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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
Jacksonville Division

2015 MAR 26 A 10:47

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

v.

WESLEY ALLEN BROWN,
EDWARD RUBIN,
and
MAVERICK INTERNATIONAL,
INC.,

Defendants.

Case No. 3:15-cv-354-J-39MCR

FILED UNDER SEAL

Sealed Order Granting Plaintiff's *Ex Parte* Motion for Statutory Restraining Order

Plaintiff, the U.S. Commodity Futures Trading Commission ("Commission" or "CFTC"), has filed a Complaint for Permanent Injunction and Other Relief, and has moved, pursuant to Section 6c(a) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 13a-1(a) (2012), for an *ex parte* statutory restraining order enjoining defendants Wesley Allen Brown ("Brown"), Edward Rubin ("Rubin") and Maverick International, Inc. ("Maverick") (collectively the "Defendants") from destroying, altering, or disposing of, or refusing to permit authorized representatives of the Commission to inspect and copy any books or records or other documents, including electronically stored information ("ESI"), and further enjoining Defendants from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property. The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission's motion for a statutory restraining order, and finds that:

1. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and Section 2(c)(2) of the Act, 7 U.S.C. § 2(c)(2) (2012).

2. Venue lies properly within this District pursuant to Section 6c(e) of the Act, 7 U.S.C. 13a-1(e) (2012) in that the acts or practices described in the Complaint took place within this District.

3. There is good cause to believe that Defendants have engaged in, and may continue to engage in certain unlawful conduct, including, but not limited to: misappropriating participants' funds, making affirmative material misrepresentations to pool participants and/or prospective pool participants, acting as an unlawfully unregistered commodity pool operator ("CPO") or an unlawfully unregistered associated person ("AP") of a CPO, improperly commingling pool participants' funds with personal and other business-related funds, and engaging in other acts, practices or a course of business that defrauded pool participants or prospective pool participants, operated as a fraud or deceit on pool participants, cheated or defrauded or attempted to cheat or defraud other persons, or willfully deceived or attempted to deceive other persons in connection with a pooled investment vehicle that is not an eligible contract participant ("ECP"), as defined by Section 1a(11) of the Act, 7 U.S.C. § 1a(11) (2012), in connection with leveraged, margined or financed foreign currency transactions ("forex") as described in Section 2(c)(2)(C)(i) of the Act, 7 U.S.C. § 2(c)(2)(C)(i) (which are subject to the anti-fraud provisions of Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(2)(A), (C), pursuant to Sections 2(c)(2)(C)(ii)(I) and 2(c)(2)(C)(iv) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(ii)(I), 2(c)(2)(C)(iv)), in violation of

Sections 2(c)(2)(C)(iii)(I)(cc), 4b(a)(2)(A), (C), and 4o(1)(A)-(B) of the Act, 7 U.S.C.

§§ 2(c)(2)(C)(iii)(I)(cc), 6b(a)(2)(A), (C) and 6o(1)(A)-(B) (2012), and Commission Regulation 5.3(a)(2)(i) and (ii), 17 C.F.R. §5.3(a)(2)(i) and (ii) (2014).

4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for customers in the form of monetary redress will occur from the continued sale, transfer, assignment, or other disposition by Defendants of assets or records unless Defendants are immediately restrained and enjoined by Order of the Court.

5. There is good cause for the Court to impose a restraining order prohibiting Defendants and their agents, servants, employees, attorneys, and other persons who are in active concert or participation with them, from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property owned, controlled, managed, or held by or on behalf of, or for the benefit of Defendants.

6. There is good cause for entry of an order prohibiting Defendants, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants, including any successor thereof, from destroying records and/or denying agents of the Commission access to inspect and copy records to ensure that Commission representatives have immediate and complete access to all such books and records.

7. Absent the entry of this statutory restraining order, the Defendants are likely to dissipate or transfer assets and destroy business records.

8. This is a proper case for granting a statutory restraining order *ex parte* to preserve the *status quo*, protect public customers from loss and damage, and enable the Commission to fulfill its statutory duties, therefore the Court orders as follows:

DEFINITIONS

For the purposes of this Order, the following definitions apply:

9. The term “assets” means any legal or equitable interest in, right to, or claim to, any real or personal property, whether individually or jointly, directly or indirectly controlled, and wherever located, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds mail or other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at other financial institutions), credits, receivables, lines of credit, contracts (including spot, futures, options, or swaps contracts), insurance policies, and all cash, wherever located, whether in the United States or outside the United States.

