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

U.S. COMMODITY FUTURES TRADING)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
JOHN M. DONNELLY, et al,)
)
Defendants, and)
)
BLUE LOGIC OPERATING PARTNERS LP,)
et al,)
)
Relief Defendants.)

CIVIL ACTION NO.: 3:09CV00016

CONSENT ORDER OF PERMANENT
INJUNCTION AND FOR OTHER
EQUITABLE RELIEF AGAINST
DEFENDANTS JOHN M. DONNELLY,
TOWER ANALYSIS INC., NASCO TANG
CORP., AND NADIA CAPITAL CORP.

1. On March 11, 2009, Plaintiff U.S. Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint against John M. Donnelly, Tower Analysis Inc., Nasco Tang Corp., and Nadia Capital Corp. (collectively, "Defendants") and Blue Logic Operating Partners LP, Nadia Operating Partners LP and Deborah B. Donnelly (collectively, "Relief Defendants"), seeking injunctive and other equitable relief for violations of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1 *et seq.* (2006), and the Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2008). On the same date, the Court entered an *Ex Parte* Statutory Restraining Order against the Defendants and Relief Defendants. A Consent Order of Preliminary Injunction and Other Ancillary Relief was entered against the Defendants and Relief Defendants on March 23, 2009.

I. CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint against the Defendants, without a trial on the merits or any further judicial proceedings, Defendants:

2. Consent to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief Against Defendants John M. Donnelly, Tower Analysis Inc., Nasco Tang Corp., and Nadia Capital Corp. ("Order").

3. Affirm that they have agreed to this Order voluntarily, and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.

4. Acknowledge service of the Summons and Complaint.

5. Admit that this Court has jurisdiction over them and the subject matter of this case, and that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

6. Waive:

- (a) any and all claims that they may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Regulations, 17 C.F.R. §§ 148.1 et seq. (2008), relating to, or arising from, this action;
- (b) any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act, 1996 HR 3136, Pub. L. 104-121, §§ 231- 223, 110 Stat. 862-63 (1996), , as amended by Pub. L. No. 110-28, 121 Stat. 112 (2007), relating to, or arising from, this action;
- (c) any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and
- (d) any and all rights of appeal of this Order.

7. The Defendants neither admit nor deny the allegations of the Complaint or the findings of fact or conclusions of law contained in this Order, except as to jurisdiction and venue, which they admit. The Defendants do not consent to the use of the allegations of the Complaint, or the findings of fact or conclusions of law in this Order, as the sole basis for any other proceeding brought by the CFTC, other than any proceeding to enforce the terms of this Order or a Commission registration proceeding relating to and of the Defendants pursuant to Section 8a of the Act, 7 U.S.C. § 12a(1), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.*, and any proceeding in bankruptcy filed by or against any of the Defendants. Solely with respect to any proceeding to enforce this Order and any Commission registration proceeding relating to any of the Defendants pursuant to Section 8a of the Act, 7 U.S.C. § 12a(1), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.*, or any proceeding in bankruptcy filed by or against any of the Defendants, Defendants agree that the allegations of the Complaint and the findings of fact and conclusions of law in this Order shall be taken as true and correct and be given preclusive effect, without further proof.

8. Defendants shall provide immediate notice to this Court and the CFTC by certified mail, return receipt requested, of any bankruptcy proceeding filed by, on behalf of, or against any of the Defendants, individually or collectively. Such notice to the Commission shall be sent to: Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

9. Agree that no provision of this Order shall in any way limit or impair the ability of any person to seek any legal or equitable remedy against Defendants or any other person in any other proceeding.

10. Agree that neither Defendants nor any of their agents, servants, employees, contractors or attorneys shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in this Order, or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect Defendants': i) testimonial obligations; or ii) right to take legal positions in other proceedings to which the Commission is not a party. Defendants shall take all necessary steps to ensure that all of their agents, servants, employees, contractors or attorneys under their actual or constructive authority or control understand and comply with this agreement.

11. Notwithstanding the foregoing paragraph 10 of this Order, Defendants' shall have the right to argue before this Court, or any other court with appropriate jurisdiction, factual or legal theories relevant to the imposition of restitution, disgorgement and/or civil monetary penalties under this Order

12. Consent to the continued jurisdiction of this Court for the purpose of: determining the amounts of restitution, disgorgement of ill-gotten gains, and civil monetary penalties; enforcing the terms and conditions of this Order; and for any other purpose relevant to this action, even if any of the Defendants now or in the future resides outside the jurisdiction.

II. FINDINGS OF FACTS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law, and a permanent injunction and ancillary equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), as set forth herein.

