

**FILED**

**OCT 22 2008**

**NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
BUSINESS CONDUCT COMMITTEE**

**NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING**

In the Matter of: )  
)  
TRENDEX COMMODITY CORP. )  
(NFA ID #291585), )  
)  
and )  
)  
THOMAS PAUL WAYNE )  
(NFA ID #239002), )  
)  
Respondents. )

NFA Case No. 08-BCC-025

**COMPLAINT**

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association ("NFA"), and having reason to believe that NFA Requirements are being, have been, or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee issues this Complaint against Trendex Commodity Corp. ("Trendex") and Thomas Paul Wayne ("Wayne").

**ALLEGATIONS**

**JURISDICTION**

1. At all times relevant to this Complaint, Trendex was a registered introducing broker and an NFA Member located in Plantation, Florida. As such, Trendex was required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.
2. At all times relevant to this Complaint, Wayne was an owner, principal, and associated person ("AP") of Trendex, and an NFA Associate. As such, Wayne was required to comply with NFA Requirements and is subject to disciplinary

proceedings for violations thereof. Trendex is liable for violations of NFA Requirements committed by Wayne in the course of his activities on behalf of the firm.

### **APPLICABLE RULES**

3. NFA Compliance Rule 2-4 provides that NFA Members and Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business.
4. NFA Compliance Rule 2-2(a) provides that no Member or Associate shall cheat, defraud or deceive, or attempt to cheat, defraud or deceive, any commodity futures customer.
5. NFA Compliance Rule 2-29(a)(1) provides that no Member or Associate shall make any communication with the public which operates as a fraud or deceit.
6. NFA Compliance Rule 2-29(a)(2) provides that no Member or Associate shall make any communication with the public which employs or is part of a high-pressure approach.

### **COUNT I**

#### **VIOLATION OF NFA COMPLIANCE RULES 2-4: FAILING TO OBSERVE JUST AND EQUITABLE PRINCIPLES OF TRADE.**

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7. The allegations contained in paragraphs 1 through 3 are realleged as paragraph 7.
8. Effective November 1, 2007, NFA amended its Enhanced Supervisory Requirements to require any NFA Member that charges 50% or more of its customers round-turn commissions, fees and other charges of \$100 or more per futures, forex or option contract to comply with the Enhanced Supervisory

Requirements, including the requirement that the Member tape record all conversations with customers.

9. Prior to November 1, 2007 (the effective date of the aforementioned amendment to the Enhanced Supervisory Requirements) Trendex charged its customers \$150 in commissions and fees per trade, but as of November 1, 2007, Trendex reduced its commissions and fees per trade to \$99, thereby avoiding the Enhanced Supervisory Requirements.
10. In February 2008, NFA began an examination of Trendex. As part of its examination, NFA reviewed the monthly statements of Trendex's customers and found that starting in November 2007 most of Trendex's customer accounts changed from trading primarily options to trading almost exclusively futures.
11. NFA asked Wayne about this change. Wayne told NFA that Trendex had felt forced to lower its commissions because of the change to NFA's Enhanced Supervisory Requirements, and in order to make the same amount of income as it had in the past the firm switched from recommending that its customers acquire and hold option positions to recommending that they purchase futures contracts and trade them frequently, almost on a day trading basis.
12. The monthly statements for Trendex customers for the months just before and after November 1, 2007 (the effective date of the aforementioned amendment to the Enhanced Supervisory Requirements) reveal that the change in Trendex's trade recommendations had the intended effect of keeping Trendex's overall commission income nearly the same after November 1, 2007 as it was before.

