

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

U.S. COMMODITY FUTURES :
TRADING COMMISSION, :
 :
Plaintiff, :
 :
v. : CIVIL ACTION FILE
 : NUMBER.: 1:16-CV-0978 TCB
HENDRIK A. VAN BEUNINGEN :
AND :
DEBRINK TRADING FUND I, LLC, :
 :
Defendants. :
_____ :
 :

ORDER

This matter comes before the Court on a Joint Motion for Permanent Injunction, Civil Monetary Penalty, and other Equitable Relief Against Defendants [24]. For the reasons set forth below, the Court will grant the motion.

I. BACKGROUND

On March 28, 2016, Plaintiff U.S. Commodity Futures Trading Commission (“Plaintiff,” “Commission” or “CFTC”) filed a Complaint [1] against Defendants Hendrik A. Van Beuningen (“Van Beuningen”) and DeBrink Trading Fund I, LLC (“DeBrink” and collectively, “Defendants”) seeking injunctive and other equitable

relief, as well as the imposition of civil penalties, for alleged violations by Defendants of the Commodity Exchange Act, (“CEA”) 7 U.S.C. §§ 1 *et seq.* (2012), and Commission Regulations, 17 C.F.R. §§ 1.1 *et seq.* (2015).

On the same day it filed the Complaint, the Commission filed an *Ex Parte* Motion for Statutory Restraining Order, Preliminary Injunction and Other Equitable Relief (“CFTC Motion”) [4]. The next day, the Court entered an order granting the portion of the CFTC Motion that sought a statutory restraining order and certain other interim relief (“SRO”) [8]. On March 30, 2016, Defendants were properly served with a Summons and a copy of the Complaint. [14, 15].

On April 25, 2016, this Court entered a Consent Order of Preliminary Injunction and Ancillary Relief in Resolution of Plaintiff’s *Ex Parte* Motion for Statutory Restraining Order, Preliminary Injunction and Other Equitable Relief (“Consent Order for Preliminary Injunction”) [19].

II. CONSENTS AND AGREEMENTS

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

1. Consent to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendants (“Consent Order for Permanent Injunction”);

2. Affirm that they have read and agreed to this Consent Order for Permanent Injunction voluntarily, and that no promise, other than as specifically contained herein, 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 Consent Order for Permanent Injunction;

3. Acknowledge service of the summons and Complaint;

4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to 7 U.S.C. § 13a-1 (2012);

5. Admit the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to 7 U.S.C. §§ 1-26 (2012);

6. Admit that venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e) (2012);

7. Waive:

(a) any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules

promulgated by the Commission in conformity therewith, 17 C.F.R. §§ 148.1 *et seq.*, (2015) relating to, or arising from, this action;

(b) any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;

(c) any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and

(d) any and all rights of appeal from this action;

8. Consent to the continued jurisdiction of this Court over them for the purpose of implementing and enforcing the terms and conditions of this Consent Order for Permanent Injunction and for any other purpose relevant to this action, even if Defendants now or in the future reside outside the jurisdiction of this Court;

9. Agree that they will not oppose enforcement of this Consent Order for Permanent Injunction on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waive any objection based thereon;

10. Agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Consent Order for Permanent Injunction, or creating or tending to create the impression that the Complaint and/or this Consent Order for Permanent Injunction is without a factual basis; provided, however, that nothing in this provision shall affect their: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendants shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement; and

11. By consenting to the entry of this Consent Order for Permanent Injunction, Defendants neither admit nor deny the allegations of the Complaint or the Findings of Fact and Conclusions of Law in this Consent Order for Permanent Injunction, except as to jurisdiction and venue, which they admit. Further, Defendants agree and intend that the allegations contained in the Complaint and all of the Findings of Fact and Conclusions of Law contained in this Consent Order for Permanent Injunction shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: (a) any current or subsequent

bankruptcy proceeding filed by, on behalf of, or against Defendants; (b) any proceeding pursuant to 7 U.S.C. § 12a (2012) and/or 17 C.F.R. §§ 3.1-3,75 (2015); and/or (c) any proceeding to enforce the terms of this Consent Order for Permanent Injunction. Defendants do not consent to the use of this Consent Order for Permanent Injunction, or the Findings of Fact and Conclusions of Law in this Consent Order for Permanent Injunction, as the sole basis for any other proceeding brought by the Commission.