The Parties

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).

14. **Defendant John M. Donnelly** (“Donnelly”) is an individual who resides in Albemarle County, 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 Operating Partners” (hereinafter “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” (hereinafter “Nadia Capital Partners Fund”). Donnelly has never been registered with the Commission as a commodity pool operator (“CPO”) or in any other capacity.

15. **Defendant Tower Analysis Inc.** (“Tower Analysis”) 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.** (“Nasco Tang”) 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.** (“Nadia Capital”) was incorporated in Virginia in 2008 and operates out of 600 E. Water Street, Suite F, Charlottesville Virginia. Nadia Capital

is the general partner of the relief defendant Nadia Capital Operating Partners LP. Nadia Capital has never been registered with the Commission as a CPO or in any other capacity.

Formation and Operation of the Pools

18. Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (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, solicits, accepts or receives 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.

19. From at least 1998 to the present (the “relevant period”), Donnelly has fraudulently operated at least three commodity pools: the Tower Fund, the Blue Logic Fund, and Nadia Capital Partners Fund. At least 30 individuals and entities invested with Donnelly’s pools. 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 the purpose 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.

20. Since at least 1998, Donnelly solicited pool participants for 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. Donnelly promised to take as compensation only 60% of the earnings of the Tower Fund.

21. 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. Donnelly represented to 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 promised Blue Logic Fund pool participants that Nasco Tang would take only 60% of the pool's earnings.

22. 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 futures commission merchant ("FCM") registered with the CFTC, and MF Global Inc. ("MF Global"), also a FCM registered with the CFTC. Donnelly used the Tower Analysis futures trading accounts in connection with not only the operation of the Tower Fund, but also the Blue Logic Fund.

23. Donnelly maintained a futures trading account in the name of Tower Analysis at Rosenthal Collins from 1999 through 2001. Very few futures trades took place in the account.

24. Donnelly maintained two trading accounts in the name of Tower Analysis at MF Global during the following time periods:

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

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

withdrew a total of \$9,077,456.07 from the Tower Analysis accounts.¹ While a portion of these withdrawals went to either Tower Fund pool participants or Blue Logic Fund pool participants, sizeable amounts ultimately were transmitted to Donnelly and Nasco Tang, the entity owned and controlled by Donnelly.

26. 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 Fund, for the purpose of trading U.S. Treasury bond and note futures, S&P 500 index futures and NASDAQ 100 index futures. Donnelly and Nadia Capital promise Nadia Capital Partners Fund pool participants that Nadia Capital will take only 50% of the earnings of the pool as sole compensation for the operation of the pool. 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.

27. From October 2008 to the present, Donnelly has maintained one account at Rosenthal Collins in the name of Nadia Capital, purportedly to execute futures trades on behalf of the pool participants. Since opening the account, Donnelly deposited a total of \$525,000 in the Nadia Capital account at Rosenthal Collins and withdrew \$333,000.

28. 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.

¹ 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.

Donnelly's Fraudulent Solicitations

29. From at least 2001 to the present, Donnelly directly and indirectly fraudulently solicited a substantial amount of funds from at least 30 individuals or entities to invest in the commodity pools he operated.

30. During the relevant period, Donnelly made the following false representations and/or omissions of material fact:

- a) Donnelly falsely represented to Tower Fund, Blue Logic Fund, and Nadia Capital Partners Fund pool participants that he generated monthly and annual returns exceeding the amount generated by the interest payments made by the FCMs.
- b) Donnelly falsely represented to Tower Fund and Blue Logic Fund pool participants that he would trade and/or had traded commodity futures contracts with pool funds, specifically U.S. Treasury bond and note, S&P 500 index and NASDAQ 100 index futures.
- c) Donnelly falsely represented to Nadia Capital Partners Fund pool participants that each day he would trade 20% of funds deposited in the Nadia Capital Partners Fund pool.
- d) Donnelly falsely represented to Tower Fund and Blue Logic Fund 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 Fund pool participants that Nadia Capital would take as sole compensation 50% of the earnings of the pool.

- e) Donnelly omitted the material fact that he misappropriated pool participants' funds by paying himself a salary and other compensation from participants' principal and using the funds to pay other participants.
- f) Donnelly failed to disclose to the pool participants that he did not trade their funds in accordance with the terms and conditions offered and/or agreed upon.

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

31. Donnelly withdrew a substantial amount of funds from pool participants' funds as personal compensation. Donnelly was not entitled to any funds because he failed to trade according to the terms and conditions agreed upon. Alternatively, although the pools Donnelly operated did earn a modest return based upon the interest paid into the accounts by the FCMs, Donnelly was not entitled to the amount of funds he paid to himself because the interest payments generated less than 1% in earnings and Donnelly's withdrawals for personal compensation exceeded the interest earned in the accounts.

