

1 WAYNE STRUMPFER
Acting California Corporations Commissioner
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Acting Deputy Commissioner
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7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

11	In the Matter of the Accusation of)	CASE NO.
12	THE CALIFORNIA CORPORATIONS)	FILE NO.
13	COMMISSIONER,)	
14	Complainant,)	ACCUSATION TO BAR MICHAEL D.
15	v.)	VESSEY
16	MICHAEL D. VESSEY, an individual,)	(CORPORATIONS CODE SECTION 25232.1)
17	Respondent.)	
18)	
19)	

20 Wayne Strumpfer, the Acting California Corporations Commissioner ("Commissioner") of
21 the Department of Corporations ("Department") alleges and charges as follows:

22 **I. JURISDICTION AND VENUE**

23 1. The Commissioner brings this action pursuant to the provisions of California
24 Corporations Code section 25232.1, and the rules and regulations promulgated thereunder.

25 2. The Commissioner is authorized to administer and enforce the provisions of the
26 Corporate Securities Law ("CSL") of 1968, Corporations Code section 25000 et seq., and the
27 regulations thereunder at California Code of Regulations, title 10, section 260.000 et seq.
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1 **II. STATEMENT OF FACTS**

2 3. This action is brought to bar Respondent Michael D. Vessey (“Vessey”) from any
3 position of employment, management or control of any investment adviser, broker-dealer or
4 commodity adviser pursuant to Corporations Code Section 25232.1.

5 4. At all relevant times, Vessey was the Chief Executive Officer, President and owner of
6 Trendwise Financial, Inc. (“Trendwise”).

7 5. Trendwise is a California corporation, incorporated in September 1990. Trendwise at
8 all relevant times was located at 232 North Lake Avenue, Suite 220, Pasadena, California, 91101.

9 6. On December 4, 1990, the Commissioner issued an investment adviser certificate to
10 Trendwise. In March 2005, Trendwise’s investment adviser certificate was surrendered.

11 7. On December 14, 2000, Alfred Louis Vassallo, Jr. (Vassallo), the president of Presto
12 Telecommunications, Inc. (“Presto”) sent Vessey a memorandum and corporate resolution arranging
13 for and memorializing the proposed purchase of one million one hundred and sixty thousand
14 (1,160,000) shares of Presto common stock for \$2,500,000 for Vessey or his assigns.

15 8. Presto is a Delaware Corporation, incorporated in 1995. Presto purports to be a
16 telecommunications company. In November of 1998, the Mexican government granted Presto’s
17 Mexican subsidiary a license to operate a commercial telecommunications network in Mexico. In
18 November of 2001, Mexican regulators initiated an administrative proceeding to revoke the license
19 and Vassallo was served with a notice of initiation of the revocation proceeding.

20 9. In January of 2001, Vessey formed FLI, LLC (“FLI”), a Nevada Limited Liability
21 Company. FLI was organized to acquire between 90,000 and 490,000 common shares of Presto.
22 Vessey is the manager of FLI. Investors could gain admittance into FLI with the purchase of its
23 preferred shares at \$10,000 per share.

24 10. On March 2, 2001, Vessey issued a private placement terms sheet for FLI. A
25 minimum of \$500,000 was to be raised by March 31, 2001. The maximum amount of money that
26 FLI was to raise was \$2,500,000.

27 11. A total of 160 subscriptions were sold to 15 investors between January 17, 2001 and
28 July 15, 2002. By July 15, 2002, investors had invested a total of \$1,160,000.00.

1 12. On September 10, 2001, Vessey received a memorandum from Kenneth W.
2 McNerney (“McNerney”), the sole owner and employee of Forme Consulting Group (“Forme”),
3 which detailed the future sale of 616,000 common shares of McNerney’s interest in Presto to Vessey
4 for \$270,000.

5 13. On September 20, 2001, Vessey filed a limited offering exemption notice with the
6 California Department of Corporations for the sale of securities in FLI.

7 14. Vessey personally loaned Presto \$100,000, and MPTC Management Corporation
8 (“MPTC”) loaned Presto \$55,000. Vessey is the sole owner of MPTC.

9 15. Vessey individually purchased approximately 1,975,000 shares of Presto stock.

10 16. Vessey, through Trendwise, received finder’s fees for individuals who purchased
11 Presto stock or loaned money to Presto. Vessey stated that the finder’s fees that were received were
12 5% of the loan given to Presto or 5% of the amount of money paid to Presto for stock. Vessey stated
13 that Trendwise was to receive at least \$78,000 dollars in finder’s fees. \$15,000 was paid to
14 Trendwise for a finder’s fee. The bill for the \$63,000 in finder’s fees had been outstanding since the
15 end of 2002.

16 17. From January 24, 2002, to August 26, 2002, Vessey, acting for FLI, purchased
17 342,500 shares of Presto stock from MPTC. The sales of Presto stock from MPTC to FLI accounted
18 for approximately 30% percent of the amount of money that FLI spent on Presto stock. Since Vessey
19 is the sole owner of MPTC, he received this money.

