

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

U. S. COMMODITY FUTURES  
TRADING COMMISSION,

Plaintiff,

v.

TUNNEY & ASSOCIATES, P.C. & MICHAEL  
TUNNEY,

Defendants.

Civil Action No: 1:13-cv-02919

Hon. \_\_\_\_\_

**COMPLAINT**

The United States Commodity Futures Trading Commission (“Commission” or “CFTC”),  
by and through its attorneys, alleges as follows:

**I. INTRODUCTION**

1. Defendant Tunney & Associates, P.C. (“T&A”), a Certified Public Accounting (“CPA”) firm, and its sole owner and auditor, Defendant Michael Tunney (“Tunney”), served as an independent auditor and conducted required year-end audits from 2007 through 2011 for a brokerage house registered with the CFTC as a Futures Commission Merchant (“FCM”). However, neither T&A nor Tunney was qualified to conduct an FCM audit. For example, no one at T&A, including Tunney, had any experience auditing FCMs or any entity that was required to hold segregated accounts for customers. Moreover, Tunney had no understanding of the applicable CFTC Regulations prior to preparing for and completing the 2011 audit.

2. In fact, T&A and Tunney (collectively, “Defendants”) improperly relied on a non-employee, non-CPA (“Mr. Y”) to perform all of the work on the FCM’s 2007 through 2010 audits. Tunney conducted the FCM’s 2011 audit on his own because Mr. Y had passed away.

3. T&A's audits of the FCM from 2007 through 2011 did not comport with Generally Accepted Auditing Standards ("GAAS") or other requirements set forth in CFTC Regulation ("Regulation") 1.16, 17 C.F.R. § 1.16 (2012). Specifically, insufficient audit documentation exists to demonstrate that any GAAS compliant audit occurred for the period 2007 through 2011. Even if such audit documentation existed, the audits would fail to comply with GAAS because T&A did not plan the FCM's audits, nor did Tunney supervise Mr. Y's work. For the 2011 audit, the work-papers and audit documentation demonstrate a lack of technical proficiency and due professional care sufficient to perform an audit in accordance with GAAS.

4. T&A's audits also violated Regulation 1.16 because they did not appropriately address the risks particular to an FCM client, and failed to include appropriate tests of the FCM's accounting system, internal accounting controls, and procedures for safeguarding customer and firm assets. In addition, the scopes of T&A's audits for the years 2007 through 2011 were insufficient to provide reasonable assurance that any material inadequacies existing at the date of the examination would be discovered.

5. Tunney and T&A further failed to notify the Commission of material inadequacies T&A identified in its 2007 and 2010 year-end audits, which the FCM had failed to timely report to the Commission as required by Regulation 1.16(e)(2).

6. By this conduct and further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices that violate certain provisions of the Commission's Regulations, 17 C.F.R. §§ 1.1 *et seq.* (2012).

7. Accordingly, the CFTC brings this action pursuant to Section 6c of the Commodity Exchange Act (“Act”), as amended,<sup>1</sup> to be codified at 7 U.S.C. § 13a-1, to enjoin T&A’s and Tunney’s unlawful acts and practices and to compel their compliance with the Act and the Regulations. Unless restrained and enjoined by this Court, Defendants T&A and Tunney are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below. In addition, the Commission seeks a civil monetary penalty, pre- and post-judgment interest, and such other equitable relief as this Court may deem necessary and appropriate.

## II. JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear 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.

9. 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 T&A and Tunney are found in, inhabit and/or transact or have transacted business in this District, and Defendants’ acts and practices in violation of this Act occurred, are occurring, and/or are about to occur within this District, among other places.

---

<sup>1</sup> The Commodity Exchange Act, as 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) and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203 (“Dodd-Frank Act”), Title VII (the Wall Street Transparency and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted July 16, 2010).

### III. PARTIES

10. Plaintiff **The U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2006), as amended, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012).