32. Donnelly only rarely executed trades. From at least June 2001 to the present, 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.

Donnelly's Misappropriation and Confession

33. 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. Donnelly further

confessed that throughout the lives of his commodity pools, he used pool participant funds to pay other pool participants.

34. As noted above in paragraph 31, Donnelly misappropriated pool participants' funds by withdrawing substantial amounts of pool participants' funds to which he was not entitled. 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

35. During the relevant period, Donnelly issued monthly account statements to pool participants. 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.

III. CONCLUSIONS OF LAW

36. Prior to being amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), made 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.

37. 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.

38. 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 violated 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 date of enactment 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.

39. Commencing in at least September 2000 and continuing through the present, Donnelly acted as a CPO for the Tower Fund, Blue Logic Fund, and Nadia Capital Partners Fund pools 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.

40. As alleged above, during the relevant period, Donnelly employed a device, scheme or artifice to defraud prospective and existing Tower Fund, Blue Logic Fund, and Nadia Capital Partners Fund 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 pools and pool participants; (3) issuing or causing to be issued false account statements and reports reflecting positive returns for the pools 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.

41. 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.

42. 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).

43. Donnelly was acting as an agent of Tower Analysis, Nasco Tang and Nadia Capital when he violated the Act as found herein and, therefore, Tower Analysis, Nasco Tang and Nadia Capital, as Donnelly's principals, are each liable for Donnelly's violations of:

a) 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, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006);

b) Sections 4o(1)(A) & (B) of the Act, 7 U.S.C. §§ 6o(1)(A) & (B) (2006), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006); and

c) 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).

IV. NEED FOR A PERMANENT INJUNCTION AND OTHER ANCILLARY EQUITABLE RELIEF

44. Defendants have engaged in acts and practices that violate Sections 4b(a)(2), 4o(1)(A) & (B) and 4m(1) of the Act, 7 U.S.C. §§ 6b(a)(2), 6o(1)(A) & (B) and 6m(1) (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).

45. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Regulations.

V. ORDER FOR PERMANENT INJUNCTION

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

46. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), Defendants are permanently restrained, enjoined, and prohibited from:

a. in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other persons, where such contract for future delivery was or could be used for (A) hedging any transaction in interstate commerce in such commodity or the products 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, (i) cheating or defrauding or attempting to cheat or defraud others; (ii) willfully making or causing to be made to such other person any false report or statement thereof; or (iii) willfully deceiving or attempting to deceive any other persons by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such persons, including but not limited to:

- i. omitting material information, including the fact that he was misappropriating pool participant funds;
- ii. falsely representing that he was generating profits from his trading on behalf of the pool and pool participants;

- iii. 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;
- iv. misappropriating pool participant funds by using such funds to pay principal and purported returns to other pool participants; and
- v. misappropriating pool participant funds to pay business expenses and for personal use.

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

b. making use of the mails or any means or instrumentality of interstate commerce to employ a device, scheme, or artifice to defraud commodity pool participants or prospective pool participants, or engaging in transactions, practices or courses of business which operate as a fraud or deceit upon pool participants or prospective pool participants, including but not limited to:

- i. omitting material information, including the fact that he was misappropriating pool participant funds;
- ii. falsely representing that he was generating profits from his trading on behalf of the pool and pool participants;
- iii. 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;
- iv. misappropriating pool participant funds by using such funds to pay principal and purported returns to other pool participants; and
- v. misappropriating pool participant funds to pay business expenses and for personal use.

in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006); and/or

c. making use of the mails or any means or instrumentality of interstate commerce in connection with a business as a commodity pool operator, unless first registered with the Commission, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

47. Defendants are further permanently restrained, enjoined and prohibited from directly or indirectly engaging in any activity related to trading in any commodity interest, as that

term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (“commodity interest”), including but not limited to, the following:

- A. Trading on or subject to the rules of any registered entity, at that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);
- B. Engaging in, controlling, or directing the trading of any commodity interest accounts, on their own behalf or for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- C. Soliciting, accepting or placing orders, giving advice or price quotations or other information in connection with the purchase or sale of commodity interests, for themselves and others;
- D. 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) (2009), or acting as a principal, agent or officer or employee of any person registered, required to be registered or exempted from registration with the Commission unless such exemption is pursuant to Commission Regulation 4.14(a)(9), 17 C.F.R. 4.14(a)(9) (2009); and
- E. Otherwise engaging in any business activities related to commodity interest trading that (a) would require registration with the Commission or (b) involve selling any commodity futures trading system to retail customers.