12. Agree to provide immediate notice to the Commission in the manner required by paragraph 1 of Part VI of this Consent Order for Permanent Injunction, of any bankruptcy proceeding filed by, on behalf of, or against them, whether inside or outside the United States, and

13. Agree that no provision of this Consent Order for Permanent Injunction shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Defendants in any other proceeding.

III. FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order for Permanent Injunction and that there is no just reason for delay. For these reasons and for the purpose of avoiding the costs of litigation, the Court therefore directs the entry of the following Findings of Fact,

Conclusions of Law, permanent injunction and equitable relief pursuant to 7 U.S.C. § 13a-1, as set forth herein.

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

1. The Parties to This Consent Order for Permanent Injunction

Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act and the Regulations promulgated thereunder. The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

Defendant Hendrik A. Van Beuningen is an individual who resides in Atlanta, Georgia. Van Beuningen was the sole member and manager of DeBrink. From November 2013 through March 2016 (“the Relevant Period”), Van Beuningen controlled the day-to-day operations of DeBrink, including, but not limited to, opening and controlling trading and bank accounts in the name of DeBrink, soliciting members of the public (“Pool Participants”) to invest in DeBrink, creating and maintaining DeBrink’s website at www.debrinktrading.com, and preparing online account statements for and making them available to Pool Participants. During the Relevant Period, Van Beuningen acted as an associated

person (“AP”) of DeBrink, though Van Beuningen has never been registered with the Commission in any capacity. Further, during the Relevant Period, Van Beuningen controlled the day-to-day operations of DeBrink Trading, LLC, including, but not limited to, opening and controlling at least one bank account that held Pool Participant funds.

Defendant DeBrink Trading Fund I, LLC is a Georgia limited liability company formed by Van Beuningen on or about December 9, 2013, with its principal place of business located at 182 Meeting Lane, Atlanta, GA, 30342. DeBrink’s last corporate filing with the Georgia Secretary of State was in April 2014. DeBrink is engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and, in connection therewith, solicited, accepted, or received from others, funds, securities, or property, for the purpose of trading in commodity interests. During the Relevant Period, DeBrink was the CPO for the pooled investment funds (the “Pool”). DeBrink has never been registered with the Commission or qualified for any exemption from registration.

2. The Beginning of Defendants’ Scheme

On November 12, 2013, Van Beuningen registered a new website at the Internet address www.debrinktrading.com. On this website, Defendants claimed,

among other things, that the Pool was an “Abnormal fund looking for Abnormal returns” and was “trading bond, yen, oil, gold and euro futures.”

On January 23, 2014, Defendants opened two bank accounts in the name of DeBrink. Previously, on November 25, 2013, Defendants had opened a bank account in the name of DeBrink Trading, LLC. One of the bank accounts in DeBrink’s name was a savings account that has remained mostly dormant, with a balance never exceeding \$150. The other bank account in DeBrink’s name received Pool Participants’ funds.

On or about February 6, 2014, Defendants opened a futures trading account with a registered futures commission merchant (“FCM 1”) in the name of the Pool. Defendants’ first trade in the FCM 1 account took place on February 26, 2014. This was the only Pool futures trading account active during the Relevant Period.

Between February 2014 and January 2016, Defendants solicited and received at least \$505,000 from at least five Pool Participants for the purported purpose of trading foreign currency, “bond,” oil, and gold futures contracts.

Throughout the Relevant Period, Defendants failed to operate the Pool as an entity cognizable as a legal entity separate from that of DeBrink. Further, throughout the Relevant Period, Pool Participants’ funds were received in a

DeBrink bank account, rather than in an account in the name of the Pool and Defendants commingled Pool funds with non-Pool funds.

3. Defendants Misappropriated Pool Funds and Misrepresented Pool Trading Results

Defendants either misappropriated or lost the Pool funds, yet continued to represent the Pool's trading was profitable. Between February 2014 and May 2015, Defendants received \$365,000 from Pool Participants. Of this amount, Defendants transferred only \$228,405 to FCM 1. As of September 30, 2015, Defendants had lost nearly all the funds transferred to FCM 1 through unprofitable trading, with only \$7,632.48 of the original \$228,405 remaining.

However, in October 2015, Defendants' website falsely claimed the Pool experienced a 19.14% return for 2014 and a 31.77% cumulative return through September 2015. In reality, Defendants had experienced cumulative trading losses since the Pool's inception.

Throughout the Relevant Period, Defendants provided Pool Participants false information about the supposed success of the Pool through Defendants' website and other communications.