10. The term, “document” is synonymous in meaning and equal in scope to the usage of the term in Fed. R. Civ. P. 34(a), and includes, but is not limited to, all writings or printed matter of any kind, including without limitation: records, correspondence, memoranda, notes, rolodexes, address books, diaries, statistics, e-mail, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice or intra-office communications, telephone message slips, offers, notations of conversations, bulletins, drawings, plans, computer printouts, computer input or output, teletypes, facsimiles, invoices, worksheets, ledger books, books of accounts, and all drafts, alterations, modifications, changes and amendments of any

of the foregoing. The term “document” also includes graphs, charts, photographs, phonographic record, audio and video recordings, computer records, and other data compilations from which information can be obtained or translated, if necessary, through detection devices into reasonable usable form. The term “document” also refers to each and every document in your actual or constructive possession, including but not limited to: (i) all documents within your custody or control of any of your present or former agents, employers, employees, partners, and (ii) all documents which you have a legal or equitable right to obtain from another person. A draft or non-identical copy is a separate document within the meaning of the term. A document also includes the file and folder tabs associated with each original and copy.

11. “Defendants” refers to Wesley Allen Brown, Edward Rubin and/or Maverick International, Inc., and/or any person insofar as he or she is acting in the capacity of an officer, agent servant, employee, and/or attorney of the Defendants and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with the Defendant(s).

RELIEF GRANTED

I. RESTRAINING ORDER PROHIBITING THE TRANSFER, REMOVAL, DISSIPATION AND DISPOSAL OF ASSETS

IT IS HEREBY ORDERED that:

12. Plaintiff’s *Ex Parte* Motion for Statutory Restraining Order [Doc. S-4] is **GRANTED** as set forth herein.

13. The Defendants and their agents, servants, employees, assigns, attorneys, and/or person in active concert or participation with them, including any successor thereof,

and persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are immediately restrained and enjoined, except as otherwise ordered by this Court, from directly or indirectly: transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, wherever located, including Defendants' assets held outside the United States; *provided however*, that if either Defendants Brown, Rubin or Maverick have or control any accounts in which there are any open trading positions in contracts, agreements, or transactions in commodity futures, options on commodity futures, and/or foreign currency or options relating thereto ("forex"), Defendants shall forthwith close out or liquidate any and all such open positions.

14. Defendants are restrained and enjoined from directly or indirectly opening or causing to be opened any safe deposit boxes titled in the name of, or subject to, access by Defendant(s).

15. The assets affected by this Order shall include both existing assets and assets acquired after the effective date of this Order.

II. MAINTENANCE OF AND ACCESS TO BUSINESS RECORDS

IT IS HEREBY ORDERED that:

16. The Defendants, and their agents, servants, employees, assigns, attorneys, and person in active concert or participation with them, including any successor thereof, who receive actual notice of this Order by personal service or otherwise, are restrained from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in

any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of any Defendant.

III. BOND NOT REQUIRED OF PLAINTIFF

IT IS FURTHER ORDERED that:

17. As Plaintiff Commission is an agency of the United States of America which has made a proper showing under Section 6c(b) of the Act, 7 U.S.C. 13a-1(b) (2012), this restraining order is granted without bond. Accordingly, the Commission need not post a bond.

IV. INSPECTION AND COPYING OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that:

18. Representatives of the Commission shall be immediately allowed to inspect the books, records, and other documents of the Defendants and their agents including, but not limited to, paper documents, electronically stored information ("ESI"), tape recordings, and computer discs, wherever they may be situated and whether they are in the possession of the Defendants or others, and to copy said documents, data and records, either on or off the premises where they may be situated.

19. Defendants shall, within 24 hours of the service of this Order upon them, cause to be prepared and delivered to the Commission, a detailed and complete schedule of all passwords for any encrypted ESI in the possession or control of the Defendants that relate to the business practices of any Defendant or the business or personal finances of any Defendant. Defendants shall, within 24 hour of the service of this Order upon them, cause to be prepared and delivered to the Commission, a detailed and complete schedule of all desk

top computers, laptop computers and/or other computers owned and/or used by them in connection with their business. The schedules required by this section shall include at a minimum the make, model and description of each, along with the location, the name of the person primarily assigned to use the computer, and all passwords necessary to access and use the software contained on the computer and/or PDA. The Commission shall be authorized to make an electronic, digital or hard copy of all of the data contained on the computer(s).

