

CLERK'S OFFICE U.S. DIST. COURT  
 AT ROANOKE, VA  
 FILED  
**MAR 11 2009**  
 JOHN F. CORCORAN, CLERK  
 BY: *[Signature]*  
 DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE WESTERN DISTRICT OF VIRGINIA**

U.S. COMMODITY FUTURES TRADING )  
 COMMISSION, )

Plaintiff, )

v. )

JOHN M. DONNELLY, TOWER ANALYSIS )  
 INC., NASCO TANG CORP., and NADIA )  
 CAPITAL CORP., )

Defendants, and )

BLUE LOGIC OPERATING PARTNERS LP, )  
 NADIA CAPITAL OPERATING )  
 PARTNERS LP, and )  
 DEBORAH B. DONNELLY, )

Relief Defendants. )

CIVIL ACTION NO.: *3:09-cv-00016*

COMPLAINT FOR INJUNCTIVE AND  
 OTHER EQUITABLE RELIEF AND FOR  
 CIVIL PENALTIES UNDER THE  
 COMMODITY EXCHANGE ACT, AS  
 AMENDED, 7 U.S.C. §§1-25

Plaintiff, Commodity Futures Trading Commission ("Commission" or "CFTC"), by its attorneys, alleges as follows:

**I. SUMMARY**

1. From at least 2001 through the present ("relevant period"), Defendants John M. Donnelly ("Donnelly"), Tower Analysis Inc. ("Tower Analysis"), Nasco Tang Corp. ("Nasco Tang") and Nadia Capital Corp. ("Nadia Capital") fraudulently solicited and accepted millions of dollars from at least 30 individuals and entities to participate in one or more commodity pools to trade commodity futures contracts, including U.S. Treasury bond and note, S&P 500 index and NASDAQ 100 index futures.

2. Claiming to successfully employ lessons learned from his experience in astrophysics and “algorithms derived from the quantification of a fractal wave frequency model,” Donnelly, acting as an unregistered commodity pool operator (“CPO”) and President of Tower Analysis, Nasco Tang, and Nadia Capital, omitted material facts, including that Donnelly was misappropriating pool participants’ funds, and made material misrepresentations, including misrepresenting that he traded pool participants’ funds in index futures contracts, when in reality, he traded very little of participants’ funds.

3. Recently, Donnelly confessed that he never really traded pool participants’ funds, purportedly due to some form of mental incapacity. Donnelly further confessed that he used pool participants’ funds to pay principal and purported profitable returns to existing pool participants in a manner typical of a Ponzi scheme, as well as pay business expenses, which included approximately \$1,000,000 paid to Donnelly as “salary.”

4. To conceal his fraudulent scheme and misappropriation, Donnelly issued or caused to be issued false monthly statements and other reports. These reports falsely reflected profitable returns from the pool’s purported trading activity and that the pool participants’ investments were increasing in value.

5. Contrary to his representations to pool participants that he traded pool funds (and, bizarrely, contrary to his recent confession that he never traded anything), Donnelly, in reality, traded only a small fraction of pool participant funds in commodity futures trading accounts for the pool.

6. Through his ongoing conduct, Donnelly has engaged, is engaged, or is about to engage in acts and practices in violation of the anti-fraud provisions of Sections 4b(a)(2) and 4c(1) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 6(b)(a)(2) and 6c(1) (2006), and

Section 4b(a)(1) of the Act as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act ("CRA")), § 13102, 122 Stat. 1651 (effective June 18, 2008), to be codified at 7 U.S.C. § 6(b)(a)(1). Donnelly also acted as a CPO of the commodity pools without being registered as such in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

7. At all times relevant and in regard to all conduct alleged herein, Donnelly was an agent of Tower Analysis, Nasco Tang, and Nadia Capital and acted within the scope of his employment. As such, Tower Analysis, Nasco Tang and Nadia Capital are liable for Donnelly's conduct pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006).

8. The Relief Defendants are not charged with any violation of law but with having obtained funds to which they are not entitled and which were derived from the Defendants' violations of the Act.

9. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act. In addition, the Commission seeks civil monetary penalties and other equitable relief, including restitution to pool participants, disgorgement of Defendants' and Relief Defendants' ill-gotten gains, a permanent trading ban, and such other relief as the Court may deem necessary or appropriate.