Defendants provided false information about the Pool's trading results knowingly or with reckless disregard for the truth.

Defendants consistently lost money trading at FCM 1 in both 2014 and 2015 and, as of November 2015, were prohibited from any further trading at FCM 1. By October 31, 2015, all but approximately \$160 of the then-remaining Pool Participant funds (*i.e.*, those funds not transferred to FCM 1) had been transferred either to a Van Beuningen personal bank account or a DeBrink Trading, LLC bank account or withdrawn as cash by Van Beuningen.

Defendants received an additional \$40,000 from a Pool Participant on or about November 17, 2015 and an additional \$100,000 from a Pool Participant on or about January 5, 2016. These additional Pool Participant funds were misappropriated and never transferred to a Pool FCM trading account.

Pursuant to Defendants' agreements with Pool Participants, Defendants were entitled to a fee of 3.5% of the Pool "assets under management." Defendants, however, misappropriated Pool Participant funds, taking far more from the Pool than they were entitled to under these agreements.

Other than the account at FCM 1, the Pool did not have any other active futures trading accounts during the Relevant Period.

4. Throughout the Relevant Period, Defendants Provided False Account Statements and Made Other Misrepresentations to Pool Participants

Once Pool Participants invested in the Pool, Defendants provided them with password-protected access to restricted areas of Defendants' website. In these restricted areas of Defendants' website, Pool Participants could access and view their account statements prepared by Defendants that purported to show the net value of their interests in the Pool, as well as the profit or loss on their investments.

Defendants prepared and posted on the website account statements for Pool Participants during the Relevant Period. Throughout the Relevant Period, the Pool Participant account statements accessible via the website were inaccurate and did not reflect the trading losses. For example, as recently as March 2016, Defendants falsely provided Pool Participants with online account statements that claimed the five Pool Participants were experiencing an average 37.47% return on their \$505,000 combined investment.

Throughout the Relevant Period, Defendants also provided Pool Participants—in person, over the telephone, and via email—false information about, among other things, Defendants' trading, the supposed success of the Pool, the net value of Pool Participants' investments, and the risks associated with

investing in the Pool. Defendants made these misrepresentations in the account statements knowing them to be false or with reckless disregard as to their truth.

5. Defendants Fabricated FCM Statements to Cover Up Their Trading Losses

In October 2015, FCM 1 noticed an inconsistency between the Pool's trading results at FCM 1 and the returns reported by Defendants on the www.debrinktrading.com website. More specifically, Defendants were reporting a 19.14% return for 2014 and a 31.77% cumulative return for the Pool through September 2015. However, the Pool's trading account with FCM 1 showed trading losses for these time periods. FCM 1 asked Defendants to explain the discrepancy.

In response, Van Beuningen emailed to Defendants' introducing broker ("IB") two account statements purportedly from another FCM ("FCM 2"). Defendants' IB then forwarded the two documents to FCM 1 for its review.

These two account statements purportedly from FCM 2 were addressed to:

DeBrink/Parker Trading
1299 Appling Drive
Charleston, SC 29469

The two account statements purportedly from FCM 2 were dated “September 30, 2015” and “September 31, 2015” and showed an account balance in excess of \$500,000.

Because the month of September does not have 31 days in it, FCM 1 became suspicious and contacted FCM 2 to try to verify the existence of DeBrink’s second trading account there. FCM 2 examined the purported account statements and concluded that they were complete fabrications. FCM 2 further advised FCM 1 that DeBrink did not have an account with FCM 2. FCM 2 also noted that the Charleston address provided was fictitious.

On or about October 29, 2015, FCM 1 froze DeBrink’s account, which had a balance of less than \$5,400. Defendants did not inform Pool Participants that the Pool’s account with FCM 1 had been frozen.

6. Defendants Did Not Have Any Other Trading Accounts with Registered FCMs That Could Support the Pool’s Purported Trading Profits

Van Beuningen had a futures trading account in his name with FCM 2. It was opened in 2011. However, after some trading in 2011 and 2012, the FCM 2 account went mostly dormant beginning in March 2013, with an account balance of approximately \$30, and had no trades at all between January 2014 and November 2015.

In late November and early December 2015, Van Beuningen deposited \$15,000 into the FCM 2 account and started trading futures again. At that time, FCM 2 asked Van Beuningen to fill out new account opening forms. In his account opening forms, Van Beuningen represented that it was an individual account and that no one else had an interest in it. In early January, Van Beuningen subsequently deposited another \$45,000 into the FCM 2 account.