V. SERVICE OF ORDER AND ASSISTANCE OF UNITED STATES MARSHALS SERVICE OR STATE LAW ENFORCEMENT

IT IS FURTHER ORDERED that:

20. Copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any Defendant or that may be subject to any provision of this Order.

21. Representatives of the United States Marshals Service, the Sherriff's Department of Brunswick County, North Carolina, and the City of North Myrtle Beach, Department of Public Safety, are specially appointed by the Court to effect service, and shall do so within **seventy-two (72) hours of this Order.**

22. In order to ensure the safety of CFTC representatives, the United States Marshals Service is **DIRECTED** to accompany and assist the Commission's representatives outside and inside the premises of Defendants, as well as to secure the premises, in the service and execution of this Order. Any other cooperating North Carolina and/or South Carolina state or local law enforcement officials are authorized to accompany and assist the

Commission's representatives outside and inside the premises of Defendants, as well as to secure the premises, in the service and execution of this Order.

23. The CFTC shall **immediately** file proof of service with the Court once service has been accomplished.

VI. SERVICE ON THE COMMISSION

IT IS FURTHER ORDERED that:

24. The Defendants shall comply with all electronic filing rules and requirements of the U.S. District Court of the Middle District of Florida and shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Timothy J. Mulreany, Division of Enforcement, U.S. Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, tmulreany@cftc.gov, by electronic filing, e-mail, personal delivery or courier service (such as Federal Express or United Parcel Service) and not by regular mail due to potential delay resulting from heightened security and decontamination procedures applicable to the Commission's regular mail.

VII. FORCE AND EFFECT

IT IS FURTHER ORDERED that:

25. This Statutory Restraining Order is binding on all the parties to this action, their officers, agents, servants, employees, and attorneys, and on those persons in active concert or participation with them who receive actual notice of this Statutory Restraining Order until 11:50 a.m on Thursday, April 9, 2015, unless extended or sooner dissolved.

26. Plaintiff is directed to comply with Local Rule 4.05(b)(5), and immediately effect service of process on Defendants in accordance with Rule 4, and to provide Defendants with all of the material required by the Local Rules. Plaintiff is under a continuing obligation to notify and serve any papers subsequently filed with the Court on Defendant until the preliminary injunction hearing or until counsel for Defendants files a notice of appearance, whichever occurs first.

27. Defendants are hereby ordered to **SHOW CAUSE** why the Plaintiff's Motion for Preliminary Injunction should not be granted, and shall file their response(s) thereto, including all counter or opposing affidavits and a memorandum of legal authority, **within seven (7) days of service.**

28. A **HEARING** as to whether this Statutory Restraining Order should be converted to a preliminary injunction will be held on **Wednesday, April 8, 2015 at 9:00 A.M.**, in Courtroom 12C, Twelfth Floor, United States Courthouse, 300 North Hogan Street, Jacksonville, Florida, before the undersigned.¹ Counsel shall appear in person and telephonic appearances will not be permitted.

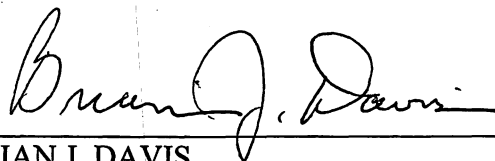
29. In issuing this Statutory Restraining Order, the Court understands that Defendants have not yet been given an opportunity to be heard and emphasizes that it is not making a final decision on any request for preliminary injunctive relief. However, the Court

¹ All persons entering the Courthouse must present photo identification to Court Security Officers. Although cell phones, laptop computers, and similar electronic devices are not generally allowed in the building, counsel are permitted to bring those items with them upon presentation to Court Security Officers of a Florida Bar card or Order of special admission pro hac vice.

is persuaded that issuing the Statutory Restraining Order until a full hearing can be held on CFTC's request for preliminary injunctive relief is the lawful and proper action.

30. The Clerk of the Court is **DIRECTED** to email a copy of this Order to counsel for the Plaintiff and confirm receipt of same.

DONE AND ORDERED at Jacksonville, Florida on this 26th day of March, 2015,
at 11:58 a.m.



BRIAN J. DAVIS
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
United States Marshals Service