20 18. On February 28, 2002, Pricewaterhouse Coopers, Inc. (“Pricewaterhouse”) sent
21 Vasallo a memorandum advising Vasallo that Pricewaterhouse was completing the sale of shares in
22 Presto held by First International Bank of Grenada Limited to MPTC. The shares were to be
23 released to Vessey upon the final payment, which occurred on March 1, 2002. The total amount of
24 shares sold to MPTC was 472,880 shares.

25 19. On March 4, 2003, Vessey and Vasallo signed a memorandum of understanding
26 whereby Vasallo agreed to sell 300,000 shares of Presto stock to MPTC and Vasallo would loan
27 MPTC \$2,500,000, with Presto stock as collateral.

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III. RESPONDENT VESSEY SHOULD BE BARRED FROM ANY POSITION OF EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY INVESTMENT ADVISER, BROKER-DEALER OR COMMODITY ADVISER PURSUANT TO CORPORATIONS CODE SECTION 25232.1 FOR ACTS COMMITTED AS SPECIFIED UNDER CORPORATIONS CODE SECTION 25232, SUBDIVISION (e)

20. Vessey is subject to being barred from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code Section 25232.1, for acts committed as specified in Corporations Code section 25232, subdivision (e) for willfully violating Corporations Code Sections 25235, subdivision (b) and 25401 by selling securities in the state as an investment adviser without disclosing material facts.

21. Corporations Code Section 25232.1 provides, in pertinent part:

The commissioner may, after appropriate notice and opportunity for hearing, by order censure, or suspend for a period not exceeding 12 months, or bar from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser, any officer, director, partner, employee of, or person performing similar functions for, an investment adviser, or any other person, if he or she finds that the censure, suspension or bar is in the public interest and that the person has committed any act or omission enumerated in subdivision (a), (e), (f), or (g) of Section 25232...

22. Corporations Code Section 25232 provides, in pertinent part:

The commissioner may, after appropriate notice and opportunity for hearing, by order censure, deny a certificate to, or suspend for a period not exceeding 12 months or revoke the certificate of, an investment adviser, if the commissioner finds that the censure, denial, suspension, or revocation is in the public interest and that the investment adviser, whether prior or subsequent to becoming such, or any partner, officer or director thereof or any person performing similar function or any person directly or indirectly controlling the investment adviser, whether prior or subsequent to becoming such, or any employee of the investment adviser while so employed has done any of the following:

(e) Has willfully violated any provision of...Title 4 (commencing with Section 25000)...or of any rule or regulation under any of those statutes, or any order of the commissioner which is or has been necessary for the protection of any investor.

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1 **A. TRANSACTION, PRACTICE, OR COURSE OF BUSINESS TO DEFRAUD BY AN**
2 **INVESTMENT ADVISER IN VIOLATION OF CALIFORNIA CORPORATIONS CODE**
3 **SECTION 25235, SUBDIVISION (b)**

4 23. California Corporations Code Section 25235, subdivision (b) provides:

5 It is unlawful for any investment adviser, directly or indirectly, in this state:

6 (b) To engage in any transaction, practice, or course of business which operates or
7 would operate as a fraud or deceit on any client or prospective client.

8 24. At all relevant times, Vessey through Trendwise was a licensed investment adviser.

9 25. Vessey has engaged in transactions, practices or a course of business that operated to
10 defraud and deceive clients by:

11 a) failing to disclose that he had received a proposed purchase memorandum for 1,160,000
12 shares of Presto stock on December 12, 2000, prior to the investors he solicited investing in
13 Presto stock, and that Vessey continued to purchase large amounts of Presto stock for himself
14 while soliciting clients;

15 b) failing to disclose that Vessey, through his company MPTC, owned a large number of
16 Presto shares;

17 c) failing to disclose that \$342,500.00 worth of Presto stock, or approximately 30% percent
18 of FLI's investment in Presto stock, was purchased or was going to be purchased from
19 Vessey's company, MPTC;

20 d) failing to disclose that Vessey had given a personal loan of \$100,000.00 to Presto;

21 e) failing to disclose that Vessey's company MPTC had given a loan of \$55,000.00 to
22 Presto;

23 f) failing to disclose that Vessey, through Trendwise, received or was entitled to receive a
24 5% finder's fees for finding individuals to invest or loan money to Presto, and that Vessey,
25 through Trendwise, was to receive \$78,000 in finder's fees; and

26 g) failing to disclose that in November of 2001 the Mexican government had initiated an
27 administrating proceeding to revoke Presto's Mexican subsidiary's commercial
28 telecommunications license.

1 Corporations Code Section 25401. Therefore, Vessey should be barred from employment,
2 management or control of any investment adviser, broker-dealer or commodity adviser pursuant to
3 Corporations Code Section 25232.1 as specified in Corporations Code Section 25232, subdivision
4 (e).

5 **IV. PRAYER**

6 WHEREFORE, based upon the foregoing, the Commissioner finds it is in the public interest
7 and prays that Vessey be barred from any position of employment, management or control of any
8 investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code Section
9 25232.1 for willful acts committed as specified in Corporations Code Section 25232, subdivision (e)
10 for willfully violating Corporations Code Sections 25235, subdivision (b) and 25401.

11 Dated: February 7, 2006

WAYNE STRUMPFER
Acting California Corporations Commissioner

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13 By: _____
MICHELLE LIPTON
14 Senior Corporations Counsel
15 Enforcement Division
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