

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2010023935004**

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

RE: Gary Benjamin Lesnik, Respondent
CRD No. 4523441

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Gary Benjamin Lesnik ("Respondent" or "Lesnik") 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 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 purpose 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

Lesnik was first registered with a FINRA member firm in 2002. He then was registered with Lightspeed Professional Trading LLC (known as E*Trade Professional Trading, LLC until April 2006) from July 2003 to February 2004 and again from January 2006 to July 2008. Lesnik was registered with Lightspeed Trading, LLC ("Lightspeed") from June 16, 2010, to December 20, 2012, when the firm filed a Form U5 ending his registration. Lesnik has not been associated with a FINRA member since his termination from Lightspeed. FINRA retains jurisdiction over Lesnik pursuant to Article V, Section 4(a), of FINRA's By-Laws because the AWC has been filed within two years after the effective date of his last termination of registration from a FINRA member.

FACTS AND VIOLATIVE CONDUCT

Lesnik Operated an Unregistered Broker-Dealer

Lesnik was an owner and managing member, with three other persons, of WTG, an unregistered Florida limited liability company that he helped form in April 2008. After opening an account with Lightspeed, by late 2008 WTG operated as a day-trading company. WTG and Lesnik recruited retail customers to open accounts with Lightspeed to day-trade securities using WTG's offices and equipment.

Pursuant to a written “Broker Services Agreement” between WTG and Lightspeed, Lightspeed charged WTG a so-called “trader base rate” commission on WTG’s customers’ trades that ranged from \$7.00 to \$15.00 per 1,000 shares that a customer traded through Lightspeed. Lesnik and WTG’s other members and owners separately negotiated the “trader base rate” with each of their customers, resulting in varying commission rates being charged to WTG’s customers. Also pursuant to the agreement between WTG and Lightspeed, Lightspeed kept a portion of the “trader base rate” commissions that it collected, which amounted to \$1.90 per 1,000 shares traded by WTG’s customers.

During the period that WTG operated and that Lesnik was registered with Lightspeed (June 2010 to January 2011), Lesnik was the registered representative of record on each of WTG’s customer accounts at Lightspeed. Each month Lightspeed paid Lesnik monthly commissions that were equal to the difference between the trader base rate it charged WTG for its customers’ trades and the \$1.90 per 1,000 shares that it retained.

WTG’s customers deposited money with WTG before they could commence trading accounts through Lightspeed. WTG accordingly allocated buying power to its retail customers based on the amount that they deposited. If a customer lost money in a given month, WTG debited the deposit. If he made money, WTG credited the customer’s account based on the amount of trading profits the customer made. WTG also imposed a seat charge if a retail customer’s trading volume did not generate sufficient commissions in a month.

Between June 2010 and January 2011, WTG’s monthly customer trading volume ranged from approximately 2.6 million shares to 4.3 million shares. WTG’s customers’ trading activity generated between approximately \$24,000 and \$34,000 in monthly commissions, which were shared by WTG and Lightspeed. During this period, WTG had approximately a dozen customer accounts that traded through Lightspeed. WTG ceased operations by January 2011.

Section 15(a)(1) of the Securities Exchange Act of 1934 prohibits a broker or a dealer from effecting securities transactions without being registered with the U.S. Securities and Exchange Commission. The commissions that WTG earned, through Lesnik’s receipt and transfer of commission payments from Lightspeed, constituted transaction-based compensation and effecting transactions in securities. WTG accordingly operated as an unregistered broker-dealer, in violation of Section 15(a)(1) of the Exchange Act.

As an owner and member active in the decision making on behalf of WTG, Lesnik operated an unregistered broker-dealer, which constitutes a willful violation of Section 15(a)(1) of the Exchange Act and a violation of FINRA Rule 2010.

Lesnik Shared Commissions with Unregistered Persons

From June 2010 to January 2011, Lightspeed paid Lesnik a total of \$131,450 in commissions that were generated from trading activity by retail customers that WTG referred to Lightspeed. Lesnik endorsed the monthly commission checks that he received to WTG, which in turn distributed the commissions to the four owners and members, including Lesnik. WTG’s other three owners and members were not registered with a FINRA member firm.

By sharing \$131,450 in commissions with unregistered persons, Lesnik violated NASD Rule 2420 and FINRA Rule 2010.

B. I also consent to the imposition of the following sanctions:

1. An eight-month suspension in all capacities from associating with any member firm.
2. A \$60,000 fine. The fine shall be due and payable either immediately upon re-association with a member firm following the eight-month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.
3. An undertaking to cooperate with FINRA's Department of Enforcement staff in its continuing investigation of matter no. 20100239350, including the prosecution of these matters before a FINRA hearing panel, by, among other things, meeting with and being interviewed by the staff without FINRA's resorting to Rule 8210, and testifying truthfully at the hearing of any disciplinary actions arising from the matters.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

I understand that if I am suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Article III, Section 4, of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the suspension (see FINRA Rules 8310 and 8311).

I understand that this settlement includes a finding that I willfully violated Section 15(a)(1) of the Securities Exchange Act of 1934 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.

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 prejudice 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.
- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

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.

4/1/14
Date

Gary Benjamin Lesnik
Gary Benjamin Lesnik

Accepted by FINRA:

May 2, 2014
Date

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

Michael J. Dixon

Michael J. Dixon

Senior Counsel

FINRA

Department of Enforcement

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