Besides the DeBrink account at FCM 1 and the Van Beuningen account at FCM 2, Defendants do not own or operate any other futures trading accounts.

7. Defendants Failed to Respond to a Commission Subpoena

Defendants did not respond to a Commission subpoena for documents, and Van Beuningen did not appear for sworn testimony pursuant to the same Commission subpoena. The Commission subpoena was delivered to Van Beuningen's home and office. Moreover, Van Beuningen returned the Commission subpoena to the Commission with a note that he "did not want" the delivery.

B. Conclusions of Law

1. Jurisdiction and Venue

This Court has jurisdiction over this action pursuant to 7 U.S.C. §§ 2(c)(2) and 13a-1 (2012). 7 U.S.C. § 13a-1 provides that whenever it shall appear to the

Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the CEA or any rule, regulation, or order promulgated thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the CEA, or any rule, regulation or order thereunder.

Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because Defendants reside in this jurisdiction and the acts and practices in violation of the CEA occurred within this District.

2. Fraud by a Commodity Pool Operator (Violations of 7 U.S.C. § 6c(1))

A “commodity pool” is defined under Section 1a(10)(A) of the Act, 7 U.S.C. § 1a(10) (2012), as “any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading commodity interests,” including for the trading of futures.

A commodity pool operator (“CPO”) is defined under Section 1a(11)(A) of the Act, 7 U.S.C. § 1a(11)(A)(i) (2012), as any person

engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions,

the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including any—

(I) commodity for future delivery

DeBrink has been operating as a CPO in that it engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and in connection therewith, solicited, accepted, or received funds, securities, or property from others for the purpose of trading futures.

Regulation 1.3(aa), 17 C.F.R. § 1.3(aa) (2015), defines an associate person (“AP”) of a CPO as “any natural person who is associated in any of the following capacities with . . . (3) [a] commodity pool operator as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of funds, securities, or property for participation in a commodity pool or (ii) the supervision of any person or persons so engaged”

During the Relevant Period, Van Beuningen acted as an AP of DeBrink because he was a partner, officer, employee and/or agent of DeBrink and he solicited and accepted funds, securities, or property from investors for DeBrink for participation in a commodity pool.

Section 4o(1) of the Act makes it unlawful for a “commodity pool operator, or associated person of a commodity pool operator by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly–

- (A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or
- (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

During the Relevant Period, DeBrink, acting as a CPO, and Van Beuningen acting as an AP, through the use of the mails or others means or instrumentalities of interstate commerce (including through use of emails, telephone, and Defendants’ website), have violated Section 4o of the Act by, among other things, providing FCM 1 with fabricated futures trading account statements purportedly from FCM 2; misappropriating Pool Participants’ funds; providing Pool Participants false account statements that misrepresented the Pool’s profitability and/or the value of Pool Participants’ interest in the Pool; and by misrepresenting and omitting material facts on Defendants’ website and in other communications with Pool Participants regarding the Pool’s returns, as well as other material facts regarding the Pool and Pool Participants’ interest in the Pool. Defendants engaged in these acts and practices knowingly or with reckless disregard for the truth.

Further, when Van Beuningen committed the acts, omissions, and/or failures described above, he acted within the scope of his agency, employment, and office at DeBrink; therefore, such acts, omissions, and/or failures are deemed to be those of DeBrink pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2.

Finally, during the Relevant Period, Van Beuningen controlled DeBrink, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, DeBrink's conduct. Therefore, pursuant to Section 13(b) of the Act, Van Beuningen is liable for DeBrink's violations of Section 4o of the Act.

3. Futures Fraud (Violations of 7 U.S.C. § 6b(a)(1)(A)-(C))

Section 4b(a) of the Act makes it unlawful:

(1) 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;

(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

As described above, Defendants violated Section 4b(a)(1)(A)-(C) of the Act by, among other things, in or in connection with futures contracts made for or on behalf of other persons, misappropriating Pool Participants' funds, providing Pool Participants false account statements that misrepresented the Pool's profitability and/or the value of Pool Participants' interest in the Pool and misrepresenting and omitting material facts on Defendants' website and in other communications with Pool Participants regarding the Pool's returns, as well as other material facts regarding the Pool and Pool Participants' interest in the Pool. Defendants engaged in these acts and practices knowingly or with reckless disregard for the truth.