10. Unless permanently restrained and enjoined by the Court, Defendants are likely to continue to engage in the illegal acts and practices alleged in this Complaint, as more fully described below.

## II. JURISDICTION AND VENUE

11. The Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), in that Defendants are found in, inhabit, or transact business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District, among other places.

## III. PARTIES

### PLAINTIFF

13. **Plaintiff Commodity Futures Trading Commission** is a federal independent regulatory agency charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.* (2006), and the Regulations thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2008).

### DEFENDANTS

14. **Defendant John M. Donnelly** is an individual who resides in Charlottesville Virginia. Donnelly is the founder and acts as the President of Tower Analysis Inc. and controlled the day to day operations of a pool known as the "Tower Fund." Donnelly is the founder and acts as the President of Nasco Tang Corp. and controls the day to day operations of a pool known as the "Blue Logic Fund." Donnelly is the founder and acts as the President of Nadia Capital Corp. and controls the day to day operations of a pool known as the "Nadia

Capital Partners Fund.” Donnelly has never been registered with the Commission as a CPO or in any other capacity.

15. **Defendant Tower Analysis Inc.** was incorporated in Virginia in 1995 and has operated out of 600 E. Water Street, Suite F, and 206 E. Market Street, Charlottesville, Virginia. Tower Analysis has never been registered with the Commission as a CPO or in any other capacity.

16. **Defendant Nasco Tang Corp.** was incorporated in Virginia in 2004 and operates out of 600 E. Water Street, Suite F, Charlottesville, Virginia. Nasco Tang is the general partner of the Relief Defendant Blue Logic Operating Partners LP. Nasco Tang has never been registered with the Commission as a CPO or in any other capacity.

17. **Defendant Nadia Capital Corp.** was incorporated in Virginia in 2008 and operates out of 600 E. Water Street, Suite F, Charlottesville Virginia. Nadia Capital Corp. is the general partner of the Relief Defendant Nadia Capital Operating Partners LP. Nadia Capital Corp. has never been registered with the Commission as a CPO or in any other capacity.

#### RELIEF DEFENDANTS

18. **Relief Defendant Blue Logic Operating Partners LP** (“Blue Logic”) is a partnership formed in Virginia in 2005 with its principal place of business at 600 East Water St., Suite F, Charlottesville, Virginia, and operates as a commodity pool. Defendant Nasco Tang is the general partner of Blue Logic.

19. **Relief Defendant Nadia Capital Operating Partners LP** (“Nadia Capital Partners”) is a partnership formed in Virginia in 2008 with its principal place of business at 600 East Water St., Suite F, Charlottesville, Virginia, and operates as a commodity pool. Defendant

Nadia Capital is the general partner of Nadia Capital Partners. Since late 2008, Donnelly has been soliciting new investors for Nadia Capital Partners.

20. **Relief Defendant Deborah B. Donnelly** is an individual residing in Charlottesville, Virginia. Ms. Donnelly is the wife of Defendant John M. Donnelly.

#### IV. FACTS

##### Formation and Operation of the Pools

21. Section 1a(5) of the Act, 7 U.S.C. § 1a(4) (2006), defines a “commodity pool operator” as any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, has solicited, accepted or received funds, securities or property from others for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility. A commodity pool operator serves as a fiduciary to pool participants.

22. Since at least 1998, Donnelly has fraudulently operated at least three commodity pools: the Tower Fund, the Blue Logic Fund, and Nadia Capital Partners Fund.

23. Throughout the relevant period, Donnelly operated these pools as a Ponzi scheme and misappropriated funds from the pools. Throughout the entire period when Donnelly accepted money from participants for purposes of investing in the commodity trading pools, neither Donnelly, Tower Analysis, Nasco Tang, nor Nadia Capital were registered in any capacity with the National Futures Association (“NFA”) or the Commission.

24. Since at least 1998, Donnelly solicited pool participants for the Tower Fund. Donnelly appears to have initially solicited funds from friends and acquaintances. Ultimately, at least 30 individuals and entities invested with Donnelly, Tower Analysis and its successor fund Blue Logic.