11. Defendant **Tunney & Associates, P.C.** is an accounting firm with two locations in Orland Park, Illinois and Hammond, Indiana. T&A was established in 2000 and the company is licensed as a certified public accountant (“CPA”). T&A’s business primarily focuses on bookkeeping services and tax services. T&A employs six individuals other than Tunney. One other T&A employee holds a CPA license, but Tunney is T&A’s only auditor.

12. Defendant **Michael Tunney** resides in Orland Park, IL. Tunney obtained his CPA license in 1990 and he currently maintains CPA licenses in Illinois and Indiana. Tunney is and was at all times relevant T&A’s sole owner and responsible for all facets of T&A’s operations.

### IV. STATUTORY BACKGROUND

13. A futures commission merchant or “FCM” is defined in Section 1a(28) of the Act, as amended, to be codified at 7 U.S.C. § 1a(28), as any individual, association, partnership, corporation or trust that is engaged in soliciting or accepting orders for the purchase or sale of any commodity for future delivery and, “in or in connection with such solicitation or acceptance of orders, accepts any money, securities or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.” Under Section 4d(a) of the Act, as amended, to be codified at 7 U.S.C. § 6d(a), it is unlawful for any person to

engage in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery unless the entity registers with the Commission as an FCM or introducing broker.

14. Under the Act, as amended, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012), FCMs are required to hold sufficient funds in customer accounts commonly referred to as “segregated accounts” to cover all customer obligations as of the end of each business day. FCMs are also required to separately account for customer funds, and customer funds may not be “commingled with the funds of [the FCM] or used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom [they] are held.” Section 4d(a)(2) of the Act, as amended, to be codified, 7 U.S.C. § 6d(a)(2).

15. Regulation 30.7 provides similar requirements for customer funds traded on foreign exchanges (“secured funds”), including that an FCM cannot commingle secured funds with its own funds or the funds of any other person, and that an FCM “must maintain in a separate account or accounts, money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to foreign futures or foreign options customers denominated as the foreign futures or foreign options secured amount.” Regulation 30.7(a), 17 C.F.R. § 30.7(a) (2012). The Regulations also explicitly prohibit commingling of secured and segregated funds in one account. Regulation 30.7(d), 17 C.F.R. § 30.7(d) (2012). Segregated and secured accounts are required to ensure that customer funds are protected and available for withdrawal or transfer even if an FCM experiences financial distress or enters into bankruptcy. The requirement that FCMs maintain sufficient customer funds and that those funds be segregated are cornerstones of customer protection under the Act.

16. Regulation 1.16 requires that the certified financial statement audit, among other things, be in accordance with GAAS and include a review and appropriate tests of the FCM's accounting system, its internal accounting controls and its procedures for safeguarding customer and firm assets. The audit must include all procedures necessary under the circumstances to enable the auditor to express and opine on the FCM's financial statements and schedules taken as a whole. The scope of the audit and review must be sufficient to provide reasonable assurance that any material inadequacies existing as of the date of the audit in the FCM's accounting system, its internal accounting controls, and its procedures for safeguarding customer and firm assets will be discovered.

#### V. GAAS

17. Independent auditors are required to plan, conduct, and report the results of their audits in accordance with GAAS. GAAS are sets of standards against which the quality of audits are performed and may be judged, and provide a set of systematic guidelines used by auditors when conducting audits to ensure the accuracy, consistency and verifiability of an auditor's actions and reports. GAAS includes ten standards, categorized into general, field work, and reporting standards, as set forth below, as well as the Statements on Auditing Standards ("SAS") that interpret those standards.

- *General Standards*

1. The auditor must have adequate technical training and proficiency to perform the audit.
2. The auditor must maintain independence in mental attitude in all matters relating to the audit.
3. The auditor must exercise due professional care in the performance of the audit and the preparation of the report.

- *Standards of Fieldwork*

1. The auditor must adequately plan the work and must properly supervise any assistants.
2. The auditor must obtain a sufficient understanding of the entity and its environment, including its internal control, to assess the risk of material misstatement of the financial statements whether due to error or fraud, and to design the nature, timing, and extent of further audit procedures.
3. The auditor must obtain sufficient appropriate audit evidence by performing audit procedures to afford a reasonable basis for an opinion regarding the financial statements under audit.