Further, when Van Beuningen committed the acts, omissions, and/or failures described above, he acted within the scope of his agency, employment, and office at DeBrink; therefore, such acts, omissions, and/or failures are deemed to be those of DeBrink pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2.

Finally, during the Relevant Period, Van Beuningen controlled DeBrink, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, DeBrink's conduct alleged in this Count; therefore, pursuant to Section 13(b) of the Act, Van Beuningen is liable for DeBrink's violations of Section 4b(a)(1)(A)-(C) of the Act.

4. Fraudulent and Deceptive Practices (Violations of 7 U.S.C. § 9(1))

Section 6(c)(1) of the Act makes it unlawful for any person, directly or indirectly, to:

use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act [July 21, 2010]

Regulation 180.1(a) provides:

It shall be unlawful for any person, directly or indirectly, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly:

- (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud;
- (2) Make, or attempt to make, any untrue or misleading statement of material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading;
- (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person

As described above, Defendants violated Section 6(c)(1) of the Act and Regulation 180.1(a) by, among other things, in connection with futures contracts, misappropriating Pool Participants' funds; providing FCM 1 with fabricated

futures trading account statements purportedly from FCM 2; providing Pool Participants false account statements that misrepresented the Pool's profitability and/or the value of Pool Participants' interest in the Pool; and misrepresenting and omitting material facts on Defendants' website and in other communications with Pool Participants regarding the Pool's returns, as well as other material facts regarding the Pool and Pool Participants' interest in the Pool. Defendants engaged in these acts and practices intentionally or recklessly.

Further, when Van Beuningen committed the acts, omissions, and/or failures described above, he acted within the scope of his agency, employment, and office at DeBrink; therefore, such acts, omissions, and/or failures are deemed to be those of DeBrink pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2.

Finally, during the Relevant Period, Van Beuningen controlled DeBrink, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, DeBrink's conduct alleged in this Count; therefore, pursuant to Section 13(b) of the Act, Van Beuningen is liable for DeBrink's violations of Section 6(c)(1) of the Act and Regulation 180.1.

**5. Failure to Register as a Commodity Pool Operator
(Violation of 7 U.S.C. § 6m(1))**

Pursuant to Section 4m(1) of the Act, 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 its business as a CPO. DeBrink operated as a CPO because it engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and in connection therewith, solicited, accepted, or received funds, securities, or property from others for the purpose of trading futures. Further, DeBrink utilized the mails or other means or instrumentalities of interstate commerce (including emails, telephone and Defendants' website), directly or indirectly, to engage in its business as a CPO.

During the Relevant Period, DeBrink was not registered with the Commission as a CPO and was not entitled to exemption from registration with the Commission, both in violation of Section 4m(1) of the Act. Additionally, during the Relevant Period, Van Beuningen controlled DeBrink, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, DeBrink's conduct alleged in this Count; therefore, pursuant to Section 13(b) of the Act, Van Beuningen is liable for DeBrink's violations of Section 4m(1).

6. Failure to Register as an Associated Person (Violation of 7 U.S.C. § 6k(2) and 17 C.F.R. § 3.12(a))

Section 4k(2) of the Act provides, "It shall be unlawful for any person to be associated with commodity pool operator as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or

property for a participation in a commodity pool . . . unless such person is registered with the Commission under the Act as an associated person of such commodity pool operator” Regulation 3.12(a) provides, “It shall be unlawful for any person to be associated with a . . . commodity pool operator . . . as an associated person unless that person shall have registered under the Act as an associated person of that . . . commodity pool operator”

During the Relevant Period, Van Beuningen was an AP of the CPO DeBrink because he was a partner, officer, employee and/or agent of DeBrink, and he solicited and accepted funds, securities, or property from investors for DeBrink for participation in a commodity pool. However, Van Beuningen was not registered as an AP with the Commission, in violation of Section 4k(2) of the Act and Regulation 3.12(a). Further, DeBrink permitted Van Beuningen to become and remain associated with it as an AP and knew that Van Beuningen was never registered as an AP of DeBrink; therefore, DeBrink violated Section 4k(2) of the Act.

When Van Beuningen committed the acts, omissions, and/or failures described above he acted within the scope of his agency, employment, and office at DeBrink; therefore, such acts, omissions, and/or failures are deemed to be those of DeBrink pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2. Further,

Van Beuningen controlled DeBrink, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, DeBrink's conduct. Therefore, pursuant to Section 13(b) of the Act, Van Beuningen is liable for DeBrink's violations of Section 4k(2) of the Act.