13. In one account, for example – which traded primarily options – Trendex charged commissions and fees totaling over \$24,000 for the three-month period from August 1 through October 31, 2007. In November 2007 (after Trendex lowered its commissions and started primarily recommending futures instead of options), this same account was charged commissions and fees of more than \$26,000. In December, this account was charged commissions and fees of approximately \$11,000, and in January it was charged commissions and fees of over \$10,000.
14. In another account, Trendex charged commissions and fees totaling slightly less than \$7,000 for August through November 2007, during which time the account traded primarily options. However, for the period from December 2007 through February 2008, during which time this account traded exclusively futures contracts, it was charged commissions and fees of approximately \$2,400 for December 2007, \$11,000 for January 2008, and \$4,500 for February 2008.
15. In an Interpretive Notice entitled “Commissions, Fees and Other Charges,” NFA’s Board of Directors stated that an NFA Member or Associate fails to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business when they recommend transactions or strategies to retail customers to increase the amount of commissions and fees generated, without serving any economic or other purpose for the customers.
16. As evidenced by the account activity in the aforementioned accounts and Wayne’s aforementioned statements, Trendex changed its recommended trading strategy solely to maintain the firm’s pre-November 2007 commission revenue,

and such change did not serve any economic or other purpose for Trendex's customers.

17. By reason of the foregoing acts and omissions, Trendex and Wayne are charged with violations of NFA Compliance Rule 2-4.

## COUNT II

### **VIOLATION OF NFA COMPLIANCE RULES 2-2(a), 2-29(a)(1) AND 2-29(a)(2): MAKING DECEPTIVE AND MISLEADING SALES SOLICITATIONS AND USING A HIGH-PRESSURE APPROACH.**

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18. The allegations contained in paragraphs 1, 2 and 4 through 6 are realleged as paragraph 18.
19. Wayne made misleading and deceptive statements during solicitations to customer Mohammed Qassas ("Qassas"). For example, Wayne told Qassas that gasoline would be a good purchase because it would go up when the summer driving season began. Additionally, Wayne told Qassas that his trade recommendations were based on charts and analysis and would be a "sure thing," were a "no-brainer" and that making a profit on the trades was "guaranteed." Wayne made these statements to Qassas without disclosing to Qassas that the vast majority of Trendex customers had lost money.
20. The statements set forth in paragraph 19, above, as well as Wayne's overall solicitation of Qassas were deceptive and misleading in that they cited well-known seasonal trends and suggested that they would move the market when such information had already been factored into the markets and they gave a distorted and misleading impression of the profit potential and risk of loss associated with trading futures and options by making it appear that large profits

were easily attainable. In addition, Wayne failed to inform Qassas that the vast majority of Trendex customers lost money overall.

21. Wayne also employed a high-pressure approach in his solicitation of Qassas by repeatedly calling Qassas, after he opened his account, and pressuring him to make more trades.
22. Wayne also made deceptive and misleading statements during his solicitation of Robert Jepson ("Jepson"). Wayne told Jepson that he could "quadruple his money" and that he could not miss. Wayne also suggested to Jepson that gasoline futures and option prices would increase because of the summer driving season and that orange juice futures and option prices would increase because of hurricanes.
23. The statements set forth in paragraph 22 above, as well as Wayne's overall solicitation of Jepson were deceptive and misleading in that they cited well-known seasonal and weather trends and suggested that they would move the market when such information had already been factored into the markets and they gave a distorted and misleading impression of the profit potential and risk of loss associated with trading futures and options by making it appear that large profits were easily attainable. In addition, Wayne failed to inform Jepson that the vast majority of Trendex customers lost money overall.
24. Wayne also employed a high-pressure approach with Jepson by telling him that he needed to make an immediate investment in gasoline and "get right in on it" and do it "ASAP."

25. Wayne also made misleading and deceptive statements during his solicitations of Marjorie Calabrese ("Calabrese"). Wayne told Calabrese that "out of the last 19 of 20 years, gas has gone down around Memorial Day" so a trade in gasoline would be a "low risk trade." Wayne also told Calabrese that an \$8,000 investment would return \$36,000. Wayne urged Calabrese to "get in right now."
26. After Calabrese had lost all of her initial investment, Wayne told her he would hate to see her "walk away with nothing" and that if she could come up with more money he could help her quickly earn back some of the money she lost. Calabrese told Wayne she would have to take out a \$25,000 loan in order to invest in Wayne's "recovery program." Wayne did not discourage Calabrese from taking out a loan. Calabrese did, in fact, borrow \$25,000 which she invested with Wayne in the hope of recouping some of her losses. However, Calabrese eventually lost the entire loan amount.
27. The statements set forth in paragraphs 25 and 26, as well as Wayne's overall solicitation of Calabrese were deceptive and misleading in that they cited well-known seasonal trends and suggested that they would move the market when such information had already been factored into the markets and they gave a distorted and misleading impression of the profit potential and risk of loss associated with trading futures and options by making it appear that large profits were easily attainable. In addition, Wayne failed to inform Calabrese that the vast majority of Trendex customers lost money overall.