- *Standards of Reporting*

1. The auditor must state in the auditor's report whether the financial statements are presented in accordance with generally accepted accounting principles.
2. The auditor must identify in the auditor's report those circumstances in which such principles have not been consistently observed in the current period in relation to the preceding period.
3. When the auditor determines that informative disclosures are not reasonably adequate, the auditor must so state in the auditor's report.
4. The auditor must either express an opinion regarding the financial statements, taken as a whole, or state that an opinion cannot be expressed, in the auditor's report. When the auditor cannot express an overall opinion, the auditor should state the reasons therefor in the auditor's report. In all cases where an auditor's name is associated with financial statements, the auditor should clearly indicate the character of the auditor's work, if any, and the degree of responsibility the auditor is taking, in the auditor's report.

**VI. FACTUAL BACKGROUND**

**A. FCM Retains T&A as its Independent Public Accountant**

18. FCM was at all times relevant engaged in the business of receiving money, securities and other property ("funds") from their customers to margin, guarantee, or secure the customers' futures and options trades. FCM specializes in a wide range of clearing services for

introducing brokers, commercial hedgers, commodity trading advisors, and futures traders internationally.

19. To comply with the Regulations, FCM engaged a CPA to conduct yearly audits and certify its financial statements. FCM terminated the services of its prior CPA as of at least December 31, 2007 and retained T&A at or around the same time. After FCM retained T&A, no one at T&A contacted the company's prior auditor to discuss the FCM as required under GAAS.

20. T&A learned about FCM's interest in its services through Tunney's friend Mr. Y. Mr. Y had previously done work for FCM and FCM's prior auditor, but did not work for T&A, nor did he hold a CPA license. In fact, FCM had retained Mr. Y to conduct certain bookkeeping services and Mr. Y helped establish FCM's accounting system, including determining how items were classified within the accounting system and the procedures followed when closing the accounting records on a monthly basis. Mr. Y also from time to time helped prepare and/or review non-certified monthly Form 1-FRs regarding the FCM's financial status that it was required to file with the CFTC.

21. Mr. Y and Tunney agreed that if T&A received the FCM engagement, Mr. Y would perform the majority of the work on the audits in exchange for receiving 70% of T&A's \$18,000 fee from FCM. Despite Mr. Y's background with the FCM, no one at T&A did anything to assess or ensure Mr. Y's independence before agreeing to allow Mr. Y to perform the majority of the work on the FCM's audits on behalf of T&A. Tunney agreed to the arrangement with Mr. Y, in part because neither T&A nor Tunney was qualified to conduct audits of FCM. Specifically, prior to 2008, no one at T&A, including Tunney, had provided audit services to any company for at least the preceding twenty years. In addition, no one at T&A, including Tunney, had provided audit services to any other FCM or entity required to hold segregated accounts for



customers. Moreover, Tunney had no understanding of CFTC Regulations prior to his preparation for FCM's 2011 audit. For example, Tunney was unfamiliar with the CFTC Regulations related to customer secured and segregated funds prior to the 2011 audit, and did not understand the net capital requirements or net capital computations for an FCM.

22. Tunney failed to take any meaningful steps to educate himself about the CFTC Regulations or risks associated with FCM businesses until he began preparing for FCM's 2011 audit.

23. Mr. Y performed over approximately 90% of the work on FCM's 2007 through 2010 audits, including all fieldwork procedures. Tunney relied on Mr. Y and did not review certain portions of Mr. Y's audits, including areas related to customer secured and segregated accounts and the firm's net capital requirements.

24. Tunney performed FCM's 2011 audit alone because Mr. Y had passed away. Tunney had concerns about conducting the audit without Mr. Y's assistance and acknowledged in August 2012 that he was not competent to conduct an audit of an FCM, but he did not express those concerns to FCM.