48. The injunctive provisions of this Order shall be binding upon Defendants, upon any person who acts in the capacity of officer, agent, employee, attorney, successor and/or assign of either of the Defendants and upon any person who receives actual notice of this Order, by personal service or otherwise, insofar as he or she is acting in active concert or participation with either of the Defendants.

VI. CIVIL MONETARY PENALTIES ANCILLARY EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

A. Asset Freeze and Access To Records

49. The terms of the Consent Order of Preliminary Injunction entered March 23, 2009, shall remain in effect until further order of this Court.

B. Restitution, Disgorgement and Civil Monetary Penalties

50. Defendants shall pay restitution, disgorgement of ill-gotten gains, and civil monetary penalties pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006). The Court shall determine the amounts of the restitution, disgorgement and civil monetary penalties upon motion of the Commission.

51. In connection with the Commission's motion for restitution, disgorgement and/or civil monetary penalties, and at any hearing held on such a motion: (a) Defendants will be precluded from arguing that they did not violate the federal laws as alleged in the Complaint; (b) Defendants may not challenge the validity of their consents and agreements herein or this Order; (c) solely for the purposes of such motion, the allegations of the Complaint and the findings and conclusions in this Order shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for restitution, disgorgement and/or civil monetary penalties, the parties may take discovery, including discovery from appropriate non-parties.

C. Cooperation

52. In order to facilitate the determination of appropriate amounts for restitution, disgorgement and civil monetary penalties, Defendants are hereby ordered to cooperate fully with the Commission and any government agency in their investigation of: a) the amount of funds and proceeds received by Defendants, and losses to Defendants' pool participants; and b)

the identification of Defendants' assets. The Defendants' cooperation obligations shall include, but not be limited to, the following:

- a) fully and truthfully completing financial questionnaire forms and providing any available documentary verification required by the forms;
- b) submitting to a financial deposition or interview should the plaintiff deem it necessary regarding the subject matter of said form;
- d) fully and truthfully answering all questions regarding his past and present financial condition in such interview or deposition; and
- c) providing any additional documentation within his possession or control requested by the plaintiff regarding his financial condition or status, including, but not limited to, income and earnings, assets, financial statements, asset transfers, and tax returns.

VII. MISCELLANEOUS PROVISIONS

IT IS FURTHER ORDERED THAT:

53. Notices: All notices required to be given by any provision in this Order shall be sent certified mail, return receipt requested, as follows:

Notice to Commission:

Director
Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street NW
Washington, DC 20581

Notice to Defendants:

John Davidson
Attorney for Defendants
Davidson & Kitzmann, PLC
211 East High Street
Charlottesville, Virginia 22902
(434) 972-9600
(434) 220-0011- facsimile

In the event that Defendants change their residential or business telephone number(s) and/or address(es) at any time, they shall provide written notice of the new number(s) and/or address(es) to the Commission within twenty (20) calendar days thereof.

54. Entire Agreement and Amendments: This Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

55. Invalidation: If any provision of this Order, or the application of any provisions or circumstances is held invalid, the remainder of the Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

56. Waiver: The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this Order shall be deemed or construed as a further or continuing waiver of a breach of any other provision of this Order.

57. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to determine the amounts of restitution, disgorgement of ill-gotten gains and civil monetary penalties, ensure compliance with this Order and for all other purposes related to this action.

58. Authority: Donnelly hereby warrants that he is the president of Tower Analysis Inc., Nasco Tang Corp. and Nadia Capital Corp., and that this Order has been duly authorized by Tower Analysis Inc., Nasco Tang Corp. and Nadia Capital Corp. and he has been duly

empowered to sign and submit it on behalf of Tower Analysis Inc., Nasco Tang Corp. and Nadia Capital Corp.

IT IS SO ORDERED.

DATED: JUNE 30, 2009



GLEN E. CONRAD
UNITED STATES DISTRICT JUDGE


CONSENTED TO AND APPROVED BY:

Dated: 6/30/09



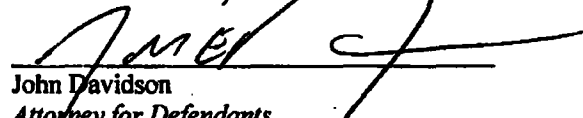
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Dated: 6-30-09



John M. Donnelly, signing individually and on behalf of Tower Analysis Inc, Nasco Tang Corp. and Nadia Capital Corp.

Dated: 6-30-09



John Davidson
Attorney for Defendants
Davidson & Kitzmann, PLC
211 East High Street
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