28. Further, Wayne employed a high-pressure approach when soliciting Calabrese by telling her she needed to "get in right now" and encouraging her to invest more money so she did not "walk away with nothing."
29. By reason of the foregoing acts and omissions, Trendex and Wayne are charged with violations of NFA Compliance Rules 2-2(a), 2-29(a)(1), and 2-29(a)(2).

### **PROCEDURAL REQUIREMENTS**

#### **ANSWER**

You must file a written Answer to the Complaint with NFA within thirty (30) days of the date of the Complaint. The Answer shall respond to each allegation in the Complaint by admitting, denying or averring that you lack sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may only be made after a diligent effort has been made to ascertain the relevant facts and shall be deemed to be a denial of the pertinent allegation.

The place for filing an Answer shall be:

National Futures Association  
300 South Riverside Plaza, Suite 1800  
Chicago, Illinois 60606  
Attn: Legal Department-Docketing

E-Mail: [Docketing@nfa.futures.org](mailto:Docketing@nfa.futures.org)  
Facsimile: 312-781-1672

Failure to file an Answer as provided above shall be deemed an admission of the facts and legal conclusions contained in the Complaint. Failure to respond to any allegation shall be deemed an admission of that allegation. Failure to file an Answer as provided above shall be deemed a waiver of hearing.

**POTENTIAL PENALTIES, DISQUALIFICATION AND INELIGIBILITY**

At the conclusion of the proceedings conducted as a result of or in connection with the issuance of this Complaint, NFA may impose one or more of the following penalties:

- (a) expulsion or suspension for a specified period from NFA membership;
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;
- (d) a monetary fine not to exceed \$250,000 for each violation found; and
- (e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

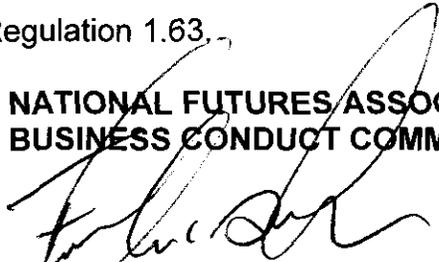
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act.

Respondents in this matter who apply for registration in any new capacity, including as an AP with a new sponsor, may be denied registration based on the pendency of this proceeding.

Pursuant to the provisions of Commodity Futures Trading Commission ("CFTC") Regulation 1.63, penalties imposed in connection with this Complaint may temporarily or permanently render Respondents who are individuals ineligible to serve on disciplinary committees, arbitration panels and governing boards of a self-regulatory organization, as that term is defined in CFTC Regulation 1.63.

**NATIONAL FUTURES ASSOCIATION  
BUSINESS CONDUCT COMMITTEE**

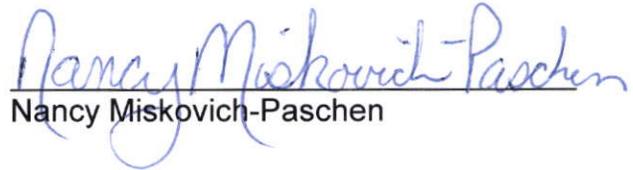
Dated: 10-22-08

By:   
Chairperson

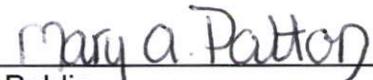
**AFFIDAVIT OF SERVICE**

I, Nancy Miskovich-Paschen, on oath state that on October 22, 2008, I served a copy of the attached Complaint, by sending such copy in the United States mail, first-class delivery, and by overnight mail, in envelopes addressed as follows:

Trendex Commodity Corp.  
867 Spinnaker Drive West  
Hollywood, FL 33019  
Attn: Thomas Wayne, President

  
Nancy Miskovich-Paschen

Subscribed and sworn to before me  
on this 22nd day of October 2008.

  
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Notary Public