25. FCM terminated the services of T&A and retained a new CPA to conduct its 2012 audit.

**B. Deficiencies With T&A's Audits**

26. T&A certified FCM's 2007 through 2011 year-end statements and did not indicate any limitations in the audits or that they could not be completed in accordance with GAAS. However, T&A's 2007 through 2010 audits were deficient in several respects and violated GAAS and Regulation 1.16. Specifically, T&A and Tunney did not have the requisite technical training and proficiency to audit an FCM as required by GAAS General Standard No. 1. Similarly, T&A and Tunney failed to obtain a sufficient understanding of FCM's

business, risks, and internal controls to assess the risk of material misstatement of the financial statements as required by Standard of Fieldwork No. 2.

27. T&A and Tunney also did not exercise due professional care as required by GAAS General Standard No. 3. Specifically, Tunney did not possess the level of knowledge, skill and ability necessary to evaluate the audit evidence obtained by Mr. Y as related to material, critical audit areas such as the computation of minimum capital requirements and customer segregation requirements. Mr. Tunney also did not conduct any planning procedures, material fieldwork and, on information and belief, he did not review Mr. Y's work to any meaningful degree as required by GAAS General Standard No. 3 and GAAS Standard of Fieldwork No. 1 for the 2007 through 2010 audits.

28. For the 2011 audit, Tunney's audit plan failed to include audit procedures designed to test applicable accounts and assertions of FCMs, including the accounting system, internal controls, and procedures for safeguarding customer and firm assets. Tunney further failed to achieve the primary objectives of the audit plan by failing to test assertions the procedures were designed to test as required by GAAS General Standard No. 3 and Standard of Fieldwork No. 1. T&A and Tunney also failed to obtain sufficient appropriate audit evidence and to maintain work-papers and audit documentation as required by Standard of Fieldwork No. 3.

29. T&A's audits also violated CFTC Regulation 1.16 because they did not appropriately address the risks particular to an FCM client, and failed to include appropriate tests of the FCM's accounting system, internal accounting controls, and procedures for safeguarding customer and firm assets. The scopes of T&A's audits for the years 2007 through 2011 were insufficient to provide reasonable assurance that any material inadequacies existing at the date of

the examination would be discovered, and T&A's failure to obtain appropriate audit evidence precluded his ability to opine on, among other things, the company's internal controls, statement of computation of the minimum capital requirements and daily computations of segregation and secured amount requirements. For example, T&A's audit did not evaluate TLG's daily or monthly net capital computations or the daily computations to determine the amount of funds that should be held in secured or segregated accounts. Moreover, T&A's audits did not confirm any customer account balances and Tunney relied on insufficient evidence provided by TLG to reach his opinions.

30. During the time T&A served as FCM's CPA, FCM engaged in a number of compliance violations of the Act and Regulations that could have been discovered and/or prevented by a GAAS compliant audit that included review of, among other things, the company's internal controls. For example, FCM deposited and held non-customer and proprietary funds in a customer omnibus trading account from 2007 to 2011 in violation of the Regulations. FCM also failed to timely obtain customer segregation and secured acknowledgement letters from banks for at least nine bank accounts containing FCM's customers' funds between November 2007 and June 2012 as CFTC Regulations require. Moreover, T&A's audits should have discovered that FCM's then-CFO did not understand the applicable requirements under the Act and Regulations for which he had responsibility to ensure compliance.

**C. Notice of Material Inadequacies**

31. For FCM's 2007 year-end certified statement dated March 25, 2008, T&A identified a material inadequacy in TLG's internal controls related to its handling of secured funds as follows: "From the date of November 30, 2007, the firm maintained a deficiency in their secured amount of customer funds held. The firm did have adequate customer funds in

segregation, however, a separate secured account was not maintained. Subsequent to the date of this audit, the firm opened a 30.7 account and had maintained adequate funds since such time.”

32. Under the Regulations, FCM was required to submit facsimile notice of the material inadequacy to the CFTC within twenty-four (24) hours, and within forty-eight hours after providing such notice to file a written report reflecting what steps have been taken to correct the material inadequacy. Instead, FCM submitted notice to the CFTC of that material inadequacy on April 11, 2008. Although required by CFTC Regulation 1.16(e)(2), no one at T&A notified the CFTC of the material inadequacy at any time.