25. Although the conditions of operation were never formalized between Donnelly, Tower Analysis and the Tower Fund participants, it appears that Donnelly promised to take as compensation only 60% of the earnings of the Tower Fund. Donnelly represented to Tower Fund pool participants that he would trade commodity futures contracts with pool funds, specifically U.S. Treasury bond and note, S&P 500 index and NASDAQ 100 index futures.

26. From at least May 2005, Donnelly and Nasco Tang solicited pool participants for the Blue Logic Fund. Donnelly also transferred most of the Tower Fund participants to the Blue Logic Fund during this time period. In limited partnership agreements sent to the pool participants for signature, Donnelly promised Blue Logic pool participants that Nasco Tang would take only 60% of the pools earnings. Donnelly represented to Blue Logic pool participants that he would trade commodity futures contracts with pool funds, specifically U.S. Treasury bond and note, S&P 500 index and NASDAQ 100 index futures.

27. Since at least 1999, Donnelly has controlled commodity futures trading accounts in the name of *Tower Analysis* at Rosenthal Collins Group LLC ("Rosenthal Collins"), a FCM registered with the CFTC, and MF Global Inc., another FCM registered with the CFTC. It appears that Donnelly used the Tower Analysis FCM accounts in connection with not only the operation of the Tower Fund, but also the Blue Logic Fund.

28. Donnelly maintained a futures trading account in the name of *Tower Analysis* at Rosenthal Collins from 1999 through 2001. According to Rosenthal Collins, very few futures trades took place in the account. Records of specific transactions in this account are no longer available.

29. Donnelly maintained two FCM accounts in the name of *Tower Analysis* at MF Global during the following time periods:<sup>1</sup>

- MF Global \*2236: June 2001 through November 2008; and
- MF Global \*1511: June 2005 through November 2008.

30. From 2001 through 2008, a total of \$8,732,321.93 was deposited into the *Tower Analysis* FCM accounts at MF Global. On information and belief, the source of these funds was from Tower Fund, Blue Logic Fund, and/or Nadia Capital Partners pool participants.

31. From 2001 through 2008, Donnelly withdrew a total of \$9,077,456.07 from the *Tower Analysis* FCM accounts.<sup>2</sup> While it appears that a portion of these withdrawals went to either Tower Fund pool participants or Blue Logic Fund pool participants, sizeable amounts of funds ultimately were transmitted to Donnelly and Nasco Tang, the entity owned and controlled by Donnelly.

32. Apart from the Tower Fund and Blue Logic Fund solicitations, from at least September 2008, Donnelly and a new entity created by him, Nadia Capital, have solicited pool participants to deposit funds with Nadia Capital Partners, for the purpose of trading U.S. Treasury bond and note futures, S&P 500 index futures and NASDAQ 100 index futures. Similar to the terms of operation for the Tower Fund and the Blue Logic Fund, Donnelly and Nadia Capital promise Nadia Capital Partners pool participants that Nadia Capital will take only 50% of the earnings of the pool as sole compensation for the operation of the pool.

---

<sup>1</sup> The accounts were originally opened with REFCO LLC, which was bought by Man Financial Inc., which was eventually spun off into MF Global, Inc.

<sup>2</sup> Donnelly maintained large amounts of cash in the futures trading accounts even though he, for the most part, did no trading in those accounts. Over time, the accounts earned \$375,249.86 in interest. Thus, Donnelly was able to withdraw a greater amount than he deposited into the accounts.



Additionally, Donnelly and Nadia Capital promised to trade 20% of the funds deposited by those pool participants who enter into loan agreements with Nadia Capital.

33. From October 2008 to the present, Donnelly has maintained one FCM account at Rosenthal Collins in the name of *Nadia Capital*, purportedly to execute futures trades on behalf of the pool participants.

34. Since opening the account, Donnelly deposited a total of \$525,000 in the Nadia Capital account at Rosenthal Collins and withdrawn \$333,000.

35. A certain portion of the pool participants' funds solicited and received by the Defendants were invested or deposited with Tower Fund and Relief Defendants Blue Logic and Nadia Capital Partners. A certain portion of the pool participants' funds solicited and received by the Defendants were transferred to or used for the benefit of Relief Defendant Deborah B. Donnelly.

#### Donnelly's Fraudulent Solicitations

36. From at least 2001 to the present, Donnelly directly and indirectly fraudulently solicited millions of dollars from at least 30 individuals or entities to invest in the commodity pools he operated, including at least one participant who deposited approximately \$11,000,000.

