a 100 share wash trade within one of his personal brokerage accounts. On this date, Respondent entered a limit order to buy 100 shares of NTSC at \$3.38 in one of his personal brokerage accounts, and Respondent also entered an identical limit order on the opposite side of the market in the same personal brokerage account. Respondent's orders executed against each other at 15:57:37 at \$3.38, setting the closing price of NTSC.
 - e. On March 5, 2009, Respondent effected a 200 share wash trade between two of his personal brokerage accounts. On this date, Respondent entered an AON limit order to buy 200 shares of NTSC at \$3.39 in one of his personal brokerage accounts, and Respondent also entered an identical AON order on the opposite side of the market in another one of his personal brokerage accounts. Respondent's orders executed against each other at 15:51:51 at \$3.39, setting the closing price of NTSC \$0.01 higher than the previous trade.
7. By reason of the conduct described in paragraphs 1 through 6, Respondent willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and violated FINRA Rules 2010 and 2020.
8. In addition, by reason of the conduct described in paragraphs 1 through 6, Respondent caused the publication or circulation of reports of non bona fide purchases or sales of NTSC, in violation of NASD Rule 3310 and IM-3310 and FINRA Rule 2010.

I also consent to the imposition of the following sanctions:

A bar from associating with any FINRA member in any capacity.

I understand that if I am barred from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Exchange Act, as amended. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar (see FINRA Rules 8310 and 8311).

I understand that this settlement includes a finding that I willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and that under Article III, Section 4 of FINRA's By-Laws, this makes me subject to a statutory disqualification with respect to association with a member.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar shall become effective upon approval or acceptance of this AWC.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive 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.

I further specifically and voluntarily waive 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.

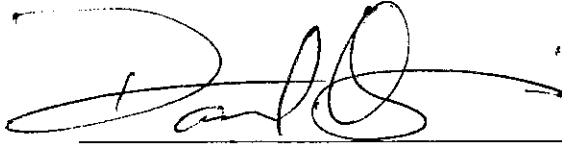
OTHER MATTERS

I understand 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 me; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my 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. I 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. I 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 my: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have 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 me to submit it.

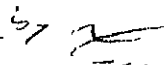
9-15-14
Date


David Lawrence Gabai

Accepted by FINRA:

September 29, 2014
Date

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

David E. Rosenstein 
David E. Rosenstein
Senior Vice President and Counsel
Department of Market Regulation