33. For FCM’s 2010 year-end certified statement dated March 28, 2011, T&A identified another material inadequacy with respect to the company’s accounting procedures as follows: “It was determined that the firm accounting procedures were inadequate in that they did not provide for the proper payable to customers on the firms [sic] balance sheet. The firm was calculating the amount for its calculation of 30.7 amounts required to be separated, but was not recording such amount as a liability on the firms [sic] balance sheet. The firm has taken corrective action in its accounting procedures to insure that such amount is now properly recorded as a liability on the firm’s financial statements and is adequately presented.”

34. TLG only provided written notification of the material inadequacy to the Commission on August 31, 2011. No one at T&A notified the CFTC of the material inadequacy at any time.

**VII. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND  
COMMISSION REGULATIONS**

**Count I**

**Violations of Regulation 1.16(d)(1):**

**Failure to Conduct Audits in Accordance with GAAS and the Regulations**

35. Paragraphs 1 through 34 are realleged and incorporated herein by reference.

36. Regulation 1.16(d)(1) requires that audits of Commission registrants be conducted in accordance with GAAS and that they meet certain other specified criteria, including:

a review and appropriate test of the accounting system, the internal accounting control, and the procedures for safeguarding customer and firm assets in accordance with the provisions of the Act and the regulations thereunder, since the prior examination date. The audit must include all procedures necessary under the circumstances to enable the independent licensed or certified public accountant to express an opinion on the financial statements and schedules. The scope of the audit and review of the accounting system, the internal controls, and procedures for safeguarding customer and firm assets must be sufficient to provide reasonable assurance that any material inadequacies existing at the date of the examination in (i) the accounting system, (ii) the internal accounting controls, and (iii) the procedures for safeguarding customer and firm assets (including, in the case of a futures commission merchant, the segregation requirements of section 4d(a)(2) of the Act and these regulations and the secured amount requirements of the Act and these regulations) will be discovered. Additionally, as specified objectives the audit must include reviews of the practices and procedures followed by the registrant in making (A) periodic computations of the minimum financial requirements pursuant to §1.17 and (B) in the case of a futures commission merchant, daily computations of the segregation requirements of section 4d(a)(2) of the Act and these regulations and the secured amount requirements of the Act and these regulations.

37. Defendants' 2007 through 2011 audits of FCM violated GAAS and the requirements of Regulation 1.16(d)(1) in that, among other things, T&A and Tunney failed to ensure that its staff had the proper technical training and proficiency to conduct an audit of an FCM, failed to appropriately plan, perform, and supervise the audits, failed to exercise due professional care in the performance of the audits, and failed to obtain and maintain sufficient audit evidence. By this conduct, T&A and Tunney violated Regulation 1.16(d)(1), 17 C.F.R. § 1.16(d)(1) (2012).

38. Each and every violation of GAAS and/or the requirements of Regulation 1.16(d)(1) for each and every audit of FCM constitutes a separate and distinct violation of Regulation 1.16(d)(1), 17 C.F.R. § 1.16(d)(1) (2012).

39. Tunney controlled T&A and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting T&A's violations alleged in this count. Tunney is therefore liable for T&A's violations of Regulation 1.16(d)(1), 17 C.F.R. § 1.16(d)(1) (2012), as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

40. The foregoing acts, omissions, and failures of Tunney occurred within the scope of his employment, office, or agency with T&A. Therefore, T&A is liable for Tunney's acts, omissions, and failures constituting violations of Regulation 1.16(d)(1), 17 C.F.R. § 1.16(d)(1) (2012), pursuant to Section 2(a)(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