37. Donnelly falsely represented to Tower Fund and Blue Logic pool participants that he and/or Tower Analysis, or Nasco Tang would take as sole compensation 60% of the earnings of the pool. He also represented to Nadia Capital Partners pool participants that Nadia Capital Corp. would take as sole compensation 50% of the earnings of the pool. Donnelly utilized the U.S. mail and other methods of interstate commerce to transmit these representations to pool participants. It appears that Donnelly withdrew approximately \$1,000,000 from pool participants' funds as personal compensation and may have withdrawn an additional \$1.7 million

in compensation through Nasco Tang. Donnelly was not entitled to any funds because he failed to trade according to the terms and conditions agreed upon.

38. Alternatively, although the pools Donnelly operated did actually earn a modest return based upon the interest paid into the accounts by the FCMs, Donnelly was not entitled to the vast amount of funds he paid to himself because the interest payments merely generated less than 1% in earnings. Consequently, at most Donnelly was entitled to \$270,015.55 during the relevant period.

39. During the relevant period, Donnelly omitted the material fact that he misappropriated pool participants' funds by paying himself a salary and other compensation from those funds and using the funds to pay other investors.

40. During the relevant period, Donnelly falsely represented to Tower Fund, Blue Logic Fund, and Nadia Capital Partners pool participants that he generated monthly and annual returns exceeding the amount generated by the interest payments made by the FCMs. Donnelly utilized the U.S. mail and other methods of interstate commerce to transmit these statements and representations to pool participants. For example, Donnelly represented to at least one pool participant that his trading generated the following annual returns:

2002	25.72%
2004	23.53%
2005	20.99%
2006	18.56%
2007	15.55%
9.01.08	8.66%

41. Donnelly falsely represented to Tower Fund and Blue Logic Fund pool participants that he would trade commodity futures contracts with pool funds, specifically U.S. Treasury bond and note, S&P 500 index and NASDAQ 100 index futures. Donnelly utilized the

U.S. mail and other methods of interstate commerce to transmit these statements and representations to pool participants.

42. Similarly, Donnelly falsely represented to Nadia Capital Partners pool participants that each day he would trade 20% of funds deposited in the Nadia Capital Partners pool. Donnelly utilized the U.S. mail and other methods of interstate commerce to transmit these statements and representations to pool participants.

43. Contrary to these claims, Donnelly only rarely executed trades. Indeed, according to Donnelly, as a result of some significant trauma he experienced in the past, Donnelly could never quite bring himself to execute trades. From at least June 2001 to the present, the FCM accounts reflect that in reality Donnelly only traded on 7 days out of the 92 months the Tower Analysis and Nadia Capital trading accounts were open. Moreover, since beginning the Nadia Capital Partners Fund, Donnelly has not executed even one trade in that account.

44. Donnelly failed to disclose to the pool participants that he did not trade their funds in accordance with the terms and conditions agreed upon.

#### **Donnelly's Misappropriation and Confession**

45. From January 29 through February 9, 2009, Donnelly confessed to at least one participant that he did not engage in the trading activity he had claimed. Specifically, Donnelly told the participant that he had mental problems which prevented him from executing trades. Donnelly further confessed that throughout the lives of his commodity pools, he used pool participant funds to pay other pool participants.

46. As noted above in paragraph 35, Donnelly misappropriated pool participants' funds by withdrawing at least \$1,000,000 of pool participants' funds to which he was not entitled. It appears that a portion of these funds went toward all, or some, of the purchase of

Donnelly's, and his wife Deborah's, primary residence. Donnelly further misappropriated pool participants' funds by paying principal and purported profitable returns to existing pool participants in a manner typical of a Ponzi scheme.