7. Failure to Operate the CPO as a Separate Legal Entity/Commingling of Funds (Violations of 17 C.F.R. § 4.20(a)-(c))

Regulation 4.20(a) requires a CPO to operate its commodity pool as a legal entity separate from that of the CPO. Regulation 4.20(b) requires that all funds, securities and other property received by a CPO from a prospective or existing pool participant for purchase of an interest or as an assessment must be received in the commodity pool's name. Further, Regulation 4.20(c) prohibits a CPO from commingling the property of any pool it operates with the property of any other person.

During the Relevant Period, DeBrink, while acting through Van Beuningen and while acting as a CPO, violated Regulation 4.20(a)-(c) by: (i) failing to operate the Pool as a legal entity separate from DeBrink, the CPO; (ii) receiving Pool Participant funds in the name of DeBrink, rather than in the name of the Pool; and (iii) commingling property of the Pool with non-Pool property.

When Van Beuningen committed the acts, omissions, and/or failures described above he acted within the scope of his agency, employment, and office at DeBrink; therefore, such acts, omissions, and/or failures are deemed to be those of DeBrink pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2. Further, an Beuningen controlled DeBrink, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, DeBrink's conduct. Therefore, pursuant to Section 13(b) of the Act, Van Beuningen is liable for DeBrink's violations of Regulation 4.20(a)-(c).

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

Based upon and in connection with the foregoing conduct, pursuant to 7 U.S.C. § 13a-1 Defendants are permanently restrained, enjoined, and prohibited from directly or indirectly violating Sections 4b(a)(1)(A)-(C), 4k(2), 4m(1), 4o(1), and 6(c)(1) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6k(2), 6m(1), 6o(1), and 9(1) (2012); and Regulations 3.12(a), 4.20(a)-(c), and 180.1(a), 17 C.F.R. §§ 3.12(a), 4.20(a)-(c), and 180.1(a) (2015).

Defendants are also permanently restrained, enjoined, and prohibited from directly or indirectly:

- a. trading on or subject to the rules of any registered entity (as that term is defined in 7 U.S.C. § 1a(40) (2012));
- b. entering into any “commodity interests” (as that term is defined in 17 C.F.R. § 1.3(yy) (2015)) for their accounts or for any account in which they have a direct or indirect interest;
- c. having any commodity interests traded on their behalf;
- d. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
- e. soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- f. 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 17 C.F.R. § 4.14(a)(9) (2014);
and/or
- g. acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a) (2015)), agent or any other officer or employee of any person (as that term is defined in 7 U.S.C. § 1a(38) (2012)) registered, exempted

from registration or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9).

V. MONETARY SANCTIONS

A. Restitution

Defendants shall pay restitution in the amount of \$480,000 (“Restitution Obligation”), plus post-judgment interest. Post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).

To effect payment of the Restitution Obligation and the distribution of any restitution payments to the Pool Participants, the Court appoints the National Futures Association (“NFA”) as Monitor (“Monitor”). The Monitor shall collect restitution payments from Defendants and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA’s appointment as Monitor, other than actions involving fraud.

The funds currently frozen in the accounts referenced below shall, upon request and at the direction of the Monitor, be immediately released to the Monitor and applied directly to payment of Defendants’ Restitution Obligation in

accordance with the terms of this Consent Order in an amount not to exceed \$480,000:

Financial Institution	Total Amount Frozen	Accounts Frozen
Wells Fargo Advisors, LLC	\$4,444.44	-3145
Wells Fargo	\$1,100.34	-2163 -3703 -6194 -0806 -1951
R.J. O'Brien	\$14,299.69	67661
Wedbush Securities	\$5,139.34 €95.44	VAN2125 VAN2127
TOTAL	\$24,983.81 + €95.44	

Defendants shall make Restitution Obligation payments under this Consent Order to the Monitor in the name "De Brink Trading – Restitution Fund" and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies Van Beuningen and/or DeBrink as the paying defendant and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the

cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to the Pool Participants identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to eligible pool participants is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part V.2 below.

Defendants shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Pool Participants to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendants shall execute any documents necessary to release funds that they may have in any

repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Pool Participants during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The amounts payable to each Pool Participant shall not limit the ability of any pool participant from proving that a greater amount is owed from Defendants or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any Pool Participant that exist under state or common law.

Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each Pool Participant who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Defendants to ensure continued compliance with any provision of this

Consent Order and to hold Defendants in contempt for any violations of any provision of this Consent Order.

To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendants' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

B. Civil Monetary Penalty

Defendants shall pay a civil monetary penalty in the amount of \$430,000 ("CMP Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).

Defendants shall pay their CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment by electronic funds transfer is chosen, Defendants shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies Defendants and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

C. Provisions Related to Monetary Sanctions

Partial Satisfaction: Acceptance by the Commission or the Monitor of partial payment of Defendants' Restitution Obligation or CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

VI. MISCELLANEOUS PROVISIONS

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

Notice to the Commission:

Chuck Marvine, Deputy Director
Division of Enforcement
U.S. Commodity Futures Trading Commission
4900 Main Street, Suite 500
Kansas City, MO 64112
Telephone: (816) 960-7700
Facsimile: (816) 960-7751
cmarvine@cftc.gov

Notice to Defendants:

Ronald D. Reemsnyder, Esquire
135 Prominence Court, Suite 160
Dawsonville, GA 30534
Telephone: (706) 216-1272
Facsimile: (706) 216-1278
rreemsnyder@rbspg.com

2. All such notices to the Commission shall reference the name and docket number of this action.

3. **Cooperation:** Defendants shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil

litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.

4. **Asset Freeze:** On March 29, 2016, the Court entered an asset freeze order [8] prohibiting the transfer, removal, dissipation and disposal of Defendants' assets ("Asset Freeze Order"). Subject to the Court's instructions on page 29-30 of this Consent Order, the Court hereby lifts the Asset Freeze Order with respect to both Defendants.

5. **Change of Address/Phone:** Until such time as Defendants satisfy in full their Restitution Obligation and CMP Obligation as set forth in this Consent Order, they shall provide written notice to the Commission by certified mail of any change to Van Beuningen's telephone number and mailing address within ten (10) calendar days of the change.

6. **Entire Agreement and Amendments:** This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

7. **Invalidation:** If any provision of this Consent Order or if the application of any provision or circumstance is held invalid, then the remainder of

this Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

8. **Waiver:** The failure of any party to this Consent Order or of any Pool Participant at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or pool participant at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

9. **Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this action, including any motion by Defendants to modify or for relief from the terms of this Consent Order.

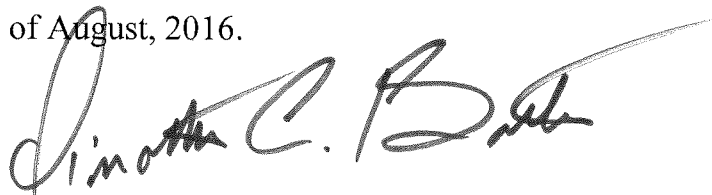
10. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Consent Order shall be binding upon Defendants, upon any person under their authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendants.

11. **Counterparts and Facsimile Execution:** This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

12. **Contempt:** Defendants understand that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this *Consent Order* forthwith and without further notice. The Clerk is further directed to close this case.

IT IS SO ORDERED this 1st day of August, 2016.



Timothy C. Batten, Sr.
United States District Judge

Accepted and agreed:

U.S. Commodity Futures Trading Commission,
Division of Enforcement

By: Jeff Le Riche

Jeff Le Riche
Chief Trial Attorney

Date: April 25, 2016

Accepted and agreed:

Hendrik van Beuningen

Hendrik A. Van Beuningen

Date: April 25, 2016

Accepted and agreed:

DeBrink Trading Fund I, LLC

By: Hendrik van Beuningen

Hendrik A. Van Beuningen,
its sole member and Manager

Date: April 25, 2016

**RAGSDALE, BEALS, SEIGLER,
PATTERSON & GRAY, LLP**

By: s/ Ronald D. Reemsnyder

Ronald D. Reemsnyder
Georgia Bar No. 597950
135 Prominence Court, Suite 160
Dawsonville, GA 30534
Ph: (706) 216-1272
Fax:(706) 216-1278
Email: rreemsnyder@rbspq.com
Counsel for Defendants

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1.B

In accordance with L.R. 7.1.D, N.D. Ga., I, Jennifer J. Chapin, hereby certify that, the foregoing was prepared using Times New Roman, 14 point and complies with L.R. 5.1.B, N.D. Ga.

/s/ Jennifer J. Chapin

Jennifer J. Chapin