## **Count II**

### **Violation of Regulation 1.16(e)(2): Failure to Report Material Inadequacies**

41. Paragraphs 1 through 38 are realleged and incorporated herein by reference.

42. Regulation 1.16(e)(2) provides that if an independent public accountant determines that any material inadequacies exist in the accounting system, in the internal accounting control, in the procedures for safeguarding customer or firm assets, or as otherwise defined in CFTC Regulation 1.16(d), the accountant must call such inadequacies to the attention of the registrant, who in turn, must notify the Commission and provide a copy of the notice to the accountant within three (3) business days. If the registrant fails to notify the Commission and provide the accountant with a copy of the notice within three (3) business days, or if the accountant disagrees with the statements in the notice, the accountant must inform the

Commission within three (3) business days thereafter. Such report from the accountant must describe the material inadequacies found to exist.

43. Defendants failed to notify the Commission of material inadequacies T&A identified in certified financial statements dated March 2008 and March 2011, and which FCM had failed to timely report to the Commission, in violation of Regulation 1.16(e)(2), 17 C.F.R. § 1.16(e)(2) (2012).

44. Each day that Defendants failed to notify the Commission of the material inadequacies constitutes a separate and distinct violation of Regulation 1.16(e)(2), 17 C.F.R. § 1.16(e)(2) (2012).

45. Tunney controlled T&A and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting T&A's violations alleged in this count. Tunney is therefore liable for T&A's violations of Regulation 1.16(e)(2), 17 C.F.R. § 1.16(e)(2) (2012), as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

46. The foregoing acts, omissions, and failures of Tunney occurred within the scope of his employment, office, or agency with T&A. Therefore, T&A is liable for Tunney's acts, omissions, and failures constituting violations of Regulation 1.16(e)(2), 17 C.F.R. § 1.16(e)(2) (2012), pursuant to Section 2(a)(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

#### **VIII. RELIEF REQUESTED**

WHEREFORE, for the reasons stated above, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

- A. Find that T&A and Tunney violated Regulations 1.16(d)(1) and 1.16(e)(2), 17 C.F.R. §§ 1.16(d)(1) and 1.16(e)(2) (2012);
- B. Enter an order of permanent injunction prohibiting T&A and Tunney and any other person or entity associated with them, including any successor thereof, from engaging in conduct in violation of Regulations 1.16(d)(1) and 1.16(e)(2), 17 C.F.R. §§ 1.16(d)(1) and 1.16(e)(2) (2012);
- C. Enter an order directing T&A and Tunney, and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, fees, salaries, commissions, loans, revenues and profits derived, directly or indirectly, from acts or practices which constitute violations of the Act and Regulations as described herein, including pre-judgment interest thereon from the date of such violations;
- D. Enter an order assessing a civil monetary penalty against T&A and Tunney and any successors thereof, in the amount of the higher of \$130,000 for each violation of the Act or Regulations committed or triple the monetary gain to Defendants for each violation of the Act or Regulations described herein occurring before October 23, 2008, and a civil monetary penalty in the amount of the higher of \$140,000 for each violation of the Act or Regulations committed or triple the monetary gain to Defendants for each violation of the Act or Regulations described herein occurring on or after October 23, 2008, plus post-judgment interest;
- E. Enter an order requiring T&A and Tunney, and any successors thereof, to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
- F. Order such other and further remedial ancillary relief as the Court may deem appropriate.



Respectfully submitted,

Date: April 18, 2013

/s/ Allison Passman  
Allison Passman, ARDC # 6287610  
Trial Attorney  
Commodity Futures Trading Commission  
525 West Monroe Street, Suite 1100  
Chicago, Illinois 60661  
(312) 596-0704  
apassman@cftc.gov

Susan Gradman, ARDC # 6225060  
Chief Trial Attorney  
Commodity Futures Trading Commission  
525 West Monroe Street, Suite 1100  
Chicago, Illinois 60661  
(312) 596-0523  
sgradman@cftc.gov

Rosemary Hollinger, ARDC # 3123647  
Associate Director  
Commodity Futures Trading Commission  
525 West Monroe Street, Suite 1100  
Chicago, Illinois 60661  
(312) 596-0520  
rhollinger@cftc.gov