#### **Donnelly's Issuance of False Account Statements**

47. From the inception of the pools, Donnelly issued monthly account statements to pool participants. For example, in monthly statements to one pool participant, Donnelly represented the following monthly returns:

<u>Month</u>	<u>"Monthly % Earned"</u>
April 2006	1.471%
May 2006	2.344%
June 2006	1.721%
July 2006	1.635%
August 2006	0.984%
September 2006	1.127%
October 2006	2.002%
November 2006	1.686%
December 2006	1.923%
January 2007	1.8635
February 2007	1.331%
March 2007	2.186%
April 2007	2.025%
May 2007	1.039%
June 2007	2.083%
July 2007	1.448%
August 2007	0.747%
September 2007	0%
October 2007	0%
November 2007	0%
December 2007	1.12%
January 2008	1.124%
February 2008	0%
March 2008	0.721%
April 2008	1.518%
May 2008	1.192%
June 2008	1.485%
July 2008	1.460%
August 2008	1.028%

September 2008	1.260%
October 2008	0.741%
November 2008	1.151%
December 2008	0.981%
January 2009	1.100%

48. The returns stated in the monthly account statements issued by Donnelly were false because Donnelly did not earn profits in the small amount of trading he did in the pools' FCM accounts and earned less than 1% per month in interest in the FCM accounts during that time.

## V. VIOLATIONS OF THE ACT

### COUNT ONE

#### Fraud in Connection with Futures Contracts

(Violations of Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2006), and Section 4b(a)(1) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1))

49. Paragraphs 1 through 48 are recalled and incorporated herein.

50. Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), make it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully make or cause to be made to other persons false reports or statements, or willfully enter or cause to be entered for other persons false records; or willfully deceive or attempt to deceive by any means whatsoever other persons in or in connection with orders to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the produce or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or

(c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof.

51. Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), make it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; or (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for the other person.

52. As alleged above, during the relevant period, Donnelly knowingly, willfully or with reckless disregard for the truth, violated Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and in violation of Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008, the effective date of the CRA by, among other things, (1) omitting material information, including the fact that he was misappropriating pool participant funds; (2) falsely representing that he was generating profits from his trading on behalf of the pool and pool participants; (3) issuing or causing to be issued false account statements and reports reflecting positive returns for the pool and increases in the value of individual pool participants' interests; (4) misappropriating pool participant funds

by using such funds to pay principal and purported returns to other pool participants; and (5) misappropriating pool participant funds to pay business expenses and for personal use.

53. Donnelly was acting as an agent of Tower Analysis when he violated the Act and, therefore, Tower Analysis, as Donnelly's principal, is liable for Donnelly's violations of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and for Donnelly's violations of Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006).

54. Donnelly was acting as an agent of Nasco Tang when he violated the Act and, therefore, Nasco Tang, as Donnelly's principal, is liable for Donnelly's violations of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and for Donnelly's violations of Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006).

55. Donnelly was acting as an agent of Nadia Capital when he violated the Act and, therefore, Nadia Capital, as Donnelly's principal, is liable for Donnelly's violations of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and for Donnelly's violations of Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006).

56. Each misrepresentation or omission of material fact, issuance of a false statement or report, and misappropriation, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008.

### COUNT TWO

#### Fraud By Commodity Pool Operator

(Violations of Section 40(1)(A) & (B) of the Act, 7 U.S.C. § 60(1)(A) & (B) (2006))

57. Paragraphs 1 through 56 are realleged and incorporated herein.

58. Commencing in at least September 2000 and continuing through the present, Donnelly acted as a CPO for the pool by soliciting, accepting or receiving funds from others and engaging in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of trading in commodities for future delivery on or subject to the rules of a contract market.

59. As alleged above, during the relevant period, Donnelly employed a device, scheme or artifice to defraud prospective and existing pool participants, or engaged in a transaction, practice or course of business that operated as a fraud or deceit upon prospective and existing pool participants in violation of Sections 40(1)(A) & (B) of the Act, 7 U.S.C. §§ 60(1)(A) & (B) (2006), by (1) omitting material information, including the fact that he was misappropriating pool participant funds; (2) falsely representing that he was generating profits from his trading on behalf of the pool and pool participants; (3) issuing or causing to be issued false account statements and reports reflecting positive returns for the pool and increases in the



value of individual pool participants' interests; (4) misappropriating pool participant funds by using such funds to pay principal and purported returns to other pool participants; and (5) misappropriating pool participant funds to pay business expenses and for personal use.

60. Donnelly was acting as an agent of Tower Analysis when he violated the Act and, therefore, Tower Analysis, as Donnelly's principal, is liable for Donnelly's violations of Sections 40(1)(A) & (B) of the Act, 7 U.S.C. §§ 60(1)(A) & (B) (2006), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006).

61. Donnelly was acting as an agent of Nasco Tang when he violated the Act and, therefore, Nasco Tang, as Donnelly's principal, is liable for Donnelly's violations of Sections 40(1)(A) & (B) of the Act, 7 U.S.C. §§ 60(1)(A) & (B) (2006), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006).

62. Donnelly was acting as an agent of Nadia Capital when he violated the Act and, therefore, Nadia Capital, as Donnelly's principal, is liable for Donnelly's violations of Sections 40(1)(A) & (B) of the Act, 7 U.S.C. §§ 60(1)(A) & (B) (2006), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006).

63. Each misrepresentation or omission of material fact, issuance of a false statement or report, and misappropriation, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 40(1)(A) & (B) of the Act, 7 U.S.C. §§ 60(1)(A) & (B) (2006).

### **COUNT THREE**

#### **Failure to Register As a Commodity Pool Operator**

**(Violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1))**

64. Paragraphs 1 through 48 are realleged and incorporated herein.

65. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), provides that it is unlawful for any CPO, unless registered under the Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as a CPO.

66. As alleged, during the relevant period, Donnelly acted as a CPO within the meaning of Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), and has used the mails or instrumentalities of interstate commerce in or in connection with a commodity pool as a CPO while failing to register as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

67. Donnelly was acting as an agent of Tower Analysis, Nasco Tang and Nadia Capital, when he violated the Act and, therefore, Tower Analysis, Nasco Tang and Nadia Capital, as Donnelly's principals, are liable for Donnelly's violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006).

## VI. RELIEF

WHEREFORE, the Commission respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and pursuant to its own equitable powers, enter:

(a) an order finding that Defendants violated: Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006); Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C); Sections 4o(1)(A) & (B), 7 U.S.C. §§ 6o(1)(A) & (B) and 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006);

(b) an order of permanent injunction prohibiting Defendants, and any other person or entity associated with them, including any successor thereof, from engaging in conduct violative of the sections of the Act that the Defendants have been alleged to have violated;

(c) an order of permanent injunction prohibiting Defendants from engaging, directly or indirectly, in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (2006) ("commodity interest"), including but not limited to, the following:

1. trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006);
2. engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise;
3. soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest;
4. entering into any commodity interest transactions for his own personal account, for any account in which he has a direct or indirect interest and/or having any commodity interests traded on his behalf; and
5. engaging in any business activities related to commodity interest trading.

(d) an order of permanent injunction from applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2008), or acting as a principal, agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2008);

(c) an order directing Defendants, as well as any other person or entity associated with them, including any successor thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act, as described herein, and interest thereof from the date of such violations;

(f) an order directing Defendants, as well as any other person or entity associated with them, including any successor thereof, to make full restitution, pursuant to such procedure as the Court may order, to every pool participant whose funds were received by them as a result of acts and practices which constitute violations of the Act, as described herein, and interest thereon from the date of such violations;

(g) an order requiring Defendants to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of (1) triple the monetary gain to Defendants for each violation of the Act or (2) \$110,000 for each violation of the Act on or before October 22, 2000, \$120,000 for each violation of the Act on October 23, 2000 through October 22, 2004, \$130,000 for each violation of the Act on October 23, 2004 through October 22, 2008, and \$140,000 for each violation of the Act on or after October 23, 2008; and

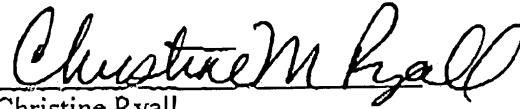
//  
 //  
 //  
 //  
 //  
 //  
 //  
 //

(h) an order for such other and further remedial ancillary relief as the Court may deem appropriate.

March 11, 2009

Respectfully submitted,

PLAINTIFF UNITED STATES COMMODITY  
FUTURES TRADING COMMISSION



By: Christine Ryall  
Chief Trial Attorney  
*cryall@cftc.gov*  
(Fla. Bar #0983550)

Eugene Smith  
Senior Trial Attorney  
*esmith@cftc.gov*

Paul Hayeck  
Associate Director  
*phayeck@cftc.gov*

Division of Enforcement  
Commodity Futures Trading Commission  
1155 21st Street, N.W.  
Washington, D.C. 20581  
Phone (202) 418-5000  
Facsimile (202